

## **RE: SUBMISSION ON CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA AMENDMENT BILL, 2002**

This draft is a great improvement on its predecessor of 2001, which authorized the unsupervised intervention during a financial emergency. However, there are certain aspects to this Bill that remains objectionable.

- (a) The ground of intervention listed in section 139(1)(b) is unnecessary.

The passing of the budget and the raising of revenue are the most important legislative acts of a municipality. The failure to do so has dire consequences for a municipality. However, the Local Government Transition Act, section 10G makes specific provision for the failure of a municipality to adopt a budget – the municipality manages on the basis of the previous budget. A similar provision should be included in the Municipal Finance Management Bill. Then intervention in this core competency would not be necessary.

A possible argument for the inclusion of this ground is when the failure to approve a budget is part of a financial crisis. Non-approval of a budget alone should not be a ground for intervention.

- (b) The grounds of intervention listed in s 139(1)(c) is unclear.

A province may intervene where a municipality fails to “fulfil any other obligations specified by an Act of Parliament, the serious or persistent breach of which threatens the health and safety of residents of the municipality”.

What is the ambit of “any other obligation” – does it include legislative duties as well? What is the meaning of a breach “which threatens the health and safety of residents”? If the idea is to authorize an intervention because of a financial emergency, then the provision does not say it. Does it intend to deal with disasters?

The first two grounds are clear. The general rule is that there will be intervention only when the municipality does not perform its executive functions. Its legislative authority is not affected. The second ground allows for only one aspect of its legislative authority to be intruded upon. By adding the third ground, the only conclusion is that it gives a general, undefined and unspecified opening for intervention.

- (c) Mandatory intervention in terms of subsection (3).

While intervention in terms of subsection (2) is discretionary, in the case of a financial crisis there is a duty to intervene. This duty to intervene should be coupled with the duty to monitor and support; it is only when a province has complied with its constitutional duty of support, that the duty to intervene very intrusively (by approving the budget) should kick in.

- (d) National intervention in terms of subsection (4)

If the objective is to authorize the national government to intervene in a municipality, then the provision should say so. As it reads now, the national government intervenes in the province and as such intervenes in the municipality.

- (e) The period in which the national Minister's approval must be obtained is extended from 14 days to 40.

If the national minister's approval for a provincial action is to be required (a provision that can be questioned on the basis being an unnecessary duplication), then it should occur expeditiously. As it is an executive decision, a delay of 40 days is overly long.

- (f) The NCOP's supervisory role is unnecessarily watered down.
  - (i) The tight time frame of 30 days obligatory review has been relaxed to 180 days.
  - (ii) The mandatory regular reviews are replaced by a discretionary process.

It is argued that because intervention also includes the assumption of legislative authority (approval of a budget), more control rather than less is required. While 30 days is a short period, this time line infuses a measure of urgency in the matter. In the past the NCOP has managed the 30 day time lines. A period of 6 months will in effect allow an entire intervention to take place, budgets approve, etc, before the NCOP has had the opportunity to pronounce on the matter. It would defeat the very objective of having the NCOP supervision there in the first place.

The mandatory review is a critical measure that requires the NCOP to remain seized with the matter. It can set its own rules regarding the time lines of its regular review and can thus manage its own workload. By making review discretionary, places the onus on the municipality to raise the matter and convince the NCOP to review the intervention.

- (g) The cosmetic changes to the wording of section 139, replacing the terms "tabling" with "submission", are not warranted. The meaning of tabling is clear and not problematic. The removal of the words "of their respective first sittings" is supported. It is a provision that was difficult to apply with certainty in practice.

### **Amendment to section 100**

Section 100 is amended in a similar fashion as section 139 – watering down the supervisory role of the NCOP. The concerns raised with regard to section 139 are equally applicable to this section.