



cooperative
governance

Department:
Cooperative Governance
REPUBLIC OF SOUTH AFRICA

UNPACKING THE INTERGOVERNMENTAL MONITORING, SUPPORT AND INTERVENTIONS BILL

4TH SALGA MUNICIPAL LEGAL PRACTITIONERS' FORUM

Durban 2024

MRTSHEPO KHASI: 15 MARCH 2024

PURPOSE OF THE PRESENTATION

- ❑ To provide an update on the status of the:
 - Intergovernmental Monitoring, Support and Interventions Bill (“IMSI Bill”); and
 - Recommend participation in the processing of the Bill.

SUMMARY ON DEVELOPMENT OF THE IMSI BILL

- ❑ **Sections 100(3) and 139(8) of the Constitution** calls for enactment of a legislation that will assist in the **processes and procedures of intervening in provinces and municipalities** in terms of sections 100 and 139 of the Constitution.
- ❑ In giving effect to **sections 100(3) and 139(8) of the Constitution** the Department developed the Intergovernmental Monitoring, Support and Interventions (IMSI) Bill.
- ❑ The Bill was subjected to both **constitutional compliance test** by the OCSLA; and to a “**socio-economic impact assessment**” by the Presidency. The final latter “seia” have been issued and obtained, whilst the Department is waiting for the final constitutional test OCSLA certificate.
- ❑ Cabinet approved the publication of the IMSI Bill for public comments on **5 July 2023**; The publication was done in the Government Gazette on **10 July 2023 (closing date 26 August 2023** for submission of the public comments).
- ❑ To date, **1 338 written comments and inputs** were obtained from different stakeholders, and all inputs were considered for inclusion in the Bill, where necessary.
- ❑ The Bill is currently serving before the GSCID Cabinet Clusters towards Cabinet, requesting approval from Cabinet to submit the Bill to Parliament for processing in Parliament;
- ❑ As a section 76 Bill, it will be considered by the **Portfolio Committee of cooperative governance. It will then be considered by the Select Committee on cooperative governance**, thereafter.
- ❑ **Once approved**, it will serve before the **Parliament (NA and NCOP)**; and once voted for approval, it will then be **sent to the President to assent**. Once so assented, the Bill will become an Act of Parliament

LONG TITLE OF THE BILL

- ❑ The Bill has been developed **in compliance** with sections 100(3) and 139(8) of the Constitution called Intergovernmental Monitoring, Support and Interventions (IMSI) Bill.

- ❑ The long title of the IMSI Bill states that **the purpose of the Bill is:**
 - ✓ To **regulate the implementation of, and the processes** provided for in section 100 and section 139 of the constitution;
 - ✓ To provide for **targeted support** to provinces and municipalities in need of assistance;
 - ✓ To provide for the **monitoring** of provinces and municipalities as to the fulfilment of their executive obligations in terms of the constitution or legislation;
 - ✓ To provide **alternative steps** to interventions to induce compliance by provinces or municipalities with their executive obligations;
 - ✓ To provide for the **deployment of administrators** by the intervening national executive or provincial executive; and
 - ✓ To provide for matters connected therewith.

KEY OBSERVATIONS/LEASONS LEARNT ON INTERVENTIONS (GENERIC)

- ❑ There has been difficulties by the provinces in interpreting what constitute an “executive obligation in terms of the Constitution or legislation”, and what powers and functions may be usurped or not during intervention processes;
- ❑ Except in very few instances, the vast majority of interventions were conducted in terms of the general section 139(1)(b) of the Constitution, and far much less on financial provisions, and the “Directives” in terms of section 139(1)(a) have not been used optimally
- ❑ There has been difficulties in regard to the computation of time as to when an intervention has started;
- ❑ Effectiveness of the interventions have more often than not, been questioned, and the ToRs not clear;
- ❑ There was little indication that provincial legislatures exercised oversight over the PECs’ actions in terms of section 139 of the Constitution;
- ❑ Some provinces have not been able to submit regular progress reports and the final close-up reports;
- ❑ Resistance and obstructionist tendencies from Municipal Councils and municipal personnel to an extent that there is no cooperation and at times, bordering on illegal activities such as destroying documentation and issuing of illegal instructions to other municipal officials against the Administrator’s work.
- ❑ Provinces tend to interpret the invocation of section 139 of the Constitution differently from each other despite national guidelines being in place.
- ❑ Provinces tend to deploy one person as an Administrator. At times, the municipal personnel are sceptical and very reluctant, and most times, uncooperative to assisting the Administrator.

HIGH LEVEL COMMENTS FROM STAKEHOLDERS AND SALIENT FEATURES OF THE IMSI BILL

- ❑ The Bill provides for **establishment of monitoring systems** to monitor compliance by the provinces and municipalities in exercising their executive obligations, and provides for the provinces and municipalities **to apply for motivated** involved. Currently, the Bill has provided a clear definition what an “executive obligation” is and this **written targeted support** from the appropriate national departments.
- ❑ The Bill should clearly articulate what an “**executive obligation**” is as it has been an illusive phrase to comprehend by all stakeholders was derived mainly from jurisprudence (**Tshwane MC dissolution case**).
- ❑ Emphasis has been on the **delineation of the different processes for different modes of interventions provided for in the Constitution**, thus clear processes for the invocation of section 100(1)(a) and (b), 139(1)(a), (b), (c), (4), (5) and (7) of the Constitution. Thus each mode must have its own simplified processes and procedures, and the Bill has followed suit.
- ❑ Strong emphasis was on the **clear delineation of the powers and mandates of the Administrator** on one side; vis-à-vis powers and mandates of the administration and the office-bearers in an intervention scenario in provinces and municipalities. – **more power leverage in such is bestowed to the**

HIGH LEVEL COMMENTS ON THE IMSI BILL FROM THE STAKEHOLDERS

- ❑ **Emphasis was also on providing a multifaceted approach and role for different stakeholders in the Bill**, including the creation of the “national coordinating committee” constituted of the Minister (to deal with cooperative governance issues), Finance Minister (to deal with finance issues), DPSA Minister (to deal with personnel issues) and any other Minister having an interest in the intervened provincial department to deal with the invocation of section 100. Also, there is a creation of “**provincial coordinating committee**” in provinces.
- ❑ **The issue of funding should be included in the Bill.** In this regard, the intervening organ or state bears the costs of the intervention, and these may be defrayed from the budget of the intervened organ of state.
- ❑ In **all intervention modes/types, computation of time** has been taken into consideration as it is important to know for certainty, when an intervention has begun.
- ❑ **Provincial legislatures' oversight role over the PEC on the invocation of the intervention has been enhanced and emphasised**

HIGH LEVEL COMMENTS ON THE IMSI BILL FROM THE STAKEHOLDERS

- ❑ The Bill provides for **suspension of officials** in the province/municipality if the situation in which **the continued presence of the official in the relevant provincial department/municipality threatens to prevent, delay or ultimately undermine the success of the intervention** in terms of the applicable labour laws.
- ❑ **Any person or an official** in a province or municipality **is guilty of an offence** if that person **wilfully interferes, hinders or obstruct** an intervention invoked in terms of sections 100 and 139 of the Constitution. Such person will be liable on conviction to a **fine or imprisonment not exceeding 5 years**.
- ❑ The Bill provides for a prototype “**Memorandum of Understanding**” to be **signed between** a sector Minister and the “intervened” corresponding MEC;
- ❑ The Bill enables the NT (through the national coordinating committee) to **divest accounting officer responsibilities away** from the current incumbent (DG/HoD/MM), and designate to another person determined by it (e.g Administrator), **to act** during an intervention in a provincial department/municipality as the **accounting officer** (section 36/7 PFMA).
- ❑ The Bill provides for the **delegation** of intervening powers to the Ministers/MECs on behalf of the Cabinet or provincial Executive respectively;
- ❑ **The submits** that the MFMA takes precedence over the IMSI Bill.

RECOMMENDATIONS

□ It is recommended that the forum:

- **Note** the update in relation to the IMSI Bill; and
- **Support** parliamentary processing of the Bill, where necessary.

THANK YOU

Ngiyabonga | Re a leboga | Ndo livhuwa | Nndza nkhenisa | Ke a leboha haholo | Dankie | Enkosi