



**SUMMARY OF CONCERNS RAISED BY PROVINCES IN NEGOTIATING MANDATES ON CONSTITUTION 16TH AMENDMENT
BILL [B1 – 2009] & RECOMMENDATIONS / COMMENTS FROM THE JOINT MEETING OF THE SELECT COMMITTEES:
SECURITY AND CONSTITUTIONAL DEVELOPMENT / LOCAL GOVERNMENT AND ADMINISTRATION**

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PROVINCE	CONCERNS	RESPONSE BY DEPARTMENTS: PROVINCIAL AND LOCAL GOVERNMENT & JUSTICE AND CONSTITUTIONAL DEVELOPMENT	COMMITTEE RECOMMENDATIONS / COMMENTS
Gauteng	1. Political parties supported the incorporation of Morafeng, but not that of Fochville, Kokosi and Green Park as there had not been sufficient consultation;		1. South Africa is a unitary state and moving from one province to another should not affect any municipality negatively.
	2. There are concerns about the state of education in Gauteng, including the availability of learning materials in Gauteng.		The Transitional Committee should be able to deal with the finer details, including administration and financial implications. An example was made of previous transitions of areas incorporated into North West which had gone through smoothly and had no impact on education.
	3. The budget adjustments to provincial budgets, transitional arrangements and financial implications required by the shift must be addressed by the Transitional Committee, whose main purpose must be to discuss and inform the community about the process of transferring Merafong City Local Municipality to Gauteng Province.	The National Treasury made a submission that in the current financial year the budget will go through as was originally voted on, even if the Bill is enacted. This is due to the fact that the formulas and grant changes cannot be done at this stage as the Division of Revenue Bill has already been passed with allocation of grants. These will be changed in 2009/10 and clauses in the Division of Revenue Bill on cross-boundary issues in order to ensure that	Protocols should have clear, set time-frames for implementation and achievement of certain goals/events. The NCOP needs to set up a strong oversight mechanism that is effective and on-going. It should not merely be called in when there is a problem but must receive regular reports on protocols and other arrangements, and to avoid unnecessary red tape and bureaucracy and should provide guidance to the Transitional Committee.

		<p>provinces spend allocations in the areas for which allocations were received.</p> <p>The Transitional Committee will manage financial matters between the 2 provinces i.t.o protocols and service level agreements i.r.o the transfer of staff and functions.</p> <p>The political advisor to the Minister is looking at possible special dispositions to be made by National Treasury to ensure allocations and funds are spent in affected areas. The department is also making efforts in this regard.</p> <p>Section 5 of the Cross-Boundary Act also provides for fora and implementation protocols. Where consensus cannot be reached the NCOP can be involved to exercise oversight of such protocol.</p>	<p>The department should confirm whether or not the Transitional Committee has already been formed and needs to make known the composition of the Members of the Transitional Committee. There is a concern that this Committee should have been established and should have started working already, and must not wait until the Bill is passed.</p>
Limpopo	1. There should be greater public involvement in government decision-making than is currently the case.		
	2. Government may be setting a wrong precedent by giving in to the demands of communities who resort to violence (eg. Moutse in Limpopo and Matatiele in KwaZulu-Natal) which would imply that the Constitution would always have to be amended.		
	3. The public should be made to		

	understand that South Africa is a unitary state and moving from one province to another should make no difference.		
	4. Consideration should be given to fast-track the reconfiguration of all provinces in South Africa to avoid similar problems in future.	There is a White Paper in respect of the reconsideration of provincial boundaries being compiled by the department. This is an observation report of stakeholder submissions in draft form and has not been published as yet. As 2009 is an election year, no decisions have been made. The matter will be referred to the new Cabinet for decisions and will be carried over to the next financial year.	The Committee supports the view that the boundaries of provinces should be reviewed in order to address service delivery problems in certain areas. This could result in there being fewer provinces in future, but not necessarily the same four provinces as we had previously.
Mpumalanga	1. The Bill must also incorporate the areas of Moutse and Matatiele back into their original provinces. The piecemeal fashion in which the matters are being dealt with may create the impression that certain areas are being neglected and may exacerbate the volatility of the situation. Election processes have been marked by violent protests in Moutse.	The matter of Moutse and Matatiele has not been settled decisively on a political level by the Executive on how to proceed on the matter. Matters are complicated and need to be dealt with in a series of consultative measures with these communities. There is also another forum / space where Premiers, MECs, etc can raise the matter with the Minister.	The people of Matatiele are disputing the department's view that the community is divided on the issue. The doctrine of the separation of powers applies. The matter has gone beyond the Executive stage and is now before Parliament who must give direction in respect of concerns raised.
	2. Protracted negotiations and consultations with the people of Moutse and possibly Matatiele is a cause for concern.	The department is engaging in a process of thorough consultation with communities in order to avoid contests after decisions are made. The department does not want to repeat the mistakes of the past in this regard.	
	3 A referendum in Moutse is not a	Although a referendum has been mentioned	

	feasible option and will not solve the problem, as many people from Mpumalanga and Limpopo who do not reside in Moutse might express their views in this regard despite not being on the Moutse voter's role.	publicly, this is merely an option. No final decision has been made in respect of Matatiele and Moutse.	
	4. The will of the people should prevail. Since the incorporation of Moutse into Limpopo in 2005, the area has been marked by violence and the same might possibly happen in Matatiele.		
Northern Cape	The Bill must also address the inclusion of Jan Kempdorp into the Phokwane Municipality in the Northern Cape since the town is divided between the North West and the Northern Cape. To date there has been no outcome i.r.o various requests to several stakeholders in this regard.	This is a valid concern and also one which affects other areas on the border of Gauteng and Limpopo. The department needs to decide on an approach to deal with all matters together in the next financial year in order to have a set of answers on all these problems, and to avoid having to come to Parliament for every boundary change or constitutional amendment. The inclusion of Jan Kempdorp into the Phokwane Municipality in the Northern Cape can be done, but not now. Political approval from principals must first be obtained, maps will need to be published, the Re-demarcation Board will need to give input and numerous other processes will need to be followed before such inclusion can take place.	The Parliamentary Legal Advisor and the Office of the State Law Advisor agreed that, due to the statutory and consultative requirements it would not be possible for the Committee to address the Northern Cape concerns in this session of Parliament, and that the Department will have to come back to Parliament with this issue in future.
Concerns raised by Members of	1. What will happen to the North West Legislature once the Bills are passed?	Schedule 3 of the Electoral Act deals with the determination of the number of seats by the Independent Electoral Commission. This	

Parliament		process was completed in 1999 at which time the number of seats allocated to North West was 33. In terms of the IEC response that was sent to the Committee via e-mail the number of seats will not change.	
	2. The provincial to national list is determined by the number of voters in that particular province and as a large number of voters will be moved from North West to Gauteng, how will this affect the number of representatives in the North West Provincial Legislature?	In terms of the notice published by the IEC on 24 February 2009, North West Province had 14 seats (lost 3 seats) and Gauteng had 47 seats.	In order for North West province to have lost 3 seats there must have been more than 2 million voters who were moved to Gauteng. This is in contrast to the department's submission that only a "small" number of voters would be affected.