

Submission on the Seventeenth Amendment Bill



Democracy Development Programme

July, 2009

The amendment to subsection 156 of the Constitution proposed in the Seventeenth Amendment Bill seeks to increase the control of national government over the functions of local government in order to “achieve regional efficiencies and economies of scale”. The principal objective of the Bill is to enact the establishment of six “wall-to-wall” Regional Electricity Distributors (REDs) that will take over the provision of electricity reticulation from municipalities and compel executive authorities of municipalities to transfer their electricity distribution assets to the REDs. In addition, it will give national government legal power to regulate the executive authorities of municipalities on any other municipal function in order to “achieve regional efficiencies and economies of scale”.

Whilst discussions on the details of the REDs fall outside the ambit of this particular Bill, it is worthwhile noting that many of the concerns and misgivings raised, as early as 2005, by civil society organisations, like the South African Municipal Workers Union (SAMWU) and Earth Life Africa, during public engagements on the Electricity Regulation Bill, which gives context to the present Bill, have not been satisfactorily addressed. This pertains to issues such as employment security, competition in the EDI, a lack of clarity on how tariffs and standards would be set and the way workers and grassroots communities would be involved in setting electricity requirements, whether electricity costing would be based on a full cost-recovery pricing system, which has far reaching implications for poorer municipalities, etc.

A 2006 study by Neva Makgetla¹ on the redistributive effects of local government budgets indicates that (at least since 2004) local government funding has not been able

¹ Makgetla S. Neva (2007) Local government budgets and development: a tale of two towns, pp.146-162, in: State of the Nation: South Africa 2007, edited by Sakhela Buhlungu, John Daniel, Roger Southall & Jessica Lutchman, HSRC Press.

to address the spatial inequalities bequeathed from apartheid. Her evidence reveals staggering disparities in funding allocations, delivery trends, employment and salary scales between rich and poor municipalities, especially those located in the former homelands. She contends that whilst capacity-building in local government is important, it doesn't eclipse the need for increased funding to poorer municipalities, as the poor in poorer municipalities continue to lag behind those (who might have experienced some degree of social progression) in wealthier municipalities. Meanwhile, rich municipalities have been using electricity disconnections as a debt management tool to force poor people to pay services, like water, electricity, etc.

And so the overriding priority should be affordability, especially for the working poor and unemployed. Curiously, the proposed Amendment makes no reference to affordability. It's our contention that the references to "equitable tariffs", "equitable access" and "universal coverage" in paragraph (b) of the proposed Amendment do not equal affordable social services, like electricity, water, housing, etc. For example, in the case of electricity, despite cross-subsidisation, ESKOM's full cost recovery policy has led to consistent increases in electricity tariffs, which have fuelled massive disconnections since the mid-90s. Over the years, many poor households with electricity access have been either disconnected by the state or decided to disconnect themselves, in the case of prepaid meters, because electricity prices have been out of kilter with their means. According to the 2003 UNDP Human Development report, electricity disconnections increased on average from over 22 000 in 1996 to almost 100 000 by 2001.² These figures make nonsense of the Department of Mineral and Energy and ESKOM's celebrated claim that a total of almost 3 million homes have been electrified since 1991³, and reports that South Africa's electricity is the cheapest in the world.⁴

Furthermore, sections (139) and (155) (6) provide for provincial government's intervention in local government when the Municipal Council of a particular municipality within its jurisdiction is unable to perform its constitutional duties. However, the proposed Amendment gives national government central control over the administration of municipal functions and the legal power to regulate the delivery of municipal services. The net effect is that provincial government's role in local government would be curtailed and the power of municipalities in terms of Section 156 (5) to decide on measures necessary to perform their functions would be tempered.

Hence, it's our contention that the proposed Amendment is a double-edged sword. On the positive side, it would remove the administrative burden thrust upon local government by the concurrent powers that the Constitution vests in the national and

² South Africa Human Development Report 2003: The challenge of Sustainable Development: Unlocking Creativity, UNDP S.A., pp. 105.

³ Eskom's Sustainability Performance 2003 information pamphlet.

⁴ Eskom Annual Report 2007 – information sheet.

provincial spheres of government regarding which national government really has the prerogative. On this score, the proposed Amendment is able to respond to concerns about the weak capacity of certain provincial governments to exercise political oversight over municipal executive authorities.⁵

However, the delivery constraints across provinces, like in the case of housing, pose an even bigger challenge. For example, in the Eastern Cape, the provincial department of housing has been pilloried for three consecutive years of under-spending whilst being faced with the largest housing backlog, reported to total about 800 000 houses.⁶ By the third quarter of 2007, the Department has only managed to spend 49.32% of its R1.57bn budget for the 2007/08 financial year.⁷ Underperformance in provinces is invariably blamed on a lack of capacity. Yet provincial government is the biggest employer of public sector employers – employing about 48% of all public sector employees, or 700 000, compared to the approximately 210 000 employed by local government.⁸ Meanwhile, the provincial share of the consolidated budget is larger⁹ than that of the local sphere even though it's responsible for a relatively smaller index of social services, which in some cases overlap with that of local government, like health care and environmental services. In fact, it is mind-boggling why these services are not being delivered by local government, especially given the proximity of this sphere of government to where people reside.

On the negative side, the proposed Amendment reduces the autonomy of municipalities to deliver services listed in Part B of Schedule 4 and Part B of Schedule 5 of the Constitution and attenuate South Africa's already feeble system of local participatory governance. It tempers the powers and functions of local government set out in Section 156. It is thus at odds with the letter and spirit of the Intergovernmental Relations Framework Act, which recognises the independence of local government. According to the South African Municipal Workers Union, "a lack of capacity" is often used as a pretext for not assigning functions to local government. They argue that control over functions and responsibilities is being centralised in the national and provincial spheres of government who have no intention to relinquish their administrative hold on service provision.¹⁰

Meanwhile, the assumption that national regulation of municipal services would bring about "economies of scale" or would reduce the cost of delivering a particular service is

⁵ See the 2007 SAMWU submission on the policy system of provincial and local government.

⁶ "South Africa: Eastern Cape Housing Failures Under Fire": Business Day newspaper article, 6 May 2008

⁷ "Housing Delivery needs help": News24 newspaper article, 6 March 2007

⁸ 2007 Samwu submission, pp.29

⁹ In 2004/05, 57% of the consolidated budget was allocated to the provinces – see the Institute for Security Studies' 2006 monograph by Cheryl Frank on Intergovernmental Relations and the Financing of Services: <http://www.iss.co.za/index.php?>

¹⁰ 2007 Samwu submission, pp.36

cause for debate. It begs the question; reducing cost for whom. Electricity is a case in point. Evidence shows that Industry accounts for about two thirds of electricity consumption in South Africa: (68% according to the 2002 Energy outlook) commerce 10% and domestic consumers about 17%.¹¹ Yet poorer customers are charged higher electricity rates than business and affluent consumers. For example, in 2002, Soweto residents were charged 28 cents per kilowatt/hour while Sandton residents paid 16 cents and big business paid seven cents. In rural areas, poor consumers were charged 48 cents per kilowatt/hour.¹² This has led to a situation in which nine out of 10 households in Soweto were behind in electricity payments, and six out of 10 had their power supply cut during the period 2001 -02.¹³ Hence, reducing cost does not mean automatic relief for South Africa's disproportionately working poor and unemployed citizens. As the abovementioned evidence illustrates, it has been business and affluent consumers that have enjoyed disproportionately the benefits of Eskom's so-called low-cost electricity supply. It lends support to the argument that national government (who holds a 90% stake in Eskom) has been using its political power to primarily respond to the market rationality of capital than the social needs of the economically excluded masses.

In addition, by advocating central control, the proposed Amendment moves development planning beyond the reach of grassroots communities residing in the local sphere. It thus undermines the principal of popular participation in development policy and practice established in Chapter 4 of the Municipal Systems Act. It reduces state-citizen interaction to a legal relationship of accountability based on a formal script of delivery promises that is bereft of popular input on delivery requirements and how services get delivered. To all intents and purposes the Amendment would only fan existing high levels of popular resistance to the state's centralised bureaucratic control over social change. Meanwhile, restricting local involvement in planning to "Organised Local Government" or SALGA, which is the representative body of municipal employers, undermines the participation of workers in municipal governance. Hence, it's our contention that proposed Amendment to section 156 of the Constitution is inimical to the process of democratic deepening in local government.

¹¹ Sustainable Energy Briefing 12: What does our energy supply really cost? Who is paying? Who knows? [Earth Life Africa Johannesburg](#)

¹² Eskom: Corporate Powerhouse or Green Company? South Africa's Mammoth Electric Company Leads the Way in Utility Privatisation While Touting Sustainable Development, by Brain Ashe, [Earth Life Africa eThekweni](#), August 16, 2002

¹³ Ashe *ibid*

Instead, we call for

- an increase in local government's political and fiscal powers
 - increased national funding for municipalities, especially poorer municipalities
 - capacity-building support to municipalities
 - a lean administrative role for provincial government
 - a national review of South Africa's system of local participatory governance
-