

Mlulami Dodo

From: Cindy-Joy Balie
Sent: Monday, February 05, 2018 2:50 PM
To: Mlulami Dodo
Subject: FW: Letter from Auditor-General Kimi Makwetu - Draft Public Audit Amendment Bill, 2018

Dear Mlu

Please print this email – again only one copy please.

Regards

From: Cindy-Joy Balie
Sent: 31 January 2018 07:03 PM
To: Paul Hoffman <paulhoffman@webafrica.org.za>
Cc: 'Bezuidenhout, Marissa (BE)' <Marissab@agsa.co.za>; tinyl@agsa.co.za; Vincent Smith <vsmith@parliament.gov.za>
Subject: Re: Letter from Auditor-General Kimi Makwetu - Draft Public Audit Amendment Bill, 2018

Dear Mr Hoffman

Thank you - this to confirm receipt of your organisation's submission.

Regards
Cindy Balie

From: Paul Hoffman <paulhoffman@webafrica.org.za>
Sent: 31 January 2018 12:59:31
To: Cindy-Joy Balie
Cc: 'Bezuidenhout, Marissa (BE)'; tinyl@agsa.co.za; Vincent Smith
Subject: RE: Letter from Auditor-General Kimi Makwetu - Draft Public Audit Amendment Bill, 2018

Dear Cindy,

Please regard my initial email (the long one) as the response of Accountability Now to the draft bill. When we have more information and answers to the questions we raise, we may supplement the response; our concerns are encapsulated in it.

Best

Paul Hoffman

From: Cindy-Joy Balie [mailto:cbalie@parliament.gov.za]
Sent: 31 January 2018 09:45 AM
To: Paul Hoffman
Cc: Bezuidenhout, Marissa (BE); tinyl@agsa.co.za; Vincent Smith
Subject: Re: Letter from Auditor-General Kimi Makwetu - Draft Public Audit Amendment Bill, 2018

Dear Mr Hoffman

I have discussed your email below with the Chairperson who has confirmed the process as outlined in my response yesterday i.e. that your concerns and/or proposals should please be submitted in writing by 19 Feb 2018.

The National Assembly has granted SCoAG permission to proceed with a committee bill, hence the publication of the draft bill in the Gazette, calling for comment to be submitted to the Committee. Ms Bezuidenhout is therefore correct in her response that comment should be directed to the Committee. SCoAG's programme allows the Committee and the AGSA to respond to all concerns and proposals raised during the consultation process.

I have copied the Chairperson to this email for his information too.

Regards
Cindy Balie

From: Paul Hoffman <paulhoffman@webafrica.org.za>
Sent: 30 January 2018 19:56:33
To: Cindy-Joy Balie
Cc: Bezuidenhout, Marissa (BE); tinyt@agsa.co.za
Subject: RE: Letter from Auditor-General Kimi Makwetu - Draft Public Audit Amendment Bill, 2018

Dear Cindy,

Our submission on the bill will be informed by the information gathered from the answers to the questions we have raised. We have put them to the AG as well. We are trying to keep an open mind in the utility of the bill, its constitutionality and legality.

If you feel it is more appropriate that the AG answers our questions, or at least some of them, please indicate which questions the committee will field.

Best

Paul Hoffman

From: Cindy-Joy Balie [<mailto:cbalie@parliament.gov.za>]
Sent: 30 January 2018 08:03 PM
To: Paul Hoffman
Subject: Re: Letter from Auditor-General Kimi Makwetu - Draft Public Audit Amendment Bill, 2018

Dear Mr Hoffman

Apologies for the late reply - I am on leave at the moment and attend to emails intermittently.

It would be most appropriate if the issues/concerns you raise are addressed to the Committee in a written submission. Those wishing to comment on the draft bill have been asked to do so by 19 February 2018; the Committee will consider all written submissions, and then identify those to appear at the public hearings.

The Auditor-General and the Committee's legal advisers/drafters will respond to all concerns after the above-mentioned consultations, and before the Committee reports to the National Assembly at the end of March.

For you information, I also attach the call for public comment that appeared in the Government Gazette on 19 January 2018.

Regards

Cindy Balie

From: Paul Hoffman <paulhoffman@webafrica.org.za>
Sent: 30 January 2018 11:37
To: Cindy-Joy Balie
Subject: FW: Letter from Auditor-General Kimi Makwetu - Draft Public Audit Amendment Bill, 2018

Dear Cindy,

Adv Bezuidenhout has requested that the queries raised below be routed through you. Some of them only the AG can answer, I suspect. Nevertheless, here they all are for your kind attention.

Yours in accountability

Paul Hoffman.
0828880821

From: Paul Hoffman [<mailto:paulhoffman@webafrica.org.za>]
Sent: 30 January 2018 12:55 PM
To: 'Bezuidenhout, Marissa (BE)'; 'chris@tontine.co.za'; 'elegy@mweb.co.za'
Cc: tinyt@agsa.co.za
Subject: RE: Letter from Auditor-General Kimi Makwetu - Draft Public Audit Amendment Bill, 2018

Dear Marissa,

I need a little more background information before responding formally to the Bill you sent me on 27th January. You will know, and will, if you don't know, be able to direct my queries appropriately to the right officials.

1. The Constitution itself defines the mandate of the AG. He "...must audit, report on the accounts, financial statements and financial management of..." the various entities listed in sections 188(1) and 188(2) of the Constitution. While additional powers and functions may be prescribed in national legislation, has consideration been given to the limits of the constitutional mandate of the AG in drafting the bill?
2. Is it not central to the core functions of the AG that nothing be done that dilutes the independence, integrity and impartiality of this high office located in Chapter Nine and also given the governing principles of Section 181?
3. Are the "dignity and effectiveness" of the AG not undermined by creating debt-collecting functions for him, functions best left to lawyers, HR departments, prosecutors in the AFU and police personnel?
4. The doctrine of the separation of powers requires that different spheres of government should "stick to their knitting" and not encroach upon the territory of other spheres. Has this important doctrine been given any consideration in the drafting of the bill?
5. What is the mischief the bill is aimed at addressing?
6. Why is the bill confined only to national and provincial levels of government when so much expenditure and service delivery takes place at local level?
7. Is recovery of expenditure that is unauthorised not the work of the entity concerned, helped by the state attorney or is private lawyers?
8. At present, what proportion of the funds that the bill aims to recover through the debt collection work to be allocated to the AG stolen, deliberately misappropriated or otherwise the "proceeds of crime" and what proportions are attributable respectively to negligence or incompetence of those accountable for its misapplication or misappropriation or misspending?
9. As it seems unlikely that defaulting officials from whom funds are to be recovered will simply agree to pay, is it not foreseeable that the process envisaged by the bill will end in litigation or formal debt collection through the courts, processes best left to lawyers?

10. Why is it not possible for the AG to alert the state attorney simultaneously with entities that are victims of misfeasance or malfeasance uncovered in audits of the identity of the culprits, the nature of the misappropriations and the amount involved and require that the state attorney report to the AG on the recovery of the said amounts within a set period?
11. Why is the funding contemplated for the bill not simply allocated to the state attorney so that its staff can attend to the debt collection function that the bill envisages in a less elaborate structure and environment that already exists?
12. In matters in which criminality is involved, why not simply refer the audit findings to the entity involved, the Assets Forfeiture Unit and the Hawks with a request for their mutual co-operation in the investigation, seizure of assets and such other steps as may be appropriate to recover the state funds involved?
13. Is the bill not directed at the symptoms of the problem it addresses, namely cadre deployment and the culture of impunity in the public administration rather than to the causes of the malady it seeks to cure?
14. Would it not be better to address the causes of the malady the bill is aimed at by enforcing the dicta in *Mlokoti v Amathole District Municipality* and others through a process of rooting out cadre deployment by substituting for it compliance with section 195(1)(h) of the Constitution? It is quite remarkable that when Minister Lynne Brown is looking to populate boards of SOCs she sends her candidate lists to the cadre deployment committee at Luthuli House and is quite open about this illegal and unconstitutional behaviour.
15. Surely addressing the culture of impunity involves proper compliance with the judgements in the *Glenister* litigation so that the AG can, when he uncovers criminal activity during an audit, turn to a specialised, well trained, independent and properly resourced anti-corruption entity for the purpose of securing a swift investigation and a prosecution of the persons accused of wrong-doing?
16. Has cognizance be taken of the fact that criminal courts have the power to order an accused person to repay money misappropriated in the course of their crime?
17. Is it not sufficient, if the mischief being addressed by the bill is indeed criminality in the public administration, SOCs and other entities which the AG audits, to use the criminal justice administration to do the necessary work involved in exacting accountability?
18. If the problems being addressed in the bill are incompetence or negligence, is the cause not cadre deployment, an illegal act?
19. If cadre deployment of the denizens of the national democratic revolution is not generally the cause of incompetence or negligence in the administration of the funds of the state, then what is?
20. Why is the AG given the task of creating the regulations contemplated in the bill? This smacks of player-and-referee syndrome.
21. Would it not be preferable, should the bill be proceeded with, to get the Rules Board or some other independent entity to prepare the regulations?

You will have gathered by now, and from the thrust of the questions set out above, that I am dubious (but still open to persuasion) about the wisdom and the efficacy of the passage of the bill into law. Debt collecting is the work of the state attorney, criminal investigation the work of the Hawks, and prosecution is currently the preserve of the NPA. The bill seeks to have the AG intrude in the territory of all three. Is this wise?

Would it not be preferable to strengthen the office of the state attorney, or even create an AG dedicated unit in it, rather than reinvent the debt collection wheel?

As regards the dysfunction in the criminal justice administration when it comes to dealing with corruption, we have already for some years suggested an Integrity Commission or Anti-Corruption Commission which would slot into Chapter Nine between the AG and the OPP. The draft legislation for this body, a one stop shop for dealing with the corrupt, is on the *Glenister* case page of our website:

<http://accountabilitynow.org.za/ifaisa-anti-corruption-commission-bill-2012/>.

IFAISA Anti-Corruption Commission Bill 2012 - Accountability

accountabilitynow.org.za

Taking on issues concerning accountability in Southern Africa.

<http://accountabilitynow.org.za/ifaisa-constitutional-amendment-establish-anti-corruption-commission/>.

IFAISA Constitutional Amendment To Establish An Anti-Corruption Commission - Accountability

accountabilitynow.org.za

Taking on issues concerning accountability in Southern Africa.

Both Advocate Thuli Madonsela and Archbishop Tutu have given their support to the idea. The former points out that the investigation of maladministration is different to the investigation of criminality and corruption. It is also so that neither the AG nor the OPP has any jurisdiction over the private sector which is always involved in procurement irregularities and corruption.

Taking the remaining good personnel in the NPA and the Hawks for the purpose of populating and establishing the new Chapter Nine institution will enable the AG to stick to his knitting, maintain his professional identity and integrity while also enjoying the new services available to address the mischief the bill under discussion apparently seeks to address. It will also flummox state capture to the extent that it has already taken place in the NPA and SAPS. The persecution of Pravin Gordhan suggests that the capture of the Hawks and NPA is well advanced.

I look forward to hearing from you once you have answers to the queries raised above.

Best

Paul Hoffman
0828880821

From: Bezuidenhout, Marissa (BE) [<mailto:Marissab@agsa.co.za>]

Sent: 27 January 2018 01:15 PM

To: paulhoffman@webafrica.org.za; chris@tontine.co.za; elegy@mweb.co.za

Subject: Letter from Auditor-General Kimi Makwetu - Draft Public Audit Amendment Bill, 2018

Dear Adv Hoffman

Herewith a letter from the Auditor-General Kimi Makwetu for your attention. The Government Gazette of 19 January 2018 serves to support the content of the letter.

Your acknowledgement of receipt will be much appreciated.

Sincerely

Adv Marissa Bezuidenhout

Business Executive • Corporate Legal and Provisioning Services • Auditor-General of South Africa
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