



Legislative and Regulatory Highlights

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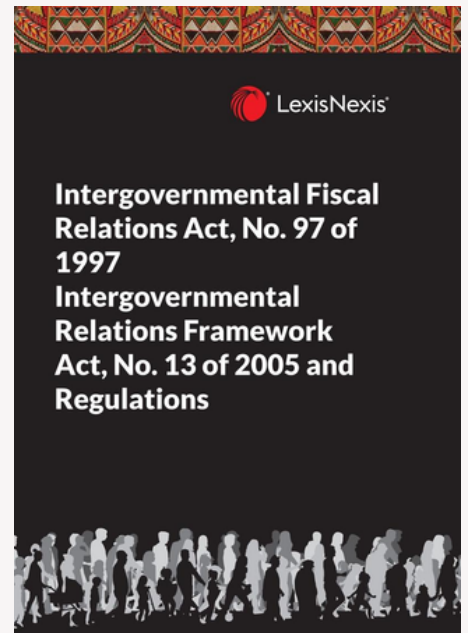
INTRODUCTION

- This month's report looks at regulatory issues aimed at intervening in local government related challenges.
- It also covers environmental and waste management developments.
- Lastly, the report looks at developments on bills that have some implications for how Parliament has processed bills and not adequately considering stakeholder inputs.

LOCAL GOVERNMENT MATTERS

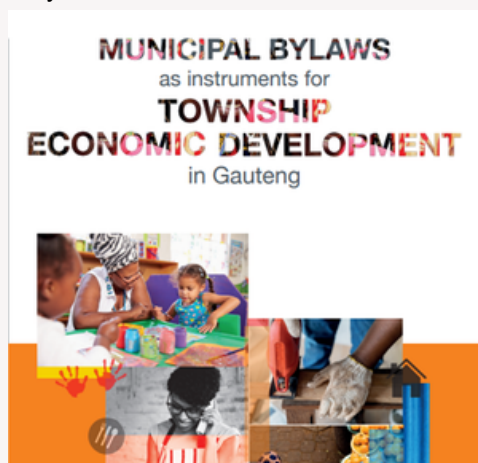
Intergovernmental Relations Framework Bill

- In November, Cabinet approved publication of the Intergovernmental Relations Framework Bill, 2024 for public comment. The Bill seeks to amend the Intergovernmental Relations Framework Act (Act 13 of 2005), to improve functional coordination among the different spheres of government.
- Chapter 3 of the Constitution requires all spheres of government to cooperate with one another in mutual trust and good faith by, among others, fostering friendly relations and assisting and supporting one another. Schedule 4 of the Constitution deals with functional areas of concurrent national and provincial legislative competence. In this regard, the Intergovernmental Relations Framework Bill, will strengthen the coordination of the implementation of government policies and legislation, including ensuring coherent government, the effective provision of services, the monitoring and implementation of policies.
- These changes to legislation will also support the District Development Model (DDM), a mechanism that allows all the three spheres of government to work together to plan and maximise service delivery impact at local government level and, by extension improve and strengthen the intergovernmental relations system



Township Economies: Standard Municipal By-Law Gazetted

- The Department of Co-operative Governance and Traditional Affairs (COGTA) gazetted a 'draft' standard municipal by-law for township economies, with the aim of facilitating inclusive spatial and economic development.
- The municipal by-law seeks to:
 - harmonise the township ecosystem
 - provide norms and standards for the establishment and management of township-based enterprises, both formal and informal
 - raise awareness of applicable laws and regulations affecting township businesses, and
 - support small businesses to grow and participate in mainstream economic activities



- It also allows a municipality – 'based on its developmental objectives' – to determine quotas on the proportion of businesses within specific categories and requires 'a proportion of the total staff employed in the business' to be either South African citizens or permanent residents.

Commentary

- Increasingly, national government and provincial governments are getting actively involved in local government issues to address service delivery challenges.
- Section 139 interventions, which allow a provincial government to intervene in a municipality if it fails to fulfil its obligations, have become the norm, not the exception. Although welcomed, the absence of clear terms of reference or objective assessments of when to terminate an intervention, administrators often cultivate existing turf wars in municipalities.
- The proposed amendments of the Intergovernmental Relations Framework Bill reflect a necessary shift toward a more centralised approach in addressing critical service delivery issues. With municipalities often struggling due to mismanagement, the national government's expanded role in infrastructure, housing, and water provision is crucial in ensuring more effective and coordinated solutions to systemic problems.
- The creation of committees such as the Inter-Ministerial Committee and the national water crisis committee demonstrates a proactive response to urgent local government issues. By prioritising municipal debt resolution and addressing water shortages, the government aims to prevent further crises and enhance the sustainability of vital services.
- The need for amending the Intergovernmental Relations Framework Bill highlights the importance of establishing a solid legislative base for the DDM. With the proper legal backing, the DDM can better bridge gaps in resources and skills at the local level, improving intergovernmental collaboration and overall service delivery.

- While the bill seeks to strengthen national and provincial involvement, it is crucial to maintain a balance between support and interference. Municipalities must retain their role as primary service providers, with the national and provincial government acting as a guiding force rather than a controlling entity. Transparent systems and proper oversight will be key in ensuring that these interventions are effective without overburdening local governments.

ENVIRONMENT AND WASTE MANAGEMENT MATTERS

Paris Agreement Article 6 Draft Implementation Framework

- The Department of Forestry, Fisheries and the Environment has gazetted proposals for giving effect to South Africa's obligations under Article 6 of the UN Convention on Climate Change 2015 Paris Agreement. Input is sought by 21 December 2024.
- South Africa, as a Party to the United Nations Framework Convention on Climate Change (UNFCCC) and its Paris Agreement, has an option to make use of Article 6 of the Paris Agreement in the implementation of its Nationally Determined Contribution (NDC).
- The draft Framework provides guidance on the key principles, the governance requirements for international offsets, the process followed, key infrastructure requirements and other activities related to Article 6 of the Paris Agreement. It is intended to articulate related governance, institutional and legal arrangements that will need to be developed or revised.
- Article 6 of the Paris Agreement recognises that some Parties choose to pursue voluntary cooperation in the implementation of their nationally determined contributions to allow for higher ambition in their mitigation and adaptation actions and to promote sustainable development and environmental integrity.
- The draft framework follows the conclusion of the Conference of the Parties (COP29) where there was adoption of Article 6.2 and 6.4 on carbon markets that will allow South Africa and other developing economies to initiate new carbon market projects, which will facilitate investments in green technologies and economic opportunities.



Waste Management: Proposed Changes to EPR Regulations

- The Department of Forestry, Fisheries and the Environment has called for input by 7 December 2024 on revised draft amendments to extended producer responsibility regulations affecting the following schemes:
 - electrical and electronic equipment
 - lighting, and
 - paper, packaging and certain single-use products
- The amended regulations introduce a deposit refund system; hold producers 'liable for achieving published targets'; and provide for a pharmaceutical industry exemption.
- The DFFE also gazetted guidelines for the determination of EPR fees to guide the PROs and producers implementing EPR schemes in choosing the most appropriate fee determining method for their specific needs and stage of sector development.
- The method employed for calculating the EPR fee depends on several factors such as the sector's level of development and maturity, and the specific types of identified product categories and products.

Commentary

- South Africa has shown commitment towards playing its part in addressing climate change challenges. Despite some developing countries rejecting the recent deal for developed countries to mobilise at least 300 billion U.S. dollars per year by 2035 for developing countries for climate action, South Africa welcomed the deal.
- A UN Environment Programme report on Municipal Waste Management Systems estimates that South Africa generates domestically a total of 12.7 million tonnes of waste per annum. In the country, municipalities are facing increasing pressures and challenges to provide waste management services due to the growing waste generation.
- Every year approximately 3.67 million tonnes of this waste are not collected and treated through formal waste collection systems, resulting in large amounts being dumped illegally.
- Waste management infrastructure in most municipalities is outdated and under-maintained, and there is a lack of capital investment, which has created problems such as landfills and pose health risks to communities.
- EPR regulations are to compel producers to be more responsible for collecting their products to mitigate the lack of capital investment by municipalities in waste management.

OTHER LEGISLATIVE HIGHLIGHTS

South African Broadcasting Corporation SOC LTD Bill

- Communications and Digital Technologies Minister Solomon Malatsi notified Parliament of his decision to withdraw the controversial South African Broadcasting Corporation (SABC Bill), owing to various concerns.
- These include the issue of the funding model and assigns too much power to the minister in appointing board members.
- The SABC Bill was officially introduced by the former minister, Mondli Gungubele, in October 2023 and aimed to streamline the governance of the SABC and establish a sustainable funding model to ensure the public broadcaster's long-term viability.
- Malatsi revealed plans to revise the bill and reintroduce it by 2025 after broader consultations with stakeholders, including civil society organisations such as the SOS Coalition and Media Monitoring Africa.



RICA Amendment Bill Referred Back to National Assembly

- President Cyril Ramaphosa has requested the National Assembly to consider afresh the Regulation of Interception of Communications and Provision of Communication-Related Information Amendment (RICA) Bill out of concern by the President that the draft law may be vulnerable to constitutional challenge.
- In the President's view, the Bill remains unconstitutional insofar as decisions in terms of section 25A(2)(b) of the draft law may lead to a subject of surveillance never being notified of the surveillance.
- The President also believes the legislation is deficient insofar as no review is possible of a decision in terms of section 25A(2)(b) to indefinitely suspend postsurveillance notification obligations.
- The President's concerns were informed by careful consideration of the Constitutional Court's 2021 Amabhungane Centre for Investigative Journalism judgment.

Commentary

- Whilst Minister Malatsi drew the ire of the Chairperson of Communications and Digital Technologies by withdrawing the bill, his reasons are valid. The only challenge is that he did not make a representation to Cabinet; for it is the latter that can withdraw a bill that it would have approved for submission to Parliament.
- By letting the bill be amended through the parliamentary process as suggested by the Chairperson and Deputy Minister Mondli Gungubele, the Minister was not going to influence or have much say in the issues that led him to withdraw it.
- Regarding the RICA bill, the Constitution states that the President must either assent to and sign a Bill referred to him or her by the National Assembly or, if he or she has reservations about the constitutionality of the Bill, refer it back to the National Assembly for reconsideration.
- Should the National Assembly fail to adequately address the issues raised by the President, he will have to send it to the constitutional court, as seen last month with the Copyright Amendment and Performers' Protection Amendment Bills. The Constitution provides that if the President still has concerns after Parliament has reconsidered a Bill, the President can refer it to the Constitutional court for a decision on the constitutionality of the draft law.
- The issue of Parliament not adequately processing bills and considering different stakeholder views has become more pronounced, especially after the apex court's judgement on the Traditional and Khoi-San Leadership Act (TKLA) on what constitutes meaningful public participation. With Parliament rushing to pass through legislation on the eve of the May 29 elections, we may have more bills sent back to Parliament by the President for reconsideration.

RISKS

- Too much intervention by national government in local government risks such intervention becoming the norm, instead of seeking to capacitate municipalities to handle their affairs and deliver services to communities as per their mandate.
- Climate change challenges have become pronounced in South Africa with frequent floods, droughts and extreme weather patterns, delaying in enacting policies and legislation to address such challenges will have consequences for the country.
- With the 6th Parliament that had the ANC with a majority rushing to pass bills before the May 29 elections, we may see more bills sent back to Parliament by President Ramaphosa for reconsideration. This will delay their implementation.

END