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Justice

MINISTRY: JUSTICE AND CONSTITUTIONAL DEVELOPMENT
REPUBLIC OF SOUTH AFRICA

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Dear Kgoshi Mokoena

MANDATING PROCEDURES OF PROVINCES BILL, 2007

Thank you for affording the Department of Justice and Constitutional Development (the Department) the opportunity to comment on the Mandating Procedures of Provinces Bill, 2007 (the Bill).

The Department has perused the Bill and has identified a few technical errors in the Bill. The Department would also like to propose certain technical changes to the Bill. Those identified technical errors and proposed changes are discussed hereunder.

1. Ad Preamble

In view of the words "AND RECOGNISING" in the beginning of the second paragraph the word "and" at the end of the first paragraph should be deleted.

2. Ad enacting clause

It is proposed that the words "by the Parliament of the Republic of South Africa," should be inserted after the word "ENACTED".

3. Content of the Act (i.e. the Index)

3.1 Ad Chapter 2

Clauses 3 and 4 under Chapter 2 deal with "Requirements in respect of Mandates" and "Requirements in respect of Designation of Head of Delegation", respectively, and not with procedures in respect of those matters as indicated in the heading of Chapter 2. It is therefore suggested that the word "PROCEDURES" in the heading of Chapter 2 should be substituted by "REQUIREMENTS". Should this suggestion be accepted, a corresponding

change will have to be effected to the heading of Chapter 2 in the text of the Bill.

3.2 Ad Chapter 3

It is suggested that the existing clause 5 should become clause 7, whilst the existing clauses 6 and 7 should become clauses 5 and 6, respectively. The motivation for this suggestion is that the reader of the Bill can be informed of what "Negotiating Mandates" and "Final Mandates" are before those terms are jointly referred to under the clause dealing with "Legislative Mandates requiring both Negotiating and Final Mandates". Should this suggestion be accepted, corresponding changes will have to be effected to the sequence of—

- (a) the existing clauses 5, 6 and 7 in the text of the Bill; and
- (b) the references to those clauses in the Memorandum on the objects of the Bill.

3.3 Ad Chapter 4

It is suggested that the words "and Commencement" should be inserted after the word "Title" in the heading of clause 9 to bring it in line with the heading of clause 9 in the text of the Bill.

4. Text of the Bill

4.1 Ad clause 1

- (a) The term "Head of delegation" is defined. However, in clause 8(1) reference is twice made to "head of the delegation". It is suggested that, for the sake of consistency, the term "Head of delegation" in clause 1 should be substituted by "head of the delegation" and that consequential amendments, where necessary, should be effected to the text of the Bill.
- (b)
 - (i) The term "Legislative Mandate" is defined to include, amongst others, questions contemplated in sections 64 and 78 of the Constitution. Section 64 deals with matters pertaining to the election of the Chairperson and Deputy Chairpersons of the National Council of Provinces, whilst section 78 deals with matters pertaining to the Mediation Committee of Parliament. Those matters are, in the Department's view, not legislative matters if they are compared with the other sections that are included in the definition of "Legislative Mandate". The question therefore arises whether sections 64 and 78 should be included in the definition of "Legislative Mandate".
 - (ii) It is suggested that the word "and" be added after paragraph (d) of that definition.
- (c)
 - (i) The term "NCOP Plenary" is defined. However, throughout the Bill reference is made to "NCOP plenary". It is suggested that, for the sake of consistency, the term "NCOP Plenary" in clause 1 should be substituted by "NCOP plenary".
 - (ii) The word "Council" at the end of the definition of "NCOP Plenary" should, in view of the definition of "NCOP", be substituted by the term "NCOP".
- (d) The term "NCOP Select Committee" is defined. However, throughout the Bill reference is made to "NCOP select committee". It is suggested that, for the sake of consistency, the term "NCOP Select Committee" in clause 1 should be substituted by "NCOP select committee".
- (e) The inverted comma at the end of the definition of "Negotiating Mandate" should be substituted by a semi-colon.
- (f) The terms "Provincial delegation to the NCOP" and "Provincial legislature" are defined. However, throughout the Bill reference is made to "provincial delegation to the NCOP" and "provincial legislature". It is suggested that, for the sake of consistency, the terms "Provincial delegation to the NCOP" and "Provincial legislature" in clause 1 should be substituted by "provincial delegation to the NCOP" and "provincial legislature".

4.2 Ad heading of Chapter 2

See proposal in paragraph 3.1 above.

4.3 Ad clause 3

Clause 3 only deals with requirements in respect of mandates relating to Bills (see paragraph (a) to (c)). However, questions contemplated in sections 64 and 78 of the Constitution are also included in the definition of "Legislative

Mandate". The question therefore arises whether clause 3 should not also provide for requirements in respect of mandates relating to questions contemplated in sections 64 and 78 of the Constitution.

4.4 Ad clause 4

- (a) It is suggested that the word "as" in the heading should be substituted by the word "of" in order to be consistent with the heading of clause 4 as referred to under the "Content of the Act".
- (b) This clause consists of only one provision and therefore it is incorrect to number that provision as "subclause (1)".

4.5 Ad clause 5

4.5.1 It appears to be unnecessary to include a reference to section 74(8) in paragraph (a) as that subsection refers back to section 74(3)(b) which is already included in paragraph (a).

4.5.2 In view of paragraph (e) of the definition of "Legislative Mandate" the question arises whether a reference to "any other national legislation which requires a decision by the NCOP" should not also be included in this clause.

4.5.3 It has been noted that this clause refers to Bills only. It is clear from the definition of "Legislative Mandate" that questions contemplated in sections 64 and 78 of the Constitution also require legislative mandates. It is, however, not clear whether such questions also require a negotiating mandate or a final mandate or both. Should such questions also require a negotiating and final mandate, consideration should be given to the necessity of including references to those two sections in this clause.

4.5.4 See also the proposal in paragraph 3.2 above in respect of the sequence of clauses 5, 6 and 7.

4.6 Ad clause 6

4.6.1 It is suggested that, for the sake of consistency, the words "final mandates" should be substituted by "Final Mandates".

4.6.2 It has been noted that this clause refers to Bills only. In this regard see the remarks in paragraph 4.5.3 above.

4.6.3 See also the proposal in paragraph 3.2 above in respect of the sequence of clauses 5, 6 and 7.

4.7 Ad clause 7

4.7.1 It has been noted that this clause refers to Bills only. In this regard see the remarks in paragraph 4.5.3 above.

4.7.2 See also the proposal in paragraph 3.2 above in respect of the sequence of clauses 5, 6 and 7.

4.8 Ad clause 8

It is suggested that clause 8 should be redrafted as follows:

"Voting Mandates"

8. (1) A provincial legislature must confer the authority **[to vote]** on the head of the delegation or delegate designated by the head of the delegation, to cast a vote in a NCOP plenary.

(2) If no matter arises from the deliberations of the NCOP select committee when considering **[final mandates]** Final Mandates which may necessitate consideration by a provincial legislature, the provincial delegation to the NCOP **[from a provincial legislature]** must table its province's **[final mandate]** Final Mandate in the NCOP plenary as that province's **[voting mandate]** Voting Mandate."

4.9 Ad clause 9

It is proposed that clause 9 should be redrafted as follows:

"Short Title and Commencement

9. This Act is called the Mandating Procedures of Provinces Act, [20007] 2007 and comes into operation on a date fixed by the President by proclamation in the *Gazette*."

5. Memorandum on the objects of the Bill

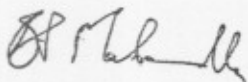
It is suggested that the Memorandum on the objects of the Bill be brought in line with the proposals made in respect of the Bill.

6. Annexure A: Format for a Mandate

It has been noted that this Annexure refers to Bills only. In this regard see the remarks in paragraph 4.5.3 above.

I trust that the above information will be of assistance to the Select Committee on Security and Constitutional Affairs when it considers the Bill. Please note that officials of the Department are available to explain the above proposals to the Select Committee, should the need arise.

Yours respectfully



MRS B S MABANDLA, MP
MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT

Date:2007-07-10..... 2007 -07- 10