

For attention Hons. Carrim and De Beer

Committee members of the Standing Committee on Finance and Select Committee on Finance

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### 1. Parliament Watch

Parliament Watch is a collective of ten independent organisations working towards the advancement of social justice, the realisation of human rights, and strong constitutional democracy in South Africa. Collaborators include the Black Sash; Dullah Omar Institute, UWC (DOI); Equal Education Law Centre (EELC); Heinrich Boell Foundation (HBF); Parliamentary Monitoring Group (PMG); Public Service Accountability Monitor (PSAM); The Right to Know Campaign (R2K); Social Change Assistance Trust (SCAT); Social Justice Coalition (SJC); and Women on Farms Project (WFP). A diverse range of individuals from the member organisations participate in Parliament Watch, this includes community activists, volunteers, and staff.

We consider the legislatures as central to our democracy and, in addition to their law-making functions, their duties to oversee effective service delivery and advance social justice and transformation in South Africa as crucial. While recent years have seen a welcomed increase in public attention to the debates and events in the National Assembly, the day-to-day work of committees generally falls outside of public scrutiny. Committees are critical in developing legislation and performing oversight on the performance of the executive including on public spending. At the foundation we believe that enhanced accountability and improved oversight can impact on the performance of government departments and ultimately service delivery.

Parliament Watch seeks to increase civil society and public knowledge of the work of committees related to the issues on which different groups focus. In addition Parliament Watch works with members of partner organisations to increase the rate of public engagement with the critical work of committees.

**Parliament Watch hereby requests an opportunity to present oral submissions to your committees on Wednesday 28 February.**

## 2. Our submissions

Parliament Watch values the committee's invitation to provide submissions on the 2018 Fiscal Framework and Revenue Proposals. In addition, we appreciate the challenges for the committees, linked to the tight timeframes in which the process must be finalised.

### 2.1. Participation of poor and working class people is required on these proposals

Parliament Watch is concerned about the short time-frames for public input, the lack of access to comprehensive information, and the time to comprehend, communicate, consult and develop positions on the proposals. The failure to advertise the opportunity for public input within adequate timeframes and on a range of appropriate platforms, to provide accessible information to the public, and to allow for timeframes in which the public can engage with the information undermines the overall transparency and accessibility of the process. Parliament Watch appreciates that resolving these challenges within the timeframes between the annual Budget Speech and the time in which the proposals must be finalised by Parliament is a challenge, and that in some respects it is a challenge that is not surmountable at this stage of the 2018 process. Nonetheless, the effect is that the majority of people affected by the proposals and decisions – those living in poverty and working class people, as well as the organisations seeking to represent the interests of those parts of our society are unable to 'meaningfully' engage in the process.

The 2013 UN Special Rapporteur on Extreme Poverty and Human Rights' report made recommendations to states to ensure meaningful participation of people living in poverty.<sup>1</sup> The report stipulates that participation is a fundamental human right.<sup>2</sup> It specifies that public participation in budget formulation and monitoring should be included in national frameworks.<sup>3</sup> The recommendations also require states to allocate sufficient resources; take measures to address inequality and discrimination; ensure access to information; put in place accountability mechanisms such as complaints system and reporting requirements; ensure empowerment of the people who participate; and support civil society to ensure meaningful participation.<sup>4</sup> Furthermore, the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression emphasises that access to information is a right,<sup>5</sup> and critically, that it is fundamental to realising the right to participate.<sup>6</sup>

The Constitution positions legislatures at the heart of South Africa's democracy, requiring that the National Assembly "*represent the people*" and "*ensure government by the people under the Constitution*".<sup>7</sup> In addition to establishing the broad powers for the legislatures, the Constitution describes the legislatures' public participation and representivity functions, requiring a high level of openness, public access and public involvement in the work of the legislatures.<sup>8</sup>

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<sup>1</sup> UN Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona. *Recommendations to States: an operational framework to ensure meaningful participation of people living in poverty*. Human Rights Council A/HR/C/23/36 11 March 2013. (UNSREPHR)

<sup>2</sup> UNSREPHR. *ibid.* Para 20

<sup>3</sup> UNSREPHR. *ibid.* Para 86(a)(iv)

<sup>4</sup> UNSREPHR. *ibid.* Para 86

<sup>5</sup> Abid Hussain. UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. Report to the UN Economic and Social Council. E/CN.4/2000/63 18 January 2000. Para 42

<sup>6</sup> UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. *ibid.* Para 42

<sup>7</sup> Act 108 of 1996. Constitution of the Republic of South Africa. Section 42(3)

<sup>8</sup> Three sections are dedicated to these issue, section 59 in relation to the NA, section 72 in relation to the NCOP and section 118 dealing with the PLs. Act 108 of 1996. *ibid.*

Our courts have dealt with the question of the role of the legislatures to promote participatory democracy and provided further guidance to Parliament on public participation in legislative processes.<sup>9</sup> In 2006, in *Doctors for Life International vs The Speaker of the National Assembly* (DfL), the Constitutional Court, considered the legislative mandate of the legislatures. The Court underscores the importance of measures to ensure the participation of people ‘*who are relatively disempowered in a country like ours where great disparities of wealth and influence exist.*’<sup>10</sup> It set out a reasonableness test to establish the appropriate extent and nature of public participation. This test requires the consideration of a number of factors, primary among these are ‘the nature and importance of the legislation’ linked to the ‘intensity of its impact on the public’.<sup>11</sup> The Court also indicates that the practicalities and efficiency of the law-making process should be considered, at the same time cautioning that inadequate public involvement cannot be justified based on these practical considerations alone. The Court stresses that the constitutional obligation includes providing meaningful opportunities for public participation and taking measures to ensure that people have the ability to take advantage of the opportunities that are provided.<sup>12</sup> The Court is clear that Parliament must “*provide notice of and information about the legislation under consideration*” and regarding the available opportunities for participation.<sup>13</sup>

The Money Bills Amendment Procedure and Related Matters Act (Money Bills Act) places a duty on the Finance and Appropriations committees to hold public hearings regarding the fiscal framework and revenue proposals.<sup>14</sup> This is the only instance in legislation in which a duty is placed on specific committees to undertake public participation, it signals the intention to ensure that public opinion is embedded in processes relating to public money.

Our research has shown that the Money Bills Act provisions mandating public participation has not had significant impact. Analysis of committee records between 2006 and 2014 shows that there has been only a minimal increase in the number of stakeholders who make submissions. In October 2006, four stakeholders interacted with the committees; between 2010 and 2014 that increased to between eight and ten bodies commenting on the fiscal framework and revenue proposals every year. These submissions were dominated by private sector stakeholders, who usually accounted for five or six of the submissions received by the committees. Organised labour has also maintained a steady presence over the years, but usually only one civil society organisation or coalition has engaged each year. In March 2013, there were no submissions from CSOs or civil society coalitions.

These findings are not surprising, given the experience of Parliament Watch members who, even with organizational support, still face difficulties of accessing the information necessary to follow the discussions in Parliament’s committees, and the difficulties of staying abreast of committee deliberations through travelling in to Parliament to directly observe (the costs of which are prohibitive for most people living outside of the urban centre), monitoring through television broadcasts (which is limited to people who can access DSTV and by what is selected for broadcast), or through accessing online records (which is limited by the high costs of data).

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<sup>9</sup> *King and Others v Attorneys Fidelity Fund Board of Control and Another* 2006(4) BCLR 462 (SCA); *Doctors for Life International v Speaker of the National Assembly and Others* (CCT12/05) [2006] ZACC 11; 2006 (12) BCLR 1399 (CC); 2006 (6) SA 416 (CC) (17 August 2006). (DfL); *Matatiele Municipality and Others v President of the Republic of South Africa and Others* 2006 (5) BCLR 622 (CC)

<sup>10</sup> *Doctors for Life International v Speaker of the National Assembly and Others* (CCT12/05) [2006] ZACC 11; 2006 (12) BCLR 1399 (CC); 2006 (6) SA 416 (CC) (17 August 2006). para 115

<sup>11</sup> *Doctors for Life. Ibid.* Para 127

<sup>12</sup> DfL. *Ibid.* Para 128 –129

<sup>13</sup> DfL. *Ibid.* Para 131

<sup>14</sup> Money Bills Amendment Procedure and Related Matters Act. No. 9 of 2009. Section 8(2)

Parliament Watch submits that the current participation process excludes the meaningful engagement of the majority of people in South Africa, whose lives will be significantly impacted by the current proposals. Some of the proposed budget allocations and cuts, as well as the revenue proposals represent a strong departure from the direction taken over the past few years. Thus we submit that the *'nature and importance'* of this process and the intense impact on the public requires more effective public participation and that the current provisions for participation do not constitute *'measures that ensure that people have the ability to take advantage of'* the opportunity as required by the Court. As such we argue that the constitutionality of the process is questionable.

## **2.2. The proposed VAT hike**

Among the Fiscal Framework and Revenue proposals, the proposal to increase VAT will have major impacts across society, Parliament Watch considers this to be a regressive move and we are particularly concerned about the impacts of this proposal on poor and working class people.

**Parliament Watch strongly urges your committees to extend the period for decision-making with respect to the revenue proposals and in particular regarding the question of increasing VAT. This extension period must take into account the significant impacts of the proposal on the majority of people and ensure that reasonable measures are taken to ensure engagement with and participation of those sectors of society whose lives will be seriously impacted.**

**Should the Committees decide that it is not able to extend the period of decision-making regarding the proposal to increase VAT, we submit that it should be rejected by Parliament at this time, in order to enable the required public participation.**

## **2.3. Proposals to improve future public participation in public finance related decisions**

Parliament Watch appreciates that as much as there are legal obligations on the legislatures to create adequate and meaningful spaces for the public to input on decisions regarding public finances, there is also arguably a responsibility for CSOs to seek to support such processes as far as possible. We have put measures in place to work with partner organisations during the 2018 period to expand (albeit modestly), the range of individuals and CSOs who are positioned to engage throughout the year's finance and budget processes, including, importantly at the stage preceding the adoption of the MTBPS and the development of BRRRs towards the year's end. This should assist our work with your committees in the early part of 2019.

**We submit that Committees must consider how to facilitate participation at all stages of the process. This must include considering what information is made public; how information is disseminated to ensure that the public at large and not only specialists and technical experts are in a position to work with that information; when information will be made available; and the timeframes between making information available and the deadline for submissions.**

We respectfully submit that as a starting point:

- The dates of public hearings can be set prior to the annual Budget Speech and communicated to the public in January.
- The committee could require Treasury to prepare information that includes the necessary detail in a format that can be understood by people who are not economists. This explanatory information must be made publically available along with the text of the Minister's budget speech.

- Treasury must be required by the Finance Committee to examine and rectify its limited participation strategies internally. We note that the Davis Tax Committee (DTC) called for public input on Wealth Taxes towards the end of 2017. Once again the timeframes for comment did not allow for civil society to consult broadly and no feedback was provided to our collective who made a submission (our submission to the DTC expressed arguments against raising VAT).
- Greater attention can be given to providing the public with information on how engaging in Parliamentary processes linked to all issues of public finance through the year can inform the national budget.

### **3. Conclusion**

As stated above, we recognise the inherent difficulties at this stage of the process and we respect that the committees have made provision for some level of public input into the process as per the Money Bills Act. We trust that your committees will consider the seriousness of these submissions. We are available to work with your committees to find solutions that can address some of these fundamental challenges.

### **4. Endorsements**

Parliament Watch has not been able to circulate our submissions for broader sectoral endorsements in time to meet the committees submission deadline. We will provide this information to the committee by 8am on Wednesday 28 February 2018.

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