



DDP



**Konrad
Adenauer
Stiftung**

Public Comment on the Constitution Sixteenth Amendment Bill and Cross Boundary Municipalities Law Repeal and Related Matters amendment bill.

**SUBMISSION BY THE KONRAD ADENAUER FOUNDATION AND THE
DEMOCRACY DEVELOPMENT PROGRAMME (06/02/09)**

1. The bill ought to be supported in principle in that ostensibly the ‘will of the people’ is being recognized i.e. the incorporation of Merafong City Municipality into Gauteng Province.
2. Yet, while this action by government is to be lauded the decision to follow the process of provinces assenting to the bill, to which they no doubt will, commits the same error where the Constitutional Court ruled against the Merafong Demarcation Forum. This relates to the procedure followed. Those who in the past had changed their minds after ‘persuasion’ by among others the parliamentary portfolio committee must now abide by a fresh mandate. The protests of the community notwithstanding, public participation must inform the process substantively. The will of the people must be seen to be carried out in substance i.e. procedurally. In this way participatory democracy is realized and seen to be so.
3. The way in which the process is unfolding seems to be rushed – even though the decision to do away with cross-boundary municipalities was taken as far back as 2002. The process is being rushed in the same way that it was in 2005 when the cross-boundary repeals legislation was first floated. Even if it is ostensibly in the interests of the people, we need to move away from a paternalistic, top-down approach to one qualitatively informed by substantive participation from the community.
4. Does the bill make provision for the redress of destruction to property and development setbacks in general as a result of the initial inclusion of Merafong into the North West Province? How does the government intend handling this? Is it going to be left up to the respective departments to sort out problems created or is the government going to make resources available to address the issue?
5. How does this bill affect other disputed areas such as Matatiele? Why doesn’t the bill also include the re-demarcation of Matatiele into KwaZulu-Natal given that government had argued in the Constitutional Court case as defendant that Matatiele was a cross-boundary municipality?
6. Point 5 above would suggest that the question of cross-boundary municipalities is being handled in a piece-meal fashion rather than holistically.

7. The cross-boundary municipality question presents government with an ideal situation to test participatory democracy. It also presents the government with an opportunity to test certain instruments which can be used as tools to promote participatory democracy. Instruments such as referenda can help the government determine in a very direct way where people want to live in South Africa. The right for citizens to live wherever they wish is a constitutionally entrenched one.
8. It is clear from the outset that the whole question of inter governmental relations between the three spheres of government is a matter of considerable concern. In the first instance matters such as these should have been resolved through the intergovernmental mechanism created as well as via the spirit of cooperative governance.
9. The bill alludes to the “consequences of the demarcation” process. This needs to be monitored very closely by parliament in order to ensure that the relevant Departments at all levels work cooperatively to ensure both transparency and effectiveness. Clear timeframes should be stipulated so that these communities are not further affected negatively.
10. It is noted that (according to reliable sources) the Matatiele case might be decided by a referendum involving the communities concerned. This is a welcome acknowledgement of “the will of the people”

Additional information about upcoming publication

The Konrad Adenauer Foundation and the Democracy Development Programme are currently involved in an international research project looking at issues that have come up as key challenges during the entire demarcation process and the consequences thereof. Once this publication is available we will be pleased to send you a complimentary copy as there are many lessons that can be learnt from international experience.

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