

NATIONAL ASSEMBLY OFFICE ON INSTITUTIONS SUPPORTING DEMOCRACY

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Parliament: Following up on our commitments to the people

Report of the Meeting of the Presiding Officers of Parliament:

Heads of Institutions Supporting Democracy, Members of the Executive and Chairpersons of Portfolio Committees

12 September 2018

Chairperson: Hon Baleka Mbete, MP, Speaker of the National Assembly

Compiled by the Office on Institutions Supporting Democracy

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1. Executive Summary

Introduction: On 12 September 2018, the Speaker of the National Assembly (NA), Baleka Mbete, convened a meeting with the Presiding Officers of Parliament, Heads of Institutions Supporting Democracy (ISDs), relevant Members of the Executive and relevant Chairpersons of Portfolio Committees to receive and discuss the report of the Task Team, which was established in November 2017.

To also assist in the processing of the Ad Hoc Committee on Review of Chapter Nine and Associated Institutions recommendations relating to the Amalgamation of certain ISDs and the shifting of budgets from the Executive to Parliament

The mandate of the Task Team was to assess the feasibility for the establishment of a Single Human Rights Body and the Shifting of the Budgets of ISDs from that of the Executive to Parliament. The solicited views of the ISDs and other stakeholders were to be distilled into a comprehensive report for the consideration and further processing by Parliament. Additional agenda items were also discussed and these are highlighted in the body of the report.

Establishment of a Single Human Rights Body: Pertaining to the feasibility of a single human rights body, the following recommendations are highlighted:

- The meeting acceded to the request by the Heads of ISDs for an additional month to refine its report so as to provide a valuable point of-reference for Parliament in processing the matter further;
- The Task Team report would include their own observations and their views on the way ahead, and would offer explicit common perspectives across ISDs on amalgamation: illuminate points of disagreements and areas of emerging consensus where such has been reached (e.g. amalgamation of CRL and PanSLAB);
- The Task Team would reflect qualitatively the complexity of issues explored by the Task Team;
- The Task Team Report would systematically identify lessons drawn from the international experiences (e.g. Australia and Kenya) and potential implications thereof for South Africa's Model (if any);

- The need to conduct in-depth analysis of institutional perspectives and experiences from other jurisdictions remains significant;
- Stakeholder engagements: Parliament should convene further engagements (such as a round table) on the idea of amalgamation and the processes to be followed to give effect to this.
- Comprehensive empirical research: The process of amalgamation should be informed by empirical evidence (cost benefit analysis, in-depth studies, evaluation, due-diligence, etc.);
- Parliament should consider exploring immediate measures, intermediate
 measures and long-term measure. Some of the different measures (listing not
 exhaustive) broadly include mechanisms for strengthening collaboration and
 cooperation amongst ISDs, relocation of ISDs into a single precinct, legislative
 and other policy amendments including modelling according to specified bestpractice case studies; and
- An evidence-based approach should culminate into the development and implementation of a road map or a clear plan of action on amalgamation.

Shifting of the Budgets of ISDs: Concerning the shifting of budgets the meeting noted the position advanced by the Task Team that it supported the Asmal recommendation on the shifting of budgets of ISDs from linked Departments to Parliaments' vote, as well as the specific issues that should be considered by Parliament whilst administering the shifting of budgets. These include amongst others: ISDs requested that the key issues (i.e. conditionalities) as outlined in the Task Team Report should be clarified and/or considered by Parliament in processing the matter further¹ -

- Review legislation / constitutional and legislative implications;
- Undertake a risk matrix and accompanied mitigation strategies;
- Outline the process and systems;
- Address governance and management systems;
- Parliament must develop all the necessary capabilities required for administering the budgets;

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¹ The detailed explanation related to conditionalities are contained in the Final Report of the Task Team

- A phased approach to the shifting of budgets should be adopted and the budgets of ISDs should be ring-fenced; and
- Within the current environment, the risk was too high to shift ISD budgets immediately. As Parliament first had to demonstrate that, it had the necessary capabilities, it was plausible to take a 3-year approach, in which time administrative capacity and the rules on the budgets need to be sorted out.

Notably, the Task Team reported to the meeting that the IEC did not formulate a position on the shifting of budgets subject to pending the clarification of specific issues (similar issues listed under conditionalities).

Way Forward on Other Matters: The resolutions on other matters include the following:

- The OISD should continue its preliminary work on a single precinct for inclusion into the Legacy Report to the 6th Parliament.
- The Deputy Speaker would keep the ISDs abreast of further developments with respect to the Determination of Remuneration of Determination of the Remuneration of Office-Bearers of Independent Constitutional Institutions Laws Amendment Act, 2014
- The ISDs to engage the IEC on what meaningful role they could play in the lead up to and during the elections in 2019.

The Report of the Task Team will be included in the *final report* handed over by the Presiding Officers to the 6th Parliament for further consideration.

2. Introduction and Background

On 12 September 2018, Speaker Baleka Mbete convened a meeting with Presiding Officers, the Heads of ISDs, relevant Members of the Executive and the relevant Chairpersons of Portfolio Committees to receive and discuss the report of the Task Team which was established in November 2017 to solicit views related to:

- A Single Human Rights Body, that will incorporate the SAHRC, NYDA, CGE,
 PanSALB, CRL Rights; and
- Shifting of ISD Budgets from the Executive to Parliament.

Additional agenda items included a briefing by the IEC on its readiness with respect to the 2019 national elections, an update on the Determination of Remuneration of Determination of the Remuneration of Office-Bearers of Independent Constitutional Institutions Laws Amendment Act, 2014, and the role of NCOP and its relationship with the ISDs. The apologies tendered during the meetings include the following persons:

- 1. Ministers: N Mthetwa, N Nene, N Monkonyane, Z. Mkhize, M Masutha,
- 2. Chairpersons P Chauke and Y Carriem
- 3. Chairpersons of the SAHRC
- 4. Acting Secretary of Parliament, Ms P Tyawa.

4. Opening and Welcoming Remarks, Speaker Baleka Mbete

Speaker of the NA Baleka Mbete opened the meeting by welcoming the Members of the Executive, Heads of ISDs, Chairpersons of Portfolio Committees, Presiding Officers and officials to the meeting. Noting that the meeting was one of several held since the 5th term of Parliament commenced in 2014, specifically on matters related to the processing of the Ad Hoc Committee Report on the Review of Chapter Nine and Associated Institutions (known as the Asmal Report).

The Speaker recalled that the first engagement on the matter was on 27 February 2014, a roundtable workshop was held on 11 September 2015, further meetings were held on 28 March 2017 and 28 September 2017, respectively. Speaker Mbete noted that the agenda of the meeting was largely dedicated to the Report of the ISD Task Team, who was given an opportunity to propose concrete recommendations on amalgamation of the proposed four ISDs, as well as the relocation of the budgets of ISDs away from the executive to Parliament.

She also noted that further processes were to unfold within Parliament once the Task Team Report has finally handed over to the Presiding Officers and invited the meeting to share ideas on how best to fully engage Parliament on the matter at hand going forward. The Speaker expressed appreciation to the Task Team for their willingness to undertake and unpack this "complex task".

Speaker Mbete also indicated that several attempts have been made to solicit the views of the Ministers in which ISD budgets were housed. The latest attempt included

writing to the Ministers to solicit written views. The responses of the Ministers have been disappointing with only the Minister of Finance, Public Service and Administration and Communications responding accordingly.

5. Remarks by Deputy Speaker, Lechesa Tsenoli

In his remarks, Deputy Speaker of the NA Lechesa Tsenoli underscored that the Task Team was established to evaluate feasibility of amalgamation and shifting of ISD Budgets from the Executive to Parliament. It was recalled that this exercise coincided with the reality that the Constitution was in existence for over 20 years, with many of the ISDs being "creatures of the Constitution". Given this epochal time, it was a timeous opportunity therefore to review the impact of ISDs on the broader democratic project.

This was an opportune time for the ISDs to reflect and do their own examination of their role and impact, as well as the consequential effects of overlaps (also known as forum shopping), budgetary constraints amongst others. The Deputy Speaker recalled that the amongst the many processes underway, the Office on Institutions Supporting Democracy (OISD) conducted a survey to ascertain the preliminary positions of the ISDs on the matters outlined above.

Deputy Speaker Tsenoli further emphasised that the Report of the Task Team was part of Parliament's initial internal consultation process, noting that "it is not yet in the formal sphere of Parliament". Due to the complexity of amalgamation and shifting of budgets, and given the limited time available before the term ends, it was envisioned that the 5th Parliament would make recommendations to the 6th Parliament for further consideration. The Deputy Speaker pointed out that as yet, no decisions were made by Parliament on either amalgamation or shifting of budgets. The Report of the Task Team should also be seen as a tool "for ISDs to generate self-awareness and to make recommendations for self-managing".

"We have expressed all along that this is not a quick sprint but a longer process- reflecting the views of all stakeholders. We are not questioning the constitutional mandates of ISDS - we have no mandate for this. What we have responsibility for we assumed- evaluate and review the recommendations, and be mindful to be objective and have an outcome that specifically deal with human rights." (Deputy Speaker Tsenoli)

6. Agenda Item: Task Team Report

The Task Team Report was presented in two segments, under the themes, establishment of a Single Human Rights Body and Shifting of ISD Budgets away from the Executive to Parliament, respectively.

In November 2017, a Task Team comprised of two Working Groups were established with representation from the ISD's, Parliament and National Government, to amongst others solicit views on the feasibility of a single human rights body and the shifting of ISD budgets respectively.

6.1. Remarks by Commissioner Nzimande, PSC

The chairperson of the Task Team's working group responsible for the feasibility of a single human rights body, Commissioner Nzimande also of the PSC represented advocate Sizani of the PSC. It was noted that the Task Team was tabling an *Interim* Report, as the Heads of ISDs requested additional time to refine their recommendations. The additional time would also be utilised to strengthen the report by including an analysis of constitutional models in Kenya and Australia. The ISDs would also include and highlight their challenges, opportunities and experience of the amalgamation of institutions such as the Higher Education Sector and ICASA. Amongst the ISDs there was a commonly held understanding that the Asmal Report was released at a particular juncture, i.e.10 years after democracy, when certain ISDs were in their formative stages. Given this context, it was necessary to "talk about institutional framework to take us forward".

6.1.1. Presentation by OISD

As the OISD acted as the secretariat to the Working Groups and Task Team, Mr Andile Mphunga (Senior Manager: ISD Oversight Support), presented the interim report on a single human rights body to the meeting. Noting that the Final Report of the Task Team was still being refined to-

 Make explicit common perspectives across ISDs on amalgamation: illuminate points of disagreements and areas of emerging consensus where such has been reached (e.g. amalgamation of CRL and PanSLAB);

- Reflect qualitatively the complexity of issues explored by the Task Team; identify systematically lessons drawn from both local (e.g. higher education, telecommunications/broadcasting and the judiciary experiences) the international (e.g. Australia and Kenya experiences) jurisdictions and potential implications thereof for South Africa's Model (if any).
- As well as the need to conduct in-depth analysis of institutional perspectives and experiences from other jurisdictions.

It was underscored that South Africa's unique history and constitutional dispensation has implications on the notion of amalgamation – As stipulated in the constitution, reform/s should be consistent with the imperative that ISDs were established to strengthen constitutional democracy (CODESA 2, Agenda 20163, SDGs, NDP, etc.);

Notably, the landscape has evolved (in various ways) since the Asmal recommendations were made more than 10 year ago (e.g. CRL was a fairly new institution then). As human rights are indivisible, interrelated and multifaceted, it remains significant to ensure a delicate balance is attained – have a dedicated, systematic and comprehensive focus on human rights in their various forms; and that all developmental priorities encapsulated in the NDP are underpinned by basic human rights. Different international experiences offer valuable insights but the unique South African jurisdiction therefore remain significant.

6.1.2. Task Team Recommendations: Single Human Rights Body

The broad proposals from the Task Team related to a Single Human Rights Model were elaborated as follows:

- Stakeholder engagements: Parliament should convene further engagements (such as a round table) on the idea of amalgamation and the processes to be followed to give effect to this.
- Comprehensive empirical research: The process of amalgamation should be informed by empirical evidence (cost benefit analysis, in-depth studies, evaluation, due-diligence, etc.).
- Parliament should consider exploring immediate measures, intermediate measures (and long-term measure. Some of the different measures (listing not

exhaustive) broadly include mechanisms for strengthening collaboration and cooperation amongst ISDs, relocation of ISDs into a single precinct, legislative and other policy amendments including modelling according to specified best-practice case studies.

• An evidence-based approach should culminate into the development and implementation of a road map or a clear plan of action on amalgamation.

6.1.3 Discussion Points

The main points raised after the presentations are presented in point form below:

- There was emerging consensus that the CRL and PanSALB due to mandate overlaps could be amalgamated- Partial Amalgamation.
- Consensus existed on the exclusion of the NYDA from the amalgamation process.
- The new proposal to merge the SAHRC/PP, was not supported by the Public Protector.
- Following the Asmal Report, the OISD was established and the FISD created, these developments should be recorded in the progress report that will serve before the 6th Parliament.
- Parliament should investigate the possibility of a single human rights campus as a matter of urgency.
- There was a flagrant disregard for recommendations made by the Auditor. The
 AG's mandate needs to be strengthened in the passage of amendments to the
 enabling legislation and thorough due diligence on issues of risk must be
 addressed by the 6th Parliament. The ISDs would not want to enter a new
 system with prevailing risk and governance issues.
- From the side of the Ministry of Women, there was support for the proposal for the ISDs to be provided with additional time, but there should assurances be given that the report of Parliament should not contain recommendations that are open ended.
- Women's organisations were not consulted on amalgamation of the CGE, whose establishment was the outcome of broad consultation. Parliament should not be afraid of consultation. The Ministry for Women will work with the CGE on a definitive contribution on amalgamation.

• The presentation and discussions underestimate the deep fractures prevalent among ISDS, and these fractures need attention from the FISD and Parliament.

6.2. Final Report: Recommendations of the Task Team: Shifting of ISD Budgets Prof Daniel Plaatjies

Presenting the report on shifting of ISD Budgets away from the Executive to Parliament, Prof Plaatjies of the FFC, and chairperson of the Working Group on Shifting of ISD Budgets noted that at the first meeting of the Working Group, all ISDs were present and agreed to the Terms of Reference (ToR) which was originally formulated by the OISD.

There was sufficient consensus that the ISD budgets should shift to Parliament, therefore the Task Team supported the recommendation on the shifting of budgets of ISDs from Departments to Parliament. It was highlighted that the consensus position was based on the proviso that Parliament should address and clarify a number of key issues or conditionalities as the matter moves forward for further processing. The detailed conditionalities are elaborated further in the Report, and include:

- Review of legislation / constitutional and legislative implications;
- Risk matrix and mitigation strategies;
- Process:
- System;
- Governance; and
- Management.

Notably, the IEC did not formulate a position on the matter, pending the clarification of specific issues (similar issues listed above).

Prof Plaatjies, noted that there was a view that Parliament and Presiding Officers should give a firm directive as the conversations are circular. There was a need for definitive political leadership on the matters discussed.

6.2.1. Main Discussion Points

Following the presentations, the following points were highlighted from the floor, as follows:

- The need to ring fence the budget so that there is an element of continuity.
- Practical considerations such as how to deal with new programmes that needed to be added should be clarified, and this therefore raised issues of the rules of the system.
- Issues of governance and how ISDs would account to Parliament required innovative thinking and proposals.
- Critically, the question was asked of Parliament whether it's systems were ready for the shift. The considered view was that the office of the CFO was not ready.
- Need to restructure the financial accounting and management systems and consequential reporting lines of Parliament.
- Capacity of Parliament- the shifting would require the right set of people to manage the budgets and lines of accountability should be clearly defined.
- A phased approach to the shifting of budgets should be adopted and ISD budgets needed to be ring-fenced.
- Within the current environment, the risk was too high to shift ISD budgets immediately. As Parliament first had to demonstrate that it had the necessary capabilities, it was plausible to take a 3-year approach, in which time administrative capacity and the rules on the budgets need to be sorted out.

7. Presentation by IEC Chairperson, Mr Mashinini

The chairperson of the IEC thanked the Speaker for the invitation to brief the meeting on the IEC's readiness for national elections in 2019.

The current five-year term of the National Assembly and all 9 provincial legislatures ends on 6 May 2019. Sections 49 and 108 of Constitution provide that when these terms expire the President and Premiers must by proclamation call and set election dates for which must be held within 90 days, thus in line with this national and provincial elections must be held between 7 May and 5 August 2019. There are currently 573 registered political parties, the Electoral Commission is currently reviewing the process by which the order of political parties appear on ballot papers is determined.

In May 2018 the Electoral Commission filed an urgent application with the Constitutional Court requesting it to extend its suspension of order of invalidity until November 2019. This would provide the opportunity to implement a number of additional initiatives such as working through a variety of address databases provided by various government and public sector institutions to geo-code and verify such addresses before assigning them to voters. On 29 June 2018 the Constitutional Court granted a temporary extension of five months (to 29 November 2018) to consider the matter of a longer extension, judgment has been reserved. The full presentation was included in the meeting pack. The main discussion points includes the following:

- The Deputy Minister of CoGTA, Mr Andries Nel requested that the ISDs engage the IEC on how best they could make a contribution to the upcoming national elections, especially with respect to the rights of citizens and voter education. Further, the IEC should engage the ISDs on how this collective could assist the IEC to ensure that the elections are free and fair- such as monitoring, diffusing potential conflicts and engaging in voting education.
- The meeting agreed that voter apathy amongst the youth needed attention as well as cybercrimes as these could have an adverse effect on the national elections if not attended to.

8. Determination of the Remuneration of Office-Bearers of ISDs

Section 219 (5) of the Constitution, determines that national legislation must establish frameworks for determining the salaries, allowances and benefits of judges, the Public Protector, the Auditor- General, and members of the Commission provided for in the Constitution, including the Broadcasting Authority referred to in section 192.

Notably, the Independent Commission for the Remuneration of Public Office- bearers advised that a date for the commencement of the Determination of the Remuneration of Office-Bearers of Independent Constitutional Institutions Laws Amendment Act, 2014, has not been not yet been determined by the President and thus a proper framework as envisaged in the Constitution for determining salaries, allowances, and benefits of judges, the Public Protector, the AG and members of Commissioners were outstanding.

The Speaker was requested by the FISD to intervene so as to ensure that the provisions on the Constitution were adhered to. In this regard, Deputy Speaker Tsenoli indicated that the Speaker had engaged the President on the implementation of the Act and that assurances were given that the matter was receiving urgent attention. The ISDs would be kept abreast of new developments and the OISD would continue to follow up on the matter.

9. Closing Remarks by Speaker Baleka Mbete

Upon closing the meeting, Speaker Mbete encouraged the ISDs to take a comprehensive approach, in an effort to strengthen their role, efficiency and efficacy. Noting that ISDs were in service of the people involved, it was critical to deal with the complexities of the matters at hand and continue to engage each other at the FISD, to the benefit of all people. She further noted that the recommendations of Asmal went well beyond technocratic solutions and subjective positions and instead should reflect the people's real aspirations and values. Speaker Mbete noted that it would be ideal if the ISDs amongst themselves agreed on amalgamation and delinking, to this end therefore it was agreed to accede to the Task Team's request for an additional month to formulate its final position on Amalgamation.

With respect to the shifting of ISD Budgets to Parliament, the Speaker noted that ahead of Parliament going to Treasury, it was necessary for government to embrace a paradigm shift, i.e. that Parliament was an arm of state and therefore its resource allocations should reflect this reality. These issues were already also discussed with Minister Nene and Minister Gigaba.

"The 5th Parliament has no time- best we can reflect- when we arrived in 2014 we thought we could put the Asmal report behind us- but it is clear that the issues are complex. Let me also say that South Africa cannot wait forever- 10 years ago the Ad Hoc Committee was created- we are now beyond 10 years since the release of the Asmal Report- we have to move but we must accept the request for more time- this must be a priority for the 6th Parliament."

10.Way Forward

10.1. Recommendations and Conclusions: Single Human Rights Body

With respect to Amalgamation of ISDs, the following main points were highlighted as a way forward-

- The Report of the Task Team will form part of the *final report* handed over by the Presiding Officers to the 6th Parliament for further consideration.
- The meeting acceded to the request by the Heads of ISDs for an additional month to refine the report and provide a valuable point of-reference for Parliament in processing the matter further.
- The Task Team was requested to share their own observations and their views on the way ahead, and to make explicit common perspectives across ISDs on amalgamation: illuminate points of disagreements and areas of emerging consensus where such has been reached (e.g. amalgamation of CRL and PanSLAB);
- The Task Team would reflect qualitatively the complexity of issues explored by the Task Team;
- Identify systematically lessons drawn from the international experiences (e.g. Australia and Kenya) and potential implications thereof for South Africa's Model (if any).
- The need to conduct in-depth analysis of institutional perspectives and experiences from other jurisdictions remains significant.

10.2. Recommendations and Conclusions: Shifting of Budgets of ISDs

The meeting noted the Task Team position that it supported the Asmal Recommendation on the shifting of budgets of ISDs from Departments to Parliament, noting the following-

- ISDs requested that the key issues (i.e. conditionalities) as outlined in the Task
 Team Report should be clarified and/or considered by Parliament in processing
 the matter further.
- Review of legislation / constitutional and legislative implications.
- Undertake a Risk matrix and accompanied mitigation strategies.

- Outline the Process and Systems.
- Address Governance and Management systems.

Notably, as reported by the Task Team, the meeting noted that the IEC did not formulate a position on the Shifting of Budgets subject to the pending the clarification of specific issues (similar issues listed under conditionalities)

10.3. Compendium of Tasks

- The Task to provide its final Report on or before 12 October 2018.
- The FISD must reflect on the report itself so report referred back to Institutions.
- The CGE should be given time to answer to the issues one by one.
- The OISD should continue its preliminary work on a *single precinct* for addition to the Legacy Report to the 6th Parliament.
- Further follow ups by the OISD on the amendment and implementation of the Determination of the Remuneration of Office-Bearers of Independent Constitutional Institutions Laws Amendment Act, 2014.
- Conditionalities as stipulated in the Task Team Report to be addressed and timeframes attached.

11. Annexure: Attendance Register

NAME	ORGANISATION
Speaker Baleka Mbete	Parliament
Chairperson Thandi Modise	NCOP
Deputy Speaker L Tsenoli	Parliament
Deputy Chairperson S Tau	Parliament
Hon C Frolick	Parliament
Hon T Didiza	Parliament
Hon T Memela	Parliament
Hon Y Phosa	Parliament
Hon N P Nkonyeni	Parliament
Hon V Smith	Parliament
Hon X Tom	Parliament
Hon H Maxegwana	Parliament
Hon J Nyambi	Parliament
Minister M Gigaba	Ministry of Home Affairs
Minister B Dlamini	Ministry: Women in the Presidency
Deputy Minister A Nel	CoGTA
Deputy Minister O Bapela	CoGTA
Mr K Makwetu	Auditor - General
Prof L Mosoma	CRL Rights
Commissioner G Mashinini	IEC
Commissioner T Tselane	IEC
Commissioner L Nare	CGE
Commissioner R Sizani	PSC
Adv B Mkhwebane	Public Protector
Commissioner D Plaatjies	FFC
Commissioner P Nzimande	PSC
Commissioner A Guam	SAHRC
Dr R Monareng	PanSALB
Ms J Tsoke	NYDA

NAME	ORGANISATION
Marco Granelli	IEC
Mr T Thipanyane	SAHRC
Ms K Maema	CGE
Ms Y Lusibane	OPP
Mr S Nkanunu	Ministry of Arts and Culture
Ms N Nojozi	Parliament
Mr K Zweni	Parliament
Mr P Davids	Parliament
Ms S Barsel	Parliament
Mr P Sebegoe	NCOP
Dr M Jahed	Parliament
Mr M Menenzi	Parliament
Mr A Mphunga	Parliament
Ms L Sait	Parliament
Ms A Gova	Parliament