

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

---

---

**ANNOUNCEMENTS,  
TABLINGS AND  
COMMITTEE REPORTS**

---

---

THURSDAY, 15 NOVEMBER 2018

---

---

**TABLE OF CONTENTS**

**ANNOUNCEMENTS**

**National Assembly**

1. Return of Bill for concurrence..... 2
2. Referral to Committees of papers tabled ..... 2

**TABLINGS**

**National Assembly and National Council of Provinces**

1. Speaker and Chairperson ..... 3
2. Minister of Energy ..... 3

**National Assembly**

1. Speaker ..... 3

**COMMITTEE REPORTS**

**National Assembly and National Council of Provinces**

1. Constitutional Review Committee..... 4

## National Assembly

1.	Cooperative Governance and Traditional Affairs .....	36
2.	Cooperative Governance and Traditional Affairs .....	51
3.	Higher Education and Training .....	57
4.	Arts and Culture.....	67
5.	Trade and Industry.....	69
6.	Trade and Industry.....	77

## ANNOUNCEMENTS

### National Assembly

#### The Speaker

#### 1. Message from National Council of Provinces to National Assembly in respect of Bills passed by Council and returned to Assembly

(1) Bill amended by Council and returned for concurrence on 15 November 2018:

- (a) **National Health Laboratory Service Amendment Bill**  
[B 15D – 2017] (National Assembly – sec 76).

The Bill has been referred to the **Portfolio Committee on Health** of the National Assembly.

#### 2. Referral to Committees of papers tabled:

(1) The following papers are referred to the **Portfolio Committee on Transport** for consideration and report. The Report of the Independent Auditors on the Financial Statements and Performance Information is referred to the **Standing Committee on Public Accounts** for consideration:

- (a) Financial Report of the Air Traffic and Navigation Services Company Limited (ATNS) SOC Limited for 2017-18, including the Report of the Independent Auditors on the Financial Statements and Performance Information for 2017-18.

## TABLINGS

### **National Assembly and National Council of Provinces**

#### **1. The Speaker and the Chairperson**

- (a) Monthly Financial Statements of Parliament – October 2018, tabled in terms of section 54(1) of the Financial Management of Parliament and Provincial Legislatures Act, 2009 (Act No 10 of 2009).

#### **2. The Minister of Energy**

- (a) 2018 Third Quarterly Report of the National Conventional Arms Control Committee (NCACC) for July – September 2018, tabled in terms of section 23(1) (c) of the National Conventional Arms Control Act, 2002 (Act No 41 of 2002).

### **National Assembly**

#### **1. The Speaker**

- (a) Petition from residents and traditional leaders of Ward 7, Maruleng, Limpopo, calling on the Assembly to investigate the availability of water in the area, submitted in terms of Rule 347 (Ms D Van der Walt).

Referred to the **Portfolio Committee on Water and Sanitation** for consideration and report and the **Portfolio Committee on Cooperative Governance and Traditional Affairs**.

---

## COMMITTEE REPORTS

### National Assembly and National Council of Provinces

#### **1. Report of the Joint constitutional review committee on the possible review of Section 25 of the Constitution, Dated 15 November 2018**

##### **1. INTRODUCTION**

“Review Section 25 of the Constitution and other clauses where necessary, to make it possible for the state to expropriate land, in the public interest without compensation, and propose the necessary constitutional amendments where necessary. In doing so, the Committee is expected to engage in a public participation process in order to get the views of all stakeholders about the necessity of, and mechanisms for expropriating land without compensation”

The Constitutional Review Committee (CRC) was mandated by the two Houses of Parliament [National Assembly (NA) and the National Council of Provinces (NCOP)], as outlined in the resolution stated above, to embark on a process to establish the views of the public on the possible review of s25 of the Constitution to allow for the State to expropriate land in the public interest without compensation, and mechanisms for expropriating land without compensation. In doing so, the Committee was expected to engage in a public participation process in order to get the views of all stakeholders about the necessity of, and the mechanisms for expropriating land without compensation. Sections 59(1)(a) and 72(1)(a) of the Constitution mandate and provide for the NA and the NCOP to facilitate public involvement in the legislative and other processes of both Houses and their committees. The Committee therefore embarked on an extensive public participation process by conducting public hearings, calling for public submissions and oral submissions by members of the public to the committee.

The terms of reference for the assignment were derived from the resolutions of the two Houses of Parliament. The guiding questions for the assignment were the necessity of, and mechanisms for expropriating land without

compensation. The Committee had to devise a strategy to ensure the successful completion of the task before it and report to the Houses of Parliament. The following sub-section focuses on the method adopted by the Committee to complete the task and/or assignment.

## **2. METHODOLOGY**

This section outlines the process adopted by the committee in responding to the assignment conferred onto it by the Houses of Parliament. Public participation was key to eliciting the views of the public on the possible review of s25 of the Constitution and establishing mechanisms for expropriating land in the public interest without compensation. Various forms of public participation approaches were adopted by the committee, i.e. Public Hearings, Written Submissions, and Oral submissions to the committee.

### **2.1 Public Hearings**

Public hearings were held in all provinces targeting certain districts and local municipalities/towns in those districts, see Table 1. Public hearings in provinces were held from the 26 June to 4 August 2018. The Committee conducted public hearings over a period of six weeks.

In order to enable the committee to conduct this work within the available time and to broaden coverage, Members of the committee were divided into two groups of 11 Members in each group. One group focused on inland provinces whilst the other went to coastal provinces. Public hearings were held simultaneously by both groups. The Committee spent at least three to four days per province visiting about three to four areas/towns per province. The Committee sought to listen to and/or engage members of the public on the necessity of, and mechanisms for expropriating land without compensation.

***Prior to Public Hearings***

The Committee hosted a preparatory colloquium in order to workshop s25 of the Constitution, its origins and progress made through implementation of s25. The colloquium explored both successes and limitations of s25, especially interpretational issues and implementation challenges. The colloquium laid a foundation for Members to engage with the inputs from members of the public.

The Committee also deployed a team of public educators to selected districts across all the nine provinces of South Africa to conduct public education on s25 of the Constitution. The main aim of public education was to raise awareness of the relevant clauses in s25 in order to enable members of the public to participate meaningfully in the discussions on s25 of the Constitution. Public education team also used that opportunity to conduct workshops on how to make oral submission on a complex matter in a short allocated time, and informed members of the public about the committee's public hearings programme, especially the relevant dates and venues for the public hearings.

The Communications Section of Parliament supported the committee by sending out media statements on the public hearings to be held in different areas of the provinces. In addition, the co-Chairpersons gave interviews to various media companies on the task of the committee with regards to possible amendment of s25 of the Constitution, including public submissions, both written and oral. Parliament also took reasonable steps to ensure that as many people as possible attended the public hearings. It organised transport for members of the public to be transported from various districts to the selected venues where the public hearings were held.

***Facilitation of the Public Hearings Sessions***

The public hearings started from 11am to 4pm and beyond depending on the number of people who would still be on the queue waiting to express their views on the matter. The 11am to 4pm timeframe therefore only served as a guide for the public hearings. The co-Chairpersons always started the hearings with an explanation of the background and purpose of the public hearings and laying out the rules of engagement. The approach was helpful to ensure that the public hearings were orderly. Members of the public were

urged to be patient and tolerant of each other's divergent views. Every person on the floor to address the committee was given an opportunity to speak without intimidation. The co-Chairpersons protected all speakers against intimidation.

Public hearings were conducted in a form of town halls style meetings in which the key principle followed was that it was about both sharing information about s25 and what it is about, as well as receiving inputs from members of the public, their views and perspectives in so far as it allows or does not allow for expropriation of land without compensation. To sum it up, the key focus was involvement and participation of as many people as possible at particular sites of public hearings. In that way, the committee afforded citizens of South Africa an opportunity for voicing their views and perspectives, and therefore having a say in the direction which the Country was going to take in so far as redressing the injustices of the past is concerned.

The co-Chairpersons, across the sites, ensured that there was a focus on the subject matter at hand and encouraged the speakers to indicate the necessity of, or lack thereof, of constitutional amendment to allow for expropriation of land without compensation. The speakers were encouraged, in their inputs, to transcend the usual and easy 'yes' or 'no' responses but to provide reasons why they thought it was necessary or not necessary or whether the current framing of the Constitution allows or does not allow for expropriation of land without compensation.

The co-Chairpersons read out and/or distributed copies of s25 of the Constitution to the public in order to ensure that there was awareness and understanding of this section. Where required, the reading of s25 was translated into the preferred languages to ensure fairness and enhancement of the understanding of the issues that the committee was concerned with. All speakers were given at least 3 minutes within which to state their position, share their views and make proposals in their own languages. The co-Chairpersons timed every speaker in order to ensure fairness to everyone that spoke and an indication was made to the speakers when their speaking time was over.

The committee received inputs from individuals, representatives of political parties, community leaders, traditional leaders, property owners, including land reform Communal Property Associations (CPAs) and Trusts, Non-Governmental Organisations (NGOs), Community-Based Organisations (CBOs), organised agriculture, lobby groups, trade union movements, researchers, traditional healers' associations, faith based organisations and other members of civil society in general.

Table 1: Distribution of Provinces and Towns for public hearings

Week	Delegation A		Delegation B	
	Province	Town	Province	Town
26 - 30 June 2018	Limpopo	Marble Hall, Mokopane Tzaneen Thohoyandou	Northern Cape	Springbok, Upington, Kuruman Kimberley
01 - 04 July 2018	Mpumalanga	Mbombela Ermelo Middleburg	Free State	Botshabelo, Welkom Phuthaditjhaba
17 - 19 July 2018	North-West	Taung, Mahikeng Rustenburg	KwaZulu-Natal	Vryheid Jozini, Pietermaritzburg Kokstad
26 - 28 July 2018	Gauteng	Westonaria Sedibeng Pretoria West	Eastern Cape	Umtata, Queenstown East London Jansenville
01 - 04 August 2018	Western Cape	Oudtshoorn, Beaufort West Cape Town	Western Cape	Citrusdal, Swellendam Cape Town



## 2.2 Written Submissions

In April 2018, the Committee put an advertisement in various national and local newspapers calling for members of the public to make submissions on the necessity of, and mechanism for expropriating land in the public interest without compensation. Members of the public were given until the end of May 2018 to provide the Committee with their views.

The date was subsequently extended following requests from some organizations to extend the closing date for submissions. Consequently, the date was further extended to the 15<sup>th</sup> June 2018 to enable further submissions to be taken by the Committee. The Communications team ensured, through the provision of interviews by co-Chairpersons and other means, that members of the public were aware of the extension of the submission date.

The submissions were received by Parliament in two ways viz. emails and hardcopies delivered to Parliament by the respondents. Emails and hardcopies were sent and/or delivered to the committee secretary as directed by the advertisement. Furthermore, certain respondents brought memory sticks with information brought in hardcopies.

The submissions received through a public call for submissions were managed by an external service provider after the closing date. The terms of reference for the service provider were as follows:

- **Response Handling:** that receipt of submissions is acknowledged mainly through emails, short messaging services (sms) and any other way possible.
- **Indexing and Data Capturing:** the information on members of the public is indexed and captured.
- **Data analysis and Report Writing/Production:** The above information must be analysed and a report written on the substance of the submissions. The analysis should also provide the committee with information on how many people were in support of or against the amendment of s25 of the Constitution. What are the arguments advanced by the respondents in support of or against the amendment of s 25 of the Constitution?

The data was prepared in the following manner to enable analysis to be conducted. The following fields of entry were aggregated from all the submissions received:

1. First Name
2. Last Name
3. Decision (“Yes, change the Constitution”; “No, don’t change the Constitution”; or “Undecided”)
4. Message (Open text)

The following data points were analysed:

1. Total number of submissions
2. Total number of “Yes” decisions
3. Total number of “No” decisions
4. Total number of “Undecided” decisions
5. Themes of open text messages

As required, the service provider analysed the information as noted above and produced a report. The summary of findings is presented later in this report.

### **2.3 Oral Submissions**

During the public call for public submissions described in 2.2 above, members of the public were asked to indicate whether they would like to make oral submissions to the committee. Initially, 42 individuals/organizations were identified for oral submissions. Later, the service provider provided the Committee with a list of 120 individuals/organizations that had requested an opportunity to make oral submissions. The support team checked for duplications, whether the submission was substantial, and established whether the respondent still wanted to come and present before the Committee. The 42 individuals/organizations that initially presented formed part of the list of 120 respondents provided to the committee by the service provider.

The first oral submissions took place in Parliament from the 4<sup>th</sup> – 7<sup>th</sup> September 2018. All 42 individuals/organizations were requested to come and address the committee. The views of these respondents were captured in the report on public submissions.

After deliberations on the list of 120 names provided by the service provider, the committee reached a consensus to reopen the oral submissions process and requested the committee secretariat to determine those who wanted to present before the committee, check whether the submission was substantive and contact the concerned persons/organization about presenting before the committee. A total of 21 respondents came to Parliament to make further submissions to the committee in addition to the 42 that initially came to present to the committee. These oral submissions took place on the 25<sup>th</sup> and 26<sup>th</sup> October 2018. This number brought the total number of individuals and organizations who made submissions before the committee to 63. In all, the committee spent six (6) full days listening to the presentations from members of the public.

The *modus operandi* during these sessions was to give presenters 10 minutes to present their views followed by questions from members of the committee. Once the questions were answered and/or points clarified, a session will end. This process was repeated for all presenters.

Having followed the methods described above for gathering the views of the public on the possible review of s25 of the Constitution, the next subsection provides a summary on public hearings, written and oral submissions to the committee.

### **3. SUMMARY OF PUBLIC SUBMISSIONS ON THE POSSIBLE REVIEW OF S25 OF THE CONSTITUTION**

The Resolutions of the two Houses of Parliament mandated the committee to ensure public participation in its work and processes. In response to this mandate, the committee conducted public hearings in all provinces, called for public submissions and lastly called on individuals and organizations to make oral presentations to it. This section of the report presents a summary of submissions from the public participation process undertaken by the committee.

### **3.1 Public Hearings**

Members of the public expressed their views on whether or not s25 should be amended and put forward their suggestions on mechanisms that could be used to enable government to expropriate land with or without compensation. The inputs of the public were summarized using the arguments for and against changing s25 of the Constitution:

#### ***For Expropriation Without Compensation***

The public's inputs demonstrated an overwhelming support for constitutional amendment and expropriation of land without compensation. However, there were varying points of departure. It was argued that s25 was an impediment to expropriation of land without compensation and therefore necessitated an amendment. Section 25(1), 25(2)(b) and 25(3) were identified as part of the problem because they protected "illegitimate" property rights acquired under the colonial and apartheid regimes. Moreover, the 1913 cut-off period for restoration of land rights in Section 25(7) was deemed to be arbitrary and necessitated the amendment.

Some respondents were of the view that the State should take responsibility for the issuing of title deeds to beneficiaries of redistribution programmes of government. It was also argued that, once the expropriation of land without compensation was achieved, all land must be transferred to the State and the State must allocate use rights to all citizens equitably. The role of traditional leaders on communal land was a contested terrain, some people believed that traditional leaders should own the land and others believed traditional leaders never owned the land and that the land belonged to the people.

To sum up, three broad views had emerged from the proponents of constitutional amendment and expropriation of land without compensation; namely, once expropriation of land without compensation was achieved, (i) the government should issue title deeds to the beneficiaries of the redistributive programme, or (ii) State custodianship (nationalisation) of all land, (iii) explore of mechanism of administration of communal land under traditional leadership.

In contrast, among those in favour of expropriation of land without compensation, one found a different line of argument that suggested that the Constitution in its current form was transformational in nature and allowed for expropriation of land with zero compensation under certain circumstances or below the market-value. In fact, they argued, s25 was written in such a manner that it did not guarantee the property rights in absolute terms. This line of argument referred to s25(2)(a) which states that property may be expropriated only in terms of law of general application for public purpose or in the public interest (defined to include the nation's commitment to land reform).

They further argued that the Constitution did not prescribe willing buyer willing seller approach. The guidance from the Constitution, in s25(3), was that compensation must be just and equitable. The section further attempted to define circumstances to be considered in determining a just and equitable compensation. In addition, those who held this line of argument referred to s 25(8) which states that “No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination”, provided that any departure from the provisions of this section is in accordance with the provisions of Section 36(1).

Section 36(1) is about limitation of rights. The Bill of Rights was also limited only in terms of law of general application. Therefore, an argument submitted under this line of thought was that there was no need to amend section 25 of the Constitution. What was needed was an amendment of the Expropriation Act, No. 63 of 1975 without delay so that it was in line with section 25 of the Constitution and clarified terms and conditions under which land could be expropriated without compensation in the public interest. Any further contestation could be brought before the Judiciary for clarification.

The different viewpoints discussed above, however, shared some common views about the importance of expropriation without compensation, or with a just and equitable compensation which may amount to zero or any amount that was below the market-value. These could be summarised as follows:

- A need to address the historical inequitable land ownership that resulted from the colonial and apartheid racial land laws, policies and practices. The legacy of the dispossession continues to date, 24 years after attainment of democracy.
- Emphatic rejection of the need to pay compensation was based on notions of illegitimate property rights through theft and murder of everyone that resisted conquest and occupation of his//her land.
- The current regime had failed to redistribute land at scale and pace expected. Less than 10% of White-owned agricultural land had been transferred, land reform programme under the current constitution had failed to deliver land to the landless.
- Expropriation of land without compensation was not an anti-White campaign, and was not meant to drive White farmers away. However, it was about transformation of South Africa to remedy the skewed patterns of land ownership emanating from the colonial and apartheid regimes.
- Skewed patterns of land ownership that continued to affect the lived reality of the landless majority, who lived under the most undignified of circumstances in the informal settlements and overcrowded areas in the former reserves. The ‘willing buyer, willing seller’ principle continued to frustrate all efforts to redistribute land.
- It was important to guard against corruption and nepotism when land is allocated.

### ***Against Expropriation Without Compensation***

As a starting point, those opposed to constitutional amendment argued that the rejection of expropriation without compensation did not mean that the proponents of this viewpoint did not support land reform. Speakers who expressed this viewpoint indicated that land dispossession that occurred under apartheid government was evil and a need for a redress was of utmost

importance. However, a constitutional amendment to ensure that expropriation was not subject to compensation was rejected. Those viewpoints hinged on the following:

- The entrenched protection of private property rights in the Bill of Rights. Any suggested amendment to expropriate land without compensation would threaten the existing constitutional architecture.
- The use of expropriation without compensation for political purposes hides government's inefficiencies in the implementation of land reform. The slow pace of land redistribution over the two decades was not a constitutional problem and was no reason why Parliament should amend it. The real challenge had been the waste of resources through maladministration and corruption, funds that could have been put to good use to accelerate land reform.
- The Constitution makes reference to legal and policy measures that could be used to address land redistribution.
- Parliament needs to accelerate processing of the Expropriation Bill which should subsequently be signed into law by the President.
- Expropriation without compensation would have devastating effects on the economy of South Africa. Venezuela and Zimbabwe were often referred to as examples of failed land expropriation policies. The ripple effect of such policy decision would be felt not only in the agricultural sector but also in banking sector, property, and export and trade industries. These effects would negatively affect the ability of the economy to create jobs which South Africans desperately need.

### **3.2 Written Submissions**

This section of the report presents the information, and analysis thereof, received during the public call for written submissions. Various themes emerged from the analysis of the information. Most respondents limited themselves to a yes or no to the amendment of s25 of the Constitution. The analysis also presented the committee with the number (and percentages) of

those who were in support or against the amendment to s25 of the Constitution, and those who were undecided about their views on the possible change to s25 of the constitution.

### ***Statistical Information***

A total of 630 609 submissions were received from the public call for written submissions. However, only 449 522 were valid, and analysis could be performed based on the contents of the submissions. The inquiries, unrelated, blank and duplicate submissions were excluded from the analysis and that brought the numbers down from 630 609 to 449 522 valid submissions, thus a variance of 181 087 submissions. Table 2 provides a summary of findings regarding the views of the members of the public.

**Table 1 Summary of Submissions**

<b>Total Submissions</b>	<b>Yes, change the Constitution</b>	<b>No, don't change the Constitution</b>	<b>Undecided</b>
<b>449 522</b>	153 849 (34%)	291 257 (65%)	4 416 (1%)

The table indicates that 65% of valid submissions were opposed to changing the constitution whilst 34% were in favour of amendment of the constitution. A further 1% was undecided on the matter.

### ***Arguments for amendment of s25***

Upon further analysis of the 449 522 submissions, 153 849 members of the public responded in favour of the change of the Constitution to expropriate land without compensation. There is a perception amongst those who responded 'yes' to changing the constitution that many people are without housing as the land prices are high and in private ownership, thus inhibiting them from having access to land for housing and to produce and/or grow food.

Many respondents who were in support of amending s25 also believed that land was taken from Blacks unfairly through apartheid government's manipulation of laws to create an unfair society which disadvantaged the Black people. They emphasized the need for a process that would redress and rectify the injustices of the past.



There were significant recommendations which members of the public attached to their 'yes' responses. They mentioned that agricultural land that was actively used for food production and contributed to job creation and the economy should be preserved and not expropriated. Government should allocate unused land for farming and invest in agricultural training institutions for skills development in order to empower 'new' farmers to promote success.

These members of the public also believed that the Constitution should be amended but expropriation should be without compensation. It was questioned whether land owned by the government will be expropriated without compensation too? The general consensus amongst the 'yes' submissions was that the current Constitution is not allowing any progress regarding the land restitution and redistribution in order to minimize the gap between the rich and the poor.

### ***Arguments Against Amending s25***

The numbers clearly indicate that majority of members of the public who made written submissions were against the amendment of the Constitution to allow for expropriation of land without compensation. Those who argued against the amendment of the Constitution were of the opinion that land cannot be taken away from owners without compensation as that constituted theft. The possible change of the constitution was labelled as unconstitutional, violation of human rights, international laws and amounted to 'reverse-apartheid'. Many respondents believed that the current s25 of the Constitution should be not be amended. Amending the section would be undoing all the positive changes implemented in the interest of the South African people and would be done so to suit political agendas.

Respondents stated that they did not want land expropriated without compensation as they had worked hard for what they have through blood, sweat and tears and questioned who would settle the bonds they have on their land if it is expropriated. It was argued that an amendment to allow for expropriation without compensation would result in a collapse of the economy, banking sector, loss of foreign investment and jobs.

### **3.3 Oral Submissions**

With regards to oral submissions to the committee, the following key issues emerged from the presentations:

#### ***3.3.1 About the Constitution***

Some presenters expressed the view that the Constitution is not an impediment to land reform. It allows for land reform and provides for various ways in which land reform can be done by government.

Section 25(2) permits expropriation of property provided that it was authorised in legislation. It was argued that there was a need for a law of general application through which government could expropriate land with or without compensation. People were of the view that this requires a review of pieces of legislation that would be used as a base and/or legal basis for expropriation of land.

The presenters noted that the failure of land reform programmes was not the failure of the Constitution but a failure of both legislation and its pragmatic application by the Executive. New legislation or legislative amendments can be introduced and brought to Parliament for consideration and eventual implementation by the Executive. The caution was that the legislative pieces introduced and passed by Parliament must be in line with the provisions of the Constitution.

Section 25(3) which deals with the just and equitable compensation, provides for the determination of compensation and the time and manner of compensation. Thus, there is flexibility and options on how this could be done.

Section 25(4) defines public interest to include land reform, any forms of reform to bring about equitable access to all natural resources of this country. No person should be arbitrarily denied access to land and other natural resources of the country.

Presenters proposed a need to balance the protectionist s25(1) – (3) and the transformative clauses of the Constitution. This balance is critical in determining requirements and decision making for expropriation of land whether it is means of compensation or not.

Some presenters argued for the development of an interpretation framework for the whole of s25 of the Constitution to guide government in implementation. This was over and above the use of legislation to guide expropriation of land with or without compensation.

### ***3.3.2 Arguments for Expropriation of Land Without Compensation***

The expropriation without compensation was supported in cases where:

- Land is abandoned.
- Neglected land is owned by absent landlords.
- Privately owned land that is not productive.
- Land belonging to the municipality and that is not in use.
- Idle land required for productive public use.
- Land whose value has been unfairly inflated due to massive State investment.
- Land whose owner benefited from unfair discriminatory loan during the apartheid era.
- Land offered by the owner to the State as a donation.
- Land held for speculative reasons but is needed for productive use.
- State land and land occupied by labour tenants historically.

An argument for altering of the current land tenure regime to address the slow pace of land reform and high costs of land redistribution was put forth by some presenters. Of main concern were people living on the farms, labour tenants, women and children who are often affected in a negative way especially when farms are sold or the main breadwinner became incapacitated to work.

The presenters implored Parliament to understand that 1) land reform process should consider land restoration for equal access by all farmers; 2) recognize that agricultural policies pursued by colonial and apartheid governments were biased towards White farmers and producers; 3) land dispossession enabled White ownership of most of the country's land; and 4) s25 disregards the influence of colonialism in the current patterns of land ownership.

An argument was presented that the South Africans were not presented with an opportunity to test the application of s25 (8). Section 25(8) states that no provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of s36(1). Section 36 is about the limitations of the rights, and s36(1) states that the rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom taking into account all relevant factors, including:

- a) The nature of the right;
- b) The importance of the purpose of the limitation;
- c) The nature and extent of the limitation;
- d) The relation between the limitation and its purpose; and
- e) Less restrictive means to achieve the purpose.

There was a sense from others that expropriation without compensation is illegal and therefore the s25 of the Constitution must be reviewed in order for expropriation of land without compensation is done legally. However, the legalization of this act must be based on the law of general application.

A view was expressed that the s25 in its entirety must be scrapped because White owned land was stolen from the Black people of this country.

The committee heard that South Africa needs to build on the Brazilian model which created a concept of a “social function” for rural land. Government must then ensure that land fulfils its social function and the failure to do so would be a reason to expropriate land without compensation.

Some presenters noted that government’s decreasing budget for land reform coupled with the failure of the “Willing Buyer, Willing Seller” policy/model meant that expropriation without compensation is regarded as just and equitable under the appropriate circumstances.

Section 25(6) provides for traditional communities to restitution of property. Section 25 (6) states that a person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress. Therefore, the 13% of communal land under the custodianship of traditional leaders must not be expropriated.

The committee heard that following expropriation, vulnerable groups such as women, farm dwellers, labour tenants, etc must be prioritized when land is redistributed.

### ***3.3.3 Arguments Against Expropriation of Land without Compensation***

Section 25 makes provision for land expropriation in the public interest. Thus government must take steps to ensure that there is expropriation of land in the public interest. In expropriating land in the public interest, fair compensation for expropriated land must be provided. Fair compensation could be very little or nothing depending on the formula that the department or government formulates for calculating compensation for land expropriation.

Others view this whole process on the possible review of s25 to enable State to expropriate land without compensation in the public interest as a political ploy shortly before the 2019 elections. Politicians are using this process as a mechanism to gain more votes in 2019.

Others argue that land was acquired through the occupation of vacant land, negotiations or as a result of a conquest.

The amendment of s25 is detrimental to rights enshrined in sections 3; 7; 9; 22 & 24 of the Constitution. These clauses relate to citizenship, rights, equality, freedom of trade, occupation and residence; and environment.

The amendment has the potential to undermine property rights. They further argued that properties are security for loans and banks invested over R1.6 trillion of South Africa's savings, salaries and investments in property loans. A decrease in property values could lead to the economic shocks both

the economy and the banking sector cannot afford. Most importantly, individual property owners will be affected negatively. In the event of a crisis, that would mean that government must step in to protect the depositors' funds.

Expropriation of productive farms may affect food security in the country. Government should take care not to expropriate productive farms and/or land.

### ***3.3.4 Impediments to Land Reform***

The following were identified as impediments to land reform by most presenters:

- Policy uncertainty;
- Failure to implement current provisions of the Constitution and land reform laws;
- Land audit, it is currently biased and not transparent;
- Paying for stolen land;
- Lack of political will;
- Corruption in the land reform process; and
- Failure of the oversight function of Parliament.

### ***3.3.5 What Needs to be Done?***

The presenters made proposals on how government could expedite land reform in the country. The presenters proposed the following:

### ***Theory Underpinning Land Reform***

- Spatial planning instruments must be used to earmark suitably located urban and peri-urban land for settlement purposes.
- Consider the findings and implement the recommendations pertaining to land reform in the High Level Panel (HLP) report.
- Consider the economic consequences of land expropriation.
- Review the structure of property rights in its entirety.
- Compensation should not remain an essential prerequisite for redress but rather public purpose as paramount to land expropriation.

- Need for a formula to calculate compensation. The formula will be used to determine when compensation should or should not be paid and how much would be regarded as fair compensation.

### ***Development and Support of New and Small Scale Black Farmers***

- Overhaul of State's technical, financial and physical architecture of support to farmers.
- Consider a blended finance model for land reform where the private sector match the funds committed by the State to establish new Black commercial farmers.
- The establishment of the National Land & Agrarian Trust to serve as a depository of all farms owned by the State.

### ***Legislative Framework***

- Expedite the passing of the Expropriation Bill in order to test what constitutes “fair and just” compensation in different circumstances.
- Draft and pass a Redistribution Bill to strengthen citizens by ensuring that State uses its power in the interest of all.
- Draft and pass a Protection of Informal Rights Bill to provide for basic protection of land rights of the poor. In addition, the Mineral & Petroleum Resource Development Act, and the Traditional Governance and Leadership Framework to be subjected to the provisions of the Protection of Informal Rights Bill.
- Develop a new Land Reform Framework Bill to address the role of local stakeholders and sub-divisions related to:
  - Sub-division of Agricultural Land Act 70 of 1970.
  - Provision of Land and Assistance Act 126 of 1993 as amended
- Draft and enact overarching tenure law that gives effect to the principle that South Africa belongs to all who live in it.
- Introduce a new law on land nationalization leading to all registered freehold rights being converted to long-term leaseholds.

### ***Custodianship of Land***

- State to have custodianship of land and administer land equitably on behalf of all citizens.

### ***Economic and Other Considerations***

- Establish a National Land Reform Fund with all citizens contributing to it.
- Establish the Office of the Adjudicator to look into matters related to expropriation.
- Creation of an Ombudsman for Land Reform.
- Establishment of government, business and civil society partnership to explore sustainable, evidence based land reform models.

### ***Alternative Dispute Resolution Mechanism***

- An alternative dispute resolution mechanism must be established to deal with any disputes that may arise out of land expropriation processes. This body must be independent of the Department of Rural Development and Land Reform.

## **4. SUMMARY OF THE PRESENTER'S VIEWS**

The following can be summarised from the views of the public with regards to the possible review of s25 of the Constitution to allow the State to expropriate land in the public interest without compensation.

### **4.1 Possible Review of Section 25 of the Constitution**

Two arguments emerged with regards to the possible review of s25 of the Constitution. One argument advocated for the retention of section 25 in its current form. These respondents argued that s25 allows for expropriation of land without compensation but the government had failed to expropriate land due to poor implementation of relevant legislation and policies. Furthermore, compensation for expropriated land can start at zero compensation. Therefore, a formula must be developed in order to ensure



that compensation starts at zero and could increase depending on the circumstances of expropriated land. The government should implement the current sections and questions on its interpretation could be resolved in a court of law. Section 25 in its entirety requires implementation and therefore the interpretations of its various clauses. These interpretations can be tested in a court of law.

Another argument was that whilst s25 implies that land can be expropriated without compensation, it should be amended to make it explicit that land can be expropriated without compensation.

#### **4.2 Land Reform**

Some members of the public emphasised the need for a land reform programme that will address and deal with the land dispossession of the indigenous people of the country. Land dispossession indigenous resulted in skewed land ownership patterns and these should be corrected. Also, land reform should address the structural challenge with regards to land ownership.

There is a need for land reform in order to promote reconciliation and unity among South Africans. Government was implored to take this opportunity to reconcile and unite South Africans irrespective of race.

Members of the public indicated that land reform must be done in order to address colonial and apartheid spatial arrangements in cities. They noted that Blacks in particular live in the periphery of the cities using a lot of their money paying for transport costs to get to their workplaces which are closer to the cities. Also, the spatial arrangement in cities still perpetuate fragmentation between Black and Whites.

Some presenters argued for the imposition of ceilings on land ownership and redistribution models similar to those of Tanzania and Cuba. In these two countries, farms were resized and redistributed for food production by co-operatives, communities and smaller farms. All property owners should be compelled to register their land ownership for a fast land audit at local government level. It was argued that land and property ownership should be limited to only two properties per owner and that there should be a

restriction on the size of primary living residence and secondary recreational living residence. This will lead to a situation wherein more residential properties are released into the market.

Respondents also called for the prohibition of ownership and sale of land to foreigners. In the case of investors, it was clarified that there should be negotiations based on land sale terms, which are in the best interests of the indigenous majority of the people. For continuation and functionality sake, they also called for land to be redistributed realistically, and the State should not to have all the land under its custodianship.

Further, that there is a need to make a distinction between, the land and the upper structure, between land and development.

#### **4.3 Expropriate Without Compensation**

Some members of the public recognized the need to expropriate land without compensation in the public interest as stated in s25 (2) of the Constitution. They indicated that there was no precedence set and therefore this clause must be tested in the court of law.

The respondents also felt that it will be an opportunity to test s25 (3) of the Constitution. Section 25 (3) relates to compensation that is just and equitable, reflects an equitable balance between the public interest and the interests of those affected. In doing so, the State must have regard to all relevant circumstances, including:

- The current use of property.
- The history of acquisition and use of the property.
- The market value of the property.
- The extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property.
- Lastly, the purpose of the expropriation.

All the above must be tested in court when the state expropriates land without compensation in the public interest. The assertion pre-empts a situation where the State is taken to court by those whose land is expropriated by the State.

#### **4.4 Legislative Reform and International Law**

The respondents called for legislative reforms to address a range of issues including protecting the rights of landless people, address repressive apartheid spatial arrangements especially in cities, and address skewed land ownership patterns. These include:

- Expropriation Bill in order to test what constitutes “fair and just” compensation in different circumstances.
- Redistribution Bill to strengthen citizens by ensuring that State uses its power in the interest of all.
- Draft and pass a Protection of Informal Rights Bill to provide for basic protection of land rights of the poor. In addition, the Mineral & Petroleum Resource Development Act, and the Traditional Governance and Leadership Framework to be subjected to the provisions of the Protection of Informal Rights Bill.
- Draft and enact overarching tenure law that gives effect to the principle that South Africa belongs to all who live in it.
- Introduce a new law on land nationalization leading to all registered freehold rights being converted to long-term leaseholds.

In deciding on the possible review of s25 of the Constitution, the respondents argued for consideration of international law as it relates to expropriation with compensation. South Africa should therefore relook at conventions and/or treaties that she has rectified over the years.

#### **4.5 Land Restitution**

There was considerable unhappiness expressed on the matter of the 1913 cut-off date for land restitution. That the provision was seen as a distortion, unjustifiable, and creating exclusion to specific cultures.

#### **4.6 Current Constitutional Provision on s25**

That Section 25 in its current form presents no problem and that the real challenge is the lack of government capacity to implement Constitutional provisions, corruption and the lack of budget to expedite land restitution and reform.

#### **4.7 Law of General Application**

There was a general consensus that a law of general application as provided for in s25 of the Constitution must be addressed through the introduction of legislation in Parliament to allow for Expropriation and expropriation without compensation.

#### **4.8 High Level Panel**

Throughout the process of the different hearings and submissions, there was constant reference to the recommendations of the High Level Panel which looked into Legislation passed since 1994 and whether it required review. It was acknowledged that the recommendations are currently before Committees of Parliament and being processed.

#### **4.9 Lack of Security of Tenure**

There was widespread dissatisfaction and calls to address the lack of security of tenure both in written and verbal submissions. In particular, farm workers and farm dwellers raised the human rights concern that their dignity and their cultural rights were being infringed by the current status quo and demanded action.

#### **4.10 Farmers**

There were mixed views on food security, held between emerging farmers who saw expropriation of the land without compensation was not the problem to food security, whilst established commercial farmers, with exceptions, opposed expropriation of the land without compensation. Established farmers argued that expropriation of land without compensation would have negative impact on food security, agricultural development and the economy.

#### **4.11 Financial Institutions**

It was recorded that financial institutions saw expropriation of the land without compensation as having a serious and negative impact upon the “debt book” and had a negative impact upon investor confidence.

International examples were also raised in this regard and the sovereign credit rating.

#### **4.12 Lack of Title Deeds**

There was also dissatisfaction with a lack of issuing of title deeds by government to land claim beneficiaries and for RDP houses beneficiaries.

### **5. OBSERVATIONS ON THE POSSIBLE REVIEW OF SECTION 25 OF THE CONSTITUTION**

#### **5.1 *Observations in Relation to Public Participation***

- 5.1.1 There were differing views on whether the current s25 of the Constitution was an impediment to Land Reform in as far as Expropriation of Land without compensation is concerned. The clarity should either be sought through test cases and an application to the Constitutional Court directly.
- 5.1.2 There were differing views regarding ownership/custodianship of land and issuing of title deeds to beneficiaries. There was argument for State to have sole custodianship of all land while the other argument was for the issuing of title deeds to beneficiaries of land redistribution programme. A mixed approach to ownership of land was proposed thus recognizing the importance of individual land ownership rights. Furthermore, a narrative that South Africans did not necessarily want agricultural land, but that some wanted urban land was put to the fore. There is an urgent need for the Land Reform Program to be expedited to redress the historical injustices of the past that caused skewed land ownership patterns in favour of White South Africans. The Constitution and relevant laws should support the expedition of land reform processes in the country.

- 5.1.3 The law of general application as envisaged in s25 of the Constitution together with other Land Reform legislation which must be finalised by the Executive and processed through Parliament. Inputs from South Africans reflected that land reform is needed at an accelerated pace. The current nature of the land reform programme has done very little to redress inequalities in land ownership.
- 5.1.4 The majority of those who participated in the public hearings across the country expressed the sentiment that s25 needed to be amended to allow for expropriation without compensation. However, there was no consensus on how this should take place, nor what the nature of the amendment should be.
- 5.1.5 Many of those who participated in the nationwide public hearings were adamant that the Constitution in its current form does not appreciate the deleterious effects of dispossession, and that it draws a moral equivalence between the interests of the dispossessed and the interests of the dispossessor.
- 5.1.6 It was also argued that although Section 25 (2) allows for expropriation of property, Section 25 (2) (b) is explicit that this must be subject to compensation, which must be agreed upon by those involved, or decided by a court of law. Most of those who participated in the hearings argued that the provisions of Section 25 (2) (b) will practically hand over the land reform programme to the courts, and provides for a litigations based land reform, likely to benefit those who currently own property.
- 5.1.7 The majority of oral submissions were strongly opposed to changing the Constitution, pointing out that the Government has failed to implement the current provisions of the Constitution, with many warning against the unintended consequences of the proposed amendment.

- 5.1.8 Written submissions received by the Committee, notwithstanding the current issues of the report and presentation thereof, are also strongly opposed to changing the Constitution.
- 5.1.9 The need for land across the country is real amongst the dispossessed Africans. There was also a strong view that private ownership of land cements inequality as it allows those who have power and resources to accumulate as much land as possible in few hands.
- 5.1.10 There was a strong sentiment that the negative wording of Section 25 (1) precludes the imperative of restorative justice, which must be at the centre of land reform, and protects private property rights to the detriment of the commitment to land reform.
- 5.1.11 During the public hearings, some traditional leaders were of the view that the Constitution should be amended but believed that land must not be under government custodianship but retained by them. Traditional leadership also requested that the 13% of the land which is currently in their hands be not expropriated.
- 5.1.12 Any decision regarding the question on a possible review of s25 of the Constitution must consider the impact on food security, stability in the agricultural sector and economy, investor confidence, financial exposure to banks and other financial institutions by commercial farmers, as well as result inadequate support for emerging farmers.
- 5.1.13 Members of the community raised important questions regarding the status of land under "Community Trusts" during the process of expropriation. They advised that this kind of land remaining their hands and be administered by their community committees.
- 5.1.14 Traditional healers expressed their frustration on getting their herbs for traditional medicine because of the entry restrictions in some areas.

## **5.2     *Observations in Relation to Process***

- 5.2.1 Members were afforded an opportunity, and did undertake in their individual capacity, to peruse the written submissions at Parliament to consider the contents of the submissions. It was apparent, that in many instances, written submissions were computer generated duplications with exactly the same content, and the only changes being to the name of the respondent and the contact details.
- 5.2.2 Some Members observed some incidences a degree of intimidation that occurred during the public hearings. Some members also expressed that there were or according to some Members Racial attacks and threats against speakers at these hearings were uncalled for and may cast doubt over the integrity of the process. A counter argument was that the land issue was and is still an emotive issue and the co-chairpersons did their best to deal with the matter.

## **6. COMMITTEE DELIBERATIONS ON THE PROPOSED RECOMMENDATIONS BY MEMBERS**

The committee deliberated on the proposed recommendations by Members.

### **6.1     Points of Convergence**

- 6.1.1 There was total agreement that there was a need for urgent and accelerated Land Reform in order to address the injustices of the past that was inflicted on the majority of South Africans.
- 6.1.2 Hunger for land amongst the dispossessed was palpable and that the disposed were of the view that very little was being done to redress the skewed land ownership patterns.
- 6.1.3 Relevant legislation must be enacted to give effect to land reform as envisaged in s25 of the Constitution which must include that the State should formulate a clear strategy for land redistribution.



- 6.1.4 The security of tenure for farm workers, farm tenants and those residing on communal land held in a Trust must be assured.
- 6.1.5 Constraints include increasing evidence of corruption by officials, the lack of sufficient budget of the land reform, and the lack of capacity within the state have proved to be a stumbling blocks to land reform.
- 6.1.6 South African were afforded fair opportunity to make representation to parliament in a language of their choice.

## **6.2 Points of Divergence**

- 6.2.1 The constitution should be explicitly clear that expropriation without compensation is one of the mechanisms legally permissible to effect the land reform program.
- 6.2.2 Section 25 of the constitution in its current form is not an impediment to land reform.
- 6.2.3 The Constitutional Court must be approached in order to provide clarity on the full parameters of s25 of the constitutionality and whether this section is an impediment to expropriation without compensation.
- 6.2.4 With regard to the custodianship of land, two views were recommended, that is, one in favour of the state retaining custody of the land and the other which advocates for a mixed ownership of land and the issuing of title deed to beneficiaries.
- 6.2.5 The amendment of s25 will threaten food security, agricultural reform and will discourage investment.
- 6.2.6 A separate and independent Land Ombudsman must be established to manage and intervene when person's rights are violated by the State.

- 6.2.7 That Parliament must urgently establish a mechanism to effect the necessary amendment to the relevant part of s25 of the Constitution. This should be done before the end of the 5th Democratic Parliamentary Term.
- 6.2.8 Expropriation without compensation does not address the real constraints in land reform.
- 6.2.9 The recommendations from the High Level Panel should be engaged and its recommendations considered.
- 6.2.10 The government must conduct a proper land audit to provide clarity on land reform.
- 6.2.11 The committee did not adequately consider the written submissions.
- 6.2.12 The provisions of section 59 of the constitution have been flouted.
- 6.2.13 The principle of “willing buyer willing seller” must be applied in the land reform process.
- 6.2.14 The Constitution in its current form is not an impediment to the land reform process.
- 6.2.15 Some political parties used the land hearings to spread misleading information about the real constraints facing the land reform process and this treated a very serious matter and process as a tool for electioneering.

## **7. FINAL RECOMMENDATIONS**

Having taken all these into account, the Joint constitutional review Committee recommends:

- a. That Section 25 of the Constitution must be amended to make explicit that which is implicit in the Constitution, with regards to Expropriation of Land without Compensation, as a legitimate option for Land Reform, so as to address the historic wrongs caused by the arbitrary dispossession of land, and in so doing ensure equitable access to land and further empower the majority of South Africans to be productive participants in ownership, food security and agricultural reform programs.

- b. That Parliament must urgently establish a mechanism to effect the necessary amendment to the relevant part of Section 25 of the Constitution.
- c. Parliament must table, process and pass a Constitutional Amendment Bill before the end of the 5th Democratic Parliament in order to allow for expropriation without compensation.

The committee is overwhelmingly satisfied with the processes followed by it. The committee attracted many South Africans to participate in this process.

**Report to be considered.**

## National Assembly

### **1. Budgetary Review and Recommendations Report of the Portfolio Committee on Cooperative Governance and Traditional Affairs, Dated 17C 2018**

The Portfolio Committee on Cooperative Governance and Traditional Affairs (the Committee), having assessed the financial and non-financial performance of Department of Traditional Affairs, the Municipal Infrastructure Support Agent, the South African Local Government Association, the Municipal Demarcation Board and the CRL Rights Commission for the 2017/18 financial year, reports as follows:

#### **1. INTRODUCTION**

##### **1.1. Committee mandate**

Chapter 4 of the *Constitution of the Republic of South Africa (1996)* sets out in detail the powers, functions and procedures of Parliament. It tasks Parliament through its Committees, such as the Portfolio Committee on Cooperative Governance and Traditional Affairs, with the following functions:

- Making laws;
- Maintaining oversight over the National Executive Authority and any organ of state;
- Facilitating public involvement in the legislative and other processes of the National Assembly and its Committees;
- Participating in, promoting and overseeing co-operative governance; and
- Engaging and participating in international participation (participate in regional, continental and international bodies)

In line with the parliamentary oversight functions, Section 5 of the *Money Bills Amendment Procedure and Related Matters (Act No.9 of 2009)* empowers Portfolio Committees, to assess annually the performance of each national department through an annual Budgetary Review and Recommendations Report (BRRR). The overarching purpose of the BRR Report is for a Committee to make recommendations on the forward use of resources to address the implementation of policy priorities and services as the relevant department may require additional, reduced or re-configured resources to achieve these priorities and services. The Act also gives effect to Parliament's constitutional powers to amend the budget in line with the fiscal framework. The BRRR process enables a Committee to exercise its legislative responsibility to ensure that the Department fulfil their respective mandates.

## **1.2. Core functions of the Department**

The main aim of the Department of Cooperative Governance and Traditional Affairs is to improve cooperative governance across the three spheres of government. The Department must support and strengthen the capacity of municipalities to manage their own affairs, exercise their powers and perform their functions, as envisaged in s154 of the Constitution.

The Department also oversees the following entities:

- The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, which promotes and protects cultural, religious and linguistic rights.
- The Municipal Demarcation Board, an independent authority responsible for determining municipal boundaries and also mandated to declare district management areas, delimit wards for local elections and assess the capacity of municipalities to perform their functions.
- The South African Local Government Association, which has a constitutional mandate to assist in the transformation of local government.
- The Municipal Infrastructure Support Agent, whose mandate is to render technical advice, and support to municipalities, as well as strengthen their capacity to provide access to basic services.

## **1.3. Purpose of the Report**

Section 77 (3) of the Constitution stipulates that an Act of Parliament must provide for a procedure to amend money Bills before Parliament. This Constitutional provision resulted in Parliament passing the *Money Bills Amendment Procedure and Related Matters (Act No. 9 of 2009)* (the Money Bills Act). The Money Bills Act sets out the process that allows Parliament to make recommendations to the Minister of finance to amend the budget of a national department. In October each year, Portfolio Committees must compile the Budgetary Review and Recommendation Reports (BRRR) that assess service delivery performance given the available resources; evaluate the effective and efficient use and forward allocation of resources; and may make recommendations on forward use of resources.

## **1.4. Method of reporting**

This BRR Report assesses the financial performance as well as service delivery performance of the Department of Traditional Affairs, the Municipal Infrastructure Support Agent, the South African Local Government Association, the Municipal Demarcation Board and the CRL

Rights Commission for the 2017/18 financial year. Informing the assessment are briefings to the Committee by the Department and entities, and other sources of information such as the Reports of the Auditor-General and Annual Reports.

### **1.5. Report outline**

The structure of the Report is as follows: section 2 provides an overview of key policy focus areas during the 2017/18 financial year. Section 3 provides key financial and performance recommendations of the Portfolio Committee on COGTA. Section 4 of the Report provides an overview and assessment of reported financial and service delivery performance for the 2017/18 financial year. Section 5 of the Report focuses on the Portfolio Committee's observations on governance, technical, service delivery and financial performance information. Section 6 table's additional reporting requests by the Portfolio Committee. The Report concludes with recommendations in section 7.

## **2. POLICY OVERVIEW**

Government's policy priorities for the 2017 Medium Term of Strategic Framework that were relevant to the Cooperative Governance and Traditional Affairs sector included:

- Reducing service delivery backlogs in the 27 district municipalities, which Cabinet had prioritised in 2011. This gives effect to outcome 9 of Government's Medium Term Strategic Framework (MTSF), which seeks to build a 'responsive, accountable, effective and efficient local government system.'
- Fostering social cohesion and promoting nation building in line with outcome 14 of the MTSF. The sector gives effect to this by supporting and championing policy on cultural, religious and linguistic matters.
- Lowering the costs of living and improving the business environment; introducing reforms to improve the functioning of the labour market; addressing spatial settlement patterns; developing an enabling economic infrastructure; and ensuring sustainable rural economies. These are some of the key aspects of the National Development Plan (NDP).
- The National Development Plan (NDP) also envisages economic transformation through the determination and re-determination of municipal boundaries, which is central to the work of the Cooperative Governance and Traditional Affairs ministry.

### 3. SUMMARY OF PREVIOUS KEY FINANCIAL AND PERFORMANCE RECOMMENDATIONS OF THE COMMITTEE

2016/17 RECOMMENDATION	PROGRESS MADE IN 2017/18
MISA must table its Annual Report on time, in accordance with legislation.	MISA tabled its Annual Report in time for the BRRR process, which enabled the Committee to take a full assessment of the entity's financial and service delivery performance during the 2017/18 financial year.
The Department and its entities must heed and act on the Committee's recommendations of the previous financial year, particularly in respect of reducing irregular expenditure and ensuring that there is no unauthorised, fruitless and wasteful expenditure incurred.	The Department and its entities incurred irregular expenditure to the value of R716.6 million, which represents a 70 per cent increase from the R423 million incurred in the previous financial year.
The Department and its entities must heed and act on the Committee's recommendations of the previous financial year, particularly in respect of ensuring that all municipalities enforce competency standards for Managers and appoint persons with the requisite skills, expertise and qualifications, and that the Department takes corrective measures in instances where municipalities contravene the Systems Act and its regulations	Ongoing.
The Department and its entities must heed and act on the Committee's recommendations of the previous financial year, particularly in respect of improving the management of contracts signed with implementing agents of CWP and maintaining an assets register that adheres to the minimum requirements for assets registers as prescribed by National Treasury.	The Department still had unavoidable actions to perform in relation to CWP assets, which rendered it unable to submit the 2017/18 Annual Financial Statements by 31 May 2018 to the National Treasury and the Auditor-General of South Africa. The delay affected the timeframe for the finalisation of the 2017/18 Annual Report, which was still outstanding at the time of the BRRR process.
The Committee must ensure greater oversight over the spending of conditional grants including examination of quarterly performance reports.	Ongoing.
Where a municipality is in serious or persistent breach of its service delivery or financial performance obligations, the Committee must assist to ensure timely provincial executive intervention in terms of s139 (5) of the Constitution.	Ongoing.

## 4. OVERVIEW AND ASSESSMENT OF FINANCIAL AND SERVICE DELIVERY PERFORMANCE 2017/18

### 4.1. Department of Cooperative Governance

At the time of the BRRR process, the Department of Cooperative Governance had not yet tabled its Annual Report for the 2017/18 financial year due to delays relating to the CWP, which rendered the Department unable to submit the 2017/18 Annual Financial Statements within the stipulated period. This delay affected the timeframe for the finalisation of the 2017/18 Annual Report, and the Department envisages tabling the signed-off Report by the end of November 2018.

#### 4.1.1. Financial performance

2017/18	
<b>Irregular expenditure</b>	<ul style="list-style-type: none"> <li>• Management did not prevent irregular expenditure, which resulted from extension of CWP contracts without the required prior approval from National Treasury.</li> <li>• The Department did not take disciplinary steps against officials who incurred irregular expenditure.</li> </ul>

#### 4.1.2. Audit findings

2017/18	
Disclaimed audit opinion	
AUDIT FOCUS AREAS	FINDINGS
<b>Quality of submitted financial statements</b>	<ul style="list-style-type: none"> <li>• The Department received a disclaimed audit opinion, as the Auditor-General could not expressed an opinion on the Department's annual financial statements.</li> <li>• The Auditor-General identified material mis-statements in respect of submitted Annual Financial Statements.</li> <li>• The Department's financial management required intervention.</li> </ul>
<b>Quality of submitted performance reports</b>	<ul style="list-style-type: none"> <li>• The Auditor-General identified material mis-statements in respect of submitted Annual Performance Reports.</li> <li>• The Department's performance management required intervention.</li> </ul>
<b>Compliance with legislation</b>	<ul style="list-style-type: none"> <li>• Non-compliance with SCM prescripts i.e. Local content and BBBEE requirements</li> </ul>



**4.1.3. Key reported achievements**

- Implemented a secondary city support programme in Polokwane Local Municipality.
- Implemented a municipal specific revenue plan in 30 municipalities.
- Assessed 110 municipalities on compliance with the rating aspects of the Municipal Property Rates Act and issued findings and recommendations.
- Supported 80 municipalities to institutionalise community complaints management processes.
- Rolled out an anti-corruption strategy to 18 district municipalities.

**4.1.4. Key reported challenges**

- The management of the CWP has remained a key challenge, as the Department was still unable to account for the Programme satisfactorily. This has resulted in the Department receiving a disclaimed audit opinion for the financial year under review, which is a regression from the qualified audit opinion obtained in the previous financial year.

**4.2. Department of Traditional Affairs****4.2.1. Service delivery performance**

In terms of service delivery performance, the DTA registered the following:

- Implementation of 30 per cent of the projects in the Traditional Leadership Transformation and Socio-Economic Development Programme, i.e. Women Empowerment Project, Food Security; and HIV and Aids Prevention Projects.
- Capacitation of eight provinces on the Framework for Resolution of Traditional Leadership Disputes and Claims.
- Conducting of four initiation campaigns.
- Capacitation of two communities on HIV and AIDS.

**4.2.2. Financial performance**

The Department did not incur any irregular expenditure during the year under review.

#### ***4.2.3. Audit findings***

During the financial year under review, the Department received a clean audit. However, the Auditor-General recommended that management should enhance timely remedial action to improve the Department's cash management.

#### ***4.2.4. Key reported achievements***

- A second consecutive unqualified audit opinion with no emphasis of matters (clean audit).
- The constitution of the Local and Provincial Houses of Traditional Leaders and subsequently the 2017-2022 National House of Traditional Leaders in November 2017, following the end of the term of Office of the Previous Houses.

#### ***4.2.5. Key reported challenges***

- A legislative and policy vacuum, which has caused most of the setbacks in the traditional affairs sector. These include the lack of a legal instrument for the recognition of the Khoi-San leadership and communities; the absence of legal constitution of kings, queens, principal traditional leadership and traditional councils; cultural initiation fatalities; inconsistencies in the provision of tools of trade for traditional leaders; and the level of participation of traditional leadership in municipal councils.

### **4.3. Municipal Infrastructure Support Agent**

#### ***4.3.1. Service delivery performance***

- The entity achieved 70 per cent (21/30) of the performance targets set in the 2017/18 Annual Performance Plan (APP). The Annual Report attributes this low performance to internal capacity challenges.
- Provided ongoing technical support to at least 60 municipalities.
- Rolled out the Regional Management Support Contractors Programme in three pilot regions: Amathole, OR Tambo and Sekhukhune Districts.
- Trained 303 apprentices towards qualifying as artisans.
- Trained 557 municipal officials in various aspects of municipal infrastructure delivery.
- Placed 102 qualified artisans and water process controllers in low capacity municipalities.

**4.3.2. Financial performance**

2017/18	
<b>Irregular expenditure</b>	Management did not take effective and appropriate steps to prevent irregular expenditure amounting to R12.1 million. The irregular expenditure related to the lease of office space.

**4.3.3. Audit findings**

2017/18	
Unqualified with findings	
AUDIT FOCUS AREAS	FINDINGS
<b>Quality of submitted financial statements</b>	<ul style="list-style-type: none"> <li>The Accounting Officer did not exercise adequate oversight responsibility regarding financial reporting, resulting in material misstatements.</li> <li>Management did not prepare regular, accurate and complete financial reports that were verifiable.</li> </ul>
<b>Quality of submitted performance reports</b>	<ul style="list-style-type: none"> <li>The Accounting Officer did not exercise adequate oversight responsibility regarding performance reporting, resulting in material misstatements in the annual performance report.</li> <li>Management did not prepare regular, accurate and complete performance reports that were verifiable.</li> </ul>
<b>Compliance with legislation</b>	<ul style="list-style-type: none"> <li>The entity incurred irregular expenditure in contravention of the Public Finance Management Act and Treasury Regulations.</li> <li>MISA did not advertise all the invitations for competitive bidding for the required minimum period, in contravention of Treasury Regulation 16A63(c). This is a repeat finding from the 2016/17 financial year.</li> <li>The Accounting Officer did not ensure compliance with Supply Chain Management (SCM) regulations.</li> </ul>

**4.3.4. Key reported achievements**

- Achieved an unqualified audit opinion on Annual Financial Statements, with only one matter of emphasis, namely, material underspending of allocated budget.
- Awarded bursaries to 202 students for studies in technical professions.

#### **4.3.5. Key reported challenges**

- Internal capacity challenges, which contributed to MISA's relatively low performance level and the concomitant underspending of allocated budget.

### **4.4. South African Local Government Association**

#### **4.4.1. Service delivery performance**

- Achieved 95 percent (58/61) of the targets set during the year under review. The entity's targets had increased by almost 100 percent, from 35 in 2016/17 to 61 in 2017/18.
- Continued to roll out the Small Town Regeneration Project in the Karoo region.
- Concluded research and finalised a report on regional economies and categorisation thereof.
- Developed a position paper on the Legislative Framework for Environmental Management to assist Local Government to clarify the responsibilities about environment function, as well as a policy position paper on funding requirements for Environmental performance.
- Hosted an energy summit to have a wider conversation around the policies impeding the operations of municipalities in the energy space.
- Conducted a capacity development workshop aimed at capacitating Organised Local Government and Local Governments to facilitate the implementation of Agenda 21 for culture.

#### **4.4.2. Financial performance**

<b>2017/18</b>	
<b>Quality of financial statements</b>	No findings.
<b>Under-expenditure</b>	Incurred under-expenditure amounting to R8.2 million.
<b>Fruitless and wasteful expenditure</b>	Incurred fruitless and wasteful expenditure amounting to R14 000, which was not recoverable.
<b>Irregular expenditure</b>	Identified irregular expenditure amounting to approximately R1 million due to failure to procure goods through a competitive bidding process.

#### **4.4.3. Audit findings**

SALGA achieved a sixth consecutive unqualified audit opinion with no emphasis of matters (clean audit).

#### **4.4.4. Key reported achievements**

- SALGA has raised all systemic and structural challenges in the Electricity Reticulation Industry through IGR platforms, which led to the formation of the Inter-ministerial Task Team (IMTT) in March 2017. SALGA's participation in the IMTT assisted in elevating the discussion on electricity reticulation challenges, which led to some achievements – including commitments and plans of action from relevant institutions.
- Published over 50 media releases and advisories, which generated media coverage, increasing visibility for SALGA and the sector.
- Achieved a clean audit for the sixth consecutive year.

#### **4.4.5. Key reported challenges**

- Decrease in projected total revenue – from R619 million to R605.6 million – due to the absence of National Members Assembly (NMA) registration fees and the absence of grants leveraged for the induction of incoming councillors in the prior year. The NMA did not convene, in line with constitutional amendments adopted during SALGA's 2016 National Conference.

### **4.5. CRL Rights Commission**

#### **4.5.1. Service delivery performance**

- Achieved 100 percent of the targets set during the year under review, despite severe budgetary and human resource constraints.

#### **4.5.2. Financial performance**

<b>2017/18</b>	
<b>Quality of financial statements</b>	<ul style="list-style-type: none"> <li>• The Commission did not prepare the financial statements submitted for auditing in accordance with the prescribed financial reporting framework set out in section 40(1) (b) of the Public Finance Management Act, No. 1 of 1999.</li> <li>• Management did not prepare regular, accurate and complete financial reports that were verifiable.</li> </ul>
<b>Irregular expenditure</b>	<b>Incurred irregular expenditure amounting to R1.1 million.</b> The Auditor-General could not obtain appropriate audit evidence to the effect that the Commission took disciplinary action against the officials responsible for the irregular expenditure.

### 4.5.3. *Audit findings*

2017/18	
Unqualified audit opinion, with emphasis of matters	
AUDIT FOCUS AREAS	FINDINGS
Quality of submitted performance reports	The Accounting Officer did not exercise adequate oversight responsibility regarding performance reporting and related internal controls.
Compliance with legislation	<ul style="list-style-type: none"> <li>• Non-compliance with Treasury Regulations 8.2.1 and 8.2.2. (regulates approval of public expenditure), which resulted in the bulk of irregular expenditure reported above.</li> <li>• Management did not adequately review and monitor compliance with applicable laws and regulations.</li> </ul>

### 4.5.4. *Key reported achievements*

- Compiled an investigative report on the commercialisation of religion and abuse of people's belief systems. The Report, which the Commission has tabled in Parliament and presented to the Portfolio Committee on Cooperative Governance and Traditional Affairs, has generated much controversy and debate, and contributed to the entity's strong media presence. The Report also prompted the South African Revenue Service (SARS) to engage religious institutions with the intention of investigating possible tax non-compliance in the sector.
- Released a Report on the Commission's findings relating to deaths in initiation schools. This followed public hearings in Limpopo, Western Cape and the Eastern Cape, which the Commission pursued in response to increased deaths, beatings, assaults and health dangers in initiation schools across the country.<sup>1</sup>

### 4.5.5. *Key reported challenges*

- **Regression from a clean audit in 2016/17 to an unqualified audit opinion owing to irregular expenditure amounting to R1.1 million.** The Auditor-General could not obtain appropriate audit evidence to the effect that the Commission took disciplinary action against the officials responsible for the irregular expenditure.
- Budgetary and human resource constraints.

<sup>1</sup> The New Age Reporter (2017).

## 4.6. Municipal Demarcation Board

### 4.6.1. Service delivery performance

- **Increased performance on pre-determined objectives from 65 percent in 2016/17 to 89 percent in 2017/18.** This is a significant performance improvement from the previous financial year where the Auditor-General found the articulation of performance indicators weak. In 2016/17, the leadership did not exercise adequate oversight responsibility with regard to performance reporting. This contributed to the MDB's failure to achieve its clean audit target.

### 4.6.2. Financial performance

2017/18	
<b>Quality of financial statements</b>	The Board did not prepare annual financial statements in accordance with prescribed financial standards, resulting in material misstatements.
<b>Under-expenditure</b>	Incurred under-expenditure amounting to R9.6 million due to delays in the implementation of the capacity assessment project.
<b>Irregular expenditure</b>	Incurred irregular expenditure amounting to R17 million, which is nearly six times higher than that incurred in the previous financial year.

### 4.6.3. Audit findings

2017/18	
Unqualified audit opinion with emphasis of matters	
AUDIT FOCUS AREAS	FINDINGS
<b>Quality of submitted performance reports</b>	Material misstatement of performance information.
<b>Compliance with legislation</b>	Non-compliance with SCM prescripts in respect of: <ul style="list-style-type: none"> <li>• A lease agreement, where the Board did not appoint a service provider with the highest score in terms of points.</li> <li>• Bid documentation, which did not meet the stipulated minimum threshold.</li> </ul>

### 4.6.4. Key reported achievements

For the 2017/18 financial year, the MDB highlighted the following achievements, among others:

- Finalisation of spatial boundaries descriptions for 18 municipalities.
- Convened two seminars in collaboration with the South African Human Sciences Research Council. These related to the

categorisation of municipalities into category A municipalities; and citizen engagement and social cohesion.

- Conducted an extended stakeholder and public participation process as part of the municipal boundary re-determination process.

#### **4.6.5. Key reported challenges**

For the 2017/18 financial year, the MDB reported the following challenges, among others:

- A small staff complement due to inadequate budget allocation, which constrains the MDB's ability to enhance public consultation.
- **Consecutive non-achievement of the envisaged unqualified audit with no emphasis of matters (clean audit).** As in the previous financial year, the Board had findings relating to material misstatement of performance information, as well as non-compliance with Supply Chain Management (SCM) prescripts that resulted in irregular expenditure.
- **Despite an additional allocation of R7 million in 2017/18, the Board did not achieve the target of conducting capacity assessments in 81 municipalities.**
- **Incurring of under-expenditure amounting to R9.6 million** due to delays in the capacity assessment project.
- Delays in the process of amendments to the Municipal Demarcation Act, which will have a negative bearing on the upcoming ward delimitation process.
- Inadequate spatial description hinders the process of addressing municipal boundary misalignments affecting areas under traditional communities.

## **5. COMMITTEE OBSERVATIONS**

### **5.1. General observations**

- The Committee noted the good work of the CRL Rights Commission during the year under review, especially in relation to highlighting the abuses perpetrated under the guise of religion.
- The Committee further noted and appreciated MISA's service delivery performance during the year under review, including the placement of 102 qualified artisans and water process controllers in low capacity municipalities.



## 5.2. Technical issues

- The Committee noted and accepted the explanation by the Minister of Cooperative Governance and Affairs in relation to the late tabling of the 2017/18 Annual Report of the Department of Cooperative Governance.

## 5.3. Governance and operational issues

In respect of governance and operational issues, the Committee noted:

- The gaps in section 71 reporting where municipalities could place deposits in banks in contravention of Treasury Regulations, as demonstrated in the VBS Mutual Bank matter.
- The need to amend reporting requirements in respect of section 71 reports to encourage more transparency and greater accessibility to the wider public.
- The problems around the customary law of succession, for example differences of opinion within the Royal Families.

## 5.4. Service delivery challenges

- The MDB planned its work much later, resulting in failure to implement the target relating to capacity assessments of municipalities.

## 5.5. Financial performance

- The Committee welcomed and congratulated SALGA and the Department of Traditional Affairs on the achievement of consecutive clean audits.
- The Committee noted that MISA had not made much progress in dealing with Supply Chain Management issues, which the Auditor-General had raised in the previous financial year.
- The Committee further noted that the CRL Rights Commission and the MDB did not comply fully with financial reporting standards and Treasury Regulations.

## 6. TABLE OF COMMITTEE'S REPORTING REQUESTS

Reporting matter	Action required	Timeframe
Brief the Committee on the customary laws of succession in relation to all the Kingships/Queenships and chieftaincies.	Department to take the Committee through this with their lawyers	Before the Committee deals clause by clause with the Customary Initiation Bill

Statistics on initiation casualties	Department to furnish the Committee with information on initiation casualties	After the December initiation season.
VBS Mutual Bank matter	The Minister of Cooperative Governance must brief the Committee on this matter	Fourth week of October 2018

## 7. RECOMMENDATIONS

In respect of the annual performance of the Department of Traditional Affairs and its entities for the 2017/18 financial year, the Committee recommends the following:

- 7.1. The Department of Cooperative Governance must address the weak levels of assurance, which the Auditor-General identified in respect of the Executive Authority, Accounting Officer and Senior Management.
- 7.2. The Department of Cooperative Governance must table its Annual Reports within the stipulated timeframes, to afford the Committee opportunity to assess the Department's financial and service delivery performance in line with its oversight mandate.
- 7.3. The Department of Cooperative Governance must consider undertaking a comprehensive review of the Community Work Programme, including identifying the key problem areas and devising mechanisms to deal effectively with the identified challenges.
- 7.4. The Portfolio Committee must invite all the municipalities with deposits in the VBS Mutual Bank in order to understand better the impact of the Bank's possible liquidation on the financial and service delivery performance of these municipalities.
- 7.5. The MDB should explore the possibility of submitting its proposed amendments to the Demarcation Act directly to the Portfolio Committee, which can deal with the amendments as a Committee Bill.

## 8. APPRECIATION

The Committee wishes to thank the Department of Cooperative Governance and Traditional Affairs, CRL Rights Commission, Auditor-General of South Africa, SALGA, Municipal Demarcation Board, and MISA for their fruitful, cordial and constructive engagements. The contributions of Committee Members, as well as Committee support staff is highly appreciated.

### Report to be noted for consideration

## **2. Report of the Portfolio Committee on Cooperative Governance and Customary Initiation Bill [B7-2018] (National Assembly – sec 76), dated 14 November 2018:**

The National Assembly referred the *Customary Initiation Bill (National Assembly – Section 76)* (hereinafter referred to as the Bill) to Portfolio Committee on Cooperative Governance and Traditional affairs.

### **Subject of the Amendment Bill**

The primary aim of the **Customary Initiation Bill [B7-2018] (National Assembly – Section 76)**, is to make provision for the effective regulation of customary initiation practices; to provide for the establishment of a National Initiation Oversight Committee and Provincial Initiation Coordinating Committees and their functions, to provide for the responsibilities, roles and functions of the various role-players involved in initiation practices as such or in the governance aspects thereof, to provide for the effective regulation of initiation schools; to provide for regulatory powers of the Minister and Premiers, to provide for the monitoring of the implementation of this Act.

The Committee held extensive public hearing throughout the provinces in August 2018. The Committee adopted the report of the public hearings in September 2018.

### **Enquiry into the subject of the Amendment Bill**

The Committee invited the Department of Traditional Affairs to brief them and received submission from various stakeholders, Departments, Government institutions, NGOs as well as individuals.

The Committee proposed the following amendments:

Amendments	Committee decisions
<p style="text-align: center;"><b>CLAUSE 1</b></p> <p>1. On page 5, after line 8, to insert:</p> <p style="padding-left: 40px;"><b>“Drugs and Drug Trafficking Act”</b> means the Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992);”.</p> <p>2. On page 5, from line 42, to omit the definition of “medical practitioner” and to substitute:</p> <p style="padding-left: 40px;"><b>“medical practitioner”</b> means a general practitioner or family physician in medicine who, in accordance with the provisions of the Regulations Relating to the Registration of Persons as General Practitioners and Family Physicians in Medicine, as published under Government Notice No. R1200 of 28 November 2000, is registered with the Medical and Dental Professional Board established by Government Notice No. R.75 of 16 January 1998;”.</p>	<p>Committee agreed to this amendment</p>
<p style="text-align: center;"><b>CLAUSE 2</b></p> <p>1. On page 6, in line 57, to omit “, medical practitioner”.</p> <p>2. On page 6, in line 60, after “herself” to insert “: Provided that a principal must have prior and proven experience as a care-giver for a minimum of five initiation seasons”.</p>	<p>Committee agreed to this amendment</p>
<p style="text-align: center;"><b>CLAUSE 8</b></p> <p>1. On page 8, in line 38, to omit “in Pretoria” and to substitute “at a place,”.</p>	<p>Committee agreed to this amendment</p>

<p style="text-align: center;"><b>CLAUSE 9</b></p> <p>1. On page 9, in line 44, to omit “February and August” and to substitute “March and September”.</p>	Committee agreed to this amendment
<p style="text-align: center;"><b>CLAUSE 15</b></p> <p>1. On page 13, in line 26, to omit “death of an initiate” and to substitute “hospitalisation and any loss of life of an initiate”.</p> <p>2. On page 14, in line 13, after “possible” to insert “and taking into account the customs of the particular community or communities”.</p>	Committee agreed to this amendment
<p style="text-align: center;"><b>CLAUSE 17</b></p> <p>1. On page 15, in line 31, to omit “department” and to substitute “departments”.</p> <p>2. On page 15, in line 32, to omit “ MEC” and to substitute “MECs”.</p>	Committee agreed to this amendment
<p style="text-align: center;"><b>CLAUSE 28</b></p> <p>1. On page 21, in line 51, to omit “person” and to substitute “child”.</p> <p>2. On page 21, in line 52, to omit “person” and to substitute “child”.</p> <p>3. On page 22, from line 19, to omit paragraph (a) and to substitute:  “(a) In terms of section 12(8) of the Children’s Act the circumcision of male children under the age of 16 is prohibited except if such circumcision is performed for religious or medical purposes and therefore the consent contemplated in this section may not, in the case of male children under the age of 16, include consent to any circumcision other than circumcision that is allowed in terms of the said section 12(8).”.</p> <p>4. On page 22, from line 61, to omit sub clause (10).</p> <p>5. On page 23, in line 3, to omit “(11)” and to substitute “(10)”.</p>	See concerns raised

<b>CLAUSE 30</b>	Committee
<ol style="list-style-type: none"> <li>1. On page 23, in line 23, to omit “and liquor” and to substitute “, liquor and drugs”.</li> <li>2. On page 23, from line 38, to omit paragraph (a) and to substitute: “(a) Subject to paragraph (b), no initiate or any person involved in initiation may, at an initiation school, use, possess, deal in, supply or manufacture any liquor as defined in section 1 of the Liquor Act.”.</li> <li>3. On page 23, in line 44, to omit “liquor is” and to substitute “a moderate quantity of liquor is to be”.</li> <li>4. On page 23, after line 47, to add: “(5) No initiate or any person involved in initiation may, at an initiation school, use, possess, deal in, supply or manufacture any drug as contemplated in the Drugs and Drug Trafficking Act.”.</li> </ol>	agreed to this amendment
<b>CLAUSE 33</b>	
<ol style="list-style-type: none"> <li>1. On page 24, in line 33, to omit “28(10)” and to substitute “28 or obtains such consent by means of duress”.</li> <li>2. On page 25, in line 4, to omit paragraph (e) and to substitute: “(e) the use, possession, supply or manufacturing of liquor or drugs or dealing in liquor or drugs by an initiate or any other person involved in initiation; or”.</li> <li>3. On page 25, in line 7, after “Health Professions Act” to insert “, the Drugs and Drug Trafficking Act”.</li> </ol>	

<p style="text-align: center;"><b>ARRANGEMENT OF SECTIONS</b></p> <p>1. On page 4, in line 9, to omit "and liquor" and to substitute "liquor and drugs".</p>	
<p><b>MEMORANDUM ON THE OBJECTS</b></p> <p>1. On page 31, to amend paragraph 2.2 as follows:</p> <p style="padding-left: 40px;">2.2 Clause 2 of the Bill determines that the Bill applies to the customary initiation practices in respect of both male and female initiates, all initiation schools and all role-players involved in initiation. The clause also briefly states the objectives of the Bill. Of particular importance is that the clause prohibits any person found unsuitable to work with children in terms of section 120 of the Children's Act or any person whose name has been entered in Part B of the National Child Protection Register or in the National Register for Sex Offenders, to participate in any aspect of initiation. The clause furthermore requires of any principal of an initiation school, any care-giver and traditional surgeon <b>[or medical practitioner]</b> who is involved in initiation to be at least 40 years old, and to have undergone initiation himself or herself.</p> <p>2. On page 35, to amend paragraph (e) as follows:</p> <p style="padding-left: 40px;">(e) In terms of clause 30 of the Bill, the principals of initiation schools and care-givers must ensure that initiates have access to clean water, appropriate sanitation services and health care when needed. Food must be provided by the families of the initiates. <b>[No alcohol may be provided to initiates under the age of 18. This is in line with section 10(1) of the Liquor Act.]</b> <u>Initiates or other persons involved in initiation may not use, possess, supply or manufacture drugs or liquor at an initiation school and may also not deal in drugs or liquor at such school.</u></p>	

<p>3. On page 35, to amend the introductory part of paragraph 2.8.2 as follows:</p> <p>2.8.2 The clause, however, also states that it does not replace any provisions relating to offences contained in the Criminal Procedure Act, the Children’s Act, the Liquor Act, <u>the Drugs and Drug Trafficking Act</u> or the Child Justice Act. In other words, any contravention of the provisions of those laws or of the Bill which falls within the scope of those laws will be dealt with in terms of the offence clauses of those laws:</p>	
---	--

**The committee raised the following concerns:**

- In one instance in the KwaNdebele area in Mpumalanga, the Committee experienced some challenges during the public participation process on the Bill due to some traditional leaders who felt that, as custodians of culture, they should be taking the lead on initiation related matters, not Parliament.
- The Committee also notes and calls for the resolution of the anomalies in the Children’s Act, which criminalises the cultural circumcision of children under the age of 16, and thus creating conflict with existing cultural norms and practices.

**Consideration of the Amendment Bill**

The Portfolio Committee on Cooperative Governance and Traditional Affairs having deliberated on and considered the subject of the **Customary Initiation Bill [B7-2018] (National Assembly – Section 76)**, referred to it, and classified by the Joint Tagging Mechanism as a section 76 Bill, reports that it has agreed to the Bill with proposed amendments.

**Report to be considered**



### **3. Report of the Portfolio Committee on Higher Education and Training on the National Qualifications Framework Amendment Bill [B 20 – 2018] (National Assembly – sec 75), dated 15 November 2018**

The Portfolio Committee on Higher Education and Training, having considered the *National Qualifications Framework Amendment Bill [B 20 – 2018]* (National Assembly – sec 75), referred to it and classified by the Joint Tagging Mechanism as a section 75 Bill, reports in terms of National Assembly Rule 288 that it has agreed to the Bill as amended, namely the **National Qualifications Framework Amendment Bill [B 20A - 2018]**.

#### **1. Purpose of the Bill**

The National Qualifications Framework Amendment Bill [B20 – 2018] seeks to amend the National Qualifications Framework Act, 2008 (Act No. 67 of 2008) in order to strengthen the principal Act in various aspects by rectifying inconsistencies and closing gaps currently in the principal Act.

The Bill also seeks to create an enabling mechanism for the South African Qualifications Authority (SAQA) and the three Quality Councils (QCs) to have legislative competence to address challenges with regard to fraudulent or misrepresented qualifications or part-qualifications. In this regard, a provision is made for the referral of all qualifications or part-qualifications presented for study, employment or appointment to the SAQA for verification or evaluation. Furthermore, a provision is also made for the referral of fraudulent qualifications or part-qualifications to the relevant professional body. A provision has also been made for offences in respect of fraudulent qualifications or part-qualifications.

The Bill empowers the SAQA to establish and maintain separate registers for professional designations, misrepresented qualifications and part-qualifications, and fraudulent qualifications and part-qualifications. The SAQA is also empowered to evaluate foreign qualifications or part-qualifications and to formulate and publish criteria for evaluating foreign qualifications or part-qualifications.

A provision has also been made to allow the SAQA, as the body with overall responsibility for the National Qualification Framework (“NQF”) and for the coordination of the sub-frameworks, to be consulted when the QCs advise the Minister on matters relating to their sub-frameworks. The rationale for this amendment is to mitigate the current situation where QCs do not consult with the SAQA about issues pertaining to the development and management of their sub-frameworks, and other matters related to their quality assurance role. This situation creates a risk for the enduring public credibility of the NQF and the quality assurance regime.

## **2. Process followed by the Committee**

The National Qualifications Framework Amendment Bill [B 20 – 2018] was referred to the Portfolio Committee on Higher Education and Training on 12 June 2018. The Bill was classified as a section 75 Bill as per Joint Rule 160(6).

On 01 August 2018, the Committee received an introductory briefing on the Bill by the Department of Higher Education and Training, which outlined the key features of the Bill and explained why it was necessary.

Subsequent to this meeting, on 12 August 2018, the Committee published the advert calling for interested people and stakeholders to submit written comments on the Bill, in terms of section 59 (1) (a) of the Constitution. In addition, the Committee issued press statements, conducted radio interviews, sent emails to the identified stakeholders (all public TVET Colleges and universities, the Sector Education and Training Authorities, Community Colleges, quality councils, the South African Qualifications Authority, Universities South Africa, South African College Principals Organisation, labour union federations, Business Unity South Africa, Higher Education Network, Catholic Institute of Education and professional bodies, the Association for Skills Development in South Africa, etc.). In addition to the invitation for public comments, the Committee forwarded the advert to all Parliamentary committees should there be any interest in participating in the process. The same advert was published on the Parliamentary website and on different social media platforms to enable electronic access.

The Committee received altogether 16 submissions from different stakeholders. Public hearings were held on 05 September 2018 where seven out of the sixteen stakeholders who made written submissions, made oral presentations to the Committee.

On 12 September and 11 October 2018, the Committee had meetings to deliberate on the Department's response with regard to the stakeholders' written and oral submissions. Furthermore, the Committee considered the input of the Parliamentary legal adviser on these submissions. The Committee adopted the motion of desirability so as to proceed to the clause by clause deliberations on the Bill.

At the meeting on 17 October 2018, the Committee resolved to undertake a special oversight visit to the South African Qualifications Authority (SAQA). The Committee conducted its visit to the SAQA on 23 October 2018. The objectives of the visit were: to obtain insight into the entity's process and operations relating to the verification of qualifications and part-qualifications; to assess the readiness of the SAQA to implement the new functions/responsibilities that are introduced by the Bill; to assess the current and future capacity needs of the SAQA with respect to the registration, verification and evaluation functions and to undertake a site visit to the different units within the SAQA responsible for verification of qualifications. During this oversight visit, the Committee was presented with an oral submission from Dr R Blom: Dean of Research at the Da Vinci Institute about her written submission on the NQF Amendment Bill.

On 24 and 30 October 2018, the Committee deliberated on the detail of the Bill, clause by clause, and considered proposals for redrafting of specific clauses of the Bill made by stakeholders, the parliamentary legal adviser, the state law adviser and the Department.

On 7 and 8 November 2018, the Committee considered the proposed redrafted amendments to the Bill and resolved that the A-list and B-Bill be drafted.

On 14 November 2018 the Committee considered the NQF Amendment Bill [B 20A – 2018] and the [B 20B – 2018], and adopted the NQF Amendment Bill [B 20B – 2018] with amendments.

Whilst the Bill, as amended by the Committee, enjoyed the support of the majority of Committee members, the DA members expressed concerns regarding the inclusion of Clause 7 32A (1). Furthermore, the DA reserved their right to support the Bill, stating that the Bill is superfluous, onerous upon employers and educational institutions and that it relies on a database that may not be able to meet the demands put upon it.

The Committee, having considered the **National Qualifications Framework Amendment Bill [B 20 - 2018]**, reports on the Bill with the following amendments and recommends that the House adopts the **National Qualifications Framework Amendment Bill [B 20A - 2018]**.

### **3. Amendments**

#### **LONG TITLE**

1. On page 2, in line 5, after “qualifications” to insert “or part-qualifications”.
2. On page 2, in line 7, after “to” to insert “the”.

#### **CLAUSE 1**

**Amendment of section 1 of Act 67 of 2008, as amended by section 8 of Act 26 of 2010**

1. On page 2, in line 11, after “registered” to insert “, established, declared or merged”.
2. On page 2, in line 14, to omit “legally” and to substitute “lawfully”.
3. On page 2, in line 16, after “is” to insert “lawfully”.

4. On page 3, in line 5, to omit “ranking” and to substitute “placement”.

5. On page 3, from line 7, to omit the definition of ‘foreign institution’ and substitute “‘foreign institution’ means a foreign juristic person offering or issuing an authentic qualification of part-qualification.”.

6. On page 3, from line 9, to omit the definition of “fraudulent qualification or part-qualification” and to substitute:

" **'fraudulent qualification or part-qualification'** is a verified qualification or part-qualification registered on the NQF or an evaluated foreign qualification or part-qualification, which is found to be forged, fraudulently obtained or awarded in contravention of this Act, and has been declared as such by a court of law;".

7. On page 3, after line 14, to insert the following:

“(e) by the insertion after the definition of “learning” of the following definition:

**'learner achievements'** means a qualification or part-qualification contemplated by this Act;".

8. On page 3, from line 16, to omit the definition of “misrepresented qualification or part-qualification” and to substitute:

" **'misrepresented qualification or part-qualification'** is a qualification or part-qualification—

(a) which is not authentic; or

(b) where the certificate of award or the SAQA Certificate of Evaluation was erroneously issued or altered in any way;".

9. On page 3, in line 30, to omit "that facilitates the management of the NQF,".

10. On page 3, after line 31, to insert the following:

“(f) by the insertion after the definition of “SAQA Act” of the following definition:

" **'SAQA Certificate of Evaluation'** means a certificate issued by the SAQA indicating the authenticity of the foreign qualification and its placement within the NQF;"

11. On page 3, in line 35, to omit "Higher Education Act or".

### **CLAUSE 3**

#### **Amendment of section 3 of Act 67 of 2008, as amended by section 9 of Act 26 of 2010**

1. On page 3, in line 57, after "the" to insert "relevant".

### **CLAUSE 4**

#### **Amendment of section 13 of Act 67 of 2008, as amended by section 12 of Act 26 of 2010 and section 12 of Act 23 of 2012**

1. On page 4, in line 18, after "institution" to insert "or QC".

2. On page 4, from line 45, to omit subsections (1A) and (1B) and to substitute:

"(1A) When verifying or evaluating a qualification or part-qualification in terms of this Act, the SAQA must, amongst other things, consider whether the education institution, skills development provider or foreign institution is registered by law and whether the qualification or part-qualification is authentic and complies with the policy and criteria contemplated in section 13(1)(h).

(1B) If after verification or evaluation, a qualification or part-qualification is found to be inauthentic or is found to be a misrepresented qualification or part-qualification or is declared by a court of law to be a fraudulent qualification or part qualification, the SAQA must refer such a finding or information to the relevant professional body, as may be prescribed, and subject to subsection (1C):

(a) must inform the requester and the holder of the qualification or part-qualification of the finding;

(b) must record such finding in the register of misrepresented qualifications and part-qualifications or fraudulent qualifications and part-qualifications; and

(c) the requester must provide the SAQA with all particulars of the holder to enable the SAQA before recording such finding in the relevant register, to give notice and comply with section (1C).”.

3. On page 5, from line 23 to omit “and” and to substitute “.”.

4. On page 5, from line 24 to omit paragraph (f).

## **CLAUSE 5**

### **Amendment of section 27 of Act 67 of 2008, as amended by section 14 of Act 26 of 2010**

1. On page 5, in line 35, to omit “providers” and to substitute “provider”.

2. On page 5, in line 40, to omit “cost” and to substitute “charge”.

3. On page 5, in line 40, after “SAQA” to insert “and within 30 days after complying with all the requirements applicable to quality assurance relating to the qualification or part-qualification”.

## **CLAUSE 7**

### **Insertion of sections 32A and 32B in Act 67 of 2008**

Clause rejected.

## **NEW CLAUSE**

1. That the following be a new clause:

### **Referral of a qualification or part-qualification to the SAQA for verification and evaluation**

“**32A.** (1) (a) All organs of state, employers, education institutions, skills development providers and QCs must authenticate, prior to appointment or registration, if the qualification or part-qualification which is presented to them for the purposes of appointment, study or for any other related purpose, is registered on the national learners’ records database.

(b) If not registered on the national learners' records database, such qualification or part-qualification must be referred to the SAQA for verification and evaluation.

(c) The Minister may in consultation with the SAQA exempt any category of persons, or entity contemplated in paragraph (a) from the provisions of this section by notice in the *Gazette*.

(2) If after verification or evaluation of the qualification or part-qualification—

(a) the SAQA establishes that the qualification or part-qualification is an authentic qualification or part-qualification, but is not on the national learners' records database, the SAQA must record such a qualification or part-qualification on the national learners' records database; or

(b) the SAQA must comply with section 13 (1B)(a) and (b) and shall refer such a finding or information to the relevant body.

(3) The SAQA must perform its functions in terms of subsection (1) and (2) within 30 days so as to not prejudice the holder of the qualification or part-qualification.

### **Offences and penalties**

**32B. (1) A person is guilty of an offence if the person—**

(a) makes or causes to be made a false entry in the national learners' records database or the misrepresented or fraudulent register;

(b) is a party to the falsification and dissemination or publication of a qualification or part-qualification of any person or the records of the national learners' records database or the misrepresented or fraudulent register; or

(c) with a fraudulent purpose, knowingly provided false or misleading information in any circumstances in which this Act requires the person to provide information or give notice to another person.



(2) A person, an education institution or skills development provider is guilty of an offence if a person, the education institution or skills development provider claims to be offering a qualification or part-qualification registered on the NQF whereas that qualification or part-qualification is not so registered.

(3) A person is guilty of an offence, if such a person falsely or fraudulently claims to be holding a qualification or part-qualification registered on the NQF or awarded by an education institution, skills development provider, QC or obtained from a lawfully recognised foreign institution.

(4) Any person, education institution, skills development provider, foreign institution is guilty of an offence if it falsely claims to be registered and accredited as an education institution, skills development provider or foreign institution in terms of the laws of the Republic or foreign law.

(5) If a person, education institution its directors or board, a foreign institution its agents or directors or board, or a skills development provider is convicted of any offence under this Act, the court that imposes the sentence shall consider as an aggravating factor the fact that the offence was—

(a) committed with the intent to gain financially, or to receive any favour, benefit, reward, compensation or any other advantage; or

(b) gained financially, or received any favour, benefit, reward, compensation or any other advantage.

(6) Any person convicted of an offence in terms of this Act, is liable, in the case of a contravention of sections 32(B)(1), 32(B)(2), 32B(3) or 32(B)(4) to a fine or to imprisonment for a period not exceeding five years, or to both a fine and such imprisonment.

(7) Any person, education institution, director or a board member of an education institution, foreign institution or its agents, or skills development provider in contravention of section 32(B)(4) may be ordered to close its business and declared unfit to apply and register any education institution,

skills development provider or become an agent of any foreign institution in the Republic offering a qualification or part-qualification on the NQF or foreign qualification or part-qualification for a period not exceeding 10 years.

## **CLAUSE 8**

### **Substitution of the Long Title of Act 67 of 2008**

1. On page 7, in line 14, to omit “its” and to substitute “their”.

## **CLAUSE 9**

### **Short title and commencement**

1. On page 7, in line 20, to omit “9” and to substitute “9(1)”.
2. On page 7, after line 22, to insert the following:  
“(2) Different dates of commencement may be so determined for different sections of the Act.”.

Report to be considered.

**Progress report of the Portfolio Committee on Arts and Culture on the appointment of the Pan South African Language Board (PanSALB) Board, dated 06 November 2018**

The Portfolio Committee on Arts and Culture (Committee), having considered the request of the Minister of Arts and Culture to appoint new members of the PanSALB Board, reports as follows:

The Department of Arts and Culture advertised a call for nominations for the Board of PanSALB on the 1 October 2018 in its website and the closing date was on 21 October 2018. The Department put together an Adhoc Committee to receive nominations for the PanSALB Board and on the 24 October 2018 the Adhoc Committee met to compile the CVs it received and sent them to the Portfolio Committee on the 25 October 2018. The Committee received 69 nominees; however, one nominee, Dr A Grootboom withdrew and the Committee was left with 68 nominees to shortlist from.

The shortlisting was done in terms of sections 5 of the PanSALB Act as amended (No 10 of 1999), which states that there should be not fewer than 11 but not more than 15 persons who, when viewed collectively, are as representative as possible of the official languages as well as language skills, including but not limited to, interpreting, translation, terminology, and lexicography, language and literacy teaching and language planning.

The Committee met on the 6 November 2018 and shortlisted the following 25 candidates:

No.	Surname	Name
1.	Muthien	Bernedette
2.	Dabideen	Preetha
3.	Chilwane	Prudence
4.	Khanyile	Zanamuhle Primrose

5.	Nicholls	Rowan
6.	Bilankulu	Nkensani Gertrude
7.	Dichabe	Seipati Bernice
8.	Dlavane	Fio Dolly Gaebeng
9.	Gqabu	Cinga
10.	Maahlamela	Tebogo David
11.	Maartens	Mariaan Magdalena
12.	Mafisa	Lebone Cedric
13.	Makubu-Badenhorst	Lolie
14.	Maleboa	Manfred Kgomo
15.	Mbuli	Thulani John
16.	Mnguni- Ngingi	Siphelele
17.	Mogale	Mashite Jacob
18.	Msomi	Sibulelo Goodfriday
19.	Mthembu	Aubrey Greyling
20.	Mudau	Ntshengedzeni Edward
21.	Ngcangca	Dennis Joseph Malunga
22.	Nxumalo	Bhekani Rombart
23.	Nkumane	Ben Ramadi
24.	Rasana	Nomakhosazana
25.	Skosana	Bongani Judas

The names of the shortlisted candidates will be published on the parliamentary website for public comment for a period of seven working days. The interviews will take place on the 20, 21 and 23 November 2018 in Parliament.

**5. Report of the Portfolio Committee on Trade and Industry on the Copyright Amendment Bill [B 13 – 2017] (National Assembly – sec 75), dated 15 November 2018:**

The Portfolio Committee on Trade and Industry, having considered the subject of the *Copyright Amendment Bill* [B 13 – 2017] (National Assembly – sec 75), referred to it and classified by the Joint Tagging Mechanism (JTM) as a section 75 Bill, presents a redraft of the Bill [B 13B – 2017].

**A. Process followed by the Committee on the Copyright Amendment Bill**

1. The Bill was introduced to Parliament and referred to the Committee on 16 May 2017.
2. The Committee held two workshops on 7 February 2017 and on 27 to 28 June 2017, respectively. The Committee received a briefing on the Bill on 30 May 2017.
3. The Committee called for written submissions on 26 May 2017. Advertisements were in all official languages in national, provincial and regional newspapers, as well as on social media platforms. The closing date for submissions was 19 June 2017 and the Committee received 73 submissions.
4. The Committee held public hearings on the Bill on 1, 3 and 4 August 2017.
5. Based on the submissions, it became apparent that the Bill had a number of technical errors, which made it incompatible with the existing copyright legislation. Therefore, the Committee made a decision to redraft the Bill to address the technical inconsistencies before deliberating on any policy areas.

6. Given the specialised, technical nature of copyright, the Committee appointed two technical consultants, namely Prof Tobias Schonwetter and Prof Caroline Ncube, in 2017 to assist it during its consideration of the Bill. The consultants played a pivotal role with the redraft. However, due to delays in deliberating on the Bill, they were unable to effectively assist the Committee in 2018.
7. The technically corrected redraft of the Bill was tabled by the drafting team in October 2017 and the Committee proceeded to consider the policy matters based on this version of the Bill.
8. The Committee also established a subcommittee consisting of Adv A Alberts, Mr G Cachalia, Mr D Mahlobo, Mr S Mbuyane and Ms L Theko (chairperson), as well as Mr D Mahlobo joined the subcommittee at a later stage. The subcommittee was mandated to deal with the following policy areas that arose from the submission<sup>1</sup>:
  - 8.1. Fair use versus fair dealing (Clause 10 – Section 12) including orphan works (Clause 22 – Section 22A);
  - 8.2. Exceptions and limitations (Clause 11 – Section 12A; Clause 12 – Section 13B & Clause 18 – Section 19C);
  - 8.3. Accessibility for people with disabilities (Clause 18 – Section 19D);
  - 8.4. Parallel importation (Clause 11 - Section 12B);
  - 8.5. Freedom of panorama (Section 15/not in introduced Bill);
  - 8.6. Private copying levy (not in introduced Bill);
  - 8.7. Regulation of collecting societies (Clause 23 – Sections 22B-22F);
  - 8.8. Ownership – Commissioned work and copyright ownership (Clause 20 – Section 21); public funding (Clause 3 – Section 5(2) & Clause 21(a) – Section 22(1));
  - 8.9. Royalties – broadcasting rights (Clause 8 – Section 9A(1)), artist's resale right (Clause 9 – Sections 9B-9F);
  - 8.10. Assignment (Clause 21(b) – Section 22(3) and Clause 32(b) – Section 39(cG));

---

<sup>1</sup> The references to clauses and sections refer to the Bill as introduced to Parliament. Subsequent references are to the technically corrected redraft of the Bill.  
ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS NO 169–2018

- 8.11. The establishment, functions and processes of the Intellectual Property Tribunal (Clause 29 – Section 29 & Clause 30 – Sections 29A-29R);
  - 8.12. Technology – the inclusion of digital aspects and the use/limitations of copyright anti-circumvention device (Clauses 4-6 – Sections 6-8 & Clause 27 - Sections 28O-28S).
  - 8.13. Moral rights (Clause 19 – Section 20);
  - 8.14. Translation/reproduction licences (Clause 34 – Schedule 2); and
  - 8.15. Ensuring that proposed Amendment Bill does not conflict with the Intellectual Property Laws Amendment Act and the proposed Indigenous Knowledge Systems Bill.
9. As a result of time constraints, the Committee was of the view that the matter may be considered more efficiently if it was brought into the main Committee. Therefore, the subcommittee was dissolved before being able to complete its deliberations and recommendations on each of these matters. However, prior to this, it was tasked with providing a position on the clauses of the Bill.
10. After its initial deliberations, the Committee made a second call for submissions on specific clauses of the Bill on 29 June 2018. These proposed clauses were informed by the Committee’s deliberations on public submissions and were substantively “new” matters that warranted further consultation. This was advertised on Parliament’s social media platforms through a media statement and communication to identified stakeholders. The closing date was 9 July 2018, which was later extended to 20 July 2018. The specific clauses were as follows:
- 10.1. The definition of “visual artistic work” (Clause 1, par (i));
  - 10.2. The minimum content of the agreement related to royalty percentages (Clause 5 – Section 6A(4), Clause 7 – Section 7A(4) and Clause 9 – Section 8A(4));
  - 10.3. The issue of retrospective application (Clause 5 – Section 6A(5), Clause 7 – Section 7A(5) and Clause 9 – Section 8A(5));

- 10.4. Reciprocal application of the resale royalty right (Clause 7 – Section 7B(3)(a)(i) read with Section 7B(5));
  - 10.5. Retrospective application of an artist’s resale right (Clause 7 – Section 7B(6));
  - 10.6. Log Sheets (Clause 11 – Section 9A(1)(aA));
  - 10.7. Failure to record acts or to report constituting an offence and the penalty for that offence (Clause 11 – Section 9A(4));
  - 10.8. Nature of copyright in programme-carrying signals (Clause 12 – Section 11);
  - 10.9. Panorama rights and incidental use (Clause 15 – Section 15);
  - 10.10. New process for commissioned work aimed at giving the author more rights (Clause 22 – Section 21(3));
  - 10.11. Transitional provisions to provide for existing collecting societies (Clause 25 – Section 22B(7));
  - 10.12. Reciprocity applying to pay-outs of royalties by collecting societies to foreign countries (Clause 25 – Section 22C(3)(c));
  - 10.13. How collecting societies should pay royalties out and what to do with funds if they cannot find the copyright owner or performer (Clause 25 – Section 22D(2)(b) and 22D(3));
  - 10.14. Increased penalties for infringement. Provision for fines when the convicted person is not a natural person (Clause 27 – Section 27(6));
  - 10.15. Copyright Tribunal (Clauses 29 and 30) in terms of (i) its composition (Section 29); (ii) it not having power to review administrative action by the Commission (Section 29A(3)); and (iii) its proceedings of the Tribunal (Section 29E); and
  - 10.16. Transitional provision (Clause 37).
11. The Committee received 60 written submissions based on this second call for written submissions.
12. The Committee, based on its further deliberations, introduced an offence for acting as a collecting society without being accredited. As this was a substantively “new” sub-clause, the Committee made a third call for written submissions on 3 September 2018 with a closing date of 21 September 2018. This was advertised on Parliament’s social media platforms, through a media statement and communication to identified stakeholders. The Committee received two submissions in this regard.



13. Furthermore, the Committee resolved to appoint a panel of technical experts to advise it on any technical or drafting issues pertaining to the Committee's amendments to the Copyright Amendment Bill. The panel was tasked to focus on the following:

- 13.1. the appropriateness of the terminology used in the Bill;
- 13.2. whether the wording of the Bill would achieve the policy objectives as agreed to by the Committee;
- 13.3. whether the amendments agreed to could withstand constitutional muster; and
- 13.4. whether the concepts outlined in the Bill would comply with international copyright law.

14. The Committee nominated the following stakeholders to the panel:

- 14.1. Prof S Karjiker (declined);
- 14.2. Adv N Pather (accepted);
- 14.3. Adv N Makhafola-Mokitimi (accepted);
- 14.4. Mr T Mathibe (accepted);
- 14.5. Mr W Ngubo (accepted);
- 14.6. Ms M Woods (accepted);
- 14.7. Adv J Baloyi (accepted); and
- 14.8. Prof O Dean (no response).

15. The third draft of the Bill was sent to the technical panel of experts on 10 September 2018. The panel was initially given a deadline of 26 September 2018, which was later extended to 1 October 2018. Only four members of the panel (Adv J Baloyi, Mr A Myburgh, Mr W Ngubo and Ms M Woods) made inputs by or after the deadline, which were considered and reported on by the drafting team.

16. Consequently, the decision included the required permission from the National Assembly to go beyond amending the sections in the Act, as envisaged in the Copyright Amendment Bill. The additional sections were as follows:

- 16.1. Sections 1 dealing with definitions;

- 16.2. Section 6 dealing with the nature of copyright in literary or musical works;
  - 16.3. Section 7 dealing with the nature of copyright in artistic works;
  - 16.4. Section 8 dealing with the nature of copyright in cinematograph films;
  - 16.5. Section 9 dealing with the nature of copyright in sound recordings;
  - 16.6. Section 9A dealing with royalties;
  - 16.7. Section 12 dealing with general exceptions from protection of literary and musical works;
  - 16.8. Section 13 dealing with general exceptions in respect of reproduction of works;
  - 16.9. Section 17 dealing with general exceptions regarding protection of sound recordings;
  - 16.10. Section 18 dealing with general exceptions regarding protection of broadcasts;
  - 16.11. Section 22 dealing with assignment and licences in respect of copyright;
  - 16.12. Section 27 dealing with penalties and proceedings in respect of dealings which infringe copyright;
  - 16.13. Section 28 dealing with provisions for restricting importation of copies; and
  - 16.14. Section 29 dealing with the establishment of the Copyright Tribunal.
17. On Tuesday, 11 September 2018, the National Assembly granted permission to the Committee to inquire into amending these other provisions of the Copyright Act, 1978 (No 78 of 1978) in terms of Rule 286(4)(c).
18. The Committee, having considered the technical panel's inputs and the two submissions from the third call for written submissions, made further amendments to the Bill, which required a further call for submissions. This was advertised on Parliament's social media platforms, through a media statement and communication to identified stakeholders on 12 October 2018. The closing date was 26 October 2018. The following specific clauses were advertised:

- 18.1. Definition of collecting society (Clause 1);
- 18.2. Adding the rights of distribution and rental (Clause 4 – Section 6; Clause 6 – Section 7; Clause 8 – Section 8; and Clause 10 – Section 9);
- 18.3. Requiring recording of acts in respect of audiovisual works and providing for an offence in this regard (Clause 9 – Section 8A);
- 18.4. Empowering collecting societies further (Clause 25 – Section 22C);
- 18.5. Creating an offence for not providing information to a collecting society (Clause 25 – Section 22C);
- 18.6. Providing for the skills of an administrator to be appointed for a collecting society (Clause 25 – Section 22F); and
- 18.7. Clarifying Section 28 to avoid unintended consequences (Clause 28 – Section 28).

19. The Committee received 16 written submissions in this regard.

20. On 7 November 2018, the technical drafting team, consisting of the senior parliamentary legal advisor and the Department of Trade and Industry, submitted a redrafted Bill based on public comments received, as well as Committee deliberations, for the Committee's consideration.

21. The team also briefed the Committee on an opinion received from Prof T Schonwetter in relation to the following questions:

- 21.1. Do the proposed exceptions and limitations comply with the Berne three-step test? If not, is it necessary to comply?
- 21.2. Would any of the proposed exceptions and limitations constitute deprivation of property? If so, would section 36 of the Constitution be covered?

22. The DTI submitted a legal opinion on 13 November 2018. The opinion focused on the legal validity or constitutionality of certain provisions of the Amendment Bill. These clauses were:

- 22.1. Clause 3 – Amendment of Section 5(2) of the principal Act;
- 22.2. Clause 5 – Insertion of Section 6A of the principal Act in respect of subsection (7) only;
- 22.3. Clause 7 – Insertion of Section 7A of the principal Act in respect of subsection (7) only;

- 22.4. Clause 9 – Insertion of Section 8A of the principal Act in respect of subsection (5) only;
- 22.5. Clause 13 – Insertion of Sections 12A to 12D of the principal Act;
- 22.6. Clause 22(b) – Substitution of Section 21(2) of the principal Act;
- 22.7. Clause 23(b) – Substitution of Section 22(3) of the principal Act;  
and
- 22.8. The justification in law for the principle of one collecting society per intellectual property right, with reference to Clause 25 – insertion of Chapter 1A in the principal Act.

23. From 15 August 2017 to 7 November 2018, the Committee deliberated on the content of the Bill.

24. No consensus was reached on a number of clauses. The Democratic Alliance objected to the following:

- 24.1. Clause 5 – Section 6A(7), Clause 7 – Section 7A(7) and Clause 9 – Section 8A(5): They objected to the inclusion of the retrospective application of the royalty share.
- 24.2. Clause 7 – Sections 7B to 7F: They objected to inclusion of the resale royalty right.
- 24.3. Clause 11 – Section 9A(4)(b) and Clause 27(b) – Section 27(6): They objected to the penalty being proposed.
- 24.4. Clause 11 – Section 9A(2)(a): They objected to the words “is equally shared”.
- 24.5. Clause 19 – Section 19D: They were of the view that the definition was too broad and that the section should clearly define the types of disabilities that should be eligible for this exception.
- 24.6. Clause 25 – Section 22B(4)(b): They were of the view that the word “transformation” is open to interpretation and the only legislation in this regard is the B-BBEE legislation. This legislation cannot prescribe transformation requirements, as this would be arbitrary. They proposed that “the prescribed transformation requirements be” deleted.

**B. Minority views were expressed on the following aspects contained in this report:**

The Democratic Alliance objected to the report.

**C. Recommendation**

The Portfolio Committee on Trade and Industry recommends that the House adopts this report and approves the second reading of the redrafted Bill.

Report to be considered.

**Report of the Portfolio Committee on Trade and Industry on the Performers' Protection Amendment Bill [B 24 – 2016] (National Assembly – sec 75), dated 15 November 2018:**

The Portfolio Committee on Trade and Industry, having considered the subject of the *Performers' Protection Amendment Bill* [B 24 – 2016] (National Assembly – sec 75), referred to it and classified by the Joint Tagging Mechanism (JTM) as a section 75 Bill, presents a redraft of the Bill [B 24B – 2016].

**A. Process followed by the Committee on the Performers' Protection Amendment Bill**

1. The Bill was introduced to Parliament and referred to the Committee on 2 December 2016.
2. The Committee held a workshop with the Department of Trade and Industry (DTI) on intellectual property and the key concepts related to the Performers' Protection Amendment Bill on 7 February 2017. It also received a briefing on the Performers' Protection Amendment Bill on 21 February 2017.

3. The Committee advertised and called for written submissions in national, provincial and regional newspapers in all official languages from 19 January until 6 February 2017. The Committee received 22 submissions.
4. Due to the cross-references with the Copyright Amendment Bill, which had not yet been tabled, the Committee resolved to await the tabling of the Copyright Amendment Bill to ensure alignment between the two Bills. The Copyright Amendment Bill was subsequently introduced on 16 May 2017.
5. On 5 September 2018, the Committee was briefed by the DTI on the linkages between the Copyright Amendment Bill and Performers' Protection Amendment Bill.
6. The Committee resolved to call for supplementary submissions related to the cross-references to the Copyright Amendment Bill. A communication was sent to stakeholders on 28 June 2018 with the closing date on 20 July 2018.
7. On 13 and 14 September 2018, the Committee held public hearings on the Bill.
8. On 9 and 17 October 2018, the Committee proceeded to deliberate on the Bill and, informed by these deliberations, resolved to call for written submissions on additional clauses on 17 October 2018, namely:
  - Deletion of the definition of broadcast (Clause 1(b));
  - The deletion of the definition of "cinematograph film" (Clause 1(c));
  - The deletion of the definition of "fixation" (Clause 1(e));
  - The substitution of the definition of "performance" (Clause 1(f));
  - The new definition of "producer" (Clause 1(h));
  - The new definition of "sound recording" (Clause 1(j)).;
  - The provision for royalties or equitable remuneration (Clause 2 – Section 3(4)(a) and (g));
  - The distribution right (Clause 2 – Section 3(4)(h) and Clause 4 – section 5(a)(vii));
  - The requirement for the agreement to be subject to standard terms and conditions in (a), and minimum content in (b) (Clause 3 – Section 3A(3)(a) and (b));

- Making the equal remuneration subject to a contract (Clause 3 – Section 3B(2));
  - New process regarding recording and reporting and providing for an offence in this regard (Clause 4(c) – Section 5(1)(1A) and (1B));
  - Regulations (Clause 6 – Section 8D(3) and (4));
  - Prohibited conduct and exceptions in respect of technological protection measures and copyright management information (Clause 7 – Section 8E to 8H);
  - Offences (Clause 8 – Section 9);
  - Amendment to certain expressions in Act 11 of 1967 (Clause 9); and
  - Transitional provisions (Clause 10).
9. The deadline for additional submissions was 1 November 2018, and the Committee received eight submissions.
10. Consequently, this decision also included clauses that required permission from the National Assembly to go beyond amending the sections in the Act, as envisaged in the Performers' Protection Amendment Bill [B 24-2016].

The additional sections were as follows:

- Section 8D of Act 11 of 1967 as inserted by section 2 of Act 28 of 2013 (Clause 6);
  - Section 9 of Act 11 of 1967 as amended by section 23 of Act 38 of 1997 (Clause 8);
  - Expressions amended (Clause 9); and
  - Transitional provisions (Clause 10).
11. On Tuesday, 30 October 2018, the National Assembly granted permission to the Portfolio Committee on Trade and Industry to inquire into amending these other provisions of the Performers' Protection Act (No. 11 of 1967) in terms of Rule 286(4)(c).
12. On 8 November 2018, the technical drafting team, consisting of the senior parliamentary legal advisor and the Department of Trade and Industry, submitted a redrafted Bill based on public comments received, as well as deliberations conducted by the Committee, for the Committee's consideration.

13. The Committee spent four days deliberating on the Bill and formally considered and adopted it on Thursday, 15 November 2018.

14. No consensus was reached on a number of clauses. The Democratic Alliance objected to the following:

- Clause 3 – Section 3A(3)(a): They objected to the inclusion of the words “compulsory and standard contractual terms” and proposed that this read as “recommended terms”.
- Clause 6 – Section 8D(3): They objected to the Minister being able to prescribe compulsory and standard contractual terms.

15. However, the majority agreed to all clauses in the Bill.

**B. Minority views were expressed on the following aspects contained in this report**

The Democratic Alliance objected to the report.

**C. Recommendation**

The Portfolio Committee on Trade and Industry recommends that the House adopts this report and approves the second reading of the redrafted Bill.

Report to be considered.