



Legal Update Bulletin
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Newsworthy

THE COURT CONFIRMS THAT THE PROVISIONS OF PAIA MAY BE USED - 24 FEBRUARY

In the most recent unreported decision in the Johannesburg High Court, the court confirms that the provisions of PAIA may be used, in certain circumstances, to refuse access to information. PAIA is therefore not an instrument, when used in any particular set of circumstances, that guarantees one access to the records or information requested.

Refusing information in terms of the Promotion of Access to Information Act No. 2 of 2000 : *Earthlife Africa (Cape Town Branch) v Eskom Holdings Limited (unreported WLD Case No. 04/27514)*

The Promotion of Access to Information Act No.2 of 2000 ("the Information Act") has already received much attention from our courts. In a recent unreported judgment in the Witwatersrand Local Division, further principles concerning the manner in which information may be requested and refused were elucidated by the court.

The matter concerned a request by Earthlife Africa ("Earth Life") to Eskom Holdings Limited ("Eskom") for information relating to certain emission records of Vaalputs, Pelindaba and Koeberg waste sites from 1983 to 2003 including sampling results of water, air, vegetation, animals (sea and land), other data concerning emissions and certain of Eskom board minutes from 1998 to 2003. Consequently, Eskom granted access to the emission reports of the Koeberg power station but stated that it was not in possession of similar information in respect of Vaalputs and Pelindaba sites. Eskom refused requests concerning its board minutes stating that the minutes were protected in terms of the Information Act by virtue of the exclusions concerning

- the economic interests and financial welfare of public bodies ;
- the protection of the trade secrets of public bodies ;
- the protection of certain financial, commercial, scientific or technical information, other than trade secrets ;
- the potential for the information, if disclosed, to place Eskom at a disadvantage in contractual or other negotiations or to prejudice Eskom in commercial competition ;

- the fact that the documents were generated in the context of the formulation of a policy or the taking of a decision in the exercise of a power or the performance of a duty conferred or imposed upon Eskom by law.

Undeterred, Earth Life lodged a second request for information with Eskom in or about January 2004. The second request was more pointed in so far as it requested information and documents concerning the Pebble Bed Modular Reactor, which the court referred to as the PBMR. The information requested concerned, more particularly, business plans relating to the PBMR, technical reports and any financial reports concerning support for any alternative energy source. Eskom again refused the minutes of the board meetings and business plans concerning the PBMR and the financial implications and technical reports of the PBMR. Eskom, once again, relied on the exclusions contained in the Information Act aforementioned.

The court accepted that the applicant had overcome the hurdle, in the Information Act, basing its request on the enforcement of a right contained in section 24 of the Constitution of the Republic of South Africa, 1996 which provides everyone with the right to an environment that is not harmful to their health or wellbeing and to have the environment protected. To this end, the court stated that "[t]his application clearly addresses such matters so that the crucial issue is whether the applicant is or not entitled to access the remainder of the records."

Due to the nature of the grounds upon which Eskom relied in order to refuse access to the information, the court was required to assess whether or not the information, so requested, related to trade secrets and potentially sensitive information the disclosure of which would place Eskom at a commercial disadvantage. The court stated that the matter "clearly, involves a considerable body of technical information and material in respect of which the court must, of necessity, seek the guidance of a suitably qualified expert. For example, the question as to whether certain information or a particular document is to be classified under one of the statutory exemptions, whether it is a trade secret or on any other basis, might well involve experts in specialised knowledge which the court does not possess. Thus, the question whether certain information or documentation does or does not qualify for exemption from disclosure may well involve a consideration of expert opinion."

The court then examined carefully the nature of the evidence attached to Eskom's answering affidavit as well as the nature of the expert evidence that was attached to and contained in Earth Life's founding and replying affidavits. The court dismissed the evidence of a number of the experts on the basis that affidavits, supporting the views that were contained in technical articles, were not provided. The court examined the nature of the expert evidence and, in certain instances, dismissed the expert evidence adduced by both parties. However, the conclusion reached by the court was that, based on the expert evidence produced by Eskom, the documents and information requested by Earthlife Africa constitute "confidential information and trade secrets which are protected from disclosure."

The court indicated that the basis for adjudicating whether or not information requested constitutes confidential information is a question of fact. In this regard, the classification of information as confidential information is only competent, for the purposes of the Information Act, when it is supported by expert evidence concerning both the nature of the information requested and the context in which the requested information is used by the entity. These issues render the requested information confidential or sensitive and thus protected by the Information Act :

"[Earth Life] has provided no evidence which contradicts that of Dr Lennon. Insofar as it may be suggested that there exists a dispute of fact as to the classification of the information sought by [Earth Life], the relief sought may be granted only if justified by the admitted averments in [Earth Life]'s founding affidavit together with the facts alleged by [Eskom]."

Earth Life also did not place into question the commercial, financial and technical nature of the information it requested. Earth Life was therefore at a distinct disadvantage in so far as it attempted to argue that the information, notwithstanding the classification of it by Eskom when dealing with the Earth Life's request, was incorrect and that the information should be classified in an alternative manner so as to provide Earth Life with access to the records it had requested. Fundamentally, the court summarised the issue as "whether, on the factual information available to the court, the respondent is entitled to refuse access by

virtue of the statutory provisions contained in the Information Act. This is essentially a question of fact and I reiterate that there appears to be little or no dispute as to questions of law." Based on the expert evidence assessed by the court, Earth Life's application was dismissed.

Whilst the short title of the Information Act indicates that it is a statute that is to be used in order to obtain access to information, large portions of the Information Act are dedicated to the protection of information. There is no reason why records should be made available to a requester who requests access to those records in terms of the Information Act. A person receiving a request is entitled to refuse access to records provided that

- the refusal is based upon one or more of the recognised exclusions contained in the Information Act ; and
- the refusal is capable of justification, based on the exclusionary ground/s selected, with reference to facts or expert evidence or both.

The court adopted a conservative and cautious approach to the interpretation of the Information Act. Whilst it was certainly argued by Earth Life that "the withholding of information is only permitted on the grounds explicitly set out in the [Information] Act [and that] [a]ccess should only be denied where it is clearly justified", the court held that Eskom had succeeded in demonstrating that the information should be protected on the grounds set out in the judgment :

"In applying such a principle, the court cannot read more or less into the limitations which have been expressly defined in the Information Act. Although the applicant has contended that the statutory limitations should be narrowly construed, they are, in my view, perfectly clear and cannot be expanded or constricted at the whim of either of the parties."

The approach by the court, in relation to the cause of action of Earth Life being the potentially adverse effect which Eskom's activities at Pelindaba, Koeberg and Vaalputs would have on the environment, constitutes a departure point that may have been more useful for Earth Life to use in order to argue for the mandatory disclosure of the information requested.

The court recognised the objects of the Earth Life, being "to highlight environmental injustice and to promote ecologically sound alternatives such as renewable energy. Its activities are mainly campaign related and include lobbying and advocacy with a range of stakeholders, including government, building campaigns at community level through sharing information and skills, engaging with environmental impact assessments, engaging the media and researching and producing information materials." The court also recognised the environmental basis upon which Earth Life made its request for information in so far as it has lobbied against the establishment of nuclear energy facilities in South Africa. The approach therefore by Earth Life was one based primarily on environmental concerns and considerations. This issue does not, however, appear to have been granted much attention by the court in assessing whether or not there existed grounds upon which to require the disclosure of the information concerned, notwithstanding the grounds advanced by Eskom upon which to refuse the information. Section 46 of the Information Act may be applied in circumstances to require mandatory disclosure of information where there is an imminent and serious public safety or environmental risk that would be revealed if the record requested was disclosed in the public interest and the disclosure would outweigh the harm contemplated in the provision in question.

The emphasis in the judgment is placed clearly on whether or not the information requested was suitably classified by Eskom for the purposes of refusing disclosure of the records and not on whether or not section 46 was applicable to the records ie, whether or not the nature of the records, if disclosed, would reveal an imminent and serious public safety or environmental risk. It may be these differences of emphasis that caused the court to find that the applicant had not adequately addressed the expert information produced by Eskom. This appears to be clear from the emphasis placed by the court on the expert evidence produced by both parties in the light of the sections of the Information Act, referred to above, excluding section 46.

If one considers this case to be one more concerned with an environmental issue rather than one based exclusively on an explanation of the provisions of the Information Act, then it is arguably at odds with

- the approach taken by South African courts to environmental issues of late, in a trend of environmental enlightenment that has placed the emphasis rather on protecting the environment and punishing polluters ;
- the approach taken by the court in the decision of David v Clutchco (Proprietary) Limited 2004 (1) SA 75 (C) in which it was held that :

"[i]f the Companies Act does not provide an equivalent process to safeguard his proprietary interests in the company, then it cannot be contended that the [Information] Act should be superseded by the Companies Act. In the as yet unreported Constitutional Court decision of Ingledew v Financial Services Board & Others [2003 (4) SA 584 (CC)] it was acknowledged that the [Information] Act is applicable in instances of concurrent rights to information; all the more so in the instant case given the absence of a right to the information sought under the Companies Act and consequently the absence of concurrent rights." (at 86D-E)

However, in so far as one considers this judgment in the context exclusively of the Information Act, then further guidance is provided on the application of the exemptions provided for in the Information Act and the manner in which persons, receiving requests for information, may deal with those requests and successfully avoid providing the information requested.

FA News website

ANOTHER VICTORY FOR ASBESTOS MINING ACTIVITIES

By Sizwe samaYende

Nelspruit – There is hope of compensation in sight for more asbestos miners who contracted diseases and other life-threatening ailments because of their jobs.

Nelspruit-based lawyer Richard Spoor has brokered a deal with Swiss Eternit Group, a multinational company, to establish a trust that will pay the workers for the next 20 years. The Kgalagadi Relief Trust will pay individuals who used to work at the group's asbestos mines at Kuruman and Danielskuil in the Northern Cape between 1952 and 1981. Spoor said the structure and organisation of the trust would be modeled on the existing Asbestos Relief Trust. The Asbestos Relief Trust, which Spoor was instrumental in creating, was established in 2003 following an out-of-court settlement between asbestos sufferers and their former bosses, Msauli, Gencor and Gefco.

The three companies agreed to set aside R460 million to compensate ex-workers from mines in Mpumalanga, Limpopo and the Northern Cape. This trust's formation followed a victory by about 7 000 asbestos victims who used to work for British multinational company, Cape Plc. Cape Plc's employees set a precedent by forcing the company to pay about R97 million in 2001 to compensate sickly workers and relatives of workers who had died from asbestos-related diseases.

"To avoid unnecessary duplication, the Asbestos Relief Trust will be entrusted with the management and administration of the new trust," Spoor said. He declined to reveal how much Swiss Eternit Group set aside for the compensation of its ex-workers but said that both parties were satisfied that "the grants payable to qualifying applicants are fair and equitable."

"The contributions are confidential but [we] are confident that they will be sufficient to enable the trust to fulfill its obligations to beneficiaries," said Spoor. Spoor added that the Kgalagadi Relief Trust would become active from the beginning of next month.

Meanwhile, the Asbestos Relief Trust was planning to set up claim offices in the neighbouring countries of Mozambique, Swaziland and Lesotho this year to facilitate the compensation of ex-workers from these

countries. This trust has approved about R100.9 million to date, to be paid to qualifying ex-mineworkers. –
BuaNews

ARBITRATION FINDS LABOUR COMMISSIONER'S SACKING WARRANTED

Released by Department of Labour on 02 February 2006

The Ministry of Labour has welcomed the arbitration award calling for the dismissal of suspended Compensation Fund Commissioner Bongiwe Winifred Ncube for misconduct, including insubordination, gross abdication of duty and negligence.

Ms Ncube had taken the matter to the Commission for Conciliation Mediation and Arbitration (CCMA) in June last year following her suspension in January last year. Charges that led to Ms Ncube's suspension related to her failure to deal effectively with the backlog of claims up to December 2002 – which eventually led to litigation against the Department of Labour by the Legal Resources Centre.

The complainant was also found to have made the Fund vulnerable to fraud by failing to halt unjustified advance payments amounting to thousands of rands, while the authenticity of certain claims was not properly considered. The CCMA also found that failure to respond to or acknowledge claims timeously had exposed the Department and the Fund to reputational risks and financial liabilities.

The public outcry, including media reports about "inefficiencies" within the Fund, led to claimants approaching NEDLAC for assistance, and these were taking place amid unsuccessful orders to Ms Ncube to prioritise responding to queries so as to put the Minister and Director-General in a position to respond to the public outcry, the arbitration found.

In its findings, the CCMA found that Ms Ncube had had "throughout her testimony, abdicated her responsibility as the head of the Fund and therefore passing the buck to her subordinates". "Insubordination, gross dereliction of duties and gross negligence warrant dismissal", the arbitration concluded.

Welcoming the arbitration outcome, Labour Minister Membathisi Mdladlana said yesterday the developments meant the Fund could now continue with its programme of improved service delivery without disturbance. Minister Mdladlana also welcomed the CCMA's findings that the settlement of current claims had reduced from 80 % to 32 % between 4 April 2004 and February 2005. This meant that the Fund had not been managing the crisis efficiently before 4 April 2004 and that there were prospects of it being resolved.

http://www.labour.gov.za/media/statement.jsp?statementdisplay_id=10357

BIOFUELS PROJECT TAKES-OFF

Cape Town – Public Enterprises Minister Alec Erwin today tabled a progress report on an array of projects intended to propel the country's economy to a six percent growth rate, including the biofuels project.

With the global escalation of oil prices affecting South Africa's economy, Mr Erwin said the biofuels project, aimed at protecting the country from the volatility of oil prices by encouraging South Africans to produce their own fuel, was moving in full steam. "The task team on biofuels has been established and work has begun," he said.

He said areas which the task team was focusing on included crop suitability, establishing support for developing small-scale farmers, the technical standards for biofuels and economic feasibility. "The project is ensuring it takes on other important issues such as the potential impact of its roll out on the environment,

food security and land use," he said. The task team is to prepare a biofuel strategy to be tabled before the cabinet lekgotla in July.

The Department of Minerals and Energy is leading the revolutionary approach to fuel supplies with its move to create a value chain out of the use of "green" biodiesel and bioethanol fuel products.

Minerals and Energy Minister, Lindiwe Hendricks, said earlier this year, increasing the volumes of ethanol in petrol and increasing the use of biodiesel would have macro-economic benefits for the country. The use of biofuels, she said, would not only help protect the country from uncertainty around high oil prices, but was also likely to be less damaging to environment. The production of biofuels would also see poor rural communities becoming suppliers of the much needed crops, such as sugar cane, from which the fuels would be made.

However, Mr Erwin said today, while the production of biofuels in the country would have a positive impact on the economy, it would not entirely replace other forms of fuels such as diesel and petrol currently being imported from other countries. "Our country's agricultural sector is not such that it can produce enough crops that could be sufficient to produce enough quantities of biofuels for all the cars on our roads.

"We will still rely on other forms of fuel to supplement the biofuels," he said.

A biofuels pilot project has already been set up in Cradock in the Eastern Cape, close to the refining capacity near Mossel Bay. Among some of the projects which Mr Erwin reported progress on were the Industrial policy framework, bringing down the costs of ICT and Business Process Outsourcing and Offshoring. – **BuaNews**

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BLITZ INSPECTIONS: TARGET SMALL BUSINESSES

Released by Department of Labour on 22 March 2006

As part of an ongoing campaign by government to further protect the most vulnerable workers, the Department of Labour inspectors are currently conducting countrywide blitz inspections aimed at checking adherence to various labour laws.

Apart from the traditional inspections, these inspections are specifically targeted at small and medium sized businesses, which will also include spaza shops.

"It is my view that all employers regardless of the size of their businesses, should adhere to our labour laws. Workers employed in such businesses are also entitled to worker rights," the Minister said.

The blitz inspections were started on Monday and will be wrapped up on Friday.

http://www.labour.gov.za/media/statement.jsp?statementdisplay_id=10403

BOILER EXPLOSION' RAZES BANGLADESH FACTORY

Chittagong, Bangladesh - At least 52 people were killed and 80 were injured in a fire that gutted a textile mill in Bangladesh's port city of Chittagong, police and witnesses said on Friday. They said some of the injured were fighting for their lives in hospitals and many people were missing.

The blaze at the KTS Textile Mills on Thursday night, the biggest ever factory fire in the country, was believed to have started when a boiler exploded. Firefighters said they were yet to completely stamp out the blaze, 12 hours after it started. "Charred bodies are still being removed to hospitals," a Reuters' reporter said from the site of the fire. Some 500 workers, mostly women, were working the late evening shift when the disaster struck.

Police said the main gate of the three-storey factory, which employed about 1 500 workers, was locked from the outside and the gatekeeper could not be found immediately.

Textiles are Bangladesh's biggest export fetching the country some \$6 billion (about R36-billion) annually, but safety standards at the mills are poor, officials and employees say

(Additional reporting by Nizam Ahmed)

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http://www.iol.co.za/index.php?set_id=1&click_id=3&art_id=qw114075918074B215&newslett=1

CHALLENGE TO GET PUPILS TALKING ABOUT SUSTAINABLE DEVELOPMENT

By Themba Gadebe

Johannesburg – How do children understand the concept of sustainable development and how important is it in their daily lives?

These are the questions that a campaign launched by government seeks to answer. The campaign is in the form of a competition targeting schoolchildren and the youth. It urges them to express their understanding of sustainable development in a creative form.

The Youth, Art and Essay Challenge falls within the ambit of the National Strategy for Sustainable Development (NSSD).

Launched last night by the Environmental Affairs and Tourism Ministry, the NSSD targets pupils under the age of 12. They are asked to interpret sustainable development through the visual arts, and a winner stands to pocket a R12 000 prize. The two runners up will each receive R10 000 and R7000 respectively.

The other category involves Grade 11 learners. They are required to write an essay on how their careers could contribute to sustainable development.

Environmental Affairs spokesperson, Blessing Manale, said Grade 11 pupils were included because they were at a stage in their lives where they were still weighing options on various career paths. "In the process of weighing their options, we want them to think about how their future careers would contribute to sustainable development," he said.

Three successful applicants in this regard stand to win R25 000, R15000 and R10 000 in that order. "We believe the money will go a long way into funding their tertiary education," Mr Manale said. All successful learners will win their schools R1 000 and a computer set.

The competition also seeks participation from young people in communities and they are asked to bring proposals on how to improve sustainable development in their communities and schools.

The challenge is open to all youth organisations and in this category; the prizes are similar to those in Grade 11. The competition will be advertised in the media and libraries, as the objective is to widely popularise the importance of sustainable development in the country. In addition, schools around the country will receive invitations regarding the challenge.

Interested candidates may send their work to: My Strategy Competition, P.O. Box 55018, Acardia, 0007.
The closing date is 30 March. – **BuaNews**

COMPENSATION FUND GOES PUBLIC

Released by Department of Labour on 20 March 2006

In a major bid aimed at bolstering its accessibility to stakeholders and the broader public, the Compensation Fund is set to embark on an aggressive marketing and advertising campaign that will see its services and offerings widely publicised.

The marketing and advertising campaigns scheduled for April, will make use of radio, newspapers, and billboards.

The key objectives of the envisaged campaign will be to inform the public about the benefits provided by the Fund and the processes to follow, in order to access the services.

The campaign will also emphasise the importance of employers registering with the Fund, and impressing upon key stakeholders: employers, workers and medical providers, the importance of adhering to the set procedures in order to speed up the process of claims and pay-outs.

The Compensation Fund is a Programme of the Department of Labour that was set up by government to serve as a social security net for workers, who sustain injuries on duty or contract occupational diseases, or die in the course of their employment because of injuries on duty or because of occupational diseases.

Employers, who employ one or more people in their business or farms, are required to register and pay annual assessments to the Fund.

Compensation expenditure can not be recovered from workers. For registration purposes, each branch of a business must submit a separate registration form, unless an arrangement for combined registration has been made.

http://www.labour.gov.za/media/statement.jsp?statementdisplay_id=10398

COMPENSATION FUND OVERHAUL GOOD NEWS FOR CLIENTS

Released by Department of Labour on 15 March 2006

Service delivery improvements that have characterised many government institutions have not left the Compensation Fund (CF) behind.

Just over a year ago the CF – which compensates workers who suffer occupational injuries or contract occupational diseases in the course of their employment – used to accept an average 8 000 claims per month but that figure has now more than tripled to 25 000, thanks to the improvements of the Fund's operations.

Over the past 12 months the CF has been introducing technological changes in its business processes and systems resulting in speedier delivery to its clients, the bulk of whom are vulnerable workers.

Not long ago, a huge backlog of claims at the CF led to litigations against the Department by the Legal Resources Centre and Compsol respectively on behalf of frustrated claimants.

Both cases have since been resolved amicably with those problems resolved but statistics show that those days are clearly a far cry from the CF of today.

In September last year alone, a record 37 000 claims were adjudicated and 25 000 accepted. Simultaneously, the percentage of claims which were accepted by the CF in relation to the numbers worked on has risen from approximately 30 % to the current 76 %.

The current status quo can largely be attributed to the appointment of the adjudication team and the rearrangement of work processes which has resulted in more claims being decided upon – one of the more important measures in eradicating the claims backlog.

The adjudication team was formed to focus more specifically on the process required to determine if an accident complies with the criteria set out in the Act and establishing the liability or otherwise of the Fund to compensate the claimant and reimburse for medical aid.

Another team, the millenium backlog team that processes specifically old claims, has so far seen the processing, payments and finalisation of 25 269 claims dating back to year 2000 and before. The team is expected to continue with claims reported in 2001. It is estimated that the backlog will take a minimum of three years to clear.

The millenium backlog team plays a major role in terms of identifying what information is required and then in facilitating the receipt of the missing information in order to be able to finalise the claim in terms of the Fund's obligations. This team is made up of former staff of the Department who were selected after thorough search. The most notable of these has been to totally get rid of the temporary files backlog .

A three-year strategy with a number of clear objectives is set to bolster the speedy service delivery that the Fund's management has introduced.

These key strategic goals aim at streamlining reliable and business-driven automated processes to improve service delivery through appropriately trained and capacitated staff for maximum service delivery.

The strategy will also ensure that the CF sets and meets time-bound delivery targets on all service requirements while its stakeholder education will improve the accessibility of services to its clients.

An appropriate raising of assessments, timeous collection of all due funds and registration of more employers, features high on the strategy's goals. A zero tolerance, pro-active and reactive approach to all risk areas will be the norm.

In an effort to alleviate the over-worked areas and focus very specifically on capacity building, the Fund has appointed project managers who will play a critical role in skills transfer and mentorship to build management capacity.

This is a strategic short-term solution that will serve while the long-term organisational design and business processes are being addressed.

One critical project that has been undertaken is the office automation which aimed at improving the entire institution's operations, thereby eliminating the pitfalls of different systems and misuse of organisational resources.

Getting the organisation to work from the same IT setup has already improved the quality of the Fund's database, thus getting comprehensive and reliable information covering all important aspects of the business

One critical area of backlog that has been tackled vigorously as well has been the payment of compensation to the more vulnerable section of the workforce: the injured workers. The workflow in the compensation section has been re-engineered to pay compensation claims more effectively and speedily.

From August last year there has been a dramatic escalation in the payments of compensation from a low of 2 974 to a high of 5 247 payments by November – a 43 % improvement.

These payment improvements also include those in the medical profession where processing of medical claims has improved from 129 days on average to 110 days.

The additional medical professionals that have been employed from December 2005 are expected to substantially improve the quality of medical assessments and shorten the delays even further.

The Compensation Fund has also set up a call centre that is set to improve the quick response to public enquiries and make the Fund more accessible to its stakeholders. A public outreach programme is scheduled to start at the beginning of next month.

This programme will be a national road show to inform the public and stakeholders about the services of the Compensation Fund and how to access those services.

The Compensation Fund has still got some long way to go before efficient and quick service delivery, but the experience of the last 12 months has shown that the Fund is on track to deliver fully and efficiently on its mandate.

http://www.labour.gov.za/media/statement.jsp?statementdisplay_id=10396

COMPENSATION FUND, KPMG JOIN FORCES TO COMBAT CRIME

Released by Department of Labour on 15 March 2006

In a bid to combat corruption and dishonesty, the Compensation Fund (CF) has joined forces with the KPMG Ethics Line to set up a hotline that staff members can call to report fraud or any other unethical behaviour being committed by fellow colleagues.

Recent surveys have confirmed that fraud is still a major problem for businesses and employees within organisations continue to pose the single largest fraud risk. Studies conducted also revealed that 88 % of fraud incidents are perpetrated by employees, either acting on their own or in concert with third parties.

However, it should be noted that 46 % of fraud cases that are successfully resolved can be attributed to tip-offs from staff members and trading partners.

The Fund has taken on a zero tolerance approach to corruption and is well on the way to wiping out unethical behaviour in the workplace. Employees will play an important role in assisting the CF to stop fraudsters and continue on its quest for high standards of corporate governance.

“We are taking corruption very seriously and we will not allow fraudsters to continue with their unethical practices. Corruption hinders service delivery to our clients and various stakeholders so it has to be stopped, whatever it takes,” said Labour Department spokesperson Mokgadi Pela.

The hotline will not only focus on fraud but will also serve as a medium from which employees can report any form of unethical behaviour such as sexual harassment and racial discrimination.

The Ethics Line operates independently and callers are guaranteed anonymity. This means that the Fund cannot demand that the identity of the caller be revealed. The call centre is secure and the public does not know the location thereof.

A major problem in the fight against corruption in the workplace is the reluctance of workers to “blow the whistle” because of a fear of being intimidated, victimised or worse, being personally attacked. It is for this reason that all employees making use of the Ethics Line to report misconducts be protected by the Protected Disclosures Act, also known as the Whistle Blowers Act. This Act promotes good, accountable, transparent public and corporate governance by encouraging employees to speak out against corruption, unethical behaviour and breaches of the law in the workplace.

“Much as we want to curb corruption, the well-being of employees is of paramount importance hence all whistle-blowers are guaranteed anonymity,” said Pela.

http://www.labour.gov.za/media/statement.jsp?statementdisplay_id=10388

Dept to enhance HIV prevention strategy

By Nozipho Dlamini,

Johannesburg – The Department of Health is working on an “accelerated” HIV prevention strategy aimed at enhancing existing interventions to mitigate the spread of the disease.

The strategy will be launched on 16 June to coincide with Youth Day celebrations.

This was announced at the launch of the National Health Consultative Forum (NCHF) here today, which has been put in place as required by the Health Act of 2003.

Government seeks to increase HIV education, peer education, communication campaigns, consistent and correct use of condoms and also wants to improve the effectiveness of the programmes to prevent HIV prevention from mother-to-child.

This as it has been recognised that there are five main barriers to successful HIV prevention.

These include inadequate resources, insufficient knowledge among health care providers and teachers about HIV and AIDS resulting in their inability to relay accurate information.

Stigma and discrimination against people living with HIV and AIDS was also another barrier and a failure to take socio-cultural factors into account in prevention programmes.

However, government will be scaling up communication and social mobilisation in the fight against the disease and the budget for a two-year awareness campaign has been increased from R160 million to R200 million.

The two-day NCHF has been convened to discuss the state of healthcare in the country including the health sector’s achievements and challenges and to further strengthen dialogue within the sector, civil society and communities.

Key issues to be discussed include TB, HIV and AIDS, the recruitment and retention of health professionals, healthy lifestyles and transformation of the health sector.

Speaking at the launch, Health Minister Manto Tshabalala-Msimang said despite efforts to strengthen the TB control programme in the country, the burden of the disease continued to rise.

The national TB cure rate was 56.7 percent in 2004, despite efforts to counter this through improving the Directly Observed Therapy Strategy (DOTS) programme as well as the integration of HIV and TB programmes.

In addition to strengthening the National TB Control Programme, the minister said her department had developed a TB crisis plan to focus on the two worst performing provinces - KwaZulu-Natal and the Eastern Cape.

Dr Tshabalala-Msimang urged the meeting to debate "the size and the shape" of the health system.

"We need to improve access to all levels of care, starting with community and home-based care right up to quaternary care," she said.

Regarding the retention of health workers within the health system, the department has developed the National Health Resource Plan aimed at addressing issues of competencies and the quality of health system delivery.

In addition the meeting will look at the need to accelerate the pace with which health facilities are repaired and the building of new facilities as suitable working conditions are also vital to health workers.
- **BuaNews**

DEVELOPING WORLD WARNED OF CLIMATE CHANGE EFFECTS

By Sello Tang

Pretoria – Developing countries stand to be most affected by climate change than developed countries, says Sir Nick Stern, head of the UK Government Economic Service.

Presenting his lecture on the Economics of Climate Change and its impact on the world here, Sir Stern advised South Africa to take the front seat in tackling climatic conditions in Africa.

He said South Africa, as the chair of G77 countries and leading member in the ongoing ministerial dialogue on renewable energies, was politically well positioned to have a direct influence in the global talks on climate changes.

Mr Stern commended the country for its "good" draft policies on climate changes (the White Paper on Renewable Energy 2003), saying this would go a long way in mitigating air pollution if well implemented.

Mr Stern was the chief economist and senior-vice President at the World Bank from 2000 to 2003 and has also headed the Commission for Africa, which dealt with development challenges facing Africa.

He's been invited to South Africa by the National Treasury.

He warned that the continuing inaction by the international community in tackling the hazards of climate changes would bear devastating effects in the future.

"Least developed countries will be hit hardest and earliest by climate change and costs of adaptation will be relatively more for poorer societies and will be difficult in the face of uncertainty," he said.

The UK economic services head called on developed countries, which are responsible for the vast portion of pollution in the world, to put more funds into global efforts to curb hazardous emissions in the air.

He said investments to help meet incremental costs of lower carbon dioxide emissions were estimated to be at least US 40 billion Dollars per year in developing countries.

However, he said this was minimal when compared to the task at hand to fight this phenomenon.

He also recommended that countries should double their efforts in replacing conventional energy generations with renewable energies.

He noted that although coal was widely used in African countries, measures had to be drawn to reduce the carbon content in it.

Sir Stern further advised countries, especially in Africa, to encourage their motorists to use more of bio-fuels than conventional fuels that contain a lot of carbon monoxide and other climatic disaster causing fuels.

Citing Brazil, which uses sugarcane to produce fuel, as a success story of how efficient it was to use renewable energies to manufacture oil, he urged the international community to follow that country's footsteps. – **BuaNews**

[BuaNews] 26-04-2006: Wednesday Second Edition

EMPLOYMENT EQUITY PUBLIC REGISTER RELEASED

Released by Department of Labour on 24 March 2006

Labour Minister Membathisi Mdladlana has today (Friday) announced the release of the employment equity public register for employers who submitted reports for the October 3, 2005 reporting deadline.

He said the Department has captured 2 762 reports submitted by employers who employ 150 or more workers. Only employers who employ 150 or more workers were required to report in 2005.

"A challenge still exists to improve the quality of the reports submitted to the Department by employers who continue to submit incomplete and incorrectly prepared information," he said.

In order to assist employers, the Department introduced an online service on 1 September last year to enable employers to complete and submit their reports online. This online service assists employers completing the required information by flagging any outstanding or problematic entries.

"Only a few employers opted for this method of submission but we are confident that this will change over time.

Employers are warned that the Department will no longer accept employment equity reports that have not been fully and correctly completed, and employers will in future be deemed not to have reported until all outstanding information has been supplied," he said.

Employers who intend tendering for State contracts are required to provide proof of submission of their employment equity report to the Department of Labour.

The next reporting deadline is 2 October, this year and all employers with 50 or more workers are required to submit their reports, as well as employers with fewer than 50 workers whose turnover exceeds their sector threshold in schedule 4 of the Employment Equity Act.

The Public Register for the 2005 reporting period is available from the website www.labour.gov.za. Hard copies of Government Gazette No. 28642 are available from the Government Printer at telephone (012) 334-4508, 334-4509, 334-4510

http://www.labour.gov.za/media/statement.jsp?statementdisplay_id=10413

FAULTY SHUTTER COULD HAVE CAUSED VOLKSWAGEN FATALITIES – INITIAL PROBE

Released by Department of Labour on 24 January 2006

The Labour Department's preliminary investigations into last Friday's Volkswagen plant fatal accident in Uitenhage have found that the two contract workers fell when the improperly fixed shutter they were standing on collapsed.

While the date for proper investigations, including interviews of witnesses, will only be will announced next week, the Department's inspectors yesterday (Monday January 23) established that the two were working on the shutter about 14 meters above ground level with their safety harnesses not attached although they had them.

When the shutter collapsed, the unattached harnesses could not prevent them from falling and as a result they died at the scene.

Occupational Health and Safety Regulations require the wearing and proper attachment of safety harnesses at all times during high-risk operations.

By yesterday, some of the witnesses, together with the workers' union representatives, were busy counseling the deceased's loved ones and helping with funeral preparations.

http://www.labour.gov.za/media/statement.jsp?statementdisplay_id=10348

HEAVIEST POSSIBLE FINE AWAITS EQUITY FLOUTING EMPLOYERS

Released by Department of Labour on 19 April 2006

Two KwaZulu-Natal companies stand to be fined R500 000 each for flouting employment equity laws.

The Durban Labour Court today (Wednesday) postponed judgement against the two Newcastle-based textile companies, Jinghua Garments and Win Cool Industries, after they applied for leave to oppose the application brought against them by the Department of Labour.

After years of using the carrot-and-stick approach in enforcing the country's equity legislation, the Department for the first time prosecuted the two for continuous violations of Sections 20 and 21 of the Employment Equity Act respectively. These sections compel employers to display the law on their notice boards, and require them to send their equity plans to the Department.

During proceedings of the two separate cases today, lawyers of the two companies asked for more time to prepare opposing affidavits to the application. Granting the adjournments, the Court ordered the two respondents to pay for the costs of today's postponement, and ordered them to submit their opposing affidavits within 10 working days.

The two cases against the companies were referred to the Labour Court last year following a series of blitz inspections by the Department's inspectors in the Newcastle area in 2003.

http://www.labour.gov.za/media/statement.jsp?statementdisplay_id=10454

WATERSHED JUDGEMENT EXPECTED AGAINST EQUITY FLOUTING EMPLOYERS

The government's crackdown on employment equity flouting companies will come under a sharp spotlight when the Durban Labour Court hands down judgement in two separate cases involving textile manufacturers on Wednesday April 19.

In what could mark the first ever successful prosecution of its kind under South Africa's equity legislation, two KwaZulu-Natal companies, Jinghua Garments and Wincool Industrial will finally know their fate after a few appearances on charges of violating sections of the Employment Equity Act.

The two cases against the companies were referred to the Labour Court last year following a series of blitz inspections by Labour Department officials in the Newcastle area. The companies face charges of failing to comply with Sections 20 and 21 of the Employment Equity Act which compel employers to display the Act on their notice boards, and require them to send their equity plans to the Department respectively.

The Labour Department has often expressed confidence that judgement against the two would send a strong warning to others about government's intolerance of employers who deliberately flout the law.

Labour Minister Membathisi Mdladlana has said the prosecutions will go a long way towards demonstrating to both private and public sector employers the government's seriousness about transforming the workplace.

"Employment equity is not about to be scrapped and it is time we live with that fact," the Minister said.

http://www.labour.gov.za/media/statement.jsp?statementdisplay_id=10426

MINISTER RESPONDS TO DA ACCUSATIONS ON COMPENSATION FUND'S INEFFICIENCIES

Released by Department of Labour on 06 April 2006

The Minister of Labour Membathisi Mdladlana has responded to the request from the DA for an investigation into the Compensation Fund's inefficiency by saying he ordered such a probe more than a year ago.

The process claimed its first casualty with the dismissal of former Compensation Fund Commissioner Bongiwe Magojo. The matter has been referred to the Scorpions for further investigation.

Minister Mdladlana was reacting to claims by the DA's health spokesperson Dianne Kohler Barnard that the health-care system for workers injured at work was in a state of crisis because of the Compensation Fund for occupational injuries and diseases was "failing disastrously" to do its job.

The Minister said: "while the DA may be thinking that they have discovered a secret, we realised this a long time ago and put in place mechanisms to correct the situation. That is why we are in the process of appointing a new Commissioner in order to put the Fund on sound footing. For now I can only advise the DA to hold its horses and watch the space."

http://www.labour.gov.za/media/statement.jsp?statementdisplay_id=10423

MINISTRIES AIM TO TRASH GREEN LAWS

Government departments, under pressure to deliver economic growth, have launched a broadside against environmental legislation, saying it is holding up development and should be scrapped.

New regulations streamlining environmental impact assessments (EIAs) have been stalled for more than a year, partly because of high-level power-mongering. Environmental consultants are worried that the regulations, which mitigate harmful ecological practices and ensure public participation, may never see the light of day.

A consultant with close links to the Department of Environmental Affairs and Tourism, who did not want to be named, said there were strong views in the economic cluster of ministries that EIAs should be totally scrapped. EIAs are extremely contentious because there is a perception they hold up development..

Minister of housing Lindiwe Sisulu said last month she had given the construction industry an undertaking that housing delivery would no longer be delayed by EIAs. We cannot forever be held hostage by butterfly eggs that have been laid, because environmentalists would care about those things that are important for the preservation of the environment, while we sit around and wait for them to conclude the environmental studies, Sisulu was quoted as saying.

A battle for control of EIAs has been raging between the Department of Environmental Affairs and the Department of Minerals and Energy since the new regulations were gazetted for comment in January last year. The regulations would bring mining EIAs under the control of environmental affairs, but the minerals department -- currently responsible for regulating the ecological impacts of mining and monitoring rehabilitation -- has resisted the change.

Minister of Minerals and Energy Lindiwe Hendricks and Minister of Environmental Affairs Marthinus van Schalkwyk discussed the issue at a meeting in late February -- days before the new regulations were expected to be promulgated. Neither party was prepared to discuss the outcome of those discussions, but the regulations are still on hold.

It is being suggested by various high-level sources that high-level opposition is the reason for the delay -- and that the regulations may never see the light of day because environmental concerns are unnecessarily obstructing government's delivery programmes, said Nick King, director of environmental NGO, the Endangered Wildlife Trust.

Other growth departments with gripes about EIAs include public enterprises, trade and industry and water affairs and forestry. Delays in infrastructure roll-out by parastatals such as Transnet and Eskom are also being blamed on EIA processes.

Several officials in the Department of Environmental Affairs and Tourism told the *Mail & Guardian* that calls by other government departments to scrap EIAs entirely were an open secret. In response to questions, department spokesperson JP Louw denied the calls. However, he said: Government is concerned about any delay, costs and associated impacts on economic growth and development. This is why we need improved efficiency and effectiveness without compromising basic environmental rights and quality.

Analysts said one reason EIA regulations had to be reviewed was that key national development initiatives could be held up indefinitely in the courts. For instance, Earthlife Africa had succeeded in stalling development of the Pebble Bed Modular Reactor for the past three years.

In some respects the environmental lobby has completely overshot the mark, said one expert. Our EIAs are a First World-type system, but our development needs are more Third World.

The new regulations are expected to streamline administrative processes, to list the types of activities where EIAs must be done -- the present regulations have blanket provisions for all land-use changes -- and to

increase penalties for failure to comply from a R100 000 fine to R5-million or 10 years in jail.

King said the EIA process was often wrongly blamed for bad planning and rivalry between government departments. His organisation and other environmental NGOs have written to Minister of Finance Trevor Manuel, calling on him to set aside R1-billion of the R375-billion earmarked in last months Budget for the Accelerated Shared Growth Initiative for South Africa to conduct a full-scale national strategic environmental assessment.

There is a lack of integrated strategic planning and decisions are being taken ad hoc in a vacuum, King told the *M&G*. We need a national assessment to determine just what is and isnt feasible in terms of national development, if it is to be sustainable and serve future generations as well.

Fiona Macleod
20 March 2006

MAIL & GUARDIAN website

CEMENT KILNS : SOUTH AFRICA'S NEW HAZARDOUS WASTE DUMP SITES - 29 MARCH

Press release from groundWork

As South Africa gears up for the building boom in preparation for 2010, industry and government are proposing to dump South Africa's growing hazardous waste production in the cement kilns which will produce the cement to construct the stadiums and sport villages for 2010. Holcim, Pretoria Portland Cement and Natal Portland Cement are all considering such proposals with the consent of provincial governments in the Eastern Cape, Gauteng, KwaZulu-Natal, Limpopo Province, Northern Cape, North West Province and Western Cape.

Since 2002, groundWork[1] and Earthlife Africa [2] has repeatedly written to the Department of Environmental Affairs and Tourism (DEAT) to raise concerns about the burning of waste, including tyres, in cement kilns. To date, no substantive response has been received. Civil society has called on government to develop policy that would guide the destruction of hazardous waste within South Africa. Government failed to respond to this call and, as a result, the cement industry is using this loop-hole to term what is really hazardous waste "alternative fuel" [3] to run their cement furnaces.

Due to this lack of guidance by the DEAT, provincial governments who are responsible for Environmental Impact Assessments (EIAs) have faced a barrage of applications from cement companies to burn hazardous waste. As a result of a lack of guiding policy, provinces are responding differently to these proposals, and this could result in certain provinces attracting hazardous waste into their areas.

South Africa is signatory to the Stockholm Convention [4], which governs the process towards eliminating the production of dioxins and associated persistent organic pollutants. The Stockholm Convention identifies cement kilns firing hazardous waste as one of the source categories that have the potential for high formation and release of dioxins.

The burning of hazardous waste could possibly start as early as Monday, 3 April in the Holcim Cement Kiln in Ulco just outside Kimberley. The Northern Cape government gave permission for the plant to burn hazardous waste on the 2 March 2006. This was despite the fact that the North West Provincial government refused permission for Holcim to do undertake a similar venture in November 2005. [5]

In a letter to the Deputy Minister on Friday, 24 March 2006, groundWork, together with the support of other civil society organizations [6], called on the Deputy Minister to :

- Give guidance to the Northern Cape Department of Tourism, Environment and Conservation on this issue which will allow for them to re-consider their decision ;
- Issue a directive to all provincial departments on this issue and set in place a moratorium on applications for the incineration of hazardous waste in cement kilns until a policy, and the necessary regulations guiding the management of hazardous waste, is developed to protect the public health ;
- Host a meeting with non-governmental and community organisations to hear their concerns ;
- Stop DEAT from issuing new or amended APPA permits for any of the cement kilns in South Africa until there is an open and transparent consultation on these permits/licences, and
- Mandate DEAT to start an engagement with civil society towards developing a policy on hazardous waste management.

"Allowing the burning of hazardous waste without there being a robust and transparent public debate on the best mechanisms for managing and destroying hazardous waste, will result in the increase of hazardous waste production as well as the possible import of hazardous waste into South Africa" cautions Bobby Peek, Director of groundWork.

"It is also clear that the destruction of potentially valuable resources for local economic development, poverty alleviation and job creation is contrary to the letter, intent and spirit of both the term 'Sustainable Development' and our National Environmental Management Act", said Muna Lakhani of Earthlife Africa eThekweni. "Attempting to replace coal with waste that will release pollutants of higher toxicity is backward looking. Many sustainable alternative options exist".

For more information call :

Bobby Peek – groundWork : 033-342 5662 ; 082-464 1383

Muna Lakhani - ELA eThekweni : 083-471 7276 ; muna@iafrica.com

Footnotes :

[1] groundWork is an environmental justice organisation working focusing on air pollution, waste and corporate abuse and works with community organisations living adjacent to petro-chemical and waste facilities nationally (www.groundwork.org.za)

[2] Earthlife Africa (ELA) is a membership driven organization of environmental and social justice activists, founded to mobilize civil society around environmental issues in relation to people. ELA Johannesburg (Jhb) branch was established in August 1988 as the first branch of the organization, which grew to many branches in the early nineties and is currently concentrated in three branches in South Africa and one in Namibia (www.earthlife.org.za)

[3] The cement companies blur this issue by indicating that they want to use "alternative fuels". Hazardous waste is not an alternative fuel. It is simply hazardous waste.

[4] The Stockholm Convention is a global treaty to protect human health and the environment from persistent organic pollutants (POPs). POPs are chemicals that remain intact in the environment for long periods, become widely distributed geographically, accumulate in the fatty tissue of living organisms and are toxic to humans and wildlife. In implementing the Convention, Governments will take measures to eliminate or reduce the release of POPs into the environment.

[5] <http://www.groundwork.org.za/Press%20Releases/23Nov05CementKiln.asp>

[6] Thabang Ngcozela - Environmental Monitoring Group : thabang@emg.org.za

Leila Mahomed - Sustainable Energy Africa : leila@sustainable.org.za

Muna Lakhani - Earthlife Africa Durban : muna@iafrica.com

Desmond D'Sa - Sth Dbn Community Env Alliance : sdcea3@mail.ngo.za

Maya Aberman - Earthlife Africa Cape Town : olivia@earthlife-ct.org.za

Richard Pocock - SolarWorks : edufun1@iafrica.com

Zini Mokhini - Earthlife Africa JHB : zini@earthlife.org.za
By email

RELEASE OF DRAFT ENVIRONMENTAL FISCAL REFORM POLICY PAPER FOR PUBLIC COMMENT

The National Treasury has undertaken research and stakeholder consultation in the area of Environmental Fiscal Reform over the past few years. In October 2002, the Department commissioned a study on environmental taxes. Subsequently, the department developed a Draft Policy Paper entitled "A Framework for Considering Market-Based Instruments to Support Environmental Fiscal Reform in South Africa".

The policy paper seeks to outline the role that market-based instruments, specifically environmentally related taxes and charges, could play in supporting sustainable development in South Africa, and to provide a framework for considering their possible application. As the South African economy grows and imposes increased demands on its environmental assets base, it is vital that it does so in a sustainable manner and that issues such as poverty, inequality and international competitiveness are effectively addressed.

The paper focuses and elaborates on the options for environmental fiscal reform and the policies and measures that could be used to achieve both environmental and revenue-raising objectives.

The National Treasury hosted a workshop in November 2003 where an initial discussion document was presented to receive feedback on a proposed Environmental Fiscal Reform framework. A wide range of representatives including the various government departments, the private sector, non-governmental organisations and academia attended the workshop. Most of the comments received from the different stakeholders were incorporated into the development of the above-mentioned draft policy paper.

The document is available for public comments on <http://www.treasury.gov.za> and comments can be sent to sharlin.hemraj@treasury.gov.za by Monday, 31 July 2006.

<http://www.info.gov.za/speeches/2006/06040614451006.htm>

FUTURE OF SA'S GREEN COURT IN THE BALANCE - 17 APRIL

Melanie Gosling

The future of South Africa's first environmental court, established in Hermanus three years ago to counter the rape of the country's marine resources, hangs in the balance as justice minister Brigitte Mabandla considers a proposal to close it down.

This comes after the specialist environmental court, which works closely with law enforcement in the province, had an 85 percent conviction success rate last year and has put some of the key "middlemen" in marine poaching syndicates behind bars.

If the regional "green court" closes down, environmental cases are likely to revert to being heard by lower district courts around the province where there are no specialist prosecutors and where environmental cases historically have had a low conviction rate.

South Africa has lost an estimated R3-billion to marine poaching in the last few years.

Regional head of justice in the Western Cape, Hishaam Mohamed, confirmed on Sunday that the green court may close.

"It is one of six proposals before the ministry. We have submitted a report to the minister who will make a decision on the matter," he said.

The proposals were made after a task team was set up to consider whether the green court, established in March 2003 as a pilot project, should be made permanent.

Mohamed said he did not want to discuss the other proposals as the report had only just been submitted to the ministry.

The environmental court, a joint initiative by former justice minister Penuell Maduna and former environment minister Valli Moosa, was set up to counter what Maduna said at the time were "Chinese triads, the Italian and American mafia and a whole host of other groups" raiding South African waters in what he said had become "a real war out there".

Sources say the current justice ministry does not favour specialist courts.

The proposal has been met with shock from people involved in anti-poaching activities.

Pieter Benadie, who manages the Overstrand Municipality and Marine and Coastal Management's anti-poaching Marines unit, said if poaching cases had to be heard all over the region, it would lead to fewer convictions.

"Some public prosecutors don't have a clue about the seriousness of environmental crime. They do things like give back confiscated vehicles to people arrested for transporting poached marine resources," Benadie said.

Mike Tannett of Seawatch, a residents' anti-poaching group who work closely with the authorities in the Overstrand, said on Sunday it would be a blow to have the green court close.

"We've been working in the anti-poaching activities for 10 years now, and we know what a difference the green court has made. Phil Snyman, the public prosecutor, won 85 percent of his cases last year. Some of the criminals who were repeat offenders did not get the option of a fine and went to jail. That has scared off some of the middlemen who were known to us and we don't see them poaching anymore.

"But there are new faces moving in to take their places. If we don't have an environmental court with a prosecutor who specialises in environmental law, we will go back to what it used to be, with rich poachers hiring expensive lawyers who could run circles around the prosecutors and get these chaps off.

"To close something so successful makes no sense and will be detrimental to the environment," Tannett said.

Pam Yako, director-general of the department of environment affairs and tourism, praised the Hermanus green court at an environmental law enforcement conference in Durban in February.

Yako said the green court's "dedicated magistrates and prosecutors" had led to "a remarkable increase in prosecutions and in the prosecution success rate of marine-related crimes", adding that her department was keen to "continue the success" of the green court.

Justice ministry spokesperson Lesly Mashohwe said on Sunday he was unaware of the proposals and would try to establish this week when the minister would make a decision on the court.

- This article was originally published on page 1 of [Cape Times](#) on April 17, 2006

[IOL](#) website

'UNLIKELY PE ENVIRONMENT COURT WILL CLOSE' - 19 APRIL

Guy Rogers

It is highly unlikely that the justice department will scrap Port Elizabeth's "green court", despite moves being afoot to close its sister court in Hermanus.

Senior prosecutor Willem Pretorius, who played a central role in the launch of the Port Elizabeth environmental court, said yesterday that he had not seen the report that the department was considering scrapping the Hermanus court.

The Hermanus court was established in March 2003 as the country's first environmental court, with specially contracted staff, while the Port Elizabeth court has operated since it was launched in February 2004 with staff already employed within the government's legal structures.

The Port Elizabeth "green court" also comprises only one courtroom, and less than half of the cases heard are about environmental issues. Its prosecution success rate is even higher than the much-publicised 85% being achieved at Hermanus, however, and was closer to 90% last year.

Pretorius said he was still very positive about the initiative to increase the impact of the Port Elizabeth green court. The local prosecution team now has approved access to police programmes, which has enabled it to increase its database on environmental crimes – which range in the region from perlemoen poaching to cycad smuggling, snaring of game, illegal destruction of indigenous bush and pollution.

The aim is that this data will reveal how much of a problem a particular crime is, and empower prosecutors to argue their cases better. It is envisaged that the court will also now be able to supply prosecutorial support on eco-cases to authorities in little towns where it might be needed.

Since it was launched, the Hermanus court has put some of the key "middlemen" in marine poaching syndicates behind bars. If it closes down, environmental cases are likely to revert to being heard by lower district courts in the province where there are no specialist prosecutors and where environmental cases historically have had a low conviction rate.

Justice Minister Brigitte Mabandla is considering a proposal to close the court. South Africa has lost an estimated R3-billion to marine poaching in the last few years. Regional head of justice in the Western Cape, Hishaam Mohamed, confirmed yesterday that the green court may close.

"It is one of six proposals before the ministry. We have submitted a report to the minister who will make a decision on the matter," he said.

The proposals were made after a task team was set up to consider whether the Hermanus court should be made permanent.

A joint initiative by former justice minister Penuell Maduna and former environment minister Valli Moosa, the Hermanus environmental court was set up to counter what Maduna said at the time were "Chinese triads, the Italian and American mafia and a whole host of other groups" raiding South African waters in what he said had become "a real war out there".

The Herald online website-www.theherald.co.za/herald/news

NEW RULES ON ENVIRONMENT STUDIES WILL CUT RED TAPE

CAPE TOWN — Long delays in getting decisions from authorities on environmental impact studies may be over with new regulations due to come into force in July.

Environmental Affairs and Tourism Minister Marthinus van Schalkwyk launched long-awaited regulations, containing compulsory timeframes, under the National Environment Management Act on Tuesday.

Developers and even some government departments had complained that the length of time taken to finalise assessments has often proved costly. Delays also frustrated house construction and other development programmes, which cannot proceed without an assurance they will not harm the environment.

However, environmental groups, alarmed at the effect on the environment of certain developments, are not likely to be as enthusiastic about a fast-track process, which could override their concerns.

Decisions will now have to be made within 14 days for purely administrative actions; within 45 days for review of and action on minor reports; and 60-105 days for review of and action on complex reports.

"The result will be a faster and cheaper process, allowing better concentration of our resources on the more complex and potentially damaging activities," Van Schalkwyk said.

He said the application process was not as streamlined or as flexible as it could be, "often resulting in unnecessary time and monetary wastage". He said that although to date 50% of environmental impact assessment applications were finalised within six months, about 6,5% took more than two years — with some taking more than three years to finalise. At present, there was a national backlog of 4000.

Another key change is the grading of activities in terms of the level of assessment required. Van Schalkwyk said the introduction of development thresholds would result in a 20% reduction in assessment applications.

The existing system, he said, often got "bogged down by over-exhaustive work on minor applications — a good example was the 2000 applications received last year in Gauteng alone for upgrades to telecoms masts".

With the new system, the list of activities requiring an assessment has been streamlined into nine areas, such as property development, energy generation and industrial activities, which have been subdivided into two schedules.

Activities in schedule one involve transformation of land to develop residential areas larger than 3ha. These will require a basic assessment, while those in schedule two, which includes power stations, will require a thorough assessment.

The regulations were developed in consultation with stakeholders since 2000 and will be promulgated in the Government Gazette tomorrow. They will take effect from July 1, except for those related to mining activities which come into force from April 1 next year. Old applications will still be dealt with in terms of the old regulations unless resubmitted by choice under the new rules.

20 April 2006
Linda Ensor

<http://www.businessday.co.za/articles/topstories.aspx?ID=BD4A187987>

NEW SYSTEM OF ENVIRONMENTAL ASSESSMENTS LAUNCHED - WITH ASGISA IN MIND

Cape Town – A new system of environmental impact assessments (EIAs) was launched today by the Minister of Environmental Affairs and Tourism, Marthinus van Schalkwyk, with the intention of speeding up decisions on proposed developments in the interests of faster economic growth.

The new system was designed to simplify the often complex system of providing environmental impact assessments, as well as to "streamline" the process and provide "legislative clarity", said Joanne Yawitch, a deputy director general in the Department of Environmental Affairs and Tourism (DEAT).

She was speaking at a media briefing in Pretoria with a video link-up to Cape Town, where the minister told reporters that "development and conservation need not be opposing end-goals".

The South African experience, said Mr Van Schalkwyk, "continues to prove that the interests of communities and the interests of the environment can never be separated".

With the new regulations, the process would be shortened, he said. A developer envisaging a particular development deserved an answer more promptly than the two or three years it had previously taken for an EIA to come through.

"People [proposing a development] deserve an answer, even if the answer is 'no'," said Mr Van Schalkwyk today.

Under the new regulations government will be obliged to deliver a decision "within 14 days for purely administrative actions, within 45 days for review and decision-making on minor reports, and between 60-105 days for review and decision making on complex reports".

"The result will be a faster and cheaper process, allowing better concentration of our resources on the more complex and potentially damaging activities - something we consider critical in facilitating the Accelerated and Shared Growth Initiative for South Africa(ASGISA)."

He said government wanted to ensure that the costs of doing business in South Africa were "fair", adding that fewer EIAs would be required, with a focus only on activities with a potentially "substantial" impact on the environment.

"Too often our existing EIA system has been bogged down by over-exhaustive work on relatively minor applications - a good example is the more than 2000 applications received last year by Gauteng alone for upgrades to telecommunication masts," Mr Van Schalkwyk said.

"The list of activities [under the new regulations] requiring an EIA has been thoroughly reworked into nine thematic areas like property development, energy generation, and industrial activities."

"These have been further divided into two schedules based on the nature and associated risk of the activity - those in schedule one, such as transformation of land to develop residential areas larger than three hectares, will now be subject to only a Basic Assessment process, whilst those in schedule two, like power stations, will require a thorough assessment process (scoping and EIA)."

The minister said it had been estimated that under the new lists, and with the introduction of "development thresholds", the number of EIA applications would be reduced by up to 20%.

The first EIAs, introduced in 1997, often resulted in unjustified and unnecessary time and monetary costs, he said, adding that significant changes had been made to an earlier draft of the new regulations that were published in January 2005, following two rounds of public consultation.

The updated - and final - regulations are to be promulgated in the Government Gazette on Friday, April 21.

They will then come into effect on July 1, 2006, with the exception of activities related to mining, which will come into effect on April 1, 2007.

It will be the first time that mining "and related activities" will be included within the same EIA system.

All applications lodged in terms of the old Environment Conservation Act regulations would be finalised in terms of those regulations, but these applicants have the option of withdrawing and resubmitting their plans under the new regulations, according to a statement released by the minister's office. - **BuaNews**

POLLUTED AREAS FACE STRICTER MONITORING

Durban - The south Durban basin and the Vaal Triangle will almost certainly be considered for declaration as high-priority polluted areas in terms of the new National Environmental Management: Air Quality Act, making them a target for stricter monitoring to bring them in line with legislation.

Milnerton and Richards Bay could also be targets. This is according to Ian Sampson, a Shepstone and Wylie attorney who was addressing the SA Institute of Environmental Health's conference in Durban. Rico Euripidou from groundWork, an environmental non-governmental organisation, said average air quality levels in the south Durban basin fell within normally acceptable ranges but it was the spikes in pollution levels that caused respiratory illnesses.

While the industry has already invested large sums in reducing harmful emissions, stricter monitoring of ambient air quality by the department of environmental affairs and tourism and the municipalities might require them to dig even deeper into their pockets.

Mondi Business Paper recently spent R1.2 billion to upgrade its Merebank mill. The project comprises the installation of flue gas desulphurisation equipment, the conversion and upgrade of a paper machine to uncoated wood-free copy paper, and the installation of a multi-fuel boiler.

Mondi's sulphur dioxide levels were now well below the levels promulgated in terms of the new air quality regulations. "The mill's emission reduction plan is also consistent with the eThekweni municipality's 'multi-point plan,'" the company said.

An Engen spokesperson said the company had invested an average R60 million a year for the past seven years in an environmental improvement programme to help clean up the south Durban basin. "The bulk of the expenditure has been on improving air quality, though there has also been some investment in areas such as effluent reduction," he said.

GroundWork director Bobby Peek welcomed the act and said it should improve air quality. Sampson said substances that would be monitored in terms of the act included sulphur dioxide, oxides of nitrogen, lead and particulate matter. But until national or provincial ambient and source levels are set, the act prescribes only provisional ambient air quality standards for these substances.

The act stipulates a temporary maximum of 0.191 parts per million for average sulphur dioxide levels measured at 25°C at normal atmospheric pressure. Instant peaks must be limited to 500 micrograms per cubic metre under the same conditions. "However, specific standards will be set for priority areas and the national air quality officer will have to develop an air quality plan for the areas within six months of them being declared," he said. In terms of ambient air standards, it was up to local authorities to enforce regulations.

Sapref said that over the past 11 years it had spent more than R480 million on initiatives to enhance environmental performance. Air quality improvement was a large part of the effort. Polluted areas face stricter monitoring.

February 9, 2006
By Margie Inggs

Business Report website

PRESIDENCY TO ESTABLISH UNIT TO REVIEW RED-TAPE HAMPERING SMMES

Cape Town – A unit is to be established in the presidency that will review the regulations governing small businesses in order to remove the red-tape that is hampering their development, says Deputy President Phumzile Mlambo-Ngcuka.

Responding to a question in the National Council of Provinces (NCOP) yesterday over how regulations in the small business environment were effecting ASGISA – the Accelerated and Shared Growth Initiative of South Africa – Ms Mlambo-Ngcuka said: “You don't give with one hand and take away with the other.”

“We've undertaken a review of some of our regulations that impact on small business, so, yes, we've identified those regulations that hamper small business development ... some of them are tax-related; we've simplified that – this is an ongoing task,” she said.

The deputy president, who is leading ASGISA – a set of economic interventions- said in the presidency itself a unit was to be established that would continuously monitor the regulatory environment effecting small business development.

She added that as some regulations were removed, others were introduced and the situation needed to be monitored to ensure an optimal environment for the small and medium-sized businesses that were holding many hopes for the six per cent economic growth sought in the immediate term.

Several interventions already identified to boost small businesses, said the deputy president, include the acceleration of the Apex and Mafisa microloan programmes to provide microfinance needed by small and start-up businesses.

Microfinance has been identified as crucial for boosting growth throughout the developing world, as the small businesses that stand to grow or fold as a result of small loans tend to be largely ignored by the mainstream banking sector, for various reasons.

Another intervention was a new product by the Khula development agency for entrepreneurs looking for loans of between R10 000 and R250 000, said Ms Mlambo-Ngcuka.

Apart from interventions to provide access to finance, others involve providing overall support, such as the “Jobs for Growth” initiative aimed at cooperatives in rural areas, while the rolling out of advice centres in different localities by SEDA - the Small Enterprise Development Agency – will provide emerging entrepreneurs with information on product development and business plans and opportunities.

The National Chamber of Commerce (NAFCOC) is being supported by the Presidency in yet another initiative that aims to create 100 000 new SMMEs (small, medium and micro-sized enterprises) every year.

“Also, for small businesses, it is important for members to know that cabinet already adopted a plan to remove unnecessary regulatory obstacles that make the work of SMMEs either cumbersome or expensive,” Ms Mlambo-Ngcuka said, adding that these included tax burdens.

Also, “poorly designed or implemented” labour regulations have been identified , while a focus on electronic business administration communications will enable cheaper and more efficient practices.

Obstacles in the municipal legal environment such as “the many bylaws that we find in our municipalities that make it difficult for small business to trade” were also receiving attention, the deputy president said.

In terms of employment there is now a strong focus on road building and upgrading in the Expanded Public Works Programme (EPWP) under the Public Works portfolio about to taken on by Agriculture and Land Affairs Minister Thoko Didiza in the wake of the recent death of Stella Sigcau.

Funds over the coming medium-term expenditure framework will target an additional 60 000 people to maintain roads and a further 100 000 people in six-month stints on road-building projects and related training.

By the end of 2005, the EPWP had brought into its service 223 000 unemployed people, through 3 400 projects around the country, said the deputy president, and in future home-based care and early childhood development would be included in EPWP projects. – **BuaNews**

RELEASE OF DRAFT ENVIRONMENTAL FISCAL REFORM POLICY PAPER FOR PUBLIC COMMENT

6 April 2006

The National Treasury has undertaken research and stakeholder consultation in the area of Environmental Fiscal Reform over the past few years. In October 2002, the Department commissioned a study on environmental taxes. Subsequently, the department developed a Draft Policy Paper entitled A Framework for Considering Market-Based Instruments to Support Environmental Fiscal Reform in South Africa.

The policy paper seeks to outline the role that market-based instruments, specifically environmentally related taxes and charges, could play in supporting sustainable development in South Africa, and to provide a framework for considering their possible application. As the South African economy grows and imposes increased demands on its environmental assets base, it is vital that it does so in a sustainable manner and that issues such as poverty, inequality and international competitiveness are effectively addressed.

The paper focuses and elaborates on the options for environmental fiscal reform and the policies and measures that could be used to achieve both environmental and revenue-raising objectives.

The National Treasury hosted a workshop in November 2003 where an initial discussion document was presented to receive feedback on a proposed Environmental Fiscal Reform framework. A wide range of representatives including the various government departments, the private sector, non-governmental organisations and academia attended the workshop.

Most of the comments received from the different stakeholders were incorporated into the development of the above-mentioned draft policy paper.

The document is available for public comments on <http://www.treasury.gov.za> and comments can be sent to sharlin.hemraj@treasury.gov.za by Monday, 31 July 2006.

Issued by: National Treasury
6 April 2006

Roof collapsed injuring seven people in Centurion

Released by Department of Labour on 09 February 2006

The Department of Labour has sent inspectors to the scene of an accident in Centurion, Pretoria where a building roof collapsed, injuring seven people this morning (Wednesday).

According to eyewitnesses, the accident occurred when part of the structure still under construction gave in at around 10: 00, seriously injuring the seven and slightly injuring nine others.

By afternoon, officials of the Department, who had rushed to the scene, were still trying to establish all facts surrounding the accident.

The Ministry of Labour has ordered a thorough investigation into the accident, reiterated its call for compliance with Occupational Health and Safety Regulations at workplaces, and has wished the injured a speedy recovery.

http://www.labour.gov.za/media/statement.jsp?statementdisplay_id=10372

SA EXTENDS TAX RELIEF FOR MINE-REHABILITATION

While work is still in progress on the proposed diamond-tax levy and mining royalties, Finance Minister Trevor Manuel has expressed concern over the rehabilitation of mines once they close and has offered another tax break to mining firms to ensure that this is provided for.

Already, tax relief is granted to mining enterprises that make financial provision, in the form of trust funds, for the rehabilitation of mines once they close. This relief entails a deduction for reserves as well as the tax-free build-up of those reserves.

However, government has received requests from the industry to consider the use of insurance products to facilitate rehabilitation of defunct mines, as such, the current income-tax exemption for mining rehabilitation trusts will be extended to insurance products and other instruments dedicated solely to rehabilitation funding.

Legal changes are expected that will extend environmental-rehabilitation requirements to sectors other than mining and the current tax incentive for rehabilitation will be extended as required. Meanwhile, the proposed diamond-export levy, which aims to reinforce regulatory measures to ensure an adequate supply of rough diamonds for domestic beneficiation, is still under consideration. However, the Budget indicates that the levy will be designed to provide credits for local sales that would act as an offset in the determination of the export levy.

The mining sector as a whole showed growth of 3,6% for the first nine months of last year but growth slowed in the third quarter thanks to wage strikes. Production of platinum-group metals showed strong growth last year on the back of surging prices and coal production also experienced steady growth.

However, gold production continued to decline despite a near ten per cent increase in prices last year as mines face dwindling reserves.

22 February 2006

<http://www.miningweekly.co.za/min/news/today/?show=81142>

SA INTENSIFIES AIR QUALITY MANAGEMENT

South Africa is developing an Air Quality Information System to provide accurate, current, relevant and complete information for informed air quality decision-making.

Environmental Affairs and Tourism Minister Marthinus van Schalkwyk said this today.

He was speaking at the opening of the 14th session of the Commission for Atmospheric Sciences (CAS) of the World Meteorological Organisation (WMO) in Cape Town.

According to the minister, the system will be located within the South African Weather Service as the institution best placed to assume this monitoring role, and are conducting a feasibility study to determine the modalities that this will entail.

Government will also be announcing for public comment, before the end of March, the first set of ambient air quality standards for South Africa and the first "controlled emitter" in terms of the new Air Quality Act.

This will address for example unacceptable concentrations of cancer-causing pollutants that had been measured in and around the country's industrial centres, costing South Africa more than R4 billion on respiratory health problems related to air pollution.

"Every winter our people cough and choke from breathing a vile cocktail of airborne pollution that remains trapped under temperature inversion layers," he said.

Talking about climate change, he said South Africa had placed the national response to climate change at the forefront of its governance priorities.

"As a developing country we believe in the importance of a future framework for action on climate change that is marked by a balance between adaptation and mitigation," he said.

"We are very aware of the need to deal with the unintended consequences of climate change mitigation measures taken by developed countries on the economies of some developing countries."

In this regard, he said this would require concerted international support for the diversification of the economies of those countries affected, to ensure that climate change action was aligned with sustainable development objectives.

He said 2006 had been declared International Year of Deserts and Desertification.

Desertification "is one of the world's most alarming processes of environmental degradation, affecting one third of the earth's surface, more than 4 billion hectares, and over a billion people.

Moreover, it has potentially devastating social and economic costs.

Furthermore, Mr Van Schalkwyk said in order to have a truly global value; meteorology ought to make a real difference to the everyday lives of people across the globe.

According to him, it was not enough to only invest in monitoring and research capacity on climate change but to project impacts for different sectors and support the development of robust climate change adaptation strategies. – **BuaNews**

[BuaNews] 2006-02-16: Thursday Second Edition

By Nozipho Dlamini

SA LAUNCHES PLAN TO PROTECT BIODIVERSITY

Environmental Affairs and Tourism Minister Marthinus Van Schalkwyk has launched a plan to reinforce the protection of the country's biodiversity against erosion and threat of extinction.

This during a two day conference, which started yesterday in the Eastern Cape to mark International Biodiversity Day.

The United Nations (UN) proclaimed the day to commemorate the adoption of the Convention on Biological Diversity (CBD), to which South Africa is a signatory.

The primary objective is to increase an understanding and awareness of biodiversity issues.

The conference in the Eastern Cape has brought together government, industry and the community to take stock of biodiversity trends and committing to action towards reducing biodiversity loss by 2010.

Issues being discussed range from approaches to expansion of conservation to collective responsibility for conserving biodiversity.

Launching the National Biodiversity Strategy and Action Plan (NBSAP), Mr Van Schalkwyk said it would guide South Africa's conservation and management of biodiversity as well as help ensure sustainable and equitable benefits for all communities.

The NBSAP highlights a number of primary strategic objectives such as the need for a network of protected areas that conserves a representative sample of all of the country's biodiversity and the need for human development to be enhanced through sustainable use of biodiversity.

It further specifies a range of activities to realise each of the objectives and sets five and fifteen year targets for each.

"It also provides for the entrenching of biodiversity considerations in our production sectors, for example the agricultural, forestry and mining industries.

"These objectives focus on two aspects: firstly, the inclusion of biodiversity priorities into guidelines and best-practice codes to reduce negative impacts on biodiversity, and, secondly, measures to encourage sustainable production practices," explained the minister.

Minister Van Schalkwyk added that the strategy and action plan would now inform the creation of a National Biodiversity Framework to ensure an integrated, coordinated and consistent approach to biodiversity management by organs of state in all spheres of government, non-governmental organisations, the private sector, local communities, other stakeholders and the public.

He said the publishing of the framework would mark the first time that an ecosystem approach to biodiversity management would be introduced and secured in South African law.

"Turning paper strategies into action on the ground requires a supportive legal environment and associated institutional capacity, but ultimately it is the commitment and partnership of all South Africans that will determine our success in these endeavours.

"We have the responsibility to ensure that our country becomes and remains a living ark. Our communities must stand as the custodians of conservation and the guarantors of biological diversity."

Meanwhile, South Africa has rich biological resources and ecology and has one of the world's richest plant and animal life.

Although it occupies only about two percent of the world's land area, it is home to nearly 10 percent of the world's plants and seven percent of the reptiles, birds and mammals on Earth. – **BuaNews**

By David Masango

SHELL TOLD TO PAY NIGERIANS \$1,5BN POLLUTION DAMAGES

A Nigerian court on Friday ordered Royal Dutch Shell to pay \$1,5-billion in damages for polluting the Niger Delta, a fresh blow to the company that was already reeling from a kidnap crisis and a wave of sabotage against its installations.

A federal high court in Port Harcourt, the heart of the country's oil industry, ruled that Shell must compensate communities in Bayelsa state for degrading their creeks and spoiling crops and fishing. The decision was a major victory for the Ijaw people -- who have campaigned for compensation for more than a decade -- and one of Shell's worst legal setbacks.

The ruling came on the same day that news emerged of the nine employees of a United States subcontractor kidnapped on February 18. The kidnapers of the nine -- a Briton, three Americans, two Egyptians, two Thais and a Filipino -- are demanding that people in the country's south receive a greater share of the region's oil wealth. The kidnapers have released what they call "pictures of our hostages with a section of the unit that secured their capture".

On Friday, they also brought one of the Americans along the Niger delta by boat to speak to journalists. Identifying himself as Macon Hawkins, from Texas, he said: "We're being treated quite well. Just let's hope it ends well."

Communities have repeatedly accused Shell of letting its oil spill into the rivers of the Niger Delta, degrading the environment, spoiling crops and poisoning fish. Shell says most spills are caused by saboteurs trying to steal the oil for sale by international criminal syndicates on the world market.

As well as the court ruling and the kidnapping, this week has also seen militants blowing up pipelines and storming a loading platform, crippling Shell's output. Justice Okechukwu Okeke's ruling in Port Harcourt on Friday upheld a vote by Nigeria's Senate in August 2004 to fine Shell \$1,5-billion. Shell had argued that the parliamentary committee that made the original order in 2000 did not have the power to require payment. But the judge ruled that since both sides agreed to go before Parliament, the order was binding.

Shell in London said the company would not comment in detail until it had received the text of the judgement; "however, we believe that we will have strong grounds to appeal as independent expert advice demonstrates that there is no evidence to support the claims". It added that it remains committed to dialogue with the Ijaw people -- a claim rejected by Ijaw leaders. Chief Malla Sasime, the ruler of the Ijaw Epie kingdom in Bayelsa, said: "Our people have gone through due process to get the judgement. They must pay the money or be ready to leave our land."

Another Ijaw leader, Ngo Nac-Eteli, said Shell would be prevented from operating on Ijaw territory if it tried to buy time by appealing against the judgement.

Militant groups in the Niger Delta have fought the government and the oil industry for 15 years, demanding a greater share of oil revenues and compensation for environmental damage. In 1995, the writer and campaigner Ken Saro-Wiwa was executed after leading a peaceful uprising of the Ogoni in opposition to Shell. -- Guardian Unlimited © Guardian Newspapers Limited 2006.

http://www.mg.co.za/articlepage.aspx?area=/breaking_news/breaking_news_business&articleid=265267&ref=error=mgnewsflash#

25 February 2006

'SMOKE SURROUNDS TAXABILITY OF CARBON CREDITS'

Cape Town - Developers of South African projects of the UN's clean development mechanism (CDM), which is designed to cut harmful carbon emissions, need clarity from the government and the SA Revenue Service (Sars) on the taxability of carbon credits. This is according to a recent report by africapractice, the communications and research consultancy, which said the taxability of CDM projects could have "important consequences" for the economics of the projects.

Sars assistant general manager of legislation, Franz Tomasek, said on Friday that it was difficult to comment in any detail because work on carbon credits was in its early stages. Carbon credits, also known as certified

emission reductions, are generated by CDM projects to reduce emissions of greenhouse gases in developing countries such as South Africa. They are sold to developed countries that have set targets for reducing greenhouse gases.

Serge de Reus, an associate director in corporate and international tax at Pricewaterhouse Coopers (PwC), said on Friday that tax should be used as an instrument to give taxpayers incentives to make use of the CDM and generate carbon credits. In the absence of specific measures to deal with the CDM, PwC, which is in the final stages of applying to become an official auditor of the CDM, has embarked on its own study of some of the tax issues at stake.

According to De Reus, a key question was whether Sars would consider the expenditure incurred on CDM projects as revenue in nature, and hence tax deductible, or capital in nature, and hence not deductible under the Income Tax Act, although it may be possible to claim a capital allowance. If expenditure was classed as capital in nature, it would not be as attractive for project developers, said De Reus.

A related matter would be whether the income generated from the sale of carbon credits would be of a revenue nature (and thus taxable as ordinary income) or of a capital nature (and subject to lower tax as a capital gain). Tomasek said that because classification between capital and revenue may be involved, it was likely that the determination of the tax treatment would be "fairly fact intensive".

According to PwC, other indirect tax and regulatory issues needed to be examined, including:

- Whether VAT input credits could be claimed;
- Whether VAT should be levied on the sale of carbon credits; and
- If the sale of carbon credits to non-South African residents would be regarded as the export of capital for exchange control purposes.

De Reus said there were also a number of industry-specific issues that needed to be considered.

April 10, 2006

By Ingrid Salgado

UIF FIGURES PROVE THAT EMPLOYMENT IS GROWING

Released by Department of Labour on 16 March 2006

The financial performance and figures from the database of the Unemployment Insurance Fund (UIF) confirms that employment is rising in the country, Minister of Labour Membathisi Mdladlana has said.

Speaking during his official visit to the UIF Head Office today, he said the records of the Fund showed that as at the end of January 2006, more than 7.1 million workers in both the domestic and commercial sector were registered with the Fund compared to just under 6.6 million at the same time last year.

"According to our records, more than half a million more workers were registered with the Fund between January 2005 and January 2006. The majority of these new registrations are new entrants in the labour market, while the rest are as a result of more employers now complying with the legislation to register workers," the Labour Minister said.

"The UIF's financial reserves, which now stand at more than R13 billion further prove that employment is rising. The reserves are invested with the Public Investment Corporation," he further clarified.

The Minister added that the good news to these workers was that they need not panic with regard to the future of the Fund as the actuarial valuation of the Fund in terms of the legislation had in fact concluded that the Fund was in a sound financial position on a cash flow basis for the next 10 years.

Meanwhile, 100 % of the UIF's payments are now being done electronically. This follows the launch of the Electronic Fund Transfers (EFT) in May last year. Through this innovation UIF monies are being paid directly into beneficiaries' bank accounts.

Minister Mdladlana has expressed satisfaction with the progress made to date. "Our provinces are now 100 % EFT and this is a good sign in terms of service delivery. We are now more effective, efficient and economic. The waiting period has been significantly reduced and the turn-around time is faster since the introduction of the electronic banking system," said the Minister.

He said between April 2005 and January 2006 more than R2 billion was paid to the approximately 1.7 million workers, who sought assistance from the Fund. "The feedback we are receiving from our clients is positive. Our clients have congratulated the Department of Labour for finally dealing successfully with long queues, which have in the past been a thorn in the flesh," the Minister added.

He said the use of cheques and cash as a method of payment were proving too costly for the Fund. "Electronic banking system has brought with it huge savings for the Fund. Since the introduction of this new system in May last year, the Fund has realised savings of more than R16 million in bank charges, printing and stationery costs," Minister Mdladlana further announced.

ERWIN CONFIRMS 2ND KOEBERG - 14 APRIL

Cape Town - With the replacement rotor for Koeberg Nuclear Power Station having arrived safely and currently being prepared for installation, Minister for Public Enterprises Alec Erwin has confirmed that the South African government is considering building another nuclear power station in the Western Cape, government news agency BuaNews reported on Thursday.

Speaking at the Western Cape's Koeberg nuclear power station on Thursday, BuaNews said that Erwin confirmed that government believed there was a need for another big baseload station in the Western Cape, and that he had asked South Africa's state-owned energy provider, Eskom, to examine the options available.

Eskom CEO Thulani Gcabashe, also briefing the media on Thursday, confirmed that Eskom would be looking at the option of another conventional nuclear power station.

Demonstration plant to be built

Meanwhile, a demonstration plant for another form of nuclear energy provision, the Pebble Bed Modular Reactor, would be built at the Koeberg site, on the west coast just north of the city, he said.

This would happen once the required environmental impact assessment was completed, Gcabashe said.

In another move to provide more energy for a growing economy, two Open Cycle Gas Turbines currently under construction - one at Atlantis just north of Cape Town and another at Mossel Bay on the east coast of the province - would start operating next year, the CEO of the major power producer said, BuaNews reported.

In the meantime, the demand side management strategy that Eskom has embraced, with the free supply of five million compact fluorescent lamps to Cape Town communities, is to continue past July, when the nuclear power station is expected to be back to full capacity.

Demand management, introduced to help the city cope with the load-shedding implemented by Eskom as the second unit at Koeberg starts winding down ahead of a delayed refuelling and maintenance outage, has been welcomed by the provincial government.

Risk of shortfall

With Koeberg's Unit 2, currently generating at 78% and sending out 700MW, going down to 56% before the scheduled shutdown in the third week of May, and with Koeberg Unit 1 only expected to be ready by May 15 after being fitted with the replacement rotor from Electricite de France, there was a risk of a shortfall of 400 MW, Gcabashe said.

It is the targeted savings of this 400MW that national and provincial government and Eskom hope to achieve to avoid further power outages.

Separately, Erwin earlier described the initial incident at Koeberg in December that caused unit one to be shut down "as a serious act of negligence or deliberate".

"The nature of the damage [to the reactor] and the cause of the damage was such that we had to investigate," the Public Enterprises minister was quoted by BuaNews as saying, adding that the circumstances around the incident were being "very carefully investigated".

Any arrests related to the incident would be announced, he said, adding that a related statement would also be made in parliament.

Committee created

The Western Cape provincial minister of Environment, Planning and Economic Development, Tasneem Essop, told reporters at Koeberg that the provincial government had created an energy risk management committee comprising all affected stakeholders to deal with the problems of load-shedding.

Until Koeberg returned to generating 1800MW of electricity by the end of July, residents in the province would have a 48-hour notice period for potential load-shedding, Essop said.

Essop said the power outages resulting from load-shedding "is a problem we can all help deal with", and that the provincial government was supporting demand side management wholeheartedly.

Fin24 Website: www.fin24.co.za

WATERSHED JUDGEMENT EXPECTED AGAINST EQUITY FLOUTING EMPLOYERS

The government's crackdown on employment equity flouting companies will come under a sharp spotlight when the Durban Labour Court hands down judgement in two separate cases involving textile manufacturers on Wednesday April 19.

In what could mark the first ever successful prosecution of its kind under South Africa's equity legislation, two KwaZulu-Natal companies, Jinghua Garments and Wincool Industrial will finally know their fate after a few appearances on charges of violating sections of the Employment Equity Act.

The two cases against the companies were referred to the Labour Court last year following a series of blitz inspections by Labour Department officials in the Newcastle area.

The companies face charges of failing to comply with Sections 20 and 21 of the Employment Equity Act which compel employers to display the Act on their notice boards, and require them to send their equity plans to the Department respectively.

The Labour Department has often expressed confidence that judgement against the two would send a strong warning to others about government's intolerance of employers who deliberately flout the law.

Labour Minister Membathisi Mdladlana has said the prosecutions will go a long way towards demonstrating to both private and public sector employers the government's seriousness about transforming the workplace.

"Employment equity is not about to be scrapped and it is time we live with that fact," the Minister said.

http://www.labour.gov.za/media/statement.jsp?statementdisplay_id=10426

GREEN SCORPIONS TO GET 800 INSPECTORS THIS YEAR

Durban - The department of environmental affairs and tourism would intensify its crackdown on offenders by appointing 800 environmental management inspectors across the country by the middle of the year, director-general Pam Yako said this week.

Speaking at the first South African environmental enforcement conference in Durban, Yako said the effectiveness of the Environmental Management Inspectorate had improved as the number of inspectors had grown.

The Green Scorpions, as they have been nicknamed, have been cracking down on environmental crimes since the first 26 inspectors were appointed last June. They monitor compliance with and enforce not only the National Environmental Management Act (Nema) but all national legislation dealing with the protection of the environment, including the new Protected Areas Act, the new Biodiversity Act and the new Air Quality Act. Within the next 18 months, the department hopes to add a new Waste Act to this list.

Under the Environment Conservation Act, the maximum penalty for not complying with environmental impact assessment regulations was R100 000 - a mere inconvenience for a large company. But Nema provides for fines of up to R5 million.

This year and next the national department of environmental affairs will engage with provincial environment departments about the participation of municipalities in the Environmental Management Inspectorate. Yako said her department, together with provincial environmental departments and the parks authorities, had developed a number of key tools to support inspectors across the country. "Probably the most important of these is the bridging training course, which is being rolled out across the country," she said. "This is an intensive training course designed to prepare our existing enforcement officials for their new powers and responsibilities.

In 2006/07 this bridging training course will be developed into a more permanent basic training course for [inspectors]." The national department has installed a tip-off line, called the Environmental Crimes and Incidents hotline. People can call it 24 hours a day on 0800-205005.

Yako said she wished to continue with the environment court in Hermanus, which was a successful joint pilot project between her department, the director of public prosecutions in Cape Town and the department of justice and constitutional development. "In the environment court, the prosecution success rate is 75 percent and at least 25 of those convicted have received sentences of direct imprisonment without the option of a fine." Yako said that while environmental offences had not been prioritised by other criminal justice institutions in the past, this had changed significantly over the past year.

Published on the web by Business Report on February 24, 2006.

<http://www.busrep.co.za/index.php?fSectionId=&fArticleId=3128808>

Acts

FORESTRY LAWS AMENDMENT ACT 35 OF 2005

The President has assented to the Forestry Laws Amendment Act which is published for general information in Government Gazette 28602 Government Notice No. 220 of 09 March 2006.

NATIONAL ENVIRONMENTAL MANAGEMENT ACT: PROTECTED AREAS ACT 57 OF 2003

The Minister of Environmental Affairs and Tourism has excluded the land described in the Schedule to Government Gazette 28582 Government Notice No. 208 of 03 March 2006 from the Karoo National Park and amended the definition of the area of the said park in Schedule 1 to the Act.

Bills

Draft Bill

NATIONAL ROAD TRAFFIC AMENDMENT BILL

Publication of the explanatory summary of the National Road Traffic Amendment Bill as set out in Government Gazette 28445 General Notice No. 147 of 30 January 2006.

Draft Bill

HEALTH PROFESSIONS AMENDMENT BILL, 2006

Publication of explanatory summary in Government Gazette 28745 General Notice No. 573 of 30 April 2006.

Regulations

AGRICULTURAL PESTS ACT 36 OF 1983

The Minister of Agriculture, acting under section 16 of the Agricultural Pests Act 36 of 1983, amended the regulations set out in the Schedule to Government Gazette 28606 Government Notice No. 228 of 17 March 2006.

ANIMAL DISEASES ACT 35 OF 1984

Publication of control measures relating to classical swine fever in certain areas as set out in Government Gazette 28716 Notice No. 338 of 7 April 2006.

BASIC CONDITIONS OF EMPLOYMENT ACT 75 OF 1997

Sectoral Determination 13 : Farm Worker Sector, South Africa
Government Gazette 28518 Notice No. 149 of 17 February 2006.

Sectoral Determination 13 : Farm Worker Sector, South Africa
Government Gazette 28518 Notice No. 149 of 17 February 2006.

Sectoral Determination 1 : Contract Cleaning Sector, South Africa Correction Notice
Government Gazette 28525 Notice No. 150 of 17 February 2006.

Investigation notice : Contract Cleaning Sector
Government Gazette 28525 Notice No. 151 of 17 February 2006.

Investigation into minimum wages and conditions of employment in the Hospitality Sector
Government Gazette 28526 Notice No. 152 of 24 February 2006.

Amendment of Sectoral Determination 9 : Wholesale and Retail Sector, South Africa
Government Gazette 28559 Notice No. 182 of 24 February 2006.

Sectoral Determination 12 : Forestry sector
Government Gazette 28598 Notice No. 219 of 17 March 2006.

National Environmental Management Act: Protected Areas Act 57 of 2003

The Minister of Environmental Affairs and Tourism has excluded the land described in the Schedule to Government Gazette 28582 Government Notice No. 208 of 03 March 2006 from the Karoo National Park and amended the definition of the area of the said park in Schedule 1 to the Act.

Employment Equity Act 55 of 1998

Public register notice in terms of s.41 of the Act published in Government Gazette 28642 Government Notice No. 246 of 24 March 2006

FERTILIZERS, FARM FEEDS, AGRICULTURAL REMEDIES AND STOCK REMEDIES ACT 36 OF 1947

Proposed amendment to the Regulations relating to the registration of fertilizers, farm feeds, agricultural remedies, stock remedies, sterilizing plants and pest control operators published in Government Gazette 28606 Government Notice No. 225 in of 17 March 2006.

Draft Farm Feeds Regulations (Sterilizing Plants) published in Government Gazette 28711 General Notice No. 495 of 13 April 2006.

Draft Pesticide Management Policy for South Africa published in Government Gazette 28711 General Notice No. 496 of 13 April 2006.

FOODSTUFFS, COSMETICS AND DISINFECTANTS ACT 54 OF 1972

The Minister of Health intends to make Regulations relating to the powers and duties of inspectors and analysts on inspections and investigations conducted on foodstuffs at food premises as set out in Government Gazette 28553 Government Notice No. 186 of 03 March 2006.

The Minister of Health intends to make Regulations regulating the maximum limits for veterinary medicine and stock remedy residues that may be present in foodstuff as published in Government Gazette 28584 Government Notice No. 215 of 10 March 2006.

Regulations governing the labeling, advertising and composition of cosmetics in Government Gazette 28761 Government Notice No. 394 of 26 April 2006.

Health Professions Council of South Africa

Amendment of the rules relating to the registration by medical practitioners and dentists of additional qualifications as set out in Government Gazette 28601 General Notice No. 13 of 17 March 2006.

Gas Act 48 of 2001

Piped Gas Regulations published in Government Gazette 28741 Notice No. 363 of 13 April 2006.

Genetically Modified Organisms Act 15 of 1997

Amendment of the Regulations published in Notice No 1420 of 26 November 1999, by the substitution of Table 2 of the Regulations with Annexure A published in Government Gazette 28486 Notice No. 130 of 17 February 2006.

Labour Relations Act 66 of 1995

Metal and Engineering Industries Bargaining Council

Cancellation of Government Notice in respect of registration and administration Expenses Collective Agreement set out in Government Gazette 28520 Notice No. 155 of 24 February 2006.

Extension of registration and administration expenses Re-enacting and Amending Collective Agreement to non-parties published in Government Gazette 28520 Notice No. 156 of 24 February 2006.

Extension of Sick Pay Fund re-enacting and amending Collective Agreement to non-parties published in Government Gazette 28631 Notice No. 251 of 24 March 2006.

Sick Pay Fund Collective Agreement : Cancellation of government notice published in Government Gazette 28631 Notice No. 252 of 24 March 2006.

Collective Bargaining Levy Collective Agreement - Cancellation of government notices as set out in Government Gazette 28712 Notice No. 339 of 13 April 2006.

Re-Enactment, Amendment and Extension of Collective Bargaining Council Collective Agreement to non-parties published in Government Gazette 28712 Notice No. 340 of 13 April 2006.

Extension of period of operation of the Pension Fund Collective Agreement published in Government Gazette 28777 Notice No. 409 of 28 April 2006.

Extension of period of operation of the Provident Fund Collective Agreement published in Government Gazette 28778 Notice No. 410 of 28 April 2006.

Hairdressing and Cosmetology Bargaining Council, KwaZulu-Natal

Extension to non-parties of Main Collective Amending Agreement published in Government Gazette 28520 Notice No. 154 of 24 February 2006.

Renewal of period of operation of Main Collective Agreement published in Government Gazette 28520 Notice No. 157 of 24 February 2006.

Bargaining Council for the Canvas Goods Industry (Witwatersrand and Pretoria)

Extension of Main Collective Agreement to non-parties published in Government Gazette 28520 Notice No. 158 of 24 February 2006.

National Bargaining Council of the Leather Industry of South Africa

Extension to non-parties of the Tanning Section Collective Amending Agreement published in Government Gazette 28605 Notice No. 411 of 17 March 2006.

Extension to non-parties of the Tanning Section Collective Amending Agreement published in Government Gazette 28712 Notice No. 335 of 13 April 2006.

Bargaining Council of the Fishing Industry

Main Collective Agreement - Cancellation of government notices as set out in Government Gazette 28712 Notice No. 336 of 13 April 2006.

Extension to non-parties of Main Collective Re-Enacting and Amending Agreement published in Government Gazette 28712 Notice No. 337 of 13 April 2006.

List of Bargaining Councils that have been accredited by the CCMA in terms of the provisions of the Labour Relations Act 66 of 1995 (as amended) for conciliation and/or arbitration and/or pre dismissal arbitrations with the terms of accreditation attached for the period 1 February 2006 to the 31 January 2008 published in Government Gazette 28605 Notice No. 411 of 17 March 2006.

National Environmental Management Act

Regulations 21 April 2006

<http://www.pmg.org.za/bills/060421EIAregulations.htm>

Regulations in terms of Chapter 5

Government Gazette 28753 Notice No. 385 of 21 April 2006

List of activities and competent authorities identified in terms of ss.24 and 24D set out in Government Gazette 28753 Notice No. 386 of 21 April 2006 and Government Gazette 28753 Notice No. 387 of 21 April 2006.

National Road Traffic Act 93 of 1996

K53 Practical Driving Test for Motor Vehicle Drivers

v.1 - Light Motor Vehicles

Government Gazette 28446 Notice No. 94 of 7 April 2006.

v.2 - Heavy Motor Vehicles

Government Gazette 28446 Notice No. 95 of 7 April 2006.

v.3 - Motor Cycles
Government Gazette 28446 Notice No. 96 of 7 April 2006.

v.4 - Light Motor Vehicle Combinations
Government Gazette 28446 Notice No. 97 of 7 April 2006.

National Nuclear Regulator Act 47 of 1998

Safety standards and regulatory practices regulations published in Government Gazette 28755 Notice No. 388 of 28 April 2006.

Occupational Health and Safety Act 85 of 1993

Notice of exemption in terms of s.40(1) of the Occupational Health and Safety Act 85 of 1993 as set out in Government Gazette 28755 Notice No. 396 of 28 April 2006.

Occupational Diseases in Mines and Works Act 1973

The Minister of Health, in terms of section 62 of the Occupational Disease in Mines and Works Act, increased the levies payable from controlled mines and works with effect from 1 February 2006 as published in Government Gazette 28606 Notice No. 227 of 17 March 2006.

Plant Breeders Rights Act 15 of 1976:

The Minister of Agriculture, acting under section 44 of the Act has made the regulations published in Government Gazette 28486 Notice No. 128 of 17 February 2006

Plant Improvement Act 53 of 1976

Regulations relating to establishments, varieties, and plants and propagating material published in Government Gazette 28486 Notice No. 131 of 17 February 2006.

Amendment of the regulations relating to establishments, varieties, plants and propagating material published in Government Gazette 28553 Notice No. 187 of 03 March 2006.

Draft Regulations

Marine Living Resources Act 18 of 1998

Draft White Shark Cage Diving Policy and Regulations published in Government Gazette 28636 Notice No. 425 of 20 March 2006.

Amendment of the fees payable for the use of fishing harbour facilities set out in Government Gazette 28618 Notice No. 223 of 10 March 2006.

Notices

Architectural Profession Act 44 of 2000

Proposed Rules for Disciplinary Proceedings, published under BN 127/2005, amended and brought into operation by BN 14 Government Gazette 28605 of 17 March 2006.

Compensation for Occupational Injuries and Diseases Act 130 of 1993

Increase in monthly pensions as set out in Government Gazette 28542 Notice No. 175 of 22 February 2006.

Engineering Profession Act 46 of 2000

Engineering Council of South Africa
Guideline Scope of Services and Tariff of Fees for Persons registered in terms of the Act
BN 16/GG 28643/31-03-2006.

Foodstuffs, Cosmetics and Disinfectants Act 54 of 1972

Regulations : Certain solvents in foodstuffs : Correction Notice
Government Gazette 28680 Notice No. 315 of 07 April 2006.

Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act 36 of 1947

Proposed amendment to the Regulations relating to the registration of fertilizers, farm feeds, agricultural remedies, stock remedies, sterilizing plants and pest control operators set out in Government Gazette 28606 Notice No. 225 of 17 March 2006.

Labour Relations Act / Employment Equity Act

Code of Good Practice: Key aspects of HIV/AIDS and employment. Consists of 8 volumes : Afrikaans, Setswana, Sepedi, isiXhosa, Xitsonga, Venda, Ndebele and Siswati.
The English version was published as Government Gazette 21815 Notice No. 1298 of 1 December 2000
Government Gazette 28701 Notice No. 320 of 7 April 2006.
Government Gazette 28671.

National Road Traffic Act

Amendment of National Road Traffic Regulations set out in Government Gazette 28446 Notice No. 92 of 07 April 2006.

Minimum requirements for registration and trading of driver's licence testing centers set out in Government Gazette 28446 Notice No. 93 of 07 April 2006.

National Nuclear Regulator Act 47 of 1999

Notice of application for nuclear vessel licence in terms of section 21(3) Government Gazette 28659
Notice No. 20 of 24 March 2006.

National Water Act 36 of 1998

Draft regulations regarding the registration of waterworks and process controllers in terms of s.116 of the Act set out in Government Gazette 28557 Notice No. 180 of 24 February 2006 and Government Gazette 28557 Notice No. 181 of 24 February 2006.

Petroleum Products Act 120 of 1997

Regulations regarding petroleum products site and retail licences published in Government Gazette 28665
Notice No. 286 of 27 March 2006.

Gas Act 48 of 2001

National Energy Regulator: Rules in terms of section 34(3)
Government Gazette 28666 Notice No. 289 of 31 March 2006.

Health Professions Act 56 of 1974

Regulations: Qualifications for registration of physiotherapy technicians
Government Gazette 28652 Notice No. 276 of 31 March 2006.

Liquor Products Act 60 of 1989

Amendment of Regulations as set out in Government Gazette 28652 Notice No. 270 of 31 March 2006.

National Nuclear Regulator Act 47 of 1999

Notice of application for nuclear vessel licence in terms of section 21(3) of the Act as set out in Government Gazette 28659 Notice No. 20 of 24 March 2006.

Pharmacy Act 53 of 1974

Rules relating to good pharmacy practice

Additional minimum standards for a drive-through facility in a pharmacy
Government Gazette 28593 Notice No. 12 of 10 March 2006.

Foodstuffs, Cosmetics and Disinfectants Act 54 of 1972 (Only for Newsletter purposes)

The Minister of Health intends to make Regulations relating to the powers and duties of inspectors and analysts on inspections and investigations conducted on foodstuffs at food premises as set out in Government Gazette 28553 Notice No. 186 of 03 March 2006.

The Minister of Health intends to make Regulations regulating the maximum limits for veterinary medicine and stock remedy residues that may be present in foodstuff as set out in Government Gazette 28584 Notice No. 215 of 10 March 2006.

Forestry Laws Amendment Act 2005

The President has assented to the Forestry Laws Amendment Act, which is published for general information in Government Gazette 28602 Notice No. 220 of 09 March 2006.

Marine Living Resources Act 18 of 1998

Amendment of the fees payable for the use of fishing harbour facilities as set out in Government Gazette 28618 Notice No. 223 of 10 March 2006.

Proclamations

Cross-Boundary Municipalities Laws Repeal and Related Matters Act 23 of 2005

Commencement date: 1 March 2006 as set out in Government Gazette 28558 Proclamation No. 7 of 23 February 2006.

Petroleum Products Act 120 of 1997

Petroleum Products Act 120 of 1997 amended by the Petroleum Products Amendment Act 58 of 2003 and the Petroleum Products Amendment Act 2 of 2005 with effect from 17 March 2006 as set out in Government Gazette 28638 Proclamation No. 11 of 17 March 2006 and Government Gazette 28638 Proclamation No. 12 of 17 March 2006.

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