No 29—2019] Sixth Session, Fifth Parliament

PARLIAMENT

OF THE

REPUBLIC OF SOUTH AFRICA

ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

TUESDAY, 12 MARCH 2019

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National Council of Provinces

The Chairperson

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

   (1) Bill passed by National Assembly and transmitted for concurrence on 12 March 2019:

   (a) **Traditional Courts Bill** [B 1B – 2017] (National Assembly – sec 76).

   The Bill has been referred to the **Select Committee on Security and Justice** of the National Council of Provinces.

TABLINGS

National Assembly and National Council of Provinces

1. **The Minister of Social Development**

   (a) Amended Report and Financial Statements of Vote 17 – Department of Social Development for 2017-18, including the Report of the Auditor-General on the Financial Statements and Performance Information of Vote 17 for 2017-18 [RP 411-2018].

National Council of Provinces

1. **The Chairperson**

   (a) NOTICE OF INTERVENTION ISSUED IN TERMS OF SECTION 139(1)(b) OF THE CONSTITUTION, 1996 TO ABAQULUSI LOCAL MUNICIPALITY, KWAZULU-NATAL.

   Referral to the **Select Committee on Cooperative Governance and Traditional Affairs** for consideration and report.

<u>Please Note</u>: In the Announcements, Tablings and Committee Reports of 8 March 2019, tabling 1(b) in the name of the Chairperson of the National Council of Provinces - The Men's Parliament Report - was incorrectly dated 19 November 2019. The entry and cover page below correctly reflect the date:

(b) Consolidated National Men's Parliament Report: 19 November 2018 – Consultation Process from Provinces to Parliament: Men Taking Action as Champions of Change.

Consolidated National Men's Parliament Report 19 November 2018
Consultation Process from Provinces to Parliament
Men Taking Action as Champions of Change

social development
Department:
Social Development
REPUBLIC OF SOUTH AFRICA

SOUTH AFRICAN NATIONAL AIDS COUNCIL
OUR ACTIONS COUNT

PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

COMMITTEE REPORTS

National Assembly

1. Report of the Standing Committee on Appropriations on the Division of Revenue Bill [B5 – 2019] (NATIONAL ASSEMBLY – Section 76), Dated 12 March 2019

The Standing Committee on Appropriations (the Committee), having considered the ***Division of Revenue Bill*** **[B5—2019]** (National Assembly), referred to it on 6 March 2019 and tagged as a section 76 Bill, reports as follows:

1. Introduction

Section 214(1) of the Constitution of 1996 (the Constitution) requires that every year a Division of Revenue Act (DORA) determines the equitable division of nationally raised revenue among the three spheres of government. This is intended to foster transparency and ensure smooth intergovernmental relations. The Intergovernmental Fiscal Relations Act, No. 97 of 1997 prescribes the process for the determination of an equitable sharing and allocation of revenue raised nationally. Sections 9 and 10 (4) of this Act set out the consultation process to be followed with the Financial and Fiscal Commission (FFC), including the process of considering recommendations made with regard to the equitable division of nationally raised revenue.

In giving effect to Section 73 of the Constitution, the Money Bills Amendment Procedures and Related Matters Act, No. 9 of 2009 (the Money Bills Act) was enacted. In line with Section 7(1), Section 7(3) of the Money Bills Act and Section 27 of the Public finance Management Act No. 1 of 1999, the Minister of Finance tabled the 2019 National Budget including the 2019 Division of the Revenue Bill (The Bill) on 20 February 2019. The Bill was then referred to the Standing Committee on Appropriations (the Committee) in line with Section 9 (1) of the Money Bills Act.

The Committee received a briefing on the Bill from the National Treasury and also had engagements with the Financial and Fiscal Commission (FFC) as required by Section 9 (7) (a) of the Money Bills Act. Furthermore, a briefing was received from the South African Local Government Association (SALGA) as required by Section 214 (2) (1) of the Constitution of the Republic. In line with section 9 (5) (b) of the Money Bills Act, the Committee has a responsibility to hold public hearings on the Division of Revenue Bill. To this end, adverts calling for public submissions on the Bill were published in both national and local print media. Radio announcements were also made in national and local radio stations. Submissions from the following organisations or interest groups were received:

- Western Cape Forum for Intellectual Disability;
- Equal Education;
- Budget Justice Coalition;
- Rural Health Advocacy Project;
- Mr KE Matlala; and
- Mr MG Buthelezi.

The Committee received oral submissions from the Western Cape Forum for Intellectual Disability and Equal Education during the public hearings that were held on 8 March 2019 in Parliament. Furthermore, having considered the submission from Mr MG Buthelezi, the Committee was of the view that it was not relevant to the Bill and therefore it was not included in the report.

2. Division of Revenue Bill 2019

The central objectives over the 2019 Medium Term Expenditure Framework (MTEF) period are to stabilise the growth of debt as a share of GDP and to strictly adhere to the planned expenditure ceiling. The 2019 Division of Revenue Bill reprioritises existing funds to ensure economic growth and inclusivity. Table 1, below sets out the overall allocations earmarked for all three spheres of government for 2019/20, 2020/21 and 2021/22.

Table 1: Division of Nationally Raised Revenue among the National, Provincial and Local Spheres of Government

Spheres of Government	Column A	Column B	
	2019/20	Forward Estimates	
		2020/21	2021/22
	R'000	**R'000**	**R'000**
National[1,2]	1 084 180 207	1 150 974 279	1 239 678 123
Provincial	505 553 753	542 908 577	578 645 170
Local	68 973 465	75 683 326	82 161 819
TOTAL	**1 658 707 425**	**1 769 566 182**	**1 900 485 112**

1. *National share includes conditional allocations to provincial and local spheres, general fuel levy sharing with metropolitan municipalities, debt-service costs, the contingency reserve and provincial allocations.*
2. *The direct charges for the provincial equitable share are netted out.*

2.1 Main Budget Allocations

The 2019 Budget indicates that over the next three years, after providing for debt-service costs, the contingency reserve and provisional allocations, 47.9 per cent of nationally raised funds are allocated to national government, 43 per cent to provincial government and 9.1 per cent to local government. Of note is that, in spite of the proposed reduction to some transfers, average annual growth is above inflation for all three spheres of government over the 2019 MTEF. Reductions are significantly smaller than in the 2018 MTEF. Table 2 below provides an overview of the division of nationally raised revenue between the period 2015/16 and 2020/21.

Table 2: Division of Nationally raised revenue, 2015/16 to 2020/21

R billion	2015/16	2016/17 Outcome	2017/18	2018/19 Revised estimate	2019/20	2020/21 Medium-term estimates	2021/22	Average annual MTEF
Division of available funds								
National departments	**546,1**	**555,7**	**592,7**	**638,2**	**684,7**	**733,1**	**777,7**	**6,8%**
of which:								
Indirect transfers to provinces	*3,5*	*3,6*	*3,8*	*4,7*	*4,6*	*5,0*	*5,7*	*6,3%*
Indirect transfers to local government	*10,4*	*8,1*	*7,8*	*7,9*	*7,2*	*7,1*	*8,2*	*1,2%*
Provinces	**471,4**	**500,4**	**538,6**	**572,2**	**612,3**	**657,1**	**701,0**	**7,0%**
Equitable share	386,5	410,7	441,3	470,3	505,6	542,9	578,6	7,2%
Conditional grants	84,9	89,7	97,2	101,9	106,7	114,2	122,4	6,3%
Local government	**98,3**	**102,9**	**111,1**	**117,3**	**127,3**	**137,9**	**149,5**	**8,4%**
Equitable share	49,4	50,7	55,6	60,5	69,0	75,7	82,2	10,7%
Conditional grants	38,3	40,9	43,7	44,3	45,1	48,2	52,2	5,6%
General fuel levy sharing with metros	10,7	11,2	11,8	12,5	13,2	14,0	15,2	6,8%
Provisional allocation not assigned to votes	–	–	–	–	19,2	11,4	18,9	
Non-interest allocations	**1 115,8**	**1 159,0**	**1 242,3**	**1 327,6**	**1 443,5**	**1 539,5**	**1 647,1**	**7,5%**
Percentage increase	*9,7%*	*3,9%*	*7,2%*	*6,9%*	*8,7%*	*6,7%*	*7,0%*	
Debt-service costs	128,8	146,5	162,6	182,2	202,2	224,1	247,4	10,7%
Contingency reserve	–	–	–	–	13,0	6,0	6,0	
Main budget expenditure	**1 244,6**	**1 305,5**	**1 405,0**	**1 509,9**	**1 658,7**	**1 769,6**	**1 900,5**	**8,0%**
Percentage increase	*10,0%*	*4,9%*	*7,6%*	*7,5%*	*9,9%*	*6,7%*	*7,4%*	
Percentage shares								
National departments	*48,9%*	*48,0%*	*47,7%*	*48,1%*	*48,1%*	*48,0%*	*47,8%*	
Provinces	*42,2%*	*43,2%*	*43,3%*	*43,1%*	*43,0%*	*43,0%*	*43,1%*	
Local government	*8,8%*	*8,9%*	*8,9%*	*8,8%*	*8,9%*	*9,0%*	*9,2%*	

2.2 Summary of the main changes to the Bill and key considerations in transfers to provinces and municipalities

This section outlines major changes to the Bill as well as key considerations in relation to transfers to provinces and municipalities. National Treasury in its submission to the Committee indicated that the proposed reductions are far smaller than in the 2018 MTEF. The National Treasury's submission also indicated that allocations through the Division of Revenue transfers are higher per capita/per household to rural areas. For instance, allocations to rural municipalities are R11 200 per household while those of metros average R4 900. Therefore, allocations to rural municipalities per household are more than twice as much those of metros. National Treasury further submitted that, to manage the growth of government debt, while funding priorities (including Eskom), the 2019 Budget effects reductions to some transfers as follows:

- The bulk of the reduction in the provincial transfers (R3 billion) has come from the Human Settlements Development Grant largely due a history of poor performance;
- The reduction of R132.8 million from the provincial equitable share is offset by a salary freeze for provincial political office bearers; and
- There is a reduction of R500 million in 2020/21 from the Integrated National Electrification Programme (Eskom) Grant.

Furthermore, National Treasury cited two examples of how blending conditional grant funds can leverage private financing. The first is the Energy Efficiency and Demand Side Management Grant, which has been redesigned to allow grant funds to develop project pipelines and create a new market for private investors to scale-up retrofitting energy efficiency technology in public infrastructure. Savings on the cost of energy will finance the upgrades. The other relates to funding from the Comprehensive Agriculture Support Programme Grant (CASP), which has been reprioritised to subsidise Land Bank loans to increase the emerging commercial farmers so that they can enter the loan market at a cheaper rate and expand production.

3 Overall Conditional Grant Allocations to Provincial Government

Direct conditional grant baselines to provinces amount to R106.712 billion in 2019/20, R114.206 billion in 2020/21 and R122.355 billion in 2021/22. Indirect conditional grants amount to R4.561 billion, R4.980 billion, and R5.675 billion respectively for each year of the same period.

3.1 Major Changes to the provincial conditional grant framework are as follows:

a) **New grant –** a new *Human Resources Capacitation Grant*, which was previously a component of the indirect *National Health*

Insurance Grant will become a direct grant to enable provincial Health Departments to fill critical posts in health facilities. The total allocation amounts to R2.8 billion over the MTEF period.

b) Additions to grant funds

R200.3 million is added to the *Education Infrastructure Grant* in 2019/20 and earmarked for the reconstruction and rehabilitation of school infrastructure affected by natural disasters in KwaZulu-Natal. An additional R2.8 billion is added over the medium term to the indirect *School Infrastructure Backlogs Grant* to provide for safe and appropriate sanitation at schools.

c) Scope of grants expanded

New components are added to the *Comprehensive HIV, AIDS and TB Grant.* The first component aims to strengthen the continued fight against malaria in three provinces and the second component enables the Department of Health to earmark support for community health workers. Funding for TB has also been split into a separate component. The grant is now named the *HIV,TB, Malaria and Community Outreach Grant.*

The *Provincial Emergency Housing Grant's* purpose is expanded in 2019/20 to include the funding of the repair of houses damaged by disasters, if the repairs are deemed to be more cost-efficient than relocating households to temporary shelters.

d) Reprioritisation of grant funding

Unallocated funds within the *Comprehensive Agricultural Support Programme Grant* amounting to R271.5 million in 2019/20, R295.8 million in 2020/21 and R320.1 million in 2021/22 has been reprioritised. The funds will be used for the implementation of a new blended finance mechanism developed by the Department of Agriculture, Forestry and Fisheries and the Land Bank. The intention is to leverage both government and private funds to extend more affordable credit to black farmers.

Due to slow spending in the personal services component of the *National Health Insurance Indirect Grant,* R2.8 billion has been reprioritised from this component towards the new *Human Resources Capacitation Grant* over the 2019 MTEF period.

e) Reductions to baselines – *Human Settlements Development Grant* baseline is reduced by R3 billion over the MTEF period in order to stabilise the growth of national debt. The reduction amounts to R1 billion in 2020/21 and R2 billion in 2021/22.

f) Ring fencing of grant funds

R2.5 billion of the Human Settlements Development Grant allocation is ring fenced over the MTEF period to upgrade human settlements in mining towns in six provinces. This R2.5 billion is in addition to the allocations determined through the formula.

A window with specific conditions relating to informal settlement upgrading will be introduced in the *Human Settlements Development Grant* in 2019/20 to intensify efforts to upgrade informal settlements. This window will amount to 15 per cent of the formula-based grant allocation to each province. This window also serves as the planning and preparatory platform for the introduction of the new *Informal Settlements Upgrading Grant for Provinces* in 2020/21.

g) Termination of grants

The *Substance Abuse Treatment Grant* and the *Social Worker Employment Grant* has been phased out. The grant funding has been incorporated into the provincial equitable share over the 2019 MTEF period. This will allow provinces to use their equitable share to start operating facilities that were built to address substance abuse and employ the social workers previously funded through these two respective grants.

The component within the *Provincial Roads Maintenance Grant*, which makes provision for the rehabilitation of roads that are heavily used in support of electricity production will come to an end in 2019/20.

h) Change from provincial to municipal transfer – the *Public Transport Operations Grant* will be a direct transfer to certain metropolitan municipalities, if the public transport contracting and regulatory functions are assigned to municipalities in 2019/20.

4. Overall Conditional Grant Allocations to Local Government

Over the 2019 MTEF, the total value of conditional grants transferred to local government amounts to R45.1 billion in 2019/20, R48.2 billion in 2020/21 and R52.2 billion in 2021/22. The section below highlights major changes in the local government conditional grant framework.

4.1 Major Changes to the Local Government Conditional Grant Framework are as followed:

a) New grant – A new *Integrated Urban Development Grant* is introduced in 2019/20, specifically targeting urban local municipalities in support of spatially aligned public infrastructure investment that will lead to functional and efficient urban spaces. The grant aims to incentivise municipalities to invest more non-grant funding in infrastructure projects in intermediate cities. The grant amounts to R856.9 million in 2019/20. Municipalities that qualified for this grant in 2019/20 are also eligible to receive a performance-based incentive component.

b) Additions to grant funds: R2.8 billion is added to the Public Transport Network Grant over the medium term for the City of Cape Town's new phase of the MyCiti public transport network approved through the Budget Facility for Infrastructure. This additional funding is for a new public transport corridor for the MyCiti network, which will link the underserved areas of Khayelitsha and Mithchell's Plain to the city centre.

c) Scope of grant expanded:

In 2019/20, a provision amounting to 15 per cent of the *Energy Efficiency and Demand Side Management Grant* is made for municipalities to use the grant funds in their preparation for the Energy Efficiency in Public Infrastructure and Building Programme. The programme aims to create a market for private companies to invest in large-scale retrofitting of municipal infrastructure, which will be reimbursed through the savings on energy costs achieved.

d) Change in grant allocation formula – the *Public Transport Network Grant* allocation is based on a formula, which has been implemented since 2016/17. A performance-based incentive component accounting for 5 per cent of the allocation formula is introduced in 2019/20. To qualify for the incentive allocation, a municipality must have an operational municipal public transport system approved by the national Department of Transport and should have spent 80 per cent of their grant allocation in the previous financial year.

e) Grant funding earmarked – a total of R798.6 million of the *Municipal Infrastructure Grant* is earmarked over the 2019 MTEF period, for specific sport infrastructure projects identified by Sport and Recreation South Africa.

A window amounting to 20 per cent of the *Urban Settlements Development Grant* is introduced for the upgrading of informal settlements. The window sets a minimum amount that each city must spend on informal settlement upgrades and requires cities to work in partnership with communities.

R318.5 million of the indirect component of the Regional Bulk Infrastructure Grant will be ring fenced in 2019/20 for bulk infrastructure needed to complete the eradication of all bucket sanitation systems in formal residential areas that were in existence in 2014.

f) Grant funding limited to existing projects – The Department of Water and Sanitation has placed a moratorium on new projects funded through the Regional Bulk Infrastructure Grant, so that it can prioritise existing projects, particularly those that have been under construction for a long time.

g) Funding transferred from one grant to another – Cities have been using their Urban Settlements Development Grant allocations to implement electrification projects in informal settlements, despite the grant funding not being allocated for this purpose. Electrification projects in municipalities are funded through the Integrated National Electrification Programme (Municipal) Grant. To align the funding to the cities' needs, their Integrated National Electrification Programme (Municipal) Grant allocations will be incorporated into their Urban Settlements Development Grant allocation from 2019/20.

h) Funding shifted from a departmental programme to a grant: A total of R9.7 million will be shifted from the Department of Water and Sanitation's accelerated community infrastructure programme, which is being phased out, to the indirect component of the *Water Services Infrastructure Grant* (i.e. R4.4 million) and the indirect component of the *Regional Bulk Infrastructure Grant* (i.e. R5.3 million) over the medium term. These shifted funds will be used to strengthen project management and grant administration.

i) Reductions to baselines:

- *Municipal Infrastructure Grant* – the baseline of the grant is reduced by a total of R2.9 billion over the 2019 MTEF period to fund the new *Integrated Urban Development Grant*.
- *Urban Settlements Development Grant* – the baseline of the grant is reduced by R100 million in 2019/20 and R100 million in 2020/21 to fund other government priorities.

- *Integrated National Electrification Programme (Eskom) Grant* – the baseline of the grant is reduced by R50 million in 2019/20 and R550 million in 2021/22 to fund other government priorities and manage the growth of the national deficit. This indirect grant funding is allocated to Eskom to implement projects on behalf of municipalities that lack the capacity to do so.

5. Stakeholder and Public Inputs on the 2019 Division of Revenue Bill

This section provides an overview of the comments on the Bill from the Financial and Fiscal Commission and the South African Local Government Association. Furthermore, the summary of submissions received from the Western Cape Forum for Intellectual Disability, Equal Education, Budget Justice Coalition, Rural Health Advocacy Project, and Mr KE Matlala also form part of this section.

5.1 Financial and Fiscal Commission

The Financial and Fiscal Commission (FFC) agreed with the general thrust of the Bill, given the tight macroeconomic and fiscal environment, as well as with the new measures introduced to improve governance and performance of conditional grants. The FFC recognised that government had managed to maintain real growth in the allocation of resources to the three spheres under difficult economic circumstances, but emphasised the need for greater oversight over provincial and municipal spending. The FFC further noted the reduction in the funding of provincial conditional grants as well as their restructuring, but accepted that this was partly due to the fiscal crisis. In local government, the FFC recognised that allocations were expected to grow modestly, and recommended that attention be paid to greater efficiency of spending. Government’s continuing efforts to reduce poverty through maintaining the increase in social grants was applauded, as were the allocations for economic development.

Whilst the FFC welcomed the majority of the adjustments to the Bill, it did not agree with the addition of Clause 27(5)*(c).* It was of the view that the Department of Cooperative Governance and Traditional Affairs should be allowed to manage the process of the Integrated Urban Development Grant (IUDG) without National Treasury approval, using the conditional grant framework.

Regarding the provincial fiscal framework, the 2019 Budget provided an estimated total provincial allocation of R1.9 trillion over the MTEF, with the composition of unconditional transfers relative to conditional grants expected to remain the same. The FFC welcomed the incorporation of the Substance Abuse Treatment Grant and the Social Worker Employment Grant into the provincial equitable share (PES) allocation, but emphasised that the transition must be accompanied by greater oversight at inception, to minimise crowding out. The PES allocation was expected to maintain a nominal average growth rate of 7.2 percent over the MTEF, notwithstanding a baseline cut of R340 million in 2020/21; and the FFC welcomed the fact that new priorities were kept to a minimum. The FFC was of the opinion that the expenditure management should be exercised to manage the impact of cost escalation on service delivery due to low real increases in the PES. Conditional grants continued to bear the largest burden of consolidation with a projected reduction of R5 billion over the 2019 MTEF. The FFC's stance was that funding should be reprioritised away from under-performing grants, while readjustment should not interfere with approved delivery plans.

The Comprehensive Agricultural Support Programme (CASP) Grant was reduced by R887.4 million with these funds being transferred to the Land Bank for the implementation of a new blended finance mechanism. The FFC welcomed the fact that reprioritised funding remained within the sector, and recommended that provincial agriculture departments work with the Land Bank to implement this new mechanism. FFC was of the view that the reduction in the baseline of the Human Settlements Development Grant (HSDG) by R3 billion over the 2019 MTEF would significantly affect its outputs. Furthermore, the FFC expressed concern over the earmarking of R7.4 billion within the HSDG over the MTEF for the implementation of the informal settlements upgrade programme, as it limited provincial discretion over the implementation of housing projects. While the FFC supported the phasing back of the Title Deeds Grant into the HSDG in 2020/21, it recommended that in future, a comprehensive evaluation of whether earmarked funding had achieved its goals, as well as the challenges encountered, had to be undertaken instead of terminating a grant simply because its predetermined life span had been reached.

The FFC supported the anticipated assignment of the public transport contracting and regulatory functions to metropolitan municipalities during 2019/20 and that R20.2 billion would be transferred directly to the affected municipalities.

The FFC supported the introduction of a Human Resources Capacitation Grant to assist provincial departments of health to address critical vacant posts in health facilities, as human resources were key to the functioning of health facilities and this would address shortages of staff in the sector which in turn could improve the effectiveness of the National Health Insurance (NHI). The FFC further noted the additional R2.8 billion allocated to the School Infrastructure Backlogs Grant (SIBG) for the replacement of pit latrines as well as to provide water in schools, but emphasised the need for effective and efficient expenditure of the additional funds, given the historical poor spending and service delivery performance of this grant.

The FFC welcomed efforts by government to protect the local government equitable share (LGES), as it would go a long way in cushioning the poor against the negative effects of limited economic growth. The local government fiscal framework was allocated R414.7 billion over the 2019 MTEF. The FFC further supported the introduction of the new Integrated Urban Development Grant (IUDG) for non-metro cities and welcomed the revision of the Public Transport Network Grant (PTNG) by the introduction of an incentive element. It also welcomed the merger of the USDG and the Integrated National Electrification Programme (INEP) Grant as well as the expansion of the scope of the Municipal Emergency Housing Grant to include repair of houses damaged by natural disasters.

With regard to sector-specific issues, the FFC welcomed the 7.4 percent average growth in social protection expenditure, as cushioning social assistance beneficiaries was critical in compensating the poor for the adverse effects emanating from both government spending constraints in general and the fiscal consolidation adjustment.

5.2 South African Local Government Association

The South African Local Government Association (SALGA) reported with concern that local government finances were in distress, as evidenced by the 145 municipalities achieving unqualified audits in 2016/17 (noted by the Auditor-General as a continued pattern of deterioration) and the fact that 40 municipalities had negative cash balances at the end of 2017/18. In addition, revenue collection rates had reportedly declined, which negatively affected the municipal financial position and increased the debt owed by municipalities to Eskom and water boards, incurring penalties. The number of municipalities adopting unfunded budgets had increased from 83 municipalities in 2017/18 to 113 in 2018/19.

It was SALGA’s view that, although there was certainly money lost each year due to poor and/or mismanagement of funds, this amount was only a fraction of the funding shortfall. Nonetheless, more concerted efforts should be put in place to reduce this. In this respect, SALGA alluded to the role that national and provincial government had played in facilitating financial mismanagement by neglecting their constitutional obligations in respect of their oversight to local government. In addition, the rising reporting and compliance burden on local government had significantly increased operating costs.

With regard to the division of revenue for 2019/20, SALGA reported that local government was underfunded in the current financial year by an amount of approximately R55 billion. This included R35 billion for operating expenditure like the maintenance deficit, unfunded mandates and under-funding of the delivery of basic services from the equitable share; and R20 billion in capital expenditure compared to consolidated budget. SALGA proposed that this gap could be filled by a combination of the following:

- A higher allocation of nationally raised revenue to local government;
- Restructuring conditional grants in terms of flexibility and maintenance;
- Review of municipal demarcation to focus on financial viability;
- Concerted campaign to reduce distribution losses;

- Restructuring the Social and Labour Plan (SLP) programme;
- National incentives to enforce commercial customers to settle their debt;
- The reduction of the reporting and compliance burden;
- Removing Eskom from the municipal electricity distribution market;
- Addressing confusion over the respective powers and functions between local government and other parts of government; and
- Requiring other parts of government to settle their outstanding accounts with local government, and to pay their accounts timeously.

With regard to the conceptual framework, SALGA proposed that the 1998 White Paper on Local Government be completely revised, as it was silent on how a situation such as the one local government currently found itself in had to be addressed. SALGA was of the view that things had changed significantly during the previous 20 years and that certain assumptions underlying the White Paper were no longer accurate.

SALGA further reported that its 2018/19 Municipal Health Services Audit had highlighted certain challenges. To this end, SALGA proposed a differentiated approach to the funding of municipal health services, which should include the review of the revenue adjustment factor on municipal health services equitable share allocation and also promote improved budgeting for municipal health services by municipalities.

SALGA was further of the view that the current structure of conditional grants was counter-productive and made the following short-term recommendations to ease fiscal pressure on local government:

- Municipalities need to have an additional allocation for maintenance as a matter of urgency. This could be achieved by restructuring (and increasing) the Municipal Infrastructure Grant to allow it to be used for maintenance, as well as allowing it to be used in any area of the municipality.
- The outstanding accounts of other organs of state must be settled in full within 90 days, that is, by the end of May 2019.

In addition, SALGA recommended the following long-term policy changes to address the underlying structural problems that have created the current situation:

- The creation of a working group to critically review the current architecture and funding model for local government, based on the current fiscal reality, with the aim of drafting a new White Paper for local government.
- The entire conditional grant system should be overhauled to make it more flexible, cost-effective and efficient.
- The proposed restructuring of Eskom must take into account the impact of the current distribution model on municipal financial viability.
- The powers and functions of municipalities need to be finalised as a matter of urgency. This is the only accurate foundation on which the current LGES model can be evaluated.
- Long-term policy changes are required to address the underlying structural problems that have created the current situation.

5.3 Western Cape Forum for Intellectual Disability

The Western Cape Forum for Intellectual Disability (WCFID) reported that, after they had lobbied government for 13 years and finally resorted to litigation, an order was handed down by the Cape High Court on 11 November 2010. In response to the court order, the Learners with Profound Intellectual Disabilities Grant was introduced in 2017, together with a framework for its distribution. While it welcomed the provisions of this conditional grant, and the recognition that the court order, although limited in scope to the Western Cape, had implications for learners with sever to profound intellecutal disabilities nationally. The WCFID expressed concern that the Grant reportedly excluded the majority of the requirements of the court order.

While commending the Department of Basic Education (DBE) for its willingness to engage on this matter, owning its mandate, and expressing the desired commitment to make legislative, regulatory and other amendments to enable the implementation of the court order; WCFID noted with concern that the structure of the Learners with Profound Intellectual Disabilities Grant in the *Division of Revenue Bill* [B5 – 2019] was similar to that of the Learners with Profound Intellectual Disabilities Grant in the 2018 Division of Revenue Act.

WCFID requested the Committees on Appropriations to consider doing the following:

- Institute the necessary measures to monitor and evaluate the DBE's implementation of the Grant;
- Instruct the DBE to develop a drastic turnaround strategy to ensure that the Grant is spent timeously and appropriately;
- Require the DBE to provide a comprehensive report on the implementation of the Grant annually; and
- Urgently investigate the possibility of an appropriate pilot to implement the court order in two provinces i.e. Western Cape and Gauteng, with conditional grant funds that the provincial education departments were not spending. This was important so that, at the very minimum, the DBE provided funding to centres for adequate staff and facilities as well as transport for learners at centres. Furthermore, this would begin a process of allocating or building classrooms for learners currently at special care centres or subsidise special care centres as state schools on private property.

5.4 Equal Education

In its submission, Equal Education (EE) focused specifically on basic education financing, including allocation and expenditure trends and the performance of the national and provincial departments with regard to the delivery of school infrastructure.

EE noted that the basic education sector budget made up 14.4 percent of the total 2019/20 consolidated Budget making it the fifth fastest-growing line item after higher education, debt servicing costs, social development and health. Allocations towards the sector had remained relatively steady over the previous five years, keeping up marginally with inflation. However, EE expressed concern that funds allocated to the national Department of Basic Education (DBE) had, over the same period, remained slow in nominal terms. Additionally, these allocations had not kept up with inflation.

EE further submitted that the state of school infrastructure in South Africa continued to be a challenge for the basic education sector – and a threat to thousands of learners and teachers across the country. EE felt that reduced infrastructure grants, albeit in the face of inefficient spending, would be detrimental for those whose education experience was marred by inadequate and unsafe facilities. It therefore recommended that, instead of cutting funding, more should be done to hold these departments accountable and to support them in executing their mandates. It further expressed concern that the DBE missed the deadline for the Norms and Standards for infrastructure delivery, the first of which was 29 November 2016, by which date there should have been no schools without water, electricity and sanitation, or schools built from inappropriate materials. EE welcomed the additional R2.8 billion allocated specifically to eradicate pit toilets over the MTEF. EE was of the opinion that Treasury should not reduce the allocations for school infrastructure, but should provide direction to the DBE and provincial education departments on how best to spend their funds; and the DBE and provinces should deal decisively with non-compliant and poorly performing implementing agents.

With regard to early learning, EE expressed concern that no clarity was given in the 2019 State of the Nation Address in terms of the Early Childhood Development (ECD) grant and it also remained unclear how two years of compulsory ECD for all learners in South Africa would be funded. Furthermore, EE expressed disappointment that the 2019 Budget made no mention of the Early Grade Reading Study (EGRS), despite the success of the study where it was piloted in the North West Province.

With regard to the provincial equitable share (PES) formula, EE was of the view that the education component needed to be revised to consider rurality. This was due to the fact that the cost of providing quality education in rural provinces was often much higher given their geographic location and historic under-funding. While welcoming the continued review of the PES and the inclusion of a new data-collection methodology for the education component; EE expressed concern that there was no mention of the structure – including plans and timelines – of the review.

Regarding learner transport, EE reported that it had been making submissions on the Division of Revenue Bill since 2016, calling for the creation of a learner transport conditional grant. The current provision of learner transport was funded through the PES allocations, but provinces often cited inadequate funding as one of the main reasons for not providing transport to all learners who qualify.

In conclusion, Equal Education requested that the Committees consider doing the following:

- Ensure that the increases to the education sectoral budget and the DBE budget keep up with inflation;
- Reverse the R7 billion cuts to school infrastructure grants over the MTEF; and ensure that the EIG and SIBG are spent effectively, with support from National Treasury;
- Migrate ECD services and funds from the Department of Social Development to the DBE, as promised by the President, and ensure that the ECD conditional grant is increased in order to accommodate the expansion of the services and include two years of compulsory ECD;
- Ensure that National Treasury provides funding towards the expansion of the EGRS. The DBE must expand the EGRS coaching intervention to other provinces; and
- Ensure that National Treasury finalises its investigation into whether a conditional grant for scholar transport is feasible, and put this into effect; and

- Ensure that the equitable share formula review process time-frames are released and made publicly available and require National Treasury and the DPME to provide an update on the progress made during the review process.

5.5 Budget Justice Coalition

The Budget Justice Coalition (BJC) comprises a range of civil society organisations including the Rural Health Advocacy Project, the Children's Institute at the University of Cape Town, Equal Education, Equal Education Law Centre, the Institute for Economic Justice, Oxfam, Pietermaritzburg Economic Justice aqnd Dignity, the Public Service Accountability Monitor, Alternative Information and Development Centre, Section27, and the Studies in Poverty and Inequality Institute. The submission from the BJC focussed on education, health, social development, local government, human settlements, gender budgeting, and Parliament's oversight role.

The following recommendations were made by the BJC:

5.5.1 Education

- Reduction to school infrastructure grants over the medium-term should be reversed. These reductions may have an impact on government's ability to deliver on the needed school infrastructure, especially those in rural provinces.
- There needs to be a concerted effort to provide both the national and provincial departments of education with the necessary support, to overcome governance and administrative challenges in respect of school infrastructure delivery.
- Migrate Early Childhood Development (ECD) services and funds from Department of Social Development to the Department of Basic Education as promised by the President.
- National Treasury should make sure that funding towards the ECD conditional grant is increased in order to have an effective two years of compulsory ECD.

- National Treasury to provide funding towards expansion of the Early Grade Reading Study (EGRS). Department of Basic Education should expand the EGRS coaching intervention to other provinces.
- Government should ensure that the Equitable Share Formula review process time-frames are released and made public. National Treasury and the Department of Planning, Monitoring and Evaluation (DPME) need to provide an update on the progress made during the review process.

5.5.2 Health

- BJC recommends an increase to the level of funding for health.
- Parliament should require National Treasury to speed up the allocation of a minimum wage for Community Health Workers so that they can be paid their dues as from 1 April 2019.
- A comprehensive financial plan for the NHI should be drafted immediately, in consultation with stakeholders, and should be based on flexible economic scenario planning to ensure that sustainable funding for NHI is secured whether the country experiences low (0% - 3%) or high (3% - 6%) economic growth.
- A business plan for the NHI conditional grant should be published to enable better public oversight.
- National Treasury should implement cost-containment measures, where necessary, that comply with human rights standards of equity, non-retrogression and minimum core obligations. This should be done while supporting the provincial department of health's capacity to contain costs in a manner that will not undermine service delivery.

5.5.3 Social Development

- Publish clear commitment plans to increase the Child Support Grant in line with the survivalist Food Poverty Line by February 2020.
- Publish a clear road map before the 2019 Medium Term Budget Policy Statement (MTBPS) by which the State sets out its commitment to progressively realise universal coverage of social security to all in terms of headcount and in terms of adequacy of values as required by the Constitution.

- The said roadmap should clearly commit to rapid extension of coverage to all people between the ages of 18 and 59 and Parliament should prioritise the Social Assistance Amendment Bill in line with the court order.

5.5.4 Local government

- An expert panel should be appointed to undertake a study into the municipal revenue model and provide recommendations.
- Government should mitigate against the risks to service delivery provision if ESKOM requests that the equitable share of indebted municipalities be paid directly to settle outstanding debts.

5.5.5 Gender Budgeting

The Budget Justice Coalition notes the recommendations contained in the submission of civil society organisations who made a submission relating to Gender Based Violence to the Standing and Select Committees on Finance and supports these recommendations:

- Emphasise to the Minister of Finance and National Treasury that they a crucial role to play in combating the Gender-Based Violence when it comes to ensuring gender-responsive budgeting.
- Call on National Treasury to include a chapter on gender in the Budget Review with clear gender targets and indicators.
- Note that the DPME is currently conducting a synthesis evaluation of the relationship between government and the Not-for-Profit Sector and to flag this in order to engage with the implications of the DPME evaluation as they pertain to the funding of NGO's, particularly in light of the NAWOGO case.
- Engage Statistics South Africa in respect of the importance of official statistics when it comes to budgeting and the need for further work on crime statistics, and statistics that pertain to the realities of Lesbian, Gay, Bisexual, Transgender, Queer or Questioning, and Intersex (LGBTQI) persons.

5.5.6 Strengthening Parliament's Oversight capacity

Parliament must improve its own capacity to scrutinise budget proposals by filling posts within its research units, especially the Parliamentary Budget Office.

5.6 Rural Health Advocacy Project

The Rural Health Advocacy Project (RHAP) is a non-profit advocacy partnership founded as a collaboration between the WITS University Centre for Rural Health, the Rural Doctors Association of South Africa and the AIDS Law Project (now Section 27). In considering access to health care services by rural communities, it is important to consider the impact of pre-existing deprivation and vulnerability on service delivery. Former homeland areas, all rural, are the most deprived in South Africa with the majority of rural people surviving on less than R33 per day. This broader context affects the ability of people to access healthcare and attain good health. Historical neglect of the rural areas, poor roads and access to facilities, high unemployment, food insecurity, and high school drop-out rates are examples of the broader context affecting health outcomes.

The RHAP, in its submission, focused on the Provincial Equitable Share and the health related conditional grants i.e. Human Resources Capacitation Grant, the National Health Insurance Grants, and Hospital Facility Revitalisation Grant. It further emphasised the need for government to streghten primary healthcare services and to prioritise rural districts when drafting the budget.

The RHAP made the following recommendations to Government:

- To review the current fiscal relations with the view to improving the management and allocation of resources earmarked for health;
- To investigate the management of current supply chain management policies within provincial departments of health;
- Provinces to assess the capability of hospital and health committees to conduct facility based oversight and ensure that the necessary funding is available to support this; and

- Government should prioritise the rural healthcare system with the establishment of a rural health task team to investigate the state of delivery specifically in rural districts.

5.7 Mr Elliot Matlala

Mr E Matlala from Jane Furse in Limpopo province, submitted that the Bill should include a section delaing with the accountability of people misusing public funds without consequences. He further submitted that the Bill should include the amendment of section 100 (b) of the Public Administration Act to allow national goverment to dismiss or suspend politicians or administrators failing to account for public funds allocated to them. He was of the view that the Bill should be amended to allow for action to be taken against those found to be involved in wrongdoing and also emphasised the need for improved accountability for allocated funds.

6. Findings and Observations

The Standing Committee on Appropriations having considered the 2019 Division of Revenue Bill and received inputs thereon found the following:

6.1 The Committee is concerned about the capacity of provincial and local government to spend conditional grants. Of particular concern is the R3 billion reduction in the Human Settlements Development Grant which is due to the history of poor delivery performance. Whilst the Committee noted the reasons for reductions to some conditional grants, it is of the view that service delivery must not be compromised as a result. The Committee further concurs with the submission of the FFC which raises similar issues.

6.2 The Committee noted that the Finance Linked Individual Subsidy programme will be shifted from provincial government to the National Housing Finance Corporation. This was done with a view to increasing the qualifying beneficiary uptake on the said programme.

6.3 The Committee has noted the increasing number of municipalities which are in financial distress, the increase in the adoption of unfunded budgets, declining unqualified audit opinions, poor financial management systems and non-compliance with supply chain management processes. The Committee further noted the non-existence of comprehensive and solid revenue management, billing and debt collection systems, which hampers the user from paying for municipal services.

6.4 The Committee noted the submission from Salga calling for the Municipal Infrastructure Grant (MIG) allocations to be utilised for anything including maintenance of infrastructure by municipalities, however, the Committee is of the view that maintenance allocation is catered for in the Local Government Equitable Share allocation (LGES) and municipal own revenues.

6.5 The Committee welcomed the R157 million, which is added to the 2019/20 provincial equitable share to expand the roll-out of the Sanitary Dignity Project for learners from disadvantaged background. The Committee further notes that the Department of Women has made progress by drafting a policy framework regarding this project.

6.6 The Committee noted that an incorrect list of municipalities had been erroneously submitted to National Treasury by the Department of Energy in respect of the Energy Efficiency and Demand Side Management Grant allocations and therefore a request for technical amendment was made by the Department of Energy.

7. Recommendations

The Standing Committee on Appropriations having considered the 2019 Division of Revenue Bill recommends as follows:

7.1 That the Minister of Finance and the Minister of Cooperative Governance and Traditional Affairs (CoGTA) should ensure that

National Treasury and CoGTA investigate if provinces and municipalities have the requisite implementation capacity before conditional grants are introduced. This will reduce the prevalent instances of underspending and poor performance of such conditional grants, which ultimately compromises service delivery.

7.2 That the Minister of Finance should consider conducting an investigation into all instances where there is a mismatch between budget expenditure and performance against approved performance targets.

7.3 That the Minister of Finance and the Minister of Human Settlements should ensure that the National Housing Finance Corporation develops a realistic implementation plan for the Finance Linked Individual Subsidy programme to increase the qualifying beneficiary uptake, and, that Parliament should monitor progress on a regular basis.

7.4 The Committee, as per its report on the 2018 Division of Revenue Bill, re-emphasises the need for municipalities to align their budgets to their Integrated Development Plans (IDP), put mechanisms in place to ensure that all resources received from the nationally raised revenue are efficiently, effectively and economically managed. The Committee further re-emphasises the need for municipalities to improve their revenue management, billing and debt collection systems and Parliament should monitor progress.

7.5 The Committee concurs with the National Treasury that the Municipal Infrastructure Grant must only be used for its intended purpose. The Committee is of the view that maintenance of municipal assets must be budgeted for by municipalities as it is catered for in the LGES and the own revenue.

7.6 That the Minister of Finance and the Minister of Women should ensure that the R157 million allocated to the Sanitary Dignity Project for learners from disadvantaged backgrounds is utilised for its intended purpose and that proper systems are put in place to achieve this. Having noted the progress made in drafting the policy framework for this project, the Department of Women should further develop a realistic project implementation plan and Parliament should monitor progress.

7.6 That the Minister of Finance ensures that the National Treasury corrects the list of municipalities in the government gazette in terms of the Energy Efficiency and Demand Side Management Grant allocations for the 2019 MTEF as indicated in the letter from the Department of Energy.

8. Committee's Recommendation on the Bill

The Standing Committee on Appropriations having considered the ***Division of Revenue Bill*** [B5—2019] (National Assembly) referred to it and classified by the Joint Tagging Mechanism as a section 76 Bill, reports that despite the technical changes on Energy section it has agreed to the Bill without amendments.

9 Conclusion

The responses by the relevant Executive Authorities, to the recommendations as set out in section 5 above must be sent to Parliament within 60 days of the adoption of this report by the National Assembly.

Report to be considered.

2. Interim Report of the Portfolio Committee on Telecommunications and Postal Services on the Electronic Communications Amendment Bill [B 31 – 2018], dated 12 February 2019

Introduction

The Electronic Communications Amendment Bill (ECA Bill) was introduced in Parliament by the Department of Telecommunications and Postal Services (DTPS) and referred to the Portfolio Committee on Telecommunications and Postal Services Committee on 16 September 2018.

The directive from the Speaker of the National Assembly to the committee was that the Bill was of an urgent nature and the committee was directed to conclude the Bill by the end of 2018.

Background

The committee received a briefing on the Bill from the Director-General (DG) and officials of DTPS on 9 October 2018. From this it became clear that the proposed Bill was of a very complex and technical nature.

Based on the assumption that the Bill would have been thoroughly consulted by DTPS with stakeholders and industry players, believing that there would be less public submission and few contractions, the committee proceeded with haste to publicise the **Bill for public comment.** The committee simultaneously arranged for public hearings and deliberations from 26 November 2018 to 30 November 2018.

During this period the committee requested the Parliament to avail a dedicated team of a content advisor, researcher, legal services and legal drafting team. Sadly, as the committee commenced with hearings, such dedicated services were not availed on a fulltime basis and in a dedicated manner.

Method of Work

The committee in adhering to the rule of law and the constitutional obligation to facilitate public participation in the law-making processes of parliament, advertised the Bill, inviting written submissions to the committee.

The committee had agreed that during the period of advertisement, members would thoroughly familiarise themselves with the content of the Bill and all other relevant documents, consult with their respective political parties on their policy positions and determine a stance on taking the Bill forward.

The committee also had agreed and directed the committee secretary, Ms. Hajiera Salie, to immediately dispatch to members written submissions as soon as they are received by her.

The submissions were also shared with the DTPS immediately after receipt thereof.

The committee extended the invitation to the Portfolio Committee on Communications and also circulated the proposed Bill and other documents to that committee.

The Telecommunications and Postal Services portfolio committee lodged an application with the House Chairperson, Mr. Cedric Frolick, requesting that he grant the committee the permission to sit outside its usual Tuesday schedule. The committee sittings would commence immediately after the deadline of the written submissions and would continue for a period of two weeks. The permission was granted.

The committee secretary telephonically contacted all stakeholders who submitted written submissions to establish whether they would like to make verbal submission to the committee and the amount of time each presenter would like to be granted. She then drafted a programme for the hearings.

Purpose of the Bill

The Bill seeks to amend the Electronic Communications Act, 2005, so as (i) to provide for transformation of the sector through enforcement of broad-based black economic empowerment; (ii) to provide for lowering of cost of communications; (iii) to reduce infrastructure duplications and encourage service-based competition through a wireless open access network service;

(iv) to provide a new framework for rapid deployment of electronic communications facilities; (v) to provide for new approaches on scarce resources such as spectrum, including the assignment of high-demand spectrum on open access principles; (vi) to create a new framework for open access; to provide for the regulation of international roaming, including SADC roaming to ensure regulated roaming costs, quality of service and transparency; (vii) to provide for regular market definition and review to ensure effective competition; (viii) to provide for improved quality of services, including for persons with disabilities; (ix) to provide for consumer protection of different types of end-users and subscribers, including persons and institutions; and (x) to provide for enhanced co-operation between the National Consumer Commission and the Authority, as well as the Competition Commission and the Authority; and to provide for matters connected therewith.

Literature considered for enactment of the Bill

The committee working with DTPS officials, State Law Advisors and Legal Services of Parliament identified several documents that were relevant for members to familiarize themselves with in order for them to be ready to process the Bill after receiving public submissions. The following were documents circulated to committee members.

1. The proposed ECA Amendment Bill (B31-2018).
2. The ECA Act, 2005 (Act No 36 of 2005).
3. The ECA Act 2013 (Act 1 of 2014).
4. CSIR Report on the ECA Bill.
5. The Social Impact Assessment.
6. National Integrated ICT Policy White Paper Africa. Government Gazette 40325 Published 03 October 2016.
7. Africa Analysis Telecoms. IT. Media (National Integrated ICT Policy White Paper) January 2017.
8. Government Gazette No 1003. Invitation to provide written comments on proposed policy and policy directions to the authority on licensing of unassigned high demand spectrum.

9. Certificate from the Office of the Chief State Law Advisor (Dated 05 September 2018) confirming that the Bill is consistent with the Constitution.
10. The report to the Joint Tagging Mechanism (JTM) recommended for the Bill to be tagged as a Section 75 Bill.
11. Presentation by Mr. Eric Boskati (Content advisor to the Select Committee in the NCOP), dated 20 November 2018.

Constraints and concerns of committee

The committee, from the onset, was concerned about a few things namely:

- Timing in presenting a complex and technical Bill on the eve of the end of the 5th Parliament's term with the expectation from the Executive that the Bill was priority, yet it was tabled only on 16 September 2018.
- The technical nature of the Bill, whilst some committee members lack sufficient exposure to the technical aspects of the Bill and digital economy, including the ICT landscape in general.
- That the committee was, and is, without the dedicated basic support in the form of competent content advisory, research and legal advisory services.
- The tagging of the Bill as a Section 75 Bill instead of Section 76 in terms of the Constitution.
- The substantial number of submissions received on the eve of the closing date.
- The extensive areas of contradictions between stakeholders including the telecommunication companies, the associated risks facing the committee to rush the Bill which could prompt a myriad of litigations and constitutional challenges.
- The limited time available for the committee to process the Bill before the end of 2018, as was directed by the Speaker of the National Assembly.
- The committee meeting sits once per week on a Tuesday from the morning till lunch time, as most afternoons are sittings and in the main those sittings are 3-line whips.

Risk Profiling by committee ahead of receiving written submissions

The committee reflected on scenarios it faced at the 20 November deadline for written submissions, include:

- Assuming no submissions were made the committee would likely use the time of two weeks allocated to sit and process the Bill.
- In case of many submissions being made the committee would, in preparation for public hearings, need sufficient time to study the documents, and ready themselves to listen to verbal presentations and to ask relevant questions.
- Lastly what would happen to the work of the committee, come the last day of submissions and commencement of public hearings, if Parliament had not kept the promise of deploying a technically competent research and content advisory service.

Publication of the Bill for Public Comments

The committee placed advertisements calling for comments to the Bill in all eleven official languages, giving a deadline of 16h00 on 20 November 2018, totaling four weeks. The advertisement was published in two national newspapers: The Sunday Times and Rapport which represented the English and Afrikaans languages. The local newspapers included Isolezwe leSixhosa, Isolezwe, Coal City, Thembisile News, Bushbuck Ridge News, Free State News, Business Ink and Seipone News. The local newspapers represented the other 9 official languages. Furthermore, the Parliament website also advertised the call for comments in all official languages.

Submission received from the call for comments on the Bill

By the deadline the committee had received 25 submissions ranging from four pages to 200 pages. Of the 25 submissions received, 22 participants indicated that they wished to attend the public hearings and make oral submissions. The rest said they would not attend owing to their financial constraints, among other reasons.

Post the closure time, the committee received an additional three written submissions and thus the total written submissions were 28.

Two of the submissions were received during the hearing with requests to also appear before the committee and give oral evidence. The committee granted permission for the two presentations to be heard. Two submissions were received after the hearings

The following stakeholders submitted written submissions, some of whom appeared before the committee to give verbal presentations.

1. ABT Africa – Mr Muzi Makhaye: Chairperson.
2. Association for Black Securities Professionals – Mr Asief Mohamed: Member of the National Executive Council.
3. Acacia Economics – Mr Ryan Hawthorne: Consultant.
4. B-BBEE ICT Sector – Mr Andile Tlhoaele: Chairperson.
5. Broadband Infraco – Mr Phatang Nkhereanye: Senior Manager.
6. Business Unity of South Africa (BUSA) – Mr Olivier Serrao: Director.
7. Cell C – Mr Graham Mackinnon: Chief Legal Officer.
8. Independent Communications Authority of South Africa (ICASA) – Mr Wellington Ngwepe: Chief Executive Officer.
9. Internet Services Providers Association (ISPA) – Mr Dominic Cull: Regulatory Advisor.
10. Liquid Telecoms – Mr Mike Silber: General Counsel.
11. Media Monitoring Africa/SOS Public Broadcasting – Mr Tsanga Mukumba.
12. Mr Gopalan Padayachee – An interested citizen.
13. Mr George Buthelezi – An interested citizen.
14. MTN – Mr Godfrey Motsa: Chief Executive Officer.
15. National Association of Broadcasters (NAB) – Mr Pillay Moilua: Chairperson.
16. Progressive Blacks in Information Communication Technologies – Mr Leon Rolls: President.
17. SABC – Mr Philly Moilwa: General Manager.
18. South African Communications Forum (SACF) – Ms Katrina Pillay: Managing Director.

19. South African Local Government Association (SALGA) – Ms Xanthea Limberg: Councillor.
20. SENTECH – Mr Zunaid Adams: Executive Legal and Regulatory.
21. SMILE – Ms Irene Charnley: Chief Executive Officer.
22. Ms Korobo – An interested citizen.
23. TELKOM – Mr Sipho Maseko: Chief Executive Officer.
24. Vodacom – Mr Shameel Joosub: Chief Executive Officer.
25. Western Cape Government: Ministry of Transport and Public Works – Ms Jacqui Gooch: Ministry of Transport and Public Works.
26. Wireless Access Providers Association of South Africa (WAPA) – Mr Dominic Cull: Regulatory Advisor
27. WOAN Forum: Convergence Partners – Mr Enver Fraser
28. Youth Economic Alliance (YEA) – Mr Afrika Mkhangala: President

Industry Experts Input

The committee invited well-known scholar and a respected industry specialist Professor Alison Gillwald from Research ICT Africa to advise the committee on matters of the ICT industry, the cost to communicate, Wireless Open Access Networks (WOAN), capacity and constraints of the regulatory framework and environments and any other matter she deemed important for the committee to consider in processing the Bill.

Public Hearings

The committee conducted the public hearings over four days: 26, 27, 29 and 30 November 2018.

The public hearings were well attended by various stakeholders, amongst them Mobile Network Operators, ICT small and medium enterprises, State Owned Entities, the sector regulator, Internet Services Providers (ISPs), Non-Governmental Organisations (NGOs), industry experts, the media and others.

Post-hearing submission

Post the public hearings the committee received two written requests to make written submission. The submissions were from:

1. eThekwini Metro and
2. ICT SMME Chamber.

The committee requested a legal opinion from the Parliament Legal Services (PLS) on how to deal with these late submissions.

The committee was informed that the processing of the Bill was still at its infancy stage with only the public hearings having been concluded and that the committee was yet to commence with deliberations on the Bill.

The advice further elaborated on a public participation process as ordained in a case law study example of the *Doctors for Life vs the Speaker of the National Assembly* amongst others.

The PLS advised that the test is that reasonable opportunity be afforded for meaningful participation, in this regard the committee would be complying with the minimum test and would not set a bad precedent.

It was in this regard that the committee accepted the explanation and subsequently the written submissions as they met the test of reasonable opportunity for participation and also that the timing of the submissions would not negatively affect the processing of the Bill.

The PLS stated that other committees in Parliament had considered late submissions, and thus they did not see any harm in the committee accepting these written submissions.

The committee thus decided to allow for the circulation of the written submissions to the committee members.

Tagging of the Bill

On 20 November 2018, before the committee's preliminary discussion on the Bill, the committee deliberated on the tagging and constitutionality of the Bill. DTPS, the parliamentary and state law advisers had posited that the Bill was correctly tagged as a Section 75 Bill.

On Tuesday 27 November 2018, the day after the committee started public hearings, Parliament's Announcements, Tablings and Committee Reports document (ATC) #177-2018 corrected the tagging to a Section 76 Bill.

Post the public hearings the Parliamentary Legal Advisor admitted that there was an error in the ATC #129-2018 of 19 September 2018, that tabled the Bill in the National Assembly as a Section 75 Bill.

The committee expressed its dissatisfaction at this anomaly as it could put the whole process of the committee to enacting this Bill into dispute.

The committee expressed a view that this anomaly had far reaching impacts on the credibility of the process, as in advertising for public comments on the Bill the committees may have mislead the public and thus the legitimacy of the process may be questionable.

Outcomes of the Public Hearings on the Bill

The committee spent the four days listening to verbal submissions from the stakeholders. The committee has not conclusively deliberated on the outcomes of the public hearings owing to insufficient time.

There are, however, matters that have been brought to the attention of the committee. These include:

i. The complaint by most stakeholders that the committee had rushed the processing of the Bill in Parliament. Other stakeholders felt the Bill was long overdue and Parliament should urgently conclude the processing of the Bill;

ii. The divergent interpretation on access to both rural and urban lands by Electronic Communications Network Services (ECNS) licence holders for deploying the electronic communications networks or facilities;

iii. The resourcing of the regulator to be able to carry out its constitutional and legislative mandate;

iv. Divergent interpretations that the Bill transfers away powers from ICASA to the Minister;

v. There were complaints about the capacity of ICASA to deliver on its mandate within the prescribed times;

vi. The failures on ICASA to complete market reviews and to determine dominance in the market;

vii. The agility of ICASA to manage tensions between policy objectives and consumer affairs;

viii. Complaints that the Bill introduced structures that encroached on municipalities and private land owners' constitutional rights and legal mandates through the functions of the proposed Rapid Deployment Committee (RDC);

ix. The unconstitutional encroachment into private and municipal lands and infrastructures and fixed structures including heritage sites envisaged in the Bill, by ECNS.

x. That the Bill creates policy uncertainty and deviates from the agreed upon allocation of the high demand spectrum and thus may negatively impact on the planned investments in the South African economy on one hand;

xi. There were conflicting views on whether it is the intention of the Bill to oblige MNOs to collectively or individually commit to buying 30% of the WOAN's spectrum capacity;

xii. Whether the WOAN, or multiple WOANs, would compete in the open market or will be accorded disproportionate advantage over the other license holders;

xiii. There were different views on the issue of spectrum re-farming;

xiv. There were divergent views on the single trenching vs competition and the effect this will have on the cost to communicate;

xv. The distinction between Broad-Based Black Economic Empowerment (B-BBEE) and Historically Disadvantaged Individual (HDI) needed clarity; and

xvi. The publication of Government Gazette No 1003's invitation to provide written comments to the Independent Communications Authority of South Africa (ICASA) on proposed policy and policy directions to the authority on licensing of unassigned high demand spectrum, and the impact this would have on aspects of the Bill.

Deliberations in the committee

i. The committee has not had time to comprehensively discuss the Bill and thus it is far from ready to present a report to Parliament.

ii. The real work of enacting legislation in the committee has thus far not occurred, the committee was only able to listen to the stakeholders' verbal submissions, receiving responses for clarity from stakeholders and the department.

iii. The committee has, since the public hearings, received other written submissions and is yet to deliberate on these together with those received from the stakeholders that made verbal submission.

iv. With the time at the committee's disposal ahead of the elections and prorogation of the 5th Parliament it is impossible for the committee to conclude processing the Bill.

v. The committee has however advised the DTPS to engage stakeholders to find common ground on areas of varying divergent views expressed both in writings and in the verbal submissions or at least find general consensus.

vi. The committee holds a view that various stakeholders are miles apart from agreement on several aspects of the Bill and thus further consultations are required.

vii. The committee is of the view that the process was an attempt by DTPS to rush the parliamentary processing of the Bill and thus the committee runs the risk of presenting poorly crafted and inadequately interrogated legislation. The Bill is of a very complex and technical nature. The inadequate technical support from Parliament also put the work of the committee in an untenable situation.

viii. It is clear to the committee that, should the Bill be enacted, there will be constitutional and other legal challenges.

Conclusions

i. The committee has not finished its work on the Bill.

ii. A common sentiment during deliberations was that any new legislation needs to be more forward-looking in order to anticipate a rapidly evolving communications technology environment.

iii. The department, after reviewing the preliminary report of the Portfolio Committee, indicated that it has identified issues that require further deliberations between the department and the industry and therefore would conduct further deliberations with stakeholders.

iv. In light of the above, on 12 February 2019, the department formally withdrew the Bill for further consultation, taking into consideration the deliberations emanating from the committee proceedings as enunciated in the deliberations of the committee above.

v. The committee supports the withdrawal of the Bill on the basis of its deliberations.

3. Report of the Portfolio Committee on Communications on the removal of the Chairperson of the Independent Communications Authority of South Africa (ICASA), dated 12 March 2019

The Portfolio Committee on Communications (Committee), having further considered its recommendation on the removal of the Chairperson of the Independent Communications Authority of South Africa, reports as follows:

On 7 February 2018, the Committee received a letter from the Minister of Communications informing the National Assembly that the Chairperson of the ICASA Council, Mr Manyaba Rubben Mohlaloga (Mr Mohlaloga), was convicted on charges of fraud and money laundering on 15 January 2018. The Minister further requested the National Assembly to commence with the process of removing Mr Mohlaloga from office.

On 27 February 2018, the Committee resolved to commence with the removal process in terms of section 8 of the Independent Communications Authority of South Africa Act (Act No. 13 of 2000) ("ICASA Act"). Section 8(1)(f) of the ICASA Act provides for the removal of a Councillor who has become disqualified in terms of section 6(1)(j) of the ICASA Act. In terms of this section, the offence of fraud is a ground for disqualification.

On 28 February 2018, the Committee invited Mr Mohlaloga to make written representations as to why he should not be removed as Councillor and Council Chairperson of ICASA. Mr Mohlaloga submitted the required written representation via his attorney.

On 27 March 2018, the Committee considered the representations that were received from Mr Mohlaloga. The Committee agreed that the purpose of providing an opportunity to make representations was not to debate the merits of the conviction. The Committee accepted that there was a guilty verdict that triggered the removal process. The Committee is not a court of law which has the expertise to determine guilt or innocence. Representations were invited to consider why, despite a conviction, the Councillor should not be removed.

In this regard, the Committee considered the nature of the fraud, the amount of money involved, the person or entity who suffered the loss and whether collectively these issues created a lack of trust in Mr Mohlaloga.

The Committee agrees that the fraud conviction is extremely serious and involves a substantial amount of public money that was appropriated for the benefit of emerging black farmers. It notes further that the actions occurred at a time when Mr Mohlaloga was serving in Parliament as the Chairperson of the Portfolio Committee on Agriculture. This raises serious concerns in respect of conflict of interest.

On 24 April 2018, the National Assembly resolved to refer the matter back to the Committee for further consideration and report (see National Assembly minutes of 24 April 2018).

The Committee met on 29 May 2018 and was of the view, based on the above, that there was a reasonable apprehension that Mr Mohlaloga cannot continue in a position of trust and authority.

The Committee accordingly recommended that the Minister of Communications suspend Mr Mohlaloga as a Councillor and Council Chairperson of ICASA, in terms of section 8(3)(c) of the ICASA Act, until such time as the National Assembly finalises the removal process.

On 12 March 2019, the Committee deliberated on the matter of the ICASA Council Chairperson following his sentencing by the Pretoria Specialised Commercial Crimes Court. The Committee noted that Mr Mohlaloga was granted leave to appeal his sentence but not his conviction. The Committee notes that Mr Mohlaloga’s attorneys have informed Parliament that he intends petitioning the Judge President of the North Gauteng High Court to grant him leave to appeal the conviction.

Having considered the matter, the Committee resolves that Mr Mohlaloga be removed as a Councillor and Council Chairperson of ICASA, in terms of section 6(1)(j) of the ICASA Act, with immediate effect.

Report to be considered.