

**LIST OF MEMBERS OF THE
NATIONAL ASSEMBLY**

SPEAKER

Dr T-B Gurirab (Mr)

**DEPUTY SPEAKER AND CHAIRPERSON OF THE
WHOLE HOUSE COMMITTEE**

Ms Loide Kasingo

THE CABINET

MINISTERS

(21 March 2010 – Elected in terms of Article 133 of the Constitution)

Mr N Angula	<i>(Prime Minister)</i>
Mr M Hausiku	<i>(Deputy Prime Minister)</i>
Dr G H Geingob (Mr)	<i>(Trade and Industry)</i>
Ms P Iivula-Ithana	<i>(Justice)</i>
Mr N Mbumba	<i>(Safety and Security)</i>
Dr A Kawana (Mr)	<i>(Presidential Affairs & Attorney-General)</i>
Ms S Kuugongelwa-Amadhila	<i>(Finance)</i>
Mr J Ekandjo	<i>(Regional and Local Government, Housing and Rural Development)</i>
Mr U Nujoma	<i>(Foreign Affairs)</i>
Mr E Nghimtina	<i>(Works and Transport)</i>
Dr A Iyambo (Mr)	<i>(Education)</i>
Ms D Sioka	<i>(Gender Equality and Child Welfare)</i>
Mr J Mutorwa	<i>(Agriculture, Water & Forestry)</i>
Mr J Kaapanda	<i>(Information & Communication Technology)</i>
Ms N Nandi-Ndaitwah	<i>(Environment and Tourism)</i>
Dr N Iyambo (Mr)	<i>(Veterans Affairs)</i>
Mr I Ngatjizeko	<i>(Labour & Social Welfare)</i>
Mr A !Naruseb	<i>(Lands & Resettlement)</i>
Dr R Kamwi (Mr)	<i>(Health and Social Services)</i>
Ms R Nghidinwa	<i>(Home Affairs and Immigration)</i>

Mr C Namoloh	<i>(Defence)</i>
Mr B Esau	<i>(Fisheries and Marine Resources)</i>
Mr I Katali	<i>(Mines and Energy)</i>
Mr K Kazenambo	<i>(Youth, National Service, Sport and Culture)</i>

DEPUTY MINISTERS

(21 March 2010 – Elected in terms of Article 133 of the Constitution)

Ms P Haingura	<i>(Health and Social Services)</i>
Ms A Muharukua	<i>(Gender Equality and Child Welfare)</i>
Mr A Muheua	<i>(Labour and Social Welfare)</i>
Ms L Lucas	<i>(Defence)</i>
Mr P Iilonga	<i>(Agriculture, Water & Forestry)</i>
Mr E Utoni	<i>(Safety and Security)</i>
Mr T Nambahu	<i>(Justice)</i>
Mr T Tweya	<i>(Trade and Industry)</i>
Dr S C Ankama (Mr)	<i>(Works and Transport)</i>
Mr P Mushelenga	<i>(Foreign Affairs)</i>
Mr P Shifeta	<i>(Youth, National Service, Sport & Culture)</i>
Mr W Isaacks	<i>(Mines and Energy)</i>
Mr S Simataa	<i>(Information and Communication Technology)</i>
Mr E Kaiyamo	<i>(Home Affairs and Immigration)</i>
Ms P Beukes	<i>(Regional and Local Government, Housing and Rural Development)</i>
Mr U Herunga	<i>(Environment and Tourism)</i>
Mr C Schlettwein	<i>(Finance)</i>
Dr. D Namwandi (Mr)	<i>(Education)</i>

SECRETARY

Mr. J Jacobs

DEPUTY SECRETARY

Mr F S Harker

LIST OF MEMBERS AND PARTIES WHICH THEY REPRESENT

ALL PEOPLE'S PARTY (APP)

Mr I Shixwameni *(Chief Whip and Party Leader)*

CONGRESS OF DEMOCRATS (COD)

Mr B Ulenga *(Chief Whip and Party Leader)*

DTA OF NAMIBIA

Mr K Kaura *(Party Leader)*

Mr P Moongo *(Chief Whip)*

NATIONAL UNITY DEMOCRATIC ORGANISATION OF NAMIBIA (NUDO)

Mr K Riruako *(Party Leader)*

Mr A Tjihuiko *(Chief Whip)*

RALLY FOR DEMOCRACY AND PROGRESS (RDP)

Mr S Bezuidenhout

Mr Hidipo Hamutenya *(Party Leader)*

Ms A Limbo

Mr H Lucks

Mr P Naholo

Mr K Nehova

Mr J Nyamu

Mr A von Wietersheim

REPUBLICAN PARTY

Ms C Gowases

SWANU

Mr U Maamberua *(Chief Whip and Party Leader)*

SWAPO OF NAMIBIA

Mr B Amathila	
Dr M Amweelo (Mr)	<i>(Chief Whip)</i>
Mr N Angula	<i>(Prime Minister)</i>
Dr S C Ankama (Mr)	<i>(Deputy Minister)</i>
Ms P Beukes	<i>(Deputy Minister)</i>
Mr E Dingara	
Mr J Ekandjo	<i>(Minister)</i>
Mr B Esau	<i>(Minister)</i>
Dr H Geingob (Mr)	<i>(Minister)</i>
Dr T-B Gurirab (Mr)	<i>(Speaker)</i>
Ms P Haingura	<i>(Deputy Minister)</i>
Mr M Hausiku	<i>(Deputy Prime Minister)</i>
Mr U Herunga	
Mr P Iilonga	<i>(Deputy Minister)</i>
Mr W Isaacks	
Ms P Iivula-Ithana	<i>(Minister)</i>
Dr A Iyambo (Mr)	<i>(Minister)</i>
Dr N Iyambo (Mr)	<i>(Minister)</i>
Mr J Kaapanda	<i>(Minister)</i>
Mr E Kaiyamo	<i>(Deputy Minister)</i>
Dr R Kamwi (Mr)	<i>(Minister)</i>
Mr P I Kapia	
Ms L Kasingo	<i>(Deputy Speaker)</i>
Mr I Katali	<i>(Minister)</i>
Ms J Kavetuna	
Dr A Kawana (Mr)	<i>(Minister)</i>
Mr K Kazenambo	<i>(Minister)</i>
Ms S Kuugongelwa – Amadhila	<i>(Minister)</i>
Ms L Lucas	<i>(Deputy Minister)</i>
Ms S Makgone	
Ms A Manombe-Ncube	
Mr N Mbumba	<i>(Minister)</i>
Ms A Muharukua	<i>(Deputy Minister)</i>
Mr A Muheaua	<i>(Deputy Minister)</i>
Mr P Mushelenga	<i>(Deputy Minister)</i>
Mr J Mutorwa	<i>(Minister)</i>
Mr B Mwaningange	
Mr T Nambahu	<i>(Deputy Minister)</i>

Mr C Namoloh	<i>(Minister)</i>
Dr D Namwandi (Mr)	<i>(Deputy Minister)</i>
Mr A !Naruseb	<i>(Minister)</i>
Ms E !Nawases-Taeyele	<i>(Assistant Whip)</i>
Mr I Ngatjizeko	<i>(Minister)</i>
Ms N Nandi-Ndaitwah	<i>(Minister)</i>
Ms R Nghidinwa	<i>(Minister)</i>
Mr E Nghimtina	<i>(Minister)</i>
Mr U Nujoma	<i>(Minister)</i>
Mr P Shifeta	<i>(Deputy Minister)</i>
Ms D Sioka	<i>(Minister)</i>
Mr T Tweya	<i>(Deputy Minister)</i>
Mr F Ueitele	
Mr E Utoni	<i>(Deputy Minister)</i>
Mr Piet van der Walt	
Ms L Witbooi	

UNITED DEMOCRATIC FRONT (UDF)

Mr J //Garoëb	<i>(Party Leader)</i>
Mr S Tjongarero	<i>(Chief Whip)</i>

APPOINTED BY THE PRESIDENT IN TERMS OF ARTICLE 32(5)(c) OF THE CONSTITUTION

Ms M Jankowski	
Prof. P Katjavivi (Mr)	<i>(Deputy Chairperson of the Whole House Committee)</i>
Mr C Schleittwein	<i>(Deputy Minister)</i>
Mr S Simataa	<i>(Deputy Minister)</i>
Ms S Swartz	
Ms A Tjongarero	

**NATIONAL ASSEMBLY
ASSEMBLY CHAMBERS
WINDHOEK
02 NOVEMBER 2011**

The Assembly met pursuant to the adjournment.

HON DEPUTY SPEAKER took the Chair and read Prayers and the Affirmation.

HON DEPUTY SPEAKER: Any Petitions? Reports of Standing or Select Committees? Honourable Amweelo.

**TABLING: REPORT ON FOURTH
PARLIAMENTARY FORUM**

HON DR AMWEELO: Honourable Deputy Speaker, Honourable Members, it gives me immense pleasure and honour to be granted this opportunity to table the Report on the Fourth Parliamentary Forum on Shaping the Information Society.

First and foremost, the Committee on ICT wishes to express its profound gratitude to the National Assembly for being given the opportunity, mandate, support and resources to attend the IPU Organised Forum in Geneva.

Honourable Deputy Speaker, Honourable Members of this august House, allow me to present to you a brief summary of the Report to give you a synoptic view of the Forum and enlightening you on the main issues and resolutions adopted.

The Forum was held in Geneva, Switzerland under the auspices of the Inter-Parliamentary Union (IPU). The Forum brings together telecommunications operators, manufacturers, regulators, civil society

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**TABLING OF REPORTS
HON DR AMWEELO**

organisations and many other players and stakeholders in the technology sector. The Forum entitled; “*The Triple Challenge of Cyber Security. Information Citizens and Infrastructure*” was the fourth meeting of Members of Parliament since the initiative was launched in 2005. The objective of the Forum was to familiarise Members of Parliament with the challenges posed by cyber crime and their oversight role in ensuring the protection of State information, data and infrastructure in response to the threat.

Cyber security is real, its effects are being experienced worldwide and Namibia is by no means immune to the attack, it has neither limits nor boundaries, its destructive nature is spiralling the globe which is why it is necessary that stringent measures need to be put in place to safeguard the Nation’s information from falling into the wrong hands. It is vital for Namibia as a country to build confidence in the fight against cyber crime, act responsibly and enact legislation that promotes a safe and enabling environment for citizens, business and institutions to fully benefit from the Internet revolution.

Cyber crime and the illicit use of ICT cannot be combated effectively with harmonised or national legislation to curtail proliferation of criminal activities with relative impunity. It is the hope of the Committee that the recommendations made in this Report are taken into account by the Ministry of Information and Communication Technology, to ensure the passage of legislation on cyber security. Such legislation should be made in consultation with all the relevant stakeholders.

Comrade Deputy Speaker, Honourable Members, with these few remarks I would like to lay upon the Table, **Report on the Fourth Parliamentary Forum on shaping the information society** held from the 18th to the 20th of May 2011 in Geneva, Switzerland, attended by the Parliamentary Standing Committee on Information and Communication Technology for the Members’ information. I thank you, Honourable Deputy Speaker.

HON DEPUTY SPEAKER: Please table the Report. Any further

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**TABLING OF REPORTS
HON KUUGONGELWA-AMADHILA**

Reports of Standing Committees? Other Reports and Papers? Honourable Minister of Finance.

TABLING: REPORTS OF THE AUDITOR-GENERAL

HON MINISTER OF FINANCE: Honourable Deputy Speaker, I lay upon the Table, Reports of the Auditor-General on the accounts of:

- Municipality of Otjiwarongo;
- Municipality of Tsumeb; and
- Municipality of Grootfontein for the year ended June 2010.
- Town Council of Okahao for the Financial Year ended June 2009;
- The Land Acquisition and Development Fund;
- Village Council of Berseba; and
- Village Council of Gochas for the Financial Year ended June 2010; and
- Village Council of Kalkrand for the Financial Years ended June 2008 and June 2009.

HON DEPUTY SPEAKER: Please table the Reports. Any other Reports and Papers? Notice of Questions? Notice of Motions? Ministerial Statements? I will ask the Secretary to read the Tenth Order of the Day.

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**PREFERENTIAL TRADE AGREEMENT
HON TWEYA**

**RESUMPTION OF DEBATE ON RATIFICATION OF THE
PREFERENTIAL TRADE AGREEMENT BETWEEN THE
COMMON MARKET OF THE SOUTH AND THE SOUTHERN
AFRICAN CUSTOMS UNION**

SECRETARY: Resumption of Debate on Ratification of the Preferential Trade Agreement between the Common Market of the South and the Southern African Customs Union.

HON DEPUTY SPEAKER: When this Debate was adjourned on the 27th of October 2011, the Question before the Assembly was a Motion by the Honourable Deputy Minister of Trade and Industry that the Bill be now read a Second Time. The Honourable Deputy Minister adjourned the Debate and he now has the Floor to reply.

HON DEPUTY MINISTER OF TRADE AND INDUSTRY: Thank you, Honourable Deputy Speaker. I will not respond question by question because some questions and concerns were repeated and I decided to consolidate those questions and I will acknowledge them: *Honourable Tjihuiko, Honourable Mushelenga, the Prime Minister, Honourable Shifeta, Honourable Bezuidenhout, Honourable Van Der Walt, Honourable Riruako and Honourable Pendukeni Iivula-Ithana and then the Honourable Speaker.* Thank you very much for your contribution and those Honourable Members who did not take the Floor.

Some of the concerns were on what the Agreement means for Namibia, what are the direct benefits that would accrue to Namibia from this Agreement and what does the Agreement mean to the man in the street or in the village? It is about the bread and butter issue.

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The response to most of the points raised are:

The SACU-MERCOSUR PTA is a unique trade agreement as it is one of the few trade agreements in the world that is concluded between two developing regions. It is, therefore, an important milestone in giving meaning to the objectives of south-south cooperation and trade integration.

The implementation of the SACU-MERCOSUR Agreement will enable Namibia and other SACU Member States to export their products to the MERCOSUR region on duty-free and quota-free basis for those products that are listed in the Agreement. The MERCOSUR's offer, as contained in Annexure 1 of the PTA, covers 967 product lines, while SACU's offer, contained in Annexure 2, to MERCOSUR covers 951 line products.

With respect to agriculture, MERCOSUR granted concession to SACU on 176 lines against SACU's offer of 159 lines. Worth noting here is that the nature of this agreement, the PTA, does give an opportunity to each party to protect its sensitive products. The reduction in tariffs or margins of preferences for products by both SACU and MERCOSUR ranges from 10% to 100%, that is, the duties were reduced by these percentages.

The immediate opportunities for Namibia in terms of export to MERCOSUR are in products such as vegetables, maize seeds and maize flour, dried grapes, which attract tariff reduction preference margin of 50% to 100%. However, the market access achieved through the Agreement creates the potential for industrial development and export of new products, especially the niche market within MERCOSUR. The Agreement will also provide SACU and Namibia, in particular, access to cheaper sources of material input for its product sector. At the moment a lot of Namibians are self-employed in sectors such as the hair industry where a lot of hair products are sourced from Brazil and the ladies here will understand, we talk of the Brazilian hair. These are some of the direct benefits.

The implementation of the SACU-MERCOSUR Agreement will reduce the cost of import on these products through reduced tariffs, which will

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lead to increased profit margins for Namibian businesses in this industry. The PTA also creates an opportunity for Namibians to create joint ventures and business linkages with their counterparts in the MERCOSUR Member States as it creates a predictable trade regime. I hope I have more or less answered those questions and concerns raised.

The second one is: What are the likely losses for Namibia and what is Namibia giving up through this Agreement?

As with all trade negotiations of preferential nature, the PTA could have potential revenue losses as tariffs are removed on the limited number of product lines offered by SACU to MERCOSUR. However, Namibia being a small country with a small domestic manufacturing base, cannot use this excuse not to be integrated in the global economy. The PTA will not only provide improved market access, but will also enhance relations through new trade and investment opportunities between the peoples of the two regions.

Thirdly, the Honourable Members wanted to know the implications of Article 6(e) of the SACU-MERCOSUR PTA on the application of policy tools, like the infant industry protection for SACU Member States, specifically Namibia. Does the article commit Namibia and other SACU Member States to seek approval from MERCOSUR when such a policy is to be applied?

The answer is that the provision of Article 6(e) is simply aimed at providing predictability and promoting transparency between the two regions in their trade. It is clearly stated that SACU members only need to notify and not necessarily to seek approval from MERCOSUR in case where one of the BLNS countries are to invoke in infant industry protection provision as provided for under Article 26 of the SACU Agreement. Under the SACU Agreement you must get that permission. In MERCOSUR you only inform about your intention.

The consultation between SACU and MERCOSUR will take place only if the applied duties adversely affect the preferential export of the Republic of Paraguay and/or Uruguay, in other words, the two smaller economies in

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MERCOSUR and the purpose of such consultation is to find mutually satisfying solution to the issue.

Members wanted to know what the procedures for infant industry protection are and I felt that it is important to share this information, Madam Deputy Speaker.

The procedure of granting the infant protection to industries starts with the assessment of information received from a concerned company and industry and it is worth noting here that the granting of infant protection applies to the entire industry and not to a single or an individual company. When assessing the application for an infant industry protection, the Ministry of Trade and Industry considers the following information:

1. The full description of the products for which the infant industry applied for.
2. The local production, consumption, existing and potential competition in the forms of import marketing or supply chain.
3. The macro-economic impact on the country in terms of industrial linkages; current and potential employment creation; skills and technology transfer; value addition and other effects on other role players.
4. The full justification for the proposed protection in terms of cost structures, economic feasibility or sustainability, benefit cost to consumer and regional and international implications.
5. The demonstration of the existence of foreign competition in the local market for that product.

Upon being satisfied with such information, the Ministry would then carry out consultation with the concerned industry and all the concerned stakeholders. This is done to determine the need, the level and the duration of protection which is appropriate. The level of protection takes

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into consideration the need of the industry to establish itself in the market, the need to repay any capital investment and the need to establish a brand name as well as develop its human capital base. Once this process has yielded satisfactory results, the Ministry of Trade and Industry would then lodge its application through the structure of SACU where a final decision is made by the SACU Council of Ministers.

This far, Madam Deputy Speaker, Honourable Members, the only SACU Member States which made use of the infant industry provision are Namibia and Botswana. Namibian industries that are currently benefiting from infant industry protection provisions are, the UHT milk, pasta, broiler industry, while Botswana is also protecting its UHT milk through the same provision. To our knowledge, there was never a case in SACU where a Member State has applied for infant industry protection and that application was rejected by the SACU Council.

The main intention of Article 26 provision of 2002 SACU Agreement is merely to create transparency among the members of the Customs Union, but not to take away the legitimacy of SACU Member States in applying infant industry protection policy as and when it is necessary.

What are the mechanisms in place to ensure that there is no dumping? The Agreement has provisions on trade remedies that both parties can invoke in the event of dumping that causes material injury to a domestic industry. In such an event, State parties are allowed to invoke Article 15 of the PTA on anti-dumping and countervailing measures, which is done in conformity with WTO General Agreement on Tariffs and Trade. State parties are also allowed to implement safeguard measures when faced with a surge or influx in imports which can cause or threaten to cause serious injury to the domestic industry.

The Honourable Members also mentioned the concern about EPA. The Round Negotiations are not yet dead and I also mentioned this. Suppose we start getting this round of negotiations going and sign an agreement, would this not affect the much talked about DOHA negotiations? Are we not pre-empting the efforts that we have made so far? That was the concern raised.

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In response I can only say that we are not pre-empting, but that Namibia attaches a great importance to the multilateral trading system and we are still committed to the conclusion of the DDA Round of Trade Negotiations. However, as a country we cannot wait for negotiations that drag on for over a decade and even up to now there is no certainty as to when these negotiations will be concluded. The Namibian industry needs to be provided with market opportunities as of today and this agreement will just fill that gap.

Whether a commercial councillor can be appointed to Brazil or in that region, I can only respond that the Ministry has taken note of that concern and that we will look into that so that we give effect to the actual implementation of this Agreement because it is in our interest.

As a footnote, I would like to thank the Honourable Speaker that we at least have managed from 1991 to realise his dream that we can now trade ocean to ocean, from Uruguay to Swakopmund and I hope that I have responded to the Honourable Members' concerns and I thank you very much for your usual support. Thank you.

HON DEPUTY SPEAKER: Thank you. I now put the Question, that the Agreement be ratified. Any objection? Agreed to. The Secretary will read the Sixth Order of the Day.

**CONSIDERATION: REPORT ON ACCESSIBILITY TO
LEGAL AND JUSTICE SYSTEM**

SECRETARY: Consideration of Report on Accessibility to Legal and Justice System.

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HON !NAWASES-TAEYELE**

HON DEPUTY SPEAKER: Does Honourable Nawases-Taeyele Move that the Report be considered?

HON !NAWASES-TAEYELE: Thank you, Deputy Speaker. The Parliamentary Standing Committee's mandate, as per Rule 48 of the Standing Rules and Orders of the National Assembly, is to oversee the work of the Ministry of Justice and other offices, Ministries and agencies that are not the subject of discussion in this Report that has been submitted to this august House.

The mandate of the Ministry of Justice is to deliver justice in the Republic of Namibia. The Ministry delivers its mandate through its critical departments, which are, the Directorates of Legislative Drafting, Law Reform and Development, Legal Support System, Lower Courts, Legal Aid and Office of the Ombudsman.

Article 10 of the Constitution requires the State to provide access to justice for all people, irrespective of their colour, race, ethnic origin, sex, religion, creed or social or economic status. According to the information of the Magistrates' Commission, the country currently has 34 Magistrates' offices and 82 Magistrates. One can safely say that most Magistrates' offices have a Magistrate on board and is indeed a commendable achievement.

Honourable Deputy Speaker, our Parliament is a key stakeholder to ensure that justice is delivered and that our people have access to a fair and just legal system. Having considered the inequalities that the people of this country endured during the colonial apartheid era, our justice and legal system should promote social and economic development and lead the country to prosperity. Justice should be accessible, affordable and speedy to the ordinary people. The laws of our country should be responsive to the needs of our people, otherwise justice will not be accessible to the ordinary people.

Honourable Deputy Speaker, Honourable Members, it is against this

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HON !NAWASES-TAEYELE**

background and ideals that the Standing Committee on Constitutional and Legal Affairs conducted regional consultations in Caprivi, Kavango and Otjozondjupa from 28 July to August 2010. The terms of reference of the Committee was to consult with Regional and Local Authority Councils, Traditional Authority leadership, Magistrates and Court officials, the Police and respective communities, to learn from them to what extent the legal system of justice system of Namibia is accessible to our people in those specific Regions.

The Standing Committee used this platform to inform the participants of the Committee's terms of reference and objectives and the need for public input on constitutional and legal issues, human rights as well as Regional and Local Government matters.

The Committee consulted and gathered information on the following aspects of the legal and justice system:

- The work, successes and challenges of the criminal and civil courts in the Region;
- Successes and shortcomings experienced by the presiding officers, in this case Magistrates, prosecutors and court officials;
- Whether the justice system and legal system is accessible to the people of the Region and of the country;
- When people need assistance of the Police, courts and lawyers, how easily can they obtain such services?
- The successes and shortcomings of the Community Courts Act (No. 10 of 2010) and the existing Traditional Courts in the Region and the relation between the two instruments and entities.
- The human resource and related issues of Community Courts and Traditional Courts.

Those were the terms of reference. The Report reflects the view of the

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people and institutions consulted in particular Regions. It spills over with recommendations on particular issues, following an intensive in-camera workshop of the Committee held in Otjiwarongo where concerns and issues raised by the communities and the leadership of the Regions were identified in detail.

For the purpose of proper reporting, the Report is broken down into various parts which are briefly outlined as follows:

Part 1 deals with the purpose of which the Committee undertook the regional consultations. Issues dealt with and discussed included, Paragraph 3 deals with Traditional and Community Courts.

Many aggrieved Namibians in rural areas make use of the Traditional Courts to lay charges with the aim to get compensation and thus, peace of mind. The operations of the Traditional Courts and the problems they face thus have a direct bearing on meting out justice at traditional level. The Report further outlines and identifies the challenges faced by the Traditional and Community Courts in the following areas:

Law enforcement: Enforcement of orders of the Court, jurisdiction at traditional level, jurisdiction at civil and criminal courts, roles of Chief in Community Court set-up, training and capacity-building for Community Court administrators.

Paragraph 4 deals with the infrastructure and logistical assistance to Traditional and Community Courts, namely transport, staff and office infrastructure.

Paragraph 5 deals with the relationship between Traditional and Community Courts with Magistrate's Courts.

Paragraph 6 deals with infrastructure and logistical assistance to Magistrate Courts. It also deals with the Magistrate Courts Act.

Paragraph 7 deals with legal representation in the courts. Article 12(e) of the Constitution states that "*all persons in Namibia shall be entitled to be*

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defended by a legal practitioner of their choice.”

Paragraph 8 deals with the implementation of the Community Courts Act (Act 10 of 2003).

Paragraph 9 deals with specific recommendations to the Law Reform and Development Commission.

Paragraph 10 deals with family inheritance matters.

Paragraph 11 deals with laws affecting communities that practise customary law and challenges at both Regional and Local Authority levels.

Paragraph 12 deals with Traditional Leaders.

Paragraph 13 deals with challenges that Regional and Local Authority Councils are experiencing.

Part 2 of the Report deals with issues that were not relevant to the purpose of the visit which falls within the jurisdiction of the Committee, namely land disputes and deliberate transmission of HIV.

Part 3 deals with matters that fall outside the mandate of the Committee, but that are referred to the relevant authorities and related to the mandate of other Parliamentary Standing Committees for their attention and action. I urge those Committees to take these issues and recommendations forward. Now that the Report is on the Floor of the House, the relevant Line Ministries should also consider those recommendations.

Honourable Deputy Speaker, Honourable Members, I would like to emphasise again that the issues and concerns raised in the abovementioned paragraphs of the Report were raised by the stakeholders and community members visited. In order to induce that the requests of the stakeholders and communities are addressed, the Standing Committee made specific recommendations in this Report for the consideration of this august House.

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The Report concludes by addressing the seriousness of these consultations and sense of expectation from communities. There are clear requests from the communities and their leadership for feedback on tangible improvement.

Honourable Deputy Speaker, Honourable Members, the Standing Committee is aware that attempts have been made and are still being made by the Ministry of Justice in particular to address some of the concerns raised and we commend the Ministry for that. However, there are issues that need immediate action to uphold the constitutional obligation of the State to provide access to justice for all people, irrespective of their colour, race, ethnic origin, sex, religion, creed, social and economic status.

I would like to conclude with the statement made by the Judge President, Petrus Damaseb: *“What is my vision for High Courts for the decade ahead? We have to enhance access to court. More and more people must be empowered to approach the courts and to have disputes resolved with as little hassle as possible.”*

Honourable Deputy Speaker, Honourable Members, it is against this detailed motivation of this Report that the Standing Committee requests the Honourable Members to consider this Report in all seriousness with the view that we form a team to make Namibia a country with an excellent, accessible, affordable and speedy justice system and I thank you.

HON DEPUTY SPEAKER: Thank you. Honourable Dingara, you have the Floor.

HON DINGARA: Thank you very much, Honourable Deputy Speaker and Honourable Members. I must inform the House that this was my very first visit to the Namibian people since I joined Parliament and that was a very good learning experience for me.

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What we realised during our visit was that some of the laws are outdated, laws such as the Administration of Estates Act, (Act of 1965) and the Wills Act, (Act 7 of 1953). We also realised that the Intestate Succession Ordinance No. 12 of 1944 is outdated, as well as Schedule 2 of the Administration of Estates (Rehoboth Gebiet) Proclamation No. 36 of 1941.

These laws stipulate that if a woman is married in community of property and dies without a will, her parents cannot inherit. It is essential to harmonise traditional and customary inheritance laws with the common law, as the traditional and customary inheritance is not recognised in the courts of Namibia. For example, should the husband die and he was married both in terms of the customary law and civil law, the wife will not be able to inherit from the estate of the deceased. (Intervention)

HON TJIHUIKO: Honourable Deputy Speaker, may I ask the Honourable Member just a small question, please? Honourable Dingara, I know that you are a very serious Parliamentarian, but is it really true what you are telling us now, that the laws you have just mentioned are still on our books? Secondly, how long has the Ministry of Justice been in existence in order for them to deal with these laws which do not tally very well with our Constitution? Has the Ministry been in existence for more than three years just for them to be able to pick up some of these things?

HON DEPUTY SPEAKER: You can ignore the question. The Minister of Justice is here to respond and what you have stated is what you believe to be in existence.

HON DINGARA: Furthermore, according some traditional practices a widow does not have any entitlement to the estate of her late husband. (Intervention)

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HON SHIXWAMENI: May I ask the Honourable Member a small question? Given the fact that he has mentioned so many outdated laws, what would he propose to the Minister of Justice in terms of dealing with these outdated laws?

HON DEPUTY SPEAKER: I think the Report covers the recommendations, just proceed.

HON DINGARA: Honourable Deputy Speaker, I should also inform the House that Honourable Tjihuiko and Honourable Shixwameni accompanied us on this visit and it was discussed in detail. Therefore, it is unfair that I have to respond to them.

Comrade Deputy Speaker, the Proclamation 15 of 1928 stipulates that one was automatically classified as having married either out of community of property, depending on how or where you live, unless you gave thirty days notice of how you want to get married. This one is only talking about the people north of the red line, which means the greater part of Kunene, Omusati, Oshana and all those areas up to the Caprivi Region. If you get married there, you are automatically considered to be married out of community of property. Many people from here go and get married there in community of property, only to find that the law stipulates that they were not married in community of property.

Family laws and inheritance matters: The Committee deliberated on inheritance and related family law matters in Namibia with specific reference to the laws mentioned below. The Committee also went further in some instances to call for a complete repeal of some of these legislations and Amendments to others:

Divorce law, customary law, marriage north of the red line, the Pension

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Funds Act. In terms of the Pension Funds Act the trustees are given the responsibility to protect the interests of dependent children of the deceased. In the process they may override the expressed nomination of beneficiaries by the deceased.

**HOUSE ADJOURNS AT 15:40
HOUSE RESUMES AT 16:15 PURSUANT TO ADJOURNMENT**

HON DINGARA: Honourable Deputy Speaker, coming to the Regional Councils and Local Authorities Acts, these Acts need to be reviewed to provide for the hierarchy and line of command between the Regional Council and the Local Authorities, because currently it is not clear which belongs where. The Regional Councils Act needs to be reviewed to provide authority to the Regional Councils to decide on employment conditions and provide power to the Regional Councils to recruit and terminate services of employees.

In terms of Section 23 of the Regional Councils Act of 1992, as amended, appointment and discharge of employees are vested in the Regional Councils, however, in terms of Section 24 of the same Act, the same functions are provided for in the Public Service Act (Act 2 of 1980), which creates confusion among Regional Councils. The current status is that Regional Councils are the appointing authority and the Public Service Commission is the authority responsible for employment conditions, such as remuneration and disciplinary action.

Coming to the Magistrate Courts Act (Act 32 of 1944), as amended, this Act needs to be reviewed so that the whole process of civil litigation is brought in line with the demands of the day.

Another challenge the Regional Councils and Local Authorities are experiencing is centralisation of power in Windhoek and bureaucracy with its long channels of cumbersome procedures for placing requests. It takes

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six months to get a pen and those are some of the challenges faced by the Regional Councils.

We also learned that on the 345 kilometres road between Tsumkwe and Grootfontein there is no network coverage and the road is bad. The community requested that the road be tarred. (Intervention)

HON DEPUTY SPEAKER: What does that have to do with the Report?

HON DINGARA: Comrade Deputy Speaker, the recommendations on these issues I have just mentioned are outlined in our detailed Report.

Otherwise, that was my contribution and I support the Report of the Committee. Thank you very much.

HON DEPUTY SPEAKER: Thank you. Honourable Mwaningange.

HON MWANINGANGE: Thank you very much, Honourable Deputy Speaker. I would also like to specifically underline some very important and critical issues in this Report on which the Committee was briefed. There are some specific problems to which we have to draw the attention of the Ministry of Justice.

The first is office infrastructure and logistical assistance to Traditional and Community Courts. The offices of the Traditional Authorities are dilapidated, half renovated or even non-existent, making it very difficult for the Traditional Courts to conduct their business and address traditional issues of the concerned community. Therefore, the administration of justice is being hampered. For example, when the Committee was in

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Tsumkwe in August last year the Traditional Court was operating under a tree. However, I am pleased to now hear from the community that this Court has been opened in Tsumkwe.

The role of Traditional Chiefs or Kings within the Community Court: The Community Courts Act (Act 10 of 2003) does not make any provision for the Chief or King of a Traditional Authority to be a presiding officer, so the intention of the Act is to do away with the current set-up of the Traditional Courts where the Chief or King acts as presiding officer of the highest structure of the Traditional Courts. Based on this, the new Community Court concept was to a certain extent rejected by some of the Traditional Authorities where proper Traditional Court systems or structures exist, but it was not really blessed by the community. However, where proper Traditional Court systems or structures did not exist, the provision of new Community Courts and the Act itself were welcomed and the Committee feels there is a need to strengthen the new Community Courts system further and create more awareness among the community members.

Lastly, Honourable Deputy Speaker, about the jurisdiction between the Community Courts and the Magistrate's Courts. In civil cases it is very clear that civil cases are tried within the Community Courts, but with criminal cases the Traditional Authorities still believe that they are also to deal with criminal cases, which is not the case.

These are the areas which need to be emphasised and sensitised with the Traditional Leader to advance the course of justice. Thank you.

HON DEPUTY SPEAKER: Thank you. Honourable Tjongarero.

HON A TJONGARERO: Thank you, Honourable Deputy Speaker. I also rise to emphasise a few points in this Report.

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Infrastructure and logistical assistance to Magistrates' Courts: The people were asking that they be given some power to source necessities from local suppliers. They say whenever they need supplies, this must be requested from Windhoek and it takes too long. Therefore, they want to be given that power to get their necessities from the local suppliers.

The next point is on staffing. The Magistrates' Courts have far too much extra work with too few staff, with the result that backlogs build up and justice is delayed. Katima Mulilo requested more Magistrates, prosecutors and typists and most of the Magistrates' Courts asked that the typists be trained.

In Otjiwarongo there was a request for more interpreters and Legal Aid staff. When we were in Grootfontein they had no Regional Magistrate for the past year and a half and they also experience the same shortage of staff, such as typists, etcetera. The same goes for equipment, no computers, fax machines and they even asked for toilet paper. Grootfontein requested new computers and software and a server to be fixed for Internet access. They also requested photocopy paper and ink cartridges. They cannot do any research because they do not have access to the Internet.

Concerns were raised that the Magistrates Courts Act (Act 32 of 1944) and the Rules of the Court are complicated and need to be simplified so that people can litigate without the presence of a legal practitioner.

Another problem raised concerned legal assistance. The problem is that the person to approve legal assistance is in Windhoek. Article 12(e) of the Constitution of Namibia states that, "*all persons in Namibia shall be entitled to be defended by a legal practitioner of their choice.*" However, obtaining a decision from the Directorate of Legal Aid which is based in Windhoek on an application for legal aid by an Accused person is currently being delayed. It can take anything from six months to two years for a decision to be made, resulting in Accused persons finding it difficult to be represented by a legal practitioner, therefore resulting in police cells and prisons overflowing with trial-awaiting inmates. That in short is my contribution to the Report and I thank you.

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HON DEPUTY SPEAKER: Thank you. Honourable Moongo.

HON MOONGO: Thank you, Honourable Deputy Speaker. First of all, I would like to thank the Members of the Committee who did their best to meet all the relevant people and to pinpoint the urgent need for change. We urgently need to implement the recommendations in the Report and we have to start from here. We first want a change of heart of Members of Parliament towards the traditional set-up and the political will. Sometimes the majority of this House are not in favour of traditional matters. For twenty years we have been talking about traditional matters and the challenges which we are all aware of since we were born in those areas, but we do not seriously address traditional problems. (Intervention)

HON DEPUTY SPEAKER: For example?

HON MOONGO: The recommendations are in the Report and we heard other people mentioning it already, but you do not want to support a Budget to cater for the problems of Traditional Authorities. They are underpaid and we gave you examples of other countries, but you did not accept it. Also the officials are underpaid and that is why the backlog is still increasing. (Intervention)

HON MINISTER OF PRESIDENTIAL AFFAIRS AND ATTORNEY-GENERAL: On a Point of Order. My sincere apologies that I have to interject the remarks of the Vice-President of DTA and also a Traditional Councillor. Did the Honourable Member declare his interest, because I am afraid some of the statements might be bordering on some of his functions.

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HON MOONGO: Yes, that is the attitude I mentioned. They do not want any progress, they only want to tamper with the rights of the community to delay justice to the community. I want to thank the Headmen who did their best and have no backlog in their community. They handle the cases even better than the High Court. There is no backlog in many of the Traditional Courts. (Interventions)

HON MINISTER OF YOUTH, NATIONAL SERVICE, SPORT AND CULTURE: Honourable Moongo, Vice-President of the DTA, have you changed your attitude on the beating of culprits, corporal punishment?

HON MOONGO: I think I have known the law even before you came in from Botswana and I do not need to teach you. You were taught in Botswana and if corporal punishment is still practised in Botswana, that is their case. I would only like to say that it is a pity that dockets are still stolen from the Magistrates' Courts. Can you tell me in which Community Court dockets were stolen? Therefore, I salute them because they are doing well. (Intervention)

HON DEPUTY MINISTER OF JUSTICE: On a Point of Information and a question. Honourable Member, now that you are saying the Government is not serious, could you tell the Nation at whose instance were those Community Courts established? Secondly, can you also show us what is the colour of the docket in a Community Court, what do they look like?

HON MOONGO: As you know, the Community Courts are crippled by

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the legal system of Namibia. They do not want to improve and empower it. They do not want to give facilities, build offices and Community Courts. They are still under the trees and that is an insult and proper records are required. How can you have records under trees?

However, no dockets were stolen and I appeal to the Ministry to empower the Community Courts. They are trying their level best and I really salute the Community Courts. (Intervention)

HON DEPUTY MINISTER OF YOUTH, NATIONAL SERVICE, SPORT AND CULTURE: May I ask the Honourable Member a small question? Honourable Moongo, you are saying the Traditional Courts are conducted under trees. Are you aware that it is a practice in the customary law that Traditional Courts are held in open spaces? In some of the traditions it is customary that they are not supposed to be under a roof, but under the trees. Are you aware of that?

HON MOONGO: He still wants to hamper the progress and empowerment of the Traditional Courts. I started by saying I want a change of heart by the Honourable Members here, because you still want the Traditional Courts to be under the trees and this is embarrassing.

With this I support the Report and I appeal for drastic steps to implement this Report. Thank you very much.

HON DEPUTY SPEAKER: Thank you. Honourable Doreen Sioka.

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HON MINISTER OF GENDER EQUALITY AND CHILD

WELFARE: Thank you very much, Honourable Deputy Speaker. I also wholeheartedly support the Report of the Committee. While Mr Moongo was shouting there, I remembered that we were the people who took the Bill on Community Courts to the Traditional Authorities to be explained. It is very disappointing if there is no improvement, but as far as I am concerned there is, because the Chiefs were provided with transport and allowances. I support the idea that assistance is needed, especially training to the Police Officers, so that they are able to arrest criminals in our communities.

When it comes to point 4.1, I have mentioned the issue of transport which was already provided. What is lacking in the Traditional Courts is gender equality. I think the Members who went there found that at some Traditional Authorities there are no female staff members and you were supposed to consider this so that there should be change. When I was still the Deputy Speaker, I undertook a trip to address the Chiefs on the issue of gender balance, that they should include women. I remember the community where a woman stood as Chief and they denied that woman to be a Chief and they considered a man. We need to see women also being involved.

There was also an issue discussed on Page 16. I do not know how far we have gone with repealing the Act on the marriages north of the red line. Many women came to me and complained about this issue and the Ministry of Justice should come up with a law on that one.

There is a very serious concern on Page 24, namely the deliberate transmission of HIV/AIDS. I really concur with the Colleagues, there is no way we will curb this disease if we do not change our attitudes. Whether we like it or not, there are people in our communities who are taking revenge, saying that *“if my husband or wife died of this disease, I will also transmit it to others.”* We have that attitude among our communities. For example, if my husband died of the disease, tomorrow I will go to Tate John and because I have my husband’s pension, John will never be faithful to his wife. Both men and women are doing it and in the end many people die. We are trying to protect those people who are

positive, but they are also causing harm. We should be frank about this and we need a policy even before we have a law to punish these people who are doing that. I know that my husband died of the disease and I go with John, I have a child with John. The wife of John will only see a child from Doreen who is positive and later on Doreen goes to another man again. Then again the wife will only see the child there, that is the only proof. Our men and women should be honest and inform their spouses and if not, use a condom to protect others. There is no way we will curb this disease. The Ministry of Health and Social Services will have to order medicine for everybody.

The same applies to our children. I have this child who was born from two positive people, this child will go to school and fall in love with another child and infect that child. Later that child finds a sugar daddy with money, she will divorce my son and infect him and consequently other people. It is a never-ending chain.

These people who are deliberately infecting other people should be regarded as criminals because they are killing the Nation. Not all of them are doing it deliberately though. Later you see your husband is sick because he was not faithful. Those people should be punished for doing that. If a woman finds out her husband has a child with someone else, she should make sure and she takes the two people to Court. Normally you can live with somebody who is positive, as long as you are using precautions. You do not have to divorce because your husband has already infected you as he has a child with a positive person.

I do not know where we will put the issue of recognition of lesbians and gays, because they are mushrooming in Namibia and the law should pronounce itself. If we are against it, let us show that we are against and if we are in support of it, let us show that we support it. A law should be enacted in this matter and Government should pronounce itself.
(Intervention)

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HON MINISTER OF ENVIRONMENT AND TOURISM: On the issue of gays and lesbians, the Government of the Republic of Namibia has made itself very clear, more particularly during the preparations for the Beijing Conference. We will recall that there was a Debate to have the phrase, “*Sexual Orientation*” in the Platform for Action and we have made it very clear that our Constitution clearly says a family in Namibia is formed between a mature man and woman and for that reason it is very clear that we cannot condone same-sex marriages. Otherwise it is unconstitutional.

HON MINISTER OF GENDER EQUALITY AND CHILD WELFARE: I want the concerned people to get the right information. (Intervention)

HON MINISTER OF PRESIDENTIAL AFFAIRS AND ATTORNEY-GENERAL: On a Point of Information. As a footnote to what the Minister of Environment and Tourism has said, there is no need to ask the Government of Namibia where it stands, because this issue was settled once and for all by a Supreme Court Judgment to the effect that according to our current legislation, same-sex marriage is a criminal offence. That has been pronounced by the highest Court in the land.

HON MINISTER OF GENDER EQUALITY AND CHILD WELFARE: Thank you very much, Dr Kawana. Maybe these people do not have access to the law and I want it to be said loudly and clearly. (Intervention)

HON MINISTER OF HOME AFFAIRS AND IMMIGRATION: On a Point of Information, Comrade Deputy Speaker. I would like to quote

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what Honourable Netumbo said from the Constitution and Honourable Minister Kawana. Article 14: Family. *“Men and women of full age, without any limitation due to race, colour, ethnic origin, nationality, religions, creed or social or economic status, shall have the right to marry and to found a family. They shall be entitled to equal rights as to marriage, during marriage and at its dissolution. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”* This means marriages between men and women are already protected by this Constitution and protected by this Government. Those who are doing otherwise are doing so illegally and should be taken to Court. Thank you.

HON MINISTER OF GENDER EQUALITY AND CHILD WELFARE: Thank you very much. As the Minister of Gender I really have to engage all of us here that we go and tell our people that marriages between gays and lesbians are prohibited by the Constitution and even the Bible. My church prohibits that and I would not like to see my church members doing it because we have the Bible which says so. (Intervention)

HON MOONGO: I would like to ask a question. To my understanding, the rights of lesbians and gays are not protected, are they also human or not? Secondly, I understand there are some who are already married. Have they violated the law?

HON MINISTER OF GENDER EQUALITY AND CHILD WELFARE: The other point was on Page 3. (Intervention)

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HON DEPUTY SPEAKER: I think the last question by the Honourable Member is relevant, namely what about those people of the same sex who got married? What will happen to them?

HON MINISTER OF GENDER EQUALITY AND CHILD WELFARE: It is an illegal marriage. Let me come to Page 3, the jurisdiction of presiding over criminal issues.

If I commit a crime in Kavango for example, then according to the Kavango law, I am fined two heads of cattle. It is allowed that you should be tried by those people. According to the Community Courts Act you have to be tried by the very community where you have committed that crime. You cannot go back to Caprivi for Chief Mamili to try you. This should be understood and this is also a challenge our Traditional Authorities are facing. If you impregnate somebody in the Caprivi, you will be fined twenty heads of cattle, but in the North you will pay nothing. (Intervention)

HON MWANINGANGE: On a Point of Information. If you impregnate a woman, that is not punishment, it is paying damages as in a civil case. However, if you beat somebody who was a breadwinner and he is incapacitated, you will pay compensation as he or she is no longer able to feed the family. Then you will be charged for assault in a criminal case and you will be imprisoned. The Traditional Leaders need to understand that they are not prevented from handling some of these cases, but not a civil and a criminal case.

HON MINISTER OF GENDER EQUALITY AND CHILD WELFARE: Thank you for what you have said, but it varies according to this law. Once you are summoned, you will be tried by that Court where you have committed a crime. When we took the laws to the Court

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we were faced with these types of questions, because some people are refusing to be tried, they want to return to their original areas.

Colleagues, I have many more points, but let me give a chance to others to contribute to the Debate. I support the Report and I thank you.

HON DEPUTY SPEAKER: Honourable Mushelenga.

HON DEPUTY MINISTER OF FOREIGN AFFAIRS: Thank you very much, Honourable Deputy Speaker. I rise to make my contribution to the Report by the Parliamentary Standing Committee on Constitutional and Legal Affairs.

Before I go to specific aspects of the Report that I want to address, I would want to make a general comment on the entire Report.

Honourable Deputy Speaker, I do not think the format of this Report is correct and the way it is presented to the House, because it has Sections that do not belong to this Committee that belongs to other Standing Committees. If the Committee has found that there were issues relevant to other Committees, these issues were not supposed to be included in the Report that is tabled before the House, the Committee was simply supposed to address these issues to the relevant Standing Committees to do follow-up. By bringing them under the Report that you have tabled here, you do not allow us also to discuss them as we will definitely be discussing issues pertaining to other Committees without giving those Committees an opportunity to address those particular issues. It is just an observation. (Intervention)

HON DEPUTY SPEAKER: Can I also comment on that? I do not think I entirely agree. Of course, it is possible that some of the issues belong to

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different Committees, but I think a responsible Committee is supposed to Report on their findings as long as they are not going to come up with recommendations based on the issues pertaining to the other Committees.

HON DEPUTY MINISTER OF FOREIGN AFFAIRS: Honourable Deputy Speaker, we have Standing Rules and Orders, we have laws and we should abide by those laws. The Standing Rules and Orders gave mandates to the Committees and these mandates clearly stipulate what the Committees are supposed to do and please, let us all follow the Rules.

Let me go to the aspects that I would want to address. On the issue of Community Courts and Traditional Courts, I am very happy that the Committee was able to appraise itself on those issues and made the necessary recommendations. Traditional Courts in themselves serve the rural communities well because of a number of advantages. One is accessibility, that especially the rural poor find these Courts to be more accessible because they are within the reach of where they stay. These Courts are compensatory in nature without having to go to the modern Courts, pay exorbitant fees to the lawyers. Once a criminal charge is laid against a person in a Traditional Court, the Court will grant some compensation to the victims. Traditional Courts are also less complicated, there are no formalities like in the modern Courts and that is why they are naturally not intimidating. The entire environment of Traditional Courts is friendly compared to the modern Courts because it is less intimidating to the Accused.

The Honourable Minister of Gender Equality and Child Welfare mentioned that there is a problem with gender in some Traditional Authorities. We should give credit to a number of communities that have made some strides as far as gender equality is concerned in the representation in the Traditional Courts.

Of course, Honourable Deputy Speaker, there are also some disadvantages associated with Traditional Courts and maybe the Committee needs to go and investigate this further as well as the Minister of Justice. It is the

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issue of conflict of interest. That issue is not really there in our Traditional Court system. For hypothetical reason, you can go to Omaalala Traditional Court. Even when Honourable Moongo's family member will be the one that will be brought before that Court, Honourable Moongo will never recuse himself, but in the modern Court the Magistrates and the Judges usually recuse themselves from cases where their relatives do appear. My mentioning of Honourable Moongo of course does not mean that he does this, it is just a hypothetical example. (Intervention)

HON MOONGO: When you are sworn in as a Traditional Headman, you are sworn in to handle all the cases. You are just like a Police Officer, you can even arrest your mother, you can arrest anybody. It is not that you cannot find your mother guilty. Many of my family members have already been found guilty by me according to our traditional justice and they were punished accordingly.

HON DEPUTY MINISTER OF FOREIGN AFFAIRS: Honourable Deputy Speaker, I know Traditional Headmen do take oath and that is why I have also taken one, but human nature and experience has taught us that somewhere, somehow you will be compromised if adjudicating.

There is a difference between a Police Officer arresting someone and a judicial officer adjudicating on the matter. Really, the issue of conflict of interest should be addressed by the Justice Ministry, especially now that the Community Courts will be introduced.

I am also pleased to see that the Committee has pointed out outdated laws. Last month I had discussions with the Chairperson of the Law Reform Commission and one of the issues we were discussing is the issue of the outdated laws and I see most of the laws he was talking about has been mentioned by the Committee. It is a good thing, because we no longer need these laws which have become obsolete.

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The Committee made a very good observation on Page 10 of the Report with regard to the Magistrate's Act. (Intervention)

HON DEPUTY MINISTER OF JUSTICE: May I ask a question? Now that you are on that issue of the outdated laws and I am asking you this question because I know you are a learned Colleague, you are venturing into these things, should we go by the content of the law or should we simply look at the years appearing in the title and conclude that this law is outdated without looking at the content? Is there a cut-off line to say the law has served its purpose and now we must get another law or what are we really trying to say?

HON DEPUTY MINISTER OF FOREIGN AFFAIRS: Honourable Deputy Speaker, to answer my learned Colleague, we must definitely go by the contents of the law, whether that particular law in its entirety is still applicable or not in Namibia. (Intervention)

HON MOONGO: On a Point of Order. I know he is a junior Judge of the Traditional Courts, a Headman and a beginner, but when you adjudicate a case, you must follow the procedure and follow the law.

Can you really convince me that when your kith-and-kin appears before you, you must recuse yourself? Otherwise you are not following the Act properly and then you must amend the Act.

HON DEPUTY MINISTER OF FOREIGN AFFAIRS: Honourable Deputy Speaker, the Honourable Member missed the point. I am saying we need to address that issue by amending the Act. I am aware that

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currently it is not addressed and it is for that reason that I made the proposal.

On the issue of litigation without legal representation that the Committee has raised on Page 10, that currently the issue of litigation is very costly to the litigants, imagine someone owes you N\$6,000, you go to a lawyer and by the time that case comes to a conclusion, you would have paid equal or more than the amount you claimed. In South Africa they have introduced the Small Claims Court and perhaps that is what we need to introduce here, that if you have a claim for N\$10,000, then you just go to the Small Claims Court and you do not need a legal representative. If you sort it out with your debtor, then the law should also be enabled to enforce the collection of these debts without placing a burden on a litigant. Otherwise people with money can always go on a debt freeze to small people and in the end they know that these people will not be in a position to go to Court because they are afraid of losing more money than what they would get in return. With these few words, Honourable Deputy Speaker, I support the Report.

HON DEPUTY SPEAKER: Thank you. Honourable Shifeta.

HON DEPUTY MINISTER OF YOUTH, NATIONAL SERVICE, SPORT AND CULTURE: Thank you very much, Honourable Deputy Speaker. I have only one point as others have been addressed by the Colleagues who spoke before. It is on the jurisdiction of Traditional Courts with regard to criminal cases.

The Report mentions the unconstitutionality of double jeopardy, which is when a case is heard by a Traditional Court and also dealt with in our criminal Court. There is a distinction here, because the aim of the Traditional Court is really not to literally punish, but an appeasement between the families. Although the Accused stands before the Court, it is between the family of the Accused and the family of the victim. It means

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that one family has to pay compensation, but it does not mean double jeopardy. In the common criminal Court there is no compensation. Even if your cattle have been stolen, the person is punished and sent to jail and you will receive no compensation. (Intervention)

HON DEPUTY MINISTER OF WORKS AND TRANSPORT: I would like to ask my humble student a question. Normally Traditional Courts find you guilty and you are asked to pay two heads of cattle, one will go to the victim and I want to know, to whom will the other one go? Is it to the Headman? Where do you think they take these things the Accused are paying? Do you think they keep them for themselves or for the community?

HON DEPUTY MINISTER OF YOUTH, NATIONAL SERVICE, SPORT AND CULTURE: Thank you very much, my teacher. Each Traditional Authority deals with cases based on its own customary law. For instance, if a person has caused the death of somebody, directly or indirectly, he would have to pay twelve heads of cattle in some Traditional Authorities. Whether by accident or murder, you will pay those twelve cattle. They would look at mitigating circumstances, but normally it is twelve or fifteen cattle. If you pay twelve cattle, one would go to the chair as part of their administrative fee. These people also have other costs and if you pay money, part thereof has to go to the chair, that means in the coffers of the Traditional Authority. That is normal practice. (Intervention)

HON DEPUTY MINISTER OF JUSTICE: Just a question. I am happy that we are debating this, but some issues now need to start evolving and one of those is the principle of accountability. In our tradition we are not very well informed as to where this cow really goes, so let us not speculate too much and you even mentioned the church.

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Accountability is a principle that we should start bringing in, because even where I come from, you even have to give part of your harvest. We were told that if there is drought and there is somebody in the community who is dying of hunger, they must use that to come to the rescue. However, we usually see it is only Government coming to the rescue of these people and none of these institutions. It is really time that we bring about these principles of accountability and not only assume. For example, those days when you appeared before the Traditional Court, you were told, “*you, the Pohambas, we are going to deal with you today*” and it is not only you, they are also dealing with those members of your family that used to be rude or troublesome.

HON DEPUTY MINISTER OF YOUTH, NATIONAL SERVICE, SPORT AND CULTURE: Thank you, Honourable Nambahu, I think you are right. As I said before, in the Traditional Courts the case is not between the Accused and the victim alone. (Intervention)

HON MOONGO: I think he is doing well and I am really happy to see young leaders like him knowing all this while other leaders who have lost their traditions do not have the background. He pointed out clearly that it is not double jeopardy and it is true, it is aimed at making peace. It is also true that different traditions have different practices. When you kill somebody in Ndonga, you have to pay ten heads of cattle and only one will go to the King to be slaughtered so that blood will be shed and peace will be maintained. Nobody from the side of your family will again shed blood and it works and it brings peace and this is not double jeopardy.

HON DEPUTY MINISTER OF YOUTH, NATIONAL SERVICE, SPORT AND CULTURE: Just to conclude on Comrade Nambahu’s question, communities normally follow their customary law. If it says when you pay this amount of money, a certain amount should go to the

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church, accountability is another thing. It is up to the community to say you as the Headman should account. It is for the community to come to Honourable Moongo to account for this amount of money paid as compensation. It is true what Honourable Moongo is saying, that in some customary laws a cattle is slaughtered for appeasement and to bring the two families together, because as I said, it is to bring peace between the two families, not between the Accused and the victim. That cattle is one of those that were paid by the Accused's family. We have now put Community Courts in place in order to align the Traditional Courts with the common Courts.

The issue of accountability is another question. Do Traditional Leaders account? In some customary laws you cannot question a Chief or a Headman, because again you will be summoned and punished. Thank you very much, I support the Report.

HON DEPUTY SPEAKER: All the comments are really relevant and educative, but let us try to be brief and concentrate on the issues raised in the Report. Honourable Tjihuiko.

HON TJIHUIKO: Honourable Deputy Speaker, I believe that this Report is very important and we need to create a bit of time to go through it. I am sure that we need to do justice to it.

Honourable Deputy Speaker, it is true that I was part of the delegation and I also see that I have signed the Report on the 5th of April. Coming back to the Report, I believe that we need to look at this Report from two principle views. One is to look at the recommendations that have been made in the Report, the second point that we need to look at is the implementation of those recommendations and I am sure that will be the most difficult part because here we are talking about financing those recommendations that we have made. We should also keep in mind that it is going to be a very costly exercise to get all these things done and we

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need to do it in phases. I need to offer my services to the Minister of Finance to advise here on how these recommendations can be financed.

On the question of jurisdiction mentioned on Page 3, as much as we wish to see justice to be done, we need to look at the practical reality of the situation on the ground. The area of jurisdiction in the Traditional Authorities, especially south of the redline, is a problem and it needs to be looked at again.

In this Report an example was used of the situation in Okakarara area where there are three Traditional Authorities and we should also know that a Traditional Authority is not something that was started today, it has come a long way. Traditional Authorities existed in those areas before Independence and at Independence new ones came about and that is where the problem arose of who has the right to rule in that area. We really need to look at that and the Traditional Authorities Act also needs to be revisited so that we can redefine the areas of jurisdiction. (Intervention)

HON MINISTER OF AGRICULTURE, WATER AND FORESTRY:

May I pose a question to Honourable Tjiuiko on the issue of jurisdiction? Honourable Tjiuiko, you are raising a very fundamental question and I am reminded of the Report of the late Advocate Kozonguizi on traditional matters. When you read that Report, it says unless you have a clear understanding of the jurisdiction of Traditional Authorities, it must be jurisdiction over a geographic area before you come to jurisdiction over people. What would your comment be on that one? I do not want to give an answer now, I just want to stimulate your thoughts. Unless the question of jurisdiction over areas is properly addressed, if we just confine it to jurisdiction over people, the problem cannot be solved. Would you agree with the Report?

HON TJIHUIKO: Honourable Minister, you are correct. If I go to the North and ask what is the area of jurisdiction of King Kauluma,

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everybody knows where it starts and where it ends and if you ask me today what is the area of jurisdiction of Chief Maharero, I do not think someone will be able to say it is from this point to that point, because traditionally the Ndonga people have been living in that area and it is known that from this point to this point is where they have been living. It is the same with Kwanyama and Kavango.

Chief Maharero was living in Okahandja, you cannot have a Traditional Authority in Okahandja, so he has to be recognised somewhere in Otjinene, which means that traditionally the area which was under the chieftainship of Chief Maharero is not Otjinene and what is Otjinene? Are you talking about Otjinene as a town, are you talking about Omaheke as a Region? This is why I am saying we should not take a natural area in the North and compare it to somebody who has been operating in Windhoek. The Witboois were traditionally operating in Windhoek, but they cannot rule from Windhoek, they were pushed into the South because of the war. This is why I am saying we cannot do anything about it, but all what we can do is to adjust our laws in such a way that it recognises the fact that some people are not in the areas where they were supposed to be and that is where the contradictions of Traditional Leaders come in, in the area south of the redline.

Coming back to Page 8, assistance to Magistrates' Courts. Honourable Deputy Speaker, I can remember that as much as we wish to see justice to be done, if you have a Magistrate who cannot even buy a pen and they have to request it from Windhoek where the Economising Committee has to authorise the purchase of a single pen and that takes six months, then you cannot expect those Magistrates' Courts to operate effectively. We need to look at the question of decentralising some of the activities so that people are able to access what needs to be done and make sure that justice is done, rather than just waiting for six months for approval from Windhoek to buy a pen. We really need to look at that very seriously.

The next is the question of staffing. As much as we make these recommendations, we should also look at the cost implications of what we are recommending, because in order for us to criticise the performance of Courts, especially in the Regions, we should also look at the staffing of

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those Courts and that needs to be done. We need to look at seriously increasing the Budget of the Ministry of Justice so that these activities can be taken care of and as soon as we have approved this Report, we should also seriously look at how soon this Report can be implemented and that is where the question of budgeting comes in.

The question of legal aid was also raised in the Regions, especially in Otjiwarongo. As far as I can remember, Otjiwarongo was the only area where they had a Legal Aid person on the ground and that person was representing the whole of Otjozondjupa Region, one lady! It is not on and we definitely need to have a Legal Aid component in each and every big town in Namibia, especially in rural areas such as Tsumkwe, Otjozondjupa and others.

Then again the question of office equipment. If you have a magistrate's Court which does not have proper office equipment such as computers and those who have computers are not connected and the people cannot do research because they cannot access the necessary information, it is again a question of not only approving the Report, but seriously looking at the money to make these things happen.

The very last point I want to make is on Page 14 to 19, namely the Amendment to the existing laws. We cannot wait for this, some of these laws are completely outdated and we need to repeal them, no question about it. That does not need us to budget a huge amount of money.

With these few comments, I support the Report and as I said, I was part of the Committee and that is why we have such a nice Report.

HON DEPUTY SPEAKER: Honourable Erastus Uutoni.

HON DEPUTY MINISTER OF SAFETY AND SECURITY: Thank you very much, Deputy Speaker. Mine is on Page 17 of the Report under

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10.3 which deals with divorce laws, customary law, marriages north of the redline.

Honourable Deputy Speaker, when I read the last Paragraph before the recommendation on this Page, I was a bit shocked. This Paragraph is saying that marriage north of the redline is out of community of property and it is not even me who did not know, even the Members of the Committee did not know. It is shocking. My family members will now become aware that I am not married in community of property. (Intervention)

HON MINISTER OF VETERANS AFFAIRS: Honourable Deputy Speaker, it is an interesting point which he brought up, but maybe when the Committee Members are going to respond, they should take into account that law that earlier so stated. What about those marriages now that we are in an independent Namibia where we have even signed a contract of marriage in community of property? Is there going to be a difference between those before and those after Independence?

HON DEPUTY SPEAKER: To my knowledge, as long as that proclamation is not amended, the situation remains the same whether before or after Independence. Can the Attorney General offer an explanation?

HON MINISTER OF PRESIDENTIAL AFFAIRS AND ATTORNEY-GENERAL: Honourable Deputy Speaker, the Constitution says the laws which were in force prior to 21st March 1990 will remain in force until repealed, amended or announced unconstitutional by a Court of law. If they have not, then they are still valid.

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HON DEPUTY MINISTER OF SAFETY AND SECURITY:

Honourable Deputy Speaker, I attended a wedding ceremony at a given Magistrate's Court somewhere in the North and I was cautious about the words "*out of community of property*." I asked the Magistrate, "*what do these words mean*" and the Magistrate, a lady, said, "*no, you do not need to care, you are automatically in community of property*." I was attending and it was me who asked the meaning of those words. It means many of us are not aware as some of the Magistrates are also not aware of this one.

People believe that we in the North are married in community of property and I have seen a number of couples who got divorced and they believed they were married in community of property. I know of the example of a woman who left the common house and they were separated for fifteen years. When the husband died after fifteen years of separation, the lady is claimed her inheritance because she believes she is married in community of property. The question is, how can you come and inherit something that does not belong to you? What I am trying to say is that I think that the properties of men north of the redline were unfairly inherited, because how can you go for fifteen years and then claim your inheritance?

What happens is that the family appoint somebody as an executor and when you take that letter to the insurance company, they ask you for your marriage certificate. Then they say no, the couple has already been separated for fifteen years and the insurance company says no, they are married in community of property, the members of the family cannot inherit. That belief is there that we are married in community of property.

HON DEPUTY SPEAKER: The House stands adjourned until tomorrow, 14:30.

HOUSE ADJOURNS AT 17:50 UNTIL 2011.11.03 AT 14:30

**ASSEMBLY CHAMBERS
WINDHOEK
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The Assembly met pursuant to the adjournment.

HON DEPUTY SPEAKER took the Chair and read Prayers and the Affirmation.

HON DEPUTY SPEAKER: Any Petitions? Reports of Standing or Select Committees? Honourable Amweelo.

**TABLING: REPORT ON FAMILIARISATION
TOUR TO NORTH-CENTRAL REGIONS**

HON DR AMWEELO: Honourable Deputy Speaker, I lay upon the Table, Report of the Familiarisation Tour to the North-Central Regions from 8 – 9 July 2011 by the Parliamentary Standing Committee on Economics, Natural Resources and Public Administration for discussion.

TABLING: REPORT ON 57TH CPA CONFERENCE

HON DR AMWEELO: I lay upon the Table, Report of the CPA (Namibia Branch) Delegation to the 57th Commonwealth Parliamentary Association Conference held in London, United Kingdom, from 25 to 27 July 2011.

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**NOTICE OF QUESTIONS
HON MOONGO**

HON DEPUTY SPEAKER: Please table the Reports. Reports of Standing Committees? Other Reports and Papers? Notice of Questions?

ORAL QUESTION

HON MOONGO: Honourable Deputy Speaker, I want to pose a very urgent Oral Question to the Honourable Minister of Health and Social Services.

It is not the first time that a patient is turned away from Katutura Hospital without treatment by hospital personnel. I have read with shock in a newspaper of today that a five-month old baby died in a taxi after she was turned away because her mother could not pay the consultation fee for the treatment. I guess all mothers in Namibia are sympathising and mourning with this poor woman. Can the Minister explain to this House what happened and what you are doing about this unacceptable situation in our country, because all the time we hear excuses while patients are dying. Maybe the workers behave in that manner because they are unhappy with certain things. Solve the problem for the sake of the lives of our people. Thank you very much.

HON DEPUTY SPEAKER: The Minister is not present. Any other Notice of Questions? Notice of Motions? Message from the Head of State? Ministerial Statements? Honourable Minister of Finance.

MINISTERIAL STATEMENT

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**MINISTERIAL STATEMENT
HON KUUGONGELWA-AMADHILA**

HON MINISTER OF FINANCE: Thank you, Honourable Deputy Speaker, Honourable Members. I rise to inform this august House about the upcoming Taxpayers Education Campaign to be launched by the Ministry of Finance.

Namibian tax law is founded on the premise of voluntary compliance, hence the adoption of self-assessment system. Under the self-assessment system the responsibility to ensure compliance with such laws lies with the taxpayer. Fundamental to the system of self-assessment is that taxpayers must have knowledge of tax laws and procedures.

In an effort towards ensuring public knowledge about tax laws, the Ministry has been undertaking public education programmes. Although a degree of improvement has been achieved in taxpayers' understanding of the tax laws which has resulted in improved collection, there are still challenges to be overcome in this regard. It is against this background that the Ministry has developed a comprehensive taxpayers education programme.

The taxpayer education programme is designed to enhance taxpayers' understanding of the tax laws and the tax administration procedures as these are key strategies in achieving voluntary compliance. This will help our country to achieve a situation where taxpayers voluntarily comply with their obligations to register, keep proper records, file timeously correct returns and pay tax on time with a minimal intervention of tax administrators. The specific objectives of the taxpayer education programme includes; to improve taxpayers' knowledge of understanding the tax system and procedures, to educate and assist taxpayers and their advisors to understand their obligations and entitlements, to foster a culture of voluntary compliance, thus contributing to closing the tax gap and maximising revenue collection, to improve public awareness of revenue administration and the benefits thereof and to maintain ongoing engagement and contact with the taxpayers and other stakeholders.

Honourable Deputy Speaker, Honourable Members, with the launch of the taxpayer education campaign we expect that the following will be achieved, amongst others:

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- Improved public awareness of revenue administration and the benefits thereof;
- Increased taxpayer voluntary compliance;
- Effective control of tax evasion;
- Improved revenue collection; and
- Better understanding of the roles of tax administrators.

We are organising a special session for the Members of Parliament in the coming days to introduce the Honourable Members to the taxpayers education programme. I would like to request the Honourable Members to avail themselves for this session once it is arranged. Thank you.

HON DEPUTY SPEAKER: Any other Ministerial Statements? None. Traditionally we deal with Questions on Thursdays, but due to pressing issues on the Order Paper, I would request the Members to agree to the questions being deferred to next Thursday. So agreed. The First Notice of Motion is by the Honourable Minister of Labour and Social Welfare. Does the Honourable Minister Move that the Bill be now introduced?

**INTRODUCTION AND FIRST READING:
LABOUR AMENDMENT BILL**

HON MINISTER OF LABOUR AND SOCIAL SERVICES: I so Move, Honourable Deputy Speaker.

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HON DEPUTY SPEAKER: Who seconds? Any objection? Agreed to. Will the Honourable Minister please table the Bill? The Secretary will read the Bill a First Time.

LABOUR AMENDMENT BILL

SECRETARY: *Labour Amendment Bill.*

HON DEPUTY SPEAKER: Does the Honourable Minister of Labour and Social Welfare Move, that the Bill be now read a Second Time?

**SECOND READING:
LABOUR AMENDMENT BILL**

HON MINISTER OF LABOUR AND SOCIAL WELFARE: I so Move, Honourable Deputy Speaker.

HON DEPUTY SPEAKER: Any objection? Who seconds? Agreed to. The Honourable Minister has the Floor.

HON MINISTER OF LABOUR AND SOCIAL WELFARE: Thank you, Honourable Deputy Speaker, I am pleased to rise today to introduce several important Amendments to the Labour Act of 2007 that are intended to strengthen our existing Labour law regime.

The Labour Act of 2007 is an important regulatory and social instrument

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that provides employers and employees with important rights and obligations and provides the tools that they require to resolve their disputes in a productive and amicable manner. However, it is a living document and it will require refinement or adjustment from time to time as conditions require.

These are the first Amendments to the current Labour Act. The Amendments are necessitated in part by the 2010 Judgment of the Supreme Court in the matter of *Africa Personnel Services versus the Government of the Republic of Namibia and Others* that declared Section 128 of the Labour Act, which made the practice of labour hire a crime, to be unconstitutional.

In its Judgment the Supreme Court recommended that the proper way to address the problems of labour hire would be through appropriate labour market regulation rather than outlawing the business of labour hire agencies. Unfortunately, the effect of the Supreme Court Judgment has been that the labour hire enterprises and user companies continued to engage in notorious exploitative and abusive practices that are both inimical to decent work and that undermine the rights and protection afforded to employees by the Labour Act.

This Bill introduces a new Section 128 in order to put an end to such practices through regulating the relationship between an employee placed by a private employment agency and the user enterprise for whom that employee renders services. I will discuss this in detail momentarily.

Since the Supreme Court Judgment, Parliament has enacted into law the Employment Services Act 8 of 2011 which regulates certain aspects of private employment agencies, including labour hire companies. This Bill contains several consequential Amendments to that Act in order to harmonise its provisions with the new Section 128. The Bill also introduces several new Sections that are intended to provide guidance as to how to determine in doubtful cases whether an employment relationship exists, to afford protection to employees in disguised or ambiguously employment relationships and to strengthen protection of employees

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subjected to fixed term contracts. In addition, we also introduce several Amendments to rectify clerical errors that were detected in the original text of the Act.

I bring to the attention of the Honourable Members of this House that the Bill was finalised after thorough consultation with the Labour Advisory Council, which is a tripartite body composed of representatives of the employees, employers and the State. Although we sometimes hear of employers complaining about what they perceive as over-regulation of the labour market, these measures enjoy wide support from our social partners because they are designed to eliminate unscrupulous and exploitative practices that threaten our shared goal of decent work and productive work for all.

Honourable Deputy Speaker, Honourable Members, I will now address the specific Amendments that are grouped according to the categories to which I have just referred.

Amendments that relate to addressing the labour hire:

Clause 6: The substitution of a new Section 128 for Section 128 of the principal Act:

Subsection (1) provides that the definition of “*place*” and “*private employment agency*” bear the meanings assigned to them in Section 1 of the Employment Services Act (Act 8 of 2011).

Subsection (2) is the heart of the new Amendment with respect to labour hire. It provides that for the purposes of this Act or any other law, an individual, except an independent contractor, whom a private employment agency places with a user company is an employee of that user enterprise and the user enterprise is the employer of that employee. Thus, in terms of Subsection (2), any person placed with a user enterprise by a private employment agency becomes, in the eyes of the law, the employee of that user enterprise and the user enterprise becomes the employer. This eliminates the fiction perpetuated under the labour hire system by which

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the labour hire company claims to be the employer of the individual while the user for whom the individual performs services claims to have no responsibility towards the employee. When Subsection (2) becomes law the enterprise that uses the services of the worker will have the same obligations towards the worker as any other employer and the worker will enjoy all the protections afforded by the law to any employee, including protection against unfair dismissal.

This protection is underscored by Subsection (3) which also specifies that an individual so placed with a user enterprise has the right to join a Trade Union and to bargain collectively with his or her employer. This eliminates the possibility that the user enterprise can refuse to recognise a Trade Union as the representative of such employee or can refuse to bargain with a Trade Union in respect of such employees under the pretext that the user is not the employer of these employees.

Subsection (4) is intended to eliminate inequalities occasioned by the two-tier system maintained by many employers who utilise labour hire, whereby permanent employees are accorded more favourable wages and conditions of employment than temporary labour hire employees, some of whom have worked for the user enterprises for many, many years.

Subsection (4) requires that a user enterprise may not employ employees placed by a private employment agency on terms and conditions of employment that are less favourable than those applicable to the incumbent employees of the user who perform the same or similar work or work of equal value and further requires that a user enterprise may not differentiate in its employment policies and practices between such incumbent employees and placed employees.

Subsection (5) prohibits the employment of persons placed by private employment agencies during or in contemplation of lock-outs or within six months of a dismissal or retrenchment in terms of Section 34 of the Labour Act of employees performing the same or similar or work of equal value.

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Subsection (6) affords to persons aggrieved by contraventions of Subsection (3), (4) and (5) the right to refer such disputes to the Labour Commissioner for resolution in terms of Section 86 providing for arbitration and further affords strong remedies for such contraventions.

Subsection (7) also makes violations of Subsections (4) and (5) a crime.

Subsection (8) confers on the Minister the power to exempt a user enterprise from the status of employer in terms of Subsection (2) upon application of the user enterprises and supported by both the private employment agency and the affected employees if the Minister is satisfied that the rights of the employees will be satisfactorily protected. If such an exemption is granted, Subsection (9) imposes joint and several liability upon both the private employment agency and the user enterprise for contraventions of the Act involving the affected employees. In such cases the employee has the option of seeking relief against the private employment agency as well as the user enterprise or both.

Subsection (10) confers on the Minister the power to prescribe regulations concerning the implementation or enforcement of any part of Section 128.

The aforementioned Amendments do not in any way prevent a labour hire company from doing business, but they are intended to eliminate the possibilities for abuse and exploitation of employees. The net effect of the Amendments is that regardless of the commercial or contractual relationship between a private employment agency and a user enterprise or between the individual placed with a user enterprise and the private employment agency, the user enterprise who uses the services of the individual shall have the responsibility of an employer and an individual under the Labour Act or any other law.

In addition to the new Section 128 and the definitions contained in consequential Amendments to the Employment Services Act of 2011, the Bill contains two additional Amendments to the Employment Services Act.

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Clause 9 amends Section 24 of the Employment Services Act to prohibit a private employment agency from charging a fee directly or indirectly to any individual using its services to be placed with an employer or a prospective employer or whom it has so placed. This is in conformity with the requirements of the International Labour Organisation's Private Employment Agency Convention 181 of 1997. This means, among other things, that labour hire agencies may not charge fees to prospective employees seeking placement or having been placed with a user enterprise, nor may the user enterprise recoup payment to the labour hire agency from the wages of the placed employee.

Clause 10 substitutes the existing Section 26(2) with a provision that prohibits a private employment agency from placing an individual with an employer or a prospective employer as a user enterprise unless the user enterprise undertakes to ensure that every individual is employed on terms and conditions that are not less favourable than those applicable to incumbent employees who perform the same or similar work or work of equal value of those contained in a collective agreement in that industry or those prevailing for similar work in the industry and Region of employment or the nearest Region in which such work is performed.

The substituted Section 26(2) also prohibits a private employment agency from placing an employee in contemplation of a strike or a lock-out at the facilities of an employer or prospective employer or within six months after the employer or the prospective employer has retrenched employees in terms of Section 34 of the Labour Act. These provisions are companions of the new Section 128(4) and (5) which regulate the practices of the user enterprises.

Amendments that address the status of a person as an employer, employee or an independent contractor are also included in this.

Clause 1(a) of the Bill would amend Section 1 of the Labour Act to revise the definition of "*employer*" to include a user enterprise as an employer and Clause 1(b) inserts a definition of an "*independent contractor*." This will bring clarity to issues involving the Act's coverage since independent

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contractors are excluded from the coverage of this Act.

Clause 7 has to do with the presumption as to who is an employee. The issue of whether or not a person fits into the definition of an employee, determines whether the person is covered by the Act and is entitled to the rights and protections that it confers. The determination of whether or not a person is an employee is based on particular sets of facts in a given situation.

Section 128(a) addresses issues of whether or not certain workers are employees. Such problems are associated with triangular, ambiguous and disguised employment relationships. Issues of whether someone is an employee arises, for example, where an agency places with a supermarket certain workers whom it refers to as service providers in order to portray them as independent contractors and thereby insulate itself and the supermarket from the obligations of an employer in terms of the Labour Act or a collective agreement. You will find such workers in some of our local supermarkets. These problems also arise where an employer signs a contract with an employee, but in order to avoid the legal obligations of an employer, designate the person as an independent contractor. In order to address such situations, the new Section 128 clarifies the issue of whether an employment relationship is present by introducing a presumption in the Labour Act that: *“Until the contrary is proved, a person who works for or render service for any other person is presumed, regardless of the form of the contract or the designation of the person, to be an employee if anyone or more of the following factors are present.”* I will not read these factors but make them available to you.

Section 128(a) will guide a decision-maker in determining whether the person is really an employee or is it rather an independent contractor. If any of the factors of Section 130(b) is present, the person will be presumed to be an employee. The presumption could be rebutted by evidence to the contrary.

Section 128 is patterned after a similar provision in the South African Labour Relations Act. It is intended to implement the International

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Labour Organisation's recommendation 198 on the employment relationships, which calls on Member States to establish criteria to help to ascertain whether a person is in an employment relationship regulated by the Labour law and employment laws.

Clause 7: The insertion of 128(b) is deeming individuals as employees. Section 128(b) allows the Minister, after consulting the Labour Advisory Council and by notice in the Gazette, to extend the provisions of Act, in whole or in part, to a person such as an independent contractor who would not otherwise be covered by the Act by deeming the person to be an employee. The provision could be invoked in situations where the contracting party has structured a relationship with its worker or workers to fit the criteria of an independent contractor, but where it would be appropriate, to extend some or all of the protections of the Labour Act to such workers. Such a provision could be used, for example, to apply the basic conditions of employment and the health and safety protections required by the Labour Act to charcoal workers whom many farmers exploit under the pretext that these employees are independent contractors who have agreed to work under inhuman conditions.

Another Amendment to mitigate the use of fixed contracts to avoid compliance with unfair dismissal, retrenchment and severance pay provisions is the presumption of indefinite employment.

Before Independence certain employers, including the apartheid Government, maintained practices whereby they hired black employees on a one-day fixed term contract as special employees and would renew this contract daily. The purpose was to avoid the obligations that an employer would have under law of collective agreements vis-à-vis permanent employees, that is employees hired for an indefinite duration. Under this arrangement some employees worked daily for as long as 20 years as casual employees and received no leave or other benefits and were subjected to dismissal on a 24 hour notice.

Although the Labour Act of 2007 eliminated the status of a casual employee, some Namibian employers today hire workers or employees on

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renewable short-term, fulltime and part-time fixed term contracts in order to avoid compliance with requirements of unfair dismissal and to avoid paying wages and benefits comparable to permanent employees. For all practical purposes they treat these employees as the casuals of the old colonial era.

Section 128(c) would mitigate this practice by introducing a rebuttable presumption that every employee is hired for an indefinite period. Employers who utilise short-term workers on fixed term contracts for legitimate business reasons need not be concerned, they can conduct their business as usual. The presumption may be rebutted if the employer can establish a justification for employing a person for a fixed term. The intention of the Amendment is to minimise unnecessary casualisation of employment and to protect workers from unscrupulous practices of hiring persons on renewable short-term fixed contracts for the purpose of avoiding obligations under the Labour Act in terms of unfair dismissal, collective termination, payment of severance pay, etcetera.

Another Amendment which I will not address is to correct clerical errors that were found in the Act. These Amendments are set forth in Clauses 1 to 5.

Honourable Deputy Speaker, Honourable Colleagues, of late our Nation has been troubled by too many strikes. If you look closely at the causes, you will see that at the heart they stem from perceptions by workers that they are not being treated fairly, from poor communications and from misperceptions about the respective rights and duties of both employers and employees. In the Labour Amendment Bill we have carefully crafted Amendments that will close obvious loopholes that permit exploitation, such as an unregulated system of labour hire and have clarified issues that give rise to dispute and confusion about the employment relationship. These Amendments will benefit both Namibian employers and workers in their efforts to contribute to national development and to build sound and harmonious labour relations characterised by fair and decent work.

Our Labour Act is a strong and progressive law that promotes the well-

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being of a large portion of the Namibian population, both employers and workers. It provides all of the tools that are needed to avoid or minimise labour disputes and to promote unity of employers and workers in achieving shared objectives.

In these Amendments we have fulfilled our commitment in response to universal public demand to address vestiges of the colonial apartheid system that remains in the labour hire system and to tackle lingering problems that stand in the way of building a stronger partnership between employers and employees. I, therefore, respectfully request your support for the adoption of this Labour Amendment Bill. Our people have waited patiently for this legislation and expectations are high that Parliament is prepared to act decisively in the interest of fairness and the well-being of our people. I urge the Honourable Members to consider this Bill in an expeditious manner so that we can adopt it during the course of this Session. I thank you very much for your attention.

HON DEPUTY SPEAKER: Any discussion? Honourable Kaura.

HON KAURA: Thank you very much, Honourable Deputy Speaker. I only want to draw the attention of the Honourable Minister to Clauses 6 and 9(a) and (b) of this Amendment Bill.

“If the Minister grants an application of user enterprise for exemption in terms of Subsection (8), the private employment agency and the user enterprise are each deemed to be the employer of the individual placed with the user enterprise and are jointly and severally liable for contraventions of this Act. In case of a contravention of this Section, the employee has the option to seek relieve provided herein against either the private employment agency or the user enterprise or both.”

In Subsection (8)(b) I do not understand and I need clarity from the

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Minister. It states: “*Private employment agency means any natural or juristic person, except the State, which provides one or more of the following labour market services: (a) services for matching offers and application for employment without the private employment agency becoming a party to the employment relationship which may arise there from.*” In the other Clause they are both liable, but here the private employment agency is not liable in this relationship. It seems to be a contradiction and I need clarity

HON DEPUTY SPEAKER: Any further discussion? Honourable Iilonga.

HON DEPUTY MINISTER OF AGRICULTURE, WATER AND FORESTRY: I Move that the Debate be adjourned until next week, Tuesday.

HON DEPUTY SPEAKER: This item is adjourned until Tuesday, next week. The Secretary will read the First Order of the Day.

**RESUMPTION OF DEBATE – RATIFICATION OF THE TREATY
ON THE KAVANGO-ZAMBEZI TRANS-FRONTIER
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SECRETARY: Resumption of Debate on Ratification of the Treaty on the Kavango-Zambezi Trans-Frontier Conservation Area.

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HON DEPUTY SPEAKER: When this Debate was adjourned on Tuesday, the 1st of November, the Question before the Assembly was a Motion by the Honourable Minister of Environment and Tourism. The Honourable Deputy Minister of Labour and Social Welfare adjourned the Debate and he now has the Floor.

HON DEPUTY MINISTER OF LABOUR AND SOCIAL WELFARE: Honourable Deputy Speaker, Honourable Members, I was about to conclude on Tuesday when I was unceremoniously disrupted by the clock. I was at the point where I was urging the Minister of Environment and Tourism regarding the Bantus of Daures where I am assigned as a SWAPO leader, who are struggling to come to terms and to live without conflict with animals and especially those that cannot easily be put on a pot, that is the elephants. These animals are wrecking immeasurable havoc in this area, often resulting in loss of life and property. Therefore, Honourable Minister, you would be well advised to include these animals from the Daures Constituency in the consignment to Cuba, thus killing two flies with one shot will not only reduce the large stock of these, but also provide the much-needed earnings for the community in these areas and their conservancy. Thank you and I reiterate my full support for the ratification of the Treaty.

HON DEPUTY SPEAKER: Thank you. Any further discussion?
Honourable Mutorwa.

HON MINISTER OF AGRICULTURE, WATER AND FORESTRY:
Thank you Comrade Deputy Speaker, for giving me the Floor to make a contribution to this important Treaty and in the same vein I thank my Colleague, the Minister of Environment and Tourism for tabling this Treaty in the National Assembly so that we can ratify it. Ratification

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actually means that we have to get into the details so that we can certify that indeed what our Head of State has signed in terms of the details is in order and will achieve the objectives for the benefit of the country and for the benefit of those communities living in those specific areas.

In as far as the principle of the Treaty is concerned, obviously, being a Member of both the Executive and the Legislature, I have no problem with the principles. The principles and objectives are noble, but it is normally in the details where the devil is hidden, but also the good things. Therefore, I will concentrate on the details and would like to pose some questions, not meant to oppose but really meant to get some specific information from the Honourable Minister when she takes the Floor to respond to the contributions of the Honourable Members.

On Page 4 of the Treaty and I know that my Colleague, the Honourable Minister of Youth, National Service, Sport and Culture in a way did make reference to this, I am referring the Honourable Minister to the last Paragraph of that Page that makes reference to many treaties and agreements that the partner States might have signed or some of them not signed.

HOUSE ADJOURNS AT 15:40

HOUSE RESUMES AT 16:20 PURSUANT TO ADJOURNMENT

HON MINISTER OF AGRICULTURE, WATER AND FORESTRY:

Thank you very much, Honourable Deputy Speaker, for giving me the Floor to continue. I was on the point of referring to Page 4, the last Paragraph which lists various agreements and conventions and I was saying that in line with what my Colleague, the Minister of Youth, National Service, Sport and Culture was asking, I would just like to post the question as to which of these agreements is Namibia signatory to.

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Which of these agreements have already been ratified by Namibia and which do we contemplate ratifying or signing?

Then on Page 6, Comrade Minister, the definition of the term “*local community*”. The definition as provided here states that “*local communities means groups of people living in and adjacent to the area of Kavango-Zambezi Trans-frontier Conservation Area bound by cultural, social and economic relations based on the shared interest and trans-boundary resources.*”

I am arguing and raising the question that when one looks at the context here in Namibia, Article 19 of the Namibian Constitution does give a definition of what “*culture*” is and it also recognises the diversity within our communities in Namibia, but when one looks at the definition of Regions and Constituencies as we have them, those Constituencies and Regions do not take into consideration the cultural dimension. In other words, a Region, in terms of our law and our Constitution, denotes just a geographic area. In other words, you are free to move anywhere. The question is, in a particular game park, you may find different communities living there with different cultural affiliations. How will this definition of a “*local community*” living in a particular area be applied practically to specifically benefit that local community within the definition as provided here and within the reality of our understanding.

On Page 9, Comrade Minister, 1(c), the various game parks within Namibia that are part and parcel of the Trans-Frontier Park are listed. I want to find out where is the Mangetti National Park. If you could just enlighten us.

On Page 14 the question that I have is with particular reference to Article 9(3) which talks about “*the role of SADC in the development of KAZA shall be specified in an agreement between KAZA and SADC, which shall address the following issues.*” The reference here is the future, that agreement between KAZA and SADC will come in the future. I do not have any evil intentions, but the point is, while ratifying the details of this Treaty now, not knowing what the details of that agreement between

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KAZA and SADC will be, how can I rest assured that the details in that agreement may not contradict what I am ratifying today? That is my question.

Then on Page 16, Comrade Minister, the article that details the responsibilities of the chairperson, here I am simply looking at (d) and (e). The chairperson, who is one of the Ministers of the partner States and the chairperson will be on a rotational basis, but when I look at (d), one of the responsibilities of the chairperson is to mobilise resources, both financial and technical, to facilitate the development of KAZA from donor agencies and other development partners, including the convening of donor conferences and (e), it will also be the responsibility of the chairperson to facilitate the participation of international development partners in implementing programmes and activities to develop KAZA. Here I am making a proposal, I thought these are very weighty responsibilities which I thought should be shifted to be the collective responsibility of the whole Ministerial Committee and not to assign it specifically to the chairperson who serves for two years and the chairperson is the person who must now do this. I thought maybe in the name of good governance and accountability, responsibilities like these would better be executed by the Ministerial Committee, obviously under the leadership of that particular chairperson. That is my argument.

Then on Page 19 I am referring to Article 14, the composition and function of the KAZA Secretariat with particular reference to (2). *“The Secretariat shall have such other staff as may be determined by the Ministerial Committee from time to time and shall ensure that there is equitable representation from partner States in the Secretariat”* and also it is their responsibility as Secretariat to ensure gender balance within the Secretariat. Noble objectives once again, but we are giving these responsibilities of ensuring equitable representation and gender balance to the Secretariat and I have read the Treaty, I did not see under the responsibilities of the Ministerial Committee how they are going to do this. Will it be nominations, that each Member State will nominate two members? I thought that when you are dealing with the Secretariat, you are dealing with experts and, therefore, I thought the recruitment of these

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experts in the Secretariat will be done through advertisements. Here my question really is on the formula to ensure that there is equitable representation in the Secretariat and there is gender balance. What will the formula be because the Treaty is silent on that.

On Page 20, 4(c) stipulates the responsibilities of the Secretariat. They are responsible to coordinate the drafting and implementation of an effective action plan for achieving the objectives of KAZA. To do that, the Secretariat – not the Ministerial Committee – must ensure full participation of the relevant stakeholders and when you go to the definition of stakeholder, as my Colleague, Honourable Schlettwein, has already elucidated in his contribution, you are dealing with a full range of individuals and interest groups and organisations. By giving this responsibility to the Secretariat to ensure that when they draw up action plans and normally a Secretariat is supposed to be action oriented experts and not supposed to be bothered with discussions and debates on policies, but here we are saying that when they draw up the action plan, they must ensure the full participation of the relevant stakeholders who have different and divergent interests and opinions. How will that affect the efficiency and effectiveness of the Secretariat to deliver what they are supposed to do, which is to implement the policy decisions by the Ministerial Committee? I see a problem there.

Then on Page 21, the National Committee. Obviously these are Commissions the different Member States will have to establish and in 21(e) it is the responsibility of the National Committees to ensure that local communities derive equitable benefits from KAZA, which is a noble objective, but again I am asking the question and I am again looking at the definition of “*local community*.” I live adjacent to Kaudum and when I look at Kaudum, I do not see people living there. Tourists come, stay in a camp and leave, but of course, in other game parks there are many people, such as Bwabwata from Divundu up to Kongola. There are many people there, but even though we use the word “*local*”, some come, live there, they have their lodges, but they are from somewhere else. What is “*local community*” and how will we in practical terms ensure when we are even battling with the definition of local community. The Prime Minister was

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talking about the original people, but how are we going to achieve this? What formula are we going to use to ensure that it is the local communities? Even though they came from other countries, they are now local because they are living there. What is a local community?

We are doing these things in terms of the Constitution and in Article 63 it is one of the responsibilities of Honourable Members to critically look at the details so that we confirm what the President has signed. Signing is a different process, he has signed in terms of Article 32 which gives the duties of the President, but it is the duty of this Assembly, in terms of Article 63, to ensure that we go into the details.

On Page 22, Article 16(2) talks about the immunities and privileges conferred by this article to the staff, which shall be prescribed in a protocol. Again it shall be prescribed. Where is that protocol? Maybe it will be developed, but it is not part of the Annexure. (Intervention)

HON RIRUAKO: On a Point of Information. Honourable Minister, you mentioned Kaudum. What is Kaudum? It is a useless asset and that is really a pain. There is nothing at Kaudum, only water for the buffaloes in a beautiful area which has not been developed. Our Government is not even willing to give it to those who want to develop it. Why should it be left like that? What is the purpose? I would like to hear from you today before I am going to do something about it.

HON MINISTER OF AGRICULTURE, WATER AND FORESTRY: Comrade Deputy Speaker, when I started the Honourable Chief was not here, but I was very clear that in terms of the objectives and principles of this Treaty to develop these game parks, there is no problem. Ratification means to certify, to correct and that is why we are concentrating on the detail and I am not implying any objection when raising questions. I am raising questions so that all of us are properly informed when the Minister

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responds, because when we go to these Constituencies, to these local communities that we are talking about, we should be speaking the same language. We are not going to speak the same language if we do not understand some of the provisions of the Treaty.

Article 20(3) talks about the committee of senior officials shall determine the modality for the institutionalisation, operation and management of KAZA Fund, it is the officials. Fine, it must start with the officials, I have no problem with that, but is it envisaged, because the Treaty is not explicit when it deals with the responsibilities of the Ministerial Committee, that the members of the Secretariat will be obliged to submit this to the Ministerial Committee for approval or is it just a question of the Secretariat doing their work and that is it.

On Pages 25 and 26, Article 28 deals with entering into force of the Treaty. *“The Treaty shall enter into force thirty days after the deposition of the instruments of ratification by any three partner States.”* We are five. Do we have an idea, Honourable Minister, how far the other four Member States have progressed in terms of ratification?

Sub-article (2) of the same Article says: *“The Treaty shall only bind the States whose instruments of ratification have been deposited and shall remain open to accession by any other partner State.”* There are lawyers here, but I do not understand well. Does it then mean that if three partner States have ratified and have deposited, it means this Treaty will only bind those three, but the others two who have not ratified are not bound by the Treaty in terms of what is being said here? Maybe somebody with a legal mind can maybe help, but I do not quite understand what is meant here.

Comrade Minister, the annexures are part and parcel of the Treaty and the map appears on Page 31. I am specifically looking at the game parks that go almost up to Rundu. We said as far as our part is concerned it is the Kaudum, Mangetti and then the Bwabwata, but this line seems to be telling me that the whole area up to Rundu is a game park.

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Otherwise, as I said, Comrade Deputy Speaker, the principles are in order but the devil is always in the details and in today's world the definition of terms is very important. I rest my case.

HON DEPUTY SPEAKER: Thank you, Honourable Minister. This item attracts a lot of interest and I cannot deny any Member a chance to talk. We only have nine days before we rise and we have very important items on the Order Paper. Based on that, I would like the next speakers to limit their interventions to five minutes. Honourable Tjihuiko, you have the Floor.

HON TJIHUIKO: Honourable Deputy Speaker, thank you very much, but I think it will be very unfair for us to be given an opportunity to look at ratifying a Treaty like this and we are being limited to five minutes.

HON DEPUTY SPEAKER: What is your reasonable time?

HON TJIHUIKO: The reasonable time is when you have gone through what you wanted to say. Let me take the Honourable Minister straight to the point that I wanted to raise, but before I do that, I believe that when we ratify a treaty, it automatically becomes part of our law, it is automatically domesticated, so therefore, it is not just a question of ratifying, it is a question of passing a law in the Chamber. That is why it is very important for us to know exactly what we are talking about and I think these are some of the things that we are really missing and we ratify things that are in some cases contrary to our Constitution and some of the laws that we have already passed. That is why it is very important for us to be very careful with what we are doing.

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Honourable Minister, let me take you to Page 8, Article 3 and it goes with Page 25. I want us to look at the legal status. It tells us that KAZA shall be an international institution, it shall have a legal personality with the capacity and power to enter into contracts, agreements and to be taken to Court, sue and being sued. If I am correct, when we are talking about international organisation, it means that it will be subject to international laws. If that is the case, Honourable Deputy Speaker, if you look at Page 25, Article 25, starting from (2) to (4), *the Adhoc Tribunal shall be composed of three members to be appointed by KAZA Ministerial Committee. The Adhoc Tribunal shall determine their own rules and procedures and the Adhoc shall be decided by majority vote and its decisions shall be final and binding.*

This is something else as to what we were saying that it has become an international organisation and it ought to be subjected to international laws. Which one of these will be more superior than the other? Honourable Minister, I hope you will be able to help some of us to understand that argument.

Moving on to Page 18, the composition and functions, this is an agreement between five countries, but here we are saying the composition and function of JMC, partner States shall appoint two and the SADC Secretariat shall appoint one individual in the JMC. Honourable Minister, are we saying that out of the five Member States, only three people from those three countries will be Members of this Secretariat and then let us suppose now the other two will not be represented at this very important structure?

Looking at the budget in Article 21(2), I am a bit worried about this. *“Partner States shall contribute to the budget of KAZA based on a formula agreed upon by a committee of senior officials.”* I think what we are saying here is that we are giving a blank cheque and this Honourable Chamber will not be able to know how much money is needed to run these institutions and they will end up using money that we have not budgeted for. I do not know how we are going to be able to do this.

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On Page 27, Article 21 – Termination. I believe that is termination of membership. Let me be very clear on this one, Honourable Minister. *“This Treaty shall remain in force indefinitely, but any Member State may submit intent to terminate by giving twelve months written notice in advance to the other partners through diplomatic channels. The termination shall require the consent of at least three member partner States to take effect.”* Suppose Namibia is not happy with what is taking place in the organisation and decides to terminate its Membership, are we saying it depends on the willingness of three other Member States? If they say no, it means that as much as we are not happy with what is going on, we have to remain a member of this organisation and we become hostage of a treaty that we have signed. I think that is very dangerous and having said that, I believe that this Treaty, as it is now, needs to be carefully revisited. I do not think that it will be in our best interest to pass this Treaty as it is now and we need to refer it back, think over it and bring it back so that some of these things we have highlighted can be taken care of. Thank you, I rest my case.

HON DEPUTY SPEAKER: Thank you. The next is Honourable Kaura.

HON KAURA: Thank you, Honourable Deputy Speaker. I only want to get some clarity on Page 29. I wonder whether this Treaty is here for us to take note or to ratify, because on Page 29, under KAZA-TFC Treaty, *“in witness whereof, the undersigned, being duly authorised by their respective Governments have signed and sealed this Treaty in five originals in English and two originals in Portuguese, all text being equally authentic. Done at Luanda on the 18th of August 2011.”* It was signed by the President of the Republic of Angola, President of the Republic of Botswana, President of the Republic of Namibia, President of the Republic of Zambia and President of the Republic of Zimbabwe. They have signed this Treaty and they say it is sealed and whatever. Now I wonder whether we are taking note or ratifying since it is already signed

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or what does these signatures mean? I need some clarity on that one.

Before I proceed, on Page 9 I see KAZA-TFCA shall comprise of the following areas. In the Republic of Angola, for example, we have two reserves and the others are the Longa-Mavinga hunting area, Luengue Hunting area, Luina hunting area and Mucusso hunting area, but in the other four countries they are game parks or game reserves. Is the hunting area similar to a game reserve or a national park or do they have a different characteristic?

Honourable Minister, I want us, young and old Namibians, to take into cognisance that when especially Etosha Game Park was established, it was established without taking any cognisance of the people who were utilising that area. It was cut up as if it was a no-man's land and if today you talk to some of our elderly people in the Ondonga area, they will point out the areas in the Etosha Pans where they used to have villages for grazing at certain times of the year. It was used as a grazing area, but when it was cut up, it was done so arrogantly as if there were no people living there, let alone the San people who were living in what is the Etosha Game Park today. They were eking out a living and living harmoniously with the wild animals, but then they were chased out of that area and the wild animals were considered more important than the human beings. Maybe we must take serious cognisance when we enter into these kinds of treaties that at times human beings are taken as less important than the wild animals.

Many questions are being asked here in Parliament, especially when wild animals are wrecking havoc and there is conflict between the human being and a wild animal. When they are destroying livestock, when they are destroying crops and even when they are destroying human beings, cognisance is not taken of that conflict, the animals are considered as more important than human beings. You may not shoot a hippo, but recently we read how a hippo killed human beings in the Kavango area.

Maybe we as young Namibians must take serious cognisance of this conflict between man and beast and organisations in Europe that value

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animals more than human beings.

Honourable Deputy Speaker, two years ago when the SADC Parliamentary Forum had a meeting in Arusha we were taken to the Goro-Goro Crater and we were surprised that the Masai people were farming and grazing their cattle in the Goro-Goro Crater. That is a national park, but yet the people were not chased out of the Goro-Goro Crater and the Masai people are living there with the animals as they have lived for thousands of years and they themselves handle the conflict between them. During the day they graze their cattle, at night they bring them into the bombo and they keep them there. However, in our situation our people were kicked out of the Etosha Pan and it is off limit, you cannot graze there, it is exclusively for wild animals and our people, especially the San people and those who were grazing their livestock in Etosha Pan have a problem up to today.

On Page 14 it says: *“The role of SADC in the development of KAZA-TFCA shall be specified in an agreement between the KAZA-TFCA and SADC which shall address the following issues, among others.”* How do you ratify something while there are still outstanding issues that must be implemented? Why not wait until everything is in place and when you are ratifying, you know precisely what you are ratifying? I have a problem with that.

On Page 12: *“Develop and implement programmes that shall enhance the sustainable use of natural and cultural heritage resources to improve the livelihoods of local communities within and around KAZA-TFCA and thus contribute towards poverty reduction.”* This sounds good, but how do we contribute to poverty reduction when elephants destroy crops in the Kavango and the Caprivi? Are we not contributing to poverty or are we contributing to poverty reduction? How do we handle this? These complaints have come before this Parliament where elephants have destroyed crops in the Kavango and the Caprivi, but there is no programme which assists the people whose crops were destroyed. Are we now contributing to poverty or are we reducing poverty? That is the

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problem I have with this, that it sounds good on paper, but in practice it is not so.

The Right Honourable Prime Minister mentioned fencing. I am also averse to fencing, but we remember that recently buffaloes came into the Okondjatu area and the whole of Omaheke area was shut down because of fear that these buffaloes were carrying the foot-and-mouth disease and for a month and a half those people could not sell their livestock. My question is, if you do not have fencing, how are you going to prevent buffaloes entering the meat-producing areas? How do we keep buffaloes out if we do not fence?

Honourable Minister, I would like to place some wild dogs on your farm and maybe you could come back and tell us in Parliament how you are handling those wild dogs, because people are talking about preserving wild dogs. I will put five on your farm and we will see how you are handling them. I thank you.

HON DEPUTY SPEAKER: Thank you. The next is Dr Ankama.

HON DEPUTY MINISTER OF WORKS AND TRANSPORT: Thank you, Honourable Deputy Speaker, I am pleased to have the Floor. I would like to make a few remarks on the Treaty on the Floor of the House and I would like to start with Page 4, the last Paragraph which speaks of signatories or parties to the international conventions. These conventions that are being referred to in this Paragraph are absent and one can hardly anticipate the content of these international conventions. International conventions are conventions that have been ratified by those individual States that have done so with their own interests and we do not know what the content is. If we ratify this Treaty without knowing the contents, I wonder whether the Libyan situation will not happen to our territories here. It is not even regional conventions which maybe we could borrow

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the conventions and see them from Member States, these are international conventions. I am afraid these may be conventions that may be contrary to the wishes and aspirations of Namibians. Therefore, I am registering my concern on that.

On Page 5 the second-last Paragraph deals with the natural and cultural heritages derived from these parks. They talk about the equitable benefits, but how will these people who live within the proximity of these parks benefit equitably? Normally what you expect to happen in a conservancy is the mushrooming of lodges and when lodges mushroom within the parks that we are talking about, mainly the owners of these lodges are not local people. If local people are involved, they have a minimal shareholding and minimal powers to direct the way the lodges should operate. I am just concerned about the practicality of how the people who used to benefit from these natural resources and practised their cultural heritages will be in a position to continue doing so. This to me is a great concern. If there was a document one could look at, perhaps one could consider that as a step towards the right direction.

Article 18 on Page 22 deals with the sharing of resources. It is a step in a positive direction that we are trying to integrate SADC, but I am asking whether this is going to be done on a quota basis? How will they be sharing resources? When the hunting season is over and they have collect x-amount of money, what modality will be employed in the sharing of these resources?

Article 23 on Page 24 equally speaks about the financial resources. What regulations are there that one could say this may work out or this may benefit one country and not the other? I would want to get that information.

Then there are related issues of conflicts between animals and people. Of course, the land does not expand, but the population explodes and we invade the habitat of the animals. As we also encamp wildlife within our environment, they do not know whether this is your mahangu field or your vegetable garden, they only see green and it is nice for them to eat.

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Therefore, the animals only see you as an intruder and when they want this mahangu or maize, then there is a serious conflict. The more people are within the area of the animal kingdom, the more problems we can expect and other Colleagues have spoken about this. My question is whether there is now a practical, uniform policy that would apply to all conservancies within Namibia and its partner neighbours? I think the question is clear because other Colleagues asked the same question.

On the selling of animal products, animal products have become a problem to those who do not have animals, particularly the western world and others. They have run out of animals and now they are trying to capitalise on our wildlife. Here we have many elephants and if you start culling them, the problem remains, where are you going to dispose of these elephants tusks, for example? You know the story of CITES very well. If CITES has a problem with us while we have not created this wonderful tourist kingdom, what will happen after we have created it and then allow them to have lodges there? Definitely they have money and they would want to take those areas as tourist destinations with their lodges and they give us a minimal kind of shareholding. What is going to happen with this? I understand we still have a lot of tusks that have not been disposed of. These people will arrest you on their laws, laws which you have not ratified knowingly and that is why I feel there is a necessity for us to see those annexures that are absent.

Apart from the question of CITES, I would also like to talk about the construction of these tourist camps and lodges. Has there been any kind of policy or regulation made to regulate who is coming in and how they should come in? Is there anything to that effect or are we going to be surprised after ratifying the Treaty when we see a lot of these guys coming in and take a lot of money made through our conservancies?

I would want to see that whatever is happening to this Treaty – and for the moment I am going to reserve my support for it – it should consider the international conventions that we are talking about now, so that we can at least understand and be at peace when we ratify this very important

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document that it will bring changes. We want positive changes for our country and for our region. I thank you.

HON DEPUTY SPEAKER: Thank you. Next is Dr Amweelo.

HON DR AMWEELO: Thank you very much, Honourable Deputy Speaker, Honourable Members. I also rise to support and congratulate the Honourable Minister of Environment and Tourism for tabling this very important Treaty.

Article 9(1) on Page 14 is speaking about the natural resources and ensure effective protection of the natural environment in all SADC Member States.

Honourable Deputy Speaker, over-exploitation, habitat loss and over-grazing, desertification, degradation and other factors are threatening the entire ecosystem and biodiversity in conservation areas. In order to preserve these threatened areas and species you need harmonised policies and actions. However, my question is, what is the immediate action being taken in order to preserve these threatened areas and species for future generations? That is my immediate question to the Honourable Minister.

The Treaty is silent with regard to research. It is essential to identify areas for future conservation and analyse the current trends in biodiversity. It would be good also to conduct special studies with regard to the protection of the natural environment. (Intervention)

HON DEPUTY MINISTER OF JUSTICE: I am sorry to interrupt you, do you not think, and some of us have been talking about this time and again, that the problems we are talking about are almost common to most

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of the conventions? When you actually address a problem without you describing what is it that we are facing as a problem in the area of conservation so that people know what you are addressing in this existing problem, then that will always pose a problem. Whenever you enact a law which is not preceded by a policy, you will have difficulties convincing people. There are many issues in there, but because of the absence of that description as to what is it that we are addressing, that actually results in this kind of confusion.

HON DR AMWEELO: Thank you very much, Honourable Deputy Minister. I have very limited time, we can discuss that later.

With regard to the population pressure, on the 31st of October 2011, the world marked seven billion people and this growing population will demand to go into the conservation areas. This is a very big problem and many studies were done all over the world, saying that the clearing of land for agricultural use is one of the main causes for the loss of animal species and conservation areas. The question is, what measures could the Ministry put in place in order to prevent the growing population going into the conservation areas, other than the problem of degradation, desertification, over-grazing and so forth?

Furthermore, habitat destruction comes in many forms, from the felling of forests to changes in farm practices that change the overall surrounding habitat. If a habitat is degraded or disappears, the species may also become threatened. We in the SADC Region need to harmonise policies and treaties like this one in order to protect and manage the threatened native flora and fauna and promote the conservation of native flora and fauna as well as to monitor and assess the whole ecosystem in conservation areas. The Treaty is silent on these issues, but those are my concerns. (Intervention)

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**TREATY ON KAZA TRANS-FRONTIER
CONSERVATION AREA
HON DR N IYAMBO**

HON KAURA: May I ask a question? Honourable Colleague, you are referring to land degradation. Is it not true that prior to colonialism there was no land degradation because our forefathers knew when to move from one area to another when it was heavily populated and they allowed it to recover, so there was no land degradation? Is this not a phenomenon which came with colonialism because people were pushed into a small area known as a reservation and, therefore, it was overgrazed and that led to land degradation?

HON DR AMWEELO: I agree with you, but the other problem is also population growth. In 2010 there were 177 million people in the SADC Region and it is growing. Apart from what you are saying, the growing population is also causing degradation and desertification in conservation areas.

Honourable Deputy Speaker, I want to raise my concern with regard to the conservation over habited spaces and ecosystems, because conservation is not always possible as the habitats have been degraded and there may be competition for land, which means species need to be removed from the area to save them. What can the Ministry do with regard to the conservation of habitats and spaces? If not, those areas will also be affected and degraded. I thank you and I fully support the Treaty.

HON DEPUTY SPEAKER: Thank you. Honourable Nicky Iyambo.

HON MINISTER OF VETERANS AFFAIRS: Thank you very much, Honourable Deputy Speaker. Much has been said by the other Colleagues and that makes my work easier and it leaves me with one question to the Minister, whether there is room within the context of ratifying this Treaty to have an addendum in order to accommodate the concerns that have

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**TREATY ON KAZA TRANS-FRONTIER
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been raised. Otherwise, obviously, there are things that have been mentioned that are of paramount importance.

Honourable Deputy Speaker, I would like to find out from the Minister on Page 10, Paragraph 2: Within the context of KAZA one can actually include or exclude areas which have not been part of KAZA area. A State has that right to include or exclude an area. For example, in Bwabwata National Park you have areas which are actually inhabited, particularly around Divundu, and if strict measures of conservation will be introduced there, that would restrict the livelihood of the people who are already there, particularly in their agricultural activities. I know that a few kilometres from Divundu you have Omega 3 and in that area you also have a big agricultural field for the Ministry of Agriculture. Are these areas now going to be excluded and if they are going to be excluded, is it not necessary that as we are signing we already indicate that these areas will be excluded. That is why I want to find out whether there is a possibility to have an addendum before the final signing of this Treaty.

Article 5(a) on Page 10 speaks of the territorial integrity, that the territorial integrity will remain the responsibility of the partner States and I think I like that one. I am saying so because in some other Clauses you are saying international partners must be given immunity when they come to invest in those areas. We know for historical reasons, that in some of these areas the international organisations are currently working with the people staying there and they have already caused a problem. When these areas are now going to be under KAZA, I want to be assured that the State will still have an obligation of what is taking place in those areas should the national interest be violated and threatened and that we will not be bound by an area that has so been designated and, therefore, hands off. That would actually be devastating and I hope it is not going to happen that way. I want you to shed some light on that one.

As I said, ownership is strictly the responsibility of Government and that is why personally I would not have liked that any other international organisation should work there freely. They should subject themselves to the authority of national Governments, because otherwise we will have

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**TREATY ON KAZA TRANS-FRONTIER
CONSERVATION AREA
HON SHIFETA**

many problems there. Other Colleagues have already mentioned that there are people who like animals more than human beings and their agendas are difficult to understand and, therefore, we may find ourselves in problems with them.

Article 8(b) on Page 13 says that “*KAZA will ensure development activities in a partner State shall not cause adverse effects in areas beyond the limits of the national jurisdiction.*” I would be happy if that is implemented.

Also in another article it says that there will be no restriction on the national interest. That even goes as far as cultural protection, cultural inheritance. Particularly in those north-eastern parts of Namibia the people are fish eaters, but we know there have been restrictions even in the rivers, that nobody should enter the river for fishing. If we do not express that national interest to be there, we will have some of our people being shot, as has already happened, and that will cause a problem within Member States of KAZA.

Because of time, Honourable Deputy Speaker, I wanted to find out from the Minister whether an addendum is possible to take care of the concerns that have been raised. Thank you.

HON DEPUTY SPEAKER: Thank you. Honourable Shifeta.

**HON DEPUTY MINISTER OF YOUTH, NATIONAL SERVICE,
SPORT AND CULTURE:** Honourable Deputy Speaker, I am concerned about the way we debate on important documents like this one. I think we need to invent a new way of scrutinising. Perhaps we need to do it through Committees that have been briefed by a team of the Ministry, because I could see many concerns. I thought the process has taken place, a lawyer was assigned to this team, the Office of the Attorney General has

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ADJOURNMENT

scrutinised this document, but it is good that we talk, as Parliament we are there to talk. However, I think we need to have a way to scrutinise such documents because they are very important and people need to understand and their concerns need to be attended to, especially those who have not seen the document before.

When you ratify a treaty like this one, the country has to look at its interests and interests change as time goes on. I am satisfied with the Convention here because you can ratify and if after five years you are not happy that this Treaty serves your interest, you can withdraw. If we decide tomorrow that we want agriculture in Bwabwata National Park and we see that this Treaty is an impediment to that, you withdraw. The question of termination, termination is different from withdrawal. Termination needs consent from partners, but withdrawal does not need any consent by any partner State, you withdraw as a country because it does not serve your interest.

Also on the question of domestication, I hope we understand that we have international law and Municipal law. When we ratify it becomes part of our international law. Domestication is another process and they have another way of doing that and Article 144 of our Constitution clearly stipulates how this becomes binding. It becomes binding by international law but it does not mean it is domesticated.

HON DEPUTY SPEAKER: The House is adjourned until next Tuesday, 14:30

HOUSE ADJOURNS AT 17:45 UNTIL 2011.11.08 AT 14:30

**ASSEMBLY CHAMBERS
WINDHOEK
08 NOVEMBER 2011**

The Assembly met pursuant to the adjournment.

HON SPEAKER took the Chair and read Prayers and the Affirmation.

HON SPEAKER: Any Petitions? Reports of Standing or Select Committees? Other Reports and Papers? Deputy Minister of Finance.

TABLING: REPORTS OF THE AUDITOR-GENERAL

HON DEPUTY MINISTER OF FINANCE: Comrade Speaker, I lay upon the Table, Reports of the Auditor-General on the Accounts of:

- Municipality of Outjo for the Financial Year ended 30 June 2009;
- Village Council of Otavi for the Financial Year ended 30 June 2009 and 2010.

HON SPEAKER: Will the Honourable Deputy Minister table the Reports? Other Reports and Papers? Any Notice of Questions? Any Notice of Motions?

NOTICE OF MOTIONS

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**NOTICE OF MOTIONS
HON !NARUSEB**

HON MINISTER OF LANDS AND RESETTLEMENT: I give Notice that tomorrow, the 9th of November 2011, I shall Move –

That leave be given to introduce a Bill to create new forms of title to immovable property; to create a register for these forms of title and registrars to register these forms of title; to provide for the nature of the rights conferred by these forms of title and to provide matters incidental thereto.

HON SPEAKER: Will the Honourable Minister please table the Motion? Any further Notice of Motions? Ministerial Statements? Honourable Kawana.

MINISTERIAL STATEMENT

HON MINISTER OF PRESIDENTIAL AFFAIRS AND ATTORNEY-GENERAL: Thank you, Honourable Speaker. I rise to make a Ministerial Statement on an issue of national importance.

In recent days there has been a hype of activities in the print media regarding the status of Mr Rodney Guiseb, one of the appointed Commissioners of the Electoral Commission of Namibia. The governance system of our country is anchored on the principle of the rule of law and democracy. The laws of our Republic prescribe procedure how Electoral Commissioners of Namibia (ECN) are appointed. Those Honourable Members who are familiar with this subject matter will recall that the current procedure of appointing members of the ECN is done in terms of Electoral Act of 1992, as amended by the Electoral Amendment Act of 1997.

Prior to 1997 Amendments, administratively ECN used to resort under the

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Office of the Prime Minister. The Opposition Political Parties perceived that not in line with the principles of good governance. They demanded that the ECN should not only be independent, but it should be seen to be independent. Therefore, the changes which were introduced in 1997 were largely aimed at meeting the demands of the Opposition Political Parties.

I will explain in summary form the new procedures which were introduced in 1997.

In terms of Section 5(1) of the Electoral Act of 1992, as amended by Section 3 of the Electoral Amendment Act of 1997, the President is empowered to appoint members and alternate members of the Electoral Commission of Namibia. Before the commissioners are appointed, Section 5(2) requires the Director of Elections to invite interested persons to apply. Such invitation is done by notice in the Gazette as well as in not less than two daily newspapers circulating throughout Namibia. Once applications have been received, the selection committee is required under Section 5(9) to meet, to interview shortlisted candidates.

The selection committee consists of a staff member of the Supreme Court or the High Court nominated by the Chief Justice, one legal practitioner nominated by the Law Society of Namibia and one person from the staff of the Ombudsman, nominated by the Ombudsman. All the aforementioned persons are appointed for a period of one year by notice in the Gazette by the Secretary of the National Assembly in terms of Section 5(12).

In addition to the requirements of the Act, the selection committee is required to comply with qualifications and other criteria determined by the Committee on Privileges of the National Assembly in terms of Section 5(5). It is important to note that one of the qualifications imposed by the Standing Committee is political neutrality of applicants and this was introduced recently.

Once applicants have been interviewed, the selection committee recommends not less than eight suitable applicants to the President, out of which five are appointed as ECN commissioners. It is clear from the

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summary that the ECN is independent in every respect, that is to say, both functionally and administratively. Indeed, contrary to the alleged statements of the Rally for Democracy and Progress (RDP) that we read in the print media, the process of identifying the appointment of the ECN commissioners was observed. Indeed, it is factually correct to say that one of the senior leaders of RDP, in the name of Honourable Jesaya Nyamu, its Secretary-General, was able to observe part of the process. He exercised his rights under the Electoral Act to object to some of the applicants. The selection committee upheld some of the objections lodged by the Secretary-General of RDP. Other objections were found not to be within the letter and spirit of the Electoral Act. At the end of the selection process, it was reported in the print media that the RDP was satisfied with the selection process. It is surprising to learn that the RDP seems to have made a U-turn.

Honourable Members, I have explained the selection process as required by the Electoral Act. It is clear from the procedure that His Excellency Dr Hifikepunye Pohamba, President of the Republic of Namibia, exercised the powers conferred on the President in terms of the Electoral Act. The President complied with the letter and spirit of the Electoral Act. As required by the Act, a minimum of eight names of qualified applicants were submitted to the President out of which five had to be appointed after taking into account such aspects as gender and regional representation, among others, the President appointed five ECN commissioners.

It later transpired that one of the appointed commissioners does not, allegedly, meet minimum requirements set by the select committee of the National Assembly, namely, a University degree or its equivalent.

Honourable Speaker, the Office of the President does not want to be drawn into the debate whether or not Mr Guiseb has a University degree or its equivalent. That task is left to those who were entrusted to ensure that all applicants meet the prescribed minimum requirements. This notwithstanding, we hold the view that those who are to be appointed as ECN commissioners should be fit and proper persons. Persons who do not meet such a requirement should not be allowed to be members of an

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important body such as the ECN which is entrusted with a duty of immense national importance.

Elections are the heartbeat of our democracy. If people who are not truthful are entrusted with such responsibility, it may compromise the credibility of our electoral process. This should not be allowed.

Therefore, the matter has to be resolved in accordance with the laws of our Republic, in particular the Electoral Act, as amended.

In a letter dated the 1st of November 2011, addressed to His Excellency the President, Mr Guiseb tendered his resignation. In the interest of transparency, part of Mr Guiseb's resignation letter reads as follows and here I am going to read as is, inclusive of typographic errors:

"Subsequent to various media articles published in the Informanté of 27 October 2011 and the Namibian of 28 October 2010 (I suppose he meant 2011), respectively, I herewith state the following: I applied to the Electoral Commission of Namibia like any Namibian and was appointed in terms of the Electoral Act 24 of 1991 (I suppose he meant 1992) and met the set requirements in terms of appointment of commissioners. I was appointed on the 23rd August 2011 by His Excellency President Hifikepunye Pohamba of the Republic of Namibia and carried out my duties to the best of my ability for the past three months with my fellow commissioners. I am a seasoned human resources practitioner and have close to ten years executive management experience in mining, aviation and the road construction industries in Namibia. Thus I am able to manage and contribute meaningfully towards the core mandate of the Electoral Commission. I am a young and industrious scholar of contemporary global issues and have the necessary acumen and contributed positively towards the Electoral Commission's objective to ensure that credible election is conducted in Namibia. I have ensured that proper systems and processes are put in place for the Electoral Commission to function efficiently. A great deal of irreparable reputational harm has been done to the distinguished offices which could have been avoided but for the malicious reporting of the media. Therefore, I sincerely wish to apologise to the Head of the State who is the

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appointing authority, the Chairman of the Electoral Commission, fellow commissioners and the Namibian public for the great embarrassment that they have been subjected to through these reports. I, therefore, would tender my resignation primarily as a result of the undue prejudice and professional harm caused by the media and those persons that have personal vendettas against me, as they are trying to create my demise. I, therefore, exonerate the appointing authority, the Office of the President and the Electoral Commission of Namibia of any wrongdoing as they had nothing to do with the media reports levelled against me for the past week so far. I would however, like to convey my sincere appreciation to the Office of the President, the Electoral Commission, fellow commissioners and the general Namibian public for the confidence they had in endorsing and approving my appointment to such esteemed office. At the same time I feel obliged and duty-bound as a responsible, patriotic citizen to resign as commissioner in order to restore the dignity and integrity of both the Office of the President as appointing authority and the Electoral Commission while I pursue other avenues to bring the doubt casted over my appointment to rest and contribute meaningfully in other meaningful ways towards the development of our beloved country, Namibia. Similarly, a great deal of irreparable reputational harm has been done to these esteemed offices and myself which could have been avoided but for the malicious reporting by the media. Therefore, I sincerely wish to apologise to the Head of the State, the Chairman of the Electoral Commission, fellow commissioners and the Namibian public for the great embarrassment that they have been subjected to through these reports. I do not deny, neither do I confirm, the allegations stated against me in these respective newspapers. In conclusion, I wish to state that the merits and demerits of the aforesaid prejudicial media reports will be dealt with appropriately at a different forum. I reserve all my rights in this matter.”

Honourable Speaker, we live in an imperfect world. There are some people who want to cut corners at the expense of their fellow human beings. However, in an open society, such as ours, such people are always exposed. I can, therefore, confirm that as a result of the resignation of Mr Guiseb, a vacancy in the ECN has arisen. I have no doubt that the vacancy will be filled soon. This will be done within the letter and spirit of the Electoral Act of 1992, as amended.

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Honourable Speaker, allow me to state in no uncertain terms that we should not blame the selection committee. In my view, it processed all applications in good faith. The experience in this case is not unique to those who were entrusted with the task of selecting suitable applicants for appointment by the President. Indeed, it is not only a national problem, but it is also an international problem.

I hope I have clarified this matter to the satisfaction of our Nation. I thank you.

HON SPEAKER: I thank the Minister for his statement. Any further Ministerial Statements? The Secretary will read the First Order of the Day.

**RESUMPTION OF SECOND READING:
LABOUR AMENDMENT BILL**

SECRETARY: Resumption of Second Reading on *Labour Amendment Bill*.

HON SPEAKER: When this Debate was adjourned on Thursday, 3rd November 2011, the Question before the Assembly was a Motion by the Honourable Minister of Labour and Social Welfare, that the Bill be read a Second Time. The Honourable Deputy Minister of Agriculture, Water and Forestry adjourned the Debate and I give him the Floor.

HON MINISTER OF AGRICULTURE, WATER AND FORESTRY:
Honourable Speaker, due to some unavoidable reasons, the Deputy

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HON NAHOLO**

Minister of Agriculture, Water and Forestry could not be here this afternoon, but he has requested me to postpone the Debate until tomorrow unless there are other Members who would want to take the Floor.

HON SPEAKER: Any further discussion? Honourable Naholo.

HON NAHOLO: Honourable Speaker, Honourable Members, a couple of weeks ago the Rally for Democracy and Progress (RDP) publicly requested the Ministry of Labour and Social Welfare to inform the public on their stand about the labour hire system that should not be allowed to continue in its current form. The RDP has been concerned that until recently the Ministry has been very slow to start the process of regulating the irregular work imposed by labour hire firms, considering that it is the only course of action to redress and put to rest the unfair labour practices in this country.

I, therefore, take the Floor, Honourable Speaker, to use this profound opportunity to thank the Honourable Minister as well as the Honourable Deputy Minister and the entire Ministry of Labour and Social Welfare for introducing this important Motion on the Amendment of the Labour Act (Act 11 of 2007), most importantly to root out unnecessary forms of employment that are against the decent work agenda of our country.

According to the International Labour Organisation (ILO), there are two forms of subcontracting, namely job contracting whereby the subcontractor supplies goods or services and labour-only contracting, whereby a subcontractor supplies only labour.

The labour hire companies in Namibia that have been mostly based in Walvis Bay, Windhoek, Swakopmund, Tsumeb, etcetera, fall into the second category as they merely supply cheap labour to their clients.

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HON NAHOLO**

Honourable Speaker, labour hire is the most exploitative form of labour broking. In Namibia we see labour hire companies hiring out workers, mostly unskilled or semi-skilled, to companies and it ranges from a few hours to several months or even a year. They do not offer their staff permanent employment but merely simple contracts. They also do not provide specialised services to their client companies, but only proffer them with casual labour in accordance with the desires of the particular client company. As a result, many companies, both private and public or State-Owned Enterprises, recruit casual workers through labour hire companies.

One prominent labour hire in this country is Africa Labour Hire, which is a replica of SWANLA which contracted labour during colonial times. Companies such as Rössing Uranium Mine, Namib Mills, Namibia Breweries, Hansa Breweries, TransNamib, NamPost, Telecom Namibia, etcetera, use labour hire because they find the labour hire workers to be cheaper than hiring workers on a permanent basis and this enables them to make savings on administrative costs, for example, calculating wages under the cost of protective clothing, etcetera.

The emergence of labour hire companies in Namibia after Independence in 1990 consequently meant that several companies no longer recruit casual workers themselves, but simply approach the labour hire companies for a certain number of workers for a particular period, while paying an hourly rate or fee per worker and no longer responsible for the conditions of employment and that culminates into the employment contract between the employer and the employee to be replaced by commercial contract between the labour hire agency and its client company. That also evolves into the labour hire companies ending up retaining between 25 to 75 percent of every worker's hourly wage and paying their workers as little as N\$2 to N\$5 per hour.

Honourable Speaker, we are all aware that labour hire workers are not necessarily unionised, hence it is hard for them to speak with one voice. We are also conscious that the density of formal employment in Namibia has decreased while the informal economy or informal employment is

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increasing and this, Honourable Speaker, is a serious challenge facing the labour sector in our country. We have seen in recent years how workers at Rössing Uranium Mine and other companies, who were not engaged in core mining activities, were phased out or retrenched and replaced by labour hire workers in most cases. This is globalisation at its worst operation and strategy to make huge profits through the sweat of others in the cheapest way. (Intervention)

HON NYAMU: Honourable Speaker, may I ask my Colleague a very simple question? Honourable Naholo, you have gone to great lengths to explain the role of the labour hire companies, how exploitative they have been and that there is a great need to bring this type of practice to an end. You also mentioned that workers who are sold on the market cheaply are not unionised. The assumption here is that if they were, they would have a mechanism to protect their interest, but I want to know, do you think the present labour unions which are married to a Political Party are truly representing the interests of the workers?

HON NAHOLO: Thank you, my senior Comrade, looking at the House, I think they are all in agreement and Honourable Kawana is confirming what you are saying.

I am saying this form of employment is a second oppression and exploitation of our people and, therefore, should not be allowed in an Independent Namibia. We have also noticed with great concern that these labour hire companies fail to offer tangible training or no training at all to their workers, but of course, some give adult basic education, literacy and language skills but this is not sufficient to promote and enhance effective and efficient productivity.

In conclusion, Honourable Speaker, the labour hire companies pose problems to workers and their trade unions. It reminds Namibia about the

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HON MOONGO**

labour contract system under which Namibian workers suffered before Independence. Just like SWANLA the labour hire companies uphold unjust and exploitative labour practices and to continue allowing such practices unregulated would persistently allow our people to suffer at our own hands as Namibians.

Honourable Speaker, based on the background information I have given here as a baseline for my support to the Motion on the Amendments of the Labour Act (Act 11 of 2007) and as a person from the labour background, I fully agree and support this Labour Amendment Bill that employees placed by a private employment agency into a user enterprise should have the same rights as any other employee. All employees should equally enjoy their right to join trade unions and to bargain collectively. All employees' conditions of employment should be similar and all policies should apply equally to all. I, therefore, urge this Honourable House to support without delay the Labour Amendment Bill as tabled. I thank you, Honourable Speaker.

HON SPEAKER: I thank the Honourable Member. Honourable Moongo.

HON MOONGO: Thank you very much, Honourable Speaker. First of all, allow me to thank the Honourable Minister who moved the Amendment. We were saying that we should get rid of this draconian labour hire practice and better late than never. Our people suffered for too long and we have to get rid of it.

I also appeal to the Minister to look into the other draconian stipulations as the rights of employers are not well protected. There are too many holidays, such as annual and sick leave. The employees have more rights than the employers. With this I am looking forward to another Amendment as we need to be protected and the employer also needs to be

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RT HON ANGULA

protected. There are too many holidays and I look forward to an Amendment. With this, I support the Bill. Thank you.

HON SPEAKER: Thank you. Prime Minister.

RT HON PRIME MINISTER: Thank you, Honourable Speaker. This Amendment is of great interest to many of us, especially those in the SWAPO Party whose initial objective was to break down the contract labour system. I would, therefore, like to thank Honourable Ngatjizeko for moving this Amendment.

However, I would like the Honourable Minister to enlighten me on three issues. I know that there is a Ruling of the Supreme Court on this matter and the Minister had to work under that constraint. That is understood. However, all of us know that most of the people who are provided by the labour hire are the unskilled workers and as much as we say they can be treated as normal employees of a user firm, there are certain constraints which I want the Minister to explain.

The question of duration of employment to me is very much important, because we might see a situation whereby the firm hires labour from the employment organisation and they make an arrangement that this month I am going to give you this one and next month somebody else and there is no way you can establish equality between workers who have been permanently employed by that firm, especially in terms of benefits. I am not quite sure how you can do that if people contrive to circumvent the intention of this Amendment by not abiding to long-term employment. I do not know whether there is a possibility to put in some kind of caveat in here to say that people so hired should not be hired for less than a certain period of time and if that happens, if the period is shorter than what is prescribed, some kind of compensation should be provided to these hired workers.

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The problem here is that the contract of hiring is between the sending organisation, which is defined here as the employer, and the receiving organisation. The worker is mentioned nowhere. The only person who is going to protect this worker is the Labour Commissioner and given the fact that it will take some time to unionise these people, they might not actually have any protection. I think we have to look deeply into this because our Courts are looking at the perspective of a person carrying out business and they are not looking from the perspective of an employee, a person who is being hired out. They are more interested in the person to make business, but the person who is being hired out is the most vulnerable one and has to be protected.

How do you provide safeguards that this thing will not be contrived, especially in terms of period of employment, in order to protect the vulnerable people?

If we are talking about lawyers and doctors, that is a different thing, but I am talking about a cashier who is hired just to go and stand at the teller-machine, receive payments and those kinds of things, a person who is hired to go and offload a truck, the person who is hired to go and clean a supermarket, how to protect that person to make sure that this Amendment will have meaning to this category of people. (Intervention)

HON BEZUIDENHOUT: May I pose a question? Would it be conceivable to actually try and legislate and regulate labour hire companies, to tell them exactly what they can and cannot do under the law should they want to set up that business? Would that be an answer to your question?

RT HON PRIME MINISTER: Yes, Honourable Bezuidenhout, if you look at Section 10 on Page 5, the Minister can prescribe certain regulations in terms of this Amendment Bill. I am not sure whether those

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regulations can go far beyond enough to protect the vulnerable. My real point of departure is that the weaker of society are the ones who need protection, especially in this unequal relationship and I want to see these Amendments reflecting that there is some recourse that these people can be protected either in terms of job security or in terms of compensation, in terms of protection against abuse or something like that, so that this should not just be a cosmetic exercise which can easily be abused by the employers and especially their lawyers.

I hope that the Honourable Minister will be able to explain and satisfy us that there must be a balance between the employer organisation, the person who is going to be hired out and the receiving organisation, because right now I have been trying to see how to protect the person in the middle and I do not see that. (Intervention)

HON NYAMU: May I ask the Honourable Prime Minister a question? Honourable Prime Minister, this Amendment Bill is actually centred on the protection of workers, as you put it correctly, especially the non-professional lay persons in the labour force. I know the Prime Minister is aware of the history of this country, how the Trade Unions became closer in collaboration with the liberation movement. I submit that the present situation where 21 years after Independence Trade Unions are still married to a Political Party, that that does not serve the best interest of the workers. Do you think that marriage is in the best interest of the workers of this country?

RT HON PRIME MINISTER: Well, you are entitled to your opinion. I do not know whether Honourable Nyamu watched NBC last night and if not, I hope that he read the newspaper this morning. (Interjection). You are denying yourself information because the allegations you are making are based on ignorance. Last night the Teachers Union, to which I belong as a senior teacher, took issue with me on a procedural matter. That is

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fine, that is the duty of trade unions to protect the interest of the workers and they are doing that. Whether, according to your perception, they are married to SWAPO, the truth of the matter is that the very SWAPO you served in different capacities was born out of the protection of the workers. That was the core value of SWAPO, to protect the workers. (Intervention)

HON KAURA: May I ask the Prime Minister a question? On Page 5 under 9(a) and (b): *“If the Minister grants an application of a user enterprise for exemption in terms of Subsection (8), the private employment agency and the user enterprise are each deemed to be the employer of the individual placed with the user enterprise and are jointly and severally liable for contravention of this Act. (b) In case of contravention of this Act, the employee has the option to seek relief provided herein against either the private employment agency or the user enterprise or both.”* Does that not render sufficient relief or protection to an employee?

RT HON PRIME MINISTER: Yes, this is like saying that the owner of a taxi and the one who is hiring a taxi are both liable to repair that taxi when there is something wrong with that taxi. You are a commodity as a person employed by this labour provider, you are still a commodity.

HOUSE ADJOURNS AT 15:40
HOUSE RESUMES AT 16:15 PURSUANT TO ADJOURNMENT

RT HON PRIME MINISTER: Comrade Speaker, I was saying that the relationship between the trader, the commodity and the buyer is still

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apparent in this Amendment, because the Minister has worked within the confines of the Court decision and I really understand his limitations, but given that situation, can we not build in some safeguards to protect the commodity who happens to be a person like you and me? That is really my point and I hope that the Honourable Minister has taken note of my concerns and he will accordingly give the necessary protection to the weaker of our society. That is the right thing to do. Thank you.

HON SPEAKER: Thank you. Honourable Nambahu.

HON DEPUTY MINISTER OF JUSTICE: Thank you, Comrade Speaker, Sir. I also want to support wholeheartedly these Amendments because it will really bring a smile onto the faces of many of our people. I know of the grievances and the unhappiness that have been caused by the delay, especially if one takes into account the court proceedings and what the Ruling has been, but I think it is really time for even those who are giving employment to actually show some sort of humanity, because the days of the ruthless capitalism are really gone. No matter how much one wants to breathe oxygen into the system, we have just seen what is happening and if you watch Wall Street and all these other things, the tax havens etcetera, those days will not come back and if there are employers who would like to live by the way they have been living, they will definitely have to bring in some Amendments because they are not even doing a favour to themselves and to the system that they worship so much.

I only wish that everything should be done and even the Colleagues in the National Council to limit the Debate on this and do a proper scrutiny as fast as they can, that these Amendments see the light at the end of the day and it becomes law as soon as possible.

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I know of the limitation that the Prime Minister has spoken about as provided for in the Ruling, but all in all, we have seen the Wal-Mart and all these things that are going around and we only wish as a country that they also bring their parts in order for these colleagues to enjoy the fruits of employment with benefits.

Obviously, we support the spirit and we always talk about the letter and the spirit. If Honourable Tjihuiko wants me to refer to a Page, I will make further contributions during the committee stage. I wholeheartedly support the speedy implementation of this Amendment Bill.

HON SPEAKER: Thank you. Minister Kazenambo.

HON MINISTER OF YOUTH, NATIONAL SERVICE, SPORT AND CULTURE: Comrade Speaker, I rise to support the Amendments which are long overdue because the vulnerable employees are really at the receiving end and we rise to add our voice to support this important documents about which some people are already worried that because it is going to cater for the interest of the workers and, therefore, consolidate their position in society and also in relation to the Party of the people, the Party of progress. Therefore, you are now calling for a divorce, but a divorce goes through processes, it does not happen like that. Therefore, I really support the Bill.

On the issue of the user enterprises, some of them in this country for quite some time have been hiding behind the agents and you found that despite the fact that the colleagues working there are the ones who are delivering the goods, some of the useless, incompetent ones are pushing papers, they work at the till. The people who are employed permanently are doing nothing, but these colleagues have no benefits.

In conclusion, while I wholeheartedly support the Amendment, Comrade

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Minister, there is a critical need for awareness, because sometimes we have good laws and policies, but these are not known to the beneficiaries. That is why I want to commend the Speaker's efforts of taking Parliament to the people and I hope that the communities will be educated on this Amendment Bill through this process. (Intervention)

HON TJIHUIKO: May I ask the Honourable Minister two small questions? Honourable Minister, you are doing quite well. I think you mentioned the Point of Information and I support you on that one, but the Minister of Labour and Social Services is a Minister just like yourself, but you are always in your car with dark windows and you do not talk to people to provide information. If you expect the Honourable Minister of Labour and Social Welfare to do that, you should also get out of your car and talk to people and provide information. Do you not think that is a good idea?

HON MINISTER OF YOUTH, NATIONAL SERVICE, SPORT AND CULTURE: Honourable Speaker, awareness is very critical, whether it is awareness by a Minister getting out of his car... (Intervention)

HON DEPUTY SPEAKER: I want to ask my Colleague a question. I do agree with you that the people are affected by Bills should be informed and be made aware. Do you agree with me that it should not be only Bills of this nature, but also international agreements we ratify here, so that at the end of the day the people who are affected know? Do you agree with me?

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**HON MINISTER OF YOUTH, NATIONAL SERVICE, SPORT
AND CULTURE:**

I agree hundred percent with you and that is why I said we have good laws, policies and instruments in our country, including some of the policies of my Ministry, but we need promotion. Even if it takes getting out of GRN window-tinted cars or Isuzu 4x4 vehicles which are running between Okakarara and Okahitua around the clock, we should use this time to educate the community members. On that I agree with you, Honourable Tjihiuko.

Before I sit down, the situation on the farms is really a serious concern. Some of our laws are not applicable in some of the remote areas. Therefore, this has nothing to do with workers being associated with Political Parties, it is for the Ministry of Labour and leaders of Political Parties and even those who are not married to anyone, who are jealous because of being political bachelors like myself, to try to access farms and address issues. For people to marry you, you have to advance and put your case across. If you keep on being jealous of others, you will not make it. With these words, I support the Bill.

HON SPEAKER: Honourable Kuugongelwa-Amadhila.

HON MINISTER OF FINANCE: Thank you, Honourable Speaker. I rise to also support the Labour Amendment Bill and I would like to commend the Ministry for acting fast in order to deal with this issue that arose when the related provisions in the Labour Act could not be upheld by the Supreme Court. However, I am saddened by the fact that we have had to come to this point where we have to legislate and re-legislate on a issue on which I actually thought we all ought to be agreeing, given our historical past and the fact that when this situation prevailed during those days, we were all appalled by it and that we, who are victims of the same system, should now fight each other and spend so much time passing laws, one following the other to deal with the same issues. It is saddening and I

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hope that after passing this Bill into law, we would stop squabbling over it and actually try to deal with the issues that this Bill is trying to deal with.

Having said that, I would like to make a few comments on some provisions of the Bill. My first comment is with regard to Section 128(2) that deals with the core issue here, as to who should be the employer of persons that are placed through private employment agencies. This provision provides that that employer would be the user enterprise and I would like to applaud that there is now certainty.

However, we also need to deal with a related issue that has a problem and that is the issue of the placement agencies claiming a part of the remuneration of the employees that they place with user enterprises and they actually claim this portion of the remuneration in perpetuity. This is exploitative and the law cannot remain silent on this issue, otherwise we would not have effectively dealt with the matter. I think it is appropriate that that issue is dealt with. These placement agencies need to quote their price for placing these people and give these people to pay this price in a manner that is suitable for them, but it can definitely not be in perpetuity, that for as long as you are employed there, this person gets a percentage of your salary. It cannot be accepted that way.

Secondly, I also applaud Section 4(a) that says that persons who are employed through these private employment agencies, cannot be employed by these user enterprises on conditions that are less favourable than those applicable to the permanent employees, because we know that there would be those companies that would try to circumvent this law by playing these tactics, but I think this can only be achieved if we have a system that really monitors the situation and is able to identify instances of violations of the law and can bring the culprits to book.

Secondly, it would also only work if we can try to look out for other manoeuvres, such as outsourcing of certain functions, because I can imagine that what they would want to do is actually to say, in order that you would not say that you have a cleaner that is permanently employed and you pay this one better than the one that is placed through the private

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placement agency, they would outsource the whole cleaning function so that you do not have anything to compare with. They will outsource to a company that they would own or co-own and then it would act like it is a different company that they have hired to provide cleaning services. They would then pay less to these employees than they would otherwise have paid them if they were directly employed by the company. I think we should look out for this and for purposes of Section 5(d) where we say that these companies should not be allowed to make use of private employment agencies to recruit staff in places which they have abolished within a period of six months, that should also apply to work that is done through newly established companies performing outsource functions from these companies.

Also in regard to Section 7 where we prescribe a penalty of a fee and imprisonment in cases of violation of the law, I thought that it would be better if the penalty related to the fine is provided in regulation, so that we are able to revise this when appropriate. If you put it in the law now and say it is N\$80,000, it would look adequate today, but then you would have to remember every two or three years to change this, otherwise it would become too irrelevant and no longer be a deterrent. I thought it would be better and enabling provision in the law, but the exact amount of the fine that is to be paid can be prescribed in a regulation so that the Minister could have the flexibility to change this when this is deemed necessary.

The last comment is on Section 9(a) that says that it is possible that the Minister can grant an exemption that the employer of a person placed through a private employment agency may not be the user enterprise if the Minister is convinced that the employer is still adequately protected notwithstanding the fact that the employer is not the user enterprise. Then it says under (a) that if there is a violation in such a situation, then the private employment agency and the user enterprise are both deemed to be the employer of the individual person. I am just thinking of a situation where the placement agency is deemed to be the employer, whether it is now in a situation where the Minister has given the exemption or otherwise, if they are jointly or individually held liable. How will the right of this workers be protected in regard to the portion of the

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remuneration that is provided by the placement agent as an employer if we hold them jointly liable as employers in terms of the protection, in terms of the benefits, because the labour law now only talks to the relationship between the employer, who is the end-user, and the employee, it does not talk to the placement agent. In this law we are now saying the employer is only supposed to be the end-user and in a situation where the placement agent also becomes an employer, how will we make sure that the employee under those conditions is also protected in terms of not being exploited in terms of the remuneration paid out to this person. I think it is important for us to look at that aspect as well.

Otherwise, I really think that this Bill is commendable and I support it.

HON SPEAKER: I thank the Minister. Honourable Utoni.

HON DEPUTY MINISTER OF SAFETY AND SECURITY: Thank you very much, Honourable Speaker. I also want to contribute on the Bill under discussion. Firstly, I also want to congratulate the Minister, the Deputy Minister and the entire staff of the Ministry for bringing this Amendment Bill.

What I am trying to find out, Honourable Speaker, which is not clear to me is, I thought this new Amendment Bill is going to completely do away with private employment agencies, but it still is like the private employment agency... (Intervention)

HON MINISTER OF MINES AND ENERGY: May I ask Honourable Utoni a question? Honourable Utoni, have you observed lately that all the good things that used to happen to Nyamu that he was so happy about,

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when these things are being done to others, he complains. Have you observed that?

HON DEPUTY MINISTER OF SAFETY AND SECURITY: Yes, I have observed and that is how he is.

Honourable Speaker, I thought that once we bring an Amendment the private employment agencies would no longer play a role, however in the new Amendment Bill it is still playing a key role. Section 128(3) says an individual placed by a private employment agency with a user enterprise has the same rights as any other employee in terms of this Act, including the right to join a trade union and bargain collectively with his or her employer. However, if you come to Section (5), it says: “*A user enterprise must not employ an employee placed by a private employment agency, (a) during or in contemplation of a strike or lock-out or within six months after the user enterprises has, in terms of Section 34, dismissed employees performing the same or similar work or work of equal value.*”

My question is, if there are no strikes or lock-outs, it means the private employment agency can still place employees with the user enterprise if there are no strikes and I am asking, why are they still playing a role? I would be happy if we do away with the private employment agency and maybe replace it with a Government agency that will look at the number of unemployed people in the Region. Why private? The Government will not charge anything, but the private agency will still charge some fees.

With this, I support the Bill.

HON SPEAKER: I thank the Minister. Minister of Home Affairs and Immigration.

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HON MINISTER OF HOME AFFAIRS AND IMMIGRATION:

Thank you, Honourable Speaker, Honourable Members. I rise to support the Bill. My small contributions is based on Page 5, Clause 7, where it says presumption as to who is an employee.

I am asking this small question because I would like to know whether this Section is applicable to charcoal employees who were that time regarded as self-employed, while in reality these people are employed by somebody. In some cases the farm owners drive to the Regions and bring them to their farms and then they are regarded as self-employed but paid low very salaries. Therefore, I would like to ask the Honourable Minister whether these people fall within this Section so that their problem can also be addressed.

According to information, most of these people are from Osire Refugee Camp and they are really treated badly and we want these people to be accommodated and protected by the Labour Act. I thank you, Comrade Speaker.

HON SPEAKER: I thank the Minister. Honourable Minister of Fisheries and Marine Resources

HON MINISTER OF FISHERIES AND MARINE RESOURCES:

Thank you very much, Honourable Speaker. From the outset, let me also join the previous speakers in congratulating the Minister as well as his Deputy and the entire staff of the Ministry for tabling this historic Amendment Bill which will amend the Labour Act of 2007. I also want to congratulate those who are on the streets, the workers and labour unions, who have fought for these Amendments to be brought here by Comrade Minister and his Deputy to this august House.

If my memory serves me well, when the Constitution of Namibia was

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crafted, I was still sitting there in the compounds down in Katutura, trying to prepare input from that side and we were fighting for the right to jobs, for the right to work and we were told there is no such thing in this mixed economy, in this capitalist kind of economy that you can demand for jobs, but this specific Bill is a step in the right direction, because we are ensuring that those who never had job security will have it now. They are getting job security because this Bill is trying to regulate the employment status of those temporary workers who were misused by the private employment agencies. I want to salute you on that.

We know that the workers never had the benefit of being members of a Union, they never had the benefit of being members of a pension fund, neither did they enjoy the benefit of being entitled to leave and this Bill will ensure that at least they are entitled to these benefits.

Comrade Speaker, I do not have much to say, but I once more want to register my support to this Amendment Bill and I know that the choice of the workers to belong to a Political Party or to be affiliated to a Political Party is their right. There is no way that somebody can prescribe to them not to belong to a Political Party through their unions. (Intervention)

HON NYAMU: May I put a question to the Minister? Since you are from the background of trade unionism and you were very active those days, do you believe that it is proper and appropriate for a trade union to be married to a Political Party which is in charge of the Government, which is the main employer? The Government in this country is the major employer and how can you represent workers if you are married to the major employer?

HON MINISTER OF FISHERIES AND MARINE RESOURCES:
Honourable Member, Honourable Nyamu, former Minister, former Deputy Secretary-General of NUNW, National Union of Namibian

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HON DR AMWEELO**

Workers, I know I visited you when you came back, when you were at Safari Court just to tell you, you were elected by the workers, the workers who are still members of SWAPO up to now. I took the message to you that they have trust in you, but you betrayed them unfortunately. It is their choice, they have decided. I just want to state that it is their freedom of choice, they fought for freedom of choice as workers and they have made their choice to be affiliated to SWAPO Party. As long as that is their choice, why bother? I thank you, Comrade Speaker.

HON SPEAKER: Thank you. Honourable Amweelo.

HON DR AMWEELO: Thank you very much, Comrade Speaker. I would also like to join others who congratulated the Honourable Minister, the Deputy Minister and the entire Ministry and the entire tripartite bodies which were involved in preparing this Amendment Bill. I only have a few issues I would like the Minister to enlighten me on.

The first is with regard to the workers who are separate from the NamPort workers, but when the ships docks, they are the people who do the offloading and loading and they are not protected.

Secondly is with regard to the labour-based construction projects. These people's protection is not covered by the law because these people just go there, they are given a task to perform and they are paid and go home. However, in terms of the new Amendment Bill, are they now considered and protected?

Thirdly is the coal workers. I remember the Minister of Lands last year went to the coal workers' working places and these people are exposed to all types of hazards. They really need to be considered for protection. Thank you very much, I fully support the Amendment Bill.

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HON SPEAKER: I thank the Honourable Minister. Honourable Tjihuiko.

HON TJIHUIKO: Thank you very much, Honourable Speaker. I will be very brief. There are two points that I want to raise.

The Minister should be congratulated for bringing this Amendment back to this Chamber and, obviously, I am a bit disappointed, because I remember the first time that we discussed the Bill itself, it was brought to the Chamber very late, close to the time of closing, we were rushed into it and as a result we ended up losing a case in the High Court. The same thing happened to the National Council, that they were put under pressure to push a Bill through and now, Honourable Minister, two, three weeks before we go on recess you are bringing a very important document for us to discuss. I think that is very unfair.

Coming back to the points, two critical points have been raised and let me agree with Honourable Utoni on that issue on Page 4 which needs to be clarified. When we bring in a law, we should look at the importance of the law and we should also look at the easy way of implementing that law. We should not just agree to the law, which is our problem in this Chamber.

Let me take you to Page 5, the issue that Honourable Kaura has just raised on Clause 59(a) and (b). I want to know, if one person can be employed legally by two people, who is going to be responsible for the Social Security of this person? Who is going to be responsible for the pension of this person? Both of them? What about other benefits such as car allowance, housing allowance, mention them? Who is going to be responsible for signing a contract with this person? Would it be both parties? Practically speaking it does not make sense. I think the Honourable Deputy Minister of Justice would agree with me that legally and otherwise this part cannot be implemented. Now how do we pass this? Do we pass this to go through and it ends up in Court and then it

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comes back to us for Amendment again? Would the Honourable Minister really seriously look at these issues?

I believe that we should not be emotional, we should not try to do something without really applying our minds to it and looking at what Honourable Kazenambo has said about the farm workers, at least today I agree with him, he said something very important. We face a serious problem of unemployment in this country and whatever we bring in should add value to the Government's efforts of creating jobs. Would this kind of Act really add value to that effort or are we asking the Government to create employment and then come in with laws that would also prohibit or make it difficult for jobs to be created? We should try to link these things, we should not just look at the Act which was brought in isolation. We should look at what it means for the economy of the country. I think these are some of the things that I am missing here.

Honourable Minister, if you need more advice on these things, please come to my office and I will be able to elaborate on that. Thank you.

HON SPEAKER: I am sure the Minister noted the officer. Any further discussion? Minister of Agriculture, Water and Forestry.

HON MINISTER OF AGRICULTURE, WATER AND FORESTRY:
Comrade Speaker, I rise to adjourn the Debate on this Motion on behalf of Honourable Petrus Ilonga to make his contribution tomorrow.

HON SPEAKER: The further consideration of this Motion stands adjourned until tomorrow afternoon. The Secretary will read the second Order of the Day.

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**EARTH SCIENCE PROFESSIONS BILL
HON KATALI**

**RESUMPTION OF SECOND READING:
EARTH SCIENCE PROFESSIONS BILL**

SECRETARY: Resumption of Second Reading on *Earth Science Professions Bill*.

HON SPEAKER: When this Debate was adjourned on Thursday, 20 October 2011, the Question before the Assembly was a Motion by the Honourable Minister of Mines and Energy, that the Bill be now read a Second Time. The Honourable Minister of Mines and Energy adjourned the Debate and he now has the Floor.

HON MINISTER OF MINES AND ENERGY: Honourable Speaker, Honourable Members, let me take this opportunity to thank Honourable Bezuidenhout, Honourable Dr Amweelo and Professor Katjavivi for their valuable comments to the Bill. I must also thank Honourable Esau for standing in for me and postponing it to today.

I have reflected on the contributions made by the three Honourable Members and my response is as follows, starting with Honourable Bezuidenhout.

Honourable Bezuidenhout was questioning the word “*who*”, whether it was referring to the Minister or to the Council. The “*who*” refers to the Council and not to the Minister, Honourable Bezuidenhout.

The Honourable Member also had a question on the term of office of the Council which was not stipulated. If you look at Page 6, Section 7, it is clearly stated that it is going to be three years thus that has been provided for.

Then the Honourable Member also asked what the maximum number of members to be co-opted would be. The Bill gives a full discretion to the Minister on how many members can be co-opted, depending on the need.

Lastly, Honourable Bezuidenhout asked what happens if somebody temporarily came to work in Namibia, whether that person will be entitled to a temporary registration. Honourable Member, the registration of the earth science professionals is only applicable to Namibian citizens and those with permanent residence and nobody who is temporarily in Namibia can apply and be registered.

Honourable Dr Amweelo emphasised capacity-building in his contribution, however, the Honourable Member was using the word “we”, which somewhat put me off as I did not know whom he was referring to. Is it “we” as Members of Parliament to be trained or is it them, him being part of the scientists. Be that as it may, capacity-building is an ongoing phenomenon in any profession and, therefore, I cannot agree more with the Honourable Member that it should be a must. He also proposed that there should be a production of a newsletter and I am sure that can also be considered.

There were also some questions for clarity from Honourable Amweelo and one is the one year, which he considers as too short for the first appointed council. Yes, it might be too short but this Council is appointed only from the professions in order to lay the foundation for the Council and, therefore, the subsequent Council members will serve for a period of three years.

The Honourable Member also wanted clarity on the submission of a Report by the Council on an annual basis, six months after the end of the Financial Year and that the president is requested to also submit Reports to the Minister from time to time. This has just been brought in so that when shortly after the end of the Financial Year or long before the end of the Financial Year there is an issue the Council wants to report to the Minister, they should not wait until six months after the end of the Financial Year, but that they can submit this to the Minister at any time.

The last question by Dr Amweelo was on the criteria to be used for the registration of the scientists and what their requirements. Every profession has its requirement and earth scientists will have to determine the qualifications and other requirements that have to be fulfilled for registration.

For *Professor Katjavivi* I have the following to say: The term “*earth science*” has in the past strictly been used for fields of science related to the solid earth. It was for that reason that the professionals who drafted the Bill used the term “*earth science*.” Professor Katjavivi asked why this Bill is called the Earth Science Bill and why it is not applicable to other scientists. The reason for using “*earth science*” rather than geological science was to also include professionals such as the geophysicists and geo-chemists who usually do not consider themselves to be geologists. We wanted to include them and that is why we coined the earth science.

Nevertheless, and thanks to Professor Katjavivi’s remarks, we have realised that in a move to inter-disciplinary and more integrated research, today scientists from a number of disciplines cooperate under the theme of “earth system science” and this, indeed, includes, apart from the geological science, the biological science, oceanography, atmospheric science and many more. The name, Earth Science Professions Bill, could therefore create some confusion as to which professions are included and which ones not. It was, of course, never our intention to attempt to regulate professions other than the ones that deal with the solid earth. We, therefore, would like to accept that we should not call the Bill an Earth Science Professions Bill and consequently, the relevant Council to be formed should not be the Earth Science Council of Namibia.

Geo-science is a term widely used these days and refers to all sciences dealing with the solid earth, namely geology as well as geo-physics and geo-chemistry. As we still want to include professions such as geophysicists and geo-chemists, we therefore propose to change the name of the Bill to Geo-Science Professions Bill and the council would, therefore, be the Geo-Science Professions Council of Namibia. I trust this has

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addressed the concerns of Professor Katjavivi.

I would, therefore, like to state that we fully support the suggestions by Professor Katjavivi to form a National Council of Science and Technology which could be an ideal umbrella body for all science and technology related organisations and would serve to take science in Namibia to new heights.

Honourable Speaker, Honourable Members, I am thankful for the contributions made to the Bill and I am looking forward to the support of the House for the proposed change of the name of the Bill as well as the name of the proposed Council and to the finalisation of the Bill. I thank you, Honourable Speaker.

HON SPEAKER: I thank the Honourable Member. I now put the Question, that the Bill be read a Second Time. Any objection? Agreed to. The Secretary will read the Bill a Second Time.

EARTH SCIENCE PROFESSIONS BILL

SECRETARY: *Earth Science Professions Bill.*

HON SPEAKER: The Secretary will read the Third Order of the Day.

**CONSIDERATION: REPORT ON ACCESSIBILITY TO
LEGAL AND JUSTICE SYSTEM OF NAMIBIA**

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**ACCESSIBILITY TO LEGAL SYSTEM
HON KAZENAMBO**

SECRETARY: Consideration of Report on Accessibility to Legal and Justice System of Namibia.

HON SPEAKER: When the House adjourned on Wednesday, 2 November, the Question before the Assembly was a Report by Honourable Dingara. Any further discussion? Honourable Kazenambo.

HON MINISTER OF YOUTH, NATIONAL SERVICE, SPORT AND CULTURE: Thank you very much, Honourable Speaker. I rise to make some comments regarding the Report on Regional Consultation on Accessibility to the Legal and Justice System of Namibia.

I would really want to echo and support the findings and observations as contained in the Report, with particular reference to the situation in the Tsumkwe Constituency, amongst others. Firstly, one would want to use this opportunity to commend and applaud the great efforts made by the Ministry of Justice under the able leadership of our Secretary General to build a Magistrate's Court in Tsumkwe area, which is state-of-the-art and highly appreciated.

For those who do not know, Tsumkwe Constituency is inhabited by the most disadvantaged community of this country, the San community, the returnees from Botswana and people from other parts of Namibia.

We are talking about accessibility to the legal system, but despite the fact that the Ministry of Justice has done its part and the Ministry of Safety and Security has done their part with the presence of the Police, Tsumkwe Constituency is a very vast area. The Tsumkwe Constituency may even be bigger than Oshana, Omusati and Ohangwena Constituencies put together. It starts near the Maroelaboom area there to the border with Botswana and down to Omaheke. From the Rooidag Gate to Tsumkwe is close to 300 kilometres. From Tsumkwe itself to Gam is 110 kilometres and to the border of Botswana is 170 kilometres. It also goes close to

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HON KAZENAMBO**

Kaudum Sekerete Game Reserve and to the south it is close to Otjituuo and in these areas there is no telecommunication – none!

The other day I mentioned here, and the Minister of Information and Communication Technology said he is going to look into this, that a family died right there at the gate as there is no telephone to call an ambulance and they waited there without transport. The road is a death road and the lawyers will have to travel on that road. There is no other name for that road, it is terrible.

Can you imagine, you are just an ordinary person and maybe a rape has taken place or your cattle have been stolen and you have to drive 300 kilometres or more from Rooidag to Tsumkwe where the Magistrate's Court is and there is no telephone – no landline, nothing. How will access to justice be realised here? The only post office in the area is in Tsumkwe. If you live in Gam or Otjipaheua, Otjipaheua is another 170 kilometres from Gam and you are supposed to go and attend a hearing in Tsumkwe of your case that you have reported. The lawyers may be there, the Ministry of Justice may provide Legal Aid, but how do you get information if you are a farmer in Otjipaheua, a 170 kilometres from Gam plus 110 to Tsumkwe, the centre where there is a Magistrate and Police? How do you access law?

These are some of the realities these people are living with. The Ministry of Justice has done its best to build the infrastructure, but it should be complemented with other infrastructures. One person was telling me that they do not know where the officials can stay because there is no accommodation and it is true, where will the officials stay, even the clerks? There is nothing in Tsumkwe, there is a shortage of accommodation, let alone for the Magistrate and the lawyers. These poor people who are going to be posted there, how will they communicate with their families and what incentives are in place for these people to go and serve at these infrastructures in the rural areas?

I agree hundred percent with the observation contained in the Report and sometimes we need to say it as it is because nobody is to be blamed. We can only improve on things if we do not see it as witch-hunt. We can only

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improve things if we do not attach the situation to our jobs, that if you say the youth are not catered for, therefore you want the President to fire me. Why should I be fired if there is a shortage of material? We should stop thinking about our jobs when people are talking and we should stop blaming others, saying maybe it is the Ministry of Justice. It needs to be complemented by the Ministry of Works and the Ministry of Information.

Sometimes you are put in a corner, with the last I went with Honourable Muheua here as the leaders assigned to Tsumkwe Constituency and when people confronted me, I said that there is a transformer here in Omatako Constituency, there is power. They spoke to the Founding President during his era, power was brought there as there was no transformer to bring companies like MTC and Telecom. When they confronted us we said, *“no, the transformer is now here, you can have companies like MTC and Telecom.”* After the transformer was installed there, we were told that there is no need for a transformer to have telephones there. Before the transformer was put there, we were told there is a need for a transformer to have communication in that vast area where the people are poor and must have access to legal justice system in this country. Now the transformer is there, but still no MTC, even to communicate and say your court case is tomorrow.

When you drive there at night, you see people with their cell phones along the road, searching for network. It means that the people have cell phones but we do not know what is the problem that MTC or Telecom do not provide a network for the people so that they can access other services. My point here is that the infrastructures should complement one another. Where the Ministry of Education is going it should be accompanied by other things, where the Ministry of Justice is going, it must be accompanied by other services, otherwise we will just blame and accuse these sectors while other sectors are letting them down.

With these words, I really join those who say that the situation needs to be considered holistically. I thank you.

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HON JANKOWSKI**

HON SPEAKER: I thank the Honourable Minister. Honourable Jankowski.

HON JANKOWSKI: Honourable Speaker, Honourable Members, I rise to make a contribution on the Report on the Accessibility to the Legal and Justice System of Namibia.

The legal system in Namibia can play an important role in supporting the poor. The reform of the law on paper is not enough to change the reality on the ground. The poor people in our society need access to the legal system that protects their rights and ensure that the law can be applied practically and meaningfully.

On Page 5 of the Report the Minister of Justice should be commended for starting with the process of training justices and clerks. The Ministry should roll out the training programme if not done so already and awareness campaigns should be started to inform all Traditional Authorities and the Community Courts. The training will ensure that the Community Court officials have the necessary skills to execute their duties efficiently and effectively in line with the customary law and the Constitution.

Although the Community Courts are regarded as compensatory, the sentence should be justifiable *vis-à-vis* the crimes committed. This will ensure that the communities respect the justice and the sentence meted out.

I commend the Ministry of Justice in its endeavour to improve the infrastructure of Magistrate's Courts across the country and support the communities in the recommendation that the infrastructures are proactive in the judicial system to ensure that the staff has a conducive working environment.

Honourable Speaker, the women and children should be protected against the perpetrators that have abused them and defence counsel who manipulate them by providing one-way mirrors in instances where it is

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needed. We should guard against a justice system that is unaffordable and inaccessible for the poor and the vulnerable members of our society.

I appeal to the august House to support the Report and adopt it to enable the Ministry to implement the recommendations.

Honourable Speaker, I support the Report and I thank you.

HON SPEAKER: I thank you. Honourable. Kaiyamo.

HON DEPUTY MINISTER OF HOME AFFAIRS AND IMMIGRATION: Comrade Speaker, I would like to say from the beginning that I support the Report wholeheartedly and would only like to add some comments.

I notice that the Report was not signed by the Chief //Garoëb and I do not know whether it is because he was not present or because of a minority opinion. However, I want to congratulate the Committee for a job well done, because when you have a Report without any minority opinion, then it is an excellent Report. Keep up the good work.

I am also happy that the Committee brought to our attention outstanding issues so that our people do not always suffer in the process. I also notice that in this Report matters are mentioned which are not part of this Committee and that is why I support the statement by Honourable Mushelenga who said that our Standing Rules and Orders should be followed to the letter. The Committee on Constitutional and Legal affairs has the duty to consider any matter relating to the Attorney-General, the Electoral Commission, Information and Justice, but now the Report contains issues which are not in their domain. Every Committee has its own terms of reference and it is in the interest of the lawmaking process that every Committee should do its own work in terms of these rules. If

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you want to address these issues, then a joint Committee can be formed to deal with these.

The Committee should result with the relevant Ministries before and after for the sake of progress and in the same spirit bring in the issue of Budget. It must take into account the Budget cycle so that it be included in the Budget and approved in Parliament. I fully support the Report and keep up the good work.

HON SPEAKER: I thank the Deputy Minister. Any further discussion? Minister of Justice.

HON MINISTER OF JUSTICE: Honourable Speaker, due to the lateness of the hour, I would like to seek the indulgence of the House that this Debate is adjourned until Thursday. I so Move.

HON SPEAKER: The Debate is adjourned until Thursday. The Secretary will read the Fourth Order of the Day.

**CONSIDERATION: REPORT OF STANDING COMMITTEE
ON INFORMATION AND COMMUNICATION TECHNOLOGY**

SECRETARY: Consideration of Report of Standing Committee on Information and Communication Technology.

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**REPORT: STANDING COMMITTEE ON ICT
HON DR AMWEELO**

HON SPEAKER: Does Honourable Amweelo Move that the Report be considered?

HON DR AMWEELO: I so Move, Comrade Speaker.

Comrade Speaker, I rise to motivate the three Reports of the Parliament Standing Committee on Information and Communication Technology, namely –

- Study Visit to the Parliament of Uganda from 1 – 4 November 2010;
- Study Visit to the Parliament of Rwanda from 14-20 November 2010;
- Workshop on ICT Policy and Legal Framework held in Swakopmund from 14 – 17 December 2010.

Recognising the growing importance of ICT in service delivery and the convergence of technologies, the President established the Ministry of Information and Communication Technology in 2008. This created the need for the establishment of an oversight Committee on Information and Communication Technology (ICT). The ICT Committee was established in June 2010 and had its inaugural meeting on 5 July 2010.

Honourable Members, the members of the ICT Committee embraced the challenge of overseeing a sector that is gaining prominence as a key driver for achieving Vision 2030 and that has hereto been covered by the various Standing Committees to a lesser degree.

One of the first courses of action for the Standing Committee was a series of familiarisation visits to Parliaments with oversight Committees of ICT.

The field of ICT is still growing in most African countries and the Parliaments offers opportunities and lessons that Namibia should exploit and replicate or avoid. The Committee further recognised that it needed a firm grounding in the policy and legal framework that governs the ICT

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industry in the country in order to be an effective oversight force and to that end, covered a workshop specifically looking at the policy and laws governing postal, broadcasting and telecommunication in the country.

Honourable Speaker, Honourable Members, allow me to draw your attention to some of the important discoveries that the ICT Committee made since it started with its operations.

The Committee learned that countries with a functional ICT Standing Committee also have an abundance of penetration of the ICT in the country. This, coupled with a strong political will, has seen the countries of Rwanda and Uganda exploit its ICT for service delivery in the education, health and regulation of the industry. Namibia can follow suit if the issues of rural electrification, equitable access to ICT, research and development and legislation are addressed. I want to include here some of lessons learned as contained in the Reports for your ease of reference.

The existence of the Independent Regulatory Institutions to ensure non-discriminatory treatment of all players in the market is crucial. Addressing non-discrimination considered in the legitimacy of independent and regulatory institutions. The fundamental issue is to establish an enabling functioning environment that attracts and sustains investment to satisfy the existing demand for service, sufficiently expand the supply of such services and introduce new services. Once the regulatory framework has created confidence through its independence, it stimulates investors' confidence and reduce regulatory risks.

The ICT Committee, therefore, welcomes the establishment of the CRAN and gazetted on 29 August 2011, the regulation regarding licensing procedures for telecommunication and broadcasting service licence and spectrum user licence. With the regulations in place, it is our hope that they will go a long way to levelling the playing field for the benefit of all Namibians. For Namibia to transform itself into an information-rich, knowledge-based society and economy, it should have institutions of learning that will produce qualified human resources to produce and manage the information communication and technology infrastructure and should not rely on foreign expertise in the long-term.

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The Minister of Information and Communication Technology, in his contribution to the 2010-2011 Budget Debate said: *“In order to grow the economy we need to embark on a coordinated and national capacity-building drive to create a critical mass of highly skilled workforce in all sectors of our economy.”*

We view the recent efforts of the Ministry of Education to arrest the wrongs in the education system as an answer to that call for a coordinated drive to create a graduate fit for the challenges of the information age and society.

The Committee will closely follow the implementation of the ICT in Education Policy, the Ministry of Education steering it so that Namibian learners have access to modern education tools.

The information, communication and technology applications that a country produces should benefit every citizen and provide access to the service regardless of whether she or he lives in the city or in the rural area. We have all heard the saying that ICT is an enabler. If this is true, the Namibian Government should create the right enabling environment through ICT to provide more services to the Namibian people, services such as mobile banking for the information sector and mobile health for patients on ARV or TB treatment.

The cost of ICT is a prohibiting factor and service providers would have us believe that prices cannot be reduced or that it does not pay to have too many service providers in a country with a small population as Namibia. We have, however, seen with the recent mobile operators’ price battle that it is possible to bring prices down and the competition ultimately benefits the citizens. It is the Committee’s hope that the arrival of the Western Cable System heralds an end to the costly nature of telecommunication and that all sectors of the Namibian society will benefit from it.

Honourable Speaker, Honourable Members, the ICT Committee looks forward to the next few years when all the above issues will be addressed through executive efforts and through public-private partnership and that the national vision of an information-reliant, knowledge-based society will

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be achieved.

With these few remarks, it is now my humble request that this august House considers the Report and the recommendations and gives their approval thereof. I thank you, Honourable Speaker.

HON SPEAKER: The House is adjourned until tomorrow afternoon.

HOUSE ADJOURNS AT 17:45 UNTIL 2011.11.09 AT 14:30

**ASSEMBLY CHAMBERS
WINDHOEK
09 NOVEMBER 2011**

The Assembly met pursuant to the adjournment.

HON SPEAKER took the Chair and read Prayers and the Affirmation.

HON SPEAKER: Any Petitions? Reports of Standing or Select Committees? Other Reports and Papers? Any Notice of Questions? Honourable Von Wietersheim.

NOTICE OF QUESTIONS

QUESTION 40:

HON VON WIETERSHEIM: Honourable Speaker, I give Notice that on Thursday, the 17th of November 2011, I shall ask the Honourable Minister of Mines and Energy:

1. Am I correct in my assumption that you as Minister responsible for Mines and especially Energy, are the State's, respectively, the Government's representative responsible for the oversight function over the State-Owned Enterprise, NamPower, in which we, the State, respectively, the Namibian people, represented by our Government has a hundred percent shareholding?
2. Has the Honourable Minister by now demanded an explanation from the Board of Directors of NamPower, why it, the Board, saw fit to spend the sum of N\$1 million on a new luxury vehicle, providing at the same time some expensive extras for the Managing Director of NamPower, as reported over a month ago?

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3. Is it true that the Managing Director is already receiving a car allowance as part of his remuneration package?
4. Has the NamPower been able to justify to you, Honourable Minister, its decision to blow such an amount of money on one luxury car for its Managing Director while purportedly not being able to meet their employees' demand for an 11% salary increase instead of the 7% increase offered by the Board?

HON SPEAKER: Please table the Questions. Honourable Naholo.

QUESTION 41:

HON NAHOLO: I give Notice that on Thursday, 17 November 2011, I shall ask the Minister of Education, Dr Abraham Iyambo, the following:

A weekly daily produced a front headline titled, *“Teachers cannot speak, write or read English. Twenty thousand teachers who sat for the June 2011 English Language Proficiency Test, (ELPT), performed dismally, with only one thousand doing extremely well.”* This was also repeated in the *Namibian* newspaper today. Thus, about the three thousand teachers within the pre-intermediate level, with eight thousand in the intermediate, while eleven thousand from the advanced level, only one thousand in the exemption level.

1. Can the Honourable Minister confirm or deny that this is a crisis at an advanced stage in the Namibian education system facing our children in public schools?
2. Some analytical statements of the results show that rural area teachers are mainly in the pre-intermediate level, most of them did not undergo any tertiary training over the past twenty years. Teachers from the rural areas all over the country struggled the most

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with their ELPT tests. Lower primary teachers performed the poorest of the teachers in all phases, followed by upper primary and junior secondary phase teachers. Three-year diploma holders also did not do as well as expected. Does this confirm the previous end year results and possibly what we are expecting by the end of 2011?

3. How and why these shocking, demoralising and humiliating results publicised against Dr Iyambo's earlier promise that the ELPT test was only for administrative purposes?
4. Is this poor performance, especially by the rural and remote area teachers, the result of a hesitation by the Ministry of Education in paying out the rural area incentives, such as bush allowance?
5. Does the Minister expect learners to pass English with flying colours when teachers can speak, write or read English and what urgent measures does he plan to implement?

QUESTION 42:

HON NAHOLO: I give Notice that on Thursday, 17 November 2011, I shall ask the Honourable Minister of Presidential Affairs and Attorney-General:

1. Can the Honourable Minister tell this august House and through it, the general public, whether or not the Reports of the seventeen Presidential Commissions of Inquiry have been released to the public or not yet?
2. If the answer is no, what are the good reasons that in 2005 during President Hifikepunye Pohamba's inauguration he vowed to set a personal example in fighting corrupt practices, but he is withholding the documents believed to contain crucial information that can confirm or refute the alleged instances of corruption?

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HON NAHOLO**

3. If the said documents are available for public consumption, can the Honourable Minister and Attorney-General reveal as to in which office they can be accessed by all citizens?
4. On October 28, 2011, the SWAPO Party's mouthpiece, *Namibia Today*, carried a front page headline and reported on what it claims are the extracts from the seventeen Presidential Commissions of Inquiry. Has the SWAPO Party-led Government and/or the State House authorised the Party newspaper to exclusively Report on the commissions?
5. If the commissions of inquiry are still classified as confidential, does the State House consider the reported information as originating from the leak of stolen documents?
6. If the commissions of inquiry's Reports are not yet released to the public and still classified, what steps, including criminal charges of housebreaking and/or theft of confidential documents from the State are taken against the perpetrators?
7. When are the seventeen Presidential Commissions of Inquiry are going to be released to the public?

HON SPEAKER: Will the Honourable Member table the Questions? Any further Notice of Questions? Any Notice of Motions? Ministerial Statements? Honourable Iyambo.

MINISTERIAL STATEMENT

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**MINISTERIAL STATEMENT
HON DR A IYAMBO**

HON MINISTER OF EDUCATION: Honourable Speaker, Honourable Members, I rise to provide the correct information about the English Language Proficiency Test, a test that was written by all school principals, teachers and by all final year student teachers at the University in September 2011.

Honourable Speaker, research into the English language proficiency of our teachers took place way back in 1999 through the English Language Teacher Development Project. Then a follow-up study took place in 2001. This has shown that the country has a joint responsibility to upgrade the English language proficiency of our teachers. Therefore, the English Language Proficiency Programme was introduced to respond to this need in 2010. The tender for the development and implementation was awarded to the University of Namibia.

In order to respond to the ever-changing needs of our teachers, a needs assessment survey was conducted in March 2011 in 330 schools across all the 13 Regions of our country. The survey in March 2011 was needed to inform the development and delivery of the programme. The findings of the needs assessment survey were presented to the Ministry this year in July.

During September 2011, the English Proficiency Placement Test was written by all principals, teachers and final year student teachers at the University of Namibia. The purpose of this test was to help the programme developers to design the most appropriate learning materials and also to place the teachers in the course best suited for their needs.

It seems that there is a general misinterpretation and misunderstanding. May I, therefore, emphasise that none of the tests from 1999 up to now were meant to fail or pass a teacher. That is fallacy. Neither was it a means of firing teachers, it was simply for diagnostic purposes to identify the needs. The test is intended to determine the training needs of teachers and place them in the appropriate continuing professional development course. It is important for the Namibian education system that we continue with the continuous professional development.

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The results of the September 2011 test were provisionally analysed and presented to the Ministry on the 1st of November 2011. At least 92% of the target group participated in this test. This is highly commendable and it shows that our teachers are willing to be supported. I, therefore, thank regional office staff, the school principals, the teachers, student teachers and NANTU leadership in demonstrating a positive attitude in supporting the survey and the placement test.

The individual results of our teachers, principals and final year students will not be made public. The teachers will only be informed individually about their placement levels, whether they will be in the pre-intermediate or intermediate and/or in the advanced stage.

Currently, Honourable Speaker, the University of Namibia is developing the curriculum and course materials according to the specific needs as determined by the Needs Assessment Survey and the Placement Test. I would like to announce here that the overall means score is 59,3%. This means that most of the teachers to a certain degree are proficient in English. It shows that we need to continue supporting our teachers.

Recent articles in some of the local newspapers are not encouraging and not supporting the aims and objectives of the Ministry regarding the English Language Proficiency Programme. Statements such as *“Teachers fail English”* are incorrect. This was not for failing or for passing. Statements like, *“Teachers cannot speak, write and read English”* are incorrect. Statements like, *“98% of teachers not fluent in English”* are incorrect. First we have analysed the data. All the 98% of those Namibian teachers are in that category. The 2% that we are talking about are mainly those whose first language is English, like those from Britain and some from Zimbabwe. The 2% means those teachers do not need some proficiency or to be assisted. Now they are saying 98% are not fluent. That is incorrect and let that be clear.

The statement that says bad teachers because of their rural nature is insulting and is not correct. Statements like, *“more than 70% of teachers of senior secondary cannot read or write basic English”* is pure propaganda. These blanket statements are false and unnecessary.

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HON NANDI-NDAITWAH**

It is unfortunate that the information has leaked into the public domain before the final Report is presented to the Ministry and through this, wrong interpretations of the information was provided to the public. It is unfortunate.

I am informing the public and the teachers that the preliminary results of the September test are encouraging and the programme developers are now in a better position to tailor-make the course according to our teachers' needs. I would once again like to emphasise the fact that these tests were not about failing or passing, but to support those teachers who need to improve their English language proficiency.

I take this opportunity to thank all the participants in the survey and placement test for their positive participation. With such an attitude we as a country will move forward with education and I thank you, Honourable Speaker.

HON SPEAKER: I thank the Honourable Minister. Minister of Environment and Tourism.

MINISTERIAL STATEMENT

HON MINISTER OF ENVIRONMENT AND TOURISM: Thank you, Honourable Speaker, Honourable Members. I read with dismay in the newspaper of the 7th of November 2011 that it is reported that a group of seven Namibian women are languishing in the Santo Paul, Brazil prison after being found in possession of drugs and I agree with the Namibian Embassy in Brazil that this situation is worrisome.

Comrade Speaker, as a Namibian woman and a national leader, I am

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really disturbed by these deeds and that they should not have happened. Namibia is respected throughout the world as an orderly and law-abiding Nation and fellow women, why do we allow ourselves to be used by those greedy agents who merely want to get money at our expense and, of course, putting our Nation at stake? Whoever allow yourself, be it a man or woman, to become a drug courier, is not only an embarrassment to the Namibian women, the Government and the Namibian people, but more so an embarrassment to our own children.

Recently there was a programme on NBC-TV, Tupopyeni that was focusing on what a good woman is. To summarise that programme, it was said a good woman is a person of integrity. Surely when you allow yourself to be used in a way that is even detrimental to your whole Nation, your integrity is at stake and no one should allow such a thing to happen.

Not long ago there was a case where a Namibian woman was used by her own husband to smuggle drugs into Namibia. This poor woman died as a result of the drugs inserted into her body and when this happened, I thought it was going to serve as a deterrent to the would-be drug couriers, but here we are today facing another shame and embarrassment.

Honourable Speaker, I have always been and I will continue to be a proud Namibian woman, as we have a responsibility to safeguard our national integrity, but women who are making themselves drug couriers have no respect for themselves. Instead, as mothers to be home, taking care of our children and our Nation, we will end up being locked up in prisons for carrying substances that are currently destroying our society and, in particular, our children.

Honourable Speaker, we Namibians are very proud of our national travelling documents, especially those of us who have opportunity to travel. As soon as you show the Namibian passports at International Airports, most of the time you are just given a nod because of the good reputation of our country, but with our passports now being used by those involved in these activities, our national pride can easily be compromised and we should make all efforts to avoid such a situation to occur. As women we are the teachers of our children.

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Do we expect our children to respect us and will we be able to tell them not to abuse drugs and alcohol when we are the ones who are bringing it to them? We must be realistic and think first before indulging in such activities. What these women have done is shameful and it should really not be allowed to continue. We must distinguish ourselves as a Nation so that we maintain our international reputation.

Comrade Speaker, I have heard of many people saying that the person did this and that because he or she is unemployed. It could as well be used that those women got involved because they are unemployed and simply looking for bread for their children. I do not believe in things like that because I am sure there are many ways one can make ends meet without engaging in those deeds of making money which will put the whole Nation at stake.

How can one sell his or her freedom for a dollar? Those who are involved are now in prison and their masters are free, taking care of their families and I am sure they can easily deny that they have ever had something to do with them.

Sisters, mothers, open up your eyes and do not be fooled by those who promise to make you rich overnight because it will never happen. If they come to you with promises that they will make you rich, tell them to first make their families rich, because I know many of them, if not all, are also poor and they have poor people in their families, instead of you doing illegal things that will put you in trouble.

Namibian Nation, Namibian women, let us stand up against drug abuse and drug trafficking and let Namibian women maintain their integrity.

Honourable Speaker, on a more positive note, I want to share with this Honourable House that through the De Beers advertisement on USA and NBC-TV for two hours, Namibia was recently aired on that television for two hours and yesterday Namibia has become number seven googled country in America. For us in the Tourism Industry this is very, very important because it means many people are starting to know Namibia and

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HON !NARUSEB

many people will definitely arrange to visit our country. This advertisement, as I said, was aired for two hours and it cost US\$7 million. This is to explain how expensive advertisement is, but now we got free advertisement as a Tourism Industry and this will definitely help us as we are campaigning to host the 2013 Wild Adventure Traveller, because many members are from the United States of America. I thank you, Comrade Speaker.

HON SPEAKER: I thank the Honourable Minister. Any further Ministerial Statements? The Notice of Motion is the one of the Honourable Minister of Lands and Resettlement. Does the Minister Move that the Bill be now introduced?

INTRODUCTION AND FIRST READING:
FLEXIBLE LAND TENURE BILL

HON MINISTER OF LANDS AND RESETTLEMENT: I so Move, Honourable Speaker.

HON SPEAKER: Who seconds? Objection? Agreed to. Will the Minister please table the Bill? The Secretary will read the Bill a First Time.

FLEXIBLE LAND TENURE BILL

SECRETARY: *Flexible Land Tenure Bill.*

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HON SPEAKER: Does the Minister Move that the Bill be now read a Second Time?

HON MINISTER OF LANDS AND RESETTLEMENT: I so Move.

HON SPEAKER: Any objection? Agreed to. You have the Floor, Honourable Minister.

**SECOND READING:
FLEXIBLE LAND TENURE BILL**

HON MINISTER OF LANDS AND RESETTLEMENT: Honourable Speaker, Honourable Members, it is an honour to have this opportunity to present to the National Assembly the Flexible Land Tenure Bill for discussion and adoption.

The Bill seeks to accelerate access to, and delivery of secured tenure in informal urban areas to people without any rights to the land that they are presently occupying. People living in informal settlements are generally low-income people who have no possibility to empower themselves economically through a secure land tenure system. In order for them to get comparable rights as other people living in urban areas, simple and cheaper forms of land titles have to be introduced.

Therefore, this Bill seeks to put in place a land registration system that is just, modern and that contributes to economic growth and bolsters household welfare. The new system being proposed by the Bill will only

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cover land that is situated within the boundaries of a Local Authority and Regional Authority area.

In Namibia and as in many other southern African countries, the issue of land was probably the single most important driving force for the struggle for national liberation. At Independence Namibia undertook the resolution to address the skewed nature of land ownership and land distribution. The introduction of the Flexible Land Tenure Bill reaffirms Government's commitment to ensuring access to land and improving living conditions of all Namibians.

Since Independence the urban population in Namibia has increased from 28% to 33% due to a combination of socio-economic problems in the rural areas. In Windhoek the annual growth rate in 2001 reached almost 4.5 percentage points through rural-urban migration. The urban areas have been increasingly occupied by informal settlements. The informal settlements do not have adequate access to infrastructural services, social services and tenure rights. The concept contained in this Bill will hopefully provide a complementary system to the current formal system of freehold tenure which is cumbersome, expensive and beyond the reach of the urban poor.

Honourable Speaker, Sir, the public sector has found it difficult to respond to the dramatic demand for urban land and this has led to a rethinking of the whole official planning system. It is agreed that the role of the Government should be to perform certain planning and control functions, protect basic human rights and land rights. The current pressing challenge is how to expand and extend the formal land tenure system to the poor and most disadvantaged sector. At the moment urban authorities can only deliver land at high cost owing to strict requirements of survey, planning and registration. In Namibia another challenge is posed by the incomplete cadastral and land registration system that covers certain parts of the country, namely commercial, rural and urban areas. This type of framework is elitist and exclusionary as it caters only for the businesses and middle-class at the expense of the low-income group. Low-income families are forced to pursue a different strategy through the orthodox land

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delivery process, that is planning, servicing, building and occupation, in order to acquire land on which to settle. They become part of the informal land development process that follows the reversed sequence, namely occupation, building, servicing and finally, planning. This reverse sequence gives the families a place to stay but they have no means of securing right of occupation and they struggle to get access to services.

People living in informal settlements need to know that they will not be evicted from their land without compensation or being offered alternatives. They need to know, Honourable Members that they can build homes that one day their children will inherit and that their properties will get basic services, such as water and electricity. Government needs to have a system to better manage the informal settlement with respect to installation of infrastructure, land-use rates and taxes. It is Government's responsibility to ensure that all citizens have property rights, good quality of life and a stable society.

In Windhoek, Oshakati, Eenhana, Oshikango and in many other proclaimed towns there is a frustration at the inability to survey and register land rights that could be used to access credit for investment and development. It is agreed that an estimated 70,000 people in Namibia are migrating into urban areas annually. This increases the pressure on Local Authorities to provide, plan and accommodate the influx of people into urban areas. Generally these people live with the constant threat of possible eviction from their land and homes. Over 235 informal settlements and about 134,884 families, which is more or less more than half a million of people, are affected by this problem.

Whilst the number looks insignificant in comparison to other countries in the Region, it represents that a large percentage of Namibia's urban population lives in informal settlements without access to services and secure tenure. The solution for these families is affordable, accessible and credit-worthy form of tenure.

Honourable Speaker, with the introduction of the Flexible Land Tenure Bill today, the Ministry of Lands and Resettlement offers an alternative

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form of tenure that addresses the four issues of imbalance and discrimination against low-income communities. The tenure system is called flexible because it provides for incremental tenure upgrades, beginning with the starter title, moving to land-hold title and finally, to freehold title. The Flexible Land Tenure system allows the upgrade from one type of title to another over a period of time and as and when the individuals' financial position changes.

The Flexible Land Tenure system is a key Government innovative policy earmarked to respond to the demand for affordable land for low-income communities. The objectives of the Bill that is before you, Honourable Members, are as follows:

1. To create alternative forms of land titles that are simpler and cheaper to administer than existing land titles.
2. To provide security of title for low-income persons who live in informal settlements and/or who are provided with low-income housing; and
3. To empower the persons concerned economically by means of providing an alternative mechanism to secure land rights.

Honourable Speaker, Honourable Members, the global experience informs us that rapid urbanisation may be slowed or reduced but it cannot be stopped. Rural-urban migration is a consequence of seeking better jobs and probably to improve lifestyles. Without adequate land being delivered to cater for the growing urban population in an orderly fashion, only a squatter or a ghetto scenario can result, thereby producing a string of negative social challenges which is probably just a time-bomb in waiting. Eventually Government has to tackle these challenges through re-planning, upgrading and rehabilitation programmes, but the associated costs are far greater than those projected for the implementation of the Flexible Land Tenure system. When enacted into law, the Flexible Land Tenure Bill will take Namibia to where it wants to be by year 2030 – God willing, that is a Nation free of hunger, disease, ignorance, free of inequity, evictions and the perpetual presence of poverty.

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The proposed new tenure system also places emphasis on gender-responsive planning, policies and activities aimed at enhancing gender equity and equal opportunities for women and men.

Finally, while other countries are still grappling with the problems relating to regulatory frameworks, let us be forward-thinking and address these socio-economic issues that are consequences of historical inevitable imbalances.

In conclusion, Comrade Speaker, Honourable Members, may I appeal to this House to debate and consider the Flexible Land Tenure Bill favourably in light of the plight of our urban vulnerable poor communities and I thank you.

HON SPEAKER: I thank the Honourable Minister. The House shall rise for refreshments.

**HOUSE ADJOURNS AT 15:40
HOUSE RESUMES AT 16:00 PURSUANT TO ADJOURNMENT**

HON SPEAKER: We resume business. Any further discussion? Honourable Tjihuiko.

HON TJIHUIKO: Honourable Speaker, in the absence of any contribution, I would like to adjourn the Debate until next week, Tuesday.

HON SPEAKER: Further consideration of this Motion stands adjourned

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until Tuesday, 15 November 2011. The Secretary will read the First Order of the Day.

**RESUMPTION OF SECOND READING:
LABOUR AMENDMENT BILL**

SECRETARY: Resumption of Second Reading on *Labour Amendment Bill*.

HON SPEAKER: When this Debate was adjourned yesterday, the Question before the Assembly was a Motion by the Honourable Minister of Labour and Social Welfare, that the Bill be read a Second Time. The Honourable Minister of Agriculture, Water and Forestry adjourned the Debate on behalf of the Deputy Minister and he now has the Floor.

HON MINISTER OF AGRICULTURE, WATER AND FORESTRY: Comrade Speaker, the Deputy Minister could not be here this afternoon, but he has made arrangement with the Minister and those who want to take the Floor can proceed with the Debate.

HON SPEAKER: Any further discussion? Honourable Kawana.

**HON MINISTER OF PRESIDENTIAL AFFAIRS AND
ATTORNEY-GENERAL:** Thank you very much, Honourable Speaker. I rise to support the Labour Amendment Bill which is aimed at addressing

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the chronic problem of labour hire in our country.

Comrade Speaker, the struggle for Independence of Namibia initially started as a struggle against exploitation. This goes to show that the struggle for Independence of our country was, indeed, spearheaded by workers. It is also historically recorded that it is the struggle of the workers which gave rise to the formation of the SWAPO Party, which was called SWAPO then. Therefore, the SWAPO Party is an integral part of the workers' struggle.

This history is not unique to our country. Those who are in the North will recall that the Labour Party of the United Kingdom is predominantly supported by the workers due to historical background, historical ties. So, this situation is not unique to Namibia.

Against this background, the workers, through the NUNW and the SWAPO Party, are one body. For anybody to say, as insinuated by the Secretary General of the RDP, Honourable Jesaya Nyamu, that there must be separation, is like cutting the body in half. None of the two halves will survive and therefore, I want to tell the Secretary General of RDP that the workers are SWAPO and SWAPO is the workers. He was my leader before he decided to venture into uncharted political waters and he knows very well the constitution of the SWAPO Party and that the workers are represented in the structure of the SWAPO Party from the section, branch, district, regional up to national level because of that historical tie. Indeed, it was the workers who created the SWAPO Party, so they cannot run away from their Party, it is impossible.

Therefore, Comrade Speaker, as a person who is opposed to exploitation of man by man or woman by woman, it is indeed encouraging to see the support in this House. (Intervention)

HON TJIHUIKO: Honourable Speaker, on a Point of Information.

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With due respect to the Honourable Minister of Presidential Affairs, I am not sure whether the information provided to us is correct, the fact that the Labour Party in the United Kingdom and the trade unions are the same. I do not think that information is correct. The workers have supported the Labour Party, in fact they have formed the party and as trade unions they remain independent, they are not affiliated to the Labour Party. These are two distinct things and you cannot compare them. The situation we have in Namibia is an exploitative one where the Ruling Party is now controlling the workers, but in the UK it is the other way around, the workers are putting pressure on Government and here the Government is putting pressure on the trade unions. Thank you.

HON MINISTER OF PRESIDENTIAL AFFAIRS AND ATTORNEY-GENERAL: Honourable Speaker, I know that the Honourable Member was in the United Kingdom, but I lived there for ten years and for his information, the workers contribute to the election campaign of the Labour Party. He must also be informed that that is not unique, there are other countries where you find Political Parties called the Workers Party. That is historically recorded. (Intervention)

HON DEPUTY MINISTER OF GENDER EQUALITY AND CHILD WELFARE: May I ask the Attorney-General a question? Honourable Kawana, I heard that we are going to Aminuis on Saturday. Did you invite Honourable Tjihuiko to witness the events at Aminuis or did you not invite him?

HON MINISTER OF PRESIDENTIAL AFFAIRS AND ATTORNEY-GENERAL: Honourable Speaker, those are Party matters and we will deal with them on Saturday. (Intervention)

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HON TJIHUIKO: Honourable Speaker, again on a Point of Information. I want to remind the Deputy Minister of Gender Equality and Child Welfare that there are laws in this country and whenever a Deputy Minister engages in an official Government activity it has to go through the system, namely the Governor's Office, the Regional Council's Office. What you are now busy doing in Aminuis is putting the Aminuis community against another. We will wait for Saturday and we hope you will take the consequences of what will happen.

HON MINISTER OF PRESIDENTIAL AFFAIRS AND ATTORNEY-GENERAL: Thank you, Honourable Speaker. I can see Honourable Shixwameni is smiling because I know he supports this Amendment wholeheartedly, to address labour hire. I am not too sure about the ideology of the RDP, but I know those years their President was a hardened left-winger and I do not know if that situation is still the same. I have not had an opportunity to read the constitution of RDP.

We are vehemently opposed to exploitation, because what is happening in Namibia today, and regrettably in an independent Namibia, is something which reminds us of what used to happen before Independence.
(Intervention)

RT HON PRIME MINISTER: Honourable Kawana, I am also interested in your question on the ideology of the new kid on the block. Do you think that the ideology might be compared to the combat name of the President of RDP?

HON SPEAKER: Which is what?

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HON MINISTER OF PRESIDENTIAL AFFAIRS AND ATTORNEY-GENERAL: Honourable Speaker, some of our former leaders used to have revolutionary names, such as Ho Chi Minh, but I am not so sure whether that ideology is still surviving or it has been dumped. Maybe that is something which could be verified privately.

Honourable Speaker, I was saying that it is most unfortunate that the system which we fought during the colonial period, the system which spilled the blood of the Namibian Nation still exists in an independent Namibia. That goes to show that our struggle is not complete. It is most unfortunate that a section of our population, the workers, are being hired out just like SWANLA, as mentioned by other speakers. It is very unfortunate indeed and, therefore, if we were to complete our struggle against exploitation, the struggle against socio-economic deprivation, this situation must be addressed without any further delay.

There is also a very dangerous trend in our country and I see my Vice-President and Minister of Trade and Industry is here. There is this perception about foreign investors, but my understanding of a foreign investor is that it is a person who comes here with his or her money to invest in Namibia, but what is happening in some instances is that these people come, they have nothing, they are “Johnny Walker Special”, they do not even have a bicycle. They are granted loans which were supposed to be given to Namibian citizens. Then they set up industries here and some of us say we support that because of employment. I have reservations and I am sorry to say that, because the resources of this country belong to the people of this Nation regardless of political affiliation. Nobody should come from Europe as “*Johnny Walker Special*” and access the loans which were supposed to be accessed by Namibian citizens. I have a problem with that.

Therefore, if somebody comes here from outside to access loans which were supposed to be accessed by Namibian citizens, set up an industry, go to labour hire to hire some workers through exploitation that we were fighting against yesterday is most unfortunate and this situation must be addressed, because we say the natural resources of this country must, first

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and foremost, benefit the people of Namibia. The struggle was about that, but we have this culture of saying one or two Namibians will be employed. (Intervention)

HON MINISTER OF TRADE AND INDUSTRY: May I ask the Honourable Minister a question? Honourable Member, are you aware that the Minister of Trade and Industry issued a proclamation about foreign investors who come here to do certain things that Namibians can do and are you aware that we fought together against Wal-Mart and after insults in the courts, are you aware that we won that case?

HON MINISTER OF PRESIDENTIAL AFFAIRS AND ATTORNEY-GENERAL: Indeed, I am very happy about that proclamation which is a step in the right direction. It will go a long way to achieve the aims and objectives of our struggle. We need to restrict certain economic activities in this country to Namibian citizens. (Intervention)

HON NYAMU: May I ask Honourable Kawana a question? Dr Kawana, are you aware that the problems we face regarding investment in this country is that there is no mutual understanding among executive Members of the Ruling Party and Ministries are sabotaging the work of other Ministries. Home Affairs is sabotaging Trade and Industry, do you know this?

HON MINISTER OF PRESIDENTIAL AFFAIRS AND ATTORNEY-GENERAL: I think Honourable Nyamu was one of the senior members of the executive, but I am not aware that he, either in

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SWAPO or at governmental level, raised that issue until he left.

I was saying, Comrade Speaker, there is now a law to restrict certain economic activities to Namibian citizens. Sometimes I do not understand economists and I am sorry to say this because I am a lawyer by trade and coming from a different profession, but I think it is wrong to get somebody from outside Namibia to access our financial resources which were supposed to be accessed by Namibians, set up an industry here, make profit and that profit will be shipped out. How will the Namibian economy grow? If that loan is given to a Namibian citizen, regardless of political affiliation... (Intervention)

HON MOONGO: May I ask the Honourable Minister a tiny question? I am happy that the Minister is saying first the Namibians have to be given loans, but are you aware that many of the small Namibian companies which took loans are nowhere to be traced, such as the ones of GIPF? If this is the case, are we not opting for foreigners to do proper business?

HON MINISTER OF PRESIDENTIAL AFFAIRS AND ATTORNEY-GENERAL: Regarding GIPF, I would like to remind the Honourable Member that during the time Resolution 435 was to be implemented, the SWAPO Party was perceived to be communists, terrorists who were going to nationalise and confiscate properties right and centre. The then pension fund of civil servants was privatised. Indeed, it was under Government supervision of the SWAPO Party that the GIPF was created to ensure the welfare of our workers. Today that fund is the most successful fund in Africa, if I may put it that way, because it now constitutes 50% of GDP. That is the success story of our Government after Independence. I do not want to go further than that. (Intervention)

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HON NEHOVA: Honourable Speaker, I want to ask the Honourable Minister of Presidential Affairs and Attorney-General a very short question. Honourable Kawana, can you tell us in this Chamber and this question was supposed to go to the Minister of Trade and Industry, how much of the GIPF money is invested outside Namibia?

HON MINISTER OF PRESIDENTIAL AFFAIRS AND ATTORNEY-GENERAL: Honourable Speaker, I am not a trustee of the Fund and I am unfortunately not in a position to assist the Honourable Member, but what I wanted to say to Honourable Moongo is that that Fund, created by the incoming SWAPO Party Government, is today 50% of our GDP. It is worth more than N\$42 billion in terms of assets and other liquidities.

Today we are a major exporter of grapes because of that Fund. We built a number of infrastructures because of that Fund, but as I said, Honourable Member, I wish I could say more, but since this matter is likely to come before Court, I am restrained to say more than what I have said now.

Going back to the subject matter, Honourable Speaker, I am very happy to see this Amendment, because it is an Amendment that reminds us of the dark history of the past, whereby during those years, in terms of the labour laws and policies of apartheid, it was common to draft a law along these lines: Any native seen crossing a farm without any visible means of support is liable to be arrested and to be sentenced to hard labour. I wonder, when you say “*without visible means of support*”, whether you have to carry a basket of bread to say that you can sustain yourself. What used to happen those years, once you were arrested, you would be forced to work on that farm which you were crossing without any visible means of support. That is the dark history we are talking about and that is the dark history we are trying to address.

In short, Honourable Speaker, once again, this Amendment is in line with the philosophy of the SWAPO Party, the aims and objectives and policies

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of the SWAPO-Party Government and I hope that we will do away with this culture of saying, if an industry creates employment, it is fine for foreigners to come and access our financial resources when Namibian citizens are struggling to access the same financial resources. That must be stopped and stopped now, because we have embarked on the second phase of our struggle, the struggle for economic emancipation of our people. If we do not achieve this second phase of the struggle, it will mean that we have betrayed those who sacrificed their lives for the struggle of this country, starting with the forebears, the Hendrik Witboois, the Samuel Mahareros, the Nehale Iya Mpinganas, Mandume Ndmufayos, Ipumbu Ya Tjirongos and many other forbearers.

With this I say I support the Amendment and I thank you.

HON SPEAKER: Honourable Mushelenga.

HON DEPUTY MINISTER OF FOREIGN AFFAIRS: Honourable Speaker, I also rise to add my voice to those of the previous speakers who expressed support to the Amendment introduced by the Honourable Minister of Labour and Social Services to the Labour Act 11 of 2007.

At the outset I would like to congratulate the Honourable Minister for bringing this Amendment to the House within a reasonably short time. It was said here that we should not congratulate people when they are just doing their work, but there are Ministers who are now sitting on the other side of the House who took years and years to bring legislation to the House.

Honourable Speaker, this Amendment provides for the prohibition of user enterprises to employ individuals who are placed by private employment agencies or to put it this way, this current legislation is aimed at protecting the interests of the employees who are normally recruited by

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private employment agencies to the user-enterprises more particularly, the Supreme Court Judgment of Africa Personnel Services versus Government of the Republic of Namibia, found in the Namibian Law Reports, 2009(2), Page 596, says there are various ways in which we can still maintain these private employment agencies, yet we will ensure the protection of the workers and this is what the Honourable Minister is doing. For example, it was said in that Judgment that the International Labour Organisation Convention 181 provides for labour hire companies and private employment agencies, but their operations are strictly regulated.

If you look at Article 4 of that Convention, for example, it affords those workers fundamental rights, like freedom of association. When I look at the proposed Amendment, this is addressed in Section 10 where it is said that employees who are to be employed through private employment agencies, these agencies should ensure that these employees are going to enjoy the rights of the employees that are already in the employment of those prospective employers whom these agencies are recruiting for. Therefore, it goes without saying in many instances those employees will be enjoying the rights guaranteed by the Namibian Constitution in Article 21(1)(e), which talks about freedom of association.

Previously these labour-hire companies were notoriously known for recruiting casual workers for the very same purpose, not to belong to trade unions because they are not in permanent employment, they are employed this month, the other month they are not paid, in order to exploit them and their rights. The Honourable Minister, in the Amendment that he tabled in this House, has brought reassurance and hope in the lives of the workers who are employed by these agencies and that gone are the days of their exploitation.

I am also glad to know that provision has been made under Section 8 for the issue of joint and several liabilities that now if the user enterprise happens to infringe upon the right of an employee. It is not only that user enterprise that is going to be held liable, but also the employment agency. This provision will ensure that these private employment agencies will be

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prudent when they are recruiting user enterprises, to ensure that they only recruit those user enterprises that will also safeguard the interest of the workers, because they know that if they do not do that, they will equally pay the price for the exploitation of the workers, which previously was not the case.

Honourable Speaker, I also want to spend some time to lecture members of the Opposition, the RDP in particular. When a Minister introduces a Bill, one will always find the aims and objectives of the Bill. (Intervention)

HON MOONGO: May I ask a question? Has the young Deputy Minister ever employed even one worker in his lifetime?

HON DEPUTY MINISTER OF FOREIGN AFFAIRS: Honourable Speaker, I do not have a chain of small loss-making shops like the Honourable Member on the other side. I, nevertheless, have employed workers as a communal farmer and I know what I am saying when I talk about workers and their rights.

The aims and objectives of the Bill are stated here and, among others, it says, “to provide protection for individuals placed by private employment agencies.” This is one of the intentions. When there is a dispute between an employee and an employer and there are arguments about legislation, the Courts look at the intentions of the Legislature and the intention of the Legislature is found in the aims and objectives of the Bill.

Therefore, it is not in order to make statements here that the rights of the workers are not fully guaranteed because their federations are affiliated to a ruling party, when the same Ruling Party has tabled legislation that clearly states that it is aimed at guaranteeing the rights of the workers.

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These collateral issues that are brought here, Honourable Speaker, are really anchored in petty jealousy, because the very same members who make these arguments actually want the same workers to unofficially affiliate with them through hook or crook. Then they will be discussing them, influencing them and their independence. We want transparency whereby a federation is affiliated to a Political Party and does so in daylight and not under the cover of dark clouds. (Intervention)

HON MOONGO: I would like to know from the young Deputy Minister whether that is an indication that SWAPO is weak and cannot stand on its own?

HON DEPUTY MINISTER OF FOREIGN AFFAIRS: Honourable Speaker, what I was saying is that you go for transparent affiliation and you put in place mechanisms in terms of legislation to regulate the conditions of service under which employees should be treated rather than doing this under a dark cloud where you meet these workers in the darkness in order to sabotage programmes of the Government. This does not mean weakness, a weak Party is the one that registers certain candidates in Local Authority elections who get the votes of five people, which means even some of the candidates do not vote. I thank you and I rest my case.

HON SPEAKER: Next on my list is Honourable Lucks.

HON LUCKS: Thank you, Honourable Speaker. I rise to make my contribution to this very important piece of legislation, the Labour Amendment Bill. Before sharing some general observations regarding

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this Bill, let me speak about some of the specific sections of the proposed Amendments.

If I look at Section 5(1) on Page 3, the inclusion of “*essential services*” as a category of employees who may not appeal against an arbitrator’s award is very important as this will, along with existing legislation, ensure that there is no interruption in essential services when it comes to labour disputes.

Then Section 6(2) stipulates that, “*an individual placed by an employment agency becomes the employee of the user enterprise*” and then in Subsection (8) a provision is made that “*the Minister may exempt a user enterprise from this provision.*”

If I then go on, if the Minister grants such an exemption, Subsection (9) states that, “*both the employment agency and the user enterprise are jointly and severally liable in case of any contraventions of the Act.*” I know some Members have already spoken about this provision, but I have a question about the practicality of this provision. If an employment agency, after placing an individual, has no control over the user enterprise to ensure that such a user enterprise does not contravene the Act, how can this employment agency be held liable for any contraventions?

Then Section 7(2) states that “*managerial employees are not included in the provision that employees are presumed to be employed indefinitely.*” I would like to ask the Honourable Minister what the rationale is for excluding managerial employees. I have two concerns about this provision, firstly the definition of “*managerial employees*”. I am concerned that companies could be tempted to misuse this provision by designating all kinds of positions as managerial positions in order to employ people on fixed term contracts. Especially international companies that are known to employ foreign managers in Namibia on fixed contracts in most cases have no plans for training and succession for local managers and in most cases local Namibian talent is available and these people can do the job just as well, if not even better.

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Before I make some general observations about this Bill, I would also like to ask the Minister what measures he intends putting in place to ensure fair and equal enforcement. It is well-known that some Chinese construction companies operating in Namibia regularly contravene the Labour Act and it is critically important that we ensure very, very strict enforcement of this Act.

Honourable Speaker, Honourable Members, there is a saying that, “*real freedom exists only within well-defined boundaries.*” This piece of legislation will add to defining those boundaries. It will not only ensure that all parties operate within the rules and laws, but it will always help to eliminate any grey areas when it comes to the Labour Act and this will ultimately lead to better labour relations in Namibia. If there are strict, fair and relevant laws that govern the labour market and if all parties thoroughly understand and agree on those laws, we will have much less labour disputes in Namibia and productivity and profitability will greatly increase for the greater good of our Nation.

Before I conclude, let me comment on what the Honourable Minister said in his motivation speech: “*Although we sometimes hear of employers complaining about what they perceive as over-regulation of the labour market, these measures enjoy wide support from our social partners*” and the sentence goes on. Honourable Minister, you are correct that such perceptions do exist and I am of the opinion that these fears of employers need to be addressed. I would thus like to strongly encourage you and your Ministry to come up with legislation that also protects employers. These are the people that risk their hard-earned capital, their own money, whereas an employee risks his job. This is necessary to ensure that balance is maintained. It will increase productivity for the attainment of our Vision 2030. Colossians 3:22 reminds us to obey our early masters in everything we do, to try to please them at all times, not just when they are watching and to serve them sincerely because our reverend fear of the Lord. I think this has reference to employees in our country.

With these few words, I wholeheartedly support this Bill and I would like to call for a speedy passing thereof. Thank you.

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HON SPEAKER: Honourable Namoloh.

HON MINISTER OF DEFENCE: Thank you very much, Honourable Speaker. I would also like to add my voice to the Bill which has been introduced by the Minister of Labour and Social Welfare.

Many people will wonder what a soldier knows about labour, but as a soldier who was also an employee, I have suffered at a very tender age under the previous dispensation. I did not work for SWANLA, but I was instrumental in the collapse of SWANLA contract labour system from 1971 to 1972. I did not work for SWANLA but I was also hired to work and I think some of you will know the word “*helfen*”, which is German for help. As young people we were used to work either in the kitchens or restaurants. I was washing dishes in a restaurant in Walvis Bay, thus I experienced that exploitation and sympathise with those being used in the same way. I also used to work in the warehouses of Walvis Bay at a very young age and I was working with my white counterparts and their salaries were a hundred times mine. I was given R10 a week if I worked Sunday and theirs was over R200.

Honourable Minister, therefore I feel it is very fundamental that we are addressing these issues of exploitation of workers and it was also said here that our forefathers and parents started the fight because of the contract labour system and we cannot continue allowing our people to be exploited while we have shed blood. Therefore, I think this Bill has come at a very proper time, although one could say it is late. (Intervention)

HON MINISTER OF HOME AFFAIRS AND IMMIGRATION: Honourable Speaker, I would like to ask a small question to my son and my neighbour. Honourable Minister, are you aware that in the history of that exploitation some people were even killed and cooked for the pigs?

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When we used to work in the kitchens, the people were using plates but we were using jam tins. Are you aware of that?

HON MINISTER OF DEFENCE: Yes, Honourable Minister, I am aware. That man who was cooked for the pigs was from my village, Odibo, and I am aware of that. I know when you cook for the bosses, you do not use the cups or plates they are using, you use other utensils.

Honourable Minister, if this legislation is not addressing what is happening on the ground, we may pass a very beautiful legislation in this House but the monitoring of what is happening on the ground is very important. Otherwise we can have a very good legislation, but without monitoring it, it will have no effect and I know the Labour Commissioner will be able to monitor what is happening on the ground. Many things have been mentioned by the previous speakers which are happening on the ground and we need to monitor them so that the law is meaningful. With these few words, Honourable Minister, I want to support this Amendment Bill and we want it to be passed with immediate effect. Thank you.

HON SPEAKER: Thank you. Honourable Bezuidenhoudt.

HON BEZUIDENHOUDT: Thank you, Honourable Speaker. I would also like to contribute to the Labour Amendment Bill. I sat here and listened and sometimes I thought we are complaining to ourselves. The Constitution of Namibia gives this House the principal legislative authority to amend and pass laws and I want to quote the last Section of Article 63(3)(i), that these laws should be “*in the best interest of the people of Namibia.*”

Obviously, the concept of labour hire, be it up front, be it underground or

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not visible, is not in the interest of the people of Namibia and, therefore, this House is obliged by the Constitution to look at that.

The Constitution also states in Article 8(1): “*The dignity of all persons shall be inviolable.*” Article 9(1) says: “*No person shall be held in slavery or servitude.*” These are the things that our forefathers put in place in the Constitution and which we should be aware of when we tackle Bills. Maybe the previous Bills were silent as to the practice of labour hire and then people came in from a certain angle to make the Government aware of how they interpret and how the objective of the Bill is to regulate the employment status of individuals placed by private employment agencies to work for user enterprises. I think this whole arrangement of a labour hire system is unethical, is actually just plain wrong. It should not even exist, but because of the nature of people, we need to legislate.

On the justification that the ILO regulations and literature condone labour hire as long as it is properly regulated, I can only say that is just an opinion of one well-respected international organisation, but we do not want to follow it if it does not suit the Namibian people or according to our Constitution. However, now we have this problem and we have to deal with it. Now that we have to regulate the employment status of individuals placed by private employment agencies to work for user enterprises, we need to go much further to be more strict and to make it virtually impossible to exploit people.

I would just ask the Honourable Minister to elaborate on one issue which I do not see in the Act and maybe it is not the opportune time to look at it now or maybe it would be good to look at it now in the future. We are living in a very connected world and Namibians who have the capability and the skills to work in that virtually connected world can produce pieces of goods that can benefit somebody in another country. This person in Namibia is working for an individual or company in the United States, China or Singapore and that relationship is risky, it is not regulated and sometimes it is impossible to regulate. Equally, there can be people from abroad working in Namibia and the Government and the private sector

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have massive systems that need to be maintained and with today's technology a person can do first-line maintenance from a remote location.

How sure are we that the individuals working from abroad for the Namibian Government do not fall under a labour hire scenario, because it is possibly something done all over the world. Maybe I am talking of things which are not important now, but may be important in the future that we need to look at, the cyber workers or virtual workers, in the words of the Prime Minister, commodities that will be sold by various enterprises.

As we progress in the world it becomes more and more important that legislation should also be monitored and enforced by our foreign partners, such as the ILO and United Nations agencies. When we deal with issues of virtual workers, they also need protection. I personally sometimes use foreign workers to do work for me abroad and then send the things to me in Namibia and that is virtual. In my hobby I would battle with a piece of code, I would then contract somebody abroad to look at my code, correct it and send it back to me, for which I pay him or her. I do not know the individual, but that is the way people tend to work nowadays and Namibians have the skills to do those types of jobs, working from here, logging into a server at Lagos and doing the maintenance over there. Maybe in future we need to look at those type of workers. I thank you very much, Honourable Speaker.

HON SPEAKER: Thank you. Honourable Kaiyamo.

HON DEPUTY MINISTER OF HOME AFFAIRS AND IMMIGRATION: Honourable Speaker, I did not want to take part in this Debate, but Honourable Nyamu *krap waar dit nie jeuk nie*. Saying that the workers are married to SWAPO is an insult to some of us who were involved in organising the workers. I cannot remember anybody

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who organised the workers successfully who was not from SWAPO. Starting from 1950 to 1996 they were all from SWAPO. I think the first President of the Republic, Comrade Nujoma, was the first worker in our time, followed by Honourable Amathila, assisted by teacher Gurirab. They are here. They were all from SWAPO, assisted by the former SWAPO, Moongo. (Intervention)

HON NYAMU: On a Point of Information. The Honourable Member should know that I know the history and background of this country. I was part of the struggle in this country from the start. For his information, I have served in the trade union of this country as a deputy secretary. What I am trying to say is that it is one thing to struggle for the liberation of the country, we needed joint efforts by workers and politicians, but that stage is over, this country is now independent and there is a need now to free the workers to do their job and to protect the interest of the workers. However, SWAPO is married to these workers and does not want to divorce them.

HON DEPUTY MINISTER OF HOME AFFAIRS AND IMMIGRATION: Honourable Member, when you organised the workers you were part of SWAPO. (Intervention)

HON MINISTER OF FINANCE: I would like to pose a question to Honourable Kaiyamo. Honourable Kaiyamo, do you not think that some of the Honourable Members of this House across there seem to see everything from the perspective of confrontation and divorce, as they put it, that they can no longer reconcile with the fact that there are some Namibians who still believe in teamwork and that team efforts are still necessary for us to carry out the next phase of the struggle, which is to emancipate our people from poverty and underdevelopment. Do you

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think that that is probably the problem with the Members and that is probably why they differ from the Party on non-principle issues and actually try to sabotage the work?

HON DEPUTY MINISTER OF HOME AFFAIRS AND IMMIGRATION: Minister, I fully agree with you. Let me continue and put the history in its right perspective.

Honourable Nyamu, what you are talking about is true, when you authorised the money for the workers, when you were under John Ya Otto, you were a SWAPO. (Intervention)

HON KASINGO: Honourable Kaiyamo, are you aware that globally, internationally, the SWAPO Party's relationship with NUNW and ANC's relationship with COSATU are mostly admired? Wherever you go the people say this is good. There is not a single progressive Political Party which does not want to align itself with the labour movement. Are you aware of that?

HON DEPUTY MINISTER OF HOME AFFAIRS AND IMMIGRATION: I am quite aware of that. That group of the SWAPO Party, Comrade Sam Nujoma, Ben Amathila, Peter Nanyemba, Ya Otto and the rest were workers of the SWAPO movement. Then in the seventies there were Jason Angula, Marco Hausiku, Alfeus !Naruseb, Bernard Esau, Immanuel Ngatjizeko, Kasingo and many others. Honourable Mushelenga is here, they are all from SWAPO. SWAPO is the party of the workers. All these were cadres of the SWAPO movement and the party, of which you were part, a big team, a strong team, but you chose to be on the other side of the House. (Intervention)

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HON KAIYAMO**

HON DEPUTY MINISTER OF GENDER EQUALITY AND CHILD

WELFARE: On a Point of Information. Comrade Speaker, Namibia is 21 years old and our people know who is sitting here, and who is sitting there. Whatever you are talking here, SWAPO is SWAPO. Even if you did not go to university, you know the history of Namibia. Even Muharukua knows the history of Namibia better than people who call themselves educated. When SWAPO is talking, we are talking to the people, we are not talking to other people, because we were here in Namibia, not in Luanda or somewhere else. The DTA tried to attract people with cake and other things to their meetings but people did not attend. We did not leave our colleagues while they were fighting. Why did you come back while they were still fighting?

**HON DEPUTY MINISTER OF HOME AFFAIRS AND
IMMIGRATION:**

I cannot mention all the names, but I know all of them were of SWAPO. I still remember Alfeus Muheua was in my class and in the SWAPO League and we joined the struggle of the workers together.

All I want to say is that this is an important Bill. (Intervention)

HON MINISTER OF HOME AFFAIRS AND IMMIGRATION:

On a Point of Information. Comrade Speaker, I would like to inform the House that even though Honourable Nyamu said that it is the Ministry of Home Affairs which is sabotaging the Ministry of Trade and Industry, the first SWAPO member who wrote a letter to undermine the Government of the Republic of Namibia is Honourable Nyamu.

**HON DEPUTY MINISTER OF HOME AFFAIRS AND
IMMIGRATION:**

You cannot hide the truth, the truth will always come

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HON SCHLETTWEIN**

out. All I want to say is; this is an important Bill which ought to be supported in order for our workers to have a better life in our republic. All I want to say as the Deputy Minister of Home Affairs is that you Colleagues who are now involved in business and want to import skills, please apply in good time for the work permits. I support the Bill.

HON SPEAKER: Thank you. Deputy Minister Schlettwein.

HON DEPUTY MINISTER OF FINANCE: Honourable Speaker, thank you very much for giving me the Floor. I did not want to participate in this very important Debate, but when the Honourable Minister of Defence told the story that he was a helper in the kitchen, it stimulated me to share an experience from my side and it is just to confirm that contract labour did happen and kitchen workers in my family's house ate not from the same plates that we used, their plates were there where the dogs' ones were and I know that because it was a saying in our family, if you misbehave, you go to the kitchen and eat with those. When I misbehaved, I ate from Zabino's plate. Therefore, from a privileged vantage point I can confirm that that practice really did happen and by the way, while Zabino served me on his plate which was there with the dogs, he taught me how to eat *pap* that was much more tastier than the ones we ate. He taught me how *matangara* must taste and I still like the taste today. It is just to confirm that these things really did happen and some of us who were very privileged at that time can confirm that that in fact brought me in contact with (Intervention)

**HON MINISTER OF PRESIDENTIAL AFFAIRS AND
ATTORNEY-GENERAL:** I am sorry to interrupt the Honourable Member, but may I ask him a question? Comrade Schlettwein, how many times did you misbehave so that you could eat *matangara*?

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HON DEPUTY MINISTER OF FINANCE: I misbehaved often and in fact, my greatest misbehaviour, from that point of view, caused that I was then expelled from school and my father thought it wise to teach me how real work looked like. He employed me on our own farm for a salary equal to the second-lowest salary our farm workers were receiving. Therefore, I had to stand in the queue and get the same brown envelope. In those days it was R15 a month. I had the same benefits, I also had free lodging. However, to answer the question, I think the misbehaviour continued to such an extent that I was later a security risk and all sorts of things.

On a serious note, I think when this Amendment was proposed in the original Labour Act, labour hire was equated with contract labour and the intention was to prohibit it. My feeling is that that is still what we actually need to do. We are now trying to dilly-dally around the actual want, I take it, is with all of us and we are trying to regulate in such a way that it becomes *de facto* very unpleasant or almost impossible to engage in it. Do all of us not really want to get rid of that very nasty system?

My question to the Honourable Minister, therefore, is; what does it take to do exactly that? My take is that the ILO was not subjected to contract labour. The ILO was not subjected to apartheid. The ILO is not sharing that very harsh and evil experience that many of us from different vantage points have experienced. Is it not a relevant question to say if we all do not want it, let us bite the bullet and do what is needed to get rid of it? That would be my submission, but I do understand that we are bound by a High Court decision and that our Constitution apparently does allow it in principle and that we, therefore, have to take a much more complicated and inefficient way to achieve that goal. I support the Bill.

HON SPEAKER: Honourable Kasingo.

HON DEPUTY SPEAKER: I Move that the Debate be adjourned until tomorrow.

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**REPORT ON INFORMATION AND
COMMUNICATION TECHNOLOGY
HON DR A IYAMBO**

HON SPEAKER: The further consideration of this Motion stands adjourned until tomorrow afternoon. The Secretary will read the Second Order of the Day.

**CONSIDERATION: REPORTS OF STANDING COMMITTEE
ON INFORMATION AND COMMUNICATION TECHNOLOGY**

SECRETARY: Consideration of Reports of Standing Committee on Information and Communication Technology.

HON SPEAKER: When the House adjourned yesterday, 8 November 2011 under Rule 90, the Question before the Assembly was a Report by Honourable Dr Amweelo. Any further discussion? Dr Iyambo.

HON MINISTER OF EDUCATION: Honourable Speaker, Honourable Members, I would like to make a contribution to this Report by the Parliamentary Standing Committee on Information and Communication Technology on their experience and what they witnessed in Rwanda.

Honourable Speaker, this is a very important Report since we are living in the 21st century and a digital world in which technology is the enabler of everyday transactions and activities. Yes, these days ICT is very important as today it is no longer a mechanic but a technician who is needed to fix a computer on a car. A small computer will open your gate when you press a button, but another computer may disable your house alarm when you just press a button. Therefore, technology is everywhere.

The question that we always ask ourselves is, where did communication

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technology start? Did it start somewhere in other continents or did Africans make a contribution? I do believe that it is tragic that our indigenous African knowledge has not been patented, recognised, neither acknowledged. Today we are using cell phones, fixed telephones, but when you look at inventions, there is no African name. You will not find a Gurirab, Iyambo or even Nyamu or Hidipo, but our forefathers started this communication technology. Those days somebody would take matches and the person would stand very far with a thread and we talked. That was indigenous communication technology. The tragedy is that we did not go any further, others modernised everything and now we are talking about telephones, wireless telephones, but this was really an indigenous African innovation.

Honourable Speaker, the question I would like to ask is that Namibia has the ability to develop our own ideas as Africans, in this case as Namibians, but the question is, what is happening at the moment, are we as political leaders demonstrating support for the development of ICT? Yes, we want young people to use ICT, but do we as politicians and leaders have that enthusiasm that is permeating to the young people to use ICT? I would like to challenge the Members of Parliament whether we are leading by example in the use of ICT. (Intervention)

HON MINISTER OF DEFENCE: I am sorry to interrupt the Minister, he is doing very well, but I want to ask a question in the form of information. Are you aware that as Africans we do not invest in these technologies and as a result, people who are highly qualified are bought to operate in foreign countries and then they produce what we use here?

HON MINISTER OF EDUCATION: Honourable Minister, I am aware of the tragedy of brain circulation now being used. That is the tragedy of the African continent.

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I was saying that I wonder how many of us here this afternoon are really using ICT at our offices, motivating the young ones. If we are not doing so, we can forget about motivating the young people.

These days ICT is used everywhere. Before you check in at the airport, they ask you to produce your passport and possibly many Members of Parliament maybe find it a nuisance that your passport is scanned, but how many of us are doing that with so much confidence? That means there is a need for us as Members of Parliament to be the drivers of the computer world.

Also with respect to our offices, how are we really using computers and driving the ICT? Honourable Speaker, at many of our offices we have young people looking for service, but how many young people suffer because there are no computers where they can just press and find out where the office of the Minister or the Permanent Secretary is or find the information they need?

Another issue is conferencing. These days our officials come to the capital city for meetings from all the Regions, but by using video conferencing we can communicate with our Regional Directors, thereby cutting costs. How many of us are doing that and why are we not doing that more often?

HON SPEAKER: The House stands adjourned until tomorrow afternoon.

HOUSE ADJOURNS UNTIL 2011.11.10 AT 14:30

**ASSEMBLY CHAMBERS
WINDHOEK
10 NOVEMBER 2011**

The Assembly met pursuant to the adjournment.

HON SPEAKER took the Chair and read Prayers and the Affirmation.

**TABLING: ANNUAL REPORT OF
OFFICE OF THE OMBUDSMAN**

HON SPEAKER: In terms of Section 6(3) of the Ombudsman's Act, I lay upon the Table, the Annual Report of the Office of the Ombudsman, 2010.

HON SPEAKER: Any Petitions? Reports of Standing or Select Committees? Other Reports and Papers? Honourable Van Der Walt.

**TABLING: REPORTS OF THE WORLD
TRADE ORGANISATION**

HON VAN DER WALT: Honourable Speaker, I lay upon the Table the following Reports:

- The Report of the World Trade Organisation (WTO) Public Forum Seeking Answers to Global Challenges, held in Geneva, Switzerland from 19 to 21 September 2011; and
 - Report on the 24th Session of the Steering Committee held in Geneva, Switzerland on the 21st of September 2011.
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**NOTICE OF MOTION
HON IIVULA-ITHANA / HON TWEYA**

HON SPEAKER: Other Reports and Papers? Notice of Questions?
Notice of Motions? Minister of Justice.

NOTICE OF MOTIONS

HON MINISTER OF JUSTICE: Honourable Speaker, I give Notice that on the 15th of November 2011, I shall Move –

That leave be given to introduce a Bill to amend the High Court Act, 1990 to provide for the creation of local divisions and to provide for matters incidental thereto.

HON SPEAKER: Please table the Motion. Deputy Minister of Trade and Industry.

HON DEPUTY MINISTER OF TRADE AND INDUSTRY:
Honourable Speaker, Sir, I give Notice that on Tuesday, the 15th of November, I shall Move –

That this Assembly –

Ratifies the Swakopmund Protocol on the Protection of Traditional Knowledge and Expression of Folklore.

HON SPEAKER: Will the Honourable Deputy Minister please table the Motion? Any further Notice of Motions? We start with Questions.

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**RESPONSE TO QUESTIONS-HON MOONGO
HON NAMOLOH**

Question 30 is by Honourable Moongo. Does the Honourable Member put the Question?

RESPONSE TO QUESTIONS

QUESTION 30:

HON MOONGO: I put the Question.

HON MINISTER OF DEFENCE: Thank you, Comrade Speaker, I wish reply to the questions by Honourable Moongo and in the first instance, I would also like to thank Honourable Moongo for the interest he has had in the Namibian Defence Force all these years.

In his first question he is asking if we are aware that the communities in the northern Regions appreciate the sacrifices made by the NDF. Yes, we are aware, Honourable Member, and we appreciate that they are happy with what the Namibian Defence Force has been doing. It is the task of the Namibian Defence Force to provide assistance to the Local Authorities in any given situation. Thank you.

HON MOONGO: I would like the Honourable Minister to answer the second question, why they are discriminated and not receiving allowances as others are doing.

HON MINISTER OF DEFENCE: *“Why were these members discriminated against by not getting humanitarian incentive allowance*

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**RESPONSE TO QUESTIONS-HON MOONGO
HON NAMOLOH**

like other Government employees who were there?" Honourable Member, we do not discriminate and we do not give humanitarian allowances to members of the Defence Force. To give a humanitarian allowance is to compensate somebody for losses suffered. In this regard, when our members of the Defence Force are deployed in areas such as Caprivi, they operate from their bases and they are provided with all the necessities from the bases, such as food, accommodation, etcetera. For somebody to receive an allowance, he should operate outside his area of operation and our forces who operated there were from those places and it was not necessary for us to give incentives, which is normal practice in the Government.

The Honourable Member is also interested in the Sergeant Major Force No. 1704 stationed at Suiderhof Military Base who joined the Force in 1990. You must understand the ranks, the rank of sergeant major is the top rank in this category, therefore he is not being discriminated. He cannot be promoted to another category because that is the top category and there is no discrimination at all. If he wants to be promoted, he has to attend the Quartermaster Cadet Course in which we will convert him to be commissioned as an officer. If you become a Lieutenant General in this country and you have been there for twenty years, you cannot complain that you were discriminated as that is the top rank in this country. It is the same in this category and maybe you need to know the ranks. There was no discrimination at all. If he has come to you to say he was discriminated against, I think it is out of ignorance. I thank you.

HON MOONGO: I thank the Minister for the information, though he tried to run away from the true facts.

HON SPEAKER: If you are not sure, just put the question for further clarity.

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**RESPONSE TO QUESTIONS-HON LUCKS
HON SHIFETA**

HON MOONGO: I have to consult the Member.

HON SPEAKER: Question 32 is by Honourable Lucks to the Minister of Youth, National Service, Sport and Culture. Does the Honourable Member put the Question?

QUESTION 32:

HON LUCKS: I put the Question.

HON DEPUTY MINISTER OF YOUTH, NATIONAL SERVICE, SPORT AND CULTURE: Thank you very much, Honourable Speaker. I would like to thank Honourable Lucks for the questions. The first question is whether the Minister is satisfied with the overall performance of the Welwitchias at the World Cup 2011.

We at the Ministry of Youth, National Service, Sport and Culture can divide the performance of the national team at the Rugby World Cup 2011 in New Zealand into three categories. The first category is the preparation for the World Cup.

The preparation of the national team for the last two years when they qualified for World Cup 2011 in Tunisia in 2009: The Rugby Union ensured that they take part in South African Vodacom competitions for the last two years to prepare the local rugby players and to close the skills, strength and the conditioning gap between the professional and amateur players. A local mobile company, MTC, is currently the sole provider and sponsor to ensure that the Welwitchias can take part in the South African Vodacom competition. This is and will remain a problem for our local amateur players to receive proper conditioning, especially competition,

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**RESPONSE TO QUESTIONS-HON LUCKS
HON SHIFETA**

skills training and strength to excel at the level of the current professional players.

From the side of the International Rugby Board they ensured that we could take part in the International Rugby Board Nations Cup in Romania for the last two years. This competition was won by Namibia in June 2010.

The second category is the discipline of the team when they are not on the field. The discipline of the national team who represented Namibia at the World Cup 2011 off the field was admirable and outstanding. Our team was classified as the team with the least complaints for services provided by Rugby World Cup 2011 by the Team Service Manager.

Thirdly, performance on the field: We can argue that the performance of the national team against Fiji and Samoa was fairly good and acceptable, but the high score against South Africa, the reigning world champion, could have been lower. This is because we were the underdogs there but we are improving.

However, let us take the scores into perspective. South Africa was the then world champion – and now it is New Zealand – and ranked number two in the world, Wales number six, while Samoa number eleventh and Fiji number sixteenth. Namibia ranked number nineteen in the world, but number two in Africa and the national team has last played a test against a Nation ranked higher than that of nineteenth at the World Cup 2007 in France. For four years it was not possible for Namibian Rugby Union to invite or travel to another country to compete against them. Our national team needs to play more against higher ranking teams. Our local players need to be exposed to better coaching, strength and conditioning and the national team needs to play more competitive sides to achieve these goals.

With all the above mentioned, I can clearly state that the Namibian national team performed fairly well at the Rugby World Cup 2011 in New Zealand.

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**RESPONSE TO QUESTIONS-HON LUCKS
HON SHIFETA**

The second question: *“Would the Minister agree that the score line is not reflective of the ability, the guts and determination of the national rugby team?”* I can agree with the guts and determination side. Yes, our boys showed that they are coming from the Land of the Brave and this was the case at the Rugby World Cup 2007 in France, but the second attribute cannot be secured at the Rugby World Cup. We can still increase our ability or better our performance. I sometimes felt sorry for our rugby players because they have to tackle more than their opponents and I know that their bodies are not ready to take all these hard knocks, but with all our shortcomings, we still believe that they can and will do it for their beloved country. I have to add that our captain was among the five at the World Cup who has received that honour, that he was one of the top five good players, that is Jacky Burger. So, it is an honour for the country, it is an honour for our captain of the national team.

Question 3: *“Is the Minister of the opinion that the level of funding for our national rugby team is adequate?”* Straightforward, no, it is not and we have been saying this year that we can only perform better if we better our Budget. We have so many sport codes in Namibia and the funding from the Namibian Government is also not adequate. Sometimes other priorities take centre stage and need immediate attention, but through the Namibian Sports Commission we will relook into the funding towards the rugby sports code.

Question 4: *“What measures does the Minister intend putting in place to deepen and consolidate the development of rugby at school and at the junior level?”* Our Rugby school structures are fairly good and well managed and from Reports on school competitions, I concluded that the competitions are done fairly. The development of rugby at junior level is our main obstacle to become a force to be reckoned with in rugby in the world, although it is the foundation of every development structure. Our biggest challenge we as the Namibian Nation face is the bridging between the rugby school level and the rugby senior level. Currently there is no formal under-19 and under-21 rugby leagues where these young men can display their talents. They must immediately join the senior class and perform against experienced players. Rugby is a physical sport and many complaints are received from parents of these young men. Injuries can

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**RESPONSE TO QUESTIONS-HON NYAMU
HON EKANDJO**

cause some of these young men to leave the sport for good. Many of our young men opted to study in South Africa and because of better competition there, skills training, strength and conditioning, etcetera, they become more advanced players and decide to stay in South Africa instead of playing for Namibia. Some of our players leave the Namibian shore to seek greener pastures and sometimes find themselves in Europe or elsewhere.

We urge the administrators of rugby to find a golden way and implement systems in rugby so that our young men remain in Namibia. I must also add that we only have less than eight professional players and we play against those who are hundred percent professional players. Even some of these players have their fulltime jobs and you cannot expect them to perform better than those who are fulltime rugby players.

I hope I have answered the Honourable Member's question and I thank you very much.

HON LUCKS: I would just like to thank the Deputy Minister for a very detailed and thorough answer which was delivered in a very constructive way. Thank you very much.

HON SPEAKER: Question 34 is by Honourable Nyamu. Does the Honourable Member put the Question?

QUESTION 34:

HON NYAMU: I put the Question.

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**RESPONSE TO QUESTIONS-HON NYAMU
HON EKANDJO**

**HON MINISTER OF REGIONAL AND LOCAL GOVERNMENT,
HOUSING AND RURAL DEVELOPMENT:**

Thank you, Comrade Speaker. The Honourable Member, former Comrade Nyamu said, the expressed broad public sentiments, the *Namibian* newspaper of the 7th October commented as follows: *“In the High Court Judgment in which the Parties’ election challenge was dismissed, Judge Petrus Damaseb and Collin Parker were scathing about the conduct of the Electoral Commission of Namibia, especially its chief administrator, Moses Ndjarakana, even recommending to face criminal charges.”* Then it furthermore said: *“The following statement by the two Judges has far-reaching implications for future elections in Namibia.”* Then he quoted again: *“It will be unfortunate if the people responsible for these lapses (at ECN) are allowed to participate in the conduct of elections and to unnecessarily put the country under suspicion that characterised the aftermath of the National Assembly elections.”*

Then in Question 1 Honourable Nyamu is asking the following: *“Considering that both the Prime Minister, Honourable Nahas Angula and Honourable Jerry Ekandjo have taken an oath to defend and protect the Constitution and laws of the Republic, what steps have they taken to ensure that culprits of electoral mismanagement are brought to book?”* I do not know whether you know what you are asking for. Is this Ministry responsible for the ECN or is the ECN an independent body?

HON SPEAKER: I must confess that I am embarrassed as Speaker that I did not properly apply my mind to what the House is now being drawn into. This matter was before one of our highest Courts and went up to the Supreme Court. I am not quite sure why this was allowed to be on the Question Paper. Could I ask the Minister and Honourable Nyamu that we defer consideration of this question so that I consult? I do not know what I am being asked to preside over, so I would ask you not to proceed and I will summon the two of you to my office to find out from you what is it that we are about to enter into. I should have been careful earlier, it is my fault and I apologise. Let us move on to the next question. Question 35 is

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**RESPONSE TO QUESTIONS-HON WITBOOI
HON MBUMBA**

by Honourable Witbooi to the Minister of Safety and Security. Does the Honourable Member put the Question?

QUESTION 35:

HON WITBOOI: I put the Question.

HON MINISTER OF SAFETY AND SECURITY: Honourable Speaker, the question by Honourable Witbooi is as follows: *“Can the Honourable Minister inform this august House about the facility in place to which traumatised officers have accessed to, to deal with their traumatic experiences.”*

The answer is: The Namibian Police Force renders professional social services to the members of the Force and addresses all human dimensions, such as psycho, social, spiritual, health, including HIV/AIDS, and women empowerment issues. These services are rendered by professionals at the Gender and Welfare Directorate for the Namibian Police Force, which consists of social services, chaplaincy, health services and women network divisions. The following divisions are involved in offering services to traumatised members:

Social Services Division: Social Services recognises the complexity of interactions between human beings and their environment and the capacity of people both to be affected thereby and to alter the multiple influences upon them, including bio-psycho-social factors. Currently the division renders psycho-social services to Police Officers and civilian component of the Namibian Police Force as well as their immediate families. The services are rendered through case work, family therapy, group therapy and community work. Social services function in a multi professional team, therefore referrals are made in cases where other professional services are required, such as clinical psychological counselling and spiritual counselling.

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**RESPONSE TO QUESTIONS-HON WITBOOI
HON MBUMBA**

The following Regions were visited by social workers of the Namibian Police Force with their outreach programme and a situation analysis was done: Khomas, Karas, Hardap, Caprivi, Kavango, Kunene, Omusati, Ohangwena, Oshana, Omaheke and Erongo. The remaining Regions will be visited before the end of this year.

Chaplaincy Division: The Namibian Police Force chaplaincy was established with the purpose to give spiritual and emotional support to the members of the Police Force and their families. It is a service in place together with the Social Services Division to which traumatised officers have accessed or referred to, to deal with their traumatic experiences. Chaplains exercise a positive Ministry of presence by personally visiting members of the Namibian Police Force and I am happy to say that together with the Ministry of Defence we now have Pastors or Reverends of good standing in society who have left their parishes and they are now chaplains in our forces.

Health Services Division: The Health Services render health education, life support treatment to members, counselling and referring sick members to clinics, health centres and hospitals. The division also consists of one subdivision, namely HIV/AIDS, commonly known as POL Action and also runs three other programmes, namely TB, malaria and personal hygiene.

The subdivision of HIV/AIDS is responsible for coordinating, implementing and mainstreaming of HIV/AIDS activities within the Namibian Police Force.

The next question: *“How many case loads are the Ministry handling? Can the Honourable Minister segregate the number of Police Officers who are on the programmes per Region, if necessary?”*

The following number of cases were reported and attended to during 2010/2011:

Khomas Region: Domestic violence – 2; marital or love related problems – 23; alcohol abuse – 12; suicide – 10; divorce cases – 2;

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**RESPONSE TO QUESTIONS-HON WITBOOI
HON MBUMBA**

bereavement – 2; mental problems – 2; stress – 19; debts and excessive credits – 5; memorial services and funerals – 5; spiritual guidance to suicidal attempts – 3; traumatised officers – 3; hospitalised officers – 17; home visits – 14. Altogether in the Khomas Region, 54.

Caprivi Region: Marital, love related problems – 1; alcohol abuse – 6, transfers – 2, work related or promotions – 4; medical – 1, rehabilitation – 1, memorial service and funerals – 2; stress – 4, home visits – 2. Total, 23.

Kavango Region: Marital, love related problems – 1; accommodation problems – 1; domestic violence – 1. Total, 3.

Kunene Region: Alcohol abuse – 1; marital, love related problems – 1; family disorganisation – 1; memorial service and funeral – 2; stress – 2. Total, 7.

Hardap Region: Alcohol abuse – 2; rehabilitation – 2. Total, 4.

Erongo Region: Stress – 1, traumatised officers – 2. Total, 3.

Karas Region: Divorce – 1; health conditions – 1, transfer – 6; stress – 5. Total, 13.

Otjozondjupa Region: Mental problems – 3; spiritual guidance to suicidal attempts – 2; traumatised officers – 2. Total, 7.

The average total number of cases is 171.

The last question: *“If there is no programme for traumatised officers that is being implemented by the Ministry of Safety and Security, can the Minister inform the august House how the Ministry is currently handling the affected officers and as to when such programme will be in place?”*

The Gender and Welfare Directorate within the Namibian Police Force is currently handling all the reported trauma cases of affected officers or

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members. Training and group therapy was offered to 45 mortuary curators on dealing with work-related trauma and self-counselling.

During the 2011 Namibian Police Force annual sport championship in Swakopmund, HIV/AIDS information was disseminated to more than 800 members who participated in the said event. However, these professionals are facing some challenges and these challenges are: Lack of manpower due to the fact that professionals leave for greener pastures. There is a high demand for additional social workers, registered nurses and ordained Pastors within the Namibian Police Force. The fee for alcohol rehabilitation treatment is not affordable to all addicted members since Medical Aid does not subsidise such cost. The last one is lack of transport.

The Namibian Police Force will continue to oversee the well-being of members through intensive efforts. It is, therefore, vital that the necessary resources are availed to implement and mainstream activities in all Regions in order to maintain the strength of the Force and uphold its mandate. I thank you, Honourable Speaker.

HON SPEAKER: Thank you for the comprehensive answer. The Secretary will read the First Order of the Day.

**RESUMPTION OF DEBATE ON RATIFICATION OF THE
TREATY ON THE KAVANGO-ZAMBEZI TRANS-FRONTIER
CONSERVATION AREA**

SECRETARY: Resumption of Debate on Ratification of the Treaty on the Kavango-Zambezi Trans-Frontier Conservation Area

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HON SPEAKER: The Minister motivated this Treaty before I was here and since I came, I am hearing so many things around this discussion and I am getting worried about this. I am particularly concerned about the name of the President being brought into this, that the matter be considered with due speed, because the President has signed the Treaty. It is unfair to the President, the President is not a Member of this Chamber and it also infringes on the role of Parliament, the National Assembly in particular. I would want us to read the following articles of our Constitution. We start with Article 32(3)(e). The President and the other competent Members of Cabinet can do that, that is their prerogative. Article 32(9) reads: *“Subject to the provisions of this Constitution and save where this Constitution otherwise provides, any action taken by the President pursuant to any power vested in the President by the terms of this Article shall be capable of being reviewed, reversed or corrected on such terms as are deemed expedient and proper should there be a resolution proposed by at least one-third of all the Members of the National Assembly and passed by a two-thirds majority of all the Members of the National Assembly disapproving any such action and resolving to review, reverse or correct it.”* I hope we will never get that.

And lastly, Article 63(2)(e): *“The National Assembly shall further have the power and function, subject to the Constitution, to agree to the ratification of or accession to international agreements which have been negotiated and signed in terms of Article 32(3)(e) thereof.”*

Therefore, both the President and the Members of Cabinet and the Parliament, through the National Assembly, have corresponding mutually reinforcing responsibilities. Therefore, let us just debate the Treaty on its own merits and should we be satisfied, let us ratify it without bringing in the President. I have stolen into your time but I thought I should clarify that, because I do not know how honest and fair you are to one another, but a lot of things are being said about this Treaty. I thought I should clarify how I see the matter. The House shall rise for tea.

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HON SHIFETA**

HOUSE ADJOURNS AT 15:40
HOUSE RESUMES AT 16:24

HON SPEAKER: When the House adjourned on Thursday, the 3rd of November 2011, the Question before the Assembly was the Motion by the Honourable Minister of Environment and Tourism. The Honourable Deputy Minister of Youth, National Service, Sport and Culture adjourned the Debate.

HON DEPUTY MINISTER OF YOUTH, NATIONAL SERVICE, SPORT AND CULTURE: Thank you, Honourable Speaker. I was just about to complete my speech. I was saying that most of our concerns about the Treaty has been addressed and, therefore, I wholeheartedly support the ratification of this Treaty. Something we have to understand is that a treaty is an international convention which comes about as a result of consensus. It is a give-and-take situation between State parties where you have to relinquish some of your sovereign rights.

I have to thank the Ministry and also the team negotiating on our behalf.

I have gone through this document and I concluded that most of our concerns are addressed. It also has some Clauses which make provision for renegotiations in the light of changing conditions and circumstances.

We have a structure composed of Ministers and senior officials, a joint management committee and a Secretariat and I think in the event of our interests or conditions changing, there are Clauses which provide that we can even withdraw or propose for termination. I do not think that we have to be so much concerned about what will happen.

What I have also inferred on this is that it will boost our tourism industry. With all respect, I have seen that once this Treaty is entered into and the

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implementation starts, we will see an improvement in the tourism industry in a very positive way and it is also good that we ratify it as soon as possible. It has already been signed by the Heads of State and we should confirm that we agree to be bound by this Treaty.

I, therefore, support this Treaty and as we all know, the proof of the pudding is in the eating, therefore let us agree to this Treaty and if we are not satisfied with the implementation after five years, we can withdraw. There are those who have concerns, but as it is presented to us now, I think we will have more benefits than obligations in this Treaty. I thank you and I support the ratification of the Treaty.

HON SPEAKER: I thank the Deputy Minister. Honourable Van Der Walt.

HON VAN DER WALT: Thank you, Honourable Speaker, Honourable Members of Parliament. I rise to fully support the Treaty on KAZA. I have listened carefully to the statements of some of our Colleagues and Comrades and I went through it step by step, the legal and financial implications and the withdrawal and termination of the whole Treaty.

Yes, this Treaty is a legal entity of its own, it can be sued and it can sue.

This is an organisation which can make decisions through its senior committee, but what I found is that they make provisions all over the show where we are protected.

If we move on from the legal status and I look at the withdrawal of this Treaty in Article 32 on Page 26, there is a huge difference between withdrawal and termination of this Treaty. It is only when the termination took place that everybody will depart and then you need three countries to support you, but to withdraw you only need to give notice twelve months

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ahead of time and then you can withdraw.

In Article 23 on Page 24 it makes it very clear that the senior committee has to prepare and submit to a Ministerial Committee the financial situation of this Treaty. Therefore, I cannot see a problem there. In Article 20 on Page 23 it says the KAZA Fund shall be governed in terms of financial regulations made in accordance to Article 23, which I have already mentioned.

I have said that there is a difference between withdrawal and termination, where we need three countries to terminate the whole KAZA, but withdrawal is not a problem, you can do it after notice of twelve months. Therefore I cannot find any problem here. What I actually see is that we are going to create synergy in this part of the North and we will create a conservancy. If I compare all the countries involved, it will be bigger than Europe and which makes it more interesting is that Namibia is the only country which borders on all the other countries. We are in the middle of everything and I think the day we want to terminate this Treaty, all the other countries will definitely agree, because without Namibia they will not be linked to each other.

Let us implement the Treaty and if there is any problem, we withdraw and with that, Honourable Speaker, I rest my case. I thank you.

HON SPEAKER: I thank the Honourable Member. Any further discussion? Deputy Prime Minister.

HON DEPUTY PRIME MINISTER: Comrade Speaker, I Move that the Debate be adjourned until Tuesday, 14:30.

10 November 2011 **SECOND READING: LABOUR AMENDMENT
BILL
HON DR N IYAMBO**

HON SPEAKER: The further consideration of this item is adjourned until Tuesday. The Secretary will read the Second Order of the Day.

**RESUMPTION OF SECOND READING:
LABOUR AMENDMENT BILL**

SECRETARY: Resumption of Second Reading on *Labour Amendment Bill*.

HON SPEAKER: When this Debate was adjourned yesterday, 9 November 2011, the Question before the Assembly was a Motion by the Honourable Minister of Labour and Social Welfare, that the Bill be read a Second Time. The Honourable Deputy Speaker adjourned the Debate. Any further discussion?

HON MINISTER OF VETERANS AFFAIRS: Comrade Speaker, I also rise to add my voice to this Amendment and I want to approach it from the aspect that this Amendment is coming after the Supreme Court pronounced itself on the labour hire issue.

Some Honourable Members took the Floor and asked some questions, and I want to refer specifically to Honourable Jesaya Nyamu and also Honourable Schlettwein.

Honourable Nyamu was of the view that the marriage between SWAPO and the Labour Union should now end, but honestly speaking, I think the Honourable Member is jealous about the relationship. Honestly, I think he will not admit it but that is the case. It was said more than once that it

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is the prerogative of the labour movement itself to decide with whom to affiliate and in this case, as has been the case historically, it affiliated to SWAPO and it is our view that that healthy relationship will continue. Honourable Nyamu, you found that relationship in existence when you became a SWAPO Member, it existed throughout and you left that relationship and it is going to continue to be like that.

Honourable Speaker, the issue referred to in the Amendment is the agencies that are hiring people and pass them on to user companies. We are now saying that it is right that the user company should not be exempted from the responsibility to ensure that the employee so employed must have all this human rights and interests being protected. (Intervention)

HON NYAMU: Honourable Speaker, we do not seem to have a quorum.

HON SPEAKER: Ring the bells.

HON SPEAKER: In terms of Rule 17(c) of the Standing Rules and Orders, the Speaker adjourned the Assembly at 16:55 with the following Members present:

36 Voting Members and the Speaker:

Hons. Tjihuiko; Kaura; Garoëb; Moongo; Lucks; Von Wietersheim; Bezuidenhoudt; Nyamu; Hamutenya' Witbooi; Ueitele; !Nawases-Taeyele; Amathila; Tweya; Nambahu; Hausiku; Geingob; Iivula-Ithana; Mbumba; Sioka; Kuugongelwa-Amadhila; Ekandjo; A. Iyambo; Kaapanda; Muheua; I. Iyambo; Ngatjizeko; Katali; Nghimtina; !Naruseb; Namoloh; Kaiyamo; Shifeta; Kavetuna and Kapia

HOUSE ADJOURNS AT 16:56

**ASSEMBLY CHAMBERS
WINDHOEK
17 NOVEMBER 2011**

The Assembly met pursuant to the adjournment.

HON SPEAKER took the Chair and read Prayers and the Affirmation.

HON SPEAKER: Any Petitions? Reports of Standing or Select Committees? Honourable Jankowski.

**TABLING: REPORT ON THIRD SESSION
OF THE CHILDREN'S PARLIAMENT**

HON JANKOWSKI: Honourable Speaker, before I lay upon the Table, Report on the Third Session of the Children's Parliament held from the 9th to the 11th of May 2011, I want to give a brief introduction.

The Third Session of the Children's Parliament took place from the 9th to the 11th of May 2011 under the theme, "*Accountable Parliamentary Democracy: Prioritising Children's Rights and Inclusive Service Delivery.*"

Forty-two learners, three from each Region and three members of the Junior Town Council of the City of Windhoek as well as three former young Parliamentarians participated in the Session. The initial approach of the Parliament Standing Committee on Human Resources, Social and Community Development was to table the Report for discussion to this august House, but due to time limitation, the Report is now tabled for note-taking. This Committee will forward a copy of the Report to all Permanent Secretaries of Ministries identified in the Report and engage them on how far they have gone with the implementation of the

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**TABLING OF REPORTS
HON KUUGONGELWA-AMADHILA**

recommendations before the convening of the Fourth Session of the Children's Parliament.

Honourable Speaker, I now lay upon the Table, the Report on the Third Session of the Children's Parliament held from the 9th to the 11th of May 2011 at the National Assembly Chambers, Parliament Building, Windhoek.

HON SPEAKER: Will the Honourable Member table the Report? Other Reports and Papers? Minister of Finance.

TABLING: REPORTS OF THE AUDITOR-GENERAL

HON MINISTER OF FINANCE: Honourable Speaker, I lay upon the Table, Reports of the Auditor-General on the Accounts of:

- Town Council of Okahao;
- Town Council of Helao Nafidi;
- Village Council of Aranós

for the Financial Year ended June 30, 2011;

- Village Council of Stampriet for the Financial Years ended June 30, 2007, 2008 and 2009;
- Agricultural Bank of Namibia; and
- Karakul Board of Namibia

for Financial Years ended March 31, 2010.

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**MINISTERIAL STATEMENT
HON MBUMBA**

HON SPEAKER: Will the Honourable Minister table the Reports? Other Reports and Papers? Ministerial Statements? Minister of Safety and Security.

MINISTERIAL STATEMENT

HON MINISTER OF SAFETY AND SECURITY: Honourable Speaker, Honourable Members, I feel duty-bound to deliver a message in the hope to shift minds and attitudes of our citizens, this with the aim to ensure that we have a peaceful and memorable festive season for 2011/2012.

The year 2011 is drawing to an end, but remaining in our minds are memories of lost lives of families and friends in road accidents and crime incidents that could in many instances easily have been avoided. This year, 2011, was indeed full of challenges for the law enforcement agencies in general, and the Ministry of Safety and Security, in particular.

Before I turn to the challenges, allow me to express our Ministry's deepest thanks to the public for their continued support in the fight against crime. The law enforcement agencies have never and will never reduce crime and its evils in isolation, because crimes are committed by members of the communities against members of the communities, negatively affecting members of our communities. It is, therefore, befitting to commend all law-abiding people in Namibia who contributed directly or indirectly to the fight against crime. We will continue to count upon their support and cooperation.

In the same breath, it is a pleasant moment for me as your Minister of Safety and Security to profoundly acknowledge the support that I received from this august House, especially during the Budget Debate and Budget approval of Minister Votes which have been steadily increasing during the last few years. I also recognise your individual and collective support for the passing of anti-crime legislation. To this end, I applaud you for

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prioritising the security of our people, knowing that security is a prerequisite to political, social and economic development. We should continue in the same spirit with the ultimate objective to have an effective and efficient modern law enforcement fraternity that includes the Namibian Police, the Judiciary, Namibian Correctional Services, the Legislature and, of course, our citizens.

Comrade Speaker, Honourable Members, the prevalence of incidents of violent crimes, such as armed robberies, violence against women and children, murder and increase in loss of precious lives through road traffic accidents and theft of property, continue to be a national concern which compels us to re-examine our national efforts in the fight against crime. Most regrettably, this deplorable situation tends to worsen during festive seasons. In order to redress this retrogressive social order, the Namibian Police Force and other law enforcement agencies have responded remarkably by arresting suspected criminals and investigating offences or alleged offences more effectively and efficiently. Consequently a high number of offenders were convicted, sentenced and sent to prison, a development which resulted in overcrowding of our Correctional Services facilities as well as police holding cells across the country.

Honourable Speaker, it is against this ugly background that we need to prepare ourselves as a Nation to create a peaceful and relaxing upcoming festive season. To this end, I wish to highlight key areas on which we must work in unison to ensure a festive season characterised by peaceful, responsible and festive communities celebrating, but also planning and looking forward to a better tomorrow. First of all, we must decisively address conditions conducive to breeding crimes and offences in order to enhance our stance on a zero tolerance of crime. Among others, as a Nation we must contribute to the reduction of alcohol and fight against drug abuse. It is regrettable to note that in the majority of cases of domestic violence, victims and perpetrators alike were found to be under the influence of alcohol or narcotic drugs. It goes without saying, therefore, that the increase in alcohol and drug abuse during festive seasons is proportionally influencing the increase in crime.

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The other area of significant concern is the emerging anti-social behaviour by some learners at our schools. I am referring to students and pupils who are not only involved in vandalism and theft, but also in life threatening crimes, such as assault and even murder. It is, indeed, a matter of concern to observe that the age at which kids are committing crimes is getting lower. Juvenile delinquency is obviously a matter that we need to deal with decisively.

Honourable Speaker, another aspect of great concern is our national roads which have been turned by irresponsible drivers into carnage fields. The increasing loss of lives on our roads through avoidable accidents is a national embarrassment which could equally be blamed on over-speeding, reckless and negligent driving, aggravated by impaired minds of drivers as a result of the use of alcohol and drugs and even fatigue when driving long distances.

Alarming road traffic statistics reveal that during the past festive season, that is from November 2010 to January 2011, 352 road traffic accidents occurred, resulting in 71 fatalities and 807 injuries. Equally puzzling are the annual statistics of the previous year 2010, which disclose the record of 2,689 road traffic accidents, with 532 fatalities and 5,131 injuries. What terrible figures!

Our sense of responsibility should be renewed by sharing the most frightening statistics for this year, which reflect that already 4,917 accidents were recorded, which resulted in 400 fatalities and 4,629 injuries.

The carnage on our roads will continue unless we all resolve to halt it. It is heartening to observe that a series of concerted efforts have been going on to change the scene for the better. His Excellency the President of the Republic of Namibia, Comrade Dr Hifikepunye Pohamba, has on many occasions appealed to the people of Namibia to behave responsibly and to reduce death on our roads. The law enforcement agencies have increased both their visibility and effectiveness. More speed cameras were deployed, breathalysers were used more than ever before, unprecedented number of traffic summonses were issued to offending drivers, more

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warrants of arrest were executed. A national awareness campaign, *Xupifa Eemwenyo*, “*Let us Save Lives*”, which join efforts and resources of all stakeholders in road traffic accident prevention continues to be vibrant since its launch in 2004. Various indabas, meetings and workshops have been organised, stiff traffic fines were enacted, a strategy for Namibia road safety 2009 to 2014 has been adopted and many other well-articulated programmes were devised, but despite all these well-meaning attempts the problem persists.

The above leaves me with the conclusion that the missing element is a shift in mind and attitude by individual drivers and other road-users. As I intimated earlier, effective law enforcement mainly depends on joint efforts of the whole Nation. The road traffic passengers should start demanding their rights. Why allow a bus driver to overload? How long are you going to allow drivers to drive above official speed limits? Why failing to report a driver who is under the influence of alcohol? Why getting into an unroadworthy vehicle? I appeal to passengers to stand up and enforce their rights.

Turning to drivers, none of us is above the law. Abiding by the laws and regulations which suit you is selective morality. If you reduce your speed, you reduce death. If you stop driving after taking alcohol, you will stop accidents. If you take unroadworthy vehicles for repair, accidents will be reduced. If you obey traffic regulations, you will guarantee safety on our roads.

In short, I appeal that the catchwords for this festive season should be, “*Drivers and passengers, change your attitudes to save lives.*”

Honourable Speaker, the festive season period poses a serious challenge to the Namibian Correctional Service in terms of perceived escalation and attempts by offenders to escape, hostage-taking and the security risk this brings to the safety and security of staff, offenders, visitors and service providers. This is specifically the period during which high-risk offenders are desperate to escape for various reasons that include either participating in criminal activities during that period or simply the desire to enjoy the festive mood with families and friends which they forfeited when they

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committed crimes. We would, therefore, like to urge the public not to harbour or support offenders who are contemplating to escape or those who may manage to escape. Families, friends and other associates are further urged neither to connive, nor to assist offenders in illegal activities, including smuggling of unauthorised articles into prison.

The security of all our thirteen correctional facilities is heightened in order to curb accidents. Security at prison entrances and exits is to be drastically enhanced and visitation rights are to be controlled. No one will be allowed visitation right without positive identification. Cell phones will not be allowed into the facilities and parcels coming into prisons will be searched. The smuggling of mobile phones and other wireless devices into prison institutions by offenders' families, friends, associates or even prison members, poses a high risk threat in that these devices may be used to plan an escape, arrange a getaway car, in threatening witnesses, continuing drug trafficking and even order a murder from inside the prison institution.

The Ministry of Safety and Security, therefore, calls upon all members of the Namibian public to cooperate and support these security measures and further encourage the public who may not know to enquire about the correct operational procedures in advance before visiting our facilities during the period in point.

Furthermore, the Ministry would like to express gratitude and appreciation to those members of the public who provide us with information to seize unauthorised articles, such as mobile phones, that are smuggled into our facilities. We encourage those members and others to continue supporting us because the security of our prison facilities means security of the public.

I wish to reassure the people of Namibia that the majority of the members of the Namibian Police Force and the Namibian Correctional Service will not take vacation leave during the looming festive season. These women and men in uniform are ready to work extraordinarily hard in order to guarantee a peaceful festive season that we all aspire to enjoy.

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HON TWEYA**

In conclusion, allow me, Honourable Speaker, to call upon all law-abiding people in Namibia to rally behind the law enforcement community, spearheaded by the Namibian Police Force, to give them support, cooperation and provide crime information, information about conspiracy or plans by prisoners to escape from lawful custody and report all violators of traffic laws and regulations. I wish everybody in Namibia a peaceful and fruitful festive season and a productive year 2012. I thank you, Honourable Speaker.

HON SPEAKER: On behalf of the House and, indeed, on behalf of the Namibian people at large, I want to thank the Minister for his very thoughtful, very masculine address to the House and to reassure him that for our part as citizens we will oblige to live by the reminders that you have made for us to contribute to ensuring the safety and security that you stress. Any further Ministerial Statements? Deputy Minister of Trade and Industry.

MINISTERIAL STATEMENT

HON DEPUTY MINISTER OF TRADE AND INDUSTRY: Honourable Speaker, Honourable Members, I rise to give a Ministerial Statement in terms of the notice of application for review of the decision of the Commission in relation to the proposed merger in terms of the Competition Act (Act 2 of 2003), Section 49(2), Rule 32.1 and that is concerning the proposed merger notice, Wal-Mart Stores Incorporated and Wal-Mart Holdings Limited, Case No. 2010, October.

Please take note that on the 9th of February 2011 the Namibian Competition Commission (referred to as the Commission) conditionally approved the proposed merger between Mass-Mart Holdings Limited and

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HON TWEYA**

Wal-Mart Stores Incorporated. The approval was subject to four conditions:

Notice is hereby given that on the 8th of March 2011, received an application on behalf of Wal-Mart Stores Incorporated in terms of Section 49(1) of the Competition Act 2 of 2003 for review of the decision of the Commission in relation to the merger concerned. Before this review could be undertaken, Wal-Mart Stores Incorporated applied to the High Court to have the four conditions attached by the Commission to the approval of the merger declared invalid. This application was opposed by the Commission and the Minister of Trade and Industry.

The High Court, on the 28th of April 2011, declared the conditions to be invalid. The Commission and the Minister of Trade and Industry appealed to the Supreme Court. The Supreme Court, on 4 November 2011, upheld the appeal and ruled, *inter alia*, that the review of the Commission's conditional approval of the merger by the Minister of Trade and Industry should proceed, commencing on the date when the Judgment was given, save in respect of the fourth condition. The Supreme Court held that the fourth condition falls away in light of the invalidity of Notice 75 of 2010 issued by the Minister in terms of Section 3(4) of the Foreign Investment Act 27 of 1990.

Section 49(3) of the Competition Act provides that the Minister must make a determination of the review, either overturning the decision of the Commission or amending the decision of the Commission by ordering restrictions or including conditions or by confirming the decision of the Commission. The nature of the review is thus to review the Commission's decision to grant conditional merger approval, subject to the following conditions:

1. That the first condition states that the merger should allow for local participation in accordance with Section 2(f) of the Competition Act of 2003 in order to promote a greater spread of ownership, in particular to increase the ownership states of historically disadvantaged persons.

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2. That there should be no employment losses as a result of the merger.
3. That the merger should not create harmful effects on competition that may give rise to the risk of the market becoming foreclosed to competitors, especially Small and Medium Enterprises.

A copy of the application of Wal-Mart Stores Incorporated for review, which sets out the ground on which Wal-Mart Stores Incorporated seeks the review, may be obtained from the Ministry of Trade and Industry, Brendan Simbwaye Square, Block B, Corner of Uhland and Goethe Streets Windhoek from room 235. Interested parties are invited to make written submissions within fourteen days after the date of publication of this notice to the Minister of Trade and Industry in regard to any matter to be reviewed. I thank you, Honourable Speaker.

HON SPEAKER: I thank the Honourable Deputy Minister for the important information. Before we get to the business, will we take the Questions?

RT HON PRIME MINISTER: I regret that there were no consultations on this matter, but I would like to appeal to the Colleagues that we deal with the Order Paper because of the importance of the Amendments being proposed by the Minister of Finance with regard to our own finances.

RULING

HON SPEAKER: Before we do that, I regret my absence yesterday but I am compelled, based on what has reached me, to give my Ruling on the matter and the Ruling is in respect of the Stamp Duties Amendment Bill,

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**INCOME TAX THIRD AMENDMENT BILL
HON KUUGONGELWA-AMADHILA**

Value Added Tax Amendment Bill and the Income Tax Amendment Bill by the Honourable Minister of Finance to which I say the following:

In terms of Rule 35(d), read with Rule 98 and Rule 117, I would like to inform the Honourable Members that on 11 November 2011, the Honourable Minister of Finance has requested, through me, to table the abovementioned Bills as a matter of urgency and I was convinced that the Assembly should consider the abovementioned Bills on an urgent basis. Thus the time available to each Honourable Member will be restricted, as stipulated in Rule 98 of the Standing Rules and Orders.

I would like to add further that on Thursday, 10 November, closing the sitting of the House, I reminded the Members of the Ruling Party about the earlier communication to them that the Party caucus would take place. That was part of the consultations that the Minister had initiated and it is against that background that the Minister communicated to me the very next day. That is how that matter stands and with that the Speaker has the last word in this matter. The First Notice of Motion is the one of the Honourable Minister of Finance. Does the Honourable Minister Move that the Bill be now introduced?

**INTRODUCTION AND FIRST READING:
INCOME TAX THIRD AMENDMENT BILL**

HON MINISTER OF FINANCE: I so Move, Honourable Speaker.

HON SPEAKER: Who seconds? Any objections?

HON MOONGO: Yes.

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HON KUUGONGELWA-AMADHILA**

HON SPEAKER: I have said that the Rule that I mentioned requires that the Speaker's word is the last. Other Rules allow for intervention.

HON MOONGO: We are really unhappy.... (Intervention)

HON SPEAKER: Sit down. Honourable Minister table the Motion.

HON MOONGO: It is undemocratic to silence me.

HON SPEAKER: I also have other Rules. Sit down, Honourable Member.

HON MOONGO: We are unhappy, we are unhappy, the Rules are undemocratic and this House is a democratic House.

HON SPEAKER: I hope that is your last word. That will be recorded. The Secretary will now read the Bill a First Time.

INCOME TAX THIRD AMENDMENT BILL

SECRETARY: *Income Tax Third Amendment Bill.*

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**INCOME TAX THIRD AMENDMENT BILL
HON KUUGONGELWA-AMADHILA**

HON SPEAKER: Does the Honourable Minister of Finance Move that the Bill be now read a Second Time? Who seconds? Any objection? Agreed to. The Honourable Minister has the Floor.

**SECOND READING:
INCOME TAX THIRD AMENDMENT BILL**

HON MINISTER OF FINANCE: Honourable Speaker, Honourable Members, it is my pleasure to introduce Amendments to the Income Tax Act (Act 24 of 1981) as amended.

Honourable Speaker, Honourable Members, during the tabling of the 2011/2012 Appropriation Bill, I submitted to this House that Government was seized with the review of the Tax Policy with the objective of identifying alternative sources of revenue. I submitted to this august House that the details of the proposed tax changes will be tabled during the course of the year.

In keeping with this undertaking and objective, I rise today to table specific Amendments to the above referred tax law.

Honourable Speaker, Honourable Members, the proposed tax Amendments form an integral part of the tax policy reform agenda to mobilise revenue and strengthen the stability of revenue flows that is commensurate with economic activities and the ability to pay. The proposal is also aimed at broadening and deepening the revenue base in the context of increasing momentum on regional and international trade liberalisation. In keeping with these objectives, the following Amendments are proposed on the Income Tax Act.

In an effort to harmonise tax law, the Income Tax Amendment Bill introduces various definitions not previously included in the Act. Amongst these definitions, the definition of “education policy” is provided to provide clarity in regard to the tax deduction and exemption of the

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**INCOME TAX THIRD AMENDMENT BILL
HON KUUGONGELWA-AMADHILA**

proceeds of education policies. This Amendment aims to encourage investment in the education of our children by exempting proceeds of such investment policies from income tax.

In terms of this Bill, income received from the sale or transfer of ownership of a mining licence will now be taxable. This means that when a person disposes of a mining licence or shares in a company that holds a mining licence, such income will be taxable according to the normal income tax rate for personal income in terms of individuals and corporate in terms of corporate entities. This is aimed to ensure that we optimise the benefit from our natural resources for citizens of Namibia.

In addition, the Bill seeks to amend building allowances incentive to taxpayers in order to provide more certainties for taxpayers on how to benefit from these incentives.

The Bill further introduces a Section aimed at preventing abuse by some taxpayers who seek to reduce their taxable income. Section 21(a) of the Act is amended in order to insert a provision to introduce ring-fencing of assessed losses of certain trade. Ring-fencing is an anti-avoidance measure to ensure that some people do not use certain transactions and activities to reduce their tax liabilities. These trading activities would include, amongst others, sport activities, gambling, creative art, animal showing and part-time farming or animal breeding.

Higher tax rates are introduced for non-resident shareholders and withholding tax on entertainment fees and management fees or consultancy fees are also introduced for services rendered by non-residents. This measure is aimed at bringing into the tax net non-registered persons or companies who perform professional and/or similar services under work contracts and collect fees without paying taxes in Namibia. The person who pays the non-resident contractor or the contracting party will have to deduct the income tax from the fee payable to the contractor and remit such to the tax office. This is to curb the current situation whereby people come to Namibia, undertake work through which they derive income but they do not contribute to the fiscus.

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The effective date for the commencement of these Amendments, as indicated above, is January 2012 for companies and March 1, 2012, for individuals. There are other minor Amendments, as would be observed in the Bill when we go through the Committee Stage and some of these have different effective dates.

I would now like to appeal to the Members of the House to support these proposals and to facilitate for the Amendments to be approved as soon as possible so that they would take effect. I thank you very much, Honourable Speaker.

HON SPEAKER: I thank the Honourable Minister. Any further discussion? Honourable Minister of Mines and Energy.

HON MINISTER OF MINES AND ENERGY: Honourable Speaker, I rise to support the Amendments tabled the Honourable Minister of Finance.

Honourable Speaker, the Ministry of Finance is the responsible institution that is mandated to collect revenue for the State in order for the State to be able to fulfil its responsibility for the benefit of the Namibian people. At times things are changing and it is also prudent that the Honourable Minister of Finance reviews the tax laws and that is why we very often see her bringing Amendments to the House.

Amendments are being made not only to amend what is currently in place but it is also an opportunity for her to add some of the aspects that we as a country realised need to be included in the taxes. I am saying this having in mind the tax on mining transactions. You have noticed that in the past, companies, through the stock exchange or through other means, transferred the shareholding in companies, which shareholding actually means the resources of the Namibian people, but in the past did not attract any tax to the State at all and, therefore, after thorough consultations with

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the mining sector it was felt that it is not proper for the transfer of minerals, where money is being exchanged and the Government and the State is not getting anything. Therefore, Honourable Minister, I would like to applaud you for bringing this Amendment so that transactions on our resources also invite tax like any other transaction in our country.

This will then also empower and enable us to have control over how our resources are being handled by those who have received rights over them.

With that, Honourable Speaker, I support the Amendment Bill.

HON SPEAKER: Thank you.

HOUSE ADJOURNS AT 15:40
HOUSE RESUMES AT 16:15

HON SPEAKER: Any further discussion? Honourable Kapia.

HON KAPIA: Thank you very much, Honourable Speaker. I rise to make my contribution and also to support this Amendment. Honourable Speaker, these Amendments of the Income Tax Act are long overdue and straightforward. The Minister of Mines and Energy mentioned the tax on the selling of shares and mineral rights to a second party and I want to add that I am very much happy about the tax for non-resident shareholders and consultants and also those companies contracted which are not residents of Namibia.

These Amendments show the seriousness of our Government in terms of compelling those people who want to do business in Namibia to be here

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permanently. This shipping of money from Namibia without the Namibians benefiting should come to an end and, therefore, I really want to support the Amendments and request this House to discuss and debate these Amendments today and dispose of the discussion so that we continue next week with our normal business of this House.

Therefore, Honourable Speaker, I want to Move that the House discusses this Amendment Bill today and dispose of it so that we continue with the agenda of the National Assembly. I support the Amendment Bill wholeheartedly. Thank you very much.

HON SPEAKER: Thank you. Prime Minister.

RT HON PRIME MINISTER: Thank you, Honourable Speaker. Firstly, I want to thank the Minister for introducing these Amendments and also to thank Honourable Moongo for his patriotic understanding that these Bills are very important and we should deliberate on them. I only have three comments.

One is on the education policies. I think this is a very important Amendment and I would like to encourage the young couples to invest in the education of their children by buying these policies and saving for the tertiary education of their children. As much as we like to condemn the Namibian education system, the fact remains that more and more young people are qualifying to enter institutions of higher learning. However, the Government's support Budget is not enough to take care of all the needs of those students who could be supported by Government, therefore it makes sense for people to save for the tertiary education of their children and I would like to thank the Honourable Minister for promoting that culture of saving for tertiary education.

The second issue is the tax on people who sell mineral licences. In the motivation of the Minister she was saying that the taxation will just apply

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to the selling of mining licences. In my view, the taxation should cover even those who are selling mineral rights at exploration level because that is what is being abused now. We just heard that Auryx of Oshikoto Gold sold their shares to another company and that took place in Toronto, but the rights which are being sold are in Namibia. I was asking one of the shareholders who happens to be a Namibian and what he told me is that the sale took place outside Namibia, but he knows that what is being sold is a Namibian asset. If you buy a house in Namibia, you must pay the transfer duties and everything else and I think that should also apply to the minerals and mineral rights of Namibia.

The Honourable Minister mentioned part-time farmers and I did not get exactly what she said and I hope she will explain in detail what it means. Part-time farmers are producing food for this country, they are earning foreign currency for this country through exports and I hope that they will be encouraged to do their part-time farming. I thank you.

HON SPEAKER: I thank the Prime Minister. Honourable Riruako.

HON RIRUAKO: Mr Speaker, I thought the discussion was going to be adjourned, but for that matter, it will lose its flavour and I have to react.

Mr Speaker, this is the time for us to keep what we think is ours. The time has gone when we had to wait for somebody to rescue us, now is the time to defend ourselves. Minerals are our assets and we have been robbed several times. I can name Harry Oppenheimer, I can name Cecil Rhodes and I can attach other names to what I have said, but the evidence is there. I have tried by all means to take them to Court, but they have been tricky and used technical know-how in order to stop me. For that matter, if anyone wants to be our partner, he must believe in so-called joint ventures. I have to say that because most of the people do not like to have joint ventures with us here, but we need to have that in order to reap the fruits of this country together with those who regard themselves as

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foreigners and they cannot operate from here. Once you operate from here, you must have your partner from here. That is the issue and you cannot even say no to that.

From what I read, I could read your mind and that you are really moving in the right direction. (Interjection). I do not want to hear that Honourable Moongo, I do not want to blame you for what you are, I do not know what you defend, how are you going to gain from that?

These assets are for generations to come, they are not for us and for that matter, we have to share with other people who are coming over here. If you want to promote trade and industry, promote partners from here. You cannot take everything that belongs to us and go.

In the past we used to say, take all the diamonds and gold to where you come from, but we want your factories to operate from here. That is our attitude now today. Please, do you hear what I am saying and you know what is the direction? I have to thank the Honourable Member and Honourable Prime Minister who came up with these proposals. This is a must and in our interest. I thank you.

HON SPEAKER: Any further discussion? Minister of Education.

HON MINISTER OF EDUCATION: Honourable Speaker, I support the Bill wholeheartedly and I have only one simple question which is also in line with the points raised by the Right Honourable Prime Minister, that the Amendment will encourage investment in the education of our children. What I wanted to find out on this investment, particularly with respect to the deduction and the exemption of proceeds, does it mean that if somebody wants to buy thousands and thousands of computers for schools, that person will get an exemption or if somebody wanted to buy textbooks in large quantities to take to schools, that would mean a deduction? I just want to get information on that because if that is the case, I would be very happy to hear that, because that would encourage

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more investment in education, particularly by members of the private sector. I support the Bill. Thank you.

HON SPEAKER: Honourable Tjihuiko.

HON TJIHUIKO: Thank you very much, Honourable Speaker. Honourable Speaker, allow me to mention something very interesting that I have seen. I was watching news on television on Sunday and I have seen the SWAPO Vice-President and the Secretary-General in Aminuis. I was wondering what they were doing there, but nevertheless, they were welcomed, they even enjoyed our trees to park their cars and I want them to go back again. Coming back to the ...(Intervention)

HON RIRUAKO: Do you know that I invited my Colleagues when they were in Aminuis and I sent my message through Honourable Muharukua that I would like to chat with you before you go where the Chief used to be and I did not get any response, but you went to look at the place where your elders were roaming around, for you to take care of it. I thank you for that, but on the other side I did not even hear what was the purpose.

HON SPEAKER: Minister of Justice.

HON MINISTER OF JUSTICE: Thank you, Comrade Speaker. I rise to add my support to the tabling of this very important Bill and I would just like to point out one aspect that I appreciate very much.

Of course, my youngest child is at university level, so I do not have any conflict of interest, I do not have a grandchild yet, but the young people

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who are of childbearing age should really appreciate this type of legislation because it is going to save you in the long run. The exemption given to funds that are set aside for education purposes, where you will have a policy to take care of the education of your children, will be appreciated. (Intervention)

HON DEPUTY MINISTER OF WORKS AND TRANSPORT: I would like to pose a question to my senior Comrade. Comrade Ithana, you are doing very well, but I just want to find out, are you saying that now that there is this kind of Bill on the table that will definitely become a law and that will allow those who have children to benefit immensely from education, are you probably encouraging that we should go seriously on the work and produce as many as possible to benefit from this? (Laughter)

HON MINISTER OF JUSTICE: Thank you, Comrade Speaker, the question by Honourable Ankama is quite relevant, Namibia is faced with so many disadvantages. We have been calling for investors to come to Namibia and invest and some of them who would like to do so, will eventually get discouraged when they hear about the statistics pertaining to how many we are. Maybe this is an indirect encouragement for the population growth.

Comrade Speaker, I remember at one point the Honourable Minister of Finance and I cannot remember whether it is the current one or one of the previous ones, once mentioned in Parliament that Namibia does not have a saving culture. We live from hand to mouth and that does not make us economically strong and when our children grow up, they find us ill-prepared financially to support them. I see the benefits in this law, that we are being encouraged to take up these policies that the Ministry would exempt from attracting the type of tax that is normally applied.

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The Bill was just tabled and we are still to digest it, but from the looks of things, this is a positive approach to our financial situation and, therefore, we should embrace it. Hence I felt I should add my voice to those who have supported the Bill and I thank you.

HON SPEAKER: I thank the Minister. Honourable Nujoma.

HON MINISTER OF FOREIGN AFFAIRS: Thank you, Comrade Speaker, I also rise to give my full support to the Income Tax Third Amendment Bill. I think the previous speakers have spoken about the exemption from tax on education policies taken by parents and I think this is a good thing and we should encourage it, because if you look at our Education Budget, those responsible parents who ensure that the future of their children is taken care of will reduce the burden on the State. It is a good thing and those who can afford should be encourage to save the little money they have so that they pay for their own children. Of course, those who are not able, Government will take care of the children, as it is doing now, because a substantial chunk of the Budget is always dedicated to education. I think that is a good policy, we should continue to pursue it.

Another issue that I also support is the taxes on the sale of mineral licences and mineral rights. All these are very important. You just hear of billions of dollars being exchanged in London or in Australia and yet the Namibians do not benefit. Therefore, we need to look carefully at these issues. These are our minerals and they are not infinite, they will one day be exhausted and what would the Namibian people have gained? I support wholeheartedly the positive move by the Minister.

The third issue is manufacturing, that allowances should not be provided for goods that are not manufactured in Namibia. Comrade Minister, I would like you to look at this issue carefully because I know that there are some fishing companies that are importing certain species to be processed in Namibia and I understand that these fishing companies are employing

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a sizeable number of Namibian people. It is important that we weigh and balance the benefits so that we do not discourage these fishing companies that are spending a lot of money to send their vessels into the deep sea and would like to add value in Namibia. These are positive things which need to be encouraged. If they add value here they create jobs and the most important is not to discourage them but instead encourage them.

We were falsely told here and it was capitalised by what I would call irresponsible commentators, newspapers and some Members of the Opposition that the unemployment rate stands at 52.2% and some of us did not agree with these figures. We have raised objection and we will continue to raise that objection, because if you look at the ILO definition, people who are employed seven days a week are considered to be employed. (Intervention)

HON TJIHUIKO: May I ask a question? The statistics that you are referring to, I was one of the people who had a question mark on the 52%, but it was the official figure presented by the Honourable Minister of Labour and I believe those statistics were approved by Cabinet. Therefore, I agree with you, but I think Honourable Ngatjizeko can explain to us what method has he used to get to this 52%.

HON MINISTER OF FOREIGN AFFAIRS: I was saying that because of this high unemployment rate we should consider this issue carefully and weigh the benefits to the Namibian people. If people want to come and add value here, they should be encouraged if they are in the true sense of the word creating jobs. If there are taxes we should consider it carefully because sometimes it is not necessary to tax them, because the goods are not going to be used here, they are just processing it here and taking it to other countries. Countries such as Dubai and Singapore are successful because they are service-oriented countries. They provide

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services to trade, shipping, etcetera and they earn a lot of money.
(Intervention)

HON RIRUAKO: May I ask a question? If the policy of the countries you mentioned is applied here as well, then we have a balance. Mauritius is selling without taxing, giving exemptions. It has to come from both sides, then it is valuable for both sides.

HON MINISTER OF FOREIGN AFFAIRS: I agree with you. I was in Aminuis this weekend and I am happy that you recognised that we were there. That is democracy, that is tolerance.

I was saying that these countries serve as service markets. Anything that is manufactured in China has to go through Dubai and they have made good money. There are tax exemptions and we should not destroy the little golden eggs we would like to lay.

Comrade Minister, that is the only thing I wanted to add. While I fully support this Income Tax Third Amendment Bill, I want us to take those things into consideration so that we do not discourage people who want to do business in Namibia and add value in this country, also bringing in skills. Thank you very much.

HON ULENGA: I Move that the Debate be adjourned until Tuesday, next week.

HON SPEAKER: The further consideration stands adjourned until Tuesday, next week. The Second Notice of Motion is one by the Honourable Minister of Finance. Does the Minister Move that the Bill be

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**FIRST READING: VALUE ADDED TAX
AMENDMENT BILL
HON KUUGONGELWA-AMADHILA**

now introduced?

**INTRODUCTION AND FIRST READING:
VALUE ADDED TAX AMENDMENT BILL**

HON MINISTER OF FINANCE: I so Move, Honourable Speaker.

HON SPEAKER: Who seconds? Any objections? Agreed to. Will the Honourable Minister table the Motion? The Secretary will read the Bill a First Time.

VALUE ADDED TAX AMENDMENT BILL

SECRETARY: *Value Added Tax Amendment Bill.*

HON SPEAKER: Does the Minister Move that the Bill be now read a Second Time?

HON MINISTER OF FINANCE: I Move so, Honourable Speaker.

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HON SPEAKER: Objection? Agreed to. The Minister has the Floor.

**SECOND READING:
VALUE ADDED TAX AMENDMENT BILL**

HON MINISTER OF FINANCE: Thank you, Honourable Speaker, Honourable Members. I rise to motivate Amendments to the Value Added Tax Act.

During the severity of the global financial crisis and economic downturn, domestic policy response was called upon to provide the necessary support to the Namibian economy and households, especially for the low-income individuals. The Government during that time zero-rated certain goods and services for VAT purposes to enable citizens to afford acquiring them. These measures were well received by our citizens and some of the measures benefited the low-income earners. However, in some sectors little or no significant benefits were passed on to the low-income earners. In addition, the relief extended during difficult economic times is not intended to continue *ad infinitum* even after conditions have improved.

With economic recovery emerging and headline inflation at relatively low levels, the Value Added Tax Amendment Bill intends to amend the supply of health services from being a zero-rated supply to an exempt supply so as to be in line with the broad international treatment of health services under the VAT law.

Exemption means that private health service supplies are not longer required to register and bear compliance costs associated with Value Added Tax registration and as such cannot claim input VAT refunds from the Receiver. However, they will continue to offset their Value Added Tax expenses against their taxable income.

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This Amendment also strengthens equity principles of the tax system by ensuring that health and education services are treated on equal footing under the Value Added Tax law. In its current form the Value Added Tax Act does not allow taxpayers who are dissatisfied with the decisions of the tax administrators to appeal to the tax tribunal to hear their objections regarding VAT matters, as is the case under the Income Tax Act. To provide an efficient and effective dispute resolution mechanism for taxpayers, a new provision allowing taxpayers to appeal to the Tax Tribunal is added.

Honourable Speaker, Honourable Members, besides the proposed Amendments as elaborated earlier under the motivation for the Income Tax Amendment Bill and also the ones that I have outlined in terms of the Value Added Tax Bill, Government is also seized with the assessment of other forms of alternative sources of revenue, the details of which will be introduced during the course of next year. These include Amendments of the corporate income tax for mining companies, transfer duties on members' interest and shares in companies holding immovable property, increase of the VAT threshold and in this regard consultations are ongoing with stakeholders. Once these consultations are concluded, we will table the Bill for the consideration of the House.

Further, specific environmental taxes will be introduced under the Customs and Excise Act and an export levy will be introduced to provide for the imposition of an export levy on the export of raw materials. The levy will range between zero to 2% of the value of raw materials exported. Government is also seized with the determination of the differentiated rate in this regard.

The proposed tax Amendment will strengthen revenue flows while maintaining the principles of equity and efficiency. We have given due regard to the related tax burdens and maintaining a competitive environment for the economy in coming up with these proposals.

I also wish to stress that our Government has undertaken wide consultations with stakeholders, the outcome of which has been

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considered as much as possible in coming up with these proposals.

The revenue flows from the proposed Amendment would strengthen our capacity as a country to fund critical development programmes. In this regard, I want to count on the collective support from the Honourable Members of this House towards this Bill.

It is now my honour to submit the Amendment Bill and to call upon the House to favourably consider the proposals that we are putting forth. I thank you, Honourable Speaker, Honourable Members.

HON SPEAKER: I thank the Minister. Any further discussion?
Honourable Ankama.

HON DEPUTY MINISTER OF WORKS AND TRANSPORT: Thank you, Honourable Speaker. I will be very brief because I would honestly like to support this very important Amendment Bill, but I have a few questions.

Firstly, I am looking at the shop owners and markets, these guys who normally would pass the VAT on to the customers or ordinary citizens. Of course, we are living in the free market economy, but how far do we have access to their dealings so that we could at least understand that indeed these guys are not charging the ordinary people more than they should? A free market economy is a very difficult one, it is also a broad term, but that does not necessarily mean we should not be in a position to control. What control mechanism is in place to ensure that we are not under-taxing them in terms of VAT and that they are not asking more from the citizens?

I do not know whether this issue resorts under VAT or the normal taxation, but the absentee landlords are making exorbitant financial gains

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in this country. They are not here and when it comes to willing buyer, willing seller, we are the ones suffering the most. These people have large properties in this country. Is there no way of having some kind of tax in place to make sure that they are taxed in such a manner that they understand that either they have to sell the property they own to the State or to the citizens of this country? Some have more than one property, big farms and I just want to find out if there is any way we can incorporate that kind of extension to include them as well. Let us make sure we force them, if they are not selling willingly, we force them to sell because after all, this is our country and it is our land. I just wanted to contribute to that extent and I support the Value Added Amendment Bill. I thank you.

HON SPEAKER: I thank the Deputy Minister. Prime Minister.

RT HON PRIME MINISTER: Thank you, Honourable Speaker. I thank the Honourable Minister for introducing this Value Added Tax Amendment Bill and I only have a small question.

The Amendment to abolish the supply of medical or paramedical services as a zero-rated supply is justified because when you supply educational materials they are not zero-rated, if I understood clearly and she is arguing that this is for equity purposes. Fine. I thought it could have been more useful for her actually to zero-rate educational materials under the Palermo Agreement, so that these materials become affordable to many people. Books are very expensive and the reason why some of our teachers are struggling with language is because there are not even novels anywhere to be found for people to read because of the price of these books. I would have thought that equity could have been achieved in this regard by zero-rating textbooks and other educational materials. Thank you.

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HON SPEAKER: Thank you. Honourable Nambahu.

HON DEPUTY MINISTER OF JUSTICE: Thank you very much, Comrade Speaker. I also just want to add my support to this Amendment Bill.

In these times we are living in, I cannot see any responsible and patriotic person opposing the imposition of taxes for purposes of enhancing revenue collection, because we know that the debt crisis and all these other things affecting other areas are likely to head our way. I would like to think that any patriotic person, whether natural or juristic, should support this. In these hard times all Governments in the world are looking for avenues to increase their revenue and we have seen how the colonial metropolis are actually running to the former colonies. The King of Spain was in Latin America a few days ago, urging the Latin Americans to work with them so that they can plug the holes in order to weather the storm. Barack Obama was doing the same in Asia-Pacific, Britain was in the Commonwealth, so everybody is looking for avenues to increase their tax collection. Therefore, I would like to support whatever is to be done in that regard.

I only have a question regarding the VAT Tribunal, whether it is only for purposes of appeal or is it something permanent? For example, if I buy somewhere and I know this person is not paying tax as a juristic person, will I not have the right to report that person to that tribunal to say that on his receipt there is no provision for VAT? Will I be asked for a *loco standi*, to ask me how relevant is this to you, you have no business asking me to pay tax or is it just there for appeal?

I have listened to many of our leaders saying that this is the time for innovation, but it is also time for us to jealously guard what is ours in accordance with Article 100 of the Namibian Constitution which says the resources of this country are State assets. I want us to exercise our minds in that direction, whether that tribunal can also not be approached by

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citizens who have seen that there are others who are violating our tax regimes. With that, I support the Bill wholeheartedly.

HON SPEAKER: Thank you. Honourable Iilonga.

HON DEPUTY MINISTER OF AGRICULTURE, WATER AND FORESTRY: Thank you, Honourable Speaker. I rise to support the Amendments and I only have two questions.

Firstly, the suppliers of medical and paramedical services used to register and by doing that they could increase their price because they could hire lawyers to apply for them to be allowed to supply medicine in the country and now they are exempted. The question is whether they are going to reduce the price of medical services we are paying through the medical scheme. We are paying a lot of money and will they, while having savings, reduce the price of their medication? That is the only question I have to the Minister and I support the Bill.

HON SPEAKER: I thank the Deputy Minister. Honourable Riruako.

HON RIRUAKO: Hopefully we have come to the point where we are supposed to view the world's direction. We did not use to be on our own, those who supported us said we should add value to what we have. They do not say it verbally, but indirectly and now the time is to say that do your thing to reach the tempo of the world of today. That is why we have to. I support the Honourable Member who has spoken, who said we are late to be able to cope with the momentum, we do not have assets which were put aside. I was talking to Honourable Mbumba when he was the

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Minister of Finance and he said we have those little things which are not big and I said, why do you not add value to what you have in order to accumulate we are supposed to. However, now is the time for us to reach that height. We cannot keep on tolerating this, this is the time to have something to depend on and not to depend on foreign aid. It is good money but it has some insults behind it. Therefore, we have to know what we are doing for the future generation to be independent financially and also politically.

What happened here is , we do things freely and defending positions behind us. That must be done, whether we want it or not. We do not mention these things openly, we go step by step and try to change things in order to adhere. That vision or mission must be there. Without a vision you cannot accomplish what you want. You have Vision 2030 and that vision must be there to be accomplished.

Honourable Nambahu, I must thank you for that kind of direction and I thank the Speaker for allowing me to say what I wanted to say.

HON SPEAKER: Thank you. Honourable Tweya.

HON DEPUTY MINISTER OF TRADE AND INDUSTRY:
Honourable Speaker, I rise to give my support to this Amendment and I have four questions for clarity.

The first one is on the registration for VAT. Has a ceiling been looked up, seeing that the value that was determined when the VAT was established is no more the same value now? Is it still the same value or has that changed?

The second one is on the Tribunal. It is referred here, *“to provide for a Tax Tribunal for VAT appeal cases only.”* Does Section 73(a) of the

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principal Act give the same composition for the ordinary Tribunal, because this one makes provision for a Tribunal for appeals. That Tribunal created in terms of this one, is it the same in terms of the composition and the functions?

The third one is on the practical experience at the border posts for those that submit VAT claims. I remember others having a problem at Oshikango and even at Hosea Kutako. Is there perhaps now provision made for those that are entitled to claim VAT, especially at the border posts, in the local currency? I know that when we go out, you can claim at the international airports, but I am not sure whether we have addressed these concerns that some tourists experienced here at our border posts.

The fourth question is on the other challenge that we had, the purpose for zero-rating or exemption of some products or commodities and we had the experience that you zero-rate maize or sugar or cooking oil and the retail companies the next day increase by exactly the same margin that you have zero-rated or exempted. The challenge we have is that we did not have a monitoring body to ensure that the beneficiaries really benefit from the good intention of the Government. I would have expected the creation of such a body as well, just as we had created a Tribunal body to listen to appeal cases. With those few questions for clarity, Honourable Speaker, I support the Amendment Bill wholeheartedly. Thank you.

HON SPEAKER: Thank you. Honourable Von Wietersheim.

HON VON WIETERSHEIM: Thank you, Honourable Speaker. There is a reference in the Motion as well as in the heading of the Bill which the Honourable Minister unfortunately did not motivate or explain and that is

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HON SCHLETTWEIN

to allow for a month-end cut-off date of a tax period of not more than ten days after the last day of the month. If that means what I think it means, this is a very critical question and I would like to have the chance to properly read the Amendment or investigate further, maybe even have some personal consultation and for that reason I would like to adjourn the Debate until Tuesday.

HON SPEAKER: The further consideration of this Bill stands adjourned until Tuesday, next week. The Third Notice of Motion is one by the Honourable Minister of Finance. Does the Deputy Minister of Finance Move that the Bill be now introduced?

INTRODUCTION AND FIRST READING:
STAMP DUTY AMENDMENT BILL

HON DEPUTY MINISTER OF FINANCE: I so Move, Honourable Speaker.

HON SPEAKER: Secondment? Objection? Agreed to. Will the Deputy Minister table the Bill? The Secretary will read the Bill a First Time.

STAMP DUTY AMENDMENT BILL

SECRETARY: *Stamp Duty Amendment Bill.*

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**SECOND READING: STAMP DUTY
AMENDMENT BILL
HON SCHLETTWEIN**

HON SPEAKER: Does the Deputy Minister Move that the Bill be now read a Second Time?

HON DEPUTY MINISTER OF FINANCE: I so Move.

HON SPEAKER: Any objection? Agreed to. The Deputy Minister has the Floor.

**SECOND READING:
STAMP DUTY AMENDMENT BILL**

HON DEPUTY MINISTER OF FINANCE: Thank you, Honourable Speaker. I hope that we will have enough time to dispose off this brief Amendment that I have the pleasure to introduce and it is the Amendments to the Stamp Duties Act (Act 15 of 1993), as amended.

Honourable Speaker, when the Honourable Minister earlier this year tabled the Amendments to the Transfer Duty Act that is the sister Act to this one, namely Act 14 of 1993, this House approved that the threshold for transactions that attract transfer duty would be raised to a threshold of N\$400,000. This brought relief to low-income earners who acquired immovable property.

Honourable Speaker, in order to align and to bring the same relief in terms of the stamp duties on transactions involving immovable property, it is now my pleasure to propose the introduction of a similar threshold on stamp duties for a transfer deed that will ensure that the low-income earners who purchase immovable property below N\$400,000 also need

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RT HON ANGULA / HON KAPIA**

not to pay stamp duty on the transfer deed and will, therefore, enjoy the same treatment as under the transfer duty regime. I thank you, Honourable Speaker.

HON SPEAKER: Thank you. Any further discussion? Prime Minister.

RT HON PRIME MINISTER: Thank you, Honourable Speaker. This is a Christmas gift and I want to thank the Honourable Deputy Minister for really thinking about the low and middle income earners who want to own houses, that when they buy a house which is worth less than N\$400,000, they will not be required to pay stamp duties.

I only have one question to Honourable Schlettwein. What is the magic about N\$400,000? Why do you not make it N\$500,000? Then anybody, from the shack dweller to a Director in Government, can benefit from this Christmas gift. Can you consider to make it N\$500,000? Thank you.

HON SPEAKER: Thank you. Honourable Kapia.

HON KAPIA: Thank you very much, Honourable Speaker. I want to join the Right Honourable Prime Minister in thanking and congratulating the Ministry of Finance. That was also my concern, why N\$400,000 and not N\$500,000, but I just want to caution that we can do good things, we can approve good laws, but if there is no support from other institutions responsible for land and Local Government, this will not be realised because the Local Authority Councillors are failing to control the land price and at the end of the day you can increase the threshold but the land will be very expensive. You will never find a house in Namibia costing less than N\$400,000 as from the day we pass this law. Just watch out.

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HON IILONGA**

That is where the problem comes in. I think the Local Authority Councillors in this country must be empowered and if there is a need to amend a law, it must come here so that we are able to help our people. The idea of this Amendment is really to help our people, the Civil Servants and other people with low salaries to be able to buy houses.

The banks have already announced that they will never approve a loan of less than N\$400,000, so what is this we are doing now?

The Local Authority Councillors must really look at the price of land, then we will be able to talk.

I support the move by the Ministry of Finance but I caution the Local Authority Councillors in this country to come up with a clear cutline when it comes to land, so that we are able to help the poorest of the poor. I support the move but with that caution. Thank you very much, Honourable Speaker.

HON SPEAKER: Thank you. Honourable Iilonga.

HON DEPUTY MINISTER OF AGRICULTURE, WATER AND FORESTRY: Thank you, Comrade Speaker. I thank the Minister of Finance, through the Deputy Minister who moved this very important Amendment, but I have the same concern as Comrade Kapia. I still live in Katutura where you used to find houses between N\$200,000 and N\$300,000, but Comrade Speaker, today a two-bedroom house costs from N\$500,000 and more. If the intention is for this Amendment to really do justice, we have to do away with the auctioning of land by municipalities. The developers, the people with money, bid, get the land and just build these so-called flats. I regard them as single quarters, but they give them very nice names and you find a person renting that house at N\$3,000 to

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N\$4,000 a month and it is just a room. How do you expect this N\$400,000 to help anybody?

The municipalities and the private sector are for profits in this capitalist system, so how are we going to make sure that this will help the poor while the houses are too expensive now? If we want them to benefit, let us increase it to N\$700,000, because that is the only way they will not have to pay stamp duty. (Intervention)

HON DEPUTY SPEAKER: I would like to put a question to the Honourable Deputy Minister of Agriculture, Water and Forestry. Yes, I do agree that the price of houses is really skyrocketing. I would just like to ask the Colleague, are you aware that our youth, in particular the educated ones, even if they happen to have a PhD will not be able to afford a house. From now onwards, up to maybe ten years, the people in Greenwell Matongo who were settled on small plots, will be better off than these PhD holders. Are you aware of that?

HON DEPUTY MINISTER OF AGRICULTURE, WATER AND FORESTRY: Thank you, I am aware of that and the Prime Minister suggested N\$500,000. At least then we may hope that those who are lucky enough to find a house of N\$500,000 will not have to pay stamp duties, but it will not really help to have a law which is not benefiting anybody. It is there on paper, but the prices of houses are above that threshold. I support the Amendment with that request, whether you cannot amend it to be at least N\$500 000.

HON SPEAKER: Thank you. Honourable Riruako.

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HON RIRUAKO**

HON RIRUAKO: It is a pity that the day is gone and we cannot say what we are supposed to say. Honourable Speaker, it is not just the N\$500,000 you are talking about, the estate agents are getting richer and richer. N\$80,000 extra is really unfair and we allow this to happen. The erven that were taken free of charge, how many houses were erected on those erven and to whom does it belong? In the municipal area they sell everything and they earn millions and billions.

Now you go to the farms, they start with N\$500,000 per hectare. What is that? Here around Windhoek, N\$500,000 per hectare. What is that and you allow these things to happen and you just keep quiet because it is freedom of everything. Where have you seen this in the whole world, in an African country like ours and we just keep quiet and fold our hands like this. This is unfair. The Parliament does not have anything to say about this. You cannot buy a house under N\$2 million, N\$3 million, N\$5 million or N\$7 million. Who can argue with me? Mr Von Wietersheim, can you argue with me on that? It is a fact and this is the property of everybody who is sitting here. The same people decide and tell us this is the price they want. That is unfair to our public and to our Nation as a whole. That is what it is. I am not here to play games.

Who are you going to rescue with N\$400,000? Around Windhoek an erven alone costs N\$500,000 to a million. Thank God I was created as a human being, nothing else. (Interjections). You lived somewhere else, you did not live here where we are. We want action, it is unfair and we cannot tolerate it anymore. I am not inciting anybody, I am telling the truth. We have to face it and come up with a solution. That is the name of the game.

I agree with the Deputy Minister of Finance because he is looking for ways in order to have a better country, but there are those who are given freedom of everything and we are here to say yes, yes. Until when? Other countries that are richer came up with a solution and contributed and the erven was given free of charge and you cannot even contribute to others who do not have. We are here to groom the children of this country equally, black and white. We do not live in Europe where racism is

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HON TJIHUIKO**

conducted and they regard it as the norm of the day, we are here and we regard everybody as humans and we accept it. We cannot keep on talking without any actions. I raise my hand to grab yours, where is yours to grab mine? That is the way. If you do not know what we want, we put this on the table for you to eat and you have to take action. Thank you.

HON SPEAKER: Thank you. Honourable Tjihuiko.

HON TJIHUIKO: Honourable Speaker, I rise to support the Ministry of Finance on this critical Amendment. I must admit that this is a very good move that it has taken. I agree to some extent with the question that was posed by the Right Honourable Prime Minister, that why did they decide on N\$400,000 and not N\$500,000 and I think the figures can be looked at.

The interesting thing that I have noticed, Honourable Speaker, the Amendment talks nicely with the Bill that was brought in by the Minister of Lands, looking at the access to land by the poor. They complement one another. It is always good to have Acts that support one another in such a way that once this one has been passed, one can definitely support the other one. I think that is of crucial importance. I do not know whether it happens by accident or by design. (Intervention)

HON DEPUTY MINISTER OF TRADE AND INDUSTRY: May I ask the Honourable Member a question? Honourable Tjihuiko, can you please for the first time in your entire life in this House give credit where it is due for proper planning?

HON TJIHUIKO: Honourable Speaker, I think I have actually said that, it is only that I wanted that confirmation that it was actually thought of, it

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did not happen by chance.

The other point that I want to raise is the prices of houses. If somebody buys a car for N\$800,000, you can pay off that car within 48 to 52 months, but when you buy a house for N\$600,000, you will pay over 18 to 20 years and that is a problem. Those who are selling houses are ripping off the poor. As much as we may wish to ask the Honourable Minister of Finance to raise this threshold from N\$400,000 even to N\$2 million, there will be only a few who are going to benefit from that, it will not address the problem. Let us look at the actual problem and the actual problem is that the way the system of buying houses in this country is designed is killing our people, it is killing us. That is actually the critical point we need to look at.

However, looking at the Amendment, as I said, this is a good move and I support it. Thank you.

HON SPEAKER: Thank you. Honourable Von Wietersheim.

HON VON WIETERSHEIM: Thank you, Honourable Speaker. Though I have sympathy with the Right Honourable Prime Minister and my other Colleagues, I wish to remind them that the Honourable Minister of Finance actually brought these Amendments to increase the income.

Therefore, looking at the N\$500,000 or the N\$400,000, with the N\$400,000 she is giving very little, but for those who are receiving that, that might be quite a substantial part of the expenses when buying a house.

Furthermore, I am not going to get involved in the political discussion of the housing situation, but I can only support this Amendment. Thank you.

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HON UUTONI**

HON SPEAKER: Thank you. Honourable Uutoni.

HON DEPUTY MINISTER OF SAFETY AND SECURITY: Thank you very much, Honourable Speaker. I also want to contribute to the Bill. I think the intention of the Bill and of the Minister is hundred percent good, because we still have ample time to change some of the things. I am saying we have ample time because Government had a good idea to establish NHE in Namibia. The purpose of NHE is to build houses for the low-income group. The prices of NHE houses are reasonable, to me. (Interjections). I am talking about what I know, they are between N\$150,000 to N\$200,000 and I am now comparing to what has been tabled here.

What needs to be done is that we maybe talk to the municipalities to allocate more plots to NHE and then people who cannot afford, can approach NHE and buy houses from them. Then we leave out the private developers because the private developers are the ones who are building expensive houses. That is why I am saying the intention of the Bill is good and we just need to encourage the municipalities to allocate more plots to NHE. If the prices of NHE are going up, the Government can still tell them to reduce. (Intervention)

HON TJIHUIKO: Mr Speaker, may I just give some information? The Honourable Member is talking about Government giving money to NHE to build houses. He is trying to create the impression that they are building cheap houses. Maybe in some other parts of this country, but I have applied for an NHE house in Okakarara and the price of a house in Okakarara is N\$235,000. I have applied for the last four years and I have been waiting for that house to be built. If you want to help the poor, look at some other options of allowing the municipalities to do that, but this NHE and the bureaucratic structure of that organisation will not do any justice to the building of low-cost houses, just forget it.

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ADJOURNMENT

HON DEPUTY MINISTER OF SAFETY AND SECURITY: I do not know whether the Honourable Member qualifies for NHE. We are talking about Civil Servants who are earning something like N\$50,000, N\$70,000 or N\$100,000 per annum.

HON SPEAKER: We shall now adjourn until Tuesday, 14:30.

HOUSE ADJOURNS AT 17:45 UNTIL 2011.11.22 AT 14:30

**ASSEMBLY CHAMBERS
WINDHOEK
22 NOVEMBER 2011**

The Assembly met pursuant to the adjournment.

HON SPEAKER took the Chair and read Prayers and the Affirmation.

MOTION OF CONDOLENCE

HON SPEAKER: I have three announcements to make. My Office has been informed this morning about the passing on of a former Member of Parliament, Honourable Margaret Jwangamang on Friday, 18 November 2011. She was a Member of the National Assembly from 2000 to 2005 and served on the various Standing Committees of the National Assembly, which include the Standing Committee on Human Resources and Social and Community Development, Committee on Constitutional and Legal Affairs, Committee on Foreign Affairs, Defence and Security and the Commonwealth Parliamentary Association Namibia Branch. She served the Namibian Nation through this august House with honour and dignity and contributed immensely in her humble manner towards nation-building.

A memorial service will be held on Wednesday, the 23rd of November 2011 at the Holy Redeemer Catholic Church in Katutura, starting at 18:00 and she will be laid to rest on Saturday, 26 November at Epukiro Village in the Omaheke Region. I now ask the Honourable House to rise and join me in the observance of a minute of silence.

THE HOUSE OBSERVES A MINUTE OF SILENCE

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**MOTION OF CONDOLENCE
HON IIVULA ITHANA**

HON SPEAKER: Honourable Minister of Justice, if you want to add something which I have not covered, you are welcome to do so.

HON MINISTER OF JUSTICE: Comrade Speaker, Honourable Members, the late Margaret Jwagamang was a Member of the SWAPO Party for a long, long time and eventually ended up in this House as one of us. We know at one point she had that unfortunate accident where her health was affected, but she continued to serve the Party. It is with shock and disbelief that we heard that she has left us, but I know her legacy will remain with us. I would, therefore, on behalf of the SWAPO Party, the entire leadership and membership, like to convey sincere condolences to her family, her children in particular and to the SWAPO Party membership as a whole. May her soul rest in eternal peace.

ANNOUNCEMENTS

HON SPEAKER: The second announcement: As part of its awareness campaigns on Government intervention aimed at the integration of marginalised communities in the mainstream of the Namibian economy, the Office of the Prime Minister is hosting a National Marginalised Communities Information Day in the Parliament courtyard during tea-break today. All Members are invited to attend the event.

The third notice: I am made to understand, an effort I resist, that the outstanding business of the House that we agreed will be considered between now and Thursday may include – and that is where my resistance comes – consideration until next week and that we will not do. Whatever is now being looked at must be finalised with all deliberate speed and that we adjourn the House coming Thursday.

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**NOTICE OF MOTIONS
HON DR AMWEELO**

HON SPEAKER: Any Petitions? Reports of Standing or Select Committees? Other Reports and Papers? Any Notice of Questions? Notice of Motions?

MOTION ON BUSINESS OF ASSEMBLY

HON DR AMWEELO: Honourable Speaker, I Move without notice, that the proceedings on the first Notice of Motion and Orders 1 to 10 on the Order Paper be, in terms of Rule 90(c) of the Standing Rules and Orders, not interrupted if still under consideration at 17:45. I so Move, Comrade Speaker.

HON SPEAKER: Any Ministerial Statements? Deputy Minister of Trade and Industry.

MINISTERIAL STATEMENT

HON DEPUTY MINISTER OF TRADE AND INDUSTRY: Honourable Speaker, Honourable Members of Parliament, it is my distinct honour and privilege to brief you on the Namibia International Investment Forum and Expo 2011, which Namibia is hosting at the end of this month.

By now most of you should be aware that Namibia will be hosting the Namibia International Investment Forum in partnership with the Commonwealth Business Council (CBC) on November 29-30, 2011, at the Safari Hotel in Windhoek. The event is organised by the Ministry of Trade and Industry in cooperation with local public and the private sector

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HON TWEYA**

stakeholders and the Commonwealth Business Council. It will be officially opened by President Dr Hifikepunye Pohamba on November 29. Concurrently, the first ever “*made in Namibia Expo*” will take place to showcase locally manufactured products at the same venue. This Expo will continue until the 1st of December 2011, while the Investment Forum will end on November 30. There will be a gala dinner on the evening of the 29th of November 2011 and for invited guests to witness the Namibia business awards for deserving businesses.

Before I deal with the arrangements around the Namibia International Investment Forum and Expo 2011, allow me to delve into the reasons why we are staging this event.

Honourable Speaker, Honourable Members, Namibia cannot afford to operate in isolation. We need foreign capital, skills, technological know-how to develop our natural resources and also foreign markets to trade with. Therefore, the Investment Forum and Expo will serve the purpose of promoting available investment opportunities in the areas designated, such as transport, education, property and construction, banking and finance, communication, tourism, agriculture and manufacturing to foreign and domestic investors. Additionally, we are hoping that our SMEs and Namibian companies will establish good linkages with their counterparts from Africa, Asia and Europe for business synergies and expansion into foreign markets. It is also important that we tell those interested in Namibia that we are an open and mature country where the rule of law is supreme and where investors are welcome to invest and operate in a peaceful environment.

The Investment Forum and Expo is one of the means in our quest to diversify the economy from dependent on the production and export of primary products towards industrialisation and also from dependent on one single market source towards multiple market destinations.

Finally, we expect that more foreign direct investment will assist in unlocking many of the hitherto undiscovered and undeveloped economic sectors whose potential is unused. We are expecting over 150 international investors from Europe, United Arab Emirates, South Africa,

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Indonesia, Cuba as well as business delegations from within the SADC Region and beyond, to be led by the Trade Ministers and business chambers. The total number of expected delegates, including Namibians, who will attend the Namibia International Investment Forum is around 500 people.

The Investment Forum will present to potential investors Namibia's economic potential and business opportunities in the following sectors: mining, energy, agriculture, transport, manufacturing and tourism, only to mention a few. Additionally a project centre will be in place to enable bilateral meetings with the purpose of encouraging joint venture discussions and furthermore, all key economic public institutions will have information booths to disseminate information to interested potential investors.

The Forum will include sectors' presentation from Line Ministries and renown international and national experts dissecting development potential in areas, as I mentioned before, mining, energy, finance and others. These are expected to be highly informative, interactive and stimulating sessions where policy-makers, business practitioners and academic intellectuals will approach issues from different, yet complementary, angles.

The event will also witness the awarding of recognition accolades to both local and foreign businesses, including small and medium enterprises which have done much to add value to Namibia's economic development in terms of innovation, employment creation and economic diversification. The specific awards will be given to:

1. Investor of the Year, which includes domestic and foreign;
2. Best Innovative Company of the Year;
3. Entrepreneur of the Year;
4. Best Corporate Responsible Company;
5. Business Leader of the Year; and
6. Lifetime Achievement Awards.

High-ranking Government officials, including Ministers, Governors,

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Councillors and so forth, will be available throughout the conference to engage directly with local and international business people.

With regard to the Expo, 130 local Namibian companies and SMEs from our thirteen Regions will participate in the Expo to present their products. The purpose is to introduce both Namibian and international investors to products being manufactured by local SMEs and to assist such SMEs to network and establish a wider market beyond their Region.

Finally, we expect international investors to show interest in working with our SMEs and further develop their products through capital injection, technological know-how and international market distribution. The Expo will open for the public on November 30 until December 1, 2011. All preparations for the Namibia International Investment Forum and the Made in Namibia Expo are on course. So far we have received confirmation from delegations as far as the United Arab Emirates (UAE), Cuba, Mauritius, Indonesia, Angola, Zimbabwe, Congo Brazzaville, the DRC, Lesotho, Mozambique, USA, South Africa, Zambia, Ghana, Tobago-Trinidad, Germany and many others. Additionally, individual registrations are received on a daily basis, including companies from countries such as the UK, Australia, Nigeria, Italy and Botswana.

I am, therefore, confident that the event will be a resounding success. We have embarked on a media awareness campaign in Namibia and a little bit in South Africa, whereas the international marketing of the event is fully handled by our partners at CBC. However, both Namibia and international companies are to pay a minimal registration fee to participate, whereas invited Government officials are exempted from such payments. More information can be obtained from our website. I will avail the statement to the Honourable Members. The amount is a mere N\$700 for the registration.

Further information on our website, the first website is www.investments.com.na and the second one is www.madeinnamibiaexpo.com.na. Namibians can also directly register at the Namibia Investment Centre and I encourage all to do so before it gets full because of the high interest.

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**HIGH COURT AMENDMENT BILL
HON NAMBAHU**

Honourable Speaker, Honourable Members, with these many remarks, I would like to officially invite you, the Honourable Members, to this Namibia International Investment Forum and Expo, 2011 and I thank you for your attention.

HON SPEAKER: I thank the Deputy Minister for the information. Any further Ministerial Statements? The First Notice of Motion is one by the Honourable Minister of Justice. Does the Honourable Minister Move that the Bill be now introduced?

**INTRODUCTION AND FIRST READING
HIGH COURT AMENDMENT BILL**

HON DEPUTY MINISTER OF JUSTICE: I so Move, Honourable Speaker.

HON SPEAKER: Who seconds? Objections? Agreed to. Will the Honourable Deputy Minister please table the Bill? The Secretary will read the Bill a First Time.

SECRETARY: *High Court Amendment Bill.*

HON SPEAKER: Does the Deputy Minister Move that the Bill be now read a Second Time?

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**SECOND READING: HIGH COURT
AMENDMENT BILL
HON NAMBAHU**

HON DEPUTY MINISTER OF JUSTICE: I so Move.

HON SPEAKER: Any objection? Agreed to. The Deputy Minister has the Floor.

SECOND READING: HIGH COURT AMENDMENT BILL

HON DEPUTY MINISTER OF JUSTICE: Thank you very much, Comrade Speaker. I rise to provide the House with a detailed motivation on why I would urge you, Honourable Members, to support the adoption of the High Court Amendment Bill, 2011.

This is a very brief Bill which has an important purpose and potential and if approved, will greatly improve the delivery of justice in the High Court of Namibia. The adoption of this Bill will complete the national project which the Government started in 2005 to decentralise the services of the High Court, one of the most important pillars of our State, to the most northern parts of our country.

After the completion of the building for the Oshakati Division of the High Court, the Judge President of the High Court had assigned permanent Judges to that court, dealing exclusively with criminal cases on the strength of the provisions of the Criminal Procedure Act, which enables the Prosecutor General to decide where to indict anyone accused of a crime.

From statistics provided by the Registrar, the Oshakati Division of the High Court was able to finalise 23 criminal cases, 106 criminal appeals and 736 criminal reviews since the two Judges were assigned there in February 2009.

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AMENDMENT BILL
HON NAMBAHU**

Mr Speaker, Sir, Honourable Members, it is worth mentioning that from August to September 2011, the Judge President assigned three Acting Judges to Oshakati who amongst them disposed of 52 appeals over a period of six weeks. This is a very impressive record and we must all be proud of these special efforts being made by the Judiciary to speedily finalise the appeals and to bring finality to cases.

The biggest problem facing the Judge President at the moment in making the Oshakati Division of the High Court operational is the absence of legislation that enables him to allocate civil and labour cases to that FTG division. As our law stands at the moment, it is not possible to assign general civil jurisdiction to a Court outside Windhoek. Hence the propose Amendment Bill. Once the Bill before the House is enacted into law, a significant proportion of the civil cases being heard in Windhoek, although involving parties residing in the north, can now move conveniently and economically to be heard in the north.

Comrade Speaker, Honourable Members, the objects: The proposed Bill concerns only the High Courts. The complete unitarity of the Judiciary in Namibia at High Court level is in line with the full unitary system of Government in Namibia. In short, there is a single High Court of Namibia with constitutional, statutory and common law powers and these powers are exercised by means of uniform rules, known as Rules of the High Court throughout the whole of the Territory of the Republic of Namibia. Thus, the jurisdiction of the High Court is national irrespective of where in Namibia the High Court is sitting. The promised Amendment has been formulated with this constitutional fact in view and it has been necessitated by the construction of a High Court complex based in Oshakati in pursuance of the Government's avowed policy of decentralisation of State functions and duties.

What is more, the proposed Amendment is forward-looking in that it envisions the reality that the High Court services and facilities may in future be further decentralised into the other parts of Namibia, so as to bring the services and facilities provided by the High Court closer to the greater majority of the people of Namibia.

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AMENDMENT BILL
HON NAMBAHU**

Purpose: The Bill seeks to amend accordingly the High Court Act, Act 16 of 1990, the principal Act, so as to provide for the creation of local divisions of the High Court and for matters incidental thereto. I think those who are familiar with the South African system would have heard of the Bloemfontein Division and this kind of thing.

Section 4 of the principal Act is, therefore, amended in such a way that the seat of the Main Division of the High Court is in Windhoek.

The President may, by proclamation, establish local divisions where the need to do so arises. After the President has created a local division, as aforesaid, it is incumbent on the Judge President, by notice in the Gazette, to determine the geographical area of jurisdiction of a local division that is established by His Excellency the President and the seat of such a local division.

It is also the responsibility of the Judge President to assign Judges or Acting Judges to local divisions for the proper administration of justice at the High Court level.

Consultations: The Honourable Judge President consulted the Judge President Advisory Committee on the Rules of the Court, consisting of representatives of the Government Attorney, the Prosecutor General, Judges of the High Court and the Law Society of Namibia and their views have been accordingly incorporated in the formation of this Bill.

Implications: There is no direct financial implication and any incidental financial implication flowing from the operation of this Bill after it has been passed shall be borne by the Budget allocation to the High Court under the annual Budget of the Ministry of Justice.

Personnel: There is also no direct personnel implications over and above the approved personnel establishment of the High Court and I am emphasising these issues because time and again we do see Bills and documents coming and we hear that there are no financial implications and I think this is a tendency that we should really do away with. There

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AMENDMENT BILL
HON MUSHELENGA**

are always impacts, there are always implications and if we follow the template whereby the financial implications are studied, the environmental implications are studied and the social implications, we would not experience the problems we do with most of our legislation. Also, when it comes to consultations with those involved or affected, then we would have done a good job and the problems envisaged will definitely not be encountered. I am not saying we are the most exemplary and the most shining example, but all I am trying to say is that an example should be set and implications should be spelled out for the Legislature to be guided.

I Move that the House approves the proposed Bill to amend the High Court Act of 1990 in order to facilitate further decentralisation of the High Court services in our country and to our citizens. With these remarks, I beg your indulgence to approve the Bill with supersonic speed. I thank you.

HON SPEAKER: I thank the Deputy Minister. Honourable Mushelenga.

HON DEPUTY MINISTER OF FOREIGN AFFAIRS: Thank you very much, Honourable Speaker. I rise to support the introduced Bill, the High Court Amendment Bill amending the current High Court Act in order to provide for local divisions.

As Honourable Nambahu has said, those of us that read a number of court cases have seen that countries like South Africa have divisions, Bloemfontein, Cape Town, Transvaal and so on.

The reason why one creates so many divisions is, firstly, for the purpose of efficiency. This Bill, undoubtedly, is aimed at ensuring efficiency in our justice system and not only criminal. As the Honourable Deputy Minister of Justice has said, currently civil claims are only heard in the

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main Court in Windhoek, but by creating local divisions we are going to have a number of civil cases heard in this Court and it is going to lessen the backlog of civil cases currently only heard in the capital.

Secondly, it is cost-saving not only to the Ministry of Justice, but also to the Ministry of Safety and Security which needs to transport prisoners from one place to another in order to go and stand trial. They would no longer have to come from Oshakati to Windhoek for trial and maybe soon they would not have to come from Keetmanshoop to Windhoek, but the Court will be right there at their doorsteps.

It is also an exposure to the public out there as to how the court system works, because I will compare this to when the National Council this year had a sitting in Walvis Bay, that the public out there in the Region was able to see how this branch of the Legislature works. Now they will also be able to see how this branch of Government, the Judiciary, works at a very high level, because currently many people are only exposed to the magistrates' Courts.

What is important, Honourable Deputy Minister, is that as time goes on the Ministry also has to look at the resources needed for this local division. Currently the Oshakati High Court library has limited sources. When one wants to look at a number of cases, many of the sources are not available at the local division and I think the Ministry needs to ensure that these local divisions are adequately resourced, just like the main division here in the capital and it is my understanding that the Labour Court, which is a division of the High Court, will also be decentralised to this local division so that aggrieved employees or employers can be heard in their Regions where these local divisions are going to be created, to save them from travelling to Windhoek.

Honourable Speaker, Deputy Minister, this was the right thing the Ministry did and I know one Honourable Member from the other side, whose name I will not mention, will have a problem, but this is the right thing which the Ministry did. With these words, I support the Bill.

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HON SPEAKER: I thank the Deputy Minister. Honourable Maamberua.

HON MAAMBERUA: Thank you, Honourable Speaker, I will be brief. I think the justifications given by the Deputy Minister of Justice suffice, however, looking at the Bill before us, one would want to approach this with the belief that lawyers are supposed to be exact and precise in both the definitions and language and therefore, I have one or two points to clarify and I hope this is not something that was rushed through as an afterthought.

On Page 3 we have one “*Judge President*” without a hyphen and “*Judge President*” with a hyphen. What is the difference? Are these two different offices that you are talking about or not?

Paragraph 5 on Page 3: “*If any civil cause, proceeding or matter has been instituted...*” Maybe it is supposed to be “*civil case*”, unless it is a new legal term that we are not aware of.

Those were some of the observations, otherwise I support the Bill and I am happy in the context of the explanations already given. Thank you very much.

HON SPEAKER: Thank you. Honourable Shixwameni.

HON SHIXWAMENI: Thank you, Honourable Speaker. I will also be brief. I would like to express support for this decentralisation of the High Court. It will, as the Deputy Minister said, help to ease the burden on the current two High Courts, that is the central one in Windhoek and the one in Oshakati. However, I would like to point out that we hope that there shall be money available to these divisions of the High Court in the

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Regions because we already have a problem with the magistrates' Courts. I am sure the Members in the Standing Committee on Constitutional and Legal Affairs of Parliament would testify that they do not have the necessary resources where they operate to ensure that they are indeed effective and efficient. When we create such divisions, we also need to make the necessary funds available so that the Courts are able to operate. That is one point that the whole Ministry and, indeed, the whole Government will have to take into account, that any decentralisation needs funding. We should not cheat ourselves that we can decentralise functions and that those functions would not need money. That is where I contend the Deputy Minister's assertion that there will be no money needed for this decentralisation function as it cannot be true, because when a Judge has to go to Caprivi to preside over a case, he would need to be paid S&T, he would need to be paid accommodation. Therefore, we should not fantasise that this time around there would be no money needed. He would need transport to travel from here to Rundu to preside over a High Court case.

Therefore, while supporting the decentralisation function, I think what we need to emphasise is that the necessary resources be made available to the people to be able to perform their functions effectively and efficiently.

Although this is a very straightforward Bill, I would like to request that the National Assembly not be cajoled into passing Bills at short notice. It is a very bad legislative practice. Members of Parliament need to be given sufficient time to study the Bills, we need to be given sufficient time to consult with stakeholders. We also need to consult with the very lawyers that the Ministry has consulted so that we can hear whether the things beings said by the Deputy Minister are the things that they have approved. Otherwise, I think the Bill is straightforward, justice passed very rapidly is justice felt. I support the Bill.

HON SPEAKER: Thank you. We shall rise for refreshments.

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**HOUSE ADJOURNS AT 15:40
HOUSE RESUMES AT 16:20**

HON SPEAKER: I now call on Honourable Kawana.

HON MINISTER OF PRESIDENTIAL AFFAIRS AND ATTORNEY-GENERAL: Thank you very much, Honourable Speaker. I rise to support the Amendment to the High Court Act and just to say that I think this Bill is long overdue, the move is commendable and, indeed, I want to take this opportunity to commend the Honourable Minister, the Deputy Minister and also the Judge President of our High Court because currently parties to civil cases and cases other than criminal are forced to travel all the way to Windhoek, which is very costly. However, once this Amendment is effected, it will be possible for parties to bring civil cases before the High Court in Oshakati.

Let me also take this opportunity to request the Ministry to build houses for these Judges, because this is an issue which we discussed at the Judicial Service Commission just yesterday and accommodation for Judges is a very big problem in Oshakati. Maybe they may start addressing issue by building houses in the north, so that those Judges to be appointed there will be able to work in a conducive environment.

Regarding the financial implications, I know the Honourable Deputy Minister is more than capable to respond, but if I understood him correctly, he said the financial applications will be attended to through the normal budgeting process and maybe Honourable Shixwameni did not hear him.

Regarding the sufficient time to consult other stakeholders, maybe that is a point taken, but at the same time, as he has now confirmed that he is also trying to become a lawyer and I do not know how far he has gone towards

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that objective, but I know he is studying law and this Bill is really very straightforward. However, the purpose of Committees is to also address such matters. Whenever a Bill is presented here in Parliament, obviously there is nothing which prevents individual Members of Parliament to consult, but at the same time we have the functions of Committees which empower them to convene hearings and that avenue can still be used by our Honourable Members.

With these few remarks, Honourable Speaker, I support the Amendment Bill and I thank you.

HON SPEAKER: I thank the Honourable Minister for the clarification. Any further discussion? Does the Honourable Deputy Minister wish to reply?

HON DEPUTY MINISTER OF JUSTICE: Thank you very much, Comrade Speaker. I only want to thank the whole House, those who have contributed and those who have supported in silence. They have heeded our call and I think the objective is admired by all and I will not say much.

Comrade Mushelenga, thank you very much for your support. You just elaborated on the examples and the resources needed by the division. We have taken note of the issue of the library during our visit to the Region and actually it is not only the High Courts, our magistrates' Courts are all in need of resources. The libraries are not adequately resourced and as you may be aware, we are rolling out all the reports in order for them to be able to assess cases, because it becomes very awkward for a defence lawyer to cite the latest authority and you, the presiding officer, are actually not as equipped as your counterpart. However, you are talking to the right audience because resources get apportioned from this House and sometimes when we cry that we do not have enough resources, people say lawyers only want money. Therefore, it is very important for the Members of this House to understand the need for more resources in order

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to be commensurate with the task at hand. I think this has been emphasised by the contributors.

Honourable Maamberua, thank you very much for your support.

We will take care of the typographical errors and all the other small issues.

Honourable Kawana raised a very important issue of housing. We thought about assigning NHE to build houses for Judges, but Judges are people of high standing in society. In times of crisis one would like to go to the house of a Magistrate and I have visited some of their houses, they are dilapidated, very small and not properly furnished and this is not good for the position they hold in the community and an embarrassment. Therefore, I cannot agree more and obviously, all of us should look at this aspect and see how best we can provide houses to our Judges. Maybe we need to think of a revolving fund. People are building all these sectional title properties and maybe Government has to look at something like that to generate funds to cater for the needs of our people.

Somebody jokingly said that in the United Nations system people of high ranks have houses with many windows and the lower you go, the lesser the windows. By the time you get to the cleaner, they have no windows. Resources allowing, we will definitely do the job.

I wholeheartedly thank you for your understanding and for supporting this very important Bill. Thank you.

HON SPEAKER: Thank you very much, Deputy Minister. I now put the Question that the Bill be now read a Second Time. Any objection? Agreed to. The Secretary will read the Bill a Second Time.

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HON SPEAKER: The Secretary will read the First Order of the Day.

**RESUMPTION OF SECOND READING:
INCOME TAX THIRD AMENDMENT BILL**

SECRETARY: Resumption of Second Reading of *Income Tax Third Amendment Bill*.

HON SPEAKER: When this Debate was adjourned on Thursday, 17 November 2011, the Question before the Assembly was a Motion by the Honourable Minister of Finance, that the Bill be read a Second Time. Honourable Ulenga adjourned the Debate and he now has the Floor.

HON ULENGA: Thank you, Honourable Speaker. Honourable Speaker, I requested an adjournment of this Bill, which I consider to be very important, in the hope that I will be able to deal with some perplexing questions which the Bill is presenting to me. I understand this is a Bill to basically amend the Income Tax Act of 1981. However, there are many, many Acts which are referred to in the Bill which I have since the adjournment tried to get hold of so that I can get an idea of this Amendment.

Honourable Speaker, as you can see, already on Page 1 this Amendment Bill is asking for the Amendment of Section 1 of Act 24 of 1991, as amended by Section 1 of Proclamation AG10 of 1985, Section 1 of Act 8 of 1987, Section 1 of Act 1 of 1989, Section 24 of Act 3 of 1991, Section 1 of Act 8 – *ad infinitum*.

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Again on the 4th and 6th Pages there is this endless reference to the Acts that have already been amended and this particular Bill is attempting to again further amend these Amendments.

Honourable Speaker, in view of the foregoing, I think it would be more wise and less problematic for the Minister to introduce a completely new Bill and do away with these about twenty Amendments, because right now it is totally impossible to follow what is being amended and for what purpose. It is just a confusion.

Honourable Speaker, one particular shortcoming in the submission of this kind of Bill is the total absence of communication between the Minister and the Committee on Constitutional and Legal Affairs. I would, therefore, propose, with all due respect, that this Bill be referred to the Committee so that there can be some kind of understanding of what actually is going on as far as this Bill is concerned. I thank you, Honourable Speaker.

HON SPEAKER: Honourable Von Wietersheim.

HON VON WIETERSHEIM: Thank you, Honourable Speaker. When the Honourable Minister introduced this Bill, which she said during her motivation she announced some of these points in March of this year already, I find it very surprising that she tables it five days before the end of the Session. Her motivation was that it took so long for all the consultations taking place, but now we hear it was not even discussed with the Committee on Constitutional and Legal Affairs and there seems to be quite a lot of other matters that, I doubt, have been put through proper consultations with the people concerned.

The Honourable Member also mentioned two of the effective dates for company and persons, respectively, and that was the 1st of January and the

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1st of March. After perusal of this Bill, I found that these dates are back in this year and there are some dates of implementation even further backdated, which I think is of great concern, except if the Minister can say that there is also just a mistake in dating these different provisions.

As far as the support to education is concerned, I want to wholeheartedly support this provision. I think that is long overdue and can only be welcomed in all respects that are mentioned in the Bill.

Secondly, the sale of mining licences, which include, however, a whole list of matters related to the sale of the licence. As far as a licence is concerned with no value addition happening yet, I can also only wholeheartedly agree. The question is, if an existing mining operation is sold, of course the mining rights are going with it, I suppose. Can that also be seen under this specific provision of this Bill? As far as that is concerned, the commencement date for the mining licence sales is backdated to the 1st of April 2010. Is that on purpose and is it, on the other hand, targeting specific transactions that have been taking place in the past? Then the question arises, is this constitutional at all to make legislation which will actually change conditions for a transaction that has taken place already?

Ring-fencing is in principle a proper development and a very necessary development. Although the Honourable Minister would have heard that already the farming activities of some of the members were mentioned which will, of course, be affected. If you are not farming or animal breeding, unless the person carries on farming, animal breeding or activities of a similar nature on a fulltime basis, the person may not use losses of this activity against income from another activity. Of course, there are a lot of conditions which, I must say, seem to be quite fair. My problem with this whole process is, how is the Ministry of Finance going to administer that? There are so many various conditions of so many years, being years with losses and being years without losses and I find it questionable to see how this is being administered against the background of the present administration of the Ministry of Finance, I am sorry to say.

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The next point I wish to shortly touch on is the deduction or withholding of tax on services rendered by non-residents, which I again find very much acceptable. Everybody who is earning here should also be taxable. There are a few questions that arise in this context and that is, for example, for development projects which are bringing in experts from outside, whether one cannot make a provision to exempt certain projects in order not to increase the cost of those projects, because what would happen is that this 25% will be added to the total cost of the project, because up to now it was not applicable. Immediately the costs are going to rise and the question is, what is the benefit in the end? The other provision could be that those persons prove that they are registered as income tax payers for the period that they are present and earning an income in the country. That is just an idea.

Dividends tax: The tax on proceeds from dividends is raised for payments where 25% or more of the capital of the company is owned. The rate is doubled from 10 to 20%. My question is, did the Ministry actually find a model to determine what additional benefits are coming from this change? As was mentioned by Honourable Shixwameni, we should actually have cost implications or revenue implications for all these steps that are being done in order to see whether it is worthwhile to take a new path.

Incidentally, and I am not sure that this was the intention, the minority shareholders with below than 25% will actually be discriminated against. That is how I read this and of course, if you have foreign shareholding of above 25%, those foreign shareholders will stop selling their shares at 25% because as soon as they go below, they will have to pay 20% tax instead of 10% on their dividends.

Apart from that, it may have an effect on the grading of our rating for foreign investments.

For me as a previous local business person, I think one of the most difficult provisions for our local business persons is the provision to have the provisional taxpayer now paying tax on his estimate only for the year ahead. The first payment is to be done, if I remember correctly, six

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months before the end of the tax year and the second payment then at the end, estimating the income that will be accrued and which tax has to be paid on. The first in respect of the first six months of any year, it is very difficult to make an assessment which may not fall outside of 80% of the real result, the amount of taxable income, which will then, if you are outside of that 80%, attract a very, very harsh additional tax, a penalty of up to hundred percent of the amount. I would plead with the Honourable Minister to keep the present situation where you can either pay on your estimate or use the last previous assessment. I think the last assessment gives you a better indication. It may be that the Honourable Minister is trying to get more income, I mean this is the purpose of the changes, as we understand it, and the last assessment in many cases are so many years back and, of course, the State loses money by that.

I would see the solution in getting your officials in the Ministry to assess the companies and not have the last assessments four to five years ago and now penalise the business person in saying that he must now make correct assessments for his income and if he does not do that, then he will pay the penalty. I think that is, to my mind, for our local business people the most important change that is foreseen and we should, to my mind, not do that to our local business people. Allow them to pay their provisional tax as before, either on assessments and then if the assessments are too old, assess the people and have new assessments available.

Of course, I see there is a Clause which allows the Minister to remit the additional tax. Again this is an administrative burden if you are being penalised and then you must write to the Minister and there will be a whole system of people who are going to look at this. I think it would be better to work on the old system.

Finally, the commencement dates. As I said in the beginning, I hope that these dates are just a mistake, that there was a printing error or maybe the Minister can explain what the idea is with these commencement dates. The one on education is acceptable because it is provided here for the the 1st March 2011, which means that is the running tax year and that is in favour of the consumer, so this is quite acceptable. The others are very

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questionable and the withholding tax one is even backdated to the 1st of March 2009. I am not sure whether this is something that is already in existence, it seems to me that is the case and this is just mentioned here to restate the date. In that case I have no problem with that. That is all from me, thank you, Honourable Speaker.

HON SPEAKER: I thank the Honourable Member for his substantive contribution. Any further discussion? None. Does the Honourable Minister wish to reply?

HON MINISTER OF FINANCE: Thank you, Honourable Speaker, for the opportunity to respond and I want to thank the Members for the interest shown in the discussions on this Bill and for the queries that were put forward, which I am now going to respond to.

Maybe I should start with the comments of *Honourable Ulenga* because they are so much different from the comments of all other Members that have spoken. The Honourable Member suggests that the Minister ought to have consulted the Committee on Constitutional and Legal Affairs on these Amendments on the table of Parliament because of the fact that the main law that is being amended now was passed as far back as 1981. I do not really see what the relevance is in the date of the initial promulgation of this Act in terms of the Amendments that we are putting forward, because in terms of these proposals that we are putting on the table, we are not amending any of those Amendment Acts that have been passed since then, we are amending the provisions in the main Act, which should be available to all the Members of Parliament, as should be the case with the Amendments Acts that have been passed by this House on the main Act. I believe with that the Members should have been able to make any references that they need in order to contextualise the proposals that we are making under this Amendment Bill. In any case, the specific proposals that are made to amend the Act are so clear that there is no

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problem presented by the fact that some Members do not have the Bills that have been passed to amend the initial Act promulgated in 1981 available to right now. Therefore, I really do not consider the expressions of the Honourable Member to constitute a ground for a postponement of the passing of this Amendment Bill. In any case, I do not think it is required that Ministers should necessarily have to approach the Constitutional Committee unless it relates to issues that touch on the Constitution, which is not the case here.

I would now proceed to the comments by the *Right Honourable Prime Minister* who wanted to know whether it would not be more appropriate for the definition of “*gross income*” in the Bill to include exclusive prospecting licences (EPL) in order that the income from the sale of this too would be taxable in terms of the proposal that is made under the Bill. I want to agree with the Prime Minister that it would be appropriate to extend the taxability of income to income derived from the sale of exclusive prospecting licences and that was indeed the intention of the Bill. It seems as if the formulation, as currently contained in the Bill, is not very clear and following the expressions of the Prime Minister, I have gone on to prepare an Amendment that would clarify these provisions better so that this intention comes out much more clearer, that the proceeds from the sale of EPL would also be taxable. I will table this Amendment in the Committee Stage.

The Prime Minister also sought an explanation on the provision regarding “*part-time farming*”. He specifically wanted to know whether the provision in the Bill will not discourage people from farming and my answer to that is that this provision is indeed aimed at high-income individuals who have the means to disguise hobbies and other trades and thereby avoiding payment of income tax. The provision merely serves to ensure that people do not use certain activities to avoid paying tax or to decrease their tax liability. We want to incentivise farming, but at the same time we also want to curb tax avoidance schemes by prohibiting the deduction of losses derived from part-time farming, looking at what the prospects are for the part-time farmers to derive taxable income, the farming income compared to expenditure, the number of fulltime

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employees appointed for farming operations, the equipment used exclusively for farming activities and the time the person spends at the premises, conducting business. Various sectors, as described in the Bill, will be looked at to determine the position on the activities carried out by the taxpayer.

Further, a question was asked as to why export allowances will not be available to non-Namibian manufactured goods and it was specifically asked whether this will not have a negative impact on economic activities and job creation here. My answer is that the export allowance for the export of Namibian manufactured goods only is intended to incentivise local production of goods. We want people to produce here, not to source goods from outside and export from here, so that it can act as disincentive and as a result of that empower local producers and creation of employment opportunities here. If this allowance were to be extended to non-Namibian manufactured goods, as is the case now, the market will be flooded with goods produced somewhere else and there will be no room for local production to flourish. Therefore, exporting value added goods create employment opportunities and have various other economic benefits for the country, such as the development of regional markets.

The other question was, when raw materials come from somewhere else, whether export allowances will not apply. The answer is that a trader importing raw materials and manufacturing it in Namibia will qualify for the export allowance, because we actually want to encourage that. The reason behind this is that manufacturing is taking place in Namibia and as such, local employment has been created to produce the goods out of those raw materials. The aim of Government is to achieve a well-developed economy which can be depicted by the realisation of macro-economic objective of equitable income distribution, price stability and economic growth. In an effort to expand the volume of the country's export, the export allowance incentive serves as an effort to promote a greater level of economic activity in export industries so as to generate more foreign exchange and improve the balance of payment.

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Today there were further comments made on the Bill. There were those from *Honourable Von Wietersheim* that these Amendments were announced much earlier and are only being tabled now. I actually only made reference in general to areas where additional taxes may be levied, but I made it a point not to announce specific tax adjustments because work was still ongoing to agree where these adjustments would be and what the rates were going to be. Extensive consultations have taken place and a lot of interest was shown, resulting in a situation where the consultations were very protracted, but in the normal tradition of consultation and transparency of the SWAPO Party Government, we decided to accommodate all the requests that we received for consultations before we finalise our proposals for Amendments to the law, therefore resulting in these proposals only now coming to Parliament. I would have loved to have been able to bring these Amendments to Parliament earlier, but I would not wish to have closed the door in the face of people who wanted to raise their concerns. Therefore, I believe it was worth it that we only come now, so that we would at least know what the views of everyone is with regard to the Amendments we are proposing.

The effective dates are wide-ranging and some have already started, implying retroactivity. I intend to amend some of the commencement dates during the Committee Stage because the intention is not to have them taking retroactive effect, except for the last one under (e) which, as you have indicated, is already in effect and we are actually only synchronising the law.

I appreciate that the support to education is being welcomed. On the query about how the Ministry would administer this Amendment that ring-fences income from offsetting of losses from part-time farming activities; I take note of the fact that the Honourable Member does not seem to have faith in the Ministry of Finance, I cannot do anything except to continue with the efforts that we are making to educate the public and to continue with the reforms that we have commenced with, but I believe the Honourable Member would not deny that despite the scepticism that he may have about the ability of the Ministry to administer the tax laws, the public revenue collection has improved significantly and that can only

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happen if the Ministry is making efforts to administer the laws and ensure compliance. The ratio in terms of revenue as a proportion of GDP for Namibia is next to almost no one else in the region and that means we are in fact enforcing our laws here and that is the only way that we are able to expand public expenditures and strengthen the intervention of Government in the economy without necessarily raising public debt. We are under 20 percent, our Budget has grown significantly. That is only because we do collect our taxes. We have not had increases in tax rates, we have increased the threshold, we have reduced some rates, but despite this we have had a much higher revenue outturn. Therefore, despite the shortcomings that we still have to address, I think it is worthwhile to at least commend the foot soldiers there at the Ministry of Finance Inland Revenue and the customs officials at the borders who have to work under very difficult conditions in order to enforce our tax laws.

The Honourable Member expressed concern that the withholding of taxes may have a negative effect on development projects where expatriates may be invited to work. It was termed as grossing of costs and passing it on to the local investors. Here I want to indicate that these expatriates who come here to work on contracts of a year and longer are already required in terms of the law to register for taxes and when they register for taxes, they pay rates which are much higher than the 35% rate that we are suggesting should be the rate for withholding. You know it is up to 34.5% for individuals and companies. Thus, by requiring them to pay only 25%, we are actually giving a concession and I do not think this should really be a problem. The main objective, as the Honourable Member has acknowledged and which I appreciate, is that everybody should contribute to the fiscus. You should not have people coming here, deriving benefits from the Namibian economy, but not contributing, as is the case with others.

As to whether smaller shareholders in companies would be negatively affected by the raising of the tax on non-resident shareholders, I want to indicate that we should probably see this not as an increase in the tax of minority shareholders who are non-residents, but should actually see it as a case of focusing the concession of paying a lower rate of only 10% to

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the larger shareholders. That is the intention, to say that we want those who make huge investments here that make a greater impact on economic activities to receive favours through tax concessions and not to give this to everyone just because they are non-residents.

As to whether this would discourage foreign shareholders to dispose of a part of their shareholding to below the threshold of 25%, beyond which a higher rate would apply, somebody actually tried to link this to economic empowerment policies and my position is that when we have economic empowerment policies or laws, it should not be possible to circumvent these laws in this manner. I believe that if we pass a law that would require investors to accommodate previously disadvantaged persons, it should be mandatory and it should not be on the basis of tax incentives so that you can choose not to comply in order to continue to enjoy tax incentives. I believe we should as a necessity continue to reform our economy to ensure that all our citizens can participate and effectively benefit from the economic activities of our country.

The changes in provisional tax payment: The Honourable Member expressed his lack of trust in the ability of the Ministry to administer tax laws and I have already addressed that aspect and I will proceed to say here that we do not assess the income of taxpayers after five years, as the Honourable Member wants to imply. It is true that there were delays in assessing some assessment forms on account of a number of factors which we have been trying to address and we believe that with the current reforms that we have undertaken to implement, we should be able to overcome in the coming few years, but that not being the case, I believe that it would not be appropriate to allow people to continue to make provisional payments on the basis of assessments of the previous year. Just imagine a situation of a mining company that was for the most part doing exploratory activities and only mining to a small extent, so that their income and their tax were very low, but the next year they start to mine and generate huge amounts of income. You cannot expect that person to make a provisional payment on the basis of the previous year when they were exploring. We would want those people to pay provisional tax on the basis of the income that they expect to generate for that specific year.

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Also consider a situation where a company may be expecting to make losses this year because they have to make huge investments in that year, but in the previous year they did not have this investment and they made a huge profit which attracted a huge tax bill. If you are to say that they should pay provisionally on the basis of the previous year's income, it would mean that they would be so disadvantaged in this year that they may not be able to continue with their operations. We really want to relate the taxes to the income for that specific year for which the tax is being collected.

I did not get the second-last question where he talked about the Ministry having to remit something and then he went back to the application date, which I have cleared. With that, I think I have exhausted the responses to the questions.

HON VON WIETERSHEIM: I thank the Honourable Minister for the very elaborate answer. I can understand very well the examples that you gave of the large mining companies doing exploration and then the next year having a big income because of mining, but what about all the relatively small businesses that I was at some stage part of and I know what it involves to try and get the correct assessment of the provisional tax. I think that is the sector I am looking at if I am pleading for making either on the previous assessment or on an estimate, which would be acceptable.

Then I mentioned and that was what you did not quite get, Honourable Minister, that I see that there is a provision that, where the taxpayer is not satisfied that he or she can apply to the Minister to take into consideration the circumstances why the assessment was not near to the 80 percent what you were looking for. That was what I was referring to, but then I said again, I doubt that this administrative burden which is then placed onto the Ministry again, that this will really in the end be a solution to the assessment question. Thank you, Honourable Speaker.

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**SECOND READING: INCOME TAX THIRD
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HON KUUGONGELWA-AMADHILA**

HON SPEAKER: Honourable Minister, I hope there is clarity on the question.

HON MINISTER OF FINANCE: Honourable Speaker, I think the principle that I have alluded to is that the tax should relate to the income on which it is applied. If you have a situation where you want somebody to pay tax, whether provisional or final on the basis of the income of a different year, I think that is problematic for the tax office, but also for the taxpayers themselves and I can testify to this as someone who administers the payment of the support to the Political Parties, because the Rule that we have agreed upon for determining the amount that must be availed to support Political Parties is that there is a percentage of the income of the previous year of the State, a maximum of which should then be availed. It is a challenge if the economy goes into a recession. Maybe the previous year you had an extraordinary growth of income, the next year the economy goes into a recession of 15%, now your revenue outturn is negatively affected but you are bound by this formula to provide this funding that is based on the calculation of the income of the previous year, which income you do not actually have. Therefore it is very problematic.

On the other hand, if the economy does so well that the revenue increases by 30 percent after last year's recession, you have to calculate the funding for Political Parties based on the income of the year of recession while you are actually in a year of prosperity. That is somehow problematic.

As to whether the taxpayers can approach the Ministry if they are not satisfied, if the Ministry tries to impose a calculation that is not commensurate with the principle as agreed in the law, the taxpayers are always welcome to approach the Ministry and appeal and if the Ministry is not willing to consider their appeal, they can always approach the established structures to seek redress. However, it would be a problem if they want to appeal to be relieved from their obligation to comply with the law. Then there the discretion of the Minister would have to apply and that discretion would have to be exercised in a manner that does not

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disadvantage the interest of the public. Thank you.

HON SPEAKER: Thank you. I now put the Question, that the Bill be read a Second Time. Any objection? Agreed to. The Secretary will now read the Bill a Second Time.

INCOME TAX THIRD AMENDMENT BILL

SECRETARY: *Income Tax Third Amendment Bill.*

HON SPEAKER: The Secretary will read the Second Order of the Day.

**RESUMPTION OF SECOND READING
VALUE ADDED TAX AMENDMENT BILL**

SECRETARY: Resumption of Second Reading of *Value Added Tax Amendment Bill.*

HON SPEAKER: When this Debate was adjourned Thursday, 17 November 2011, the Question before the Assembly was Motion by the Honourable Minister of Finance, that the Bill be read a Second Time. Honourable Von Wietersheim.

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AMENDMENT BILL**

HON VON WIETERSHEIM / HON KUUGONGELWA-AMADHILA

HON VON WIETERSHEIM: Thank you, Honourable Speaker. Basically as I have indicated, I did speak to the Honourable Minister about the problematic Section and I understand that it is not affecting the usual 20 or 25 days grace period to pay VAT after the end of the month. Thus, that actually answers my query and I have nothing further to add to that. Thank you.

HON SPEAKER: Any further discussion? Does the Honourable Minister of Finance wish to reply?

HON MINISTER OF FINANCE: Honourable Speaker, I would like to start by thanking the Member for expressing interest and the comments that he has made.

The first comments were by the *Right Honourable Prime Minister* who suggested that the Ministry could have done better in order to equalise the treatment of education and health, zero rate the education materials rather than to exempt the health care services. I want to respond as follows:

Tax legislation is in place which compels schools, universities and educational institutions not to charge VAT on the fees to students. Therefore, this change is not going to result in any additional charges being made to students on educational materials. The materials used in the education sector, of which very few is produced in Namibia, is exempt from VAT when imported by the State. Also, an individual or company that makes a donation to a Namibian educational institution may deduct the donation made to the educational institution from his or her income before paying tax. This is a measure aimed to encourage individuals and businesses to support and promote the educational development of our country.

Zero-rating materials used in the education sector may have severe

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unintended consequences as these are not used exclusively in the education sector and to add to that, it is the principle that when the State offers tax incentives, there is no mechanism to make sure that those that supply the related goods and services actually do pass this over to the public. Often the situation that we have is that we allow these people a bigger margin for their profits and after one month they just increase their prices to fill the vacuum that was created by the reduction or zero-rating of a specific product. Such was the case with basic foodstuffs which we zero-rated some years back.

Another question was why the tax Tribunal is only going to cater for appeals and whether it should not include tax violation considerations as well. My answer is that the purpose of the tax Tribunal is only to provide taxpayers who are aggrieved with certain decisions of the Ministry of Finance, such as taxing income which according to the taxpayer should not have been taxed, the opportunity to raise their concerns. This forum is an informal dispute resolution mechanism which strengthens the equity principle maintained in the Constitution by ensuring that taxpayers who are dissatisfied with certain VAT decisions of the Ministry of Finance may raise such dissatisfaction, which will be decided upon by the Tribunal, as is the case under the Income Tax Act. The VAT Act prescribes procedures that should be followed to appropriately deal with taxpayers who do not adhere to the stipulations of the tax law. Anyone who becomes aware of non-compliance with the VAT Act or any other tax law by any person or company is welcome to approach the Ministry to report these cases and there are adequate provisions in law to hold such a person accountable.

The Ministry can impose penalties and may, in consultation with the Ministry of Justice, approach a Court where taxpayers who make themselves guilty of offences under the Act are tried. The property of a person or company may also be attached in such a case on failure to pay tax due to the Government. The Tax Tribunal is a more affordable way of solving dispute before taking a matter up with formal court proceedings, which at time are very expensive.

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RT HON ANGULA**

With regard to the cut-off date, the query by *Honourable Von Wietersheim*; the VAT Act provides that companies or individual traders must compile their financial transactions from the first day of the calendar month until the last day of the calendar month and submit their VAT transactions according to this period. Some traders have their financial month-end at the end of a specific week, which may go past the end of the month. The provision for the cut-off date will enable these traders to apply to the Ministry for approval of a cut-off date after the month-end to coincide with the trader's month-end cut-off date. This is actually for the convenience of the taxpayers. The VAT return the trader is required to submit to the Ministry will then not create an additional administrative burden to the trader. This provision serves to accommodate VAT registered taxpayers administratively.

I hope that with this I have been able to convince the Members about the appropriateness of these proposals and that they will support the proposals.

HON SPEAKER: Right Honourable Prime Minister.

RT HON PRIME MINISTER: A follow-up question. I know that this Bill is not about instruction materials, but the Minister said something on which I want an explanation. She said that if instruction materials, such as textbooks, are imported by Government, they do not invite Value Added Tax. The reality on the ground is that Government does not import instruction materials, they are imported by the Longman's of this world and other commercial book handlers. There is therefore no way this concession can be passed on to a learner in the classroom.

I also want to remind the Minister about the Palermo Agreement which requires countries not to charge tax on textbooks. It is an international agreement. Thank you.

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HON MINISTER OF FINANCE: I want to again assure the Prime Minister that what has happened here is to change the VAT status of educational material supply from a zero-rated to a VAT exempt, meaning that there will still not be a tax charge, but because it is not a zero-rated supply, the supplier will not be able to claim refund from the Ministry. That is the only difference. But there will be no charging of tax to the one who is buying the material. Thank you.

HON SPEAKER: I now put the Question, that the Bill be read a Second Time. Any objection? Agreed to. The Secretary will now read the Bill a Second Time.

VALUE ADDED TAX AMENDMENT BILL

SECRETARY: *Value Added Tax Amendment Bill.*

HON SPEAKER: The Secretary will read the Third Order of the Day.

**RESUMPTION OF SECOND READING:
STAMP DUTY AMENDMENT BILL**

HON SPEAKER: When this Debate was adjourned on 17 November 2011, the Question before the Assembly was Motion by the Honourable Deputy Minister of Finance, that the Bill be read a Second Time. The

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HON UTONI**

Honourable Deputy Minister of Safety and Security has the Floor.

HON DEPUTY MINISTER OF SAFETY AND SECURITY: Thank you very much, Honourable Speaker. I rise to support the Stamp Duty Amendment Bill. The Honourable Minister, her Deputy and the entire Ministry are doing very well. It is evident through your Ministry that the SWAPO Government is a caring Government. The Amendment Bills you have tabled in the Honourable House and education policies are telling us that it is a caring Government. Now the Stamp Duty Amendment Bill is also telling us that you are identifying the needs of our low-income group at the grassroots and that is why I am saying you are doing very well. Keep it up as some of us are learning from your very good example.

Honourable Speaker, this Stamp Duty Amendment Bill provides for tax exemption on properties whose values do not exceed N\$400,000 and last week some of the Members asked whether we really have houses of that value in Namibia. They are saying the cost of houses is too high and I agree with the Members that the houses we can buy in Namibia range from N\$600,000 for a one-bedroom house and upwards. What I am trying to say is we want to take drastic action with this Amendment as Government, because it is like we are just saying houses are very expensive, but are we really taking action?

Last week I was saying Government has established the National Housing Enterprise and I know the Minister is giving a few pennies to NHE, but maybe we need to increase the allocation to NHE. Can Government not ask Local Authorities who have big portions of virgin land to provide land and the Ministry of Finance allocates more money to NHE to service the land.

We have Local Authorities of different sizes, such as Windhoek which is a big city. Then we say Windhoek can provide virgin land where we can service 500 plots. Then 400 plots can be used by NHE for low cost housing and the other hundred can be given to those who can afford a

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higher price. In the smaller towns we service 300 ervens and 50 can go to those who can afford a higher price and 250 can then be purchased by the low-income group. This is what we have to do and it is an action we have to take. We do not need always to say houses are very expensive, let us take action. We have the authority and everything in our hands.

We can say this year we will build so many houses in Windhoek, so many in Grootfontein, so many in Outapi and in this way we can improve the situation. Let us not focus on the current set-up of infrastructure, let us also look at the future.

With this, Honourable Minister, I will say that now we are moving towards Christmas and New Year and this Amendment Bill is like a Christmas and New Years gift to us. I thank you.

HON SPEAKER: Any further discussion? None. Does the Deputy Minister wish to reply?

HON DEPUTY MINISTER OF FINANCE: Thank you, Honourable Speaker. I will start off by saying that I will have the easier way out today because I am motivating an Amendment Bill which is a gift instead of additional taxes. I would thank the Honourable Members who made their contributions and who supported the Bill.

When I listened to the discussion, I thought it is important just to make a short clarification between the difference of what the Transfer Duty Act taxes and what the Stamp Duty Act in fact taxes and the difference is a simple one. The Transfer Duty Act provides for taxes charged when immovable property changes ownership. The Stamp Duty Act is a sister Act aligned with that and it only taxes the written instrument that facilitates that transaction. In this case it is the transfer deed that is needed to effect ownership change of an immovable property and that is difference.

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So, the Stamp Duty Act does not have a direct impact on immovable property prices, it is only that written instrument that attracts the tax. I thought that is important to understand before I make my comments.

The questions that I have received were firstly from the *Right Honourable Prime Minister* and he asked what is the magic in the N\$400,000, why can it not be N\$500,000 or anything else. The answer to that is that in 2010 this august House amended the Transfer Duty Act and increased the threshold for the exempted portion on dwellings or erven bought by natural persons to N\$400,000. It was before that N\$200,000 and it has now been raised to N\$400,000. In order to align that with the instrument that effects that transaction, namely the Stamp Duty Act, you will probably follow the logic that it must be the same threshold than the one in the Transfer Duty Act and that is the answer I can provide. There is no magic with the figure, but it is a mere alignment to an existing piece of legislation so that they have the same thresholds. Otherwise you would have a distorted administration as a result.

The second point, Honourable Prime Minister, is that if you give gifts, you can give one gift every ten years or you can give smaller gifts every year and I think in a tax regime you do not want to give too much at once and then for a protracted period nothing, because the market changes and you have to align to the market. Our approach was to give the maximum, that is an exempt threshold of N\$400,000 and have future space to give further relief as and when the market allows.

The second lot of questions by *Honourable Ilonga* related to how the poor are assisted. Here one must realise that both the Transfer Duty Act and the Stamp Duty Act are progressive taxes, which means that the higher the purchase price of the property, the higher the tax. Therefore, there are two ways this tax regime assists the poor. One, it tries to curb excessive prices because the tax becomes very high when the price is very high and secondly, it exempts at the lower end of the market. So, there is no tax payable by poorer people who cannot afford very expensive immovable property. That is the answer to that, two points, it suppresses

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prices and secondly, it is a straightforward exemption for the lower end of the market.

Honourable Riruako and Honourable Tjihuiko asked whether there is any way that the tax legislation that we have amended can be leveraged in bringing down prices. As I said, the Stamp Duty Act is an Act that taxes instruments of transactions, not so much the prices itself, so it is an issue where this piece of legislation is probably not the right piece of legislation to address those questions which are relevant.

With regard to the question of prices of agricultural land and urban property, I think it is also our worry that prices are too high. When one looks into the situation of agricultural land, there is a development towards a direction that the prices currently are way above the production potential of that piece of land that is attracting that price. What it means is that those who afford those farms must have significant additional resources to buy the farm because they cannot sustain that capital outlay with the production on that piece of land. There are serious consequences when one considers that.

The first consequence is that proper farmers who want to farm are out-competed by people that have other resources from somewhere else. That drives the price up and it makes it very difficult for those farmers to access the land or the means of production that they need.

Secondly, and it is a very direct consequence to our own Budget, it makes land reform much more expensive. You have to buy land for agricultural purposes where the price is way off the peg of the potential production that that land can deliver.

Therefore, I can only say that yes, from a financial point of view we have serious sympathy with those who spoke and said high land prices, especially agricultural land, are problematic. Whether the tax legislation is that piece of legislation that one should leverage to bring down prices is another question and I think it is not today that I want to offer arguments whether that is the right way to go, but I think the principle argument from

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Honourable Utoni that something must be done is probably worthwhile pursuing.

With regard to prices of urban dwellings and erven, a very similar situation is happening. I think what we are witnessing is an escalation of prices that are close to, what one can perceive as a bubble in the real estate market and I think it is quite evident that some speculative purchasing and selling is happening in the urban market, which escalates the price and often so that it runs out of the affordability range of the normal Civil Servants, again a problem that we have to address, in my opinion.

Again, tax legislation is probably not the right or the only tool that would leverage or solve that problem, but again, I think, it is an issue that should be a priority in our discussions or our agenda. I hope I have answered all the questions and I thank the House for the support.

HON SPEAKER: I now put the Question, that the Bill be read a Second Time. Any objection? Agreed to. The Secretary will now read the Bill a Second Time.

STAMP DUTY AMENDMENT BILL

SECRETARY: *Stamp Duty Amendment Bill.*

HON SPEAKER: The Secretary will read the Fourth Order of the Day.

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**COMMITTEE STAGE-EARTH SCIENCE
PROFESSIONS BILL
HON KATALI**

**COMMITTEE STAGE:
EARTH SCIENCE PROFESSIONS BILL**

SECRETARY: Committee Stage *Earth Science Professions Bill*.

HON SPEAKER: Does the Honourable Minister of Mines and Energy
Move that the Assembly now goes into Committee?

HON MINISTER OF MINES AND ENERGY: I so Move, Honourable
Speaker.

HON SPEAKER: Any objection? Agreed to. The Deputy Chairperson
of the Whole House Committee will take the Chair.

ASSEMBLY IN COMMITTEE:

**DEPUTY CHAIRPERSON OF THE WHOLE HOUSE
COMMITTEE:** The Committee has to consider the *Earth Science
Professions Bill*.

Clause 1 put.

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**COMMITTEE STAGE-EARTH SCIENCE
PROFESSIONS BILL
HON KATALI**

HON MINISTER OF MINES AND ENERGY: Honourable Deputy Chairperson, I would like to Move –

That in the whole Bill, substitute –

1. (a) The phrase “*earth science*” wherever it occurs with the word “*geo-science*”

(b) The phrase “*earth scientist*” wherever it occurs with the word “*geo-scientist*”; and

(c) The phrase “*an earth scientist*” wherever it occurs with the phrase “*a geo-scientist.*”
2. Move the definition of “*Financial Year*” to appear immediately after the definition of “*Council*”.

DEPUTY CHAIRPERSON OF THE WHOLE HOUSE COMMITTEE: Please table the Amendment. Any objection? Agreed to.

Clauses 2 to 19 put and agreed to.

Clause 20 put.

HON MINISTER OF MINES AND ENERGY: In Sub-clause (5)(b), substitute the phrases “*ESI-NAM*” and “*FEFI-NAM*” with the phrases “*GEO-FI-NAM*” and “*S-Geo Science-NAM*” respectively. ???

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**DEPUTY CHAIRPERSON OF THE WHOLE HOUSE
COMMITTEE:** Table the Amendments. Any objection? Agreed to.

Clauses 21 to 29 put and agreed to.

Clause 30 put.

HON MINISTER OF MINES AND ENERGY: In Sub-clause (2)(b), substitute the phrase “*twelve thousand*” with the phrase, “*twenty-four thousand*.”

**DEPUTY CHAIRPERSON OF THE WHOLE HOUSE
COMMITTEE:** Please table the Amendment. Any objection? Agreed to.

Clauses 31 to 45 put and agreed to.

Schedule and Title put and agreed to.

**DEPUTY CHAIRPERSON OF THE WHOLE HOUSE
COMMITTEE:** I shall report the Bill with Amendments.

ASSEMBLY RESUMES:

Bill reported with Amendments.

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**THIRD READING-EARTH SCIENCE
PROFESSIONS BILL
HON KATALI**

**THIRD READING:
EARTH SCIENCE PROFESSIONS BILL**

HON SPEAKER: Does the Honourable Minister of Mines and Energy Move that the Bill be read a Third Time?

HON MINISTER OF MINES AND ENERGY: I so Move, Honourable Speaker.

HON SPEAKER: Any objections? Agreed to. Any further discussion? Does the Honourable Minister of Mines and Energy wish to reply?

HON MINISTER OF MINES AND ENERGY: Honourable Speaker, I would like to thank the Honourable Members for the support in passing this very important Bill. I thank you very much.

HON SPEAKER: I now put the Question, that the Bill be read a Third Time. Any objections? Agreed to. The Secretary will now read the Bill a Third Time.

GEO-SCIENCE PROFESSIONS BILL

SECRETARY: *Geo-Science Professions Bill.*

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**SECOND READING: LABOUR
AMENDMENT BILL
HON DR N IYAMBO**

HON SPEAKER: The Secretary will read the Fifth Order of the Day.

**RESUMPTION OF SECOND READING
LABOUR AMENDMENT BILL**

SECRETARY: Resumption of Second Reading on *Labour Amendment Bill*.

HON SPEAKER: When the House adjourned on Thursday, 10 November 2011, the Question before the Assembly was Motion by the Honourable Minister of Labour and Social Welfare, that the Bill be read a Second Time. The Honourable Minister of Veteran Affairs had the Floor and I ask him now to continue.

HON MINISTER OF VETERANS AFFAIRS: Thank you very much, Honourable Speaker. I want to promise my neighbour here that since I was the last to speak on this Bill, I just want to say the following:

Section 26 of the Employment Service Act is now going to be amended by this Bill that we are discussing. Obviously it is also now an ideal situation that the onus of responsibility is also now going to rest on the user enterprise, so to speak. When reading Section 10(2)(i), (ii) and (iii), I want to implore my Colleague here that should really have his Labour Inspectors hard at work in order to ensure these requirements are actually fulfilled, because we know that it is easier said than done. What is going to happen practically in the field is most probably going to be something else and that is a worrisome situation. If Labour Inspectors are not going to make sure that what is stated here is implemented in the field, we will

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AMENDMENT BILL
HON DR N IYAMBO**

find that what is going on now will continue and if that is the case, that would be unfortunate.

I also want to state that we as Honourable Members may not see this as only applying to others, but it may as well be the situation with ourselves.

We too are user enterprises and I may not be far wrong if I say that if you go to the farms of some of the Honourable Members here, what is forbidden here is what is taking place there. Honourable Tjihuiko, I am wondering whether you are treating your farm workers fairly. Be honest. That is really the problem. Maybe we may not even be treating our domestic servants fairly and, therefore, it is also an indictment to us as Honourable Members of this House.

My dear Colleague, I want you to reply and I only want to say, let us not be caught to be among people who are treating workers badly. Honourable Kaura, let us treat them fairly. (Intervention)

HON KAURA: May I ask the Honourable Member a question? Honourable Minister, based on your own personal experience as a farmer, are the farm workers treating the farm owners fairly? Are they treating us fairly?

HON MINISTER OF VETERANS AFFAIRS: Treat them fairly first, then they will treat you fairly, Honourable Member.

With the very few words that I said, I am very pleased that Section 26 of the Employment Service Act is now amended and I think we can be happy with what is there, but Honourable Minister, I want your inspectors really to be in the field and they should also come to our farms, maybe even in our houses. Thank you.

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**SECOND READING: LABOUR
AMENDMENT BILL
HON NGATJIZEKO**

HON SPEAKER: I thank the Minister. Any further discussion? Does the Honourable Minister of Labour and Social Welfare wish to reply?

HON MINISTER OF LABOUR AND SOCIAL WELFARE: Thank you very much, Honourable Speaker, Honourable Members. I want to express my appreciation for the overwhelming support that you have expressed for this Bill. It actually shows to what extent we as leaders are supportive of efforts to improve the plight of our workers, especially those working under labour hire conditions.

I would want to start with the comments that have been raised by my senior Colleague next to me. Those are words of wisdom which, I believe, has been taken up by all of us, especially as Members of this House and as leaders of the Nation, that we would be setting the example for others in terms of treatment of our labourers.

We have a limited number of Labour Inspectors in the Ministry, but as we get more resources we will appoint more of them so that we can deal with the situation as it occurs.

I want to emphasise at the outset that this regulatory Bill has been tabled primarily in order to protect the workers employed through the labour hire system and to ensure that the full protection of the Labour Act is available to workers in cases where their status as employees are unclear in terms of the Labour Act or ambiguous. I also want to remind you that the Supreme Court has already ruled that it is unconstitutional to prohibit the practice of labour hire because labour hire companies and, indeed, all private employment agencies have the constitutional right to conduct business. However, there is no constitutional right to exploit workers. In light of the Supreme Court Ruling in the Africa Personnel Services case, this Bill is intended to end the exploitation of employees who pass through the labour hire system. I will now try to address some of the issues addressed by the Honourable Members.

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Honourable Kaura and Honourable Tjihuiko have sought clarification on a matter of holding both the private employment agency and the user company liable for violations of this Act, as provided for in Clause 9, in cases where the user company seeks exemption from the provision of Section 128(2). Let me give an example: A specialised company has been appointed to recruit medical personnel to perform functions in HIV/AIDS programmes of the Ministry of Health and Social Services and to administer all personnel functions, including payment of salaries and benefits in regard to these persons, as specified by a donor grant. Technically the specialised company is fulfilling the statutory function of a private employment agency and the Ministry is the user enterprise. In terms of Subsection (8) the Ministry would be entitled to apply for an exemption from Subsection (2), which makes the Ministry the employer of the medical personnel. Nevertheless, in the event of violations of the Act, the employee shall have the right to seek redress against either the specialised company or the Ministry. That is one way of looking at it.

The Right Honourable Prime Minister has raised concern that employers may find loopholes in the Bill that will permit them to hire a series of employees on short-term contracts rather than to provide long-term employment. We are of the opinion that Clause 128(c), which introduces a presumption of indefinite employment, addresses this concern. I would like to emphasise that the protection against unfair dismissal applies to all employees regardless of length of service. If employees hired on a one-month contract and then replaced by another employee on a short-term contract to continue with the same work, the first employee can lodge a complaint of unfair dismissal with the Labour Commissioner. The burden will be on the user or employer to justify the short-term arrangement.

Honourable Nambahu and Honourable Kazenambo, I agree that Amendments, once enacted, would be implemented without delay. I further agree that a strong public awareness campaign is needed in order for the implementation to be effective.

Honourable Nghidinwa asked whether the presumption of employee's status contained in Section 128(a) applies to charcoal workers who are

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HON NGATJIZEKO**

currently considered to be self-employed. Yes, if any of the factors enumerated in Section 128 are present, the charcoal workers will be presumed to be employees covered by this Act. However, in addition, the Minister may also confer some or all of the protections of this Act upon these workers even if they are self-employed by deeming them to be employees in terms of Section 128(b).

Honourable Kuugongelwa-Amadhila has raised a concern that user companies might deduct from the salaries of the employees the fees charged by a private employment agency that has placed the employee. I thank the Honourable Member for a point well taken and I will try to introduce a small Amendment to close that loophole.

Honourable Kuugongelwa-Amadhila has also raised a concern that employers will manoeuvre to evade the requirements of Section 128(4)(a) which forbids a user company to pay wages and benefits to employees placed by a private employment agency that are less favourable than those paid to its incumbent employees. While we have no doubt that some employers will try to evade the requirements of the law, such as asserting that these workers are service providers or they do not perform the same work, we believe that we have provided strong tools against such evasion, including the deeming provision of Section 128(c). We will not abandon such workers under any circumstances. If further refinements of the law are required to close unanticipated loopholes, we will take the necessary action.

It was also suggested that it would be desirable to provide for the imposition of a penalty for violations of the new Section 128 in regulations rather than in the Act so as to make it easier to adjust the penalty if necessary in the future. While this suggestion is certainly of consideration in the future when further Amendments of the Act are considered, the modification of this provision at present would be out of line with the scheme applicable to all other penalty provisions in the Labour Act.

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Honourable Dr Amweelo has enquired whether casual workers, such as stevedores and labour-based employees, will be protected. He also expressed the more general concern as to whether the law protects employees against casualisation. I wish to inform this House that the references to “casual employees” contained in the Labour Act of 1992 were eliminated from the 2007 Act. The 2007 Act does not recognise casual status. All employees are entitled to the full protection of the Act, including the categories mentioned by Honourable Amweelo, regardless of the duration of their employment, including applicable minimum wages as is the case in the construction sector. The focus of these Amendments is on the elimination of the exploitation and abuse associated with casualisation. We will continue to foster measures and policies to promote direct hiring and long-term employment, however, we would also endeavour to regulate the labour market so as to recognise the legitimate needs of employers for flexibility in certain employment situations, but not at the expense of the fair employment practices and decent wages and conditions of work.

Honourable Tjihuiko further asked whether the user enterprises or a private employment agency will be responsible for the payment of Social Security. For the purpose of the enforcement of the Social Security Act, the law will hold the user company or the employer responsible. This does not preclude the user and the employment agency from making their own internal arrangements, but such arrangements will not insulate the user from the responsibility of an employer in the event that Social Security contributions are to be paid.

Honourable Lucks has questioned the imposition of joint and several liability on both the private employment agency and the user enterprise in circumstances where an exemption has been granted to a user company from Section 128(2). He questions whether it would be practical to hold the private employment agency jointly liable with the user company for the user’s violations of the Labour Act when the private agency may not control the practices of the user company. This is a policy choice. Through the introduction of joint and several liability, we are simply affording adequate protection to a potentially vulnerable employee in a

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triangular employment relationship. As a matter of policy, a private employment agency will be required to assume such a business risk as if it becomes involved in a triangular employment relationship. As a practical matter, that agency could still enter into an indemnification agreement on a commercial basis with the user enterprise. However, they could not agree to remove the protections that this Amendment affords to the placed employee.

Honourable Lucks also questioned whether it might not be necessary to provide a definition of “*managerial employee*” in the new Section 128(c). We are of the opinion that a managerial employee has a commonly understood meaning in law and that it is not necessary for a statute to define it. We have consulted with the legal drafter who concurs with this view. In the likely event that there is a dispute as to whether or not an individual is a managerial employee, an arbitrator of the Labour Court could provide an interpretation.

Lastly I want to thank Members again for your support and if there are a few technical Amendments that have to be effected, we will do so. Thank you very much for your support.

HON SPEAKER: I now put the Question, that the Bill be read a Second Time. Any objection? Agreed to. The Secretary will now read the Bill a Second Time.

SECRETARY: *Labour Amendment Bill.*

HON SPEAKER: The Secretary will now read the Sixth Order of the Day.

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**RESUMPTION OF SECOND READING
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SECRETARY: Resumption of Second Reading on *Flexible Land Tenure Bill*.

HON SPEAKER: When the House adjourned on Wednesday the 9th November 2011, the Question before the Assembly was Motion by the Honourable Minister of Lands and Resettlement, that the Bill be read a Second Time. Honourable Tjihuiko adjourned the Debate.

HON TJIHUIKO: Thank you very much, Honourable Speaker. Let me start by congratulating the Honourable Minister of Lands for a job well done. Once somebody has done something right, one has to recognise that achievement. I am quite impressed by the Bill, I see it as one way of trying to create a conducive environment for the unfortunate ones to be able to have something that they will call their own. That is why it is very important. However, there are one or two things I want to know from the Honourable Minister.

Firstly is the question of Section 3, application of the Act. Honourable Minister, you were saying that the new system only applies to land situated within the boundaries of Local Authorities and Regional Authority areas. I am quite clear on Local Authority boundaries, but when you are referring to Regional Councils, what do you mean by that? Are you saying that, for instance, the registrar in the Otjozondjupa Region who will be registering a piece of land will also be able to allocate a piece of land in communal areas or what is meant by Regional Authorities? I am asking this question because there are already lawful authorities, for instance the Traditional Authorities, which have been given the right to

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allocate the twenty hectares of land to the less privileged people in those areas. According to this Bill the new registrar will now have the same area of jurisdiction as the Traditional Authorities.

Unless we are very clear on this, we may find ourselves in a situation where the Land Board have their own way of doing things based on the recommendations. The Traditional Authority, on the other hand, will have their own right of giving land and the registrar will also have an area of jurisdiction, which may infringe on the area of a certain Traditional Authority. I think we need to have clarity on that.

Secondly, how would the area of jurisdiction referred to in 4.4.1 differ from the area of jurisdiction of the Traditional Leaders in those specific areas?

In Section 11 it is said that *“the relevant authority may on its own motion or application by owner on a piece of land consider the establishment of land-hold title or starter title. Therefore, the relevant authority must conduct a feasibility study, geological and environmental, existing planning requirements, etcetera, of the area according to the prescribed procedures and regulations.”* Are we assuming that these Local Authorities, for instance, have the resources to do this? Let me take the example of the Local Authority in Usakos or Karibib, would they really have the resources to do these feasibility, geological and environmental studies or will the Government step in and help the weaker Local Authorities which may not be able to do justice to what is being required here? Unless we have a proper answer to this, we may find that we have a good law on paper, but most areas will not be able to benefit from this because the Local Authority responsible may not be in a position to do justice to what is required in this law.

Honourable Speaker, when I read this Bill I was so excited and I decided to consult. Some of us like consulting, unlike others. I had a meeting with the community in Katutura and I was very impressed. At that meeting I had close to a hundred people and more than 90% of those who were present were females and I would say that 51% of the people in that

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meeting are SWAPO supporters and because of the fact that they are not getting information from SWAPO, they chose to go to a person who is more sympathetic with the poor. Therefore, it is a good thing that they came and they got the proper information. I hope that the SWAPO Colleagues will also make use of the same opportunity to go out to Katutura, have meetings with the communities, provide information, walk down the streets in Katutura, shake hands with the people and they will be able to appreciate that. I am saying this from experience, because the reason why there were three hundred people at the SWAPO meeting in Aminuis is that they went to see the Ministers, not really that they went to join the Party.

Honourable Minister, on a serious note, let us make it our business to launch an awareness campaign, especially once the Bill has gone through the process. Let us make sure that our communities get the information through the various local radios, so that everybody will be in the know, because this is one of the things which our female colleagues are very serious about and if you give a house to a woman, you have given a house to the Nation. Obviously, they are serious about this, they want to know about this and it is the responsibility of the Ministry of Lands to make sure that this information is accessible to everybody.

Let me conclude by saying that I am a bit worried and we must guard against the misuse of this opportunity. How would these associations referred to access this land? In most, if not all, the municipalities land is being sold and they are mostly doing it through auctions and in most cases the powerful ones are the ones buying the land and they build what one of the Honourable Members was referring to as a new type of single quarters that is being built all over the place now, similar things like the single quarters where one big structure is being built and separated into smaller pieces and people are buying these things at very high prices. I think we should guard against that, otherwise these good ideas that the Government has may end up not really meeting the objective because some of the colleagues will buy land and then they will start reselling this land to the Government or they will build houses on that piece of land and start selling at prices that our people cannot afford.

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I am aware of the fact that Government has a parastatal called the National Housing Enterprise and I am sure that people will be tempted to use this institution. My advice is that this should not be done. The National Housing Enterprise has proven itself, through their highly sophisticated bureaucratic structure, to be very expensive. Whatever money you are going to give to them, more than 50% will end up being spent servicing the bureaucracy and it will not really reach our people. Let us look at some other flexible way and make sure that at least 80% of the money that has been allocated for this purpose should be spent on the purpose. It should not be spent on salaries and benefits of those who are already in the system.

With those comment, which I think are very professional comments, I support the Bill and I hope that we will be able to pass this Bill before the end of the week so that our people can benefit from this. Thank you very much.

HON SPEAKER: Thank you Honourable Tjihuiko. Honourable Muheua.

HON DEPUTY MINISTER OF LABOUR AND SOCIAL WELFARE: Thank you very much, Comrade Speaker, Sir. You have pleaded for brevity and I will be very brief, as usual.

Comrade Speaker, Sir, Honourable Members, I rise to add my unequivocal support to the Flexible Land Tenure Bill as introduced by my namesake, the Honourable Minister Alpheus !Naruseb and also wish to profoundly thank him, his Deputy and the entire staff for a job well done.

The introduction of this very important Bill comes at the right time when the cries of our people for this precious commodity have reached a crescendo. Thus, Comrade Minister, allow me to once again thank you on

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behalf of the toiling proletarian masses out there and, indeed, on my own behalf for heeding our cries. This is, indeed, what is expected from a responsible Government led by carefully elected leaders from among the cream de la cream of the tried and tested cadres of the SWAPO Party under the time-tested leadership of His Excellency Comrade Lucas Hifikepunye Pohamba, President of the Republic of Namibia and his predecessor, the Founding Father and the First President of our country, Dr Sam Shafiishuna Nujoma. We pray to the Lord for their longevity in order to guide our country and people on the path of economic emancipation, just like they did during the long and bitter struggle for freedom and Independence, never wavering where others did. To them we say, “*ngavekurupe nomeho, omajo matuvetatunine.*”

Comrade Minister, as you are acutely aware, the struggle was for the land to be returned to its rightful owners, the dispossessed and indigent black people of this beautiful and richly endowed country we call Namibia, which we are willingly, as manifested over the last two decades, prepared to share with others, including those who are descendants of those who did not only dehumanise us, but also took away from us our land and properties.

Comrade Speaker, Sir, Honourable Members, you may or may not have picked up from the media, articles of the ever-increasing price of property, especially in urban areas. At the current prices very few, if at all, young black graduates or those entering the job market will ever be in a position to purchase a house in any of our towns and cities. What this actually means is that we are relegating them to live in informal houses and backyard shacks for the rest of their lives.

A recent study by FNB’s Mr Namene Kalili aptly illustrates and amplifies this sorry state of affairs of the unsustainably high prices of houses. According to their smooth house prices for the last four years, the lowest prices in Ongwediva jumped from N\$242,337 in January 2007 to a whopping N\$555,366 in July 2011. In Otjiwarongo, over the corresponding period, the price jumped from N\$192,916 to N\$672,537. Swakopmund – N\$615,399 to N\$881,344; Walvis Bay – N\$348,986 to

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N\$611,751 and Windhoek, from N\$493,977 to N\$980,607. Clearly, Comrade Speaker, Honourable Minister, this situation cannot be left to its own devices, it must be arrested sooner rather than later, for failing to do so will unleash a tidal wave of a revolution of angry and frustrated young black people we may not be able to stem.

I was happy when the Honourable Minister of Local Government and Housing shared with some of us the good news that he has succeeded in expanding the borders of the City of Windhoek in all wind directions, as this will most certainly relieve the pressure on the demand side which, in turn, coupled with the good intentions of the *Flexible Land Tenure Bill*, might force the prices of houses down to acceptable and affordable levels.

I applaud you, Comrade Minister, your Deputy and the entire staff for the objects of this Bill, which, *inter alia*, is “*to create alternative forms of land title that are simpler and cheaper to administer than existing forms of land; to provide security of title for persons who live in informal settlements or who are provided with low-income housing and to empower the persons concerned economically by means of these rights.*”

As I conclude, Comrade Speaker, Honourable Members, may I seize this opportunity to reiterate my earlier call on the Honourable Minister to seriously consider the acquisition of land adjacent to communal areas of especially the small, squeezed ones, such as the Daures Constituencies of Okombahe, Otjimbingwe and Omatjete. Very few people of these Constituencies have benefited from the resettlement programme and these areas are becoming smaller with almost each passing year as the population grows. This situation is exacerbated by the fact that these areas are located in the most arid parts of our country at the threshold of the oldest desert in the world, the Namib.

With these few remarks, Comrade Speaker, Sir, Honourable Members, I support the Bill and I wish to thank you.

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HON SPEAKER: I thank the Honourable Member. Honourable Utoni.

HON DEPUTY MINISTER OF SAFETY AND SECURITY: Thank you very much, Honourable Speaker. I also want to contribute to the *Flexible Land Tenure Bill*, which is a very good Bill and I first want to start with the explanatory notes.

The first Paragraph of the introduction does not sound well to me, because it is like pointing a finger to a certain group or to a certain structure of Government. Then it is saying “*the current system of land registration that is in operation in Namibia is considered cumbersome and costly to the majority of the people. The Local Authorities which are supposed to address these challenges have failed to respond to the dramatic demand of urban land*”. I think we know the challenges that Local Authorities were facing. Yes, the Honourable Deputy Minister said the prices of land in some Local Authorities jumped upwards, but we know very well that these Local Authorities did not have enough resources to deliver land. When they find little money, it is spent to service a portion of land and then try to make cost recovery later on. That is what causes the prices to rise. What I am trying to say here is that maybe it is not good that we point fingers.

We remember very well that during March, April when we have just approved the Budget of the Ministry of Regional and Local Government, Housing and Rural Development, that Central Government should now start allocating money to each and every Local Authority, unlike in the past. That is why I am saying that maybe this one is not good.

In Section 2 in the explanatory notes there is also something that needs to be changed. It says: “*This Act is driven by the desire to accelerate access to and delivery of secure tenure in informal urban areas to people without any right to the land they are presently occupying. People living in informal settlements are generally low-income people who have no*

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possibility to empower themselves economically through a secure land tenure system.” Maybe this expression, “*informal settlements*” also needs to be changed. We should maybe say “*people living in unproclaimed town lands.*” That will sound better.

Honourable Speaker, Section 11 is talking about a preliminary tax before the establishment of starter title and land-hold title scheme. I only want an explanation here by the Honourable Minister. This Bill is talking about starter title. I want to know the relationship between this one and the Town Planning Act. Is this one going to be superior to the Town Planning Act or how is it going to work and if they are not related to one another or they are not giving any proper distinction, then it is going to be a problem and we need an explanation on this one.

Moving to the Bill itself, I want to start with Section 9(10) on Page 8. It reads: “*No natural person may hold more than one starter title right and no person may acquire a starter title right if he or she is the owner of any immovable property or land-hold title right in Namibia.*” If I am given a piece of land with my brother or my siblings, because some of the villages fall within the town land, if you want to declare that as our own starter title, can we also not acquire another property elsewhere in Namibia? I am trying to read the Section, that no one should have any immovable property or land-hold right in Namibia. When you have a starter title, you should not acquire any immovable property.

Honourable Speaker, I move to Section 15(4) on Page 15 which says: “*If 75% of the holders of rights in the scheme agree with an upgrading under this Section, the relevant authority may pay fair compensation to the holders of rights that do not agree with the upgrading.*” We are talking of people with starter titles and when those 75% do not agree with the upgrading, the relevant authority should compensate. Is this to compensate the 75%, giving the money and then again allocating them a piece of land or what does it mean? I thank you and I support the Bill.

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HON SPEAKER: I thank the Honourable Deputy Minister. Honourable Simataa.

HON DEPUTY MINISTER OF INFORMATION AND COMMUNICATION TECHNOLOGY: Thank you very much, Honourable Speaker. As usual I am going to be very brief and to the point and, for that matter, allow me to immediately proceed to Section 9, the same Subsection that the Honourable Deputy Minister of Safety and Security commented on, but I will be advancing my comments from a different perspective.

The provision in terms of Subsection (10) is good, but my concern lies in the modalities of implementing a system that will ensure that indeed we do not end up advancing to more than two, if not three or five, starter title rights to one individual. What system are we going to have in place and connected to that, is it not advisable, because there is no system in the world, no matter how effective, that is going to be foolproof. I have come to realise that. That being the reason, can we not make provision for revocation of starter title rights issued in the event that individuals do so on the basis of false information, if at the end of the day it is so established? That is somehow missing, Comrade Minister.

My second comment – and it seems my Colleague and I think along the same lines – is on Section 15(4). Again here I seem to have a different concern and, indeed, this provision is democratic and fair enough, but what is not clear to me is that those who are compensated for not agreeing and I also tried to look at the notes that were provided together with the Bill, but I could not get clarity. Therefore, I am seeking clarity from you, Comrade Minister, whether those who will be paid, that once they are paid they will then have to surrender the rights they have to their dwellings? It is not very clear to me. If the answer is no, then my concern will not be legitimate, but if the answer is yes, then indeed my concern will stand.

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My last comment and observation is on Section 19 on Page 19. I am wondering, Comrade Minister, why there are no appeal mechanisms built in, either to the Minister or to somebody other than appealing in the first instance directly to the magistrates' Courts. There are two reasons why I am saying that. The first is that there is a lot of uneasiness, particularly to the ordinary Namibians out there, when you talk about Courts of law. Not many people are keen to say "*let me go to the Court of law*" and the second concern that comes to their minds naturally is that "*I will have to part with my money*" and it is that money that they seem not to have. I really have a concern there. Unless we are going to educate our people, this may be a little bit prohibitive in a way.

My second concern is that, as we are all aware, our magistrates' Courts are overburdened with many cases. I am wondering whether they will be able to deal with these appeals at the speed that is required. We are dealing with a situation where people are desperate, they do not have a shelter and they need to have a shelter.

Otherwise, in short, Honourable Minister, those are the three concerns and comments that I had and in general and in principle, I support the Bill.

HON SPEAKER: Thank you. Honourable Ueitele

HON UEITELE: Honourable Speaker, Honourable Members, allow me to thank the Minister responsible for Lands and the relevant Ministries for introducing this Bill dealing with the land ownership in settlement areas and in urban set-ups.

In terms of the Bill, the objectives of this Act are as follows: *To create alternative forms of land title that are simpler and cheaper; to administer the existing forms of land title; to provide security of title for people who live in informal settlements or who are provided with low-income housing;*

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*to empower the people concerned economically by means of these rights;
to put in place a land registration system that is just modern and that can
contribute to economic growth and bolster household welfare.*

Besides the abovementioned objectives, it is my wish and my conviction that the introduction of this Bill is to address the existing barriers in the Town Planning Ordinance (Act 18 of 1954) and Township and Land Ordinance 11 of 1963. I am confident that the necessary Amendment to these ordinances will improve and simplify the challenges of urban land delivery and land management in general. It aims to substantially increase the rate of land delivery and to keep pace with the booming population influx as well as the challenges of uncontrolled rapid growth of informal settlements; to improve and strengthen the institutional capacities of the existing relevant land delivering and managing authorities and to create new ones if there is a need for decentralisation of these services. It is also to ensure coordination and determining market influence factors pursuing the supply of delivery of land; to ensure uniform, fair, equitable, reasonable and pro-poor land pricing guidelines.

Honourable Members, Honourable Speaker, the introduction of the *Flexible Land Tenure Bill* is aimed to promote ownership of the available land and to review the existing method of sale by relevant authorities, like sale by way of auction, by way of tenders, by way of private treaty with advertisement and by way of private treaty with ministerial approval.

The Bill is aimed at ensuring a fair, coordinated and procedural allocation of land. This is to prevent and address the current uncontrolled land invasion as well as unplanned informal settlements. It is aimed at ensuring established market enabling policies aimed at promoting self-reliance, pride and a sense of belonging for the people in poor communities.

Having this Bill will enable the creation of strong partnership and self-help approaches to eliminate the current shortage in available land, service and housing created by rapid urbanisation. It is also aimed to create an enabling condition that will allow the private and informal sector to play a

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decisive role in land, land service and housing provision.

Having said that, Honourable Speaker, Honourable Members, while I wholehearted welcome and support the open-ended approach of this Bill, I am strictly cautious and strongly recommend standardisation and uniform application and implementation of these provisions. This Bill must be an important instrument which will provide uniform determined size of reasonable living units as well as proper township layout in terms of the streets. This will help prevent the most current discriminatory sizes of residential units in different towns and one-way streets in some of the informal settlements and also in some of the towns where you are seeing there is one only way and if one car is coming in that street, then the other car cannot pass.

Furthermore, the Bill must also introduce a uniform standardised provision of service structures and layout of informal settlements. The Bill must eliminate the current inherited monopolistic land ownership which highly hampers development programmes in many smaller towns. The Bill must also balance or clarify the conflicting conception of free service by the community and cost recovery from the relevant authority.

Whilst I fully support the provision of the establishment of associations of the scheme groups, I will reject any situation where we as Government will run away from our responsibility and create middlemen who might later be driven by self-interest and come up with heavy conditions for poor beneficiaries. This means, as stipulated in the Bill, the association must be screened, adhere to legal requirements, monitored and coordinated on a regular basis. The Bill must introduce a uniform and a standardised Government and relevant authorities' assistance or subsidies to these associations. This will eliminate the current different assistance accorded to deserving groups by different Local Authorities. Some Local Authorities do not give those groups any incentives and it takes a year or two for these groups to have sanitation after their houses have been built.

Lastly Comrade Speaker, housing and land provision is a national priority and the land has been the cornerstone of our struggle. That is why any

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policy aimed at addressing this plight must never be delayed. In the light of the seriousness and the sensitivity of this matter on the table and with my few recommendations, I fully support the Flexible Land Tenure Bill and I thank you.

HON SPEAKER: I thank the Honourable Member. Honourable Maamberua.

HON MAAMBERUA: Thank you, Honourable Speaker. I am going to be a bit disorganised in my approach, given the nature of these questions and the various papers that are before us. Having said that, let me just delve into the subject matter.

First a number of questions and, of course, when I look through this Bill and the explanatory notes, I think we have more questions than answers to this noble intention presented to us.

My first question to the Minister is: Have you considered changing the land tenure system in Namibia from freehold to leasehold altogether? I am asking the question because I think it is easier to address the land question in this country if we are dealing with a leasehold system instead of the freehold, where somebody has title deed to the land forever.

The other question is: What policy framework is actually informing this Bill?

I wish to hasten to agree with Honourable Muheua that the Ministry should also, when acquiring farms surrounding the communal areas, give priority to those people who come from those communal areas and not resettle people from far away. I think it is just natural, given the history of the communal areas, that they have now become very small and, therefore, farms around the communal areas should actually be given first to people

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who live in those communal areas.

I would have loved to see this approach being a bit more comprehensive, so that when we address the land question, we are not looking at it in a piecemeal manner. If we are only addressing land problems in the so-called informal settlements in towns, we at the same time have a very great need for those people in the communal areas who need title deeds. However, this is not the intention of the Bill, but I think that need should not be forgotten.

My next question is whether any consultations were held with stakeholders? For example, the municipalities that are going to be affected, the communal people who would probably be rushing now to be entitled to have title deeds in the informal settlements, have they had any input into this Bill? That brings me to the question of cost, is this land going to be availed to these people for free? If so, any feasibility study that was conducted to determine the actual cost to the State of introducing a Bill of this nature? That is not to say that even if it was too expensive that it should not be done, but at least that we have some idea as to what is this project that we are about to embark on.

Is the flexible land registration system only for settlement purposes or are businesses also allowed to register under the two levels of tenure, namely the starter title and the land-hold title or is it only when you put up a residential building?

When we are talking about municipal land and Local Authorities, are the municipalities going to be compensated? Is there any money to be paid to the municipalities? Does this law actually allow to talk to the Municipal Act or is it on its own?

How is this Act going to help us to control land prices? Obviously, if we have two registrars of deeds now and this settlement is going to be registered under the Registrar of Lands in this case, we may find ourselves at risk of having parallel towns being developed, because one is already an established municipal area and then some land is being registered by a

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different authority and if the two Acts, that is this Bill and the existing Municipal Act, do not talk to each other, then obviously the risk might be there that parallel towns in more or less the same jurisdiction may be established and that could be a risk. We do not want to create two towns in one town, so to speak.

Under the objectives of the Act we are talking about, in order for them to get comparable rights as people living in urban areas, simple and cheaper forms of land title have to be introduced. What do we mean? That is the question that I posed earlier, is the land going to be free, is it going to be cheap? In what sense? How? What exactly are we referring to that people could actually access cheaper land?

I think those are some of the introductory issues that I have and I wish to stop here in the interest of time. Otherwise, the intention of the Bill in the context of give the land back to the people “*patji ngarikotoke*”, I think it is well-intended and it should be supported. Thank you very much.

HON SPEAKER: Honourable Moongo.

HON MOONGO: Thank you very much, Honourable Speaker. First of all, I would like to thank the Minister, he is the right commander with the right soldiers. I hope with this Bill the Nation can take a step forward. I really trust the Minister, he listens to people and I want to ask him what is the motive and the plan why the Ministry does not advise many other State institutions who make the price of land so high that the poor people cannot afford? What is the good reason? The only people I realised who are serious are the Traditional Leaders. When it comes to land they have one price, so that every poor person can afford it, but when the Traditional Leaders give the land to a municipality, then the people can no longer afford it and I think the Minister could really intervene in this. This is a

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serious violation, we fought for the land and now the poor people do not have the land.

I would like to caution the Minister to empower the community leaders that whenever the institution is going to ask land in order to price it higher, they must also pay higher to the traditional fund, because now they only give the land. There in the municipal areas the poor people cannot afford land. What is this Minister? I hope you get my message and with that I support the Bill.

HON SPEAKER: I thank Honourable Moongo. I give the Floor to Honourable Kawana.

HON MINISTER OF PRESIDENTIAL AFFAIRS AND ATTORNEY-GENERAL: Thank you very much, Honourable Speaker. I rise to support the Bill. In thirty years from now, 75% of the world population will live in urban areas. That is why I am comforted by this Bill because other Nations have already taken steps to address the problem of housing and if we do not plan accordingly, we will be affected by this urbanisation which has been confirmed by the United Nations.

Comrade Speaker, most of the people in developing countries will come and live in squalid conditions as squatters and these are the people who will create political problems for the countries, the politicians and the Governments and that is why we need to prepare and prepare now to avoid those potential problems. Some colleagues have referred to them as political powder cake which can explode.

I have also made a bit of a study and came to the information that rich Europeans normally flock to South Africa and also some rich African business people and even politicians, especially Cape Town where they buy properties. As a result, South Africans in turn flock to Namibia and buy properties here and they are squeezing out the locals. Now the question is, where do we go? That is a good question and that is why we

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TENURE BILL
HON KATALI**

really have to do something to make sure that we retain our land and retain our country. After all, as it was said by Honourable Moongo, although he took leave from the struggle, the struggle was about land.

Comrade Speaker, a few years ago I travelled to a neighbouring country, which I am restrained to mention by name. I met my counterpart and I was very embarrassed when he told me he has been to Windhoek and not only that, he told me he owns two houses in Ludwigsdorf and one house in Swakop. I was very embarrassed. Where do we go? Let us address the housing problem of our people, especially the poor, those who live in informal settlements. With these few words, I wholeheartedly support the Bill. I thank you.

HON SPEAKER: Honourable Katali.

HON MINISTER OF MINES AND ENERGY: Thank you, Honourable Speaker. From what I have heard from my Colleagues, I no longer understand the meaning of the word "*brief*" and therefore, I will refrain from being brief or whatever.

I wholeheartedly support the Bill. I almost became an expert in this flexible land tenure system that time. I am only left with one question that was not answered and I hope by now the Minister might have an answer to this question. The objective of the Bill is to formalise the informal settlements. What measures are there to prevent the informal settlements to continue or is it still that people are continuing to be in informal settlements and the Bill is trying to follow them up for correction? Is there any measure to prevent the escalation of informal settlements so that the Bill will still just follow and follow and it will become endless? With that question, I once more support the Bill.

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HON MINISTER OF LANDS AND RESETTLEMENT: Honourable Speaker, may I, through you, beg the indulgence of my Colleagues, the esteemed Members of this august House, to give me time to reflect on the very interesting issues raised and questions and give my response tomorrow.

HON SPEAKER: Any objection? Agreed to. The Debate stands adjourned until tomorrow. The Secretary will read the Seventh Order of the Day.

**RESUMPTION OF DEBATE ON RATIFICATION OF THE
SWAKOPMUND PROTOCOL ON THE PROTECTION OF
TRADITIONAL KNOWLEDGE AND EXPRESSION OF
FOLKLORE**

SECRETARY: Resumption of Debate on Ratification of the Swakopmund Protocol on the Protection of Traditional Knowledge and Expression of Folklore.

HON SPEAKER: When this Debate was adjourned on Wednesday, 16 November 2011, the Question before the Assembly was Motion by the Honourable Deputy Minister of Trade and Industry. The Honourable Deputy Minister of Works and Transport adjourned the Debate. Honourable Mutorwa.

HON MINISTER OF AGRICULTURE, WATER AND FORESTRY:
Thank you, Comrade Speaker. I am taking the Floor to make a small

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contribution to this very important protocol. I commend my good friend, the Deputy Minister of Trade and Industry, for tabling and eloquently motivating this protocol, which I support.

The subject matter of traditional knowledge and expression of folklore is a very important subject matter and very rich. Our experience on the continent is that even with colonialism and slavery, one of the things that still make us what we are, is our spiritual being or traditional knowledge, our cultures and traditions.

As far as I am concerned, intellectual property is a permanent property which is transmitted from generation to generation, although there exist a risk to lose these issues if we do not make some efforts in terms of laws to protect them. I think the main objectives of this Protocol are exactly to try and do that.

I only have an advice, Comrade Tweya, and in actual fact, I am also very relieved and glad that the responsibility of managing this Protocol is put entirely in what is called the National Competent Authorities, which in our case is the Ministry of Trade and Industry. Therefore, when I read Article 14(1), (2) and (3), that division within the Ministry of Trade and Industry that is entrusted with the responsibilities of making sure that the communities whose traditional knowledge and folklores are meant to be protected by this Protocol are rarely informed, because we know the exploitation that is going on by those sophisticated ones who will go to a village and interact, as my good friend, the Minister of Presidential Affairs and Attorney-General, has said, maybe interact with a sangoma, a “medicine person.” These are the people that have sustained us before the existence of hospitals with natural herbs. Now here comes somebody who was trained in a university and in a very cunning way would interact with this “medicine man”, sometimes in some kind of contemptuous way too, but when that knowledge is at the end of the day taken out, the person who will get the credit is this person from somewhere else.

That is why education and awareness are important and I would like to appeal to the Ministry of Trade and Industry to ensure that that division

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within the Ministry that will be entrusted to ensure that people understand the provisions of this Protocol must be properly staffed, must also be outwardly looking, to go out and explain the provisions of this Protocol to our people.

Otherwise, Comrade Speaker, I just stood up to say these few things and to commend our Colleagues in the Ministry of Trade and Industry for bringing this Protocol here which, if properly managed and implemented, would contribute something to our people in terms of our traditional knowledge and our folklores, our spiritual richness. Thank you.

HON SPEAKER: Honourable Moongo.

HON MOONGO: Thank you very much, Honourable Speaker. Again I rise to support this Protocol, but it is a pity that the majority of our youth are not interested in traditional affairs as they say it is outdated and that is unfortunate. We want them to change and understand that without tradition, you do not have a firm foundation. I appeal to the Minister to establish a committee which will capture our traditional knowledge. (Intervention)

RT HON PRIME MINISTER: May I ask Honourable Moongo a tiny question? I agree with you, the young people should be encouraged to embrace traditions, but when are you going to take an interest in NAMCOL?

HON MOONGO: Rather advise me to go for traditional knowledge instead of NAMCOL. At my age I want to follow traditional knowledge

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as it will enrich me and also enrich the youngsters if they learn from me. If they learn from me, they can start businesses without support from the Government and they will make it. This is from the tradition, from the blood. (Intervention)

HON DEPUTY MINISTER OF AGRICULTURE, WATER AND FORESTRY: May I ask Honourable Moongo a question? Honourable Moongo, you say you will advise the youth not to borrow any money from wherever to start a business. Did Uukumwe not get any money from anybody? Did it not get money from the slush funds?

HON MOONGO: It is a good question, because you might know that I was a freedom fighter that time when the slush funds were divided. When I came back I joined the DTA after Independence, after the national elections were done already and there were no slush funds. I did not enjoy those things, as you suspect. However, let me leave that to the people themselves to decide. I started from scratch and I used my skills. Just pay a visit to Uukumwe and you will be blessed and from there you can start your own.

Therefore, I am saying I am happy that the Ministry will encourage knowledge of traditions and that it not be buried, which is the attitude of many of you here who say it is outdated. This is a true story, that we must not lose our traditional knowledge, we must keep it for the future. With this, I support the Protocol. Thank you.

HON SPEAKER: Does the Deputy Minister wish to reply?

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HON DEPUTY MINISTER OF TRADE AND INDUSTRY:

Honourable Speaker, let me not waste time and express my thanks and gratitude to my good friend and my honourable Traditional Leader for their support, but also to the Honourable Members who have supported unconditionally. Yes, it is true, it is our responsibility to maintain our traditions and that is why we have this Protocol. This House would still be presented with a Bill where we will translate this Protocol into the Bill so that we maintain our own traditions, because we do have good things which we should not allow to be buried. We have the responsibility to make sure that we sustain it for the future generations to come. Thank you very much for your support. I thank you.

HON SPEAKER: I now put the Question, that the Protocol be adopted. Any objection? Agreed to. The Secretary will read the Eighth Order of the Day.

RESUMPTION OF DEBATE
RATIFICATION: TREATY ON KAVANGO-ZAMBEZI
TRANSFRONTIER CONSERVATION AREA

SECRETARY: Resumption of Debate on Ratification of Treaty on Kavango-Zambezi Transfrontier Conservation Area.

HON SPEAKER: When the House was adjourned on Wednesday, 16 November 2011, the Question before the Assembly was a Motion by the Honourable Minister of Environment and Tourism. Honourable Kapia had the Floor and he may continue.

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HON KAPIA

HON KAPIA: Thank you very much, Honourable Speaker. I ended with a question on this Treaty we are ratifying, that we want more information and clarity before we approve it. I was saying that in 1884 some people sat somewhere and planned how to colonise Africa and they divided Africa amongst themselves and colonised us. Now we have KAZA, which is a good idea, but is it really only these five countries which initiated this or is there some influence or interest from somewhere?

Coming back to Namibia alone, there are employees of Ministries working in these national parks. When KAZA takes over, what will be the situation of these employees of the Ministry of Agriculture, Water and Forestry because I understand that some of the forests will form part of KAZA. Are they going to remain employees of the Directorate of Forestry or will they be taken up by the management of KAZA? The same goes for the rangers and others of Ministry of Environment and Tourism itself who are protecting these national parks. Will they be employees of the Parastatal called KAZA or will they remain with the Ministries?

These are some of the concerns that we must debate to get clarity, so that when we ratify this Treaty we are clear. Therefore, in the light of the many questions posed, many of us feel that we need more time to really go through this Treaty and see whether the communities understand it and know what we are busy doing here. There are Committees of Parliament and they are not really allowed to do the work they are supposed to do and to come and inform the National Assembly on the findings and the concerns which were raised on the Floor of the House.

Honourable Speaker, sometimes when somebody speaks, people feel that maybe you are not supporting a Treaty or a Bill. The idea is good but we want to assure ourselves, so that we are not going to point fingers to each other tomorrow or being blamed by our own people who gave us the responsibility to be here. I have nothing against the idea, but really, we want to have time to satisfy ourselves with this Treaty. I want to repeat that since there is no protocol for this Treaty and it is already called international while it is within SADC and not called a regional Treaty, some of us have fears that people in Europe and wherever are just waiting

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for us to approve the Treaty so that they can put up lodges, fly in and out, because KAZA will regulate even immigration and customs.
(Intervention)

HON MOONGO: I hope I understand you well, but do you not think it is a contradiction if the President already signed and SWAPO rejects the Treaty?

HON KAPIA: Honourable Moongo, the Honourable Speaker clarified this issue very well and I do not want to dilute the words of our Honourable Speaker. (Intervention)

HON DEPUTY MINISTER OF AGRICULTURE, WATER AND FORESTRY: Comrade Kapia, is the fear not that if we ratify this Treaty without a protocol, the same thing which was ruled Out of Order by the Speaker will be repeated? People will tell us this House has already ratified the Treaty. Is it not going to be the same? Would it not be better to have the protocol and then ratify? Will this House not be told it has already been ratified by this House? We cannot allow it to be that way.

HON KAPIA: That is exactly the concern, that the same Honourable Moongo will do that. Therefore, we want to do justice, we are not against anybody, we are just trying to do justice to this Treaty so that when we ratify it, we are all happy, the affected community will be clear and be happy and everybody will be happy. We particularly want clarity on the financing of KAZA or the benefits accruing from KAZA to Government and the community to live in harmony as they used to live in those areas where KAZA will operate.

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HON NAMBAHU

With these words, Honourable Speaker, I really want to register my concern. Thank you very much.

HON SPEAKER: Thank you. Honourable Nambahu.

HON DEPUTY MINISTER OF JUSTICE: Thank you very much, Comrade Speaker, I am going to be very brief. I initially did not want to take part in this discussion, but having seen the concerns raised, I am just going to limit myself to two or three points.

I have spoken to the officials and some of the Comrades in the Ministry about some of the issues and I am not going to repeat them here, such as the issue as KAZA being a natural person able to dispose of assets and how that will be done. However, let me just say something on the issue of buying in.

In modern international law instruments the question of buying in by those who are affected is crucial, for those who are affected to feel part and parcel and to take ownership of whatever initiatives taken. I feel that is very critical. When you, for example, establish the water-sharing arrangement, you have to consider existing uses by those inhabitants of the area. You even have to consider the river inhabitants, whether your actions will not affect the flow and the living creatures within the rivers.

Therefore, while listening to the discussions, I thought that probably it is not too late for us to consult those affected so that they can buy in and actually make them take ownership of what we are proposing to do. Therefore you hear of all the impact assessments, environmental assessments, social impact assessments, economic assessments, developmental assessments and I think any good consult should actually raise these kinds of questions so that those affected could give answers and then there is no gap between the leaders and the followers. Leaders have to lead and those who follow must be convinced of what is being

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done. I am not saying there is anything of the sort, but just to be on the safe side I think that is necessary.

The issue of the clearing house also comes in and maybe we have to rethink the clearing houses, so that they have a proper check list on what was done and once those questions are answered, then we will be able to go forward. Otherwise we will have problems if that is not taken care of. With those remarks I support the Treaty, there are good initiatives in there as there are a lot of activities that are happening without control and people putting up lodges. I worked in some of those areas previously and in the Omega people fly in and out at night. Therefore, there are initiatives that need to be taken, but it is always good to be descriptive of what the situation is, buy in and actually make people aware of what you are taking so that they are brought along. With those remarks, I support the Treaty.

HON SPEAKER: Thank you. Any further discussion? If not, I revert the Floor to the Minister to reply.

HON MINISTER OF ENVIRONMENT AND TOURISM: Thank you, Comrade Speaker and Honourable Members. I must say the discussion on this Treaty has been very useful, more particularly to those of us who have the responsibility to oversee its implementation and I am now referring to the Ministry of Environment and Tourism.

Comrade Speaker, just as an introduction before I go into the details of the questions that were raised on the Floor, I want to make it clear to all of us, more particularly if you recall when I introduced this Treaty, I informed this Honourable House that the idea of KAZA came into being in 2003 and I was made to understand and I am convinced what I am informed is correct, that the idea of KAZA has originated from ourselves as KAZA Member States. From the information made available to me, Namibia has played a very crucial role in the birth of the idea and that is also based on

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our strong support of the integration of the SADC Region and that is why at that meeting of our Heads of State, where the idea originated, the Ministers responsible have to take it very seriously. I am referring to a meeting of the Heads of State of the five countries which took place on 24th July 2003, chaired by His Excellency Dr Sam Shafishuna Nujoma, the Founding President, in Katima Mulilo and that is where the idea came from and the Ministers responsible were then directed to work on that idea.

Subsequently in December 2006, the Ministers responsible for tourism then, signed a memorandum of understanding and that has then committed the five countries to collaborate on this specific project to establish the KAZA and the idea of the treaty then also came in.

This Treaty was worked on by the five partner countries and there has been an interaction between the Ministers responsible for tourism and the respective Offices of the Attorney-General. I can recall that when in 2009 and 2010 Namibia was the coordinator for KAZA, which normally takes two years, and the Treaty was to be finalised, we had to attach a lawyer from the Office of the Attorney-General to our team that was working on the KAZA Treaty until the work was concluded.

I also have to inform you that before this Treaty was signed in Luanda by our Heads of State, to be specific, on the 18th of August, it had to be taken to the SADC Ministers of Justice at their meeting that took place in Swakopmund to certify the Treaty, because it is also in line with the SADC Declaration of Understanding on the Trans-Frontier Area.

Comrade Speaker, the point I want to make here is that this is an initiative of the five countries and we need to take it that way, otherwise if we continue to think that we cannot carry such an initiative forward, it would be self-defeating. Of course, there are European countries which are supporting the project and I really do not think we need to be apologetic about them supporting us. We know what they have taken and if they are bringing in, we cannot be suspicious as we know we are the ones in control to ensure that the project really meets the intended goal, as directed by those who initiated it. I would, therefore, really request the

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Honourable Members not to see any ghosts in this project, but to see it as a projected that originated from ourselves.

Having said that, Comrade Speaker, the objective of this Trans-Frontier Conservation Area is to harmonise the policies, strategies and practices of managing natural resources where two or more countries share the same resources and it is not taking over any sovereignty of any of these countries and it is even clearly stipulated in the Treaty that we are only harmonising the implementation of our programme, but under no circumstances can the national laws be affected. However, we have to collaborate because the resources are shared by the five countries.

The KAZA-TFCA, therefore, will foster trans-national collaboration and cooperation among our partner countries in implementing the eco-system and cultural resource management and the eco-system integrity and natural ecological process will be enhanced by harmonising renewable natural resources management approach and tourism development across the international borders. That is where the word “*international*” comes in. It is not national because there are five countries involved, therefore you are crossing international borders, hence it has to be an international Treaty.

Comrade Speaker, the ***Right Honourable Prime Minister*** has really raised a very pertinent issue, namely as to what extent that can benefit the indigenous communities and more particularly, one can now refer to the indigenous communities in Bwabwata National Park and how other Ministries will be involved in KAZA in order to take this conservation and tourism initiative further. This was really the concern that the Right Honourable Prime Minister had.

Comrade Prime Minister, Honourable Members, the indigenous Kwe or San community in Bwabwata National Park had formed a Kramashan Association, a representative body which is representing the interest of the communities living inside the park in terms of bio-diversity conservation and tourism benefits. The Ministry of Environment and Tourism has awarded two hunting concessions to the association, generating N\$4 million per year, of which 50% goes to the community through their

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association and 50% goes to the Game Product Trust Fund and it is this Fund that we are using in the support and the protection of the management of our natural resources. This programme will continue even when KAZA becomes operational, nothing will be taken away from this community.

They also have a community tourism campsite which has now been approved to be developed into a tourism lodge. They are also authorised to harvest devil's claw from inside the park, generating over N\$200,000 per year. All the proceeds from the lodge that this community is going to build will be guided by our own tourism concession policy, because it is going to be a concession in the park and it is not that it is going to be administrated by KAZA which has its own Secretariat. Here I just want us to understand that nothing will change from what is currently happening in as far as the community's activities are concerned, but rather to strengthen them.

For example, making use of the funds which are part of Namibia's benefits from KAZA, if we have to get anyone to be in partnership with the community, it is not only that the community will say they have the land, but we make sure that the community also cash in to make sure that the share for the community cannot be less than 50%, unlike what is happening now when the community enters into partnership with the private sector, because they do not bring in cash. Because the land is communal land, it is not evaluated so that you can say your share is this amount. We now want to get rid of that so that the community is not just given a contribution or a donation, but to have true ownership and we are saying the principle of more than 50% to be owned by the local people has to be enforced and to strengthen their capacity. That is why the cash has to be made available.

Honourable Prime Minister, I was with you last night when you launched the film, "*Born in Etosha*" and I want to give some information related to the benefits for other indigenous people in as far as conservation is concerned and I am saying this because at one point it was also mentioned that when we have proclaimed parks, then they are fenced and we are

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denying the people who lived there access. What benefits are they getting?

Cabinet has directed that the Ministry of Environment and Tourism must identify and negotiate to purchase farms to the size of 45,000 hectares adjacent to Etosha. Then we have to approach the Ministry of Lands to purchase these farms for the /Haikum. To date 37,159 hectares of land have already been bought. Thank you, Honourable Minister of Lands. We are handing over some of this land to the Office of the Prime Minister for their project. This land so bought will be utilised as follows and the programme has already started:

On one part of the land where many people are going to settle, facilities such as schools and clinics will be set up as well as agricultural activities. I visited one of the places and I could see that the /Haikum are interested in agriculture. (Interjection). There was a question on how the indigenous people are benefiting from the conservation and the indigenous people are part of the Etosha. I will come to KAZA. We are saying those indigenous people were deprived of their land, they are going to benefit. Therefore, one part of the land is for agriculture, the other part is going to be a game farm and another part where they are going to erect their lodge.

When it comes to KAZA, other Ministries are already involved in the development of KAZA Trans-Frontier through the KAZA National Committee for Namibia and the Special Advisory Committee. Ministries and institutions which participate in the National Committee for Namibia include the Office of the Prime Minister, the Ministry of Agriculture, Water and Forestry, more particularly the Directorate of Veterinary Services, the Ministry of Lands and Resettlement, the Ministry of Fisheries and Marine Resources, the Ministry of Safety and Security, the Ministry of Environment and Tourism, Caprivi, Kavango and Otjozondjupa Regional Councils as well as traditional authorities whose areas are covered by KAZA. Those are the realities, Comrade Speaker, and this is a technical committee and the officials are very much acquainted with it and they have attended many of the meetings that have taken place, especially during 2009 and 2010, where a lot of work was done which led to the finalisation of the committee.

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The committees that are going to be established, include the committee on Conservation and Animal Health Working Group, the Tourism Working Group, Community Working Group, Safety and Security Working Group and Communication Working Group and issues of poaching will be addressed by those committees. I am responding to a question that it is hoped when we have the KAZA, then the issue of poaching will come to an end. It will come to an end because everything to do with security will be dealt with by the Security and Safety Working Group. These working groups will have officials from all the five countries and that is why they will be able to deal with those issues.

Honourable Sioka, thank you for supporting the donation of the game to Cuba. This programme is going on very well and no one can stop it.

You have asked why the Minister Committee and other committees in the Treaty require a quorum of at least three partner States for meetings to proceed and why not at least four. Honourable Member, three countries have been found to be appropriate in forming a quorum for the meeting because decisions are made by consensus. Three countries out of five is a good quorum and there will be no voting as decisions are taken by consensus.

Then there was a question as to why the headquarters and the Secretariat are in Kasane and why not separate. Honourable Members, this is not possible because it is the Secretariat that mans the headquarters and it is not possible to separate the two.

Honourable Kawana made a comment that we need to guard our resources to benefit our people and Africa. This statement is in line with the objective of KAZA. It is imperative that any programme to promote the conservation of bio-diversity must have a positive impact on the standard of living of those rural communities. It is on the basis of the potential presented by the vast wildlife, tourism and cultural resources in the region that the five partner countries believe they can derive equitable returns and significant socio-economic benefits, provided they harmonise their conservation policies and ensure their shared natural resources are managed in a sustainable way.

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Honourable Bezuidenhout wanted to be assured that KAZA will remain a prime tourist destination. Yes, the five Governments have agreed to work together and as you can see in this Treaty, the whole idea of KAZA is to make this area a tourist destination and that has to benefit all five countries who are members. We need to work together and promote cross-border tourism as a means of fostering regional socio-economic development and enhance eco-system integrity and natural ecological process by harmonising our policies. The support, as the Honourable Member has said, of the Members of Parliament will be much appreciated to ensure that KAZA is implemented and its intended objective is realised.

Honourable Limbo made a comment that communities need to be trained in wildlife related activities and those officials at the border posts must be friendly to visitors and tourists. She also wanted to know if KAZA will reduce illegal hunting. Yes, Namibia has already started with the training of communities in the field of wildlife management and tourism mainly through the conservancy programme. Out of 65 registered conservancies, eighteen conservancies are in KAZA area and training of officials at points of entry in tourism and how to receive our tourists and visitors have been discussed within the KAZA Secretariat and at an appropriate time such training will be conducted in line and in consultation with appropriate Ministries.

Honourable Kazenambo wanted to know what impact will the Treaty and conservation mentioned in the preamble have if Namibia ratifies the KAZA Treaty. Those are the treaties which were referred to that some member countries are party to. I must state here that the conventions and treaties mentioned in the preamble are only for recalling that all or some of the five KAZA partner countries are parties to those conventions. Where a country is not a member to such convention, that convention has no impact on that specific country.

As an introduction to the KAZA Treaty we are reminding ourselves and recalling that some countries or all countries may be part to some of those international conventions. Namibia, for example, is a member of all these said conventions in the preamble except for the African Convention on Conservation of Nature and Natural Resources, Algeria, 1968 and the

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Convention of Migratory Species, Bonn, 1979. Honourable Members, with the exception of two, Namibia is already part and where they are mentioned in this Treaty, we are obliged as we are already party to those. These two we are not, but there are countries who are and that is why we were just reminding ourselves, because what we are doing here can also in one way or the other be seen in the same light. Those two conventions, therefore, do not apply to Namibia and for this reason, the Paragraph therefore states that, “*further recalling that all or some*” because we know not all the countries are party to that. In this KAZA Treaty we are, therefore, simply reminding ourselves.

On cultural heritage, KAZA is to enhance the protection of cultural heritage resources and to ensure its sustainable use, because the Honourable Member wanted to know to what extent are we going to protect our cultural heritage. In Article 6 there is emphasis on the protection of our cultural heritage and that is why we feel we can do it as partner countries as a resource we are sharing.

The ***Honourable Deputy Minister of Finance*** wanted clarification on the definition of “*stakeholders*” and Article 18 on the assets. Honourable Member, “*stakeholders*” in this definition mainly refer to communities, Traditional Authorities, Ministries, Regional Councils, private sector, NGOs or those individuals as legal persons, because all these groups which make up the different committees become stakeholders because they are working together as a team. Assets refer to those properties acquired with KAZA money. For example, the Secretariat office in Kasane, Botswana, even if not constructed with KAZA funds, is already an asset because Botswana agreed to hand that over and if you want to withdraw, you cannot withdraw immovable assets, it will remain the property of KAZA.

On the issue of materials, Article 6 is very clear that the Treaty is focusing on wild species and plants, not minerals, because some Members of Parliament were asking what would happen if a mine is found in the KAZA area. KAZA is not taking territories from Member States, here we are only talking about renewable resources, wildlife and plants. However, if minerals are found there, Comrade Katali will know how to manage it,

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he will not even need any approval from the KAZA but just apply the national laws.

Then there was a question about the park. Colleagues, the KAZA area, as demarcated, does not mean the whole area has become a park. The parks are gazetted and they are demarcated as they are. We have only realised that the natural resources we are talking about, especially wildlife, are to be found within those areas which became the borders of KAZA and because of that, the whole area will then be developed as a tourist destination. For example, whether you are coming from Windhoek or from Katima, when you cross the Divundu Bridge, you are entering the prime area of tourism and that is why we say we need to build that entrance so that it will become more attractive for tourism purposes, but it does not mean Divundu has become a park or any other place that can be identified.

Again, those who are going to have tourism facilities within KAZA will be benefiting, because as we are marketing KAZA, your product is also marketed because we want the area to really be a spinner for tourism for the five countries. The area is going to be marketed by all five countries so that they can attract more tourists, and in that way the area will be able to be developed.

Honourable Muheua, thank you for your support for the animals we are sending to Cuba and we will continue to monitor this whole issue of human-wildlife conflict. Because of our conservation our wildlife has really recovered, especially the elephants, and because of that, we have to develop similar monitoring and management mechanisms within KAZA. For example, when we are selling KAZA, we are talking about the number of species to be found there and if the number of elephants has increased to such an extent that the five countries decide they must be reduced, we will be able to move as a team and increase our quota for trophy hunting of elephants and because of that project, you are strengthened because we are managing our resources together. You are going to have the same management programme for the five countries and that will help us to manage the human-wildlife conflict.

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Honourable Mutorwa had many questions and I always enjoy your questions because of the way you analyse your documents. You asked how Namibia will benefit through the definition of “*local communities*” contained in the Treaty. Honourable Members, in terms of the definition of “*local communities*” in the Treaty, in Namibia communities will benefit in the following categories and this is in accordance with our national policy and tourism and wildlife concession on state land, which many countries in African now want to copy:

- (a) Communities resident in protected areas: The main target for concession from protected area to local community should be communities resident in protected areas, because such communities potentially have the greatest impact on the park and are likely to be most negatively affected by wildlife or by loss of access to land and resources. Where communities live within protected areas and other neighbouring communities are negatively affected by protected areas, the Ministry gives preference to those who are in the park. That is why I mentioned the Association, that when we are awarding concessions we give preference to those in the park, but we also pay attention to those who are neighbouring the park because we know they are also affected. We always have to ensure that the concession opportunities are equitably and fairly awarded to those neighbouring the park.
- (b) Communities that have formed legal entities, like those who have conservancies, should also be targeted for concessions from protected areas, because they often suffer livestock and crop losses due to the wildlife that are leaving the park.

In other words, Honourable Members, this programme is part and parcel of our programme of sustainable utilisation of our natural resources and we are arguing that these communities are the custodians of these resources and if we are talking about conservation, you cannot just talk about conservation and forget the people who are taking care of those resources that you are conserving. That is why we have to ensure that they are given preference when we are allocating the concessions in those areas.

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A good example in the KAZA area is the community north of the Kaudum National Park, which have formed the George Mukoa and Muduvu Nyangana Conservancy in the Kavango Region and together with the Gciriku Traditional Authority have been given a tourism concession at the Sekereti in the Kaudum National Park. We make sure that that concession in that park is given to those two conservancies as well as the Gciriku Traditional Authority and once everything is done, they will benefit. You may not see the benefits now because the programme is just starting, but we are looking ahead because tourism, like any investment, is not for the short term, it is for the long term and that is what we are looking at.

Where there are neighbouring communities but there is no legal entity, the Ministry notifies potential beneficiaries of pending concession opportunities and encourages the formation of entities, not necessarily conservancies. They can have an association so that they can benefit. Where they do not have conservancies and we know that in this area there is a potential for conservation, we alert them and they can organise themselves even to have a trust.

Where there are multi-poor neighbourhood communities that have legal entities, the Ministry gives concessions depending on the number and the type of available concession opportunities and the number of immediate communities neighbourhood that meet those principles. In the case where there is no immediate neighbouring community, the Ministry can consider awarding concessions as part of poverty reduction objectives, to organise communities or groups who are committed to conservancies and these include even trusts and conservancies.

Then there was a question on where is the Mangetti National Park, which is mentioned in the Treaty. Comrade Mutorwa, the Mangetti National Park is located in the Kavango Region and it should not be confused with Mangetti cattle ranch or Mangetti Dunes and this was proclaimed in accordance with a Cabinet decision and to be exact, the Mangetti National Park is situated in the eastern Kalahari woodland about 100 kilometres south-west of Rundu. Just after the gate on your way to Rundu, the sign is even very clear. That is where the Mangetti National Park is. It is one of the parks which is developing very fast and even the benefit-sharing,

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because the Government manages the park but there has been a benefit-sharing agreement signed between the Ministry, the Traditional Authority and Kavango Regional Council and already there has been a distribution of benefits done since this park was proclaimed in 2008.

Another question was why the Treaty should be ratified if the agreement between SADC and KAZA is not attached to the Treaty. Honourable Speaker, even in the absence of the agreement, the role of SADC is recognised under Article 9 and for the information of this Honourable House, Trans-Frontier Conservation is an initiative and a programme accepted by SADC and KAZA Trans-Frontier is, therefore, a SADC registered project as it has been recognised that KAZA is part of that programme where SADC vision of regional integration is an objective in order to reduce poverty and the management of trans-boundary natural resources management is the key.

Today we have 21 Trans-Frontier Conservation Areas and Trans-Frontier Parks in SADC which are at different levels of development, but I must say, KAZA is one which is really developing fast. When we started to develop and negotiate this Treaty among partner countries, we had the role of SADC in full in this Treaty. As I mentioned earlier, this Treaty even went to the SADC Ministers of Justice and that explains the role SADC is playing and to say that SADC is part of this programme. KAZA meetings, whether at ministerial level or secondary level, the SADC Secretariat is always present. Therefore, we should not think that SADC is not part and parcel of this, because they have always been there.

Then the question, how will the KAZA Secretariat staff be appointed and what formula will be used to ensure equitable and gender representation. Honourable Speaker, in order to ensure equitable representation of the partner countries and gender balance in the appointment of KAZA Secretariat staff, guidelines for the recruitment of the Secretariat staff have been developed and are already approved by the Minister Committee. We really feel these are more administrative and not necessary to bring them to our Parliament.

The KAZA Secretariat staff are currently just a small unit and is going to

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expand, because the current staff is just a regional coordinator, one programme manager, a financial manager, one administrative officer who is also a Portuguese translator and an accountant.

One of the responsibilities of the Secretariat is to coordinate the drafting and implementation of an effective action plan for achieving the objective of KAZA with full participation of relevant stakeholders. His question was, how the relevant stakeholders' efforts affect the efficiency of the Secretariat. Honourable Members, the relevant structure referred to in this as the responsibility of the Secretariat is the specialised advisory group, which is KAZA Technical Committee, Committee of Senior Officials and Ministerial Committee. When an action plan is drafted, it has to be approved by the Ministerial Committee and must be looked at and scrutinised by the Technical Committee and the Committee of Officials. It is just a structure, but when you go through the Treaty, you realise that all policy issues have to be approved by the Committee of Ministers, including those of financial nature as well as the action plan.

Another question was how we will ensure benefits to local communities, for example the communities living in areas adjacent to Kaudum National Park. I think I have answered this question in detail as to how the communities inside and outside the parks are benefiting.

Then it was asked where is the Protocol on Immunities and Privileges. The Protocol on Immunities and Privileges have not been concluded in this Treaty. This was again advice by our legal experts that we do not need to have those things in the Treaty and that is what we have to say. This is also in line with the SADC Treaty, that protocols can also be brought to Parliament for ratification if advised to do so. It is really not necessary that protocols have to be ratified and that is the advice we got.

Comrade Mutorwa further wanted to know, when the committee of senior officials determines the institutionalisation and management of KAZA Fund, does the Secretariat submit this for approval for the Ministers? Yes, Article 11(4)(b) is very clear that this Budget has to be approved by the Committee of Ministers.

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Then, whether we know what progress was made by the other countries to ratify Treaty. Yes, Angola has ratified the Treaty, Botswana and Zimbabwe have indicated that they have laws that do not require that. We all know that Zambia just had their election and I think in the process they are going to do what their laws dictate.

Then there was a question on the town of Rundu which is within the borders of KAZA. I think the tourism operators in Rundu must be celebrating because they are part of KAZA. They are now going to be part of this big family and they are going to benefit from marketing. Tourism is marketing and if your marketing is weak, you are not going to make it in the tourism industry. Rundu is not a part but it is within KAZA area and even if the town of Rundu discovers something which is of tourism nature, we can make it a KAZA project and we can fund it through that. That is how they can benefit from it.

Honourable Tjihuiko wanted to know how will the National Assembly know how much money will Namibia contribute to KAZA. Honourable Member, when the formula for contributions by partner countries is proposed by the committee of senior officials, it will be approved by the Ministers and every Member State has to go to their Ministries of Finance to be appropriated and you will see it in the Budget. You cannot expect the figure to be mentioned in the Treaty because the figure will change from time to time. Therefore, it is really not possible for us to have the figures in the Treaty.

There should be no confusion between termination of the Treaty and membership. Article 31 deals with withdrawal from the Treaty. That means a country can terminate its membership, but the Treaty will remain in force even if a certain partner country has withdrawn. If after five years a country no longer wants to remain in KAZA, they can give notice to partner countries and then they can withdraw.

For termination you need at least three countries which are no longer there, then there is no way KAZA can continue with only two countries. We are not locked in, there are ways we can withdraw.

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Honourable Kaura, on the issue of the hunting areas in Angola, in Angola the hunting area is equal to a national park in other countries. For example, in Zambia they are calling them game management, therefore the intention is the same, but they are given different names.

Then there was another question by *Honourable Kaura* whether the Treaty is for noting or ratification since it has already been signed. Honourable Members, I think one Honourable Member reminded us that we need to be systematic and consistent. This is not the first Treaty we are signing or ratifying and all the treaties we ratified came here already signed by the Government. Therefore, it is not unique to this Treaty and I do not think it will end with this Treaty or any agreement. All of them have already been signed by the Government when they come here and that has been the procedure for the past twenty-one years. I do not know why we are forgetting it, it is really unfortunate.

You asked how KAZA would contribute to poverty reduction and I think I have really explained this. The benefits to the communities at the different levels are contributing to poverty eradication in our communities. Human-wildlife conflict keeps on coming up and as I said, what the KAZA partners are going to do is to work together and see how we can manage as a team the human-wildlife conflict and in the process we will see the impact.

Honourable Speaker, each country will have its own programme on how they are going to make sure their communities benefit. That is the underlying factor and the current ongoing activities are not going to be affected. If we look at the Treaty, it has recognised that activities such as fishing, ploughing and livestock farming will all continue, nothing is going to be disrupted in the implementation of this Treaty.

Comrade Speaker, I am concluding, I really want to allay the fears of the Honourable Members that Namibia's territorial integrity is not under threat and I want to assure you that what we are going to do in implementing this KAZA will be in the best interest of the Namibian people. Thank you very much, Honourable Speaker.

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ADJOURNMENT

HON SPEAKER: I now put the Question that the Treaty be ratified. Any objection? None. Agreed to. On that note, the House stands adjourned until tomorrow, 14:30.

HOUSE ADJOURNS AT 21:09 UNTIL 2011.11.23 AT 14:30

**ASSEMBLY CHAMBERS
WINDHOEK
23 NOVEMBER 2011**

The Assembly met pursuant to the adjournment.

HON SPEAKER took the Chair and read Prayers and the Affirmation.

ANNOUNCEMENTS

HON SPEAKER: I am extending an invitation to the Honourable Members on the occasion of launching a publication by the United Nations Community entitled “*Achieving the Millennium Development Goals: A Guide for Namibia’s Parliamentarians*” that will take place during tea-break in the Parliament Garden.

The second announcement is that the Honourable Members will find an invitation on their desks, including a programme, from the Ministry of Gender Equality and Child Welfare to attend the official launch of the Sixteen Days of Activism against Gender-based Violence on Friday, 25 November 2011 at the UN Plaza, Katutura. The official proceedings will commence at 09:00.

HON SPEAKER: Any Petitions? Reports of Standing or Select Committees? Other Reports and Papers?

TABLING: REPORTS OF THE AUDITOR GENERAL

HON MINISTER OF FINANCE: Honourable Speaker, I lay upon the Table, Reports of the Auditor General on the Accounts of:

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**NOTICE OF MOTIONS
HON DR AMWEELO**

- Municipality of Usakos for the Financial Year ended June 30, 2009 and 2010;
- Municipality of Outjo;
- Municipality of Henties Bay;
- Village Council of Aroab; and
- Village Council of Leonardville for the Financial Year ended June 30, 2010.

HON SPEAKER: Will the Honourable Minister please table the Reports? Any Notice of Questions? Any Notice of Motions? Honourable Amweelo.

MOTION ON BUSINESS OF ASSEMBLY

HON DR AMWEELO: Comrade Speaker, I Move without Notice, that the proceedings on items 1 to 9 on the Order Paper be, in terms of Rule 90(c) of the Standing Rules and Orders, not be interrupted if still under consideration at 17:45.

HON SPEAKER: Will the Honourable Member table the Motion? Any Ministerial Statements? Honourable Minister of Gender Equality and Child Welfare.

MINISTERIAL STATEMENT

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**MINISTERIAL STATEMENT
HON SIOKA**

HON MINISTER OF GENDER EQUALITY AND CHILD

WELFARE: Honourable Speaker, Honourable Members of this august House, gender-based violence in Namibia is on the increase. Cases of gender-based violence reported to the Namibian Police are still frightening. According to the UN definition, gender-based violence consists of various forms of violence, which include physical, sexual, psychological violence occurring in the family and in the general community. Battering, sexual abuse of children dowry (*lobola*) related violence, rape, female mutilation and other traditional practices harmful to women; sexual harassment and intimidation at work, in education institutions and elsewhere; trafficking of women, forced prostitution and violence.

To curb these phenomena the Government initiated several strategies, including enacting of gender-based violence laws, such as the Combating of Rape Act 8 of 2000 and the Combating of Domestic Violence Act 4 of 2003, just to mention a few, a national gender-based violence conference held in 2007, establishment of the National Advisory Committee on Gender-Based Violence in 2008 and the launch by His Excellency President Hifikepunye Pohamba to advised Cabinet through the Ministry of Gender Equality and Child Welfare on the best possible strategies to deal with gender-based violence.

Honourable Speaker, Honourable Members, to create more awareness, a national media campaign on zero tolerance for gender-based violence was launched by the Right Honourable Prime Minister, Comrade Nahas Angula, of the Republic of Namibia in July 2009 at Oshikango Border Post and the campaign is still continuing. Gender-based violence sensitisation workshops and meetings are being held countrywide by the Government officials, NGOs and civil society organisations. During the launch of the Sixteen Days of Activism against Gender-based Violence Campaign last year, the Right Honourable Prime Minister of the Republic Namibia, Comrade Nahas Angula, also launched the Namibian Charter of the Africa Unite Campaign. The SADC Charter of the said campaign was also launched by Madam Pohamba, First Lady of the Republic of Namibia during the SADC Meeting of Ministers responsible for Gender and Women Affairs.

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**MINISTERIAL STATEMENT
HON SIOKA**

Comrade Speaker, in addition to campaigns and workshops, Namibia, like any other country, will join the globe by launching the Sixteen Days of Activism against violence against women and children again this year and the theme for this year is, *“Peace in the Home to Peace in Namibia: Unite to End Violence Against Women and Children.”*

Every year Government and civil society organisations work together to broaden the impact of the campaign. The sixteen days start from 25 November, ending the 10th of December 2011. The primary objectives are to:

1. Raise awareness about gender-based violence as a human right issue at the local, national, regional and international level.
2. Strengthen local work around violence against women;
3. Establish a clear link between local and international work to end violence against women.
4. Provide a forum at which organisers can develop and share new and effective strategies.
5. Demonstrate solidarity of women around the world to stop violence against women and children.

Comrade Speaker, Honourable Members, the launch will take place at the UN Plaza in Katutura, starting with a public march from Katutura Shoprite at 08:00 and proceeding to the venue. The launch will be officiated by the Honourable Dr Theo-Ben Gurirab, Speaker of the National Assembly, on the 26th of November 2011 at 09:00, UN Plaza, Katutura. We are, therefore, inviting you all, the Members of Parliament and the public, to witness the launch of the Sixteen Days of Activism against Gender-based Violence. I thank you, Comrade Speaker.

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**MINISTERIAL STATEMENT
HON NANDI-NDAITWAH**

HON SPEAKER: I thank you. Minister of Environment and Tourism.

MINISTERIAL STATEMENT

HON MINISTER OF ENVIRONMENT AND TOURISM: Thank you, Honourable Speaker. I would like to inform the Honourable Members that on your table there are two documents that the Ministry of Environment and Tourism has made available. One of them is the Namibia Second National Communication to the United Nations Framework Convention on Climate Change and the other one is the Community Information Toolkit on Adaptation.

The National Communication is a requirement of the UN Framework Convention on Climate Change that regularly Member States have to communicate on how far they are and looking at issues which are to be addressed under that Convention.

The Community Information Toolkit on Adaptation is meant to be used by our farmers and all those involved with natural resources and all the 13 Regions have their own information kit. This is because our characteristics are not the same. I just thought I could share this information with the Honourable Members and we would really appreciate if you could go through and acquaint yourselves with our adaptation strategy and also help the communities as we are adapting to the impact of climate change. I thank you, Comrade Speaker.

HON SPEAKER: Any further Ministerial Statements? Minister of Home Affairs and Immigration.

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HON NGHIDINWA**

MINISTERIAL STATEMENT

HON MINISTER OF HOME AFFAIRS AND IMMIGRATION:

Thank you very much, Honourable Speaker, Honourable Members. As we are approaching the end of the year, many Namibians and foreign nationals residing in Namibia want to travel outside Namibia for holidays and other related businesses. This is also the time when criminals attempt to engage some of the staff members of the Ministry in corrupt activities, such as the selling of national documents or fabricating false national documents, permits and visas to those who do not deserve them. I, therefore, would like to sound a stern warning to those who are involved in such corrupt practices to stop selling or forging national documents, permits and visas with immediate effect.

All services rendered by the Ministry of Home Affairs and Immigration are done at the Ministry's offices and not at houses or private institutions. I should point out once again that the Ministry of Home Affairs and Immigration has no contractual arrangement with the so-called agents and we encourage our clients to get services directly from the Ministry. We have noted that people are being cheated and robbed by the so-called agents and they are charging them exorbitant prices for documents that can be issued by the Ministry free of charge.

The Ministry, together with other law enforcement agencies, are on full alert to apprehend culprits of this nature and once apprehended, they will be dealt with accordingly and the law will take its course.

Lastly, I would like to use this opportunity, through you, Honourable Speaker, to inform the Nation that the citizenship applications of the about five thousand foreign nationals who were registered last year and who have been residents of Namibia since 1930 up to 1977, as per Cabinet Decision No. 22/12/06, are at an advanced stage and they will receive their citizenship certificates soon. In the same vein, I would like to urge those who applied for identity documents and passports to go and collect them at the offices where applications were made. These documents are

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piling up at the regional and sub-regional offices countrywide and we might run out of space if owners are not collecting their documents.

In conclusion, the staff members of the Ministry and myself welcome all those who want to enjoy their holiday in Namibia and wishing the Honourable Members and all Namibians who want to travel abroad a safe journey, Merry Christmas and Prosperous New Year.

HON SPEAKER: I thank the Honourable Minister. Honourable Ulenga.

HON ULENGA: Honourable Speaker, I thank the Minister and congratulate her on the information. I just want to know exactly how many are we now in Namibia after the citizenship granted to these people. What is the total population now?

HON SPEAKER: I thought it is another agency. We will be told in due course. The Secretary will read the First Order of the Day.

**RESUMPTION OF DEBATE ON RATIFICATION OF TREATY
ON PROTOCOL IN CONNECTION WITH NUCLEAR
TECHNOLOGY**

SECRETARY: Resumption of Debate on Ratification of Treaty on Protocol in Connection with Nuclear Technology.

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**TREATY ON NUCLEAR TECHNOLOGY
HON DR KAMWI**

HON SPEAKER: When the House adjourned Tuesday, the 25th of October 2011, the Question before the Assembly was a Motion by the Honourable Minister of Health and Social Services. Honourable Dingara adjourned the Debate on behalf of the Deputy Speaker. Any further discussion?

None. Does the Honourable Minister of Health and Social Services wish to reply?

HON MINISTER OF HEALTH AND SOCIAL SERVICES: Thank you very much for giving me the Floor. Honourable Speaker, Honourable Members, I wish to thank the Honourable Members for supporting the ratification of the Treaty and Protocol in connection with Nuclear Technology. There has been some different views from two to three of my learned Colleagues for whom, I understand, their view point. However, I believe that there are three important pillars that underscore the nuclear weapons non-proliferation regime.

Firstly, I take cognisance that the Nuclear Non-Proliferation Treaty regime calls for disarmament. This, we believe, must be pursued without discrimination and those who possess nuclear weapons must commit to and adhere to measures necessary for nuclear disarmament.

Secondly, all countries the world over must subject their nuclear materials and nuclear facilities to the International Atomic Energy Agency safeguards in order to provide assurance that their nuclear programmes are for peaceful purposes only and that no diversion towards the manufacturing of nuclear weapons takes place or that clandestine activities take place.

I fully concur that in both respects, namely, nuclear disarmament and safeguards, there are definitely double standards being applied, especially by the western world.

Honourable Speaker, Honourable Members, as is the case with many developing countries, Namibia attaches equal importance to the third

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**TREATY ON NUCLEAR TECHNOLOGY
HON DR KAMWI**

aspect, that is the NPT regime, which is the promotion of peaceful applications of nuclear energy. Therefore, while we note the double standards of some countries, this should not be reason for us not to agree and approve the said principles articulated in this important international legal instrument. Let us also not leave room for the same countries that apply double standards to question our principles, stance and integrity in this regard, especially if one was to consider the ideals that our very best Namibian Constitution stands for. Ratifying these instruments and adhering to the requirements thereof is an opportunity for us to demonstrate to the very same countries that Namibia is true to its declared ideals.

Furthermore, Namibia is an important uranium producer and we have a vested interest to see to it that our uranium product is utilised for peaceful purposes only. By ratifying the Additional Protocol we open ourselves up to further scrutiny and verification, that our nuclear related activities are intended for peaceful purposes only. Therefore, in as far as it concerns nuclear activities and products within our jurisdiction, let us pursue the principles and ideals stipulated in this instrument, while we also call upon others to pursue the same objectives.

Honourable Speaker, Honourable Members, there were only two questions. As to the question of how many States have ratified the Treaty of Pelindaba as of 1 March 2011, all fifty-three members of the African Union are signatories to the Treaty and thirty-one States have deposited their instruments of ratification with the AU Commission that is the Treaty depository.

The other question was, how many States have ratified the Model Additional Protocol? As of September 2011, out of the 154 Member States of the International Atomic Energy Agency, eleven countries have additional protocols in force. Again I want to say thank you for the support.

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HON !NARUSEB**

HON SPEAKER: Thank you very much for the information. I now put the Question, that the Treaty be ratified. Any objections? Agreed to. The Secretary will read the Second Order of the Day.

**RESUMPTION OF DEBATE ON SECOND READING –
FLEXIBLE LAND TENURE BILL**

SECRETARY: Resumption of Debate on Second Reading of *Flexible Land Tenure Bill*.

HON SPEAKER: When this Debate was adjourned on Tuesday, the 22nd of November 2011, the Question before the Assembly was a Motion by the Honourable Minister of Lands and Resettlement, that the Bill be read a Second Time. The Honourable Minister adjourned the Debate to reply today.

HON MINISTER OF LANDS AND RESETTLEMENT: I am rising to respond to questions raised during the Debate on the Second Reading of the *Flexible Land Tenure Bill* and I will start with *Honourable Tjihuiko*. He knows the questions he has asked and I will just respond.

The Ministry would like to inform this august House that when the *Flexible Land Tenure Bill* becomes law, it will be administered through the Land Rights Office which will be established in terms of Section 4 of this Bill. These offices will be managed by Land Rights Registrars and other support staff, as explained under Section 5 of this Bill. These Registrars will be subjected to the control and direction of the current Registrar of Deeds, which is downtown in Robert Mugabe Avenue. The

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offices are situated in the Deeds Registry's office in Windhoek. It should be noted that these offices will be established on a need basis in areas where there is demand for services that are provided under the *Flexible Land Tenure Bill*.

The regime of this Bill is in the jurisdiction of proclaimed Local Authorities only. The Local Authorities are areas where the Traditional Authorities have no jurisdiction. This Bill will only operate outside the communal areas. The areas of jurisdiction of the Traditional Authorities are clearly provided for under the current Communal Land Reform Act (Act 2 of 2002) and to be exact, Section 3 thereof.

Section 3 of the Bill alludes to the areas of jurisdiction of this Bill. As pointed out, the Bill will not apply in communal areas or in freehold farming areas. You cannot go to my farm and start to register in terms of this Bill.

The *Flexible Land Tenure Bill*, under Section 11, is in conformity with existing provisions of the Namibia Planning and Advisory Board, the much known NAMPAB, as it pertains to the establishment and planning of new area schemes. This requirement already exists under the current Planning Ordinance of 1954, administered by the Ministry of Regional and Local Government, Housing and Rural Development.

The issue of campaigns and consultations to make communities aware of the contents of this Bill is appreciated. This Bill is earmarked to give and address security of tenure to informal settlements. Security will be granted to each erf. Section 12 of the Bill addresses these concerns and empowers the relevant Local Authority to impose conditions on the Starter Title. The spirit of this Bill is to provide security of tenure. This Bill actually curbs and reduces incidents of land grabbing because the Bill operates within an already established scheme by a Local Authority.

Section 13(6) prohibits the transfer of the erf by another person who is not the registered owner and sets the conditions for checks and balances.

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With regard to NHE, the Bill is targeting the most vulnerable groups in our communities, whereas the National Housing Enterprise is catering for the middle and higher income bracket persons.

Turning to *Comrade Alfeus Muheua*, the comment by the Honourable Member on the land reform issues pertaining to the acquisition of farms adjacent to communal areas, for example Otjinene, Omatjete, Otjimbingwe, is noted. The Ministry is in the process of reviewing the current resettlement policy because we realised that there is much dynamism involved in whatever we do and we will take this into consideration. The Ministry appreciates the need to accommodate the diverse land needs of our communities, we are not blind to it, we hail from those communities, we live in those communities and we know what is happening in those communities.

The comments by the *Honourable Uutoni* on the first Paragraph of the Explanatory Notes and the suggestion that instead of referring to “*informal settlements*”, refer to them as “*unproclaimed towns*” are noted but this Bill functions within a proclaimed area and addresses the needs of people residing in non-formalised portions of that Local Authority area, hence the use of the term “*informal settlement*”, but we will not get ourselves bogged down by semantics. If we come up with a proper term, we are amenable to suggestions, but unfortunately we cannot call them unproclaimed towns because they are within already proclaimed areas.

On the question by *Comrade Uutoni* on the relationship between the *Flexible Land Tenure Bill* and the Town Planning Act, the Bill complements the Town Planning Act as it provides for the formalisation of the informal settlements and services. In our very humble opinion, we seem not to be able to detect any area of contradiction.

Whether people are allowed to own more than one starter title, Section 9 of the *Flexible Land Tenure Bill* addresses the issues of ownership and the rights and restrictions of ownership. The Bill does not provide for multiple ownership of land rights or erven. Section 15(a) deals with the

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updating of the starter title or land-hold title to full ownership, meaning freehold title.

In the case of objections to the upgrading of this scheme to a freehold title, the Bill provides for compensation to those members who are not keen on the upgrading of the starter title. Details of application of this provision will be provided in the regulations.

Honourable Simataa, the Ministry takes note of the concerns to provide for consequences in instances of misrepresentation by persons in the acquisition of the starter title. That is about all we can say on that one.

Why are there no in-built appeal mechanisms? Section 19 of the Bill provides for the appeal mechanisms through the magistrates' Courts of the district in which the property is situated. However, if we as lawmakers feel that the process through the magistrate's Court would be too cumbersome, then we take note of it, but the first port of call is that we work through the established Court system. It probably does not negate the possibilities that we can have in-built mechanisms within the regulatory framework to deal with the subject matter. We are not aggressively opposed to looking into that in the regulatory framework.

Comrade Ueitele, I appreciate your proposal for the creation of a middleman and we will look into that and see how best we can deal with the situation, because the crux of this Bill is to eliminate all the unnecessary expenditure that at the end of the day is expected to be borne by the landless. If the idea is to do something about the toiling masses out there who are landless and you still want to inflate expenditure that they have to incur through middle people, it would probably defeat the purposes of introducing this Bill.

Coming to my dear friend, *Honourable Maamberua*, the Ministry is guided by the 1998 National Land Policy which provides for the fundamental principle in terms of addressing equality before the law, a mixed economy, a unitary land system, focus on the poor, the rights for women, security and protection and the existence of multiple forms of

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land rights that include customary title, freehold and leasehold, amongst others.

The *Flexible Land Tenure Bill* is informed by the current Land Policy of 1998, however the Bill does not address land issues that deal with communal areas. The current Communal Land Reform Act of 2002 (Act 5 of 2002) is the one that addresses issues of communal land administration, while the *Flexible Land Tenure Bill* purports to focus on addressing the vacuum existing in the Local Authority land administration.

Yes, consultations on this Bill started way back in 1999 until today. A total of five consultative workshops were held with the following organisations and Government Ministries: We started off with the Polytechnic of Namibia, University of Namibia, Urban Dynamics and Plan Africa Consulting, City of Windhoek, National Housing Action Group and SDFN, which I assume is the Shack Dwellers Foundation of Namibia, the Ministry of Regional and Local Government, Housing and Rural Development, Oshakati Town Council, Twahangana Land Rights Office, Law Society of Namibia, Institute of Professional Land Surveyors, Havens' Ark, IBIS, GTZ – German Technical Cooperation, Association of Town and Regional Planners, Swedish Embassy, Regional Council Oshana Region, Professional Town Planners, United Nations General Assembly in New York and Kenya Nairobi United Nations Habitat.

The cost of feasibility studies: The costs in terms of funding are drastically reduced. The convincing costs are eliminated by direct registration by the Land Rights Offices. Labour could be provided by the beneficiaries themselves. The cost implications to the beneficiary are reduced through setting up of registration officials and management administration structures and that is really what we want to curb.

The Bill is meant to address residential purposes only, as provided by Section 9.

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**SECOND READING: FLEXIBLE LAND
TENURE BILL
HON !NARUSEB**

**HOUSE ADJOURNS AT 15:40
HOUSE RESUMES AT 16:30**

HON MINISTER OF LANDS AND RESETTLEMENT: Thank you, Honourable Speaker, I shall resume responding to questions. I just want to stress a bit on the questions raised by *Honourable Uutoni*, although I have passed them. The question was whether people are allowed to own more than one starter title and how does the Bill address the issue of objections to the upgrading of the approved land. That is where we had the 75%.

Section 9 of the *Flexible Land Tenure Bill* addresses the issues of ownership and the rights and restrictions of ownership. The Bill does not provide for the multiple ownership of land rights or erven. Section 15 (4) deals with the upgrading of the starter title to full ownership, meaning freehold title. In the case of objections to the upgrading of this scheme to a freehold title, the Bill provides for compensation to those members who are not keen on the upgrading of the starter title. Details of application of this provision will, as I have said earlier on, be provided in the regulations.

Turning to *Honourable Maamberua's* question on any feasibility study done to determine the cost to State of the introduction of this Bill, the cost to the beneficiaries in terms of surveying the land would be drastically reduced. The cost for conveyancing are totally eliminated because the bulk of the expenditure, when you have to register land or ownership of immovable property is taken up by the registration process, because in Namibia it is only done by a lawyer who has sat and passed the exams of conveyancing and they want to recoup the expenditure that they have so incurred.

Labour costs are non-existent as labour is provided by the beneficiaries themselves. The cost implications to the beneficiary are extensively reduced as most of the costs are absorbed by the Government and these are in the areas of establishment of land registration offices and the

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**SECOND READING: FLEXIBLE LAND
TENURE BILL
HON !NARUSEB**

management of the administration structures.

Is this Bill meant to address business concerns as well? The Bill is primarily targeting residential purposes only as provided under Section 9. Business concerns cannot get a starter title.

Are municipalities going to be compensated? The Bill is meant to operate and function within a scheme provided and established by the municipality. Section 11 provides for the steps undertaken to establish a starter title. The Bill functions at the behest of the Local Authorities.

Is this Bill going to reduce the price of urban land? The Bill's impact on the pricing of property might not be apparent at this stage, but the spirit of the Bill is to assist the vulnerable members of our communities to access homes. That is really the long and the short of it.

Is the registration of property going to be uniform? The registration of the property is the same and will be uniform under the *Flexible Land Tenure Bill*. The beneficiaries will start with the starter title, which will be upgraded to the same standardised system of land registration. The starter title will also be registered at the Deeds Office. Section 6 provides for the registration of both the starter title and the land-hold title and its upgrading and final registration in the Deeds Office, as applicable to any property in Namibia.

Honourable Katali asked what measures have been put in place to stop the proliferation of informal settlements. We take note of this concern and will liaise with relevant Local Authorities to find mechanisms to enforce bylaws that would be aiming at addressing the mischief or to prohibit the further mushrooming of other informal settlements. We need to be realistic here, there are certain things that you can regulate through bylaws, but there are certain things that probably becomes inevitable and part of our daily lives. This Bill is actually meant to curb the increase of informal settlements in all the Regions of our country and I thank you, Honourable Speaker.

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**SECOND READING: FLEXIBLE LAND
TENURE BILL
HON MAAMBERURA / HON KAPIA**

HON SPEAKER: I thank the Honourable Minister for his reply. I now put the Question that the Bill be now read a Second Time. Any objections? Honourable Maamberua.

HON MAAMBERUA: Honourable Speaker, it is actually not an objection as such, but it is a humble appeal, considering the spirit of this Bill that we are trying to address the low-income group in this country, the poor, and I am particularly addressing myself to Section 19 which deals with appeals, where it is now expected that if somebody is somehow aggrieved, these poor people have to appeal through the magistrates' Courts, while we know this can be expensive and cumbersome. I do not know why we cannot change the Clause, as the Minister already agreed, so that these poor folks can appeal either direct to the Minister or to an appeal board. That may be cheaper and more efficient. That is my appeal, that we do not constrain the possibility of these very poor people from getting fairness and justice.

HON SPEAKER: The Minister has taken note of that. Honourable Kapia.

HON KAPIA: Honourable Speaker, I only have a follow-up question to the Minister. The estate agents are not mentioned anywhere and I want to know how they will be handled, because they are the ones complicating matters and making the prices of land or houses very expensive with their 10% commission.

HON SPEAKER: Any additional questions? Honourable Minister.

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TENURE BILL
HON !NARUSEB / HON MAAMBERUA**

HON MINISTER OF LANDS AND RESETTLEMENT: Thank you, Honourable Speaker. As I have stated, Honourable Maamberua, there are no strong reservations with regard to the issue that you have raised. I still believe that we can work out something through the regulatory framework. I mentioned NAMPAB which will be part and parcel of that set-up. The administrative mechanisms that are incumbent in that process can easily be applied here, because the provision of an appeal is relevant, but to break it down to the steps that need to be taken would probably be over-provided for in the Bill. We make a provision for appeal and mentioned the first Court of our court system, but the process that can be followed can be clearly explained within the regulatory framework. An appeal can be lodged with the Minister and the detailed steps can be followed within that context. It does not exclude that the incumbent steps can be followed. That is my understanding and I do not want us to get bogged down by the very technical detail. The appeal process is there and if it is cumbersome, then we will think of providing for it within the regulatory framework. That is really my understanding.

The estate agent is what is referred to as the middleman by Honourable Ueitele and that is what we want to eliminate. If you are looking for a place to put up your home, which is actually a basic necessity, I do not think you would be eager to go through a third person. Therefore, the Bill is actually addressing those many people in-between which inflate the prices. Thank you.

HON SPEAKER: Honourable Maamberua.

HON MAAMBERUA: Thank you, Honourable Speaker. I am not actually going to insist on the point, but I want to make it clear that the Bill, as it stands, does not provide for any other avenue except appealing through the magistrate's Court and if we leave it this way, the regulations are not going to override the provisions of the Act. No provision is made

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TENURE BILL
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for other appeal mechanisms. Unless we amend this Clause right now, I do not think there is any other possibility.

HON SPEAKER: Honourable Minister.

HON MINISTER OF LANDS AND RESETTLEMENT: Thank you, Honourable Speaker. I also know that in terms of Article 18 of our Constitution it is possible for the proper administrative processes to be followed and there is no law that overrides the Constitution. However, I take note of what you are saying and if we, within the internal mechanism that we shall be devising, would recognise that there is a need to clearly spell out within the Act and list the steps that need to be followed in terms of the appeal procedure, we shall do so. Thank you.

HON SPEAKER: Thank you. I now put the Question, that the Bill be read a Second Time. Any objection? Agreed to. The Secretary will read the Bill a Second Time.

**COMMITTEE STAGE:
FLEXIBLE LAND TENURE BILL**

HON SPEAKER: Does the Honourable Minister Move that the Assembly now goes into Committee on the Bill?

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**COMMITTEE STAGE: FLEXIBLE LAND
TENURE BILL
HON !NARUSEB**

SECRETARY: Committee Stage *Flexible Land Tenure Bill*.

HON MINISTER OF LANDS AND RESETTLEMENT: I so Move,
Honourable Speaker.

HON SPEAKER: The Deputy Chairperson of the Whole House
Committee will take the Chair.

ASSEMBLY IN COMMITTEE:

**DEPUTY CHAIRPERSON OF THE WHOLE HOUSE
COMMITTEE:** The Committee has to consider the *Flexible Land
Tenure Bill*.

Clauses and the Title put and agreed to.

**DEPUTY CHAIRPERSON OF THE WHOLE HOUSE
COMMITTEE:** I shall report the Bill without Amendment.

ASSEMBLY RESUMED:

Bill reported without Amendment.

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**THIRD READING: FLEXIBLE LAND
TENURE BILL
HON !NARUSEB**

**THIRD READING:
FLEXIBLE LAND TENURE BILL**

HON SPEAKER: Does the Honourable Minister Move that the Bill be now read a Third Time?

HON MINISTER OF LANDS AND RESETTLEMENT: I so Move, Honourable Speaker.

HON SPEAKER: Any objection? Agreed to.

HON MINISTER OF LANDS AND RESETTLEMENT: Thank you, Honourable Speaker. I just want to, most sincerely, thank the Honourable Members for the support that they have given to the passing of the *Flexible Land Tenure Bill* and through your indulgence, I have also taken note of the comments on Article 19 of the Bill and I see some merits in the observations. Maybe through your good offices we could bear some influence on our Colleagues in the National Council for them to be able to give meaning to the concerns so expressed. I thank you.

HON SPEAKER: The Secretary will read the Bill a Third Time.

FLEXIBLE LAND TENURE BILL

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**COMMITTEE STAGE: INCOME TAX
AMENDMENT BILL
HON SCHLETTWEIN**

SECRETARY: Third Reading of *Flexible Land Tenure Bill*.

HON SPEAKER: The Secretary will read the Third Order of the Day.

**COMMITTEE STAGE
INCOME TAX THIRD AMENDMENT BILL**

SECRETARY: Committee Stage *Income Tax Third Amendment Bill*.

HON SPEAKER: Does the Honourable Minister of Finance Move that the Assembly now goes into Committee?

HON DEPUTY MINISTER OF FINANCE: I so Move, Honourable Speaker.

HON SPEAKER: Any objection? Agreed to. The Deputy Chairperson will take the Chair.

ASSEMBLY IN COMMITTEE:

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**COMMITTEE STAGE: INCOME TAX
AMENDMENT BILL
HON ESAU**

**DEPUTY CHAIRPERSON OF THE WHOLE HOUSE
COMMITTEE:** The Committee has to consider the Income Tax Third Amendment Bill.

Clause 1 put.

HON DEPUTY MINISTER OF FINANCE: Honourable Chair, I want to pose an Amendment of Paragraph (e) of Clause 1, to substitute the following Paragraph for Paragraph (o):

“Any amount received or accrued from another person as consideration (or payment of like nature) or the open market value by way of a sale, donation, expropriation, session, grant or other alienation or transfer of ownership of a mineral licence, as defined in the Minerals Prospecting and Mining Act (Act 33 of 1992) or rights to mine minerals in Namibia and includes a sale of shares in a company for mineral licences or right to mine minerals in Namibia.” I so Move.

**DEPUTY CHAIRPERSON OF THE WHOLE HOUSE
COMMITTEE:** Clause 1, as amended, put and agreed to.

Clauses 2 to 5 put and agreed to.

Clause 6 put.

HON MINISTER OF FISHERIES AND MARINE RESOURCES: Honourable Chairperson, I seek clarity on Clause 6 from the Minister in terms of this Clause, whether it promotes industrial development and job creation. I seek comfort on that specific Clause as I maybe do not understand it properly.

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**COMMITTEE STAGE: INCOME TAX
AMENDMENT BILL
HON SCHLETTWEIN**

HON DEPUTY MINISTER OF FINANCE: Honourable Chair, I think this question was also asked during the general discussion of the Bill and the explanation of that is that this provision tries to incentivise Namibian manufacturing and value addition instead of incentivising the import of finished goods and re-exporting of that and then attracting the incentives. I therefore think the answer is yes, it does promote manufacturing and value addition in the country.

**DEPUTY CHAIRPERSON OF THE WHOLE HOUSE
COMMITTEE:** Clause 6 agreed to.

Clause 7 put.

HON MINISTER OF FISHERIES AND MARINE RESOURCES: In Clause 7 under 21(a)(i) you talk about natural persons here. Does it exclude juristic persons, because sometimes people are registering Close Corporations or companies? Does it also include juristic persons when you talk about natural person, because a natural person, to my understanding, is a person like you and me?

HON DEPUTY MINISTER OF FINANCE: Honourable Chair, my understanding is that in this Section it includes both. The natural person includes a juristic person

HON MINISTER OF FISHERIES AND MARINE RESOURCES: In the very same Clause 21(a)(ii)(b)(vi) on the next Page where you talk about farming or animal breeding. I am one of the Affirmative Action farmers and normally they also benefit from assessed losses in their

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**COMMITTEE STAGE: INCOME TAX
AMENDMENT BILL
HON SCHLETTWEIN**

activities. In terms of this Clause it means that those who were affirmed through the acquisition of land will be negatively affected by this. I know that the Land Act made an exemption for those who are affirmed in terms of land tax, whereby you only pay a certain percentage of the land tax and I do not know whether we are just applying this Clause throughout. I want the Deputy Minister to give us comfort because maybe now we will not be benefiting from this kind of arrangement.

HON DEPUTY MINISTER OF FINANCE: This question was also asked and I can offer an explanation. The first thing one must make clear is that the reference to natural person in this Section is in terms of a salary recipient and that is only possible for a natural person. The Section thus provides for the ability of people that receive a taxable income as natural persons to offset that against losses that they have in terms of another business and there you are covered, it can be a Close Corporation or farming business or whatever.

Secondly, I think the aim of this provision is not to harm Affirmative Action farmers but to prevent tax avoidance schemes. The important thing here is that a farmer who has a continuous farming operation is not touched by this. You can have a farming operation and not be resident on the farm, but as long as the farming operation is continuous, then you will not be touched. Therefore, I think the possibility of being harmed is mitigated by that provision.

**DEPUTY CHAIRPERSON OF THE WHOLE HOUSE
COMMITTEE:** Clause 7 agreed to.

Clauses 8 to 12 put and agreed to.

Clause 13 put.

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**COMMITTEE STAGE: INCOME TAX
AMENDMENT BILL
HON SCHLETTWEIN**

HON DEPUTY MINISTER OF FINANCE: Honourable Chair, as the Honourable Minister has indicated, we propose Amendment of the implementation dates in Clause 13 and to substitute the following Paragraphs for Paragraphs (a), (b), (c), (d) and (e).

- (a) “In the case of any taxpayer other than a company at the commencement of the year of assessment commencing on or after 1 March 2012;
- (b) In the case of any taxpayer which is a company at the commencement of the year of assessment of such company commencing on or after 1 January 2012;
- (c) Section 8 and 9 are deemed to have come into operation at the beginning of the year of assessment commencing on or after 1 March 2009.

**DEPUTY CHAIRPERSON OF THE WHOLE HOUSE
COMMITTEE:** Please Table the Amendment. I now put Clause 13, as amended, agreed to.

Title put and agreed to.

**HON DEPUTY CHAIRPERSON OF THE WHOLE HOUSE
COMMITTEE:** I shall report the Bill with Amendments.

ASSEMBLY RESUMED:

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**THIRD READING: INCOME TAX
AMENDMENT BILL
HON SCHLETTWEIN**

Bill reported with Amendments.

**THIRD READING:
INCOME TAX THIRD AMENDMENT BILL**

HON SPEAKER: Does the Honourable Deputy Minister Move that the Bill be now read a Third Time?

HON DEPUTY MINISTER OF FINANCE: I so Move, Honourable Speaker. Honourable Speaker, on behalf of the Honourable Minister I wish to appreciate the comments that were made. I think tax law reviews, especially when it comes to getting more revenue out of the taxpaying community, are not the easiest things to agree on. We appreciate the positive spirit and the support that the Honourable Members gave us and I want to thank you for that.

HON SPEAKER: I now put the Question, that the Bill be read a Third Time. Any objection? Agreed to. The Secretary will read the Bill a Third Time.

INCOME TAX THIRD AMENDMENT BILL

SECRETARY: *Income Tax Third Amendment Bill.*

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**COMMITTEE STAGE: VALUE-ADDED TAX
AMENDMENT BILL
HON SCHLETTWEIN**

HON SPEAKER: The Secretary will read the Fourth Order of the Day.

**COMMITTEE STAGE
VALUE-ADDED TAX AMENDMENT BILL**

SECRETARY: Committee Stage *Value Added Tax Amendment Bill*.

HON SPEAKER: Does the Honourable Deputy Minister of Finance Move that the Assembly now goes into Committee?

HON DEPUTY MINISTER OF FINANCE: I so Move, Honourable Speaker.

HON SPEAKER: Any objection? Agreed to. The Deputy Chairperson of the Whole House Committee will take the Chair.

ASSEMBLY IN COMMITTEE:

**DEPUTY CHAIRPERSON OF THE WHOLE HOUSE
COMMITTEE:** The Committee has to consider the Value-Added Tax Amendment Bill.

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**THIRD READING: VALUE-ADDED TAX
AMENDMENT BILL
HON SCHLETTWEIN**

Clauses and Title put and agreed to.

I shall report the Bill without Amendments.

ASSEMBLY RESUMED:

Bill reported without Amendment.

**THIRD READING
VALUE-ADDED TAX AMENDMENT BILL**

HON SPEAKER: Does the Honourable Deputy Minister Move that the Bill be now read a Third Time?

HON DEPUTY MINISTER OF FINANCE: I so Move, Honourable Speaker.

HON SPEAKER: Any objection? Agreed to. Any further discussion?

HON DEPUTY MINISTER OF FINANCE: Honourable Speaker, as I said for the Amendments to the Income Tax Act, I again want to thank the Members of this House for supporting us and amending the Value-Added

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**COMMITTEE STAGE: STAMP DUTY
AMENDMENT BILL
HON SCHLETTWEIN**

Tax Act and I wish to thank the House for the support.

HON SPEAKER: I now put the Question, that the Bill be now read a Third Time. Any objection? Agreed to. The Secretary will now read the Bill a Third Time.

VALUE-ADDED TAX AMENDMENT BILL

SECRETARY: *Value Added Tax Amendment Bill.*

HON SPEAKER: The Secretary will read the Fifth Order of the Day.

**COMMITTEE STAGE:
STAMP DUTY AMENDMENT BILL**

SECRETARY: *Committee Stage Stamp Duty Amendment Bill.*

HON SPEAKER: Does the Deputy Minister of Finance Move that the Assembly now goes into Committee?

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**COMMITTEE STAGE: STAMP DUTY
AMENDMENT BILL
HON SCHLETTWEIN**

HON DEPUTY MINISTER OF FINANCE: I so Move, Honourable Speaker.

HON SPEAKER: Any objections? Agreed to. The Deputy Chairperson will take the Chair.

ASSEMBLY IN COMMITTEE:

DEPUTY CHAIRPERSON OF THE WHOLE HOUSE COMMITTEE: The Committee has to consider the Stamp Duty Amendment Bill.

Clauses and Title put and agreed to.

DEPUTY CHAIRPERSON OF THE WHOLE HOUSE COMMITTEE: I shall report the Bill without Amendments.

ASSEMBLY RESUMED:

Bill reported without Amendment.

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**THIRD READING: STAMP DUTY
AMENDMENT BILL
HON SCHLETTWEIN**

**THIRD READING:
STAMP DUTY AMENDMENT BILL**

HON SPEAKER: Does the Honourable Deputy Minister of Finance
Move that the Bill be now read a Third Time?

HON DEPUTY MINISTER OF FINANCE: I so Move, Honourable
Speaker.

HON SPEAKER: Any objection? Agreed to. Any further discussion?

HON DEPUTY MINISTER OF FINANCE: Honourable Speaker, the
Stamp Duty Bill, as coined by the Right Honourable Prime Minister, is a
Christmas gift to everybody, so I hope that the House will gratefully
accept the gift. Thank you.

HON SPEAKER: I now put the Question, that the Bill be read a Third
Time. Any objection? Agreed to. The Secretary will read the Bill a
Third Time.

STAMP DUTY AMENDMENT BILL

SECRETARY: *Stamp Duty Amendment Bill.*

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**COMMITTEE STAGE: HIGH COURT
AMENDMENT BILL
HON NAMBAHU**

HON SPEAKER: The Secretary will read the Sixth Order of the Day.

**COMMITTEE STAGE
HIGH COURT AMENDMENT BILL**

SECRETARY: Committee Stage *High Court Amendment Bill*.

HON SPEAKER: Does the Deputy Minister of Justice Move that the Assembly now goes into Committee?

HON DEPUTY MINISTER OF JUSTICE: I so Move, Honourable Speaker.

HON SPEAKER: Any objections? Agreed to. The Deputy Chairperson will take the Chair.

ASSEMBLY IN COMMITTEE:

**DEPUTY CHAIRPERSON OF THE WHOLE HOUSE
COMMITTEE:** The Committee has to consider the High Court Amendment Bill.

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**THIRD READING: HIGH COURT
AMENDMENT BILL
HON NAMBAHU**

Clauses and Title put and agreed to.

**DEPUTY CHAIRPERSON OF THE WHOLE HOUSE
COMMITTEE:** I shall report the Bill without Amendments.

ASSEMBLY RESUMED:

Bill reported without Amendment.

**THIRD READING
HIGH COURT AMENDMENT BILL**

HON SPEAKER: Does the Honourable Deputy Minister of Justice Move that the Bill be now read a Third Time?

HON DEPUTY MINISTER OF JUSTICE: I so Move, Honourable Speaker.

HON SPEAKER: Any objection? Agreed to. Any further discussion?

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**THIRD READING: HIGH COURT
AMENDMENT BILL
HON NAMBAHU**

HON DEPUTY MINISTER OF JUSTICE: Honourable Speaker, I want to thank the Honourable Members most sincerely for their support and understanding in passing this very important Amendment Bill. I think that you heeded my call for supersonic speed in passing the Bill and I am most thankful for that and I just want to transmit my very best wishes for the festive season.

HON SPEAKER: I now put the Question, that the Bill be read a Third Time. Any objection? Agreed to. The Secretary will read the Bill a Third Time.

HIGH COURT AMENDMENT BILL

SECRETARY: *High Court Amendment Bill.*

HON SPEAKER: The Secretary will read the Seventh Order of the Day.

**COMMITTEE STAGE:
LABOUR AMENDMENT BILL**

SECRETARY: Committee Stage *Labour Amendment Bill.*

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**COMMITTEE STAGE: LABOUR
AMENDMENT BILL
HON NGATJIZEKO**

HON SPEAKER: Does the Deputy Minister of Labour and Social Welfare Move that the Assembly now goes into Committee?

HON MINISTER OF LABOUR AND SOCIAL WELFARE: I so Move, Honourable Speaker.

HON SPEAKER: Any objections? Agreed to. The Deputy Chairperson will take the Chair.

ASSEMBLY IN COMMITTEE:

DEPUTY CHAIRPERSON OF THE WHOLE HOUSE COMMITTEE: The Committee has to consider the Labour Amendment Bill.

Clause 1 to 5 put and agreed to.

Clause 6 put.

HON MINISTER OF LABOUR AND SOCIAL WELFARE: Thank you, Deputy Chairperson. I want to amend Clause 6 by substituting the following Subsection for Subsection 128(3) of Act 11 of 2007:

“An individual placed by a private employment agency with a user enterprises has the same right as any other employee in terms of the Act, including the right to join a Trade Union and to be represented by a Trade

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**COMMITTEE STAGE: LABOUR
AMENDMENT BILL
RT HON ANGULA / HON NGATJIZEKO**

Union in collective bargaining with his or her employer.”

**DEPUTY CHAIRPERSON OF THE WHOLE HOUSE
COMMITTEE:** Any further discussion?

RT HON PRIME MINISTER: I just want to be clear on the Amendment, whether the same rights stipulated here are partial or as a whole, in the sense that we are also talking about the right to benefits or only the right to join a Trade Union? I am asking this question because I suspect some of the companies who hire these people are actually trying to avoid the payment of benefits, such as medical aid, housing, perhaps transport, etcetera. I just want the Minister to assist me with the meaning of “*same rights*”.

HON MINISTER OF LABOUR AND SOCIAL WELFARE: Thank you, Right Honourable Prime Minister. What has been happening in the labour hire system is that those employees who have been employed through the labour hire system would usually have less rights compared to the incumbent or permanent employees. These employees basically only received a salary that was determined by the labour hire company and not by the employer itself, but this Clause provides that if the current employees have health benefits, pension and others, the same rights should be extended to the labour hire employees without discrimination. That is the intention.

**DEPUTY CHAIRPERSON OF THE WHOLE HOUSE
COMMITTEE:** Any further discussion? Honourable Kaapanda.

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**COMMITTEE STAGE: LABOUR
AMENDMENT BILL
HON KAAPANDA / HON DINGARA**

HON MINISTER OF INFORMATION AND COMMUNICATION TECHNOLOGY: What will happen if the placement of such an employees will be for a short term? Will the employer not deny such an employee certain benefits because the employment is only for a short period of time?

HON MINISTER OF LABOUR AND SOCIAL WELFARE: What the Labour Act provides for is that the employer and employee should enter into a contract, whether written or oral. Whatever you agree is what is supposed to be applicable. If you have been employed for a week and that was the agreement upfront, that should apply, which is not the case with the labour hire arrangement.

DEPUTY CHAIRPERSON OF THE WHOLE HOUSE COMMITTEE: Thank you very much. Honourable Dingara.

HON DINGARA: This one is talking about the remuneration of the employee which is not through the labour hire company and the remuneration of the employee which is through the labour hire company will be equal. I am wondering how it could be equal because the labour hire company must deduct money from the salary of the other employee. If one cleaner in a company was employed through the labour hire company and the other one was directly employed and their salaries, for examples, are N\$2,500 per month, a fee will be deducted by the labour hire company from the salary of the one who was hired through the labour hire company and that would obviously make a difference between the salaries received. How will it work that they take home the same amount of money?

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**COMMITTEE STAGE: LABOUR
AMENDMENT BILL
HON NGATJIZEKO / HON ULENGA**

**DEPUTY CHAIRPERSON OF THE WHOLE HOUSE
COMMITTEE:** Honourable Minister, will you answer?

HON MINISTER OF LABOUR AND SOCIAL WELFARE: I think we should understand these Amendments in the context of what the labour hire employees have been getting and what the permanent employees have been getting. For instance, I can say that if there was a company with permanent employees, it would be providing a basic salary and allow those employees to belong to a Union and they would have bargaining rights. The labour hire company would be regarded the employer although the work is done for the user company. That is the difference.

Normally there would be a difference even between permanent employees. If you start working for a company today, you are likely to receive a different salary from those who have been in service for a longer period, but what we are basically saying is that we should not deprive people of their rights, there should be agreements, whether oral or written, that you come and work for my company, I pay you this and that is the agreement. You work for a month or you work for a week, that is the agreement. I hope I am clear on this one.

**DEPUTY CHAIRPERSON OF THE WHOLE HOUSE
COMMITTEE:** Any further discussion? Honourable Ulenga.

HON ULENGA: Honourable Chairperson, I am getting more confused as to the sense of Clause 6(3). I no longer know what these rights refer to because you cannot join a Trade Union for a week. You cannot bargain on a salary in a week's time. The very sense and the very basis and logic of using this kind of system is to make more profits and to pay lower salaries. That is the only incentive that is in there, that is to pay lower

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**COMMITTEE STAGE: LABOUR
AMENDMENT BILL
HON NGATJIZEKO / HON IILONGA**

than the user enterprise. I cannot see how it can happen that one can do this kind of business and still give the same benefits and rights to the workers. Unless there is any other logic, I am completely lost as far as the meaning and the purpose of this is concerned. I thank you.

DEPUTY CHAIRPERSON OF THE WHOLE HOUSE COMMITTEE: I would like to remind the Honourable Members that this is the Committee Stage, it is not general Debate. Honourable Minister, could you clear the doubts?

HON MINISTER OF LABOUR AND SOCIAL WELFARE: I do not know whether what I will say now will clear the doubt, because in terms of the labour hire system, employees were not allowed to belong to a Union and what is being provided for is that they have that right and the Union can negotiate on their behalf. It is equally saying that if you are a cleaner, the starting salary for cleaners applicable to that company for permanent employees or temporary employees, whatever the arrangement, should be applicable. It should not be a situation that the labour hire employee is taken and the salary is negotiated between the labour hire company and the user enterprise and what the employee receives is possibly half of that or even less than half compared to the other employees in the company. That is all that I can explain.

DEPUTY CHAIRPERSON OF THE WHOLE HOUSE COMMITTEE: Clause 6, as amended, agreed to.

Clause 7 put.

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AMENDMENT BILL
HON NGATJIZEKO**

HON DEPUTY MINISTER OF AGRICULTURE, WATER AND FORESTRY: Thank you, Comrade Deputy Chairperson. Clause 7(2)(b) reads: “*Invite interested persons to submit written representations on the proposal notice within a reasonable period.*” We know how our people are, a reasonable period can be a year. Therefore, I want to propose that the Ministry sensitises the National Council to put a specific period, either fourteen or thirty days, so that no one can come and say a reasonable period is one year to respond.

HON MINISTER OF LABOUR AND SOCIAL WELFARE: I think the point that has been raised by the Deputy Minister is quite relevant considering the history of this whole issue, that there would be stakeholders that would be against the implementation of these corrective measures that are being provided for. Therefore, I would have no problem if at the level of the National Council we can be more specific in terms of what we mean with “*reasonable time*”. Thirty days would be fine with me.

DEPUTY CHAIRPERSON OF THE WHOLE HOUSE COMMITTEE: Clause 7 agreed to.

Clauses 8 put and agreed to.

Clause 9 put.

HON MINISTER OF LABOUR AND SOCIAL WELFARE: In Clause 9 we propose an Amendment by inserting the following Subsection under Subsection 24(1) of Act 8 of 2011:

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“A user enterprise may not deduct or withhold from the remuneration of an individual placed with it by a private employment agency an amount equivalent to the fee paid by the user enterprise to the private employment agency for the placement of the employee or any portion thereof.”

**DEPUTY CHAIRPERSON OF THE WHOLE HOUSE
COMMITTEE:** Clause 9, as amended, agreed to.

Clauses 10, 11 and the Title put and agreed to.

ASSEMBLY RESUMED:

**DEPUTY CHAIRPERSON OF THE WHOLE HOUSE
COMMITTEE:** I shall report the Bill with Amendments.

Bill reported with Amendments.

**THIRD READING
LABOUR AMENDMENT BILL**

HON SPEAKER: Does the Honourable Minister of Labour Move that the Bill be now read a Third Time?

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HON MINISTER OF LABOUR AND SOCIAL WELFARE: I so
Move, Honourable Speaker.

HON SPEAKER: Any objection? Agreed to. Any further discussion?

HON MINISTER OF LABOUR AND SOCIAL WELFARE: Thank
you, Honourable Speaker, I want to take this opportunity to thank all the
Honourable Members for the support they have given to this Amendment
Bill. Thank you very much, enjoy your festive season.

HON SPEAKER: I now put the Question, that the Bill be read a Third
Time. Any objection? Agreed to. The Secretary will read the Bill a
Third Time.

LABOUR AMENDMENT BILL

SECRETARY: *Labour Amendment Bill.*

HON SPEAKER: The Secretary will read the Eighth Order of the Day.

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**RESUMPTION OF CONSIDERATION OF REPORTS OF THE
PARLIAMENTARY STANDING COMMITTEE ON
INFORMATION AND COMMUNICATION TECHNOLOGY**

SECRETARY: Resumption of Consideration of Reports of the Parliamentary Standing Committee on Information and Communication Technology.

HON SPEAKER: When this House adjourned on Wednesday 9 November 2011, the Question before the Assembly was a Report by Dr Amweelo. The Honourable Minister of Education had the Floor.

MINISTER OF EDUCATION: Honourable Speaker, Honourable Members, when the House adjourned last time while I had the Floor to make some contributions to this Report and what the Honourable Colleagues witnessed in Rwanda, I emphasised the need and the cardinal importance of ICT in the twenty-first century. I would like to proceed by saying that a country like Rwanda, Kenya and Portugal are countries that have registered exceptional leaps forward in the development of ICT and are countries that are to be emulated as we are on our journey to developing ICT in our socio-economic endeavours.

Honourable Speaker, I am giving these three examples of Portugal, Kenya and Rwanda for one reason. In these three countries, despite their economic circumstances and recent historical trajectories, particularly Rwanda, nearly every child has a laptop. Particularly in Portugal every child from Grade 1 has a laptop. Portugal is not blessed in terms of economic resources or natural resources like Namibia, but every child has a laptop and their teachers are empowered to use ICT in every-day teaching and learning. Namibia, as a developing country, needs to explore

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how they succeeded to do this. (Intervention)

HON TJIHUIKO: Honourable Speaker, may I ask the Honourable Minister a small question? Talking about laptops, I was actually looking at Page 3 of this manual we were given: Table 2, *MDGs and Southern African countries expected to achieve goals by 2015*. Looking at the eight countries listed here, Namibia is not there. Can the Minister perhaps give us some information as to why Namibia is not listed? Does that mean that we will not be able to achieve those goals by 2015 or have we already achieved those goals? I am asking this question because you are now talking about ICT while the basics do not seem to be in place.

HON MINISTER OF EDUCATION: Yes, we should come to that with enough time for the topic. For now let me concentrate on ICT and at an appropriate time we will look at how we are meeting the MDGs as related to education, particularly MDG 3 with respect to the parity in education, the participation of boys and girls as well as the hundred percent enrolment by the year 2015. We will talk about that at an appropriate time. For now allow me to concentrate on ICT.

I was talking about these countries that have achieved leaps and the question is; how did they achieve this? This is really because ICT in those countries is championed by political leaders, championed by business leaders. Therefore, as political leaders we have a responsibility and that is what I was asking last time: Are we comfortable enough that we have enough enthusiasm for ICT. It starts with us if this is to permeate to the young people. We should be seen as having this enthusiasm, utilising ICT and encouraging the young ones as well as the business community.

We have a situation in the country that those who are leaving Grade 12, going to the universities, the Polytechnic, both locally and overseas, are really disadvantaged, particularly those from the rural areas. Some of

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these young people for the first three months at university are more acclimatising, getting used to using a computer. The lecturers would give them assignments and then for a young person from a village who has never been exposed to a computer before it would be an ordeal to be able to do research on the Internet or simply just to type assignments. It, therefore, calls for us to continue investing in ICT, because investing in ICT is not a mistake.

What would be a mistake would be not to do so. The responsibility of investing in ICT should not be seen as the sole responsibility of Government, it should be a shared responsibility with the private sector. I referred to Portugal, that each child has a computer. The original idea was not from the Government, it was an idea from the private sector that approached the Government, saying that they would like to participate, invest and give resources so that each and every child in that country can have a computer.

We as a country can do that. We have vibrant industries, the mining sector, the diamond industry, the hospitality industry, the transport industry, the financial sector, the fishing sector, the agricultural sector, all our sectors, including the State-Owned Enterprises. A small computer of this size, some meant particularly for education, are made cheap, for example in India. In Namibia this laptop can be around N\$3,000 and we have only around 600,000 learners in our schools. It is a small amount for our country so that each and every Namibian child can have a laptop. If the Mining Sector could perhaps put their resources together, we could maybe get just one million from all of them together, then the financial and fishing sectors together, then maybe we can buy these computers and achieve what countries like Rwanda, Burundi and Portugal have achieved, irrespective of their historical circumstances.

I would, therefore, like to put this to our private sector, to the members of the State-Owned Enterprises, to join the Government in getting some laptops and to live in the 21st century. At the moment we have more than 1,700 schools in the country and only 250 are connected to Internet. If Government is joined by the private sector to continue where we have

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started as a country, we can succeed. (Intervention)

HON KAURA: Honourable Minister, where do we start? Do we start providing laptops to students or do we train teachers and provide them with laptops so that they can teach the students? What we have picked up is that many of our teachers are not computer literate and, therefore, if you provide a laptop to a child, it will become a toy, he cannot do anything with it because there is nobody to teach him how to use the laptop.

HON MINISTER OF EDUCATION: Where to start is an open-ended question. I would not have said we start with the teachers, I would say we start with the political leaders, with Members of Parliament. That is a good beginning. It is a matter of encouraging what will happen in Swakopmund to be intensified, but Honourable Kaura, it is a valid question and we need to start with our teachers. However, we also admit that those understand the usage of ICT, using their cell phones, etcetera, are not the adults but the little ones. They are very, very clever and I am sure if you want your television to be adjusted, you will call one of the young ones. The young ones even know more than us, but for teaching purposes our strategy is to start with the teachers, for them to be able to use the ICT. But again, how many of them were exposed to computers themselves. We need that preparation of our teachers.

I agree with Honourable Kaura, we need to expose and empower our teachers as we want them to be adequately equipped to use ICT for every subject in every aspect of teaching and learning. If we are to succeed, we must empower the teachers. We want to empower the teachers to be able to save on lesson preparation and I agree with you that we have to start with the teachers. At the moment it takes time to prepare lessons and we must therefore give tools to the teachers for them to be able to stimulate the children to be curious through innovative lesson preparation, rather than doing it the traditional way.

Of course, our teachers and our learners can only do it if there are certain things: The first is electricity and I appreciate that our colleagues at the

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Ministry of Mines and Energy are working very hard to look at this under very difficult circumstances in terms of competing needs for the development of the country. But yes, we need electricity, including solar energy. Then, of course, we need the computer hardware as well as Internet connectivity if the teachers are to be computer literate. We have to start with the teachers, but in the long run the future lies with the children and they have to be able to go to university and do research. All that can no longer be done manually. (Intervention)

HON TJIHUIKO: May I ask the very last question? The topic that you are addressing now is very interesting, talking about education and I think Honourable Kaura has raised a very important point, whether we start with the kids or the teachers. I know at Independence we moved rapidly from Afrikaans-oriented teachers to English and your test has proven that 98% of the teachers cannot teach in English. Minister, you are telling us that out of 1,700 schools only 250 are connected, if I got you correctly? If that is true, then that is an educational crisis, that in the 21st century we only have 250 schools connected.

HON MINISTER OF EDUCATION: Honourable Colleague, you are indirectly provoking the situation I was avoiding, just to talk about one thing at a time. Let me start with the issue of the crisis. We should appreciate what we have. We have achieved a lot and we still have to achieve a lot. It is a journey. If you look at what was there at Independence in terms of the administration of education, the training of the teachers, the investment in schools and textbooks, the preparation of the curriculum to be truly Namibian, to have schools for blacks and whites, etcetera, we have laid a very firm and solid foundation. What we need now is to continue with that reform. Education is not a destination, even bigger nations such as America and the United Kingdom still have problems with education. (Intervention)

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HON DINGARA: May I ask the Honourable Minister a small question? Comrade Iyambo, you referred to countries such as Rwanda and I can add Uganda and Singapore where I have seen the real benefits. What I wanted to say is that you need not worry too much about the Opposition, we will support you a hundred percent. Just bring it here, we will support it and then every Namibian child will have a laptop. Do not worry about the hiccups the Opposition Members are trying to raise, just carry on and explain and the other things. I think you are doing well.

HON MINISTER OF EDUCATION: Thank you very much, I was saying it is very important that we recognise where we were in 1990 and the efforts that have been made. One thing that we must add is to say what should be our collective responsibility, not the responsibility of the first Minister of Education, the second, the third and now the fourth and fifth, but our collective responsibility, what are we doing with respect to education as the leaders. That collective responsibility should be our mentality.

With respect to the 98% of teachers who do not know how to read and write, it is very important that we as leaders get the facts right and convey the right facts. (Intervention)

HON MAAMBERUA: Thank you, Honourable Speaker. May I ask my good friend, the Honourable Minister of Education, a small question? Honourable Minister, I think in your intervention you have been trying to be very hypothetical and I think we are now at the stage where we need to concretise our interventions and probably also the answers. Hence my question: What is actually the level of computer competency in our schools at the moment? You can also expand a bit and tell us whether your Ministry has done any assessment or study in order to determine the milestones that we have to cross before we can call Namibia fully computer literate at school level. What are the milestones? I think we

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need to avoid being hypothetical and just look at what exactly the Ministry did.

HON MINISTER OF EDUCATION: No, you do not have to be careful to be hypothetical, it is very important. That is why you have the word “*hypothetical*”, it is for you to be hypothetical to lead to something. I can also be very factual on specific things when the time so demands.

Let me conclude with the Honourable Colleague who just ran away. His question has become too public and I need to answer it. Honourable Colleagues, I mentioned to you last time that the report that 98% of the principals and teachers who sat for this placement test do not know how to write or read English is incorrect. The people who wrote that article might not have presented the issue very well. What it means is that we categorise people in three groups. As we design the work of teachers, some are put in what is called *advanced*. When we give them that course it is going to be advanced. Some are put under intermediate and some under pre-intermediate. When the test was written, it was found that apart from the advanced level, we had a group of about 2% who do not need any assistance in English, their proficiency in English was good. That means that 98% are either under advanced, which is still good, are either under intermediate, which is good or even under pre-intermediate according to their needs. Therefore, you find that those under advanced is between 92% to 75%. That is not a big number, there is nothing wrong with that. The same with those who are under intermediate, around 53 to 70% and then the rest are those who are below.

What we need is to encourage them. It was not for them to fail or pass, it was for us to design materials for them. Therefore, the Honourable Member from NUDO should not use the information as it was presented. I have the Report here, it will be shared first with Cabinet and NANTU and then we will make it public. For now, what people are writing is just people guessing and that is not the correct information.

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In terms of the exact figure for computer proficiency, we do not have the figure yet and we really still need to assist. There has been a lot of training of teachers but we need to do more. Some schools have computers and much more needs to be done.

Finally, with respect to the Report of the parliamentarians who went to the Regions, I am interested to hear more from the Colleagues. You have picked up very important information and we will be waiting for inputs and advice. We have started to engage many companies, including Microsoft as well as UNESCO for the training of the teachers and staff to continue with the existing programme. May I, therefore, thank the Parliamentary Standing Committee on ICT for the support they have been giving and championing the ICT.

I will add by saying ICT can only develop if it has the very clear, undivided support of us, the leaders, encouraging the young ones, encouraging the teachers and ourselves, if need be, to use that ICT. I am very happy that this Report has come out, that very much has taken place and we just need to continue from where we are at the moment. Thank you, very much.

HON SPEAKER: Thank you very much. Any further discussion?
Minister of Information.

**HON MINISTER OF INFORMATION AND COMMUNICATION
TECHNOLOGY:** Thank you, Comrade Speaker. I also rise to support the Report by the Standing Committee on ICT. I really appreciate that this Committee selected to go to countries that have made good advances in ICT utilisation and development.

In my early appointment days I also went to Uganda in order to learn from their experiences and to see what is on the ground and I was very

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impressed with the progress they have made and still continue to make.

Like Uganda we also passed a law on communication, the Communication Act, as the basis for our effort to promote ICT in our country. From this law we developed policies as well as regulations that are very critical in the implementation of this Act. This Act provides for the universal service obligation that obliges us to address the current rural and urban digital divide. How can we do that? In the same Act there is a provision for the establishment of a Universal Service Fund. This fund would be accrued by levying all the ICT operators and the funds that accrue, in this way will be utilised in funding the projects which are aimed at addressing the existing dichotomy between rural and urban areas.

The universal obligation makes it essential or obligatory that ICT should not become a property of the elites, but should be applied universally in the country. Every citizen of this country, irrespective of their status, should be entitled to access ICT.

I must point out from the beginning that our Ministry is basically involved in policy and regulatory matters. That is why I am talking about policy and regulations. As a matter of policy our Ministry has been setting up multi-purpose centres in all the thirteen Regions and for each multi-purpose community centre we provide a computer, a printer, a photocopier, a fax machine and a projector. The idea is to create an environment where printing can take place and computer literacy as well as to provide entertainment opportunities for young people. The multi-purpose centre basically targets the youth by having an entertainment facility to draw our young people from the streets and to provide them with an alternative, which is entertainment.

As a matter of policy we have established the Communication Regulatory Authority of Namibia (CRAN). CRAN is there to regulate the communication industry to ensure fair competition and also to promote growth in this vibrant sector.

Also as a matter of policy we entered into an agreement with the

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Government of India to provide Namibia connectivity through a Pan-African Centre. That resulted in the creation of an e-mailing centre here in Windhoek as well as an e-health centre. The purpose of an e-mailing centre is to provide lecturing from Namibia. In fact, the centre is connected to the Indian universities and the lectures will be received from India into our learning centre here in Windhoek. (Intervention)

HON MAAMBERUA: May I ask the Minister a small question? Honourable Minister, what is the level of computer competency in Namibia and by which year will Namibia be fully computer literate?

HON MINISTER OF INFORMATION AND COMMUNICATION TECHNOLOGY: Honourable Member, I will come back to that. The centre I talked about is an innovative programme by which costs have been cut. Instead of putting up a centre with all necessary essentials, here you just have a road with a pavement, students assemble in this centre and the facilitator will write, but lectures will come from India and this will reduce the burden in many ways. Likewise, the e-health centre, which is situated in the Central Hospital, will connect our physicians to their counterparts in India for advice. This is how we are embracing ICT in a big way.

Of course, Namibia is at the threshold of ICT cutting edge and we reached the stage after acquiring the West Africa Cable System (WACS), which is a submarine cable which landed in Swakopmund this year. This cable provides us with broadband connectivity and Telecom Namibia has pledged to connect each school, clinic and hospital throughout Namibia throughout Namibia.

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HON SPEAKER: Minister, broadband stands for what?

**HON MINISTER OF INFORMATION AND COMMUNICATION
TECHNOLOGY:** Broadband is a pipe that will enable us to connect
Internet easily. (Intervention)

HON MINISTER OF JUSTICE: Comrade Speaker, just for
comprehensive understanding of connecting schools to the broadband and
to the Internet, I want to know how many schools in the country have
access to electricity or what type of connectivity are we talking about in
this respect and how are these two programmes inter-related?

**HON MINISTER OF INFORMATION AND COMMUNICATION
TECHNOLOGY:** Comrade Speaker, there are schools which have
electricity and those who do not have it yet. What happens at the moment
is that we have met with the Minister of Education and the Minister of
Mines and Energy in order to plan together and coordinate our planning
activities, so that when a particular school is supposed to receive this
equipment, then there is also a plan to connect.

Telecom Namibia has also established fibre rings in all the 13 Regions and
also extended fibre rings to the borders of our neighbours, connecting
Namibia to South Africa, Botswana and Zambia. (Intervention)

HON TJIHUIKO: May I ask the Honourable Minister a question?
Honourable Minister, I want to understand you clearly. You mentioned
the Ministry of Education, the Ministry of Mines, the Ministry of
Information and the question of planning. Are you thinking of coming

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together and planning or do you have a system in place where now the process of planning has started, because the impression I got is that you were thinking of meeting with the Ministry of Education and Ministry of Mines in the future and the programme you are talking are already in place. Where are we now?

HON MINISTER OF INFORMATION AND COMMUNICATION TECHNOLOGY: The discussions have already begun and we are moving forward. Telecom Namibia provides services to the rural areas, including the farmers. Since we have been experiencing increasing copper wire theft, all the copper wire has been substituted with wireless technology and we are now connecting the rural areas or farmers with wireless technology, such as CDMA and WIMAX, and provide them with data and voice.

Of course, as a Ministry we also support the concept of one laptop per child and we will mobilise resources. (Interjections) This is long-term planning and we have already started. Under our Ministry we have set up a forum for ICT stakeholders, which comprises Government and the private sector and we discuss how we can promote ICT in our country in the best way and I should inform you that currently we have a pilot project being run by my Ministry where we are setting up a multi-sectoral centre in the Omaheke and Omusati Regions. This is a joint project between my Ministry and our Parliament. The team from Parliament is led by our Deputy Speaker, Professor Kasingo, and one of the private sector ICT companies has volunteered to run these centres once everything is up and running. Here you can see the level of commitment by the private sector to cooperate with Government in promoting ICT in this country in a big way. The issue of one laptop per child will one day become a reality. Let us work together and realise this dream, because most countries are doing this. We cannot over-emphasise the importance of ICT in terms of creating efficiency whether in our Government or in the private sector.

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Therefore, we cannot afford staying behind, not embracing ICT. We just need to put money where our mouths are.

I wish to make a proposal, Comrade Speaker. As we all embrace ICT, I would like Parliament to take part in this endeavour by providing each and every Member of Parliament with an iPad. In the same way, Comrade Speaker, I would like to ask the Speaker to contemplate erecting a computer terminal in front of Parliament. (Intervention)

HON ULENGA: May I ask the Honourable Minister a question? Do you know that the Namibian Parliament cannot determine its own Budget but that it is decided by the Cabinet? Do you not think you are wrongly kicking the ball out of Cabinet while Cabinet should be doing the things you are talking about, because you decide on the Budget?

HON MINISTER OF INFORMATION AND INFORMATION TECHNOLOGY: Honourable Member, I put this request before the Office of the Speaker to grapple with it. Honourable Speaker, if you put a computer terminal there where the public can have access to parliamentary information, we will go a long way in opening up a very useful avenue where the public can be informed by accessing parliamentary information through a parliamentary computer terminal. This can also apply to any Government institution. In the Ministry of Works there is such a terminal. When people want information on vacancies or any other possible employment opportunity, they just log in on that computer. (Intervention)

DEPUTY MINISTER OF AGRICULTURE, WATER AND FORESTRY: May I ask a question? Comrade Kaapanda, Honourable Tjihuiko asked you a question, that the teachers cannot even read English. Are you aware that when cellular phones were introduced in this

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country it was a luxury, but now our grandmothers (*Kuku's*) at home can retrieve messages and reply to messages, but they do it in their home language, not in English? If we could have laptops in our schools, it is not just for English, you can master it in any language. Are you aware of that?

HON MINISTER OF INFORMATION AND COMMUNICATION TECHNOLOGY: Yes, it is true. I have a sister who is close to 75 years old and she knows how to send messages on a cell phone and I must say this to the Honourable Members, people who have not even reached Grade 6 know all applications on a cell phone. They watch videos, they listen to music, they listen to the news, they can send a message to various people. You cannot imagine how this gadget stimulates creativity in the minds of people. (Intervention)

HON SPEAKER: Minister, with due respect, we are going to rise today and we still have several matters to dispose of.

HON MINISTER OF INFORMATION AND COMMUNICATION TECHNOLOGY: I was just encouraging that we should put up these terminals and the Honourable Member has already pledged that she is going to put up one in her office next week. Congratulations. Honestly, this will provide a good platform for communication between Government and the public. Ministers, let us improve our websites, they can also serve a good purpose.

Finally, I support the Report. Thank you.__

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HON SPEAKER: Thank you. Minister of Finance.

HON MINISTER OF FINANCE: Thank you, Honourable Speaker. I also rise to give my support to the Report tabled in this House by the Committee on ICT and I want to commend them for the missions they have undertaken in order to learn from the experiences of others. I agree with the preceding speakers that there are immense benefits to be reaped from harnessing the opportunities that are offered in ICT and in the area of public finance management specifically we have started to make use of ICT, starting of management of expenditure where we have introduced the IFMS system that has assisted us to improve significantly expenditure control and as a result, the over-expenditure by offices, Ministries and agencies, while there are still incidents of violations, has been reduced significantly as this IFMS was operationalized and rolled out to more stakeholders. As we continue with efforts to build capacity amongst the users of the system so that they can optimise the benefits offered by the system and rolling it out, we expect to see significantly improved compliance with financial laws as a result of the use of this system.

We could also further harness benefits from ICT in tax administration, where we would also want to look at issues such as the use of e-tax filing that could reduce tax administration bureaucracy significantly and improve efficiency and also in terms of cost of complying with the tax laws.

Similarly we look an integrated IT system for tax management that would also take an integrated approach to the management of files of taxpayers across the range of taxes, so that we would not have a person coming to claim a VAT refund while they owe in terms of income tax. We are therefore looking at optimising the potential offered by ICT in this regard.

In the area of banking, I think there is also a lot to be offered by the use of ICT where many of our communities who currently do not have access to banking services could actually access through the use of ICT. We

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already have cell phone banking and we actually see some corporate entities coming up with solutions that should enable us to transfer money to people without bank accounts. I want to encourage specifically the banking sector to continue to come up with innovative ways of reaching those that are unbanked and hopefully also to look at ways of reducing the cost of doing so. Increasingly we observe that it is cheaper to do your banking through ICT than to do it through the normal way of going to the bank and withdrawing or making deposits.

It obviously becomes very important to have an appropriate regulatory framework for these electronic transactions because it is also possible that fraudsters can optimise this situation and defraud members of the public and I am pleased to note that the Ministry of ICT has indeed already commenced with efforts to ensure that there is an appropriate regulatory framework and hopefully, in the next year we should see this becoming law.

I also believe that the use of ICT in public procurement could assist especially those who are in outlying areas, to actually increase their participation in public procurement. If we can use ICT to enable them to submit their tenders, so that they should not have to come here to collect documents and so forth.

I, therefore agree with those who have spoken that ICT can bring many benefits in all aspects of human endeavour and it is for us as a country to organise ourselves in a cost effective manner, because we do not have all the resources to avail to the Nation so that they can do this. We would have to find innovative ways of harnessing the benefits that are offered by ICT and I believe that we can realise immense gains as a result.

I once again thank the Committee for the Report that they have provided and I look forward to all of us making use of the lessons that have been shared with us through the Report. I thank you.

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HON SPEAKER: Honourable Nambahu.

HON DEPUTY MINISTER OF JUSTICE: Thank you, Comrade Speaker. I want to commend for the timely tabling of this Report and I only want to bring another dimension to this discussion.

I am very much impressed and have always been by the computer enthusiasts when they advocate computer literacy, but there is also this other aspect of security. I am very happy that Namibia is interacting with big players in the market and the question probably is what we have to put in place to protect ourselves. Some of us are very much busy with regulations, cyber crime type of laws and all that, but what are we putting in place at the physical infrastructure level, at the hardware level, to actually insulate ourselves against all the attacks that we are exposing ourselves to? The enthusiasts overlook this aspect and we are urged just to rely on the confidentiality clause and disclaimer in existence, but the Maddox of this world were not deterred by this when they went about hacking.

The other day there was an article in the newspaper talking about the vulnerability of computers at Government level and I was asking some of the technocrats what is in place? Some of them have not even read the paper. Therefore, it is an aspect of security, an aspect of these dummy computers that we have and somebody somewhere who has the real computer and is monitoring everything that we do. What are we putting in place? Inasmuch as we are advocating one child, one computer, we have also seen that four out of five children have watched pornography on the computer and they go and practise they see. (Intervention)

HON TJIHUIKO: May I ask the Honourable Deputy Minister a question? Honourable Deputy Minister, should have started from a different angle but I want to ask you a question. I remember that when you were still with us before you became a Deputy Minister,

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we undertook a trip to the Regions where we have identified the need for computers in the Magistrates' Courts and we were actually planning to find out from the Ministry of Justice as to why it has no computers and how do they expect Magistrates to do research. Now that you are a Deputy Minister, what have you done to improve the lot of the Regions? You are now talking about security, you were supposed to talk about the availability. Is your Ministry still in the same position as three years ago when we were in the Regions or have you done something to improve the lot of the Ministry?

HON DEPUTY MINISTER OF JUSTICE: Some of the aspects that the Honourable Member is raising are going to be answered by my Report of the Constitutional and Legal Affairs Committee and if you have not heard of NAMSYS, if you have to hear that even in Tsumkwe we now have computers, if you have not heard that we have electrified and computerised most of the Courts, then I think we will have to make a Ministerial Statement. We are much better off now than we were that time we visited and we are rolling out NAMSYS and JUTASTAT and all these other things are being phased out. We are not thinking of plans, as you are accusing us, we have already planned.

Comrade Speaker, before I was derailed by the Honourable Member, I was simply saying, inasmuch as we advocate and become enthusiasts and enter into contracts with the big boys in the market, it is also appropriate for us to apply our minds to the issue of security, because it is not only at the regulations and the conventions where you find cyber crime, it is also at the physical level, at the hardware, at the infrastructure and the undertakings that you get from the private sector to actually curb this.

Honourable Tjihiuko will remember the Y2K millennium bug and it did not end there, the problems might still come and one can see how viruses are actually invading big countries like China because people want to spy on each other. As soon as you open yourself up without taking precautions, you are running that risk. With those remarks I really thank

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you for tabling the Report. Thank you.

HON SPEAKER: I thank the Deputy Minister. Minister of Justice.

HON MINISTER OF JUSTICE: Thank you very much, Comrade Speaker. All of us want to participate in this Debate just to support the Committee for having made this investigation and bringing this Report. I support it for various reasons.

ICT is the way to go, whatever the disadvantages. We cannot hide anywhere under the sun, whether we like it or not, ICT is here. The best under the circumstances is for us to get where others are in terms of knowledge, the gadgets, the information available, so that we are also at par with those who are using the technology for positive purposes and even to be ahead of the criminals. Criminals will be with us as long as we live. In the field of ICT and in the normal situation they are always around and we must stay ahead of them. That is the way to go.

ICT has improved communication not only inside countries and across the borders, but even within the same systems ICT can help us reduce the wastages. The other day I was asking my neighbour here, why is it that we have the items on the Order Paper on this gadget here, yet we continue to get these blue papers. This is double expenditure. I thought we bought these gadgets to comply with Comrade Netumbo's call. When are we going to stop this? (Intervention)

HON ULENGA: On a Point of Information. That has its own particular reason. We do not spend our mornings here, we prepare ourselves for Parliament by receiving those documents way before we come to

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Parliament and we do not have these gadgets in our offices, perhaps you have.

HON MINISTER OF JUSTICE: What I meant, Honourable Speaker, is that we do not need the blue forms on our tables, because we have this screen in front of us. Communication intra-offices, intra-agencies, can be facilitated very easily via ICT, provided all of us take an interest in knowing how to use it.

The Deputy Minister of Justice just mentioned what the Ministry of Justice is trying to do in order to alleviate many of the problems that have been besetting that institution, namely the backlog of cases. (Intervention)

HON MINISTER OF ENVIRONMENT AND TOURISM: Comrade Minister, you are right that maybe there are double expenses, but the question is whether we are really well-equipped to operate this screen, because when you want to read the items, you do not know which button to press. Maybe it is controlled somewhere, but when you have this paper, you can see what is next on the Order Paper. What do we do in this case?

HON MINISTER OF JUSTICE: Good question, we discussed that here, but we did not find a solution. It is good that you have asked that question while the officials are listening. (Intervention)

HON SPEAKER: While you are on the Floor, I was not here when the technicians came to sensitise you on what they have put in place, but I understood there was an induction course to familiarise you with the equipment. Is that not true?

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HON MINISTER OF JUSTICE: Comrade Speaker, I also was not here when the induction course was given and, therefore, the first time I came in this august House and saw this gadget here, I was trying to press the buttons so that the screen could scroll up and down, but it does not scroll unless the Front Desk does so. Therefore, what help does it provide to us if I come here and I want to see when I have to participate. It is not quite useful in that regard. (Intervention)

HON MINISTER OF EDUCATION: On a Point of Information. When we press all these things, we always get a message, “*not available.*” Maybe they should assist us a bit more.

HON MINISTER OF JUSTICE: We at the Ministry of Justice have found ICT as one of the tools to help us manage our complex affairs in the sense that we do draw clients from all over this country. People come to Court, they are summoned and they come there, not knowing when precisely their cases will come up. They will sit around, cannot even go for tea because they are anxious that their names will be called. What we are currently busy with is to introduce an ICT managed system whereby clients, wherever they are in this country, will be able to go at a centre, press a button and get to know when precisely will their cases appear. Are their cases on the roll, and if it is on the roll, when precisely during that day will that case be called and before which Judge or which Magistrate. We now have that kind of assistance, not only to us who are managing the system but also to the public, so that we prevent them from undertaking long trips to either Katima Mulilo, Rundu or Keetmanshoop, just to be told their cases cannot be called today. That is the benefit we are deriving from ICT.

However, our children must know how to properly manage these gadgets, to understand it in detail. My Deputy talked about cybercrime and many of us are now banking through the Internet. As we are banking

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through the Internet, there are those who are syphoning our money from our accounts through the Internet. Therefore, it is a double-edged sword, but when you have people who are knowledgeable, then you also know how to limit these unauthorised intrusions into the system.

Comrade Speaker, I know we are going into recess today and I just thought I should add a little bit of what I thought could enhance and provoke our appetite to want to become more ICT-oriented people than to be discouraged by the disadvantages that the system presents and just to thank the Committee for this Report. I rest my case.

HON SPEA KER: Thank you. Does Dr Amweelo wish to reply?

HON DR AMWEELO: Thank you very much, Honourable Speaker. I will start from the bottom up, starting with *Comrade Pendukeni*. I thank you very much for the support. Yes, ICT is applicable to all sectors and she mentioned very important things with regard to its use in Parliament, so that one day Parliament becomes paperless. I support that idea.

Also very important is Intranet because it will enable the Members of Parliament to receive their payslips through the Internet and we would like to introduce Intranet in our Parliament and our Ministries, so that our system becomes paperless. You would never see any paper in Netherland because they are provided with iPads.

Honourable Nambahu mentioned cybercrime and we all know that technology is developing very fast in the market, but again crime follows the technology. This cybercrime destroys all the information in our computers and the Minister of ICT told us that the policy, regulations and the Act are on the way with regard to the prevention of cybercrime.

Honourable Kuugongelwa-Amadhila mentioned that they have already

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introduced ICT in the IMFS system and also in tax administration, e-filing, e-payments, etcetera.

Honourable Kaapanda mentioned e-learning in centres and schools and so forth and that Indian professors and lecturers will strengthen the capacity of our people. That is a very good idea and I want to remind him not to forget the ICT Committee so that we can work together.

The Minister of Education mentioned that in the early days our forefathers communicated with matchbox and from there the technology developed until where we are today. Honourable Members, Internet has been in existence for the last 38 years. I fully support what Honourable Dr Iyambo said and, I think, also Honourable Kaura mentioned, that the ICT Committee and the Parliament already prepared for a workshop in Swakopmund this year to focus on issues related to Microsoft Word, Microsoft Excel, Microsoft Power Point, Microsoft Outlook, Microsoft Explorer, how to use Internet, how to retrieve, how to send an e-mail and so forth.

I would like to thank you very much.

HON SPEAKER: I now put the Question that the Report be adopted. Any objection? Agreed to. The Secretary will read the Ninth Order of the Day.

**RESUMPTION OF CONSIDERATION OF REPORT ON
REGIONAL CONSULTATIONS ON THE ACCESSIBILITY TO
THE LEGAL AND JUSTICE SYSTEM OF NAMIBIA**

SECRETARY: Resumption of Consideration of Report on Regional

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Consultations on the Accessibility to the Legal and Justice System of Namibia.

HON SPEAKER: When the House adjourned on 8 November 2011, the Question before the Assembly was a Motion by the Honourable !Nawases Taeyele. The Minister of Justice adjourned the Debate and she now has the Floor.

HON MINISTER OF JUSTICE: Thank you, Comrade Speaker. Comrade Speaker, I take the Floor in this august House to participate in the Debate on the Report of the Standing Committee on Constitutional and Legal Affairs on accessibility to the legal and justice system, based on the Committee's visits to Caprivi, Kavango and Otjozondjupa Regions.

As the Minister responsible for the Ministry of Justice, I wish to provide the Ministry's comments and perspectives on some of the conclusions and recommendations the Committee has made on the diverse programmes which fall within the Ministry's mandate. I welcome the Committee's initiatives in undertaking periodic visits to see for itself the impact of some of the programmes for which this august House provides resources in order to ascertain whether any benefits trickle down to the general public for which it is intended. However, I wish to point out that while the Committee may have interviewed Justice officials in the relevant Regions, it would have greatly assisted the process for better sharing of information if it had also interviewed the heads of the directorates whose activities are covered under the Report. This could have been done prior to or after the trip of the Members of the Committee. Be that as it may, I will in my intervention and for ease of presentation follow the format of the Report and I will, therefore, address some of the comments and recommendations, as appropriate, according to the scheme of the Report.

Law enforcement – Paragraph 1.1.1:

Honourable Speaker, the Committee noted that the Traditional Courts needed assistance to enforce its orders on compensation. In terms of Section 17(3) of the Community Courts Act (Act 10 of 2003), any member of the Namibian Police shall be competent to serve any court process of the Community Court and may also arrest any person and bring such a person before a Community Court who, for some or other reason, cannot be arrested by the Messenger of that Community Court. I agree with their recommendation to amend Section 23 of the Community Courts Act and in addition I should also mention the fact that we will endeavour to also amend the Police Act so that make this categorically a responsibility of the Police to assist the Community Courts.

Jurisdiction and Training: Paragraph 3.1.2 and 3.1.3:

The Community Courts, as a new programme, was implemented during August 2010 to September of the same year following the creation of the Division: Community Courts, which provided initial training. As part of its mandate the division conducts continuous training to the court personnel of the respective Community Courts. The division conducted training workshops throughout the year to relevant participants in order to enhance their awareness on the operations of the Community Courts. The **Division:** Community Courts is also mandated to supervise the administration of Community Courts and training is mainly intended for members of the gazetted Community Courts. However, during the practical training the Traditional Authorities were also included in the training as participants.

The role of Chiefs within Community Courts setup: Paragraph 3.1.4:

The Community Courts Act does not exclude a Chief or a King from practising as a justice. The selection of justices and assessors is made by the Traditional Authority itself, as prescribed by the Act. The Act also provides for the establishment of a body of appeal which can cater for the involvement of the Chief or King to have the final decision on any matter, but here I would like to add that the Act, as it is, deviated from the

structure of Traditional Courts system as we know it, and we are currently studying how to amend the Act to provide for that.

The Act makes provision for applying either for the recognition of a Community Court if it has been operational as a Traditional Court before the commencement of this particular Act. It additionally provides for an application for the establishment of a Community Court if not operational as a Traditional Court before the commencement of this particular Act.

Community Courts – Paragraph 8:

Practical training workshops have been conducted to all gazetted Community Courts since February this year and is still continuing.

The Kavango Region in particular was one of the Regions which received the initial training, introducing the participants to the Community Courts Act and the operations thereof. To this effect, two training manuals have been developed and all of the participants have been provided with copies thereof. The manuals are, unfortunately, in the official language only but will be translated in all other languages during the course of next year.

The Traditional Authorities Act 25 of 2000 makes provision for Traditional Courts. The Community Courts Act is not taking away the operations of the Traditional Courts, but rather requires that these Courts should now operate in such a manner that all proceedings are reduced to writing in order to comply with the Constitution of the Republic of Namibia, the rules of natural justice and fairness. The Community Courts Act merely formalises the court process to be followed, introduces administrative procedures, but does not interfere with the specific customary practices and the manner of adjudication. I know Honourable Moongo will agree with me on this one.

Legal Representation in Community Courts:

Let us understand each other here. Community Courts have their own manners of adjudicating. They have their own rules and I have visited Community Courts throughout this country and their manner of

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adjudicating is similar. The accused can never be represented unless that person is either sick, but in terms of legal representation in lieu of the accused him or herself is not possible and, therefore, we should not confuse our civil courts with Community Courts. The complainant and the accused have to tell the justices and nobody but themselves. “*Were you there that day, yes or no?*” It cannot be explained by a legal representative who will be arguing the circumstances and all these kinds of things. I have told the traditional authorities that they should never, never allow legal representatives to appear before them, they should in actual fact chase them out because they do not belong there. You cannot claim to be a lawyer if you have not gone through legal training in order to appear before a Magistrate’s Court or the High Court or Supreme Court.

How come that we, the lay people in traditional laws, want to appear before these Courts? In actual fact, it is contempt and we should refrain from doing that.

Power to purchase necessities from local suppliers:

The Committee recommends that Magistrate’s offices should do proper planning and requisitioning support by proper Budget. The Committee further recommends that the Economising Committee should be decentralised to the local Magistrate’s offices to allow them to procure from local service providers. The Magistrate’s Office in Rundu procures goods locally. (Intervention)

HON ULENGA: I would like to ask the Minister a question with regard to what she is discussing right now. In view of what the Minister just said, can she explain to me what the Namibian Constitution says under Article 12 which talks about fair trial, and specifically sub-articles (b), (c), (d) and (e). Paragraph (e), for example states that “*all persons shall be afforded adequate time and facilities for the preparations and presentation of their defence before the commencement and during their trial and shall be entitled to be defended by a legal practitioner of their choice.*” Will we need to change the Constitution to say except when they appear before a Community Court?

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HON MINISTER OF JUSTICE: Comrade Speaker, the question by the Honourable Member is a constitutional one and I was looking for the article where limitations on some of these rights that we always claim are provided. *“Limitations upon fundamental freedoms: Wherever in terms of this Constitution the limitation of fundamental rights or freedoms contemplated by this Chapter is authorised, any law providing for such limitation shall be”* There are limitations to whatever we claim. Read this article properly and you will find your answer there.

The Magistrate’s Office in Rundu procures goods locally where there is a Government store, while other offices have to procure from Windhoek due to unavailability of specified goods and services. The State Finance Act stipulates that the Economising Committee must approve all requisitions for the purpose of controlling expenditure. The Economising Committee is thus a centralised entity. Decentralisation will also require that the whole process of procurement be decentralised, including the printing of orders, for example. The decentralisation of Government offices is a slow process and is driven by other Ministries and not the Ministry of Justice.

The staffing needs: There are no posts for maintenance clerks on the establishment of the Directorate: Community Court Services and hence, maintenance work will still continue to be done by legal clerks. Budget constraints are hampering the creation of additional posts on our establishment. Very few posts of interpreters are funded in 2011/2012 Financial Year and this might explain the shortage of interpreters in Rundu in particular. Currently there is no legislation that requires that the Ministry of Justice to employ social workers for screening of juvenile offenders and this clearly explains why the Ministry of Justice is not employing social workers.

On shortage of typists, the Ministry is currently busy with a competency framework project which in future will identify training gaps for individual staff, as opposed to the current situation where training is only done on request by the individual staff in the Ministry.

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The Namibian Police has been supporting the Ministry of Justice to escort moneys from the Magistrates' Courts to the banks and vice versa.

However, in some instances the Police are unable to assist because of lack of manpower. The Directorate: Court Services is currently looking at other options, like making use of private security companies to escort this money.

There is a recommendation that the age of Magistrates should be fixed at a certain age. Magistrates are employed based on set requirements, such as qualification and experience. The Magistrates Act (Act 3 of 2003) does not stipulate a minimum age for Magistrates to join the magistracy and hence the Committee's suggestion to appoint Magistrates only above the age of 25 may be regarded as discriminatory against the younger and qualified candidates.

The Ministry of Justice has its footprints in most of the towns. Ministries, offices and agencies do make use of the Magistrates' Offices to issue liquor licences and to act as agencies to collect revenue. In terms of the Liquor Act the Courts are mandated to act as the Secretariat and in terms of this Act the Magistrate is the Chairperson and the Secretary of the Board. The issuing of liquor licences and the revenue collection are, indeed, considered a burden to the already overstretched staff at the Magistrates' offices. Efforts should be made by the lawmakers to bring changes so that the Magistrates' Offices only deal with their core functions, not issuing of liquor licences and all these kind of things.

With regard to the Committee's finding that the appointments of legal clerks at Grootfontein takes up to two years, this is mainly due to the fact that promotion posts in general take longer to be filled and also the fact that we do not seem to have enough Magistrates with sufficient experience to fill such posts. They are hard to come by.

Office equipment: The Committee noted that the work of Magistrates' Courts in the Regions is hampered by lack of basic equipment. This situation was addressed and each station currently has a modern fax machine, a photocopier machine and the computer problems at some

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stations are still being experienced because of the cumbersome tender

procedure experienced by the IT department. The real challenge is not to equip these offices with the above equipment, but to ensure that they are operational at all times.

The Ministry signed an agreement with Telecom to be provided with Internet services countrywide as well as to provide broadband connectivity between various offices within the Ministry. The roll-out of these services is underway and will be available in due course.

Magistrates are the main beneficiaries of reference law books and the Directorate: Court Services avails funds every year for the deployment of law books expenses. However, purchase of these books is only done upon request by individual Magistrates' Offices, which is a shortcoming on our side.

With regard to the uniforms for cleaners in Rundu, a request for such was not channelled to the head office.

Comrade Speaker, I have noted with interest, the recommendation of the Committee on how the process of application for legal aid could be expedited. In this regard, I wish to comment as follows:

In the current Financial Year 2011/2012, two offices have been opened at Gobabis and Opuwo. In other words, we have decided to decentralise the Directorate of Legal Aid. With regard to the post for a legal officer for Katima Mulilo, interviews were held but the candidate declined to take up the position. At any rate, no office space is available at the magistrate's Court building at Katima Mulilo. The directorate plans to open an office at Khorixas, but the only one candidate who was shortlisted did not come for the interview and the post will have to be re-advertised in the next Financial Year. My Ministry is actively working on measures to enhance the directorate's capacity to speed up the processing of applications at the regional level through appropriate staffing initiatives.

Infrastructure: A feasibility study for the construction of a new

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Magistrate's Court at Katima Mulilo has been completed. Actual construction work can commence within the next two Financial Years depending on the availability of funds. Chairperson of the Committee, take this into consideration, look at our allocation for the next Financial Year and find out why an allocation is not made here.

Meanwhile an additional courtroom was constructed at the existing Court building to deal with an increase in the workload at this station. Another feasibility study for the construction of a new courthouse as Grootfontein is done during this Financial Year. A consultant was recently appointed to conduct a feasibility study for the upgrading of Otjiwarongo Magistrate's Court to cater for the required additional offices.

Law Reform and Development Commission: Finally I wish to refer to the recommendation made in relation to the Law Reform and Development Commission. The Administration of Estates Act (Act 66 of 1965) and the Wills Act (Act 7 of 1953) are part of the projects of the Law Reform and Development Commission. The expected outcome should be that the law must not discriminate in any way and must cater for all race groups, women and children as well as extended customary heirs. At my instance, additional consultations were made with specified interest groups, including the Traditional Leaders. This project is high on the agenda of the Commission and I expect a full Report and attendant draft Bill early in the New Year. All the discriminatory laws relating to matter of inheritance, including Schedule 2 of the Administration of Estates Rehoboth Gebiet Proclamation (Proclamation 36 of 1941) will be dealt with in that Bill.

Comrade Speaker, today's Session being the last before we break for Christmas holiday, I am using this opportunity to wish each and every one of us and our loved ones a blessed, safe and restful holiday and a prosperous 2012 and I thank you.

HON SPEAKER: Thank you. I now put the Question, that the Report be adopted. Any objection? Agreed to. We have reached the stage where we, by tradition, give an opportunity to the Political Parties to speak and it

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starts by that tradition with the Opposition. It is not mandatory to speak, but it is a good thing to do so. Honourable Ulenka.

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HON ULENGA: Honourable Speaker, I would like to preface by felicitations to the Colleagues for a Merry Festive Season with a bit of disappointment. We have done good work this year and I am glad to see our Parliament moving from strength to strength in terms of dealing with its mandate. However, I think we need to look seriously at our programme and the way we do our work. Seeing that the Members of Parliament have other things to do as well apart from sitting in the House, perhaps we need to look again at the times and the days that we have allocated to our Sessions on a weekly basis. As all of us can see, we have not been able to finish all the work that we wanted to do. There have been whole programmes that had to be left out simply because we cannot deal with these issues before the recess. I can mention quite a number of Motions, especially on the questions side. When we are dealing with the Budget we do not have time for the questions, understandably, and after that we only have a very short time left. Therefore, starting from next year, we need to look at the way we programme ourselves and also make a balance between matters that come from the Cabinet and matters that come from the backbenchers.

With those few cautionary remarks, Honourable Speaker, the festive season is again upon us and my only wish to the Colleagues and to the Nation is that in undertaking all our merry and celebratory trips and activities, be careful not to overdo matters, especially when it comes to drinking, especially drinking and driving. (Interjections) I am talking to the Namibian Nation, I know that some of you do not drink. I am talking to those of us who sometimes use alcohol. As you know, especially backbenchers who have been visiting the various parts of the country, the big issue out there is alcohol abuse and I think it is high time that we as Members of Parliament talk to our fellow citizens just to lower it down a little bit. We all drink but we are also empowered with the capacity to

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make sure that when enough is enough, it is really enough. This will help us by perhaps also minimising the accidents which come as a result of the abuse of alcohol.

Honourable Speaker, I would like to wish, on behalf of our Party and on behalf of myself, indeed, a very Merry Festive Season and a prosperous 2012 to Namibia and to our Nation as well as to the Honourable Members. I thank you.

HON SPEAKER: Thank you. Honourable Shixwameni.

HON SHIXWAMENI: Thank you, Honourable Speaker, for the chance to say a few words, but since I intended to table an unopposed Motion to salute the Occupy Wall Street movement and the Occupy Stock Exchanges movement, I would like to take this opportunity to congratulate and salute these movements for bringing to the attention of the world the plight of the 98% marginalised in the world and wish them all good luck in what they are doing and that, as Martin Luther King said, *we shall overcome one day* as workers of the world.

Honourable Speaker, this has indeed been a very hectic year and I must admit that we as legislators have collectively tried our level best and we have done what we could do with all the weaknesses of the system. However, I am able to congratulate all the Honourable Members here, particularly the backbenchers in the Committees. Whereas the Committees were basically not functioning in 1995, you can see the way the Committees have grown from strength to strength and I would like to congratulate the Members of the Committees for the hard work they have put in and, of course, also the Executive for bringing many Bills to the House which have been passed. I can see that we as a country are starting to find one another, to work together to make sure that our country becomes prosperous. I think for that we should all pat ourselves on the

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back and say keep up the good work, let us take out the negativity and look forward as a Nation as to how we can cooperate in our political and ideological diversity.

I would like to congratulate the Honourable Speaker for your stewardship of this House during this Session. I think you have done extremely well together with your deputy and I hope that we can look forward to the next Session and having a more lively Debate, lifting the standard of the Debate of the House to a much higher level.

I would also like to say to our whole Nation, as we enter the festive season, let us enjoy the festive season, we have come to the end of the year and this is the time to sit down and reflect on what we have done and what has been our contribution to the Nation throughout the year.

Therefore, I would like to wish the Nation a happy festive season, Merry Christmas and, indeed, prosperous 2012. To the Members that are here, take a rest, take it cool and calm and come back with renewed energy so that we can move forward as a Nation. With those few words, Honourable Speaker, I thank you and wish everybody all of the best and good luck.

HON SPEAKER: Thank you. Honourable Maamberua.

HON MAAMBERUA: Thank you, Honourable Speaker. I was hesitant to take this opportunity to speak since the Speaker was calling for Opposition Parties to speak and this is the Government-in-waiting. It is a different category.

Nevertheless, Honourable Speaker, I wish to take this opportunity to state that I stand here very happy, proud and yet humbled before the Nation. I am happy because of the support that I got from all of you, that I got from the Speaker and hence, I wish to thank all the Colleagues here. I am also

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delighted by the fact that the Debates in Parliament, though with the normal parliamentary flavour, have in my view improved tremendously and I wish to caution the comrades and Members that when we bring Motions to be discussed here, some of us bring these Motions not for any political gain but actually to try to get in touch with the communities so that we try to articulate their aspirations in this House. That is the reason why we bring some of those Motions here for discussion, so that together we can find solutions to some of the problems facing our Nation and our communities, those that are voiceless and for whom we have to speak.

Having underscored that, I think it is important that we take a break and come back next year rejuvenated so that we can embark on this programme that we have not been able to complete this time around. As you have noticed, there are quite a number of Motions, papers and questions that were not addressed because of time limitations and other considerations. Therefore, I think next year we should be able to find time, energy, devotion and dedication so that we can address these outstanding issues as some of them are very crucial and important.

To all the comrades here and outside, thank you very much, your support is appreciated and have a very good, happy and peaceful end of 2011. Thank you very much.

HON SPEAKER: Honourable Gawases.

HON GAWASES: Thank you, Honourable Speaker. Honourable Speaker, Honourable Members, this was really a great experience for me as a newcomer. All these Points of Order and Points of Information were new to me and I also learned to be a good listener, however, watch out for next year. I always watch news but now I see you in person and it was quite an experience for me.

I also want to thank the chairpersons of my standing Committees. There

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was no such thing that this one is from this Party, everybody was equal there and I am very thankful for that. I want to wish you all a wonderful festive season with your families and I pray that the Lord must bring us all back. Thank you very much.

HON SPEAKER: Thank you. Honourable Moongo.

HON MOONGO: Thank you very much, Honourable Speaker. I would only like to say that this was a touchy but educating year in the sense that we learned to listen and also to be tolerant from both sides. Hopefully next year we will be more tolerant and educated. However, it was a very tough year as we have a pending case in the Supreme Court and it was uncomfortable because we will probably be told you are unconstitutional and null and void. Really, to us it is a thorn in the flesh. Anyway, let us give justice time to take its course.

With this I wish all the Members a prosperous Christmas and New Year. I thank you very much.

HON SPEAKER: Thank you. Honourable Hamutenya.

HON HAMUTENYA: Thank you very much, Comrade Speaker. Somebody who is listening will ask is he a comrade and yes, he is a comrade, a longstanding comrade and that comradeship will stand whatever the hurdles on the way.

First I would like to join those who congratulated you the other day for your successful execution of the other mission that you had. You

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distinguished yourself in carrying out the work of the Inter-Parliamentary Union, but it was not a surprise. You are well schooled in the art of diplomacy and management of institutions and reconciliation of different interests. Therefore, you did that with distinction and I congratulate you on behalf of my colleagues in the RDP.

When we came here it was tough, there were tensions, old colleagues sitting that side hardly wanted to look at me (laughter), but as time went on I saw that yes, we have been comrades and we know each other and we started to talk over a cup of tea during the break and outside there. We avoided many controversial issues, like the Court case, and we talked about the light things in life and it was touching that we are a team of Namibian officials despite our different interests that we represent. Therefore, it was cheering to note that as a people we were reconciling and being on talking terms and putting aside our difficult positions.

I would like to wish each and everyone in this House as well as your families a very Happy New Year and a Prosperous Christmas, for those who are Christians. I wish you a blessed season and a restful holiday break and that we will meet next year recharged, rejuvenated and full of fresh ideas to enable us to implement the Millennium Challenge Account with vigour and determination. Thank you very much.

HON SPEAKER: Thank you. The Vice-President of the SWAPO Party, Honourable Geingob.

HON MINISTER OF TRADE AND INDUSTRY: Thank you, Comrade Speaker. Let me start by first congratulating you for your achievements as our Speaker and also the international duty you carried out.

This year was so short, which means that we were very busy and you have

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been very busy internationally, yet stewarding your ship here.

Congratulations for that and thank you for leading and guiding us. This also goes to your Deputy Speaker. Namibians are not appreciative of achievements. Universities, international institutions, Parliaments honour people whom they recognise as having achieved something. Therefore, both of you as our Speaker and the Deputy Speaker have been honoured. Congratulations and thank you.

I would also like to turn to our Colleagues who are sitting behind me and this side first, to say thank you and congratulations. Those who are Cabinet Ministers worked hard. There are many times they had to go to Cabinet from 09:00 to 14:00 and then we just walk in here to carry on with our national duties in Parliament. The Deputy Ministers who are sitting there, people always look up to us as SWAPO. They talk too much about us, condemning us. The reason is that they have hope and trust in us. That is why they complain, that is why they criticise.

Just last Saturday I was wondering how many others, even the Government-in-waiting, can open a meeting Friday ceremonially and have a meeting the whole Saturday, debating national issues, continuing the whole night until Sunday morning 06:50. That can only happen if people are serious with their assignments and know they have a heavy responsibility. I am saying, congratulations SWAPO Members for hard work and keeping peace in spite of being attacked unfairly. I will repeat it, congratulations for keeping peace, unity and tolerance in this country.

Honourable Hidipo Hamutenya mentioned what happened. He said the first day when they came in there were tensions. I walked over and said hallo to him. He did not mention it. That is tolerance. I met you on a plane, you were looking away, I went back and talked to you and Nyamu. That is tolerance. We are being attacked, yet we are tolerant, so why do you want to deny that? Therefore, it is not easy, I can explain how tolerant we are. Some think they must have the Floor to talk and tell stories about how bad things are, how badly we are ruled, but we must just sit back here and accept, but then some of us come and correct that, that

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people we have a beautiful country.

We have six Parties in a small Parliament, some with one representative. The new Member was saying how she was impressed looking at us in person, but realising that we are tolerant, we are one, we go out and drink tea together after running our campaigns and rightly attacking each other.

What many of you, especially the two Members sitting in front, said about the country is so true. Where do you see people sitting and discussing issues, then go and drink tea and come back at the end of the year to make the very interesting and encouraging statements made by some? It gives you hope that Namibia has a bright future, because many countries do not have that fortune, that people can disagree but remain Namibians. As Honourable Hamutenya has said, we are comrades, we have come a long way and that is why I talk to him. Maybe we disagree about policies and what direction we are taking, but we came a long way and given that, I have hope and I am convinced that we can build our country. We should not make too much propaganda to please other people, like talking about what happened in North Africa and we must watch out, it might happen here. We have democracy here, why should it happen? We are here talking about our differences and holding hands. That did not happen in North Africa, so do not wish it over here. All of us will be running.

Really, it is a beautiful day. I was touched when I listened to some of the Colleagues' statements on that side – some – and therefore, let us go and rest. I am tired and I think you are also tired, you worked very hard. Let us take this opportunity that God gives us to go and rest. Some must go and farm, some must go back home to their Regions, visit people. Do not talk politics, just say good things so that you can have enough rest and when you come back we will elevate the Debate.

The Committee system that some of us participated in is very important and today's Debate showed that the Committees went around, drafted a Report that was duly attended to, answered properly and that is the future of our Parliament, the future of our National Assembly. Somebody earlier talked about the Government-in-waiting. SWANU has always had a way of waiting too long, they will be waiting for a long time. When the

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Government-in-waiting approached the Minister of Lands, the Minister of Lands said maybe the Speaker can use his influence to impress on our Colleagues in the National Assembly, who have the power to review our laws, to maybe to review that and therefore, accommodate what was mentioned by the Government-in-waiting. That, to me, is indeed how we can accommodate each other, how we can see contributions for what they are, not propaganda, but genuine contributions. That is what we will do from this side when we see genuine interest of the Nation at heart. We will join and hold hands. Keep on doing that, but I am sorry, you may be waiting again for too long.

Having said this, Comrade Speaker, I would like to wish all of us a restful season, Christmas, New Year. Recharge ourselves and come back and continue. Merry Christmas and Happy New Year.

HON SPEAKER: Thank you. I have an announcement. Honourable Members, the Minister of Finance wishes to invite all Members of Parliament to an information session on tax-related issues that will be conducted on Friday, the 25th of November 2011 at 10:00 in the National Assembly Chamber. This follows the Honourable Minister's announcement that the Ministry will embark upon taxpayer education campaigns throughout the country. The Ministry would, however, like to kick off the process with our Members of Parliament. All Members are, therefore, encouraged to attend this very important information-sharing session.

The Deputy Prime Minister will adjourn the House and tell us when we will come back. I must say that world peace and world economy are imperilled today by powerful and greedy forces out for resources and out for regime change in many parts of the world.

One of my Philosophy professors used to say, "*hope for a miracle, but do not depend on one for salvation*". I, like the others, wish us well as a

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Nation. I wish you all a restful holiday season with your families, but to continue to believe that if there is will and determination in unity, we should be able to overcome most, if not all, of the challenges that our Nation faces. I was told, maybe it is true, that Namibia produces not for consumption but for trade. To survive we must think about how to survive as a Nation and as freedom depended on us, our survival also depends on us. If a miracle finds us along the way, by all means let us welcome it. I wish you all well. Deputy Prime Minister, tell us when we return.

HON DEPUTY PRIME MINISTER: Thank you very much, Comrade Speaker. Listening to the presidents, I thought that before I do exactly what you are asking me to do, I wanted just to say a few things and that is that from the Government's side in this House we look back with satisfaction on the excellent leadership you, Comrade Speaker and your Deputy have provided during this very busy Session. We look back with satisfaction on the excellent performances and level of Debates which have prevailed in this House.

Comrade Speaker, Honourable Members, one of the kings who was very endowed with wisdom in his book said, "*there is indeed a time for everything.*" We worked very, very hard, we had time to discuss national issues very successfully though we had some differences here and there. I am sure it is now time to head for holiday, time to rest, time to be with our families and friends and, indeed, time to pay attention to our private concerns.

On behalf of the Leader of the House, I would like to wish you all a Merry Christmas and prosperous 2012.

Comrade Speaker, I want to conclude by encouraging you all to come back with new strength, new hope that we will prevail over all hurdles in the next Session as elected Members. May I now seize this opportunity to

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announce that this House adjourns until 14 February 2012. I so Move,
Comrade Speaker.

HON SPEAKER: The House adjourns until 14 February 2012, 14:30.

HOUSE ADJOURNS AT 20:40 UNTIL 2012.02.14 AT 14:30