

Chairperson, Mr Mzwandile Masina (MP)

Portfolio Committee on Trade, Industry and Competition

The Parliament,
90 Plein Street,
Cape Town,
8000

Dear Hon Chairperson, Mr Masina (MP)

RE: RESPOND FROM NATIONAL LOTTERIES COMMISSION (NLC) IN RESPECT OF THE COMMITTEE'S APPEARANCE ON THE 18TH SEPTEMBER 2024

This correspondence has reference to the questions received from the Portfolio Committee, dated 19 September 2024 with regards to the NLC briefing on the 2024/25 Annual Performance Plan (APP) and budget. The NLC seeks to clarify some of the concerns raised by the members of the Portfolio Committee.

1. APP is more forward-looking and doesn't entail how you are performing against your KPIs in terms of your mandate.

The NLC brief was to appraise the new members of the Committee on the 2024/25 APP and the budget. NLC will be appearing before the Committee upon request to report on the quarterly performance progress.

2. Does the board have plan of what it intends to do over the MTEF?

Yes, the APP is a demonstration of the strategic imperatives of the Board to conclude the 2019/24 MTEF. The NLC as per the new requirements of the 7th administration, is in the process of formulating the Medium-Term Development Plan (MTDP) strategy for 2025/30 to be approved by the Executive Authority after the compliance date submission of 31st January 2025. The process is underway and key priorities identified by the Board include but are not limited to: GBVF, youth employment, water reticulation, rural development, food security, food Gardens and Soup Kitchen projects, Arts impact investing projects, Healing systems to support Gender-based Violence and job creation initiatives.

3. Explain the R300 million paid to NT including the legal opinions.

CHANGING LIVES

Board Members: Prof NB Pityana (Chairperson), Mr T Bonakele, Ms P Mvulane
Ms B Ferguson, Mr L October, Ms I Ramafola, Adv N Nene (Company Secretary)

*Established in terms of the Lotteries Act
57 of 1997, as amended.*



The NLC concedes that R300 million was surrendered to National Treasury through its Policy Department, the dtic. This was after the National Treasury invoked section 53(3) read with section 3(3) of the PFMA, as amended, but disregarding section 25 of the Lotteries Act, as amended.

National Treasury argued and emphasised to the NLC that in the event of any inconsistency between the PFMA and the Lotteries Act, section 3(3) of the PFMA rescues the conundrum and therefore PFMA Prevails. Concerned about this legal interpretation that the Treasury insisted upon, the Board instructed two counsels to prepare a legal opinion. The legal opinion substantially confirmed the reservations of the Board. The legal opinion was shared with the Treasury officials..

In subsequent discussions with NT, the NLC surrendered a portion of R1.2bn surplus that was initially demanded to be surrendered was eventually ceded to National Treasury.

What compounded matters was when National Treasury cautioned the NLC that if there is no surrender of surplus funds, they will invoke section 83 of the PFMA, which is a financial misconduct against the accounting authority and officials of the NLC.

In the final analysis, Instruction Note 12 is a subordinate legislation and therefore cannot take precedence over section 25 of the Lotteries Act, as the legal opinion emphasized.

Based on the foregoing, the NLC is engaging National Treasury on the matter.

4. How do you build the honest and credible NLC after the corruption that has taken place:

The NLC has redefined its values and is driving a values-based and purpose driven culture, values are captured in performance contracts to drive specific behavior. In addition, in February 2024, the NLC Board approved the Lifestyle Review, Investigations, and Audit Policy to further strengthen oversight. Since the policy's implementation, the roll-out of lifestyle reviews has commenced with the Board, Executive Committee (EXCO), and Distributing Agency Members.

The NLC is also extending lifestyle reviews to senior management and supervisory levels. These reviews are a key tool in identifying and mitigating risks of fraud and corruption within the NLC.



As a Schedule 3A public entity, the NLC is committed to upholding the guidelines approved in April 2021 for auditing public servants across national and provincial departments, as well as state-owned enterprises. When high risks are identified during lifestyle reviews, these cases are escalated for further investigation to ensure thorough and effective oversight. The NLC has adopted a zero tolerance approach to fraud and corruption and any fraudulent matters are dealt with decisively.

The Public Servants Association (PSA) has raised concerns around elements of the policy and process. These concerns are being addressed through the Collective Bargaining Forum which is the official platform for engagement on labour matters. The NLC anticipates that parties will find common ground around these issues.

5. Panel of lawyers' decision and why was the process restarted?

The advertised bid for the Panel of Attorneys was advertised in November 2023 with the validity period until 8 March 2024. At this time, there was only one person in the Legal Services division as the Legal Executive joined the organisation in April 2024.

On the verge of the expiry of the validity period, the NLC attempted to seek an extension from the more than 200 legal firms that applied but only a handful responded which led to the tender being cancelled.

Pursuant to the cancellation, the new Terms of Reference were advertised in August 2024 and closed on the 20 September 2024. SCM processes are underway.

In the interim the NLC has a transversal contract with a panel of lawyers from the National Consumer Tribunal, in terms of National Treasury Regulations 16A.6.6.

6. Why did the same lawyer draft and review the RFP?

Preparations for the 4th Lottery Licence began under the previous NLC Board. The Board engaged Malatji & Co as an advisory and drafting service on the 4th Licence. That was understandable because the law firm Malatji & Co have the experience in lottery matters not otherwise available. Malatji & Co continues to provide satisfactory service and support to the NLC.

Section 13 (2)(a) of the Lotteries Act requires the Minister to issue a notice to invite interested parties to apply for a copy of the Request for Proposal (RFP). The law firm was appointed to advise the NLC Board in drafting the RFP. The RFP was reviewed by the NLC Board and sent to the Minister of Trade, Industry and Competition. The

Minister then proposed changes to the RFP, which were effected by the NLC Board. The revised RFP was sent to the Minister for his final approval prior to being issued.

7. Can you say that no private sector consulting firm is involved with the adjudication of the 4th Lottery licence process?

According to s.13 of the Act, the Board of the NLC has a duty to advise the Minister on the award of the licence. The Minister issues the licence after consultation with the Board. Accordingly, the adjudication of the Forth National Lottery and Sports Pool Licence (Fourth Licence) is being done by the adjudication committee, which is comprised of all members of the NLC Board.

8. Is there a firm who is adjudicating the 4th Lottery licence?

The adjudication of applications for the Fourth Licence is not done by a law firm. Adjudication is done by the adjudication committee comprising of all members of the NLC Board.

9. Clarity on a search company.

There were two search companies appointed to source CVs for persons who were appointed to serve as the Evaluation Committee.

10. Also confirm that nobody on the evaluation committee has a relationship with any of the bidders, and members of the Executive/President.

Yes, we can. Conflict of interest declarations were made by all members of the evaluation committee and this was assessed by a legal firm. Should any conflict of interest arise, this will be thoroughly scrutinsed and raised with the Board.

11. Did Ithuba disclose its foreign operations to you? In Uganda and Tanzania have operations partnering with Ramaphosa's son, are you aware? Need for bidders to disclose partners in other countries.

Ithuba Holdings (RF) (Pty) Ltd (Ithuba Holdings) is the company awarded the Third National Lotteries and Sports Pools Licences in South Africa. That Licence expires in May 2025 (as per extension). The NLC is aware that companies registered as Ithuba Botswana, Ithuba Uganda and Ithuba Tanzania have been granted National Lottery Licences in Botswana, Uganda and Tanzania.



The NLC is not aware of partnerships disclosed by Ithuba Uganda and Ithuba Tanzania to the respective regulators in those countries.

Bidders for the Fourth Licence are required, in terms of the RFP, to disclose their partners involved in the company that will operate the Fourth Licence in South Africa.

12. Extension of Ithuba's licence – why and until when? What being done to prevent gaps?

Section 14(a)(1) of the Lotteries Act make provision for the Minister, after consulting with the NLC Board, and at least one year before the expiry of the Licence, to extend the Licence for a period not exceeding 24 months. The Licence extension granted to Ithuba Holdings was proposed by the NLC Board in 2022, which was a year before the Third Licence expired. The extension of the current license expires on 31 May 2025. There are no gaps as the process of the 4th Lottery licence is underway.

13. Rewarding excellence – Olympics and Paralympics – funding by the NLC. This should be one of the priorities that are supported. Do you have a target? NLC has not demonstrated a plan or target to reward sports excellence

NLC has commenced the building of a robust relationship with SASCO. For the Paris 2024 Olympics and Paralympics, NLC granted an amount of R39 million. The NLC has also in the previous financial year funded the Special Olympics South Africa as well as various federations and sports clubs. A central focus of the call for applications is also on schools sports and the NLC's regulations specify that 28% of the allocated budget must be directed towards sports.

14. Adjudication around proactive funding – who was doing it? And who is doing it now?

So-called pro-active grant funding actually refers to funding following research by the NLC in s.3 of the Act. The NLC recognized that the problems emanating under this provision were due to the fact that this amendment was ostensibly implemented without a policy provision. The Board has now taken time to draft and prove a policy dedicated to the grant-funding under this rubric. The Board froze funding under this provision pending the drafting of a policy governing it. That policy has now been approved by the Board.

Proactive funding now has to undergo several stages: research, evaluation, adjudication and Board resolution. A committee called the Assurance Committee that is comprised of select representatives of Distributing Agency members from the 3



sectors (Arts, Sports & Charities) advises the Board. In terms of the new policy, the Distributing Agency will adjudicate the projects (see section 26(G)(2) of the Lotteries Act). The NLC will have the prerogative to appoint experts to assist the panel of DA's, for example: Multi-disciplinary engineers may be appointed where projects involve infrastructure.

15. Board remuneration – remuneration above as consultants. Line items of what has been paid and reasons for payment.

We are not aware that any member of the Board is rewarded remuneration as a consultant. Board remuneration is provided by the Act and approved by the Minister in keeping with Treasury Regulations.

This is disclosed in the annual report of the NLC. Refer to 2022/23 annual report for the details. For 2023/24 – AGSA is still busy finalizing the audit and the details will be published in the audit report.

16. Clarity on whether there are any sanctions that can or have been taken for those who let R300 million be surrendered to NT?

The Board was constantly consulted about this. There is no member of staff who acted in contravention of any rules of conduct of the NLC. Surrender to the Treasury was authorized precisely so that members of staff should not be found guilty of financial misconduct in terms of the PFMA. The NLC is still in discussions with the NT as the matter has not yet been concluded.

17. Issue of transparency – is it possible to publish all NGOs that are beneficiaries?

The NLDTF payments made to beneficiaries are published monthly on the NLC website. This has been the case since April 2023. The same information is also published in the Annual Report of the NLC.

18. Who are board members, what are their backgrounds and when was the board established? How long has each member served?

The Board members profiles have been attached.

19. Issue of governance is quite serious in view of the mandate of the entity and the resources it must manage. Need more detail on the organizational structure including vacancies.

The top management structure including the vacancies have been attached as an interim measure. It is important to note that as part of the modernisation journey of the NLC, the structure will be changing as business processes are revised and automated.

The questions that have not been addressed in this letter were adequately covered during the sitting.

In conclusion, whilst we recognise the immense challenge ahead of us, we are convinced that we have set the correct strategic direction. It is also important to note that the NLC has been through turbulent times, and recovery is not a one-time occurrence; it is a journey that that Board and management have committed to achieving.

We trust that the NLC responded to all the issues raised by the members.

Yours sincerely



N Barney Pityana GCOB FKC MASSAf

CHAIRPERSON: NATIONAL LOTTERIES COMMISSION
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