



Wes-Kaapse Provinsiale Parlement
Western Cape Provincial Parliament
IPalamente yePhondo leNtshona Koloni

REGSDIENSTE
LEGAL SERVICES
LINKONZO ZOMTHETHO

MEMORANDUM • MEMORANDAM

Aan
To
Iya

P PRETORIUS – DEPUTY SPEAKER

Van
From
Isuka

A LE ROUX – LEGAL ADVISER

Datum
Date
Umhla

1 APRIL 2016

Onderwerp
Subject
Umba

MONITORING OF LOCAL GOVERNMENT BY PROVINCIAL GOVERNMENT

A. Background and the legal question

1. Provincial Parliament, when it established committees for its fifth term, did not establish a Committee on Local Government Oversight as provided for in Part 3.10 of the Standing Rules. Proposals for review of the Standing Rules, dated the 8th of March 2016 and pending before the Rules Committee, suggest that the Committee on Local Government Oversight should be removed from the Standing Rules.
2. At present, the Standing Committee on Local Government is tasked with a mandate that includes 'local government oversight'.
3. The legal question is–

whether the oversight mechanisms provided for by Provincial Parliament are adequate in respect of local government.

B. 'Oversight' of local government

4. Provincial Parliament has *oversight* of the exercise of provincial executive authority in the Province, including the implementation of legislation, and of provincial organs of state in the Province. The provincial executive authority and provincial organs of state, in turn, are *accountable* to Provincial Parliament.

See section 114(2) together with section 133 of the Constitution

5. Oversight and accountability presupposes a relationship in which a person (or body) is *answerable* to another or, in other words, where that person is *responsible* to another for performance of that person's functions and powers.
See *Building Representative Democracy: South Africa's Legislatures and the Constitution* by Christina Murray and Lia Nijzink (Parliamentary Support Programme, Cape Town: 2002), Chapter 7 – Oversight
6. Hence, voters confer authority on a provincial legislature, and the provincial legislature, in turn accounts to the voters; the provincial legislature confers authority on the Premier and the Executive Council, and the Premier and the Executive Council, in turn, accounts to the provincial legislature; departments and heads of departments are established and appointed by the Premier and the Executive Council, and departments and heads of departments, in turn, account to the Premier and the Executive Council.
7. Provincial Parliament determined that the Standing Committee on Local Government will have oversight of the Department of Local Government, and the Department of Local Government, in turn, accounts to the Standing Committee on Local Government.
8. Neither Provincial Parliament nor Provincial Government has oversight of local government. A municipal council accounts to the voters that conferred authority on the municipal council.
9. For these reasons, the Committee on Local Government Oversight, as provided for in the Standing Rules, is a misnomer in as much as its name suggests that this committee has oversight of local government.
10. However, Provincial Government (through the Department of Local Government) has a distinct relationship with local government. Provincial Parliament has oversight of how the provincial executive performs in respect of its obligations pertaining to local government.

C. What is the relationship between the Provincial Government and local government?

11. The Provincial Government must, by legislative and other measures, *support* and *strengthen* the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions. In order to meet this obligation the Provincial Government must *monitor* local government in the Province.
See sections 154(1) and 155(6) of the Constitution
12. Whether the *provincial executive* is meeting these obligations (monitoring, supporting and strengthening local government) is a matter in respect of which Provincial Parliament has oversight of the provincial executive.

D. Provincial Parliament's oversight of the Department of Local Government

13. In order for Provincial Parliament to have oversight of the provincial executive in respect of the provincial executive's obligations to monitor, support and strengthen local government, Provincial Parliament may compel the disclosure of any information necessary to fulfil its oversight mandate. Provincial Parliament can compel the disclosure of information by any person, including any municipality.
See section 115 of the Constitution
14. There are also specific statutes that seek to ensure that Provincial Parliament, as a matter of course, has access to the information it needs to fulfil its oversight mandate.
15. In respect of Provincial Parliament's general oversight mandate, for example:
 - 15.1. Section 21 of the *Public Audit Act, 2004* requires the provision of audit reports to legislatures by the Auditor-General;
 - 15.2. Section 19 of the *Public Finance Management Act, 1999* requires the provision of consolidated financial statements to provincial legislatures by the relevant MEC for finance; and
 - 15.3. Section 74 of the *Constitution of the Western Cape, 1997* requires the provision of annual reports to Provincial Parliament by the Commissioner for the Environment.
16. There are many other examples of statutes seeking to ensure that legislatures have access to the information they need to fulfil their oversight functions. This is no different for oversight of the provincial executive's obligations in respect of local government.
17. In respect of Provincial Parliament's oversight mandate pertaining to the provincial executive's obligations in respect of local government, the *Local Government: Municipal Finance Management Act, 2003* requires:
 - 17.1. In section 71(7), the provision of consolidated statements on the state of municipalities' budgets to provincial legislatures by the relevant MEC for finance;
 - 17.2. In section 126(4), the provision of a report outlining reasons for any delay in completing an audit of a municipality to a provincial legislature by the Auditor-General; and
 - 17.3. In section 132, the provision of the annual reports and oversight reports of municipalities to provincial legislatures by municipalities.
18. All of these statutorily required disclosures of information to provincial legislatures serve the same purpose – to ensure that the provincial legislatures have the information they need to have oversight of their respective provincial executives.

19. It is not clear what the Standing Rules of the Western Cape Provincial Parliament achieves by making provision for a distinct Committee on Local Government Oversight, especially since Provincial Parliament does not have oversight of local government.
20. The oversight function fulfilled by the Standing Committee on Local Government appears similar to the oversight function of any other standing committee dealing with its own distinct portfolio.
21. Hence, the Standing Committee on Local Government receives information relevant to the department it has oversight of. The Standing Committee on Local Government has oversight of all of those powers and functions that the Department of Local Government is responsible for, *including* its monitoring, support and strengthening of local government in the Province.
22. To this end, the *Local Government: Municipal Finance Management Act, 2003* ensures that Provincial Parliament has access to the information it needs in respect of local government so that the Standing Committee on Local Government can have oversight of the Department of Local Government's performance in respect of monitoring, support and strengthening of local government in the Province.
23. It is observed here that the *Western Cape Monitoring and Support of Municipalities Act, 2014* serves as an example of legislation that must be implemented by the Department of Local Government, over which implementation the Standing Committee on Local Government has oversight.
24. Provincial Parliament exercises oversight over departments by means of standing committees. It does not appear rational to have one committee that has oversight of (a) the Department of Local Government, *excluding* the Department's monitoring, support and strengthening of local government, and (b) another committee that has oversight of *only* the Department of Local Government's monitoring, support and strengthening of local government.

E. Conclusion

25. It is concluded that:
 - 25.1. Provincial Parliament does not have oversight of municipalities, and municipalities do not account to Provincial Parliament;
 - 25.2. Provincial Parliament has oversight of the Department of Local Government's performance of its powers and functions in respect of monitoring, support and strengthening of municipalities;
 - 25.3. To this end, Provincial Parliament can compel the disclosure of information by any person (including a municipality) if Provincial Parliament needs that information to have oversight of the Department of Local Government; and
 - 25.4. To this end, the *Local Government: Municipal Finance Management Act, 2003* ensures that certain types of information are made available to Provincial Parliament as a matter of course.
26. It is concluded further that the oversight mechanisms provided for by Provincial Parliament are adequate to ensure oversight of the Department of Local Government, and it is recommended that the Committee on Local Government Oversight be removed from the Standing Rules.



André le Roux – 1 April 2016