

legal services in
parliament
bill drafting
assist committees

request : petitions bill
uniform approach

drafted draft based on
guidelines from the committee

Introduction

- Our office received a request from the Select Committee on Petitions and Executive Undertakings (“the Committee”) to assist with the drafting of a Processing Petitions Bill (“the Bill”).
- The request stipulated that the Bill must provide for a uniform approach in dealing with petitions across all legislative sectors.
 - It must further set out a common definition for petitions and must ensure that all role-players have a key understanding of the process and their role within the process.
- We provided a first draft of the Bill

Introduction - Cont

- The Bill in board terms dealt with the following:
 - The right to submit a petition to a House of Parliament (both NA and NCOP);
 - the referral of a petition to a Committee;
 - the establishment of a Committee in the NA and the NCOP to deal with petitions;
 - the powers and functions of the Committee;
 - how petitions will be processed by the Committee;
 - how the committee will report to its House on the petitions before it;
 - it created offences and penalties; and
 - it provided for the Speaker and the Chairperson to make to ensure the proper implementation of the provisions of the Bill.

Introduction - Cont

- As part of our legislative drafting assistance to the the Committee, we have looked at legislative authority as provided for in the Constitution in relation to this particular Bill.
- We also looked at the legislative processing thereof in Parliament in terms of the Rules

Authority to initiate and prepare

- Whether an NCOP committee may initiate and prepare a Bill will depend on what type of Bill is it.
- Section 68(b) of the Constitution limits this NCOP committee's authority to initiate and prepare legislation, to legislation that falls within section 76(3) (which includes functional areas listed in Schedule 4).
 - It however excludes money Bills from the list of Bills that may be initiated by the NCOP.
- The enquiry into whether the NCOP committee has the authority to initiate and prepare legislation is relevant because the House (NCOP) will go into this inquiry before it grants the committee permission to draft the legislation.
 - Rule 163 of the NCOP Rules requires a NCOP committee to obtain the permission from the Council.

Authority to introduce a bill – section 73 of the Constitution

- Section 73(1) provides that "[a]ny Bill may be introduced in the National Assembly".
- However, section 73(3), provides that the Bills that can be introduced in the NCOP are limited to section 76(3) Bills (which excludes money Bills or Division of Revenue Bills).
- Section 76(3) identify the following Bills as Bills that can be introduced in the NCOP:
 - a Bill that falls within a functional area listed in Schedule 4.
 - a Bill dealing with the uniform procedure in terms of which provincial legislatures confer their legislative authority on their delegations to cast votes on their behalf – section 76(3)(a)

Authority to introduce a bill – section 73 of the Constitution - Cont

- a Bill providing for the—
 - recognition of national and provincial organisations representing municipalities;
 - procedure for—
 - consulting with national and provincial government;
 - designation of representatives to participate in the NCOP;
 - participating in the appointment of two persons to the Financial and Fiscal Commission after consulting with organised local government; – section 76(3)(b)
- a Bill providing for the functions of the Public Protector; – section 76(3)(c)
- a Bill providing for the principles applicable to public administration and organs of state and a Bill providing for the preclusion from appointment persons from the public administration; – section 76(3)(d)


Authority to introduce a bill – section 73 of the Constitution - Cont

- a Bill providing for the principles applicable to public administration and organs of state and a Bill providing for the preclusion from appointment persons from the public administration); – section 76(3)(e) and
- a Bill regulating the Public Service. – section 76(3)(f)


• If the Bill does not deal with a matter listed in section 76(3), it has to be introduced in the NA.

Does the bill deal with a matter listed in section 76(3)?

- The Bill deals with the right to petition a House of Parliament and how petitions will be processed by Parliament.
- It is my view that the Bill does not contain clauses that regulate or fall within any of the functional areas listed in Schedule 4
- It also does it provide for legislation that deals with the other Bills listed in section 76(3)

 **Conclusion and recommendations**

- It is my view that the Bill can only be introduced in the NA as a section 75 Bill. An NA committee may initiate and prepare a Bill that deals with petitions.
- The following three options are recommended to the Committee:
 - Since there is no committee established in the NA of the 5th Parliament that deals with petitions, the Committee can adopt a report containing a recommendation that an *ad hoc* committee be established in the NA to initiate and prepare and introduce the Bill in the NA.
 - The report can further recommend that the *ad hoc* Committee be required to consult with the Committee when preparing the Bill for introduction.

 **Conclusion and recommendations**

- The Committee may request that the work already done in relation to the Bill be included in the rules of the NCOP.
 - The Committee may adopt a report containing a recommendation that similar rules be adopted in the NA.
- The Committee may request a member of the NA to introduce the Bill in the NA.

Thank you
