

**PARLIAMENT**  
OF THE  
**REPUBLIC OF SOUTH AFRICA**

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**ANNOUNCEMENTS,  
TABLINGS AND  
COMMITTEE REPORTS**

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TUESDAY, 26 JUNE 2018

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**TABLE OF CONTENTS**

**ANNOUNCEMENTS**

**National Assembly and National Council of Provinces**

1. Bills passed – to be submitted to President for assent..... 2

**National Assembly**

1. Referral to Committees of papers tabled ..... 2

**COMMITTEE REPORTS**

**National Council of Provinces**

1. Finance..... 3  
2. Cooperative Governance and Traditional Affairs ..... 3  
3. Cooperative Governance and Traditional Affairs ..... 13  
4. Funding of Political Parties ..... 22
-

## ANNOUNCEMENTS

### National Assembly and National Council of Provinces

#### The Speaker and the Chairperson

#### 1. Bills passed by Houses – to be submitted to President for assent

- (1) Bill passed by National Council of Provinces on 26 June 2018:
  - (a) **Extension of Security of Tenure Amendment Bill** [B 24B – 15] (National Assembly – sec 75)
  - (b) **Liquor Products Amendment Bill** [B 10B – 16] (National Assembly – sec 75)

### National Assembly

#### The Speaker

#### 1. Referral to Committees of papers tabled

- (1) The following papers are referred to the **Portfolio Committee on Defence and Military Veterans** for consideration and report and to the **Joint Standing Committee on Defence**. The Financial Statements are referred to the **Standing Committee on Public Accounts** for consideration:
    - (a) Report and Financial Statements of the Defence Force Service Commission for 2017-18 [RP 61 – 2018].
  - (2) The following paper is referred to the **Portfolio Committee on Home Affairs**:
    - (a) Agreement between the Government of the Republic of South Africa and the Government of the Republic of Chile regarding the Waiver of Visa Requirements for Holders of Diplomatic or Official Passports, tabled in terms of section 231(3) of the Constitution, 1996.
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## COMMITTEE REPORTS

### National Council of Provinces

#### **1. REPORT OF THE SELECT COMMITTEE ON FINANCE ON THE PUBLIC AUDIT AMENDMENT BILL [B13 - 2018] (NATIONAL ASSEMBLY- SECTION 75), DATED 26 JUNE 2018**

The Select Committee on Finance, having considered the *Public Audit Amendment Bill* [B13 – 2018], referred to it, and classified by the Joint Tagging Mechanism as a section 75 Bill, reports that it has agreed to the Bill without amendments.

Report to be considered.

#### **2. REPORT OF THE SECLECT COMMITTEE ON CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS ON LOCO-INSPECTION IN TERMS OF SECTION 139 (1) (b) OF THE CONSTITUTION IN MALUTI-A PHOFUNG LOCAL MUNICIPALITY, DATED 26 JUNE 2018**

##### **1. Background and Overview**

1.1 The Free State Provincial Department of Cooperative Governance and Traditional Affairs (COGTA) tabled notice of intervention in terms of section 139(1) (b) of the Constitution in Maluti- A Phofung Local Municipality to the Office of the Chairperson of the National Council of Provinces.

1.2. Subsequent to the tabling, the Chairperson of the National Council of Provinces in terms of NCOP Rule 101 referred the notice of intervention to the Select Committee for consideration and reporting.

- 1.3 On the 15 May 2018, the FS COGTA made a presentation before the Select Committee and provided rationale for the intervention. The Select Committee then decided to visit the MAP on 25 June 2018, the Select Committee conducted loco inspection to the above-mentioned local municipality in order to interact with all the critical stakeholders.
- 1.4 Having conducted the loco-inspection in Maluti- A- Phofung Local Municipality in Free State and interacted with the internal and external stakeholders of the municipality, the Select Committee reports in terms of Rule 102 to the National Council of Provinces (NCOP) as follows:

## **2. Objectives of the Loco –Inspection**

- 2.1 The main objective of the loco-inspection was to interact with the internal and external stakeholders in order to solicit their views about the constitutional, procedural and substantive matters related to the invocation of section 139(1) (b) of the Constitution at the local municipality.

## **3. Composition of the Delegation**

- 3.1 The delegation of the Select Committee composed of the following Members of Parliament and Officials: Hon J Mohapi(ANC),Free State; Hon T Wana (ANC), Eastern Cape; Hon M Chetty (DA), KwaZulu-Natal; Mr TM Manele, Committee Secretary (Committee Section); Mrs T Mpapela, Content Adviser (Committee Section).

## **4. General Overview of the Loco Inspection at Maluti- A- Phofung Local Municipality**

- 4.1. On the 25 June 2018, the Multi-Party delegation of the Select Committee interacted with stakeholders at MAP about the section 139(1) (b) intervention. The Chairperson of the Select Committee in outlining the purpose of the session alluded to the Constitutional provisions as they relate to invocation of section 139 interventions.

- 4.2. He further advised, that the Select Committee will not rubber stamp the decision of the FS COGTA but will ensure adherence to substantive, procedural and Constitutional aspects of the intervention. He also assured the stakeholders that the Select Committee has a responsibility and duty to ensure that any intervention is not used to settle political scores.
- 4.3. Various stakeholders were afforded an opportunity to voice their opinions about the section 139(1) (b) at MAP and they included, Chief Whips of Political Parties, ward committees, traditional leaders, SALGA, youth forums and organised labour.
- 4.4. The MEC of COGTA (FS) led the delegation, which included the acting Head of Department and other senior officials.
- 4.5. The Provincial Treasury delegation led by Acting Head of Department made inputs in relation to support intervention initiatives in the municipality
- 4.6. The newly appointed Mayor and the Speaker of the Council led the MAP delegation, which also included the appointed administrator who reported on progress up to date.

**5. Presentation by the Department of Cooperative Governance and Traditional Affairs (COGTA) on Section 139 (1) (b) of the Constitution in Maluti- A Phofung Local Municipality**

- 5.1. The MEC of COGTA recognising that an extensive presentation was already done to the Select Committee on 15 May 2018 provided a summary of key issues. The MEC assured the stakeholders about adherence to substantive, procedural and constitutional requirements including the notices issued to Minister of COGTA and NCOP.

- 5.2. The MEC also briefly spoke about some of the challenges that led to the invocation of section 139 (1) (b) at MAP. The stated challenges reported included political tensions within the MAP Council; service delivery challenges; protest actions and conflict between the administration and elected officials.
- 5.3. The Acting HOD also reported about non-functionality of certain ward committees, non-compliance by MAP in respect to B2B reporting and vacancy rate as also among issues that led to the Provincial COGTA to invoke section 139(1) (b) at MAP.

## **6. Presentation by Provincial Treasury**

- 6.1. The Provincial Treasury reported on challenges they noted as a going concern that were facing the MAP which included the inability to meet its financial obligations; liabilities far exceeding the assets including a huge debt owed to Eskom; poor revenue collection, non-submission of section 47 reports and vacant position of the CFO.
- 6.2. The Provincial Treasury reported that despite offering their support to MAP in form of advice and inputs in relation to budget and financial aspects, their inputs were disregarded and were not implemented by the MAP. The Provincial Treasury reported that the disregard for their offered support and input led to 290% increase in irregular expenditure.

## **7. Presentation by administrator on progress made since the commencement of the intervention**

- 7.1. The Administrator reported that on his assumption of duty at the MAP, there was no billing in system in place leading to non-collection of revenue by at least 10 the months. The administrator reported about an adopted new billing system in place, and about statements of accounts issued to customers

- 7.2. The administrator reported that MAP is prioritising and trying to service the Eskom debt. He indicated that there is a draft budget in place, which will be adopted on next Council sitting.
- 7.3. The presence of the administrator has also led to adoption of a viable financial recovery plan with the assistance of the Provincial Treasury and FS COGTA.
- 7.4. The MAP has also developed a draft organisational structure and the process is in place to consult with labour unions. Administrator also reported about the resuscitation of local labour forum.
- 7.5. The payment on time of salaries and third party commitments including settlement of outstanding arrears on third party payments. The administrator reported that the MAP has entered into payment agreements with third party companies currently owned by the local municipality and agreement has been entered with the organised labour about settling the outstanding contributions over a period of 4 months ending in July 2018.
- 7.6. The process of filling in of critical vacancies has been initiated with an advertisement with closing date of 22 June 2018 for CFO and other senior managers.
- 7.7. The presence of the administrator at MAP local municipality has led to reviewing of all contract with various service providers and this exercise has led to a termination of contract with cash collecting Services Company. The administrator assisted on this task by the State Law advisors.
- 7.8. The Administrator has reversed a number of illegal appointments leading to reduction of the salary wage bill.
- 7.9. The MIG spending has increased and a number of key projects are progressing very well with most nearing completion. The MAP has also received deployment of three engineers through MISA.
- 7.10. The administrator has also initiated the process to develop a revenue enhancement strategy.
- 7.11. The Administrator also spoke about the establishment of a B2B task team, which is a condition, attached to the Minister's concurrence with the section 139(1) (b).

## **8. Presentation by South African Local Government Association (SALGA)**

- 8.1. SALGA reported being on board about the intervention at MAP and, voiced support for the section 139(1) (b) invocation. SALGA also voiced a need to be involved in the monitoring of the progress at MAP in order to ensure that the financial recovery plan is clear with short and medium term goals. SALGA also advised and advocated for proper and adequate support if the intervention is to be successful.
- 8.2. The SALGA also spoke about the capacity building initiatives offered to municipalities, and an establishment of an academy. The established SALGA academy is aimed at formalising capacity-building support to municipalities. SALGA also reported that the current capacity building initiatives include induction to all newly appointed councillors and officials; portfolio based induction and leadership development programme done in partnership with tertiary institutions.

## **9. Opinions of Political Parties, Organized labour and Youth on intervention in terms of section 139 (1) (b) of the Constitution**

- 9.1. The African National Congress (ANC) welcomed and voiced support for the section 139(1) (b) intervention. The ANC also noted the progress since the arrival of the administrator at MAP.
- 9.2. The EFF voiced support for the section 139(1) (b) intervention and reported that as the organisations they had sponsored votes of no confidence against the former Mayor. The EFF reported that when the organisation observed that the Mayor was failing in her fiduciary responsibilities they had instituted votes of no confidence against the Mayor. The EFF also blamed the FS COGTA for not addressing challenges earlier. The EFF also raised the issue related to the CFO who has been seconded to another entity, but the MAP has advertised the position as a vacancy even although the CFO has not resigned as an employee at MAP.

- 9.3. The Dikwakwetla supported the intervention in terms of section 139 (1) (b), and further claimed that it was long overdue due to challenges experienced by the MAP. The Dikwakwetla also referred to the matter raised by the DA about the CFO. The Dikwakwetla recommended for recovery of funds misappropriated by officials both elected and non- elected.
- 9.4. The APC voiced support for the section 139(1) (b) intervention at MAP.
- 9.5. The representative of IMMATU welcomed the intervention but raised concerns with regard to the situation of the workers.
- 9.6. The representative of SAMWU noted the progress since the intervention especially concerning to third party and salary payments. However, SAMWU blamed the FS COGTA for failing to address challenges that led to workers going on strike for three months. The Union outlined how the non-payment of third parties had negatively affected workers seeking medical attention. The union also raised a number of issues negatively affecting workers including lack of resources, tools of trade and low staff morale. The union also reported about outsourcing of some services when there are employees with capacity inside the MAP Council.
- 9.7. The Ward Committees representative supported the intervention but also reported about non- functionality of certain ward committees which are receiving their stipends despite their non-functionality.
- 9.8. The representatives of youth formation welcomed the intervention, but raised a number of concerns regarding the presence of the administrator. The Youth formation reported that the students who had been awarded bursaries by the MAP have been expelled due to non- payment by the MAP. The youth formation also voiced concern about termination of EPWP and other CWP contracts since the arrival of the administrator at MAP. The youth formation requested for a skills audit at MAP.
- 9.9. The Traditional leaders voiced their support for the intervention.

**10. Select Committee Observations**

- 10.1. The Select Committee delegation noted the adherence to all constitutional and procedural requirements pertaining to invocation of section 139(1) (b) intervention at the Municipality.
- 10.2. The Select Committee observed, noted and voiced concerns about the huge debt owed by the Municipality leading to financial challenges that are compromising the provision of basic services. The Members were concerned about the fruitless and wasteful expenditure, which will come because of interests incurred on the huge debt owed by the MAP.
- 10.3. The Members voiced concern about the R2, 9 billion owed by the MAP to Eskom, making the MAP as number one in the top ten identified municipalities owing Eskom.
- 10.4. The Members noted a court action by Harrismith Business Chamber requesting to pay Eskom directly and its potential impact on revenue collection efforts by the MAP.
- 10.5. The Members voiced concern about using the MIG funding for municipal operations.
- 10.6. The Members noted the adoption of the new billing system, however wanted assurance that it is yielding positive results in terms of increasing the percentage of recovery.
- 10.7. The Members noted and appreciated the on time payment of salaries and third party commitments since the intervention, but also Members were concerned about the MAP current salary wage bill whether it is still within the requisite norm and the administrator's inability to confirm.
- 10.8. Members were concerned about the lack of political will as evidenced by the inter party political conflict and how it undermines delivery of basic services to the communities.
- 10.9. The Members noted the progress that is evident within the MAP ever since the invocation of section 139(1) (b) including the advertisement for appointment of critical personnel within the MAP.

- 10.10. The Members were concerned about the reported vulnerability of the ICT system of the MAP and its potential impact on bank accounts hacking.
- 10.11. The Members noted and strongly advised the MAP to tackle the issue of illegal electricity connections.
- 10.12. The Members noted the process underway to adopt a budget and advised against adoption of a budget in deficit.
- 10.13. Members voiced concern about public participation platforms aimed at engaging residents and how the MAP is failing to communicate its challenges with communities, which then led to wide spread protest actions.
- 10.14. The Members noted the lack of leadership shown by former Mayor in exercising her fiduciary duties including political interference on administration issues.
- 10.15. The Members noted the delay by the FS COGTA in tackling and addressing challenges before they escalated. The Members agreed that the FS COGTA should have intervened and supported the MAP when it failed to submit required reports.
- 10.16. The Members, although acknowledging the support by SALGA but voiced concern about SALGA's inability to detect and diagnose challenges early enough to divert invocation of interventions.
- 10.17. Members also noted and appreciated efforts by the Provincial Treasury to engage various departments to donate fleet of vehicles to MAP instead of renting them.
- 10.18. Members noted the poor socio- economic status of the MAP as contributing to poor revenue collection but also noted the inability to utilise resources effectively as another contributing factor.
- 10.19. Members noted and appreciated the ongoing forensic investigations on financial mismanagement.

## **11. Select Committee Recommendations**

- 11.1. Having conducted the loco-inspection and interacted with the internal and external stakeholders of the Maluti- A- Phofung Local Municipality, the Select Committee recommends to the National Council of Provinces as follows:
- 11.1.1. That the NCOP to approve the notice of intervention in terms of section 139 (1) (b) of the Constitution in Maluti- A- Phofung Local Municipality.
- 11.1.2. That the MEC of the Department of Cooperative Governance and Traditional Affairs should table a progress report to the National Council of Provinces regarding investigations in terms of section 106 of Municipal System Act conducted in Maluti- A- Phofung Local Municipality.
- 11.1.3. That the MEC of the Department of Cooperative Governance and Traditional Affairs should provide quarterly and exit reports to the National Council of Provinces on the progress made in report of intervention in terms of section 139 (1) (b) of the Constitution and in terms of section 106 of Municipal System Act.
- 11.1.4. That the Select Committee on Cooperative Governance and Traditional Affairs to conduct proactive oversight in collaboration with the Portfolio Committee on Cooperative Governance and Traditional Affairs in FS Provincial Legislature in order to assess the progress made in respect on intervention in terms of section 139 (1) (b) of the Constitution and section 106 of Municipal System Act.
- 11.1.5. The appointed Administrator to expedite the process of filing of vacancies for senior managers in order to ensure proper exiting and handing over when the intervention expires or terminated.
- 11.1.6. Forensic investigations to be conducted and affected officials to be subjected to consequence management
- 11.1.7. The MEC to ensure that the performance contract of CFO has a built in consequence management if the MAP receives a disclaimer audit opinion.

- 11.1.7. The Municipal council to implement wellness programmes for employees to boost staff morale.
- 11.1.8. The Provincial Treasury to conduct constant monitoring of the budget processes at MAP.
- 11.1.9. The South African Local Government Association (SALGA) in co-operation with Local Government Sector Education and Training Authority should facilitate training and capacity building for Municipal Councillors at Maluti-A-Phofung; to further deepen their understanding of their oversight role; legal framework and policies that govern the activities of the Municipality.
- 11.1.10. The Select Committee on Cooperative Governance and Traditional Affairs should ensure monitoring of the terms of reference of the Administrator and the implementation of the turn-around strategy through the application of Rule 91 of the National Council of Provinces.

Report to be considered

**3. REPORT OF THE SELECT COMMITTEE ON CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS INSPECTION IN LOCO ON NOTICE OF INTERVENTION, ISSUED IN TERMS OF SECTION 139(1)(b) AND (5) OF THE CONSTITUTION (1996), TO WALTER SISULU LOCAL MUNICIPALITY, DATED 26 JUNE 2018**

**1. Background and Overview**

- 1.1 The Select Committee on Co-operative Governance and Traditional Affairs, having considered the request by the National Council of Provinces (NCOP), to consider and report on the intervention notice invoked at Walter Sisulu Local Municipality in terms of section 139(1)(b) and (5) of the Constitution, the Select Committee reports as follows:

1.2 In terms of NCOP Rule 101, the Office of the Chairperson of the NCOP referred the notice of intervention by the Eastern Cape MEC for Cooperative Governance and Traditional Affairs, to the Select Committee for consideration and reporting. On 25 June 2018, the Multi-Party Delegation of the Select Committee conducted a loco inspection at Walter Sisulu Local Municipality.

## **2. Objective of the Loco Inspection at Walter Sisulu Local Municipality**

2.1 The main objective was to interact with the internal and external stakeholders of the Municipality in order to solicit their opinions on the constitutional, procedural and substantive matters related to the invoking of intervention in terms of section 139(1)(b) and (5) of the Constitution.

## **3. Composition of the Delegation**

3.1 The Select Committee delegation composed of the following Members of Parliament and officials: Hon J Mthethwa, KwaZulu-Natal (ANC); Hon D Ximbi, Western Cape (ANC); Hon M Oliphant, Northern Cape (ANC); Hon B Engelbrecht, Gauteng (DA); Mr N Mfuku, Content Adviser (Committee Section); Ms T Matthews, Researcher (Research Unit) and Mr N Mangweni, Committee Assistant (Committee Section).

## **4. General Overview of the Loco Inspection at Walter Sisulu Local Municipality**

4.1 On 25 June 2018, the delegation of the Select Committee interacted with senior officials of the Department of Cooperative Governance and Traditional Affairs, political party representatives in the municipal council (ANC, DA, and Maletswai Civic Association), the South African Local Government Association (SALGA) and external stakeholders of the Municipality.

4.2 The Departmental official made a presentation on the constitutional, procedural and substantive reasons for the intervention. The representatives of the political parties, Organised Labour and external stakeholders, further shared their opinions with regards to the intervention.

## **5. Presentation by Department of Cooperative Governance and Traditional Affairs**

5.1 At the time of its establishment, the Walter Sisulu Local Municipality inherited from the amalgamated Gariiep and Maletswai Municipalities, an Eskom debt to the value of R82,1 million. From its establishments, the Municipality had a budget deficit and inherited a dilapidated fleet and plant.

5.2 The Department established multi-disciplinary teams that were to support the Municipality in all the functional areas. The various work streams, developed support packages that outlined what the functionaries in the Municipality should implement.

5.3 It became clear to the Department that the Municipality was dragging its feet in implementing what was contained in the support plans. On numerous occasions, the Department continued to engage the Municipality as a form of support in addressing issues that had a recipe of hindering service delivery, weakening administration and negatively affecting financial management. Over and above the hands on support, financial support was also given to the Municipality in the form of transfers from the Department, to attend to matters that emerged through the amalgamation process. Regardless of the efforts by the Department in supporting Municipality, the Municipal Council failed to implement the support plans, thus leading to the failure in fulfilling its executive obligations.

5.4 In its sitting on 7 February 2018, the Provincial Executive Council (EXCO) resolved to approve the intervention in the affairs of the Municipality, in terms of section 139(1)(b) and (5) of the Constitution. An Administrator was appointed for a period of six months, subject to review with terms of reference, and assumed duties on 22 February 2018.

## **6. Terms of Reference of the Administrator**

6.1 The Administrator was appointed to discharge the following responsibilities:

- Facilitate the appointment of Municipal Manager as an Accounting Officer of the Municipality.
- Facilitate the appointments of the Chief Financial Officer (CFO) and other vacant Section 56 Managers.
- Assist in addressing the challenges currently confronting the Walter Sisulu Local Municipality, in respect to management or administrative challenges; financial management challenges and service delivery challenges.
- Ensure that the oversight structures of the Municipality are strengthened in order to be able to perform their functions effectively and efficiently so.
- Ensure that the supply chain management systems are in place for the smooth running of the procurement management processes.
- Facilitate the review of all financially related policies, especially the credit control and revenue collection policies.
- Attend to all legal matters that are confronting the Municipality, including litigations.
- Institute a forensic investigation on procurement management processes, including the irregular appointments of staff.

**7. Opinions of Political Parties and Stakeholders of the Municipality**

7.1 The delegation of the Select Committee solicited opinions of the political parties and external stakeholders of the Municipality. Their opinions are summarized as follows:

**8. Opinion of the African National Congress (ANC)**

8.1 The representative of the ANC tabled an opinion that supported the intervention. However, the debt owed to Eskom was a critical challenge for the Municipality. There are other service delivery challenges, like potholes.

**9. Opinion of the Democratic Alliance (DA)**

9.1 According to the representative of the DA, the amalgamation of Gariep and Maletswai Local Municipalities was a challenge, including the Eskom debt. What was needed is additional funding. Acknowledgement of the financial support from the Department of CoGTA, and the deployment of the Administrator was appreciated. Hence the intervention was supported. The representative of the DA also flagged issues related to employee benefits, specifically on outstanding pension fund amounting R24 million.

**10. Opinion of the Maletswai Civic Association (MCA)**

10.1 Besides supporting the intervention in the Municipality, the Association was unhappy about the composition of council committees. Reference was made of the provisions of section 160(8) of the Constitution, where it was stressed that members of a Municipal Council are entitled to participate in its proceedings and those of its committees in a manner that allows parties and interests reflected within the Council, to be fairly represented.

### **11.1 Opinion of Provincial SALGA**

11.1 Provincial SALGA has been part of the Interim Task Team on the amalgamation of municipalities in the Province. They were consulted by the MEC before the invocation of section 139 of the Constitution. Further, the intervention was supported since it was an intensification of section 154 of the Constitution, to build the necessary capabilities to assist the Municipality. Lastly, the Association was adamant that Eskom should review the current debt of the Municipality.

### **12. Opinion of Ward Committees**

12.1 The Ward Committees' representative protested that they were never consulted or informed about the intervention in the Municipality. However, the role and progress made by the Administrator was appreciated.

### **13. Opinion of Youth in Walter Sisulu Local Municipality**

13.1 The representative of the Youth in Walter Sisulu Local Municipality welcomed the intervention, since progress has been observed. However, there should be improved communication between Ward Committees, the youth formation and the Municipality. There is also a need for a youth desk in the Municipality.

### **14. Select Committee Observations and Opinion**

14.1 The notice of intervention in Walter Sisulu Local Municipality submitted by the MEC for Cooperative Governance and Traditional Affairs in Eastern Cape Province, complies with the provisions of section 139(2)(a)(ii) of the Constitution, meaning the NCOP was officially informed within 14 days after the intervention began.

- 14.2 Concerns were raised on what tangible deliverables were achieved in the past six months by the Administrator, in respect to cost containment measures on the operating expenditure, MIG spending, as well as the R23 million debt owed to employees' pension funds.
- 14.3 The Select Committee has noted the need to fill vacant positions of Municipal Manager, Chief Financial Officer (CFO), Director of Corporate Services and Director of Community Services, as these positions are critical for the successful implementation of the recovery plan.
- 14.4 The current situation in the Municipality indicates that there is limited in house experience for managing infrastructure projects, handling tender documents and meaningfully interacting with contractors. There is also limited scheduled maintenance of infrastructure taking place. These challenges make it difficult for the Municipality to spend the funds they have obtained from national government to assist them with infrastructure development. This was evident when the National Treasury withheld R10 million of the local government equitable share, with a view to substitute unspent grants totalling R10,1 million.

## **15. Recommendations**

- 15.1 Having conducted the oversight visit at Walter Sisulu Local Municipality and interacted with internal and external stakeholders, it is recommended that:
- 15.1.1 The NCOP approves the intervention in Walter Sisulu Local Municipality in terms of section 139(1)(b) and (5) of the Constitution.
- 15.1.2 The Eastern Cape Provincial Executive should intervene by imposing a recovery plan, aimed at assisting the Walter Sisulu Local Municipality to meet its obligations to provide basic services and its financial commitments.

- 15.1.3 The leadership in the Walter Sisulu Local Municipality should exercise adequate oversight over performance reporting and compliance with laws and regulations, as well as internal control.
- 15.1.4 The Administrator should fast-track the process of appointing and filling of section 57 Managers, and further assist the Municipality to ensure that the Service Delivery and Budget Implementation Plan (SDBIP) and the IDP are aligned with the Municipality budget, and has the support and confidence of the whole community.
- 15.1.5 The Administrator should table a report to the NCOP on the forensic investigations in procurement management processes, irregular appointment of staff and progress made on the payment of third parties, in particularly the R23 million debt owed to employees' pension funds. The report should be forwarded to the NCOP within one month, after the adoption of this report.
- 15.1.6 The Administrator should table an audit action plan to the NCOP, that addresses all the audit findings identified by the Auditor-General of South Africa. The report should be forwarded to the NCOP within one month, after the adoption of this report.
- 15.1.7 The Select Committee on Cooperative Governance and Traditional Affairs, in collaboration with the relevant Portfolio Committee on Cooperative Governance and Traditional Affairs in the Eastern Cape Provincial Legislature, should conduct a follow-up visit to the Municipality, to determine progress made on the intervention and the implementation of the Back to Basics programme.

15.1.8 The South African Local Government Association (SALGA), in co-operation with Local Government Sector Education and Training Authority, should facilitate training and capacity building for Municipal Councillors at Walter Sisulu, to further deepen their understanding of their oversight role, legal framework and policies that govern the activities of the Municipality.

15.1.9 The Select Committee on Cooperative Governance and Traditional Affairs should systematically monitor and review the implementation of the terms of reference of the Administrator, as well as the implementation of the municipal recovery plan, in accordance with Rule 91(2) of the NCOP Rules.

15.1.10 The Eastern Cape MEC for Cooperative Governance and Traditional Affairs should table quarterly progress report to the NCOP on the performance and implementation of the Back to Basics pillars in the Municipality, including the filling of the senior management vacant positions.

Report to be considered.

#### **4. REPORT OF THE AD HOC COMMITTEE ON THE FUNDING OF POLITICAL PARTIES ON THE *POLITICAL PARTY FUNDING BILL* [B33 - 2017] (NATIONAL ASSEMBLY- SECTION 75), DATED 26 June 2018**

The Ad Hoc Committee on the Funding of Political Parties, having considered the *Political Party Funding Bill* [B33 – 2017], referred to it, and classified by the Joint Tagging Mechanism as a section 75 Bill, reports as follows:

##### **1. Introduction**

During 2017 the National Assembly resolved to establish an *ad hoc* committee to, *inter alia*, enquire into and make recommendations on funding of political parties in national and provincial legislatures. An extensive public participation process followed, culminating in the passing of the *Political Party Funding Bill* by the National Assembly on 27 March 2018 and the Bill's transmission to the National Council of Provinces (NCOP) for concurrence. The NCOP established an Ad Hoc Committee on the Funding of Political Parties, on 18 April 2018, and the Bill was referred to the Committee on 19 April 2018.

##### **2. Process followed**

The Committee placed advertisements in the print media in all 11 official languages, calling stakeholders and interested parties to comment on the Bill. Eleven written submissions were received, as well as nine requests to make oral presentations. After considering the written submissions, the Committee invited all who requested to make oral presentations to do so. Eight stakeholders accepted the invitation and subsequently attended a public hearing on 20 June 2018 to make oral submissions. In addition to technical briefings by the legal and content advisers, the Committee also invited National Treasury and the Independent Electoral Commission (IEC) to give their views on the Bill during a meeting on 6 June and a follow-up meeting on 13 June 2018.

### **3. Political Party Funding Bill [B33 – 2017]**

The Bill retains the existing Represented Political Party Fund, which is funded from public money, and establishes a new fund, the Multi-Party Democracy Fund, which is to be funded from private sources. The funds will be administered by the IEC. Most of the provisions regulating the funds are drawn from the Public Funding of Represented Political Parties Act (Act No 103 of 1997).

The Bill regulates direct private donations to political parties and prohibits donations from –

- Foreign governments and foreign persons (except for the purpose of training, skills or policy development);
- State-owned enterprises (SOEs);
- Organs of state; and
- Proceeds of crime.

The Bill limits the amount any person or entity can donate in a financial year to R15 million; and prohibits donations made to a member of a party, except if the donation is for political party purposes and accepted on behalf of the party. The Bill requires the disclosure of all donations above R100 000 to the IEC by the political party and the donor, and the IEC must publish the donations disclosed to it on a quarterly basis. The Bill states that these disclosure requirements do not detract from the right to access to information under the Promotion of Access to Information Act (Act No 2 of 2000).

The Bill imposes accounting and reporting obligations on political parties and provides for unspent money from the funds at the end of the financial year and if a legislature is dissolved or its terms expired.

With regard to enforcement, the Bill gives the IEC monitoring and inspection powers and powers to suspend payments of money and recover money irregularly received or spent. The Electoral Court is given the power to review decisions of the IEC and to impose administrative fines.

#### **4. Submissions by stakeholders**

##### **4.1 Mr J Powell**

Mr Powell proposed that Clause 3(5) be deleted, as in his view, it limited transparency. He further proposed that the requirement that the funds be invested with the Public Investment Corporation (PIC) be deleted, as this was a risky investment. With regard to Clause 6(1) and (6), he proposed to change the basis of the allocation of funds to political parties to those represented in national and provincial legislatures to those parties that have collected signatures (number to be assessed), which may not be collected by persons who are remunerated by the party.

##### **4.2 Mr F Strydom**

Mr Strydom was of the opinion that political parties should fundraise on their own and should be transparent on figures, and then budget on how they are going to use the funds.

##### **4.3 Mr S Xaba**

Mr Xaba inquired whether Parliament could help raise funds for disabled students, if they could fund political parties. He was further of the opinion that political parties that excluded the participation of disabled people, through the failure to provide for sign language or Braille, or did not have disabled people as part of their executive and did not support Early Childhood Development for disabled children, should not receive political party funding.

##### **4.4 Free Market Foundation**

The Free Market Foundation (FMF) submitted that the obligation on a political party and donor to disclose donations above a prescribed threshold, as contained in Clause 9 of the Bill, would mean that a donor may be victimised. The FMF was of the opinion that whereas the Bill was intended to give voice to international anti-corruption measures agreed to by South Africa, it may have the opposite effect if it was enacted now.

#### 4.5 CASAC

The Council for the Advancement of the South African Constitution (CASAC) recognised that the Bill was the product of months of extensive deliberations and wide-ranging public participation and the engagement of experts. CASAC further noted that this process would set South Africa's political party finance legislation as amongst the most transparent and accountable in the world. The Council urged the NCOP to pass the Bill in its current form to avoid unduly delaying its implementation. However, if the Committee was to propose amendments, CASAC submitted the following three proposed amendments:

- With respect to Clause 6, CASAC submitted that the appropriate formula for the distribution of funds under the Multi-Party Democracy Fund, was is 50 percent on the basis of proportionality and 50 percent on the basis of equity, because the new formula may not pass constitutional muster.
- With respect to Clause 9, CASAC proposed that the prescribed threshold in terms of subsection 1(a) should be lowered to R50 000.
- In Clause 10, the Council felt that the wording could be improved to allow for donors to make donations for *bona fide* financial assistance, such as a study bursary.

#### 4.6 Auditor-General of South Africa

The Auditor-General of South Africa (AGSA) indicated that it supported the Bill, but was of the view that Clause 12(5) was in conflict with section 188 of the Constitution, because it was not clear whether the funding of political parties from the Represented Political Parties Fund was for a public purpose. The AGSA further submitted that political parties should not be audited by the AGSA because they were not accountable to Parliament for their running operations and the spending of their funds. Thirdly, the AGSA pointed out that it was in no position to take on more audits.

#### **4.7 COSATU**

The Congress of South African Trade Unions (COSATU) welcomed the Bill and its objects, and expressed support specifically for the equitable and proportional representation-based party funding; the prohibition of donations from foreign government and state agencies, South African state organs and SOEs; and proceeds of crime. However, COSATU opposed the principle of expanding public funding of political parties in a climate of austerity, poor service delivery and state and SOE job cuts. It further proposed that Clause 9(1) be deleted, to enable full transparency. It was COSATU's opinion that any dilution of this principle would put the Bill's progressive objectives at risk.

#### **4.8 My Vote Counts**

My Vote Counts (MVC) was of the opinion that the Bill should include public funding for political parties and independent candidates at local government level from the Multi-Party Democracy Fund.

MVC further proposed the following amendments:

- In Clause 1, “voluntary services” should be included in the definition of “donation in kind” and provision should be made to quantify the services for the purposes of the threshold for disclosure. The Bill should also regulate disclosure of political party investment vehicles.
- In Clause 3, MVC proposed the deletion of subsection (5), which allows for a donor to request that their identity or the amount contributed to the Multi-Party Democracy Fund not be disclosed.
- In Clause 5, to include a provision for the costs of the administration of the Multi-Party Democracy Fund to be paid for from the moneys deposited in the Fund itself (between 3 and 5 percent).
- With regard to Clause 6, MVC submitted that the formula should be 50/50.
- In Clause 7, MVC submitted that the permissible categories of expenditure of moneys allocated from the funds, were vague and open to interpretation.

- With regard to Clause 8, MVC felt that foreign entities should not be allowed to donate to political parties for “policy development” because the term was vague and foreign influence may be dangerous for our democracy. MVC further submitted that donations from companies doing business with the State should be prohibited; and that the limit that a single donor could donate should be lowered, as R15 million could make a political party entirely dependent on a single donor. It was proposed that the amount should be determined by what an average South African earns in a year, namely R34 644 per donor per financial year.
- Regarding Clause 9, MVC proposed that the prescribed threshold be lowered to R10 000, as R100 000 may be enough to influence a political party. In addition, subsection (3) should state to that the IEC should publish the information on a public platform.
- In Clause 10(1), MVC proposed that a member of a political party must not be allowed to accept donations for party political party purposes; and that all donations should go directly through the party.

#### **4.9 Sanef and amaBhungane**

The South African National Editors’ Forum (Sanef), together with the amaBhungane Centre for Investigative Journalism, submitted that the Bill appeared to be silent on dividends or returns that political parties may receive by dint of an ownership stake in a company or any other form of investment. The intention may be for dividends to be treated as donations, in which case they would be subject to disclosure if above the prescribed threshold. However, it appeared that as soon as a party was entitled to benefits by dint of equity it holds or any other investment, it would no longer a donation and would not have to be disclosed. They felt that all dividends and other investment income should be disclosed in sufficient detail to reveal underlying conflicts of interest and for the audited financial statements and opinion to be made public.

Sanef and amaBhungane further proposed the following amendments:

- In Clause 1, “donation in kind” is defined with the effect that such donations are also subject to the transparency provisions of the Bill. However, the definition excludes “personal services provided on a voluntary basis”, meaning that an individual donation of skills will never have to be disclosed regardless of value. In addition, some services ordinarily rendered at a fee, such as accounting, management consulting, legal or public relations advice may amount to a very substantial benefit if provided voluntarily. Such a benefit should be disclosed if it exceeds the threshold for the disclosure of other donations, as the risk of undue influence is no different whether a donation is in cash or in kind. They therefore proposed that, after “(b) does not include personal services provided on a voluntary basis”, the following be inserted: “except where the cumulative value of such services provided by any person over a twelve-month period exceeds the prescribed threshold referred to in section 9(1)(a);”.
- In Clause 3, subsection (5), they proposed that “who contributes below a prescribed threshold” be inserted in line 21, between “3(a)” and “may request”; and that the following new subsections be added: (6) The Commission must publish all contributions other than details of contributions envisaged in subsection (5) on a quarterly basis in the prescribed form and manner; and (7) The Commission must also publish all such contributions during an election year one month before an election, should it fall on a date other than a quarterly publication.
- With regard to Clause 8, they proposed that the definition of “donor” should include the concept of “substantially related sources” including family members, companies, subsidiaries and third parties.
- Regarding Clause 9, it was proposed that all donations must be disclosed to the IEC and not just donations above the threshold.
- Sanef and amaBhungane submitted that the prohibition on circumventing any provisions of Chapter 3, contained in Clause 10(3), did not go far enough; and that it should also apply to the rest of the Bill.

#### **4.10 Right2Know**

Right2Know submitted that political parties should be required to disclose their previous spending on elections. They further proposed the following amendments:

- With regard to Clause 6, it was proposed that the formula to allocate public funding should be adjusted to promote political diversity, with a greater proportion of funds to be shared equally and a lesser amount to be shared proportionally.
- In Clause 8, a complete ban on donations from private companies doing business with the state was proposed; and they were further of the opinion that the Bill should prohibit party investment vehicles from doing business with the state.
- With regard to Clause 9, Right2Know indicated that the prescribed threshold of R100 000 was too high and should be reduced to no higher than the average household's monthly income. They also submitted that Clause 9(3) was vague; and should state exactly how it should be disclosed.

#### **4.11 Corruption Watch**

Corruption Watch (CW) made the following submissions:

- In Clause 1, the definition of "foreign person" needs to be amended to include companies registered in South Africa that are owned or controlled by foreign entities, which could be a loophole to circumvent the prohibitions.
- With regard to Clause 6, the proposal was that the allocation of funds should be equal amongst all represented political parties.
- In Clause 8, CW proposed that all donations from companies that do business with the state should be banned; that the beneficial ownership of investment vehicles owned by political parties that make donations should be made publicly available; and that the exception to the prohibition on foreign funding in respect of political party policy development would lead to foreign influence over the policy of the political parties and must be deleted.

- CW submitted that the Bill should require Parliament to make public the IEC reports submitted to the National Assembly in terms of Clause 22.

#### **4.12 EFF**

The Economic Freedom Fighters (EFF) indicated that it welcomed the prohibition of donations from foreign governments or persons, except for skills and policy development; as well as the requirement for all political parties to disclose the donations they received. However, the EFF submitted that the funding mechanisms in the Bill were inadequate; particularly the formula used to determine the equitable and proportional distribution of funds to political parties. In this regard it was proposed that the split between equitable and proportional distribution be done on a 50/50 basis.

The EFF further indicated that the key reason it rejected the Bill in its current form, was that the wording of Clause 10 would result in the limitation and possible violation of the constitutional right to freedom of association; and would deter people from becoming members of political parties and politically engaged citizens. It therefore proposed the following new wording for Clause 10(1): “No person or entity may deliver a donation for political party purposes, to a member of that political party, other than for the realisation of that party’s political objectives.”

### **5. Observations/Findings**

The Committee noted and deliberated on all the issues raised in the submissions and during the briefings and public hearings, including the following:

- 5.1 There is a general acceptance of the intention of the Bill to regulate direct private donations to political parties.
- 5.2 There is a general acceptance of the intention of the Bill to prohibit donations from foreign governments and foreign persons, except in respect of donations for the purpose of training, skills or policy development; from state-owned enterprises, organs of state and proceeds of crime.

- 5.3 The Bill intends to place a cap on how much any person or entity can donate in a year. Further, the Bill prohibits donations made to a member of a party, except if the donation is for political party purposes and accepted on behalf of the party.
- 5.4 The Bill requires the disclosure of all donations above a prescribed threshold to the IEC by the political party and the donor.

The Committee further noted the concerns raised with regard to the following clauses that were perceived not to be in line with the Constitution:

- 5.6 The Auditor-General of South Africa (AGSA) submitted that Clause 12(5) was in conflict with section 188 of the Constitution, because it is not clear whether the funding of political parties from the Represented Political Parties Fund is for a public purpose.

The view of the Committee is that section 188(1) gives the AGSA the power to audit and report on the accounts and financial statements of “any other institution or accounting entity required by national legislation to be audited by the Auditor-General.” Section 188(2) states that in addition, subject to any legislation, the AGSA may conduct an audit of “any institution that is authorised in terms of any law to receive money for a public purpose”. The Bill also makes it discretionary for the AGSA to conduct an audit in terms clause 12(5). Both the Preamble and Clause 7 of the Bill make it quite clear that the funds from the Represented Political Party Fund is to be used for a public purpose. In any event, a political party falls within the ambit of section 188(1)(c) of the Constitution.

Parliament is mandated in terms of section 236 of the Constitution to regulate the funding of represented political parties and have done so in terms of this Bill, which includes making political parties account to Parliament through the IEC. Further, Clause 12(5) makes it discretionary for the AGSA to conduct such audits.

- 5.6 CASAC, My Vote Counts, Corruption Watch and the EFF submitted that the appropriate formula for the distribution of funds under the Multi-Party Democracy Fund was 50 percent on the basis of proportionality and 50 percent on the basis of equity, because the new formula may not pass constitutional muster.

The view of the Committee is that the formula is the product of extensive multi-party negotiations and was agreed to by all parties, other than one, in the National Assembly. Furthermore, the Committee was of the view that the new formula is in line with section 236 of the Constitution. This section provides that “To enhance multi-party democracy, national legislation must provide for the funding of political parties participating in national and provincial legislatures on an equitable and proportional basis”.

- 5.7 CASAC and the EFF submitted that the wording of Clause 10 could result in the limitation and possible violation of the constitutional right to freedom of association; the EFF indicating that it would deter people from becoming members of political parties and politically engaged citizens.

The view of the Committee is that Clause 10 is clear: Members of political parties may only receive donations if it is for party political purposes and may only do so on behalf of a political party. Further, there is no possibility that a court would interpret the provision as preventing donations of a bona fide financial assistance to a person who happens to be a member of a political party. Again, when interpreting any legislation, the courts are expected to prefer any reasonable interpretation of the legislation that is consistent with the Constitution over any interpretation that is inconsistent with the Constitution. The same approach is also expressed in section 39(2) of the Constitution and stipulates ‘When interpreting any legislation every court must promote the spirit, purport and objects of the Bill of Rights’.

- 5.8 Despite some of the concerns raised, the Committee noted that there was a high expectation that the Bill be finalised by Parliament and enacted into law before the next general elections.

## 6. Conclusion

Having considered the *Political Party Funding Bill* [B33 – 2017] and submissions made by stakeholders, the Committee recommends the adoption of the *Political Party Funding Bill* [B33 – 2017] without proposed amendments.

Report to be considered.