

PARLIAMENT: Following up on our commitments to the people.

# in session



Vol. 16 ISSUE 4 2016



## Showing the way

*Speaker takes girl children to work*



## Vision

An activist and responsive people's Parliament that improves the quality of life of South Africans and ensures enduring equality in our society.

## Mission

Parliament aims to provide a service to the people of South Africa by providing the following:

- A vibrant people's Assembly that intervenes and transforms society and addresses the development challenges of our people;
- Effective oversight over the Executive by strengthening its scrutiny of actions against the needs of South Africans;
- Participation of South Africans in the decision-making processes that affect their lives;
- A healthy relationship between the three arms of the State, that promotes efficient co-operative governance between the spheres of government, and ensures appropriate links with our region and the world; and
- An innovative, transformative, effective and efficient parliamentary service and administration that enables Members of Parliament to fulfil their constitutional responsibilities.

## Strategic Objectives

1. Strengthening oversight and accountability
2. Enhancing public involvement
3. Deepening engagement in international fora
4. Strengthening co-operative government
5. Strengthening legislative capacity



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**OUR IDEALS**

**VISION** An activist and responsive people's Parliament that improves the quality of life of South Africans and ensures enduring equality in our society.

**STRATEGIC OBJECTIVES**

Strengthening oversight and accountability; enhancing public involvement; deepening engagement in international fora; strengthening cooperative government; strengthening legislative capacity.

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# Editor's note

**The** parliamentary Budget Vote process has ended, with an allocation for Parliament of a total of R2.2bn. This is R956m less than the requested budget, and points to the recognition by Parliament and Treasury of the need for careful planning and frugality, as the economic downturn in our country and elsewhere takes its toll.

Both Presiding Officers made this clear in their contributions in the Budget Vote debates in their respective Chambers. Ms Thandi Modise, Chairperson of the National Council of Provinces (NCOP), spoke of the need to “re-imagine the way the NCOP does its business”. Her counterpart in the National Assembly (NA), Ms Baleka Mbete, made the point that it is the House’s responsibility to ensure that its strategic plan and operational plan 2014-2019, adopted last year, are implemented with vigour.

Despite the pending financial constraints, the Presiding Officers reiterated their commitment to ensuring the smooth functioning of Parliament. Despite tension and challenges in the National Assembly, especially since the start of the fifth Parliament, Ms Mbete used the debate to remind South Africans of the overriding importance of the Constitution, which holds Parliament and its officials accountable.

Reiterating her determination to preserve the Constitution, which is the cornerstone of our democracy, the Speaker of the National Assembly described it as a document that underlines the fact that all South Africans – irrespective of their race, culture or creed – are cut from the same cloth. “Despite all the differences we may have, we must not diminish [the Constitution’s] inviolability.

“It is in our ability to hear different perspectives, to persuade one another with reasoned arguments and to show respect for the views of one another that we distinguish ourselves from a society that does not cherish democratic values,” she said.

This issue of *InSession* features Parliament’s Budget Votes as well as the Budget Votes of the Departments of Basic Education and Health. See the spread on the last budget votes of the season on pages 10 to 17.

On page 18 read about the NA debate to find solutions to the pressing crisis in Vuwani in Limpopo. This article provides a background to the violence and attempts to explain the significance of the demarcation process which created the local municipality of Malamulele.

A debate in the NCOP that receives coverage in this issue of *InSession* considered the report-back on Taking Parliament to the People (TPPTP) that was held in April in the Eden District in the Southern Cape. The NCOP holds TPPTP every year. What made this programme different is that it returned to the site of last year’s TPPTP to track service delivery and government responses to the issues raised by the local community. This changes TPPTP into more than an opportunity for citizens to engage with local and national leadership; it allows the leadership itself to measure the impact it has had, or failed to have, in its response to the people. Read about this frank engagement on pages 20 to 21.

*InSession* will be covering the run-up to the local government elections of 3 August, and we start in this issue with a detailed report on the submission made to the Portfolio Committee on Home Affairs by the Chairperson of the Independent Electoral Commission (IEC), Mr Glen Mashinini. He assured the Committee that the elections would go ahead as planned – as a postponement would require an amendment to the Constitution by Parliament – and shared some insight into the complex process of running a poll and ensuring an outcome that is recognised by all as free and fair. See this report on page 24.

As usual all our regular columns are in place – the news in brief from the Committees, question time in the Chamber, our Public Education Department’s contribution, which in this issue pays tribute to our Constitution as it reaches its 20<sup>th</sup> anniversary. Finally, we include our occasional column from the Chapter 9 institutions with a comment piece from the South African Human Rights Commission.

Moira Levy  
Editor

## MP WANTS TO ENSURE ACCOUNTABILITY

In response to the story in Issue number 3, 2016, about an accident in which a child was killed, Ward 62 councillor Ms Grace Sibeko has this to say:

“The issue was thoroughly explained to Ms Mthombeni. She seemed to understand my explanation to her. I told her that according to policy we were not allowed to transport the body of her grandson to KwaZulu-Natal. We would have been able to help if the funeral took place within the Ekurhuleni area,” she said.

Due to her unhappiness with the explanation, Ms Mthombeni approached the Speaker of the Ekurhuleni Metropolitan Municipality who confirmed that Ms Sibeko’s position on the matter was correct.

She added that she found it unfair that the family was now blaming the municipality for the death because the washing basins had been in place for more than 20 years. During those two decades, she said, there had never been any deaths due to the washing basins. “This was an unfortunate incident,” she added.



## MESSAGE FROM THE national council of provinces

The Chairperson of the National Council of Provinces, Ms Thandi Modise

*We debate the National Council of Provinces Budget Vote today under the harshest economic conditions, mostly not of our own making, but subject to global trends and dynamics. These conditions impose on all of us a survivalist mentality in the hope that tomorrow will be a better day.*

The foundation of our resolve to dedicate this year to “Following up on our commitments to the people” is our constant reminder that we are part of the people. We draw our being and our relevance from serving them. We owe our very existence to living up to the ideals which they uphold and strive to realise.

In February this year, the National Treasury highlighted the decline in growth worldwide from 3.4% in 2014 to an estimated 3.1% last year. It projected growth in the South African economy for this year at 0.9%. This is far less than we need to meaningfully intervene in the lives of the people. Even with these meagre resources, we can't shy away from our responsibility to ensure that we still do our utmost to make our people's tomorrow better than their yesterday.

We are celebrating 20 years of life under the current South African Constitution. We should take a moment to reflect on how life would have been without it, how this House would have been shaped without 1994, how this country would be like without full participation by all citizens in its national life.

Over the years, this Parliament has made great strides in facilitating the transformation of our nation in line with that envisaged in the Constitution. Among other things, we pursued non-racist and non-sexist policies. We also devoted national resources towards improving the living and working conditions of the people as an

endeavour to build one society united in its diversity.

As we mark 20 years of the Constitution, we must also be reminded that this House will also celebrate this milestone next year. A direct product of the 1996 Constitution, the National Council of Provinces (NCOP) came into effect on 6 February 1997. On the eve of its first sitting, then President Nelson Mandela noted that among other things, the NCOP would preside over new forms of allocation of revenue from central to provincial governments and the shift to a system of cooperative governance. He added that the NCOP should focus on what was central to its role, instead of that which was ancillary.

During the period under review, this House received four notices of interventions in terms of Section 139(1) (b). All were approved within 14 days as required by the Constitution.

With regard to our legislative work, we debated and passed all the 26 Bills transmitted from the National Assembly. We received 12 draft Bills from the Executive. These were all transmitted to the Speakers of the Provincial Legislatures and the Municipalities via the South African Local Government Association, as required by Joint Rule 159(2).

As we work towards the progression of women in our society, we need more representation especially of NCOP women parliamentarians in the

Multi-Party Caucus so that adequate mainstreaming of gender issues can be addressed.

Parliament's budget allocation for the 2016/17 financial year is R2.2bn, which is less than the requested budget by R956m. We therefore do not have sufficient funds to implement in full the Annual Performance Plan as per the 2014-19 Strategic Plan.

As a sign of our growing democracy, we are encouraged by the interest shown by the youth in civic matters during the voter registration period. The Independent Electoral Commission announced after the March and April registration weekends that nearly 80% of first-time registering voters were under 30 years of age. This is laudable.

John Adams, the second President of the United States, once said: “Remember, democracy never lasts long. It soon wastes, exhausts, and murders itself.” With the enthusiasm of our young people, our democracy seems to be defying this assertion.

The evidence we see is that of a growing number of young people taking up the responsibility to uphold and protect our constitutional democracy.

I would like to thank the Speaker of the National Assembly for the joint stewardship of Parliament and other Presiding Officers for their support. I also thank the Select Committees for their work in overseeing the budgets.

*This is an edited extract of the address by Ms Thandi Modise during the Budget of Parliament (Vote 2) on 12 May 2016. For more on Parliament's Budget Vote debates see pages 10 to 17. 🗣️*

# i put the question

Questions asked in Parliament in May concerned the President's plans for an economic convention of all interested parties and curbs to the public service wage bill, as well as his trip to the 2016 World Economic Forum in Davos, among other issues.



Mr Mosiuoa Lekota (Cope)

**Mr Mosiuoa Lekota (Cope) asked the President of the Republic, Mr Jacob Zuma,** whether he would take immediate and decisive steps to issue an invitation to every political party and organised interest groups which publicly, unreservedly and fully support the National Development Plan (NDP) to gather at an economic Convention for a Democratic South Africa (Codesa) to agree to steps that would see the plan being fully implemented. He also asked if the mooted economic Codesa would set up an NDP support group to closely and continuously monitor progress and issue reports for government to act on. He also wanted to know if every member of the national executive was willing to subscribe fully and unreservedly to the NDP and speak in open support of it at all times.

**The President replied:** The NDP was formulated through a thorough consultative process. Various stakeholders and members of the public were consulted in several road shows and extensive public engagement programmes by the National Planning Commission. The Plan was adopted by Parliament in 2013 with the objective to accelerate economic growth, eliminate poverty and reduce inequality by 2030.

The Plan is already being implemented. The 2013 Budget was the first to be tabled within the framework of the NDP. It remains the cornerstone of all our budget allocation decisions and has been translated into a five-year Medium Term Strategic Framework (MTSF), which is government's five-year programme of action. In this way, it forms part of the strategic plan of every government department.

The key priority for South Africa at the moment is to remove all possible impediments to implementation. The government cluster system ensures that there is alignment, facilitation and monitoring of implementation of priority programmes which feed from the NDP. Parliament is also able to monitor the implementation through the normal parliamentary oversight processes.

We have also introduced innovative programmes such as the Operation Phakisa Big Fast Results methodology. The programme is being implemented in a few sectors such as the

ocean economy, information and communications technologies in schools, health and mining. Operation Phakisa is proving to be an effective implementation mechanism. Other programmes such as the Industrial Policy Action are also aimed at implementing the NDP, in order to promote inclusive growth and create jobs.

Every member of the Executive subscribes to the NDP. All government programmes are informed by the NDP.

**Mr Willy Madisha (Cope) asked the President, Mr Jacob Zuma,** if the government is implementing a policy across all spheres of government to actively and determinedly restrain the government wage bill so that it does not outpace inflation, constrain the capital budget, curtail service delivery, erode the contingency fund and impact negatively on social spending on the poor.

He also asked if the government is restraining government expenditure on the salaries of public representatives and office bearers in order to minimise the budget deficit.

**The President replied:** Government is committed to remaining within overall expenditure ceilings, which were initially introduced in 2012. The main driver of growth in the past in the government wage bill has been the implementation of above-inflation salary increases. However, careful reprioritisation of spending since

2012 has led to a reduction in the share of compensation of employees from 36.1% in 2012/13 to a revised estimate of 34.5% in 2015/16.

In the 2016 Budget Speech, the Minister of Finance announced measures to curtail growth in the wage bill, including reducing compensation budgets by R25bn over the next three years. An additional R7.2bn has been shifted out of compensation budgets over the medium term to other spending priorities.

The National Treasury, the Department of Public Service and Administration, and the Department of Planning, Monitoring and Evaluation are working on proposals to reform wage negotiation processes. Appointments to non-critical posts will be blocked on the payroll system. However, to protect service delivery, teachers, nurses, doctors, police officers and other critical posts will be excluded from this process. To further restrain growth in the wage bill, the 2016 Appropriation Bill proposes earmarking compensation budgets. The success of these interventions will be assessed during the next three-year period.

The process of determining salaries of public representatives and office bearers is undertaken by the Independent Commission for the Remuneration of Public Office Bearers. The Commission is an independent statutory body mandated in terms of section 8 (4) and (5) of the Commission's Act (Act No. 20 of 1998), to make annual recommendations relating to salaries, allowances, benefits and making submissions to the President for consideration.

A number of factors are taken into consideration with the objective of restraining expenditure. Such factors include affordability, economic

conditions, and inflation forecasts, amongst other. These factors are carefully considered by the President prior to taking a decision on the Commission's recommendations. The process also involves consultation with various stakeholders including the Legislative Sector Forum and the Minister of Finance.

A case in point is the recently announced cost-of-living adjustments for public office bearers nationally and provincially. The Commission had recommended between 5% and 6% for main categories of public office bearers, but the President, after due consideration, determined a below inflation increase (Consumer Price Index minus 1%, which translates to 4.4%) for the 2015/16 financial year.

**Mr P G Atkinson (DA) asked the President of the Republic, Mr Jacob Zuma,** how many people in his delegation attended the 2016 World Economic Forum (WEF) conference in Davos, Switzerland, and for their names and formal designations or positions in government. He also asked how many of the delegation paid the full £29 000 (approximately R650 000) conference fee and for the costs associated with the trip.

**The President replied:** The WEF meeting in Davos is a premier global marketing opportunity, bringing together heads of state and government and global business executives and owners to discuss the state of the global economy.

WEF traditionally provides an excellent opportunity for South Africa to market itself as an investment destination. The January 2016 meeting was important, given the depressed global economic climate. We met global captains of commerce and industry to brief them on the various interventions that we have undertaken to reignite growth

and create jobs, especially the Nine Point Plan that I introduced during the 2015 State of the Nation Address, within the framework of the National Development Plan. The engagements went well as Team South Africa. Both government and business was able to send out a common message that South Africa is open for business.

I was accompanied by my wife, Ms Bongekile Zuma, as well as the ministers of Finance; Planning, Monitoring and Evaluation; Energy; Trade and Industry; Economic Development; Health; and Water and Sanitation. Officials from the Presidency included Ms Lakela Kaunda, the Chief Operations Officer; Mr Silas Zimu, the Special Advisor to the President; and Dr Bongani Ngqulunga, Deputy Director-General in the Private Office of the President. In addition, the support staff responsible for research, protocol, communication and general included Ms Grace Mason, Mr Bongani Majola, Ms Milka Bosoga, Mr Pride De Lange, Mr T Sekano, Mr K Sebata, Ms T Khambane, Ms N Dlamini and Mr G Moloisi. Ministers were also accompanied by a limited number of support staff. The cost of travel, accommodation and transport is still awaited and will be available after final reconciliation.

I am not aware of any family member of a delegate being on the visit. Other than my wife, no other delegate from the Presidency travelled with a family member. None of the government delegates were required to pay the amount mentioned. Accommodation for participants and support teams in Davos is arranged through a WEF-appointed travel agency in Davos. There are no individual country arrangements. The visit to Davos contributed immensely to the drive by government to reassure investors and to promote the country as an investment destination. 🇿🇦



# highlights from the committee rooms



**Every** month Parliament's Committees exercise their law-making and oversight functions. **Mava Lukani** compiled this summary of a selection of Committees' deliberations.

## **Welcome for new Compensation Fund head**

The Portfolio Committee on Labour welcomed the appointment of Mr Vuyo Mafata as the Commissioner of the Compensation Fund.

"Over the years the fund had negative audit findings from the Auditor-General (A-G). The Committee hopes that these new interventions will talk to the issues raised by the A-G in the 2013/14 and 2014/15 financial years that remain unresolved," the Chairperson of the Portfolio Committee on Labour, Ms Lumka Yengeni, told the Minister of Labour, Ms Mildred Oliphant, during the department's Budget Vote debate in Parliament.

## **Intervention in Thabazimbi Municipality likely**

Deliberations by the Select Committee on Cooperative Governance and Traditional Affairs on the beleaguered Thabazimbi Local Municipality in Limpopo suggested that the National Council of Provinces may decide to permit the Limpopo government to intervene in this municipality.

During Committee deliberations, members agreed that the municipality had serious governance challenges that could benefit from support from the provincial Department of Cooperative Governance and Traditional Affairs, the South African Local Government Association and the provincial Treasury.

## **Small business needs funds**

The Minister of Small Business Development, Ms Lindiwe Zulu, told

Members of the Select Committee on Economic Business Development that the R4.3bn budget for her department is inadequate.

"It is difficult to meet the objectives of the National Development Plan (NDP). If we are allocated more resources we will be in a better position to deliver on our mandate. The two years of our existence (as a stand-alone department) have shown us that many requests from small and medium-sized enterprises – largely owned by black people – are financial," the minister said.

## **Tourism creates jobs, Committee hears**

The Chairperson of the Tourism Portfolio Committee, Ms Beatrice Ngcobo, was told that for every 40 tourists who visit South Africa a job is created. The Committee was at the Tourism Indaba held in Durban.

## **Seven provinces support Expropriation Bill**

The Select Committee on Economic and Business Development welcomed the adoption of the Expropriation Bill by seven provinces. The Bill will ensure consistency with provisions of the Constitution, in particular the equality clause, property clause, administrative action and extension of the purpose for expropriation to include public interest. The Committee received eight provincial mandates, with only Limpopo outstanding.

## **Trade and Industry Committee holds talks to protect consumers**

The Portfolio Committee on Trade and

Industry engaged the National Regulator for Compulsory Specifications on what the Chairperson of the Committee, Ms Joanmariae Fubbs, said was the need to "stamp out what appears to have become a culture of non-compliance by importers of goods that put the health and safety of consumers at risk".

## **Interviews for SAHRC and Information Regulator**

The Portfolio Committee on Justice and Correctional Services held interviews to fill vacancies within the South African Human Rights Commission and the newly established Information Regulator.

## **Trade and Industry Committee considers debt relief**

The Portfolio Committee on Trade and Industry met the Financial Services Board, the South African Reserve Bank and National Treasury to discuss, among other things, developments in consumer credit insurance, debt relief and the Remote Gambling Bill.

## **Praise for SABC on local music decision**

The Portfolio Committee on Arts and Culture, which has on numerous occasions called on broadcasters to increase the percentage of local content on their platforms, welcomed the SABC's decision to increase local music across its 18 radio stations to 90%.

"We are happy that the leadership of the SABC has listened and is implementing the Committee's calls albeit on a trial basis," said Ms Xoliswa Tom, the Chairperson of the Committee. 🌟



## Speaker introduces NA's budget vote

**I**n her Parliament Budget Vote speech, the Speaker of the National Assembly, Ms Baleka Mbete, emphasised the need to hold the Constitution as the supreme legal document that upholds our country's democratic values and principles, writes *Abel Mputing*.

It is a document that underlines the fact that all South Africans – irrespective of their race, culture or creed – are cut from the same cloth. “Despite all the differences we may have, we must not diminish [the Constitution’s] inviolability.

“It is in our ability to hear different

perspectives, to persuade one another with reasoned arguments and to show respect for the views of one another that we distinguish ourselves from a society that does not cherish democratic values,” she said.

Since the fifth Parliament, for a variety of reasons, the atmosphere in the

House has been challenging. But we must ensure that the intensity of feeling expressed around some issues is contained within the bounds of the rules and orders without infringing on the freedom of speech that Members enjoy, she said.

The Speaker said it is the House’s responsibility to ensure that its strategic plan and operational plan for 2014-2019, adopted last year, are implemented with vigour. The imperatives that underpin these plans include, among other things, the need to ensure that Members have more time for meaningful oversight in Committees and constituencies.

“The work pressure of Honourable Members and the hours available in



**DEMOCRACY IN ACTION:** National Assembly Speaker, Ms Baleka Mbete, delivers her Budget Vote.

to implement in full the annual performance plan as per Parliament's strategic plan. Continued budget cuts undermine the effectiveness of Parliament to deal with increasingly complex oversight tasks. We will continue to engage the National Treasury on this matter."

The focal point of this year's parliamentary Budget Vote was the disruptions in the House. The fifth Parliament is faced with two choices: being an instrument of accountability or of inaction, said Mr John Steenhuisen, Chief Whip in Parliament of the Democratic Alliance.

"This is not the Parliament that the framers of the Constitution envisaged. They dreamt of a robust and energetic multiparty Chamber with a healthy tension between the executive and the legislature. The African National Congress (ANC) has actively sought to weaken this House and deliberately suffocate its ability to hold the President and ministers accountable."

Mr Mzameni Mdakane of the ANC reminded MPs that they are elected representatives of the National Assembly. "We are here not of our accord and wishes, but because the people have entrusted us with their most treasured asset: the Parliament of the Republic of South Africa. Let us improve the quality of our arguments, not the sound of our voices."

Mr Narend Singh of the Inkatha Freedom Party also raised concerns about decorum in the House. "It seems as if an anarchy-based new order is fast approaching and has this honourable institution on the ropes. Dramatic measures must be taken if we are to arrest this decline."

According to Mr Stephen Swart of the African Christian Democratic Party,

"We saw protesting students breaking through the parliamentary gates last year and the security services of Parliament were totally unprepared for this eventuality. A few days later, we had Nehawu members protesting in the precinct and disrupting Committee and plenary sessions."

There were voices of reconciliation from other MPs. "We certainly can find a way of overcoming our current challenges and make Parliament the effective institution it ought to be, said Mr Nqabayomzi Kwankwa of the United Democratic Movement.

"We need to do away with foolish political gallantry that erodes the credibility, the dignity and the decorum of the House. With all hands on deck, we can build a Parliament that is based on the promotion of the values of human dignity, equality, non-racialism, non-sexism and the supremacy of the Constitution."

"This Budget Vote affords us an opportunity to reflect on the functions and mandate of Parliament, and in particular, the role of Parliament in exercising oversight over the executive. There is much cause for concern in this regard," said Mr Nhlanhlayayise Khubisa of the National Freedom Party.

Despite all the challenges, let us not forget that as Parliamentarians we hold a special space in our society, said the National Assembly's House Chairperson, Ms Thoko Didiza of the ANC.

"We have a responsibility to inspire our citizens that even now, regardless of our political beliefs and orientation, it is possible to collectively work for a better South Africa to ensure that democracy has meaning to the ordinary women and men of our country. In order to achieve that, we will have to see humanity in each of us," she said. 🙏

the week are not easily reconciled. We, therefore, have to seek ways to go about carrying out our oversight mandate in a smarter manner. This will be partly facilitated by the passing of the Legislative Sector Bill that will help to coordinate the work of this sector," she said.

With limited resources, Parliament must cover core programmes over the medium term. The budget is divided into five programmes: strategic leadership and governance, administration, core business, support services and associated services, she said.

"Parliament's allocated budget for 2016/17 financial year amounts to R2.2bn, which is less than the requested budget by R956m. We therefore have insufficient funds

# New way of doing things in the NCOP

**The** *Chairperson of the National Council of Provinces, Ms Thandi Modise, told delegates to the NCOP during her Budget Vote speech that Parliament's 2016/17 annual performance plan, tabled in August 2015, "sets out the work to be done to achieve our goals," writes Mava Lukani.*

The National Council of Provinces (NCOP) is beginning to re-imagine the way it does business. The recent report-back exercise in the Eden District Municipality, Western Cape, under the banner of the Taking Parliament to the People programme is a case in point, the Chairperson of the NCOP, Ms Thandi Modise, told the permanent delegates to the NCOP when she delivered her Budget Vote speech in Parliament recently.

She said the report-back visit to the Eden District Municipality was a fitting practical example of the new way of doing things as the NCOP followed up on the commitments it made to the people of the Western Cape when it was in the Eden District Municipality in April 2015.

According to Ms Modise, further work has commenced in re-engineering the report-back programme to achieve the desired impact. "This will also [apply to] Provincial Week and other programmes," said Ms Modise.

Ms Modise said the NCOP is playing its part in promoting cooperative governance and sound intergovernmental relations. "The Constitution requires all the spheres, among other things, to cooperate and support one another, and where necessary to intervene."

She said the interventions workshop with NCOP stakeholders, which was held in October 2015, helped to sharpen the understanding of delegates about the role of the NCOP. She appealed to delegates to take the recommendations of that workshop forward.

The recommendations include: the need to enact legislation as envisaged in Sections 139(8) and 100(3) of the Constitution, to guide in dealing with interventions in general, the role of the South African Local Government Association, and the submission by provinces of consolidated annual reports of municipalities as obliged by Section 47 of the Local Government: Municipal Systems Act of 2000.

Ms Modise said the fifth Parliament undertook to improve the efficacy of its overall oversight and public involvement processes.

"At the core of this shift is the need to have more time for Committees to focus on oversight work and constituency work. Steps are now under way to effect these changes through the required internal political structures," said Ms Modise.

Parliament's budget allocation for the 2016/17 financial year is R2.2bn, less than the requested budget by R956m.



"We therefore do not have sufficient funds to implement in full the annual performance plan as per the 2014-19 strategic plan. It must be noted that the fifth Parliament is the first Parliament to align its budget with the strategic plan and we find our budget to be inadequate," she said.

The budget is divided into five programmes: strategic leadership and governance has been allocated R72.8m; administration has been allocated R116m; core business has been allocated R526m; support services has been allocated R318.1m; and associated services has been allocated R626.7m.



**SERVING THE PEOPLE:** The Chairperson of the National Council of Provinces, Ms Thandi Modise, delivers her Budget Vote.

Speaking during Parliament's Budget Vote debate in the NCOP, the Whip of the NCOP Whip of the permanent Western Cape delegation to the NCOP, Ms Cathy Labuschagne, said the NCOP has a distinct role and should not repeat the work of the National Assembly. "Our main focus as the NCOP should be oversight, legislation and intergovernmental relations," she said.

She said the programmes of the NCOP, such as Taking Parliament to the People and Provincial Week, should be focused on the effect of the implementation of the Acts of Parliament and executive decisions.

She said the NCOP is not clear about its mandate and has allowed itself to merely nod to and approve the decisions of the National Assembly.

"Chairperson, this House is a way away from the proud and dignified Senate that sat here between 1994 and 1997."

Ms Labuschagne said the NCOP is underperforming on petitions. She said the Select Committee on Petitions and Executive Undertakings is currently crippled by lack of support from the institution and proposed that a petitions office should be established in the Office of the Chairperson.

"This should be considered as a matter of urgency," she said.

Also participating in the NCOP Budget Vote debate, Ms Tebogo Mokwele, an NCOP permanent delegate for the Northern Cape province, told the NCOP that Parliament must promote the principles of multiparty democracy by ensuring that any Member of Parliament, regardless of political affiliation, can preside over debates in the Houses of Parliament and in parliamentary Committees.

She also recommended that Parliament appoint a retired judge willing to preside over important debates. 🇿🇦



**BASIC EDUCATION:** Ms Angie Motshekga delivers her Budget Vote.

# Working together to improve basic education

**The** *Basic Education minister assured NA MPs about her department's commitment to building a nation in which reading, social engagement and collective responsibility coexist. She also called on communities to respect the rule of law and own their role in developing the education system, writes Mava Lukani.*

Building specific strategies to improve the quality of basic education is the government's apex priority. The Department of Basic Education has since aligned its Action Plan to take account of the 2030 timelines prescribed in the National Development Plan (NDP), the Minister of Basic Education Ms Angie Motshekga told Members of the National Assembly (NA MPs) when she delivered her department's 2016/17 Budget Vote debate at Parliament recently.

"Improved learner achievements and school performance continue to be our main goal. This Budget Vote therefore focuses on learning and teaching in the sector, and on the commitments we have made on the post-2015 development agenda – the Sustainable Development Goal 4, which has a specific focus on the provision of quality education. Equity,

quality and inclusive lifelong learning opportunities for all, continue to be our focus," Ms Motshekga emphasised.

She said the 2016 Medium-Term Expenditure Framework (MTEF) period will be marked by a consolidation of the department's work and on guiding and deepening the work done at classroom, school and district levels, through monitoring and supportive action of provincial education departments, and the actions of the department at national level.

"Together with our partners, the focus will continue to be on getting learning and teaching in classrooms right, whether this is in terms of the foundational skills, subject content knowledge, and teaching context and practice. We must get all those who are in positions of responsibility

in our system to act in support of nation-building in its truest sense."

Ms Motshekga assured NA MPs about her department's commitment to building a nation in which reading, social cohesion and engagement, and collective responsibility coexist; and in which communities respect the rule of law, and own their role in developing their education system.

She said whilst education is a complex enterprise, they are able to confirm that the effects of the massive investments government has made in the last few years are visible and can be felt throughout the system, particularly in the classroom.

"Efficiency is increasing in all parts of the system, with improved retention rates up to Grade 9, increased gender parity across the schooling system and more young people matriculating yearly than before. We have more African graduates at universities than before as a result," said Ms Motshekga.

Ms Motshekga said her department is committed to improving the quality of teaching and learning through better teacher support, development, utilisation and supply, as well as better materials provisioning, and infrastructure development, preservation and maintenance.

“We are realigning departmental structures, partnerships and assessment, so that they better support learning, teaching, feedback and support in our classrooms, and the accountability for the resources our country invests in our schools,” she emphasised.

Speaking on the department’s budget allocation for 2016, Ms Motshekga reminded the NA MPs about the 2015 MTEF overall budget for the Department of Basic Education, which is R21.5bn. She said the overall budget allocation for 2016 MTEF period before the reduction of the baseline, increased by 4.7% from the 2015 MTEF allocation to R22.5bn.

According to Ms Motshekga, with the baseline reduction and the reprioritisation of the 2016 MTEF allocation, the resulting 2016 MTEF allocation for the Department of Basic Education “is R22.3bn – an increase of 3.5% from the 2015 MTEF allocation”.

The breakdown allocations for the 2016 MTEF period are as follows: administration R377.9m; curriculum policy support and monitoring R1.9bn; planning, information and assessment R12.5bn; educational enrichment services R6.3bn; conditional grant, mathematics, science and technology R385.2m; infrastructure delivery R2.4bn; support for South Africa’s HIV and TB prevention strategy R230.9m; School Nutrition Programme R6.1bn; and Funza Lushaka Bursary Programme, which is in its 10<sup>th</sup> year, R1.4bn.

Participating in the Budget Debate, the Chairperson of the Portfolio Committee on Basic Education, Ms Nomalungelo Gina, on behalf of the Committee, condemned in the strongest terms the burning of schools in Vuwani in the Limpopo Province, saying the victims of that violence are the learners who do not get teaching because there are no schools. Furthermore, Ms Gina said the destruction or burning of state property will resolve nothing but will instead create new problems.

Ms Gina told Members of the National Assembly that the Portfolio Committee on Basic Education condemns the use of violence that threatens learning and teaching in Vuwani.

“This has unfortunately led to, among other things, arson attacks on more than 22 schools in Vuwani due to protest actions which also led to the closure of several other schools. The Committee condemns any form of protest that destroys schools and deprives learners of the opportunity to learn and thrive so that they can be free from the shackles of poverty,” said Ms Gina.

Explaining the Budget Debate process, Ms Gina said: “We will continue to do robust oversight so that the integrity of our education system is not compromised.”

She assured Members of the NA that her Committee is resolute and will defend the integrity and the nature of all achievements the country has recorded to all children across all races and poverty lines in the past years.

She said the R22.2bn allocated to the Department of Basic Education is meant to further expand quality learning opportunities to all children. She said a budget that will address the challenges

that remain must ensure that education is not compromised.

Ms Gina said that the Committee had noted that the allocation will increase to R24.8bn over the MTEF as a continued effort by the government to open the doors of learning to all.

As education is among the five apex priorities of government, Ms Gina told NA MPs that providing learning opportunities for all learners will eventually reduce poverty and address social challenges within communities, particularly historically marginalised groups. To ensure that the Department of Basic Education keeps its focus on the priorities outlined in the NDP, Ms Gina said her Committee will keep the department under its sharp eye.

“We have noted from our engagements with the department that radical steps are in place to bring about changes in realising the NDP, Medium Term Strategic Framework, and the Action Plan 2019 goals,” said Ms Gina.

Ms Gina told NA MPs that the Committee noted with appreciation the fact that R16.2bn of the total budget is allocated to the conditional grants which are administered by the provincial departments of Basic Education.

Ms Gina also praised the department for the 2016 allocation that has provided for 500 more bursaries to heed the call of President Jacob Zuma that there should be a zero per cent increase in university fees.

Ms Gina thanked the Ms Motshekga, the Deputy Minister of Basic Education, Mr Enver Surty, and the Director-General of the Department of Basic Education for their ongoing willingness to account to the Portfolio Committee on Basic Education, even for matters that fell within the executive authority of the provinces. 🙏

# ‘We must do away with healthcare systems that cater only for the elite’

**Unequal** *access to quality healthcare and the high cost of treatment of non-communicable diseases, such as cancer, came under the spotlight during the Budget Vote debate of the Department of Health in the National Assembly, writes Sakhile Mokoena.*

Tabling the department’s R38.5bn budget in the National Assembly, the Minister of Health, Dr Aaron Motsoaledi, said after the world won the battle to lower the prices of HIV/Aids treatment drugs, there was now a similar struggle for cancer treatment.

The minister said 16 years ago the price of ARVs (antiretroviral drugs) was exorbitant and it used to cost US\$10 000 (R150 000) to put just one person on a year’s treatment.

“If that was not strongly challenged, it means in South Africa today, for our 3.4 million people on ARVs, the country would be paying R510bn, which is half the country’s annual budget. It would have been totally unaffordable to treat people. Imagine how many would have died. Imagine the collapse of the economy with so many people dying – imagine the collapse of the education system, the health system and social systems,” he said.

However, Dr Motsoaledi said this scenario was averted when civil society activists in both developed and developing countries, joined by United Nations agencies, philanthropists and governments, ensured that prices were drastically reduced.

“Today, instead of US\$10 000 a year,

it costs only US\$67 (R1 005) a year to put one person on ARVs. That horrible scenario that was averted more than 16 years ago, is back to haunt us. The horror scene is back in the new arena of non-communicable diseases (NCDs) and in the treatment of multidrug-resistant tuberculosis (MDR TB). You are aware of the exploding prevalence of cancer around the world and in our own country. We have just moved in a circle.

“Just as the price of ARVs was unaffordable then, cancer drugs are devilishly unaffordable today. If no drastic action is taken today, we are going to be counting body bags like we are at war. Two years ago, I was regarded as exaggerating or outright insane by some people when I spoke openly against pharmaceutical companies that were planning a price onslaught against us. Today, that onslaught which I had foreseen is here with us,” the minister said.

“If you have breast cancer and you need treatment with Herceptin you must part with close to R500 000 for a year’s treatment, R396 613 for colorectal cancer, R960 000 for metastatic melanoma, R204 000 for MDR TB and R832 000 for drug-resistant TB.

“Today, we have no option but to call for HIV and Aids-like solidarity of all the progressive forces to force significant decreases in the price of these medicines,” said Dr Motsoaledi.

“Anybody who is desperate to remain alive and tries to obtain treatment at current costs will end up in poverty. Alternatively, governments will end up bankrupt trying to meet the health needs of their populations. This disaster of unaffordable healthcare unfortunately affects people unequally. Those of higher socio-economic status are better protected and the unfortunate ones of lower economic status are left to perish.”

Member of Parliament Mr Fish Mahlalela, who is a Whip of the Portfolio Committee on Health, was concerned that 22 years into this democracy, health inequalities continue. He said only 16% of the population was covered by the private healthcare system, a fact that was publicly confirmed by the World Health Organisation’s (WHO’s) submission to the Competition Commission’s Health Market inquiry into the cost of private health in South Africa. The WHO concluded that private healthcare in South Africa is expensive.

He said South Africa has one of the most expensive private healthcare systems in the world and that private hospital prices in South Africa were on par with prices in countries with much higher GDP levels, such as the United Kingdom, Germany and France, which



he said “makes it unaffordable to the masses of our people who happen to be predominantly black in general, and women in particular.

“In other words, the private healthcare sector in South Africa is only for the rich. This means that the public healthcare sector is deemed to be for the poor. This is a two-tier system of healthcare provision, which is highly inequitable and unaffordable. The advent of the National Health Insurance (NHI) will ensure equity in healthcare in that members of the public, regardless of their socio-economic status, will have the freedom to seek health services from any accredited healthcare facility, whether public or private, and there

will be no need for them to pay out-of-pocket expenses,” said Mr Mahlalela.

He said with the NHI, access to quality affordable health services will be on the basis of need and not the ability to pay. “This will save hundreds of lives of people who are left to die because they cannot afford to pay for healthcare services,” he said.

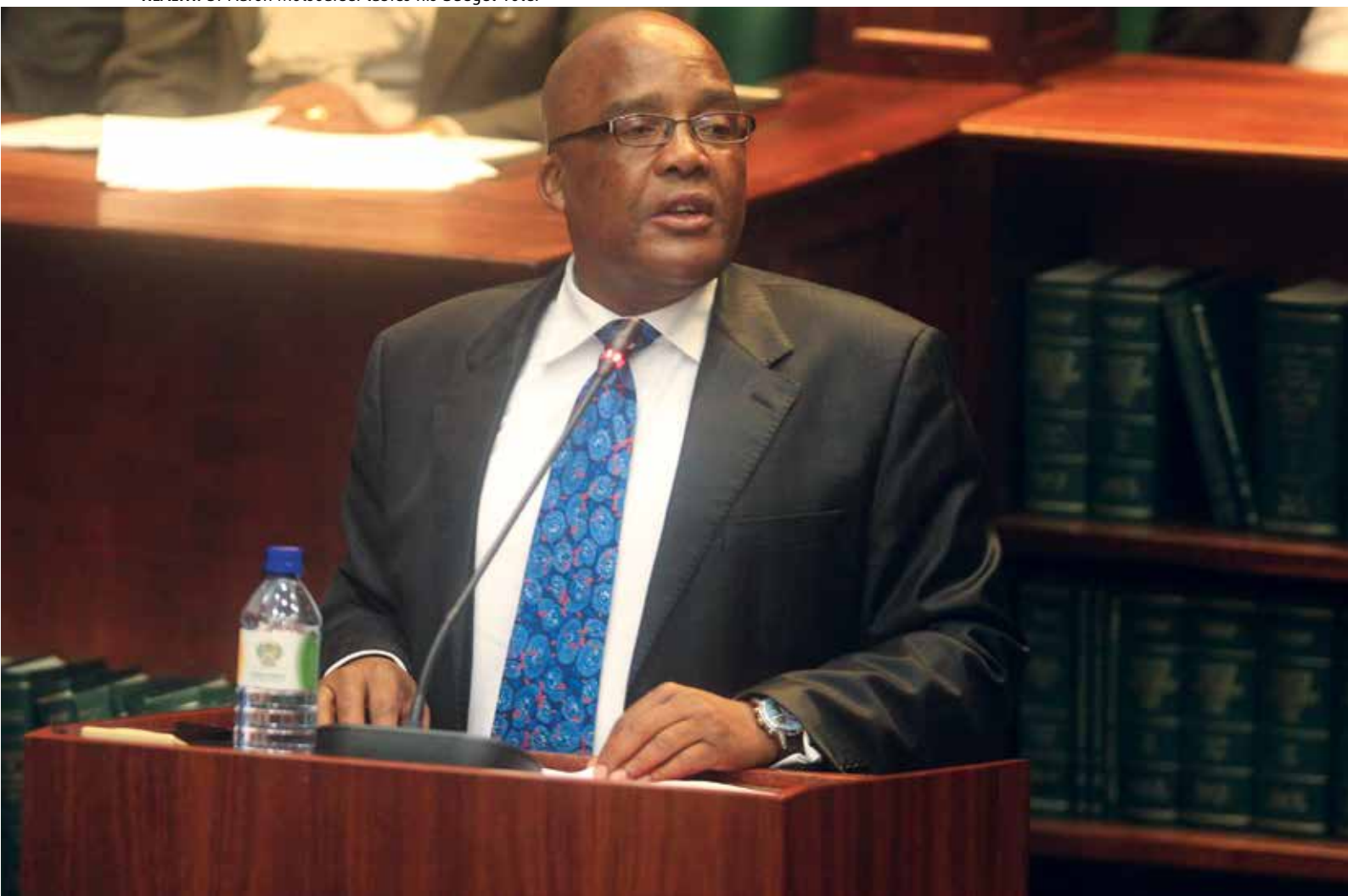
Dr Wilmot James from the Democratic Alliance advised the minister that universal access to healthcare could be achieved in one year if the minister dropped the means test, brought the off-budget medical aid credits on-budget and defined a universal subsidy for all – medical aid credits are worth R15.9bn.

“The minister should consider setting up a Maternal and Child Care Fund to finance – paid as conditional grants – the expansion of maternal and paediatric services at hospitals and clinics,” he said.

He also said the minister could create a national Emergency Care Fund that would serve as an underwriter of all parts of the health system offering emergency services of any form.

“The fund’s purpose would be to give equal access to the nearest treating facility regardless of whether the individual is covered by a medical scheme or the public sector,” said Dr James. 🗣️

**HEALTH:** Dr Aaron Motsoaledi tables his Budget Vote.





# We must find solutions to crisis in Vuwani, says MP

**The** *decision by the Municipal Demarcation Board to create a new Malamulele Local Municipality was partly to blame for the violence in Vuwani, in which public schools were destroyed, according to a debate in the National Assembly, writes **Mava Lukani**.*

**TENSIONS RUNNING HIGH:** A road in the area of Vuwani littered with rocks during the protest action.

The story of Malamulele and Vuwani villages is the explosion of the time bomb of tribal tensions that date back decades and which have been exacerbated by the non-existence of service delivery, rising corruption and patronage networks, among other things. These were the words of Mr Kevin Mileham of the Democratic Alliance during a debate in the National Assembly on ways to resolve the crisis in Vuwani, to restore the people's right to human dignity and basic services in the Vuwani communities.

According to Mr Mileham, the tensions that have exploded into violence started as far back as 1963 when an artificial border was drawn between the Venda and vaTsonga people on the Levubu River. He said the Malamulele protests that took place in 2015 happened because the Malamulele people feel that they do not get municipal services from the Venda-dominated Thulamela Local Municipality, because of their Tsonga ethnicity.

He said the decision by the Demarcation Board to create a new Malamulele Local Municipality was part of the source of the Vuwani violence in which, among other things, public schools were destroyed. He said it was important to note that no impact assessment had been done to determine the viability of the proposed new municipality, nor had any public consultation taken place with the residents of Vuwani communities on the matter.

"There is no budget allocation by National Treasury towards the new municipality and absolutely no indication that the Limpopo government will be able to implement

the demarcation resolutions in time for the local government elections," said Mr Mileham.

The Chairperson of the Portfolio Committee on Basic Education, Ms Nomalungelo Gina, said it was regrettable that the violence in Vuwani is taking place in May, a month in which South Africans celebrate the 20<sup>th</sup> anniversary of the adoption of the Constitution.

She said it was devastating that more than 60 000 learners, 2 600 of them in Grade 12, are suddenly denied education by the violence that destroyed schools in Vuwani. Ms Gina said she was puzzled by the fact that the problem arose from resistance to a demarcation decision and the schools became soft targets of disruption and destruction.

Calling the destruction of school infrastructure, the burning of school records and the disruption of schooling an attack on the national democratic revolution, she said: "We strongly denounce the destruction of school infrastructure and the disruption of schooling.

"The implication of the destruction of school infrastructure and disruption of schooling are huge and devastating. The real cost of this disruption is far beyond financial strain on that province. The school records were destroyed. Mid-year examinations were disturbed. Classrooms, libraries, laboratories, nutrition centres and utensils were burnt," said Ms Gina.

She reminded MPs that currently the Limpopo Province has an infrastructure backlog of R17.3bn, which includes R2.7bn to rebuild storm-damaged

classrooms. "It is estimated that to rebuild schools in Vuwani, the Department of Basic Education will need R234m for classrooms, R46.8m to provide mobile classrooms as an interim measure and R97.5m to provide desks," she said.

Ms Gina assured NA MPs that the Department of Basic Education and the Limpopo Province's Department of Basic Education are doing everything in their power to address the impact of the destruction and disruptions in Vuwani. The intervention includes an infrastructure recovery plan that has already delivered some positive results, she said.

According to Mr Floyd Shivambu of the Economic Freedom Fighters, the problem in Vuwani arises from the fact that the people of Malamulele complained about the inability of the Thulamela Local Municipality to deliver services to them. In response to that the Municipal Demarcation Board established the new Malamulele Local Municipality, which incorporates Vuwani and Hlanganani communities. Mr Shivambu said the incorporation of Vuwani and Hlanganani was done to ensure economic viability, but without proper consultation.

However, according to Mr Shivambu, although the newly established Malamulele Local Municipality incorporates Vuwani and Hlanganani, there is no real economic activity in these areas. "How do you explain a fact that in an area where there are more than 300 000 residents, there is no real economic activity? There is nothing happening there."

He said the violence in Vuwani is "mostly intra-ANC squabbles because the mayor of Makhado is from Vuwani".

Mr Shivambu is of the view that when that mayor fell under the new Malamulele Local Municipality, he realised that it would not be possible for him to become mayor again: "Including the councillors, they realised that with the new arrangement, they are not going to be Members of the Mayoral Committee and they are not going to occupy the positions that they were occupying before to continue dispensing patronage and getting tenders illegally to enrich themselves. Therefore, they incite these communities to go and burn the schools. That is why [those schools were burnt down]," Mr Shivambu explained.

Mr Mkhuleko Hlengwa of the Inkatha Freedom Party made an appeal to the communities of Vuwani. "Let us not throw the baby out with the bathwater and destroy the futures of young people by burning schools. In a sea of poverty and socio-economic inequalities, education remains an island of hope," he said.

He said while they condemn the burning of schools, condemnation on its own is not enough. "We must find solutions." Mr Hlengwa said MPs must not lose sight of the tensions, particularly between political leadership and traditional leaders.

"This goes back to the questions of Section 7 and 12 of the Constitution, because the challenges that exist arise out of that, the duplication of leadership in these areas – particularly with regard to governance. We need to go back to the recommendations made in 2000, when the Cabinet Committee understood that something must be done to ensure that traditional leaders and municipalities are able to work together," he said. 🗣️

# Good working relations will help the Eden community – NCOP Chairperson

**Addressing** *challenges in the Eden District requires the three spheres of government to work together to ensure that strategies address the core developmental issues of the district, a debate on the report-back heard. Sakhile Mokoena reports.*

In an effort to advance the effectiveness of the Taking Parliament to the People programme, the National Council of Provinces (NCOP) held report-back sessions to make sure that government speeds up the implementation of the recommendations and to also give feedback to the community.

A report-back session was held recently in the Eden District Municipality in the Western Cape, a year after the Taking Parliament to the People was held there.

The Chairperson of the NCOP, Ms Thandi Modise, said the exercise has revealed that with “more cooperation and good working relationships among the spheres we can further unlock more value for our people.”

She was addressing NCOP members during a debate on the report-back session in the NCOP recently. The challenges raised by the people were sometimes caused by challenges within the intergovernmental system, she said.

“Our decision to go back to Eden District in April 2016, having been there in 2015, was to make a meaningful impact on the lives of the people through following up on the issues they raised with us,” she said.

She said the Taking Parliament to the

People programme was an instrument for the NCOP to enhance its engagement with the public and it allows people to have a say in how they experienced governance.

“The advantage of the programme is that it involves the participation of the three spheres of government. This is our contribution to promoting cooperative governance. The programme assists us to get an understanding of the challenges that our people face in the different corners of our provinces,” said the Chairperson.

Ms Modise said she held discussions with the Speakers of the provincial legislatures about proposals on how to ensure that the Taking Parliament to the People programme becomes issue-based.

“We hope that this approach, which we want to introduce immediately, will make it possible to intervene in areas we consider a priority. “I am looking forward to an exciting opportunity, whereby we seek to increase the positive impact of this programme on the lives of the people,” she said.

Mr Edwin Makue, the Chairperson of the Select Committee on Trade and Internal Relations, advised political parties to make sure that the promises that are made during the upcoming

local government elections must be realistic and achievable, saying it was “irresponsible of parties to offer people jobs when they know they are unable to meet this promise”.

He added that the report-back session revealed that there was room for improvement in the intra-governmental cooperation across the three spheres of government. “The cooperation of municipal leaders, especially mayors and councillors, still leaves much to be desired,” Mr Makue said.

Councillor Ms Geolene Wolmarans, the Western Cape Deputy Chairperson of the South African Local Government Association (Salga), said she believed that functional, collaborative partnerships between all spheres of government are essential to improve service delivery in municipal spaces.

She said the NCOP engagement with various communities in the Eden District in 2015 unearthed a number of challenges, some requiring urgent attention by various stakeholders and others requiring a different way of thinking.

“The NCOP, in cooperation with Salga, can play a significant part in addressing some of the more fundamental issues impacting on service delivery. It is important to find the right balance between compliance and service delivery.

“Success in delivering basic services at local level is impacted by the



**REPORT BACK:** NCOP Chairperson Ms Thandi Modise (right) and NCOP Secretary and Acting Deputy Secretary: Core Business Adv Modibedi Phindela (second from left) visit a school in the Eden District in the Southern Cape.

effectiveness of coordination and the participation of all major roleplayers. But it is also dependent on adequate financing.

“While acknowledging the difficulties in balancing the national Budget, Salga is of the view that local government, as the sphere closest to the people and providing a direct link in the service delivery chain, is not receiving a sufficient portion of the equitable share funding,” Councillor Wolmarans said.

Equitable share funding in provinces refers to the revenue raised nationally that is assigned to provinces to enable them to provide basic services and perform the functions allocated to them.

Ms Wolmarans also called for the review of powers and functions of municipalities. “For example, the assignment of the housing function, or more specifically, the decision to uphold the assignment of the housing function and the control of electricity distribution within municipal boundaries should be reviewed.

“Indeed, it is an appropriate time to

reconsider the very structure of local government, an exercise in which the NCOP could play an important role,” she emphasised.

The Minister of Agriculture, Forestry and Fisheries, Mr Senzeni Zokwana, announced government’s plans to address food insecurity in the Eden District. He said the Department of Agriculture, Forestry and Fisheries has approved R12.5m to be spent in the Eden District during 2016/17 as part of the Western Cape Comprehensive Agricultural Support Programme (Casp), Ilima-Letsema and the Landcare Programme, in addition to the Western Cape Province’s equitable share.

The aim of the Casp programme is to provide post-settlement support to the beneficiaries of land reform and to other producers who have acquired land through private means. The Ilima-Letsema programme is focused on increasing food production and rehabilitating irrigation schemes and other value-adding projects. The Landcare Programme is particularly concerned with improving fencing and soil in agricultural projects.

“In addressing the challenges of the Eden District, the three spheres of government are working together to ensure that strategies address the core developmental issues of the district,” Mr Zokwana said.

“Government will bring both rural and urban communities together by providing the environment for employment, equal participation, self-sufficiency and progress. Agriculture is an integrated part of the strategies put in place by government, as well as the Eden District Municipality. Currently, government has scheduled meetings where relevant departments play a vital role towards the development of an integrated business plan for the whole of Eden District Municipality,” the minister said.

He said there was a focus on Oudtshoorn and Kannaland local municipalities, particularly in the towns of Amalienstein and Zoar, to create enabling resources for economic and social growth.

“There are also household action plans with the intention to strengthen support for the households to produce their own food as an intervention to promote local food security,” he said. 🌱

# African parliaments scrutinise their commitment to openness in oversight



**OPENNESS IN LAW-MAKING:** South Africa's Parliament was among those attending an Open Government Partnership Conference.

**The** role of African parliaments in promoting openness in law-making and oversight is more critical than ever. This was the view shared by many panellists who were part of the Parliamentary Openness Workshop Group at the Open Government Partnership (OGP) Conference held in Cape Town recently, writes **Abel Mputing**.

The workshop's aim was to promote the development of a declaration on parliamentary openness in law-making and oversight mandates.

"The OGP concept was established in 2011 as a collaboration between eight governments sharing a common goal to secure concrete commitments

from governments to their citizenry to promote transparency, and to empower citizens to fight corruption and harness new technologies to strengthen governance," said the Senior Partnership Officer, Mr Daniel Swislow.

"A number of parliaments and international parliamentary groups have joined more than 180 civil society organisations from more than 80

countries in supporting the declaration on parliamentary openness, which outlines criteria for openness," said Mr Swislow.

The moderator of the panel, Mr Mukelani Dimba, Executive Director of the Open Democracy Advice Centre, asked the panellists to explain the importance of parliamentary openness.

"Parliaments should set the example and be the model that inspires openness in how they conduct their affairs," said the Chairperson of Committee on Government Assurance of the Parliament of Ghana, Mr Emmanuel Bedzrah.

"You cannot have only the executive opening up. Parliament, as the people's representative, must also open up. We have more opportunity to demand executive accountability if the Parliament is transparent in engaging citizens. If the Parliament, which is responsible for overseeing the work of government is not open, the government will not work effectively," he said.

The Executive Director of Mzalendo Trust, which focuses on the daily happenings of the Kenyan parliament, Ms Jessica Musila, agreed with this view. "Politics are the basis of life in Africa. As such, parliaments must be actively involved in strengthening citizen engagements in governance to give effect not only to government commitments, but to also ensure that this is done in a more transparent manner that is open to public scrutiny."

But most significantly, Parliaments should leverage openness to conduct their mandate over the executive, said the Deputy Director and Head of Research and Programmes of Ghana's

Centre for Democratic Development, Mr Franklin Oduro.

"Parliaments are by their nature the watchdogs of good and open governments. Parliaments must demand transparency from the executive. If parliaments are not open enough, how can they demand accountability to executive's commitment to openness?"

Parliamentary openness could improve in South Africa, said the Chairperson of the Select Committee on Petitions and Executive Undertakings in the National Council of Provinces, Mr Setlamorago Thobejane. "OGP fits us well because its concept is in line with our Constitution. And the concept of openness is enshrined in various forms of our public participation models and engagements, which underscore the tenets of our constitutional democracy," he said.

The moderator asked participants to explain the stumbling blocks to parliamentary openness in Africa. Mr Oduro said there is a strong view in many African parliaments that public participation is not an important part of their law-making and oversight mandates.

"There is a view that Anglophone parliaments are more receptive to public participation than their Francophone counterparts," Mr Oduro said. Generally, Anglophone parliaments embrace public participation. It is certain institutions within them that do not appreciate that. But the mechanics of public participation and openness form part of their constitutional basis," he said.

A Member from the Francophone Parliament of the National Assembly

of Cote d'Ivoire, Mr Sidibe Abdoulaye, agreed that the Francophone parliaments are not so open, but that is set to change. "We have now passed a law that will guarantee citizens' access to information. The passing of this law was one of the criteria to join the OGP. As a result, our Parliament now has a good working relationship with our civil society to ensure that there is unfettered access and recourse to how we conduct our parliamentary affairs."

The representative of the African Commission on Human and Peoples' Rights, Ms Pansy Tlakula, asked: "Has the Ghanaian Parliament introduced the Access to Information Bill that has been in the offing for too long now? The elections are due in Ghana this year, but I am not sure if its Parliament has introduced and passed the Access to Information Bill it has been working on for many years now. In fact, it is now almost 13 years since it was mooted, but it is yet to be passed. Such an undesirable situation does not advocate for parliamentary openness in Ghana."

Mr Bedzrah was prompted to respond. "We have now opened ourselves up to public scrutiny. Regarding this Bill, we have to date received many inputs from the public and civil society and there are too many amendments to consider before we can pass it. Currently, this Bill is in its third reading and we now need to get a win-win compromise in order to pass it. And amendments can be made thereafter," he said.

Speaking from the floor, the Regional Director of Amnesty International, Mr Deprose Muchena, said apart from openness, African parliaments need to determine if the laws they pass are substantive, embrace openness and do not restrict freedom of speech. 🗣️

# Organising elections not an easy task – IEC Chair

**The** Chairperson of the Independent Electoral Commission (IEC), Mr Glen Mashinini, described organising elections as a complex, intricate operation involving over 22 000 voting districts and 250 000 people employed for just five days, reports *Sakhile Mokoena*.

Amid anxiety caused by a pending Constitutional Court judgment on whether the absence of home addresses compromises the voters' roll and the municipal demarcation dispute in Vuwani, the IEC has assured Parliament that preparations for the August 3 local government elections were very "tough" but "progressing very well".

The commission has also ruled out a possible postponement as a result of the pending court judgment on whether the absence of voters' home addresses could invalidate the voters' roll.

Appearing before the Portfolio Committee on Home Affairs, the Chairperson of the IEC, Mr Glen Mashinini, said the postponement of the elections would require an amendment to the Constitution by Parliament.

He said the Constitution requires elections to be held "not more than 90 days" after the end of the local government term and that would mean South Africa cannot hold the elections later than the 16<sup>th</sup> of August.

Committee members raised their concerns about the pending Constitutional Court judgment and asked the IEC what would happen if

the court ruled against the commission.

"The reserved court judgment is very worrisome. What if the court ruled against you, are we going to continue with the elections with this number (of voters) not participating in the elections. Is it not going to cause riots in the country? What is your plan?" asked Committee member Ms Hlengiwe Hlophe.

Another member of the Committee, Mr Archibold Figlan, said it was "very worrying that only 35% of voters on the voters' roll had addresses.

"Have we got plan B, if anything happens in court to say we cannot go on with the election?" he queried.

Mr Mashinini told the Committee that the case before the Constitutional Court could not be discussed because it was *sub judice*. "We can deal with that matter when the judgment is on the table," he said.

Answering questions from members of the Committee, Mr Mashinini conceded that organising elections was not an easy task.

"The nature of this work is a complex, intricate operation; the only equivalent to organising an election is honestly, probably when you are [deploying

troops in a war]. Here we are dealing with a complex project management activity – the training of party agents and also the staff that will manage the voting process is not as simple – we are talking about more than 22 000 voting districts and about 250 000 people that you employ for not more than five working days," Mr Mashinini told the Committee.

"You train them in that short period of time and those particular individuals come with different levels of competencies and skills, but still they endeavour to do their best. The issue of the party agents and their training is very important – the integrity of the elections is not just one component, it is a continuum of multi-layered activities that the commission has to prepare for," he said.

The Committee Chairperson, Mr Lemias Mashile, said as much as the IEC was expected to reflect the addresses of citizens on the voters' roll, people should understand that the provision of such addresses was the responsibility of municipalities.

"It is just a difficult situation on a matter that does not really lie within their powers. We need to pray that the outcome of the court helps us to hold the elections. All of us have the same interest that the elections must be free and fair. We need to ensure that all issues that may impact on the elections are corrected," said Mr Mashile.

He also called upon political parties to adhere to the cut-off dates for the





**CASTING THEIR VOTE:** Residents have their identity documents ready while they wait patiently to vote.

submission of documentation and to make sure that they deployed party agents who have a reasonable capacity to understand the situations that they will be dealing with at the voting stations. "The quality of our elections would also largely depend on the

quality of participation and input of political parties into this work," said the Chairperson.

The IEC was also advised to ensure that parties adhered to the Electoral Code of Conduct that was signed by all parties

earlier in the month of May. "The signing of the Code of Conduct was not just symbolic; it also shows commitment by the parties to play by the rules. As a referee, you should be able to enforce that, meaning that at a particular point when somebody is not playing by the rules, there must be consequences," said Committee member Ms Nokhaya Mnisi.

The Electoral Commission reported that the voters' roll was currently at 26 million.

He also reported that in the latest registration the commission registered 6.5 million, which he said was a great achievement compared to previous periods.

"In previous years if we netted just over a million, that would have been the maximum – that is commendable work and we as a commission are proud about that achievement and the work done by our institution.

"We remain committed to our mission statement that we want to remain the pre-eminent institution not only on the continent but by any world standards, and we remain so as an institution, and as a country we should be proud of that achievement," he said.

He also assured the Portfolio Committee that the IEC, in partnership with political parties as well as the community, continued to endeavour and strive for the highest standards of understanding of the rules of the game, professionalism and adherence to the rules.

Mr Mashinini appealed to political parties to not only abide by the Electoral Code of Conduct, but to also protect the commission. 🌟



## Plan to unlock municipalities' economic potential

**Government** *has identified the critical role that the Municipal Infrastructure Grant can play in resolving historical legacies of apartheid, which have contributed to many areas lacking crucial infrastructure, and to unlock the economic potential of these municipalities, writes Abel Mputing.*

The National Treasury appeared before the Select Committee on Appropriations on Municipal Infrastructure Grant (MIG) rollovers for the past five financial years, 2011 to 2016. The Chairperson of the Select Committee on Appropriations, Mr Seiso Mohai, welcomed the National Treasury's delineation of the problems

and challenges that contribute to MIG rollovers and how to address them.

"We welcome this report because it gives us the context of the glaring challenges and chronic problems that cripple the dispensation of MIG in various municipalities. Now we need to

upscale our work as a Committee and uphold the provisions of the Act that govern the MIG. Apart from the technical shortcomings that these grants are faced with, we also need to deal with relevant political authorities to determine what role they can play to ensure that MIG funds are spent properly."

However, the Chairperson is impressed that the National Treasury's interventions in this regard are yielding desired outcomes. "Although on average the rollover rate is currently 9.53% over the past five financial

years (2010/11 – 2014/15), there has however been a downward trend from 13.48% in 2012/13, to 9.20% in 2013/14 and now 4.43% in 2014/15. The downward trend might be due to the strict measures applied by National Treasury in approving rollovers.”

The Chairperson attributes the downtrend on rollovers to the stricter measures adopted by National Treasury when approving rollovers, which seek to encourage a culture of proper planning and management of infrastructure grants by municipalities.

“The stricter measures applied by National Treasury when approving rollovers will encourage a culture of proper planning. The Committee also welcomed other measures applied by National Treasury such as capacity-building workshops and collaborative approaches whereby other sector departments, such as Cooperative Governance and Traditional Affairs (Cogta) national and provincial as well as provincial treasuries are involved.”

Above all, rollovers should not be a norm. As a Committee we will, through our oversight, ensure that this principle is adhered to and enforced by Cogta, the Chief Procurement Officer and the Municipal Infrastructure Support Agency, he said.

“But despite their inception, some funds in the MIG programme are not spent and their rollovers have had an unintended effect on our country’s service delivery imperatives. This trend is attributed to lack of proper accounting practices and planning on the part of municipalities,” said the Director of Municipal Grant Monitoring and Analysis in the National Treasury, Mr Sello Mashaba.

“Some municipalities don’t have permanent Chief Financial Officers (CFOs) to uphold financial accounting practices. As a result of that, they are not in a position to produce annual financial statements that adhere to the norms and standards set by the National Treasury. And often municipalities have no project management capacity to forecast their infrastructure plans and spend on time as required. All these aspects contribute to rollovers of funds in the MIG programme,” he said.

“This norm, which is the contributory factor in the culture of non-service delivery in some municipalities, was not anticipated by the National Treasury when the MIG programme was introduced and there was no legislative provision to deal with it,” said Mr Mashaba.

“Before it was difficult to determine how these funds were utilised because they were not disclosed in the annual financial statements of municipalities. As a result, we could not monitor if they were spent on the projects for which they were originally allocated. In some instances we found that they were not, and were instead utilised to either pay salaries or in undetermined projects. And as such we could not determine their usefulness.”

Subsequent to this realisation, the Division of Revenue Act (DoRA) in 2004/5 was adjusted to deal with the emergence of MIG rollovers. This provision was meant to ensure that this grant is utilised in a manner that meets the National Treasury’s accounting standards, he said.

“Although DoRA was established a few years ago, the first DoRA that included

the rollover clause was in 2004/05. In 2009, the Municipal Budget Reporting and Regulation was approved by the Minister of Finance and the regulation paved the way to allow for the recalling of unspent conditional grants sitting with municipalities.”

In addition, the National Treasury issues annual circulars to guide municipalities on how rollovers should be submitted to the National Treasury and how unapproved rollovers should revert to the National Revenue Fund, he said.

The new legislative framework also stipulates how municipalities can apply for rollovers. This was meant to ensure that the unspent funds do not offset their original commitments.

“The grant may not have been spent as intended, but that must not offset municipalities’ original service delivery commitments which have not been addressed. When municipalities apply for rollovers, they must state reasons why the grant was not fully spent in the year that it was originally allocated as per the DoRA. They must also indicate the time period within which the funds are to be spent; and must show proof of plans and that there is a competent CFO who is permanently appointed, who will oversee the management of these roll-over grants.”

The National Treasury’s strict monitoring of the expenditure of rollovers has consolidated the accounting practices of municipalities and that has assisted in strengthening compliance to the MIG prescripts. “We have now instituted compliance in municipalities in terms of the Division of Revenue Act, promoted accountability in municipalities, and improved overall performance in MIG spending, which now stands at 95%.”

# Western Cape government called on to recognise traditional leaders

Parliament's *Select Committee on Petitions and Executive Undertakings* is often called upon to intervene in a range of community issues, ranging from complaints about noise from a church to human rights abuses. Recently, it was requested to address the alleged failure by the Western Cape government to recognise traditional leaders in the province, writes **Sakhile Mokoena**.

This latest petition before the Committee is from Mr Christo Frantz, who believes the Western Cape government is refusing to recognise traditional leaders in the province. Mr Frantz told the Committee that he was representing the traditional authorities, traditional council and traditional houses of the Western Cape.

"The provincial government is refusing to recognise us and establish the provincial house of traditional leaders because it says there is no legislation that compels it to do so. We feel the provincial government has failed its constitutional obligation," said Mr Frantz.

"Since time immemorial our traditional, indigenous communities suffered under the racist insults of the previous regime and we still have to suffer under this new dispensation. We have approached the National Council of Provinces to help us because we cannot rely on the courts because they have become a place for the rich and we cannot afford expensive lawyers," he said.

"Our position is that there is customary law that determines who must serve on the provincial house of traditional leaders and for how long, as well as his or her responsibilities," he said.

His petition was supported by the provincial Chairperson of the Congress of Traditional Leaders of South Africa, Mr Aaron Messelaar, who said the Constitution gave clear directions for the establishment of the house of traditional leaders in the province.

"Chapter 12 of the Constitution, Sections 211 and 212, give clear direction for the premier to recognise traditional leaders and institutions in the province and she failed to do so, because the provincial government governs based on the constitution of the province.

"We want the establishment of the provincial house of traditional leaders. The Department of Traditional Affairs in the province does not recognise any traditional leaders, it recognises only cultural institutions."

Responding to Mr Frantz's submission, the Deputy Minister of Cooperative Governance and Traditional Affairs, Mr Obed Bapela, said there is no legislation on the establishment of the provincial house of traditional leaders in the Western Cape. The reason for this is that, as a result of the findings of the Nhlapo Commission, there are no recognised traditional leaders in the province because the Act of the

National House of Traditional Leaders says for one to qualify as a member of the house, one must be recognised as a senior traditional leader.

The Traditional Leadership and Governance Framework Act makes provision for the establishment of the Commission on Traditional Leadership Disputes, which was commonly known as the Nhlapo Commission, whose purpose was to investigate claims and disputes of traditional leadership.

The commission received claims from traditional leaders from the Western Cape, investigated and established that the people who lodged the claims were not necessarily traditional leaders, but were practising their customs and cultures.

"Some presided over initiation schools and resolved conflict in their communities, but the report of the commission found that most of the claimants came from other provinces to the Western Cape a long time ago.

"They came to work, ended up staying and organised themselves, but not necessarily to become traditional leaders. The commission recommended that all those 29 claims be declined. The recommendation was forwarded to the Western Cape provincial government – as the law prescribed – to ensure that it was communicated to all the claimants," he said.

The Western Cape is one of two provinces that do not have any house of traditional leaders – the other one



**TRADITIONAL LEADERSHIP:** Attending the opening of the House of Traditional Leadership in Parliament in 2014.

being Gauteng – because there are no recognised traditional leaders in these provinces.

In order to address the issue, the Deputy Minister said the department has introduced a Bill in Parliament which covers all traditional leaders in the country, including the Khoi and the San traditional leaders.

“We believe if it is enacted, the Bill will compel the Western Cape government to recognise traditional leaders in the province,” Mr Bapela said.

Committee Chairperson Kgoshi Setlamorago Thobejane said the Committee will consider the submissions from all parties before making recommendations on the matter.

Although the Committee has not made any recommendations, it would seem Mr Frantz and all other traditional leaders in the Western Cape will have to wait for Parliament to finalise the traditional and Khoi-San leadership before a provincial house of traditional leaders may be established in the province.

The Committee also received a petition from some residents of Chiawelo in Soweto in Gauteng who complained about the noise emanating from the Unity Fellowship Church in the township. The Committee has met with both the petitioners and the church, but has yet to finalise its recommendations on the matter.

Another petition before the Committee is on the “alleged gross human rights violations committed by the Bafokeng Tribal Authority” in the platinum-mining town of Rustenburg in the North West. The Committee plans to invite the petitioners and the respondents for further discussions on the matter. 🌍



**south african**  
**human**  
**rights**  
**commission**

## Protest action – creating spaces for an active citizenry

**Protest** *action in South Africa has become a means to create spaces for active citizenry and public participation, writes Rachel Adams Ward of the South African Human Rights Commission, one of the Chapter 9 institutions supporting democracy.*

Protest action is a political expression of the people, both in South Africa and globally. In South Africa, the year 2015 will be remembered for the #RhodesMustFall and the #FeesMustFall campaigns, among others.

These campaigns follow an increasing trend of protest action over the past few

years, as revealed by statistics from the South African Police Service (SAPS), which indicate a significant rise in crowd-related incidents from 8 907 to 14 740 within a five-year period.

The South African Human Rights Commission (SAHRC) has been monitoring the increasing significance of the right to protest, as enshrined in Section 17 of the Bill of Rights. In November 2015, the SAHRC released its Investigative Hearing Report on *Access to Housing, Local Governance and Service Delivery*.

The report showed how the exercise of the right to protest could be used to view the extent to which socio-economic rights, such as water, health care and housing are enjoyed by communities in the country. For instance, most of the service delivery protests are about the lack of adequate housing, water and sanitation.

The report highlighted that at the epicentre of service delivery protests was a breakdown in communication between the communities and the local municipalities. An endemic problem which was found by the SAHRC was that local municipalities do not meaningfully engage with communities regarding the contents of the integrated development plans, and procurement of tenders are not open to scrutiny.

The closing down of spaces for communities to communicate their grievances, coupled with the non-responsiveness of municipalities, creates the image of a non-caring government.

According to the report, communities have no alternative after exhausting all other channels available to them, than to resort to protest action as a mechanism to channel discontent for the lack or inadequacy of service delivery in their areas. Contrary to media reports which

indicate that service delivery protests are violent in nature, the SAHRC notes that the majority of these protests are peaceful and only turn violent due to lack of planning, management and effective policing.

It is important to note that national legislation and international human rights standards clearly articulate that the act of public protest is a political or social statement that must be non-violent and must also adhere to the law. The SAHRC therefore warns against looting, damage to public and private property, and intimidation – which can occur during protest action, usually at the hands of only a minority of protesters.

It appears that what is at the heart of the service delivery protest action is the relationship between communities, their local municipalities, and government representatives. Where communities lack effective channels through which to communicate with their elected representatives, or experience continued unresponsiveness by municipalities and implementing agencies, protest action becomes the only means by which to voice their concerns.

The lack of formally mandated spaces for community engagement and public participation has led communities to create their own spaces for active citizenry through the exercise of their right to assemble, demonstrate, picket and petition.

The #RhodesMustFall and #FeesMustFall campaigns of 2015 created national awareness of these issues. These national campaigns revealed similar discontent with government, which is faced by communities during service delivery protests. They voiced the same frustration with the pace of transformation in overcoming ingrained and sustained inequalities which appear to linger indefinitely; and which affect the poor disproportionately.

Consequently, protest action in South Africa has become a means to create spaces for active citizenry and public participation. The fact that these protests often produce the desired results, all too clearly demonstrates the effectiveness and utility of the right to protest for the people of South Africa.

The exercise of this important right makes apparent the continued relevance of the Bill of Rights in South Africa for enacting transformation. However, it is also an expression of the state of inequality across the country, revealing how much more needs to be done to eradicate inequality and protect the dignity of all [people] living in South Africa. It also reveals, particularly in service delivery protests, the existence of a deeper malaise facing the local government sphere.

Ultimately these protests reflect communities' and citizens' need to be heard. A top-down approach to communication does not address this shortcoming. What is required is a bottom-up approach where municipalities meaningfully engage with communities, particularly the vulnerable groups who may experience inter-sectional forms of discrimination.

Furthermore, these engagements cannot be a once-off, rather, they must be sustained, transparent and designed to respond to the grievances raised by communities with a view to finding lasting solutions. After all, our constitutional framework enjoins the government and all of us as a collective, to play a part in fulfilling the Bill of Rights and in transforming South Africa into an egalitarian society premised on justice and fundamental human rights. 🌍

*Rachel Adams Ward is a senior researcher in civil and political rights at the SAHRC.*



**MORE THAN JUST NUMBERS:** Visiting women MPs on a study visit from Malawi.

## Moving the gender agenda forward

**During** a study group visit of women parliamentarians from Malawi, participants said that the representation of women in politics and other leadership positions must be “more than just numbers”. It must include active participation and good performance, writes *Sakhile Mokoena*.

“The representation of women must not just be about high numbers. We want it also to be reflected in our participation in positions of power. We cannot just be about numbers. We want to be judged on our performance in those positions,” said Malawian Member of Parliament, Ms Emily Chinthu Phiri, during a study visit to Parliament by the Women’s Caucus of the Parliament of Malawi.

The Chairperson of the Women Caucus of Malawi, Dr Jessie Kabwila, said the aim of the study visit was to learn from the experiences of South African women parliamentarians. They wanted to know about promoting and retaining women in politics, their role in promoting women’s rights through legislation, issues of domestic violence and related offences, and ensuring that resources and service delivery are beneficial to women.

“This visit was to learn what you are doing to deliver services to women, to make sure they have water and electricity, and also what are you doing to make sure that you get more women to get to where you are sitting today.

“We are cognisant of the work that the women’s movement of this country has

done in your diversity from your different spaces. We also remember that you have produced strong women from different ranks, not only in Parliament, people like Miriam Makeba come from here, who at the age of 23 years was addressing the United Nations.

“In fact when one analyses South Africa, we know that it would not be where you are without women and we are very happy to see you debate on this issue,” Dr Kabwila said.

The parliamentarians discussed several issues, including domestic violence, poverty, education and patriarchy in society.

Ms Grace Tseke, a Member of the South African Multi-Party Women’s Caucus, said although South Africa had passed legislation to protect women and children, the problem of patriarchy continues to exist.

“The issue of patriarchy is still deeply rooted in our society. It is us as women united as we are to take the baton of those who came before us who fought for this freedom. It is us collectively that must take this baton and move forward so that

our women, especially in rural areas, must be emancipated, know their rights and they must participate in the politics of their country,” Ms Tseke said.

“It is mainly women who have to fetch water from the wells to support their families. The provision of water and electricity makes life easy for rural women. Government is also making sure that every woman gets education. For those who did not get the chance when they were younger, there are special programmes to ensure that they get access to education,” she said.

Another Caucus member, Ms Denise Robinson, said South Africa has made many improvements in the lives of women, but problems remain. “Patriarchy is still very much a problem in our communities and while we might preach equality between men and women, it is still very often not the case at all. Sometimes the influence is subtle, but sometimes it is quite obvious too and we also have a problem of domestic violence, rape and abuse.

“We have the various campaigns and they serve a purpose to a certain extent, but too often they are events-based. What we do throughout the year – that is a big challenge,” said Ms Robinson.

She called on the justice system and all related institutions to be gender sensitive and have the right people in charge.

Both delegations agreed on the need for gender-responsive government budgeting and service delivery and committed themselves to work for this goal in their parliamentary processes. 🌍



# tribute *to* Dene Smuts

13 July 1949 – 21 April 2016



**The** Parliament of the Republic of South Africa received with sadness the news of the passing away of one of its former Members of the National Assembly (NA) and one of its parliamentary stalwarts, Ms Dene Smuts, who served in Parliament for 25 years, from 1989 to 2014.

According to her close friends and peers, prior to her political career, Ms Smuts was a journalist, editor and award-winning author.

During the constitutional negotiations of the early 1990s, Ms Smuts served on the then Democratic Party's (DP's) negotiating team, and contributed significantly to the writing of the Bill of Rights and in defining a proper process for judicial appointments. She established herself as being unwaveringly committed to the founding principles of the South African

Constitution, and always fought for them in Parliament.

In the span of her career, she served as the Democratic Alliance's (DA's) Shadow Minister of Home Affairs, Communications, and later Justice and Constitutional Development.

Whether it was in her work on the Truth and Reconciliation Commission legislation, on a modern communications policy, on working for the independence of the legal profession or in her heroic work on

the Protection of State Information Bill, Ms Smuts always worked incredibly hard and with total devotion to the Constitution and the principles it enshrines.

She was also the first female Member of Parliament (MP) to serve as a Whip in Parliament, and served as a mentor to many younger MPs and parliamentary staff. She would never accept laziness or unclear thinking from colleagues, and did not hesitate to scold them if necessary.

She was a fearsome debater in caucus and in the NA, and many government ministers withered under her trenchant questioning.

Dene Smuts will be remembered as a truly great parliamentarian, who stood unswervingly for a cause far bigger than her own personal advancement – an enduring set of principles and beliefs. Her service to a democratic South Africa has been profound.

Ms Smuts was born on 13 July 1949 and raised in Bloemfontein in the province of Free State. After high school, she continued her academic journey graduating from Stellenbosch University with a BA (Hons) degree.

She served as a constitutional negotiator for the DP during the transition from apartheid to democracy. She participated from that day until its conclusion in 1996, specialising in the drafting of the Bill of Rights for the final Constitution.

The parliamentary Committees in which Ms Smuts served included the Special Committee on the Protection of State Information Bill. She expressed concern about clauses which made information a state secret and which would have made it an offence for journalists to publish any information not vetted by the state. 🌍



# A Constitution to be proud of

**Speaking** *on the occasion of the 20th anniversary of South Africa's Constitution at a conference at Constitution Hill, Johannesburg, the Chairperson of the National Council of Provinces, Ms Thandi Modise, said the Constitution must be a living document in order to withstand new challenges and to adjust to changing circumstances, reports Abel Mputing.*

Ms Modise started by saying the Constitution should be “sacralised” because it is the embodiment of both our new nationhood and our constitutional democracy.

“If there is a single embodiment of what individuals, communities and nations aspire to, it is a Constitution, and if there is a single embodiment of the social contract we need to establish to live together as a people, it is a Constitution. Our Constitution has been regarded by many as the most admirable Constitution in the history of the world.

“Our Constitution presided over our odds and differences, and assisted us to forge a democratic and legally binding contract that ushered in a new democratic South Africa,” she said.

“The creation of the democratic Republic of South Africa in 1994 was hailed as a major constitutional achievement. The Constitution of the Republic of South Africa, 1996, is the supreme law and provides

the fundamental framework for the structures and processes of government. This ushered in a new beginning for our country. A people who were seriously at odds over centuries chose to negotiate peace, democracy and social justice.

“Twenty years on, it stood the test of time as a reconciliatory instrument whose legal framework upholds both our participatory and representative processes of our constitutional democracy,” she said.

“Our constitutional democracy was forged on the anvil of division, past injustice and economic inequality, but also on the hope for reconciliation, nation-building and social cohesion. Our Constitution is premised on the will of the people – expressed in representative and participatory processes.”

One of the distinct aspects of our Constitution is its elevation of the separation of powers between the executive, legislature and the judiciary.

it provides a legal framework that is meant to ensure that each sphere does not infringe on the jurisdiction of the other and instead respect, care for and cooperate with each other, she said.

“But what is most admirable about it is how its precepts promote, on the one hand, the separation of powers, but on the other, uphold the principles of intergovernmental cooperation,” she said.

“With Chapter 3 of the Constitution and the Intergovernmental Relations Act of 2005, South Africa arguably has the most advanced legal arrangements of any Constitution to set out the spirit of national unity, provincial and local autonomy, and the importance of intergovernmental cooperation.”

This unique arrangement was epitomised by the inception of the National Council of Provinces (NCOP), she said. “The NCOP is a particularly unique

creation in our constitutional system of democracy since it is transversal in character, stretching across the three spheres of government, and the three arms of state.

“The NCOP is also referred to as an instrument of intergovernmental relations within the legislative or policy-making branch of government because it deals with policy matters that have both national and provincial implications.”

But the extent to which this relationship is managed is crucial for the effective functioning of these three spheres of government, she said.

“The extent to which power is managed by all three arms

of government is vital. The intergovernmental relations affect the extent to which spheres or levels of government effectively participate in power-sharing ventures, and executive mechanisms, cooperative agreements, judiciary and legislative mechanisms all facilitate government machinery.

“As stipulated by the Constitution, its intergovernmental role is determined by the concurrent nature of the legislative mandate at hand,” she said.

“The caveat is that it should be in the national interest; that is reasonably necessary for, or incidental to, the effective exercise of power concerning a matter falling within the area of concurrent functional legislative competence of the provincial and

national spheres of government (Schedule 4),” she said.

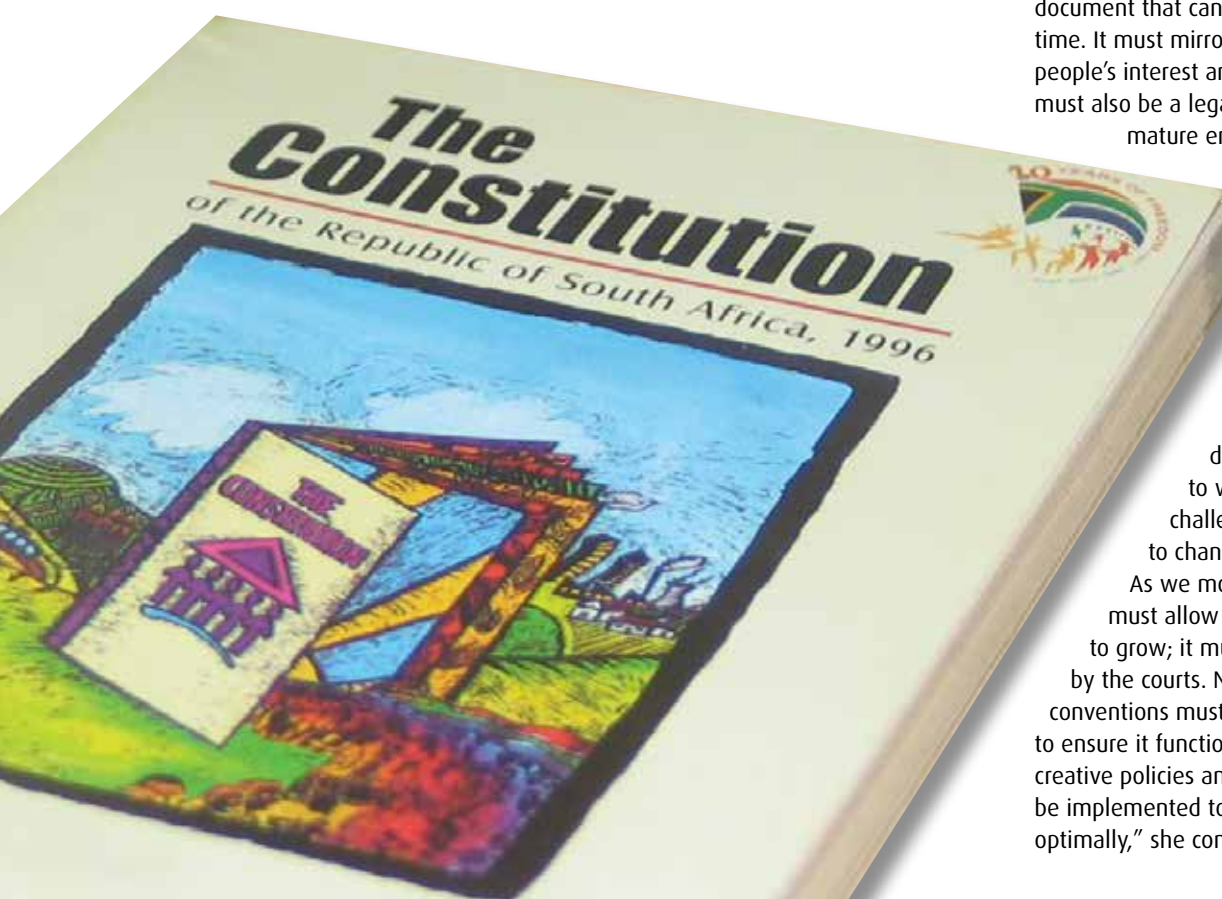
But in the main, the NCOP’s legislative mandate is to ensure that it provides public consideration for issues affecting the provincial sphere of government, she said.

“According to Section 42(4) of the Constitution, the NCOP represents the provinces to ensure that provincial interests are taken into account in the national sphere of government. It does this mainly by participating in the national legislative process and by providing a national forum for public consideration of issues affecting the provinces,” she said.

The Constitution must be a living document that can stand the test of time. It must mirror the gravity of the people’s interest and aspirations, and must also be a legal contract that is mature enough to embrace

the shifts and changes of political events over time, she said.

“The Constitution must be a living document in order to withstand new challenges and to adjust to changing circumstances. As we move forward, we must allow the Constitution to grow; it must be interpreted by the courts. New customs and conventions must be developed to ensure it functions properly, and creative policies and procedures must be implemented to ensure it functions optimally,” she concluded. 🌍





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