



AfriForum opposes the SA Weather Service Amendment Bill

The civil rights organisation, AfriForum, submitted its comments on the proposed South African Weather Service Amendment Bill to the Portfolio Committee on Water and Environmental Affairs on 12 January 2012.

AfriForum is opposed to the bill for various reasons. These reasons include:

- the threat it poses to the safety of South African citizens;
- the unjustifiable violation of South Africans' rights to freedom of expression and access to information;
- the responsible party not accepting liability for negligence;
- the negative practical effect the bill might have on the environment.

We are also of the opinion that the bill amounts to an abuse of state power at the expense of South African citizens.

We refer to the following sections of the Constitution of the Republic of South Africa:

7.(1)	This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.
(2)	The state must respect, protect, promote and fulfil the rights in the Bill of Rights.
16.(1)	Everyone has the right to freedom of expression, which includes -
(a)	freedom of the press and other media;
(b)	freedom to receive or impart information or ideas;
24.	Everyone has the right -
(a)	to an environment that is not harmful to their health or well-being; and
(i)	prevent pollution and ecological degradation;
32.(1)	Everyone has the right of access to -
(a)	any information held by the state; and
(b)	any information that is held by another person and that is required for the exercise or protection of any rights.

Several weather situations, including cumulative environmental disasters, could have even more disastrous consequences should this legislation be implemented. When considering current cumulative environmental disasters, and the impact thereof across the globe, it is clear that the timing of evacuation is crucial for limiting and managing the impacts to avoid a catastrophe.

It seems as if the state is attempting to limit freedom of access to, and distribution of essential information through this bill. Environmental monitoring programmes and management systems will not work efficiently or effectively if this bill is enacted. This bill is seriously contravening the Constitution of South Africa.

In terms of section 30A of the bill, it is an offence to issue a severe weather or air pollution-related warning without the necessary written permission from the Weather Service. Offenders face penalties of up to R10 million, or 10 years in jail.

Therefore, in the event of a possible hazard or an impending disaster, those who have knowledge about the possible impact and who wish to issue a severe weather alert, must first obtain written permission from the SA Weather Service to do so, and this may take time. In practice, this means that the Weather Service must first provide written permission before the person may warn those around him/her, or those who might be victims of the occurrence, about the emergency.

Recent flooding events in Limpopo and Mpumalanga give a clear indication of what would happen if this bill were to be enacted. On Wednesday, 18 January 2012, Hoedspruit and surrounds, including parts of the Kruger National Park, were hard hit by Cyclone Dando.

Heavy rains and subsequent flooding resulted in some communities being cut-off from civilisation. They had to be rescued by emergency services. AfriForum was informed that no prior warnings were issued by the South African Weather Service whatsoever.

It has also been brought to AfriForum's attention that a caller had phoned one of the talk radio stations on the day of the flooding with a warning to the effect that Hoedspruit might get flooded that day. Another caller then accused him of inciting panic among citizens of South Africa, and that it was a criminal offence. Hypothetically, if an early warning could not be issued, and the affected area was a highly populated area, the results could be catastrophic.

The proposed amendments read as follows:

Insertion of section 30A in Act 8 of 2001

12. The following section is hereby inserted in the principal Act after section 30: "Offences and penalties"

30A. (1) No person may—

- (a) issue a severe weather or air pollution-related warning without the necessary written permission from the Weather Service;
- (b) supply false or misleading information about the Weather Service;
- (c) unlawfully, intentionally or negligently commit any act or omission which detrimentally affects or is likely to detrimentally affect the Weather Service.

(2) A person who contravenes any provisions of subsection (1), is guilty of an offence and is liable, in the case of a first conviction, to a fine not exceeding five million rand or imprisonment for a period not exceeding five years, and in the case of a second or subsequent conviction, to a fine not exceeding ten million rand or imprisonment for a period not exceeding 10 years, or in both instances to both such fine and such imprisonment, respectively.

(3) Whenever any person is convicted of an offence under subsection (2) and it appears that such person has by that offence caused loss or damage to any organ of state or other person, the court may in the same proceedings at the written request of the Minister or other organ of state or other person concerned, and in the presence of the convicted person, inquire summarily and without pleadings into the amount of the loss or damage so caused.

(4) Upon proof of such amount, the court may give judgment therefor in favour of the organ of state or other person concerned against the convicted person, and such judgment shall be of the same force and effect and be executable in the same manner as if it had been given in a civil action duly instituted before a competent court.

(5) Whenever any person is convicted of an offence under subsection (2), the court convicting such person may summarily enquire into and assess the monetary value of any advantage gained or likely to be gained by such person in consequence of that offence, and, in addition to any other punishment imposed in respect of that offence, the court may order—

- (a) the award of damages or compensation or a fine equal to the amount so assessed; or
- (b) that such remedial measures as the court may determine must be undertaken by the convicted person.

(6) Notwithstanding anything to the contrary in any other law, a Magistrate's Court shall have the jurisdiction to impose any penalty prescribed by this Act."

Section 27A, dealing with the limitation of liability, states: Neither the Weather Service nor any other person acting on behalf of the Weather Service is liable for any damage, or loss or injury caused by the exercise of any power or the performance of any duty under this Act, or the failure to exercise any power or perform any function or duty assigned by or under this Act.

This really means avoiding accountability insofar as the SA Weather Service would not be held accountable for either negligence or bad management.. The implication of this clause is that the South African Weather Service could not be held liable even if it fails to do its job properly. However, in the event of a man-made environmental disaster, such as pollution or an environmental hazard, AfriForum assumes the body responsible for the problem would be held liable, even to the extent of being held responsible for losses or damage to the surrounding environment, and even if such damage could be attributed to the SA Weather Service not fulfilling its responsibility. It is, therefore, advisable that those bodies and organisations which carry big risk and work with hazardous substances, should have the authority to carry out precautions and actions to avoid hazardous effects on civil society, the environment and on their members through their own warning systems and environmental, health and safety management strategies.

Insertion of section 27A in Act 8 of 2001

10. The following section is hereby inserted in the principal Act after section 27: "Limitation of liability"

27A. Neither the Weather Service nor any other person acting on behalf of the Weather Service is liable for any damage, loss or injury caused by any act performed or omitted in good faith, in the course of exercising a power or performing a function assigned by or under this Act."

Could it be that with this amendment bill Government wants to hide evidence of global warming and environmental disasters from the public? If this amendment bill is enacted government might as well also implement legislation to make it a requirement to obtain written permission from the Department of Transport before anyone may inform the public of traffic problems.

Thank you

Julius Kleynhans

AfriForum: Head of Environmental Affairs