

KAS / NWU Bylaw Conference – 4 June 2015 – Potchefstroom

Needs and opportunities: bylaw-making capacity and enforcement

WORKSHOP INPUTS – A WORKING DOCUMENT

Audience: Municipalities – regulators

- Municipalities are laboratories for learning and for sharing of learning experiences – sharing info; sharing knowledge – especially with respect to so-called ‘developmental bylaws’
- What is a ‘developmental’ bylaw vis-à-vis bylaws as we used to know it?
- Need for a knowledge portal – collection and distribution of accessible information about adoption, implementation and enforcement of bylaws
- Need for awareness about existence and content of bylaws *within* municipalities
- Ensuring that bylaws have actual ‘teeth’ – penalties must be sufficiently ‘scary’
- Officials – councilors relationship and cooperation must be considered in bylaw-making processes – capacity building necessary across the board – role-division – scope of authority / responsibility of officials / councillors
- National guidelines for “generic” issues to be addressed in bylaws – measure to save money in localities with similar needs / challenges vis-à-vis specificities in specific localities
- Bylaws must be realistic and reasons for their existence must be explained and communicated to regulated local communities

Audience: Local community members & academics

- Concerns about content, scope and feasibility of bylaws – bylaws that do not fit the needs / environment of a specific local area
- PAJA and PAIA as instruments of recourse not necessarily ideal / helpful

- Dealing with disputes about the adoption of bylaws – procedural matters
- Municipalities’ compliance with national laws often include / requires bylaw-making within municipalities eg Water Services Bylaw – Thabazimbi
- Addressing procedural problems with ‘legal’ adoption of municipalities
- Entire enforcement process – training of prosecutors – matters of jurisdiction and setting of penalties eg fines (building of capacity)
- Peaceful resolution not necessarily possible – mix of command- and- control and incentive-based regulation
- Failure to understand bylaws has a direct effect on enforcement – what we do not know and understand we cannot effectively comply with – “language” must be understandable
- Public participation in the bylaw-making process – must be about real capturing and addressing of community needs and community concerns - not only about the municipality’s own compliance with procedural requirements in national laws, for example

Audience: Other role-players eg provincial government

- NPA and establishment of municipal courts (DoJ) – role clarification and needs to be explored
- Jurisdiction of different courts and enforcement agencies to be discussed and understood
- Capacity-building among councilors – raising awareness and level of understanding of meaning, role, functioning of bylaws – qualification of councilors?
- National and provincial government must monitor, support and provide capacity – KZN started in response to Zondi-case – Draft Pond Bylaw – for adoption by municipalities ‘as is’. Other examples: Draft SPLUMA Bylaw (Western Cape)
- Need to take into account / factor in capacity issues in some provincial governments eg North West.
- Municipal bylaw drafting skills poor in many areas – provinces role therefore great- ‘learning by doing’ – draft – finer techniques – DUTY of especially provinces – Department of Cooperative Governance and Traditional Affairs (CoGTA) (provincial)– single

window of coordination

- CoGTA assists in cooperation with relevant provincial sector line functions eg Department of Health / Department of Housing
- Provincial differences – WC – Centralised Legal Services Unit / KZN – Decentralised Legal Services
- Big role for ‘cooperative government’ in providing municipal support, generally Province to assist in clarifying the powers and functions of local and district municipalities – where exactly division of legislative authority lies – LG: Municipal Structures Act’s provisions
- Involvement of chapter 9 institutions and other watchdog institutions eg Public Protector – exploration of options other than litigation in the case of municipal violation of bylaws / other laws – NGO involvement? Involvement of other a-political institutions? A municipal Ombudsman – City of Johannesburg example – “Office of the Ombudsman” in the Municipality – engagement with Public Protector.
- Call for more provincially promulgated Standard Draft Bylaws (provinces) ito LG: Municipal Systems Act OR Model Environmental Bylaws (national government) ito NEMA
- Sharing of knowledge and bylaws across provinces and municipalities
- Role to be played by an active citizenry – also with assistance of institutions such as the SAHRC
- Provincial authorities to assist with capacity in relation to institutions such as intergovernmental committees eg in KZN and WC
- Some level of standardisation in some areas necessary – establishment of forums or working through existing forums / institutions such as SALGA