

070911 SC SECURITY (Ismael).



Eastern Cape Provincial Legislature

Tel:
Fax:
Enquiries:

Independence Avenue
Private Bag X0051 Bisho 5605
Reference:
Date:

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EASTERN CAPE NEGOTIATING MANDATE ON THE MANDATING PROCEDURES OF PROVINCES BILL

1. INTRODUCTION

The NCOP Business Committee of the Eastern Cape considered the Mandating Procedures of Provinces Bill[B8-2007] as well as the proposed amendments submitted to the Legislature by the Chairperson of the Select Committee of the NCOP on Security and Constitutional Affairs.

The Eastern Cape supports the principle to create uniformity amongst Provinces in dealing with NCOP matters and strengthening participatory democracy including the facilitation of public participation. However, the Eastern Cape is of the view that this should be done within a broad policy framework which in turn would guide the process of mandating the Provincial Delegations in dealing with NCOP matters.

2. CONCERNS RAISED

The following concerns were raised by the NCOP Business Committee.

- 2.1 The Bill seems to be technical only without a written policy position regarding a framework dealing with synchronization of programmes of sittings, committee work and constituency work is set out without which the technicalities of the Mandating Procedures Bill would not be able to address the participatory democracy as required by the Constitution.
- 2.2 There is no constitutional requirement for negotiating and final mandate to the Select Committee of the NCOP.
- 2.3 The Bill, if passed in its present format, would result in at least 2 and possible 3 plenaries of the Legislature to provide mandates.
- 2.4 The required sittings as envisaged in the Bill would have a direct impact on Legislatures' budgets and no mechanism to address that

is contained in the Bill. This situation would result in unfunded mandates.

- 2.5 The proposed amendment to place the duty on Legislatures to facilitate public involvement on the Bills mentioned in clause 5(1) is unnecessary wide. This could result in placing a duty on Provinces to facilitate the public involvement on Bills with no relevance. E.g.(the 7th Constitutional Amendment Bill dealing with the Matatiele borders which bears relevance only to Eastern Cape and KZN)
- 2.6 There is no policy position on the structure inclusive the NCOP and provinces to decide on the facilitation of public involvement on a particular Bill or on the level of or methodology of such facilitation.
- 2.7 It is not feasible or desirable to require the House of a Legislature to meet to provide a mandate to vote in a Committee of another House. It is desirable that a House meets to provide a mandate to vote in another House.
- 2.8 A Committee of a Legislature is an extension of the House and is representative of all Political Parties in the Legislature. If the House is not satisfied with the negotiating or final mandates of the Committee, the House would have the opportunity to rectify that at the time of considering the Committee's report on the matter.

3. MANDATE OF THE EASTERN CAPE

Having due regard to the concerns raised by the NCOP Business Committee the following mandate is arrived at to negotiate at the Select Committee on Security and Constitutional Affairs:

- 3.1 A policy position should be arrived at and included in the Legislative Sectoral Policy(see attached) currently under consideration by the Speaker's Forum to address issues such as synchronizing of programmes, public participation, uniformity and the strengthening of participatory democracy.
- 3.2 That the Bill not be passed until the finalization of such policy to politically inform the legal framework in guiding procedures such as mandating procedures and other constitutional imperatives to strengthen participatory democracy.

Alternatively,

- 3.3 That the Bill be amended to provide for Legislatures to provide in their Standing Rules of Procedures for the process of arriving at negotiating and final mandates and the Legislature only meets in Plenary for the voting mandate.

- 3.4 That the proposed amendments to clauses 5 and 8 by the Select Committee on Security and Constitutional Affairs not be adopted.
- 3.5 That a process and structure be created to facilitate agreement between the NCOP and the Provinces on the need, level and methodology of public participation on each Section 76 and 74 Bill.

DATED AND SIGNED AT BHISHO ON THIS 10TH DAY OF SEPTEMBER 2007.



^ SPEAKER
EASTERN CAPE PROVINCIAL LEGISLATURE