



Legal Services

PO Box 3704, Bloemfontein, 9300
3rd Floor, Bram Fischer Building, De Villiers Street, Bloemfontein
Tel: +27(0)51 405 8029, Fax: +27(0)51 405 8118

Your Ref:

Room 314, Bram Fischer Building

Our Ref:

Date: 20 February 2023

**MR TEBOHO MOTLASHUPING
ACTING CITY MANAGER**

Sir

**RULE 38 QUESTION: OUTSOURCING OF TRANSLATION SERVICES AND PAYMENT
OF MILLIONS OF RANDS**

Answers to Rule 38 Questions:

- (a) Who or which departments requested translation of documents and for what purposes?
Corporate Services, for the purpose of translation of Bylaws.
- (b) Which documents were translated and what is the actual costs paid, for such services?
By-laws – R3 731 250,00
- (c) How many quotations were sought and why the supply chain management policy was not followed for this type of professional services?
Service Provider who has a Service Level Agreement with MMM was used. Law firm was instructed due to specific nature of work.
- (d) Where can we access those translated documents?
Legal Services – By-Laws
- (e) Is the company that translated those documents registered with SATI (South African Translation Institute) and what is the registration number?

Not registered with the SATI. These are legislation which needed to be translated by legal practitioners to maintain the meaning of the translated document. These have legal implications.

Submitted by



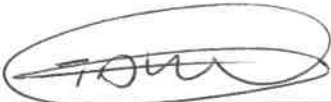
Adv. Charlie Naidoo
GM: Legal Services

Recommended / ~~Not Recommended by~~



Adv. Nkateko Mpangane
Acting Head of Department: Corporate Services
Date:

Approved / ~~Not Approved~~



Mr Tebogo Motlashuping
Acting City Manager
Date: 21/02/2023

Enquiries: Thabiso Ramolebo - Acting Manager: By-laws

Phone: (051) 405 8471

Fax: (051) 405 8119

Email: thabiso.ramolebo@mangaung.co.za

Date: 12 May 2022

ACTING CITY MANAGER

TRANSLATION OF MUNICIPAL BY-LAWS

1. PURPOSE

The purpose of this report is to inform the Acting City Manager the status of the matters pertaining to the translations of municipal by-laws into the other two official languages, namely Sesotho and Afrikaans.

2. BACKGROUND

The Municipality adopted a language policy on the 27th of November 2003 with further amendments by Council on the 27th of May 2004. (Attached hereto as Annexure A).

The bylaws of the Municipality have previously only been drafted in the English language.

As a result of the by-laws being drafted only in the English language, the Municipality received numerous complaints by members of the community.

During the public participation processes, members of the community complained that they could not understand or read the draft by-laws because they were written in English. Therefore, as a result of the lack of understanding and intention of any By-Law, they could not effectively take part in making inputs regarding the draft by-laws.

Due to frustrations, some had resorted to disrupting the public hearings because they were of the strong view that the Municipality, by failing to translate by-laws into other languages, was not taking them seriously or put differently, the Municipality was just doing the public engagement for the sake wanting to pass by-laws and not necessarily wanting to consider and incorporate their inputs into the draft by-laws.

During the previous public participation processes, some of the hearings took place with difficulty. These happened in Botshabelo and Thaba Nchu. In some areas like Dewetsdorp and Soutpan the hearings took place smoothly, but the community members still raised their dissatisfaction about the issue of the non-translated by-laws.

In addressing the challenge, after the incorporation of the former Naledi Local Municipality and Soutpan area, the by-laws had to be rationalised (reviewed) so that they be applicable throughout the jurisdictional area of the Municipality.

The public participation process was a huge challenge because the by-laws were not yet translated. The matter was raised with the then Head: Corporate Services.

In 2017 when the public engagements were conducted on the review of by-laws, it was resolved that the by-laws must be translated for future public participation processes.

It was the understanding that the by-laws are piece of legislation in the local sphere of government and translating by-laws forms integral part of the formulation thereof in the sense that the literal and contextual meaning of words or provisions must, as far as possible, not lose its meaning through translation lest we invite troubles during any interpretation of a particular by-law.

During that period of the panel of firms of attorneys, which was appointed or established through legal supply chain process, contract number: C290/l, the Molefi Thoabala Inc., which was the only one having legislative drafting certificate, was the only firm appointed on the category of legislative drafting, hence the instruction was made thereto to translate the existing by-laws at that time.

The process of rationalization was not completed as it was expected due to prolonged public participation process and internal challenges which ended in July 2021 and the last batch of the by-laws were approved and promulgated in September and November 2021. In other words, the process of rationalisation was completed in November 2021.

3. LEGISLATIVE FRAMEWORK

Section 152 of the Constitution outlines the objects of local government and states that the objects of local government are, *inter alia* to encourage the involvement of communities and community organisations in the matters of local government.

Local Government: Municipal Systems Act 32 of 2000, as amended:

Subsection 18(2)(a) of the Act, on Community Participation, prescribes that when communicating the information mentioned in subsection (1), *a municipality must take into account the language preferences and usage in the municipality.*

Subsection 18(2)(a) of the Act provides that a municipality must communicate to its community information concerning –

- (a) *the available mechanisms, processes and procedures to encourage and facilitate community participation;*
- (b) *the matters with regard to which community participation is encouraged;*
- (c) *the rights and duties of members of the local community; and*
- (d) *municipal governance, management and development.*

It is interesting to note that section 2 of the Systems Act confirms that the community is part and parcel of the municipality and states that a municipality consists of the political structures and administration of the municipality, and as well as the community of the municipality. This is a clear indication that the community is not outside the municipality but is intrinsically intertwined and interwoven with the municipality. Municipalities exist because communities exist and the constitutional mandate of municipalities is to ensure effective and efficient service delivery.

In one of the publications from SALGA entitled "**Effective Public Participation 2013**", (Attached hereto as Annexure B) SALGA states that while it is widely agreed that public participation is one of the key elements of democracy and that it can function as a tool for preventing any form of marginalisation, it seems that municipalities are not being intentional about responding to the different language needs of their community members. Although there is an acknowledgement of the cost implications of a multi-language policy especially for smaller municipalities, it is proposed that municipalities as far as possible adopt a language policy that will allow all community members to be able to access municipal documents in a language that they understand and thus be allowed to participate in council processes and proceedings. The policy should be informed by the needs of the community in the specific municipality in terms of language preference. Special attention needs to be given to illiterate members of communities, to ensure that they are not marginalised.

4. DISCUSSION

In terms of the legislation (the Systems Act) the public participation process must be adequate and reasonable. In order for effective public participation to take place, communities must be able to understand and interpret legislation which govern them.

The translation of the by-laws into other languages used in the Municipality, was implemented to ensure that by-laws are accessible to members of the community in the language of their preference. Translation of the by-laws will contribute towards effective public participation as the community will be able to make meaningful contributions regarding the draft bylaws as well as understand the implementation of by-laws.

One of the factors that should be considered is that the initial translation of the by-law will bear the major cost implication and any subsequent amendments due to amendments in legislation will bear minimum cost. The only part that will have to be translated is any amendments effected to the existing by-laws.

It has been a strong view that a translation of by-laws should be done by legal practitioners, in particular the ones who are qualified and proficient in legislative drafting, so that an interpretation of a by-law must not be compromised during the translation process. Legislative drafting is not like drafting of normal reports or documents. It is for this reason, for example, when one needs a legislation to be interpreted, they would call on the expertise of a legal practitioner and not just a linguist. During the translation process, the intension and purpose of the drafters of the legislation must be retained.

It is for this reason that a law firm was contracted to conduct the translation services. The selection of the firm was based on experience in legislative drafting. The municipality currently needs to translate forty-two (42) by-laws, which include existing by-laws and draft by-laws once promulgated. Thus far, twenty-four (24) by-laws were translated into Sesotho and sixteen (16) by-laws into Afrikaans. That means that eighteen (18) by-laws still need to be translated into Sesotho and twenty-six (26) must be translated into Afrikaans.

Initially the view was that once all the by-laws have been translated, an Item will be submitted to Council for approval before the by-laws could be promulgated.

Due to the recent media allegations which brought into question the existence of the translated by-laws, this report serves to confirm that there are in fact by-laws which were translated as mentioned above.

It must be noted that in other municipalities, like the City of Cape Town, the by-laws have been translated from English to two other main languages used within their area of jurisdiction, namely Afrikaans and IsiXhosa.

The costs incurred for the translating of by-laws by the Municipality are in line with costs incurred by other Metro Municipalities for the review of by-laws and translations. The City of Tshwane, for instance, had advertised a tender for R11 million rands for just the review of by-laws. Translation of by-laws requires more work than reviewing of by-laws.

Should the by-laws be incorrectly translated which may have a different interpretation in law, the Municipality could expose itself to much more harm and financial loss than the cost of translation. The communities may also be discriminated against if the English version seems more favourable than the translated version.

5. RISK

The recent newspaper article regarding the translation of by-laws has had a serious negative impact on the Municipality.

The article contained serious allegations which were unfounded and incorrect.

Beside citing certain individuals as having allegedly committed misconduct, the article has also brought the law firm and the municipality into disrepute and has severely tarnished the already stained image of the municipality.

At no time was the directorate contacted to verify the allegations regarding the translation of by-laws.


It is common cause that these allegations were spread by officials and members of Council within the municipality without verification of facts.

In the event that consequence management is not implemented against the persons for spreading false rumours and making unfounded allegations, the municipality will continuously be exposed to negative publicity based on rumours and unfounded allegations.

6. RECOMMENDATIONS

- 1) That the report be noted.
- 2) That copies of translated by-laws are available, and can be obtained upon request, in the Office of the Acting City Manager and Legal Services.
- 3) That once all applicable by-laws have been translated, a detailed report be made to Council, submitting the translated by-laws for approval so that they can also be placed on the municipal website for members of the public to access.

Submitted By:



Adv. Charlie Naidoo
GM: Legal Services
Date: 6 June 2022

Recommended / Not Recommended by

Adv Nkateko Mpangane
Acting Head of Department: Corporate Services
Date:

Approved /Not Approved

Mr Tebogo Motlashuping
Acting City Manager
Date:



Enquiries: Mr Thabiso Ramolebo

Date: 31 May 2022

Phone: (051) 405 8471

Fax: (051) 405 8119

PROVISION OF TRANSLATED VERSIONS OF BY-LAWS IN SESOTHO AND AFRIKAANS LANGUAGES

1. PURPOSE

- 1.1 The purpose of this report is to inform, update and clarify to the Acting City Manager about the matters pertaining to the provision of the translated versions of municipal by-laws into other main (official) languages of the Municipality, namely: Sesotho and Afrikaans.

2. BACKGROUND

- 2.1 The bylaws of the Municipality are and have been drafted in English language all the years without being available in other languages mainly used within the area of jurisdiction of the Mangaung Metro Municipality.
- 2.2 Since the by-laws of the Municipality are only available in English language, there have been complaints raised by many members of the community that they cannot understand or read the draft by-laws because they are written in the language they do not understand.
And as a result, they cannot effectively take part in making inputs regarding the draft by-laws. They feel marginalized and as such this can be regarded as a form of discrimination.
- 2.3 Due to frustrations, some had resorted to disrupting the public hearings because they were of the strong view that the Municipality, by failing to avail by-laws in other languages, was not taking them serious or put differently, the Municipality was just doing the public engagement processes for the

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sake of planning to pass by-laws and not necessarily intending to consider and incorporate their inputs into the draft by-laws.

- 2.4 During the previous public participation processes, some of the hearings took place with difficulty or did not take place. At Botshabelo W Section the matter was even sharply raised by a former ward councillor and at Kaizer Sebothelo, the hearing had to be abandoned by the officials fearing for their life. In Thaba Nchu the hearing was disrupted by angry community members. In some areas like Dewetsdorp and Soutpan the hearings did take place but the community members still raised their dissatisfaction about the issue of the non-availability of the translated versions of the by-laws.
- 2.5 In addressing the challenge, after the incorporation of the former Naledi Local Municipality and Soutpan area, the by-laws had to be rationalised (reviewed) so that they can be applicable throughout the jurisdiction of the area of the Municipality. The public participation process became a huge challenge again because the by-laws were not yet available in translated versions.

At that time, there was only one (1) firm of attorneys which was appointed in the category of legislative drafting to assist the Municipality with the drafting of by-laws in terms of contract number: C290/I

Due to the fact that the Firm was assisting the Municipality during that process of rationalization, and it was the only Firm in the category of legislative drafting, the Firm was requested to also avail the by-laws in translated versions. The Firm was instructed to provide the translated versions of only the by-laws they were drafting or assisting the Municipality with.

The understanding was that the provision of the translated versions of by-laws forms an integral part of the formulation thereof so that the literal and contextual meaning of words or provisions, as far as possible, do not lose their meaning in a translated version. This is aimed at preventing any misinterpretation amongst the three versions should any interpretation of a particular by-law be engaged upon.

- 2.6 The process of rationalization was not completed timeously as it was expected due to the prolonged public participation processes, the lock-

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down regulations that were imposed nationally as result of the Covid-19 pandemic, some internal processes that we had to follow or comply with and were ended in July 2021, and the last batch of the by-laws were approved and promulgated in September and November 2021 respectively. In other words, one can safely say that the process of rationalisation was completed in November 2021.

- 2.7 The approach was that once all the existing translated versions of the by-laws have been provided, a detailed submission was going to be made to Council for consideration and approval, as it is being recommended in terms of point 5.6 of this report.

3. LEGISLATIVE FRAMEWORK

3.1 Local Government: Municipal Systems Act 32 of 2000, as amended:

Subsection 18(2)(a) of the Act, on Community Participation, prescribes that when communicating the information mentioned in subsection (1), a *municipality must take into account the language preferences and usage in the municipality.*

Subsection 18(2)(a) of the Act provides that a municipality must communicate to its community information concerning –

- (a) the available mechanisms, processes and procedures to encourage and facilitate community participation;
- (b) the matters with regard to which community participation is encouraged;
- (c) the rights and duties of members of the local community; and
- (d) municipal governance, management and development.

3.2 Language Policy of the Municipality

The Policy recognises the three (3) languages, namely English, Sesotho and Afrikaans as the official languages of the Municipality.

It prescribes that when communicating with members of the community or/and providing them with documents, the documents must be in the language the members of community understand and prefer.

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4. DELIBERATIONS

- 4.1 In terms of the legislation (the Systems Act) the public participation process must be adequate and reasonable.

The translated versions of the by-laws available in other languages used in the Municipality, is one of the factors that make the by-laws accessible to members of the community in the language of their preference. As a result, the factor makes public engagements processes more reasonable and adequate. It is reasonable and adequate to provide members of the community with copies of bylaws written in the language they understand so that they can make meaningful inputs regarding the draft bylaws.

The Language Policy of the Municipality prescribes and encourages that the by-laws, as well, must be accessible to community members in the languages they prefer. And so, it clear that the provision of the by-laws in translated versions is line with the Language Policy of the Municipality.

- 4.2 One of the factors that should be considered is that once a by-law has been drafted or is available in translated versions it will remain obtainable in the other languages as long as the by-law continues to be applicable.
- 4.3 Although some by-laws were provided in translated versions, a huge number of by-laws still have to be provided in translated versions for the purposes of accessibility and smooth public participation processes.
- 4.4 In other municipalities, like City of Cape Town, the by-laws are available in translated versions in their two other main languages used within their area of jurisdiction in addition to English language, namely: Afrikaans and IsiXhosa.

5. RECOMMENDATIONS

- 5.1 That the Acting City Manager takes note of the report.
- 5.2 That all the by-laws be made also available in translated versions in Sesotho and Afrikaans languages for the purpose of complying with legislation.
- 5.3 That the Acting City Manager reviews and redirects how other outstanding by-laws should be provided in translated versions.
- 5.4 That once a firm of attorneys in the panel of the municipality has been instructed to draft a by-law for the Municipality, that such a firm may also be requested to provide such draft in other languages used within the area of jurisdiction of the municipality. Or the Acting City Manager can direct who

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can translate the English draft version once such draft has been provided to the Municipality.

- 5.5 That it be noted that by-laws in translated versions are availed and obtainable, upon request, in the Legal Services.
- 5.6 That once all the existing, applicable and enforceable by-laws become available in translated versions, a detailed report be made to Council, for consideration and approval for the purpose of addressing the issues of accessibility of bylaws in preferred languages, smooth public participation processes and a version for the purposes of interpretation to prevail among the versions in the three languages.
Further that, they can also be placed on the municipal website in the three language versions for members of the public to access.

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Mr Thabiso Ramolebo
Acting Manager: By-laws

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31 MAY 2022
Date

Comments by the GM: Legal Services, if any:

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Adv. Charlie Naidoo
GM: Legal Services

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31 May 2022
Date

Comments by the Acting City Manager, if any:

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Noted by:

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Mr Tebogo Motlashuping
Acting City Manager

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Date