

Immigration Bill

Another unfunded mandate?

This is an abbreviated version of SALGA's submission to the joint session of Parliament's Portfolio Committee on Home Affairs and the Select Committee on Social Services dealing with the Immigration Bill.

Assigning Home Affairs' civic affairs service to local government

Section 55 of an earlier version of the Immigration Bill referred to the need for the Department of Home Affairs 'to delegate to municipalities the function of delivering the Department's civic affairs services'. The Bill said that the Department would thereby 'divest[s] itself of this responsibility' and would have to distribute its resources between migration control and municipalities. The Department would retain so-called 'non-delivery aspects of its civic affairs functions', such as operating the national identification system and the population and fingerprint registries, capacity building, monitoring and training functions and any policy matters.

SALGA's concerns

When the Bill spoke of 'divesting' it clearly meant 'getting out of' or 'dispossessing of'. Section 55 therefore dealt with the Department 'disposing' of the delivering of the civic affairs services and delegating it to local government. The implications for local government were not clear.

key points

- The Immigration Bill provided for assigning 'civic affairs' responsibilities to local government.
- The Department of Home Affairs ignored the Systems Act's procedures for consultation with SALGA and the Financial and Fiscal Commission (FFC), among others.
- SALGA brought the matter to Parliament's attention.
- The assignment was then taken out of the Bill.

Procedures for assignment

Section 9(1) of the Municipal Systems Act states that, before a Cabinet member introduces legislation in Parliament that contains the assignment of a function or a power to municipalities, he or she must consult:

- the Minister for Provincial and Local Government;
- the Minister of Finance; and
- organised local government.

Further, the Cabinet member must:

- consider the Financial and Fiscal Commission's assessment; and
- publish the draft legislation in terms of section 154(2) of the Constitution (see p 9).

Key is the fact that these procedures must be adhered to *before the Bill is introduced to Parliament*. However, the Immigration Bill was not submitted to SALGA in accordance with these requirements. Submitting the Immigration Bill to Parliament before officially consulting SALGA was an unlawful act by the Department. SALGA therefore argued that the process underway in the Joint Committee is null and void and without any legal substance.

Immigration Bill trumps Systems Act?

The words '[n]otwithstanding any other law ...' in section 55 of the earlier Immigration Bill

appeared to imply that section 9(1) of the Systems Act has no legal bearing on that section of the Immigration Bill. It basically said that the Systems Act is of lesser legal value than the Immigration Act.

The Constitution provides for national and provincial government to assign responsibilities to municipalities (section 156). However, section 9(1) of the Systems Act clearly defines the necessary procedures involved. It is not legally correct to suggest that the Immigration Act would have superior legal value to another piece of legislation promulgated by the same Parliament.

Immigration Advisory Board

The Bill established an Immigration Advisory Board with representative of various government departments and stakeholders. Organised local government was not included. Against the background of the intended assignment of responsibilities to local government, the exclusion of SALGA from the Immigration Advisory Board was strange. It appeared as if the Department is not clear on the role and responsibilities of organised local government.

This indicates how important the requirements of section 9(1) of the Municipal Systems Act are.

Recommendation

SALGA informed the Joint Committee that the requirements of section 9(1) of the Municipal Systems Act were not adhered to and discontinued its participation in the Parliamentary process. SALGA should have been consulted before the draft legislation was submitted to Parliament. SALGA requested the Joint Committee to terminate the current process in order for the Bill to be officially referred to SALGA and the Financial and Fiscal Commission for comments.

Outcome

As a result of SALGA's intervention, the relevant provision was taken out of the Bill.

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