



water affairs

Department:
Water Affairs
REPUBLIC OF SOUTH AFRICA

Enquiries: AB Singh
Telephone: 012 336 7531
Reference: 1/2/1/TMS

MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS

NATIONAL ASSEMBLY: QUESTION 2280 FOR WRITTEN REPLY

A draft reply to the above question asked by Mr G R Morgan (DA) is attached for your consideration.

W. S. Singh

DIRECTOR-GENERAL

DATE: 10/09/2012

DRAFT REPLY APPROVED/AMENDED

as
✓ Done. ✓ 11/09.
Send the amended version to both the DG + CD Legal Service
[Signature]
MRS B E MOLEWA, MP
MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS

DATE: 20/09/10



water affairs

Department:
Water Affairs
REPUBLIC OF SOUTH AFRICA



Enquiries: AB Singh
Telephone: 012 336 7531
Reference: 1/2/1/TMS

MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS

NATIONAL ASSEMBLY: QUESTION 2280 FOR WRITTEN REPLY

A draft reply to the above question asked by Mr G R Morgan (DA) is attached for your consideration.

W. S. Molewa

DIRECTOR-GENERAL

DATE: 10/09/2012

DRAFT REPLY APPROVED/AMENDED

✓ Done. VS
11/9/12

95
Send the amended version to both the DA + CD Legal Service

B. E. Molewa
MRS B E MOLEWA, MP
MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS

DATE: 2012/09/10

NATIONAL ASSEMBLY

FOR WRITTEN REPLY

QUESTION NO 2280

DATE OF PUBLICATION IN INTERNAL QUESTION PAPER: 24 AUGUST 2012
(INTERNAL QUESTION PAPER NO. 27)

2280. Mr G R Morgan (DA) to ask the Minister of Water and Environmental Affairs:

- (1) Since 1 January 2010 (a) on how many dates has the Water Tribunal been convened, (b) how many cases have been concluded and (c) what are the relevant details of each case that have been concluded;
- (2) (a) how many cases are pending before the Water Tribunal as at the latest specified date for which information is available and (b) what are the relevant details of each case;
- (3) whether the Water Tribunal is mandated to convene a minimum number of times each year; if not, how was this conclusion reached; if so, what are the relevant details;
- (4) whether the Water Tribunal is experiencing any problems in carrying out its duties; if not, how was this conclusion reached; if so, what are the relevant details;
- (5) whether she intends to investigate any legislative amendments to improve the operations of the Water Tribunal; if not, why not; if so, what are the relevant details?

NW2860E

---00000---

REPLY:

- (1)(a) Since 1 Jan 2010 to April 2012, the Water Tribunal was convened for 50 (fifty) days during this period.
- (1)(b) A total of 42 (forty two) appeals were finalized during this period. Refer to **Annexure A**.
- (2) A total of 44 (forty four) appeals are pending in the Water Tribunal. Refer to **Annexure B**.
- (3) No, there is no provision in the legislation, namely the National Water Act, 1998 (Act 36 of 1998) herein after referred to as NWA that provides for the mandatory sittings of the Tribunal. Therefore, there are no predetermined specific numbers of days allocated to convene the Water Tribunal.

The Registrar processes the appeals until it is ripe for hearing. The Registrar sets the matters down for hearing in consultation with the chairperson and the members and the parties.

- (4) The Water Tribunal (Tribunal) faced numerous problems and challenges as set out below:
 - The current Chairperson Mr Lekala resigned in November 2011 to take up an appointment as a judge in Bloemfontein. The NWA provides that the Chairperson must be a person with practical legal experience.

- The current Water Tribunal was operating with Deputy Chairperson and who's a psychologist not a legal practitioner.
- The other members of the Tribunal were engineers and also not legal practitioners.
- The term of office of the Deputy Chairperson and members came to an end in August 2012.
- Whilst the Tribunal was operating since the end of 2011 there were arguments that the Tribunal was not legal competent and therefore not properly and legally constituted. This point was argued in The Goede Wellington case and the court ruled that the Tribunal was not properly and legally constituted.
- In all subsequent matters before the Water Tribunal, both the appellants and the respondents continued to challenge the composition and the legal competency of the Tribunal.
- The Water Tribunal faced a challenge of confidence in that the appellants were dissatisfied with the manner in which they were adjudicating the disputes.
- The Chief Director: Legal Services (CD: LS) of the Department was of the opinion that the current Tribunal is not legally competent. This opinion is reinforced by the legal opinion of Adv Paul Kennedy SC, who has concluded as follows in his opinion "I accordingly conclude that in the absence of a replacement person being appointed validly by the Minister (on the recommendation of the Judicial Service Commission as required in the legislation), no other Tribunal member can lawfully be designated to preside over any specific appeal or application. If they were to do so and to purport to make a decision on such appeal or application, they would be acting without authority. In consequence any decision they make would be *ultra vires* and liable to be set aside on review". (Refer to **Annexure C** for copy of legal opinion)

From the above it was clear to the Department that Water Tribunal was in desperate need of legal reform.

- (5) The Department has investigated legislative amendments to improve the operations of the Water Tribunal.

The operations of Water Tribunal have been held in abeyance pending the legislative amendments. As an interim solution to resolving the disputes the provisions of section 150 of the National Water Act, 1998 (Act No. 36 of 1998) (NWA) which provides for mediation and negotiation as a solution to deal with all 44 disputes / appeals is being implemented.

In the Draft Amendment Bill, 2012, a new process for nomination and appointment of the members of the Tribunal has been proposed. In terms of the new proposal, I am in the process of appointing members of the Mediation Committee as per section 150 of the NWA. In terms of the new proposal, the involvement of the Judicial Service Commission and Water Research Commission is dispensed with. The draft Bill is currently being worked on for tabling to Cabinet in 2013 legislative programme.

---00000---