



Commission for Gender Equality  
A society free from gender oppression and inequality

## **Intergovernmental Monitoring, Support and Interventions Bill (2023)**

*Commission for Gender Equality Comments*

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## **1. Introduction**

The Commission for Gender Equality (CGE) wishes to express its gratitude for the opportunity to make written submissions on the publication of the Intergovernmental Monitoring, Support and Interventions Bill.

The CGE, as an independent statutory body created in terms of Chapter 9 of the Constitution of the Republic of South Africa, 1996 (the Constitution), is mandated to promote and protect gender equality in government, civil society, and the private sector.

The Commission for Gender Equality Act 39 of 1996, as amended (the CGE Act), gives the Commission the power to:

- Monitor and evaluate policies and practices of organs of State at any level.
- Monitor and evaluate statutory bodies and functionaries.
- Monitor public bodies and authorities and private businesses, enterprises, and institutions to promote gender equality.
- Make any recommendations that the CGE deems necessary.

The CGE welcomes the opportunity to make inputs into the Bill and shall reiterate the proposed sections under the review of the Bill and respond thereto.



## 2. Background

In respect of the Bill under review, the CGE notes that the Bill aims to address the challenges faced by the South African government when it is compelled to invoke sections 100 and 139 of the Constitution of the Republic of South Africa, 1996. These sections grant the government the power to intervene in cases where provinces fail to meet their administrative and service delivery obligations. However, notwithstanding the objective, it is important to analyse the gender implications of the Bill and assess its potential impact on gender equality and women's rights.

The CGE is aware of the challenges faced by the national executive and provincial executive when implementing section 100 and 139 interventions.<sup>1</sup> In 2022 alone there have been a total of 33 municipalities under administration.<sup>2</sup> However, some of those municipalities are still in dire constraints without much improvement. The national executive and provincial executive have had to intervene in some municipalities more than once without any significant improvement in the operation of these municipalities.<sup>3</sup> The failure to improve is often attributed to several factors including political tensions, the involvement of consultants, and resistance of directives.

The ripple effect of these failed municipalities has a far-reaching effect. It is common cause that lack of quality and consistent delivery of local government services has an impact on gender inequality and often presents

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<sup>1</sup> The Constitution of the Republic of South Africa, 1996

<sup>2</sup> Consolidated general report on local government audit outcomes, pg 6, Auditor General

<sup>3</sup> <https://www.theoutlier.co.za/local-government/2023-02-15/84234-/qa-foibles-of-section-139-interventions-the-full-interview>



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far worse for women and men in rural areas where services are often less easily accessible.<sup>4</sup> Moreover, regulating the implementation of various sections of the Constitution is crucial to ensure the smooth functioning of our government. In particular, sections 100 and 139 play a significant role in providing guidelines and processes for intervention in provinces and municipalities when necessary.

Section 100 of the Constitution empowers the national government to intervene in a province to address any failures in the provincial executive. This section allows for targeted support to provinces and municipalities that need assistance. By providing this assistance, the aim is to ensure that the constitutional obligations of the provinces and municipalities are fulfilled and that they operate effectively.

On the other hand, Section 139 of the Constitution provides for the intervention in municipalities. This section allows for the temporary dissolution of a municipal council or the appointment of an administrator to ensure the proper functioning of the municipality. Through this intervention, the national government can monitor and assess the fulfilment of executive obligations by provinces and municipalities, as mandated by the Constitution or legislation. In addition to intervention, alternative steps can also be taken to address any challenges faced by provinces and municipalities. These steps may include providing training and capacity building programs to enhance the skills and

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<sup>4</sup> 'The double impact of service delivery on women as majority beneficiaries of services and as carers of households' Parliament of South Africa, prepared by J Thorpe, KIS research, pg 4, para 2, 2016



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capabilities of local government officials. By offering targeted support and monitoring the implementation of executive obligations, the government aims to improve governance and service delivery at the local level.

Although the regulation of the implementation of Section 100 and Section 139 of the Constitution is vital for the effective functioning of provinces and municipalities, by providing targeted support, monitoring compliance with executive obligations, and offering alternative steps to intervention, the government aims to ensure good governance and the delivery of services to all citizens. The CGE does need to point out the importance of considering why this is important in respect of the of gender implications of the Bill and assess its potential impact on gender equality and women's rights.

The CGE has decided to make submissions on the Bill as we are committed to be a part of any policy or legislation that aims to improve or have an impact on gender equality.

### **3. Observations in respect of the Bill in its entirety in respect of the potential impact on gender equality**

The CGE submits that in respect of the proposed aim of the Bill, that this brings about an opportunity for the incorporation of addressing gender disparities in government interventions. Therefore, the CGE submits that when examining the Bill's provisions, it is crucial to consider the existing gender disparities within the administrative and service delivery systems. Women in South Africa often face discrimination and unequal access to resources, opportunities, and decision-making processes. Therefore, any government intervention should be assessed for its potential to address these disparities and promote gender equality.



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In respect of Gender Mainstreaming in respect to Government Interventions, the CGE submits that to ensure gender equality, it is paramount that the Bill incorporates gender mainstreaming principles throughout its provisions. Gender mainstreaming entails integrating a gender perspective into all policies, programs, and initiatives. By doing so, the government can identify and address the unique challenges faced by women and promote their active participation and equal opportunities in decision-making processes.

The CGE further submits that the implementation of the Bill offers several potential benefits for gender equality. Firstly, by intervening in provinces where gender disparities are prevalent, the government can take proactive measures to address these imbalances. This may include improving access to healthcare, education, economic opportunities, and social protection for women.

Secondly, the Bill can provide a platform for empowering women and promoting their participation in decision-making processes. By ensuring gender parity in the governance structures established during interventions, women can have a greater say in shaping policies and programs that directly affect them.

While the Bill holds promise for advancing gender equality, there are potential challenges that must be addressed.



## 4. The CGE's Submission on aspects of the Act

### 4.1 Chapter 1 (Interpretation of the bill and application of the bill)

'Adverse situations' are defined as "adverse circumstances that are likely to have been caused by a failure of the province to comply with an executive obligation; and (b) a municipality, means adverse circumstances that are likely to have been caused by a failure of the municipality to comply with an executive obligation".

This definition is too broad, and it should be broken down i.e., failure to meet financial obligations or budgetary constraints, lack of service delivery, failure to meet administrative obligations.

### 4.2 Purpose and application of the Act

Section 2 (2) of the Bill states that "The provisions of this Act apply to discretionary interventions in terms of section 139(1) of the Constitution, discretionary financial interventions, and interventions in terms of section 139(4) and (5) of the Constitution only to the extent that those provisions are consistent with Chapter 13 of the Municipal Finance Management Act."

### 4.3 Chapter 3 (National Interventions in Provinces)

The methods of intervention are not clearly stipulated. Emphasis seems to be placed on the intervention steps and obligations of the provincial executive when the executive has identified that intervention is needed. The National





Executive has previously had challenges with the appointment of consultants to assist at provincial and local municipalities, therefore the approach in interventions should be clear whether it is inclusive of financial bailouts or appointments of consultants.

#### *4.4 Section 21 & Section 58 Suspension of an official in Province and local municipality*

Both these sections stipulate that the National Executive may suspend an official where where their continued presence in the relevant province/ municipality or municipal entity threatens to prevent, delay or ultimately undermine the success of the intervention. The CGE is concerned that the broad justification for suspension may open the Act to be used as a political tool. The section also omits to include any requirements for the investigation of the conduct of that official or any consequence management and makes no mention of any recommendations should there be officials guilty of corruption.

#### *4.5 Section 27 and section 68 (Designation of person to replace accounting officer or accounting authority during intervention)*

This section grants powers to National Treasury to appoint any designated official as an Accounting Officer during the intervention, however it does not include the qualifications and experience of that designated official.



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#### *4.6 Section 32 & 72 Amendment of intervention notice of section 100 & 139 of the Constitution*

This section gives the National executive authority to amend, withdraw and replace any measures of intervention. This is a concern for the CGE as previously there has been lack of consistency in providing support at provincial and local municipality level.

## **5. Conclusion**

In conclusion, the proposed Bill addressing government interventions provides an opportunity to address gender disparities and promote gender equality in South Africa. By incorporating gender mainstreaming principles, the government can ensure that interventions effectively address the specific challenges faced by women. However, it is crucial to address challenges such as the lack of gender-disaggregated data and the need for gender-sensitive monitoring and evaluation mechanisms. Only by doing so can the Bill truly contribute to a more equitable and inclusive society for all genders.