

Submission  
to the  
DEPARTMENT OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS  
on the  
[INTERGOVERNMENTAL MONITORING,  
SUPPORT AND INTERVENTIONS BILL, 2023](#)

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This submission is prepared by the [Public Service Accountability Monitor \(PSAM\)](#) on behalf of the Action for Accountability (A4A) project which is a partnership between the PSAM, the Ahmed Kathrada Foundation (AKF), and Accountability Lab South Africa (ALSA). Please contact the PSAM Director Jay Kruise ([j.kruise@ru.ac.za](mailto:j.kruise@ru.ac.za)) and PSAM Analyst Lindokuhle Vellem ([lindokuhle.vellem@ru.ac.za](mailto:lindokuhle.vellem@ru.ac.za)) regarding this submission or call 046 603 8358.

## Introduction

The Action for Accountability Project welcomes the Intergovernmental Monitoring, Support and Interventions (IMSI) Bill and acknowledges that it has been developed to try and improve co-operative government, especially the process where section 100 of the Constitution provides for the national executive to intervene in a province that cannot or does not fulfil its executive obligations, and where section 139 of the Constitution provides for the provincial executive to intervene in a municipality that cannot or does not fulfil its executive obligations.

We note that the **purpose** of the IMSI Bill is to *monitor* whether provinces and municipalities fulfil their constitutional and statutory obligations; and to provide *targeted support* to both to fulfil such obligations (especially where they fail to do so); and to *legislate* processes established by section 100 and 139 of the Constitution.

This submission takes guidance from the “whole-of-society” approach emphasised in the National Anti Corruption [Strategy](#) 2020-2030 (NACS) which “envisions an ethical and accountable state, business and society characterised by high levels of integrity and respect for the rule of law”. According to the NACS, “It promotes active citizenry that is empowered to hold leaders and organisations accountable.” This can only be achieved if citizens are provided with relevant information in a timely manner so that they may be equipped to support the Strategy. Unsurprisingly, Pillar 1 of the NACS is to “Promote and encourage active citizenry, whistleblowing, integrity and transparency in all spheres of society”. With this in mind, readers of this submission will note that a number of recommendations call for routine publication of IMSI monitoring results, delegations, plans to intervene; actual details



where a decision is taken to intervene; and when interventions are withdrawn. While the current Bill contains certain publication requirements, readers will note that our submission calls for greater levels of publication to support active citizenry and ultimately the success of section 100 and 139 interventions as well as alternative forms of intervention as envisaged in the Bill.

The [Office of the Auditor-General](#) has repeatedly emphasised the critical role of various actors in the accountability ecosystem that have a part to play in enabling a culture of performance, accountability, transparency and integrity. The people of South Africa are part of this ecosystem. The Auditor-General has noted that service delivery improvement will be enabled by capable, cooperative, accountable and responsive government institutions delivering on their mandates.<sup>1</sup> We align ourselves with the #cultureshift2030 strategy of the Auditor-General which seeks to support action that will ensure that everyone in the accountability ecosystem plays their part to resolve weaknesses in government institutions; improve governance and accountability; and ultimately enable good financial and performance management, compliance with legislation and service delivery” The people of South Africa can only be active participants in strengthening accountability ecosystems when relevant information is readily available so that they can contribute towards addressing inequality, support development and better hold elected representatives and public officials to account for their constitutional and other legal obligations.

We also note [concerns](#) raised by the Department of Planning, Monitoring and Evaluation (DPME) relating to managing the political-administrative interface when interventions mandated by the Constitution occur. The DPME has noted for instance that “Administrators and intervention teams... faced threats and intimidation in their efforts to restore governance and controls and to effect consequence management”. The DPME also noted that although interventions primarily have an administrative focus, these interventions must deliver results in contested political environments “where forces both inside and outside of the formal structures of government seek to frustrate and undermine the efforts of the intervening teams”.

We note and appreciate section 91(1)(a) relating to **Cost of intervention** which appears to address certain concerns highlighted by the DPME related to the capacitation and resourcing of earlier intervention teams. We do however, wish to reiterate the importance of adequately resourcing these teams going forward, because without necessary capacity and designated funding, these interventions and the objects of the IMSI will not be adequately realised.

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<https://www.agsa.co.za/Portals/0/Media/Media%20Releases/2022/2022%20PFMA%20Media%20Release%2023112022%20final%20-%20interactive.pdf?ver=2023-05-10-131153-310&timestamp=1683717197857>



While the Bill contains provisions that seek to counter undue interference, we remain concerned that more legislative reform may be required to address serious resistance during interventions, and which sometimes includes criminal acts. While the Bill necessarily gives powers to suspend officials and certain executives under particular circumstances, we and others have noted that often resistance to interventions originates from diverse politicians and their allies and that more needs to be done to address where undue interference is exerted by these persons. It appears that this will require revisions to the Constitution and subordinate legislation to support corrective action and greater accountability amongst politicians and their allies who place party, factional and private interests above constitutional and statutory rights and obligations.

### Submissions on the Bill

Section	Proposal	Motivation
<b>Section 1</b>	That the word “support” be replaced with “targeted support”.	To ensure consistency with the “targeted support” wording used in sections 2, 7, 8, 43, 44, 48 amongst other section.  We also note that at page 90 it is explained within the Memorandum on the Objects of the IMSI Bill that “Targeted support is additional to the “normal” support provided to provinces and municipalities to enable them to manage their affairs, and exercise their powers and functions.”
<b>Section 3</b>	It appears that within section 3(4) there is a numbering error that “A delegation in terms of subsection (2)-” should be revised to read “A delegation in terms of subsection (3)-”	To address a numbering error.



<p><b>Section 5(3)</b></p>	<p>That section 5(3) be revised to also require provinces to report to the public, via the Government Gazette and within 1 newspaper, any possible or impending non-fulfilment of an executive obligation. Such reporting to the public must be undertaken within a stipulated timeframe and we suggest within 15 days of being alerted to any possible or impending non-fulfilment of an executive obligation.</p>	<p>This proposal is warranted given the accountability, transparency, effectiveness and ethical obligations amongst others contained in section 195 of the Constitution and which apply to the entire Public Administration.</p> <p>The NACS states that stakeholder engagement and public participation are crucial to ensure that input was obtained from as many different sectors and role players as possible, and that there is broad ownership of the country's anti-corruption strategy, which in this case may mean expanding the accountability and oversight bodies to include the public as well as civil Society.</p>
<p><b>Section 6</b></p>	<p>No timeframe is provided for establishing a monitoring system to monitor the compliance by provinces with their executive obligations.</p> <p>We also propose the addition of further subsection that requires the Minister to produce and publicise 6 monthly reports on the results emanating from this monitoring system.</p>	<p>A timeframe will support planning, budgeting and implementation of this section.</p> <p>The regular publication of monitoring results will support the “whole of society” approach envisaged by the NACS and the AGSA's call to action to strengthen the accountability ecosystem. The public has a constitutional right to know where executive obligations are likely to not be fulfilled as well as where they are not being fulfilled. This information is necessary to support corrective action including consequence management.</p>



<p><b>Section 7</b></p>	<p>We propose that section 7(1) be revised to read as follows:</p> <p>“Any province that is in need of <b>targeted</b> support additional to the support it receives from the national executive to exercise its powers, duties and functions, may submit a motivated written request for such additional <b>targeted</b> support to the appropriate national department, or otherwise to the national executive member.”</p> <p>We propose that section 7(2) be revised to read as:</p> <p>“On receipt of the request, the relevant department or the national executive member—  (a) must analyse the need of the province for such additional <b>targeted</b> support; and  (b) may approve the request for <b>targeted</b> support from the province.”</p> <p>We propose that section 7(3) include a subsection that requires the relevant national executive member to publicise a copy of the support initiative in the Government Gazette within 30 days of its development and its publication should include all details required by section 7(3)(a) and 7(3)(b).</p>	<p>To make these sections consistent with the wording used in section 2 and our proposed use of the words “targeted support” in the definitions section.</p> <p>The publication of the support initiative details will support the whole of society approach envisaged by the NACS and the AGSA’s call to action to strengthen the accountability ecosystem. The public has a constitutional right to such information which is necessary to support corrective action. Such information should also be publicised to support the obligations contained in s.195 of the Constitution and is also required by s.101(3).</p>
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<p><b>Section 9</b></p>	<p>We note that section 9(1)(a) does not contain a timeframe for the national executive member to establish the facts required by that section. We recommend that words “within 30 days” appear after the word “establish”.</p> <p>We note that section 9(2) also does not contain a timeframe for the various sub-sections requiring a determination. It is proposed that timeframes be included and we suggest 30 days.</p> <p>We propose that clause 9(3) be revised to require the publication of the approved support initiative in a Government Gazette within 30 days of its approval.</p>	<p>To support prompt implementation of the IMSI</p> <p>Publication of the support initiative details will support the whole of society approach envisaged by the NACS and the AGSA’s call to action to strengthen the accountability ecosystem. The public have a constitutional right to such information and its necessary to support corrective action. Such information should also be publicised to support the obligations contained in s.195 of the Constitution and is also required by s.101(3).</p>
<p><b>Section 10(2)</b></p> <p><b>Section 10(2)(c)</b></p>	<p>Replace “intervening” with “intervene”.</p> <p>Propose that section 10(2)(c) be removed as it duplicates section 10(2)(b).</p>	<p>Correct a grammatical error.</p> <p>Avoid duplication.</p>

<p><b>Section 11</b></p>	<p>This section does not contain a provision requiring notification to the public where the national executive has decided to take steps to induce compliance, instead of intervening in terms of section 100(1).</p> <p>It is proposed that this section be revised to contain a provision requiring publication via a Government Gazette, of the alternative steps that will be taken, and that publication must occur within 30 days after the national executive have arrived at such a decision.</p>	<p>Publication of the details of the alternative steps will support the whole of society approach envisaged by the NACS and the AGSA's call to action to strengthen the accountability ecosystem. Such information should also be publicised to support the obligations contained in s.195 of the Constitution and is also required by s.101(3).</p>
<p><b>Section 16</b></p>	<p>While this section describes the contents of directives, it does not require their publication.</p> <p>It is proposed that this section be revised to require publication via a Government Gazette, of the directives, and that publication must occur within 30 days after the national executive have issued the directive(s).</p>	<p>Publication of the details of the directive(s) will support the whole of society approach envisaged by the NACS and the AGSA's call to action to strengthen the accountability ecosystem. Such information should also be publicised to support the obligations contained in s.195 of the Constitution and is also required by s.101(3).</p>
<p><b>Section 17</b></p>	<p>Propose that section 17(1) be revised to read as: "A province, <b>the provincial executive and officials</b> must comply with the directive referred to in section 16"</p> <p>Propose that section 17(2) be revised to read as: "If the province, <b>the provincial executive and officials</b> fails to comply with the directive in terms of subsection (1), the national executive may, in terms of section 100 of the Constitution,</p>	<p>To support clear interpretation and accountability.</p>



	take any steps available to it to ensure compliance with the directive, including by assuming responsibility for compliance with the directive in terms of section 100(1)(b) of the Constitution.”	
<b>Section 24(b)</b>	<p>We propose that section 24(b) be revised to read as follows:</p> <p>“must take all reasonable steps to prevent its officials and <b>provincial executive</b> from interfering with, hindering or obstructing implementation of the intervention;”</p>	It has been noted that sometimes interventions fail due to interference by provincial executives or their agents. The section should therefore not be limited to officials.
<b>Section 30(3)</b>	<p>We propose that this section contains a further sentence that reads as follows: "The public notice of the intervention must contain a statement that the national executive is intervening in the province in terms of section 100 of the Constitution because of a failure by the province to fulfil an executive obligation, and stipulate at least the following: (a) a short description of the executive obligation which the province failed to fulfil; (b) the extent to which the province failed to fulfil the obligation; (c) the intervention step or combination of intervention steps the national executive is imposing; (d) particulars of the intervention step or each intervention step; (e) the date on which the intervention will commence; and (f) the period for which the intervention is expected to be in force."</p>	<p>To foster transparency by providing the public with timely, accessible and accurate information as required by section 195 of the South African Constitution. Such information is also required by section 101(3).</p> <p>For instance, should the intervention involve the suspension of certain persons, together with the deployment of certain persons, these and other pertinent details should be made public to support consequence management and to limit the potential for undue interference.</p>



<p><b>Section 32(3)</b></p>	<p>In addition, we propose that the Minister must publicise the amended notice of intervention in a Government Gazette and a newspaper circulating within the province within 14 days.</p>	<p>To foster transparency by providing the public with timely, accessible and accurate information as required by s.195 of the South African Constitution. Such information is also required by section 101(3).</p>
<p><b>Section 33(4)</b></p>	<p>We propose that the Minister must publicise the notice of a revised intervention in a Government Gazette and newspaper circulating within the province within 14 days of its submission to the organs of state referred to in 29(3).</p>	<p>To foster transparency by providing the public with timely, accessible and accurate information as required by s.195 of the South African Constitution. Such information is also required by section 101(3).</p>
<p><b>Section 39</b></p>	<p>We propose a further subsection which should require that the report referred to in section 39(2) must appear in a Government Gazette within 14 days of its submission to the National Council of Provinces.</p>	<p>To foster transparency by providing the public with timely, accessible and accurate information as required by s.195 of the South African Constitution. Such information is also required by section 101(3).</p>
<p><b>Section 40(2)</b></p>	<p>We propose that this section be revised to read as follows: “The provincial executive may not take any decisions <b>or actions</b> which threaten to prevent, delay or ultimately undermine the success of the intervention implemented by the national executive;</p>	<p>To support accountability, corrective action and implementation of interventions.</p>

<p><b>Section 42</b></p>	<p>No timeframe is provided for establishing a monitoring system to monitor compliance, by municipalities, with their executive obligations.</p> <p>We also propose the addition of further subsection that requires the Minister to produce and publicise 6 monthly reports on the results emanating from this monitoring system.</p>	<p>To support prompt implementation and accountability efforts envisaged by the IMSI.</p>
<p><b>Section 43</b></p>	<p>We propose that section 43(1) be revised to read as follows:</p> <p>“Any municipality that is in need of <b>targeted</b> support additional to the support it receives from the national or provincial executive to manage its own affairs, and to exercise its powers, duties and functions, may submit a detailed written motivation for such <b>targeted</b> support, stating -.....”</p> <p>We propose that section 43(2) be revised to read as:</p> <p>“On receipt of the request, the national or provincial executive —  (a) must assess the need of the municipality for such additional <b>targeted</b> support; and  (b) may identify that municipality for targeted support.”</p> <p>We propose that section 43(3) include a subsection that requires the relevant department, or the national or provincial executive to publicise a copy of the detailed support initiative in a Government Gazette within 30 days of its</p>	<p>To make these sections consistent with the wording used in section 2 and our proposed use of the words “targeted support” in the definitions section.</p> <p>The publication of the support initiative details will support the whole of society approach envisaged by the NACS and the AGSA’s call to action to strengthen the accountability ecosystem. The public has a constitutional right to such</p>

	development and its publication should include all details required by section 43(3)(a) and 43(3)(b).	information and it is necessary to support corrective action. Such information should also be publicised to support the obligations contained in s.195 of the Constitution and is also required by s.101(3).
<b>Section 45</b>	<p>We note that section 45(1)(a) does not contain a timeframe for the provincial executive to establish the facts required by that section. We recommend that the words “within 30 days” appear after the word “establish”.</p> <p>We note that section 45(2) also does not contain a timeframe for the various sub-sections requiring a determination. It is proposed that a timeframe be included and we suggest 30 days.</p> <p>We propose that clause 45(3) be revised to require the publication of the approved provincial support in a Government Gazette within 30 days of its approval.</p>	<p>To support prompt implementation of the IMSI.</p> <p>Publication of the support initiative details will enhance the whole of society approach envisaged by the NACS and the AGSA’s call to action to strengthen the accountability ecosystem. The public have a constitutional right to such information and its necessary to support corrective action. Such information should also be publicised to support the obligations contained in s.195 of the Constitution and is also required by s.140(3).</p>



<p><b>Section 46</b></p>	<p>We propose that clause 46(3) be revised to require publication of the approved national support in a Government Gazette within 30 days of its approval.</p>	<p>Publication of the support initiative details will enhance the whole of society approach envisaged by the NACS and the AGSA's call to action to strengthen the accountability ecosystem. The public have a constitutional right to such information and its necessary to support corrective action. Such information should also be publicised to support the obligations contained in s.195 of the Constitution and is also required by s.101(3).</p>
<p><b>Section 47</b></p>	<p>Propose that section 47(1)(c) be removed as it duplicates section 47(1)(b).</p>	<p>To avoid duplication.</p>
<p><b>Section 48</b></p>	<p>This section does not contain a provision requiring notification to the public where the provincial executive has decided to take alternative steps to induce compliance, instead of intervening in terms of section 139(1).</p> <p>It is proposed that this section be revised to contain a provision requiring publication via a Government Gazette, of the alternative steps that will be taken, and that publication must occur within 30 days after the provincial executive have arrived at such a decision.</p>	<p>Publication of the details of the alternative steps will support the whole of society approach envisaged by the NACS and the AGSA's call to action to strengthen the accountability ecosystem. Such information should also be publicised to support the obligations contained in s.195 of the Constitution and is also required by s.140(3).</p>

<p><b>Section 53</b></p>	<p>While this section describes the contents of directives, it does not require their publication.</p> <p>It is proposed that this section be revised to require publication via a Government Gazette, of the directive(s), and that publication must occur within 30 days after the provincial executive have issued the directive(s).</p>	<p>Publication of the details of the directive(s) will support the whole of society approach envisaged by the NACS and the AGSA's call to action to strengthen the accountability ecosystem. Such information should also be publicised to support the obligations contained in s.195 of the Constitution and is also required by s.140(3).</p>
<p><b>Section 54</b></p>	<p>Propose that section 54(1) be revised to read as: "A municipality, <b>including its municipal council and officials</b> must comply with the directive referred to in section 49"</p>	<p>To support clear interpretation and accountability.</p>
<p><b>Section 57(2)</b></p>	<p>We propose that this section be revised as follows:</p> <p>"The municipal council <b>and administration officials</b> cannot take any decisions which threaten to prevent, delay or ultimately undermine the success of the intervention implemented by the provincial or national executive</p>	<p>To support clear interpretation and accountability.</p>
<p><b>Section 61(1)</b></p> <p><b>Section 61(2(c))</b></p>	<p>We propose the inclusion of a subsection phrased as follows:</p> <p>"invite the public to make written and oral submissions on whether exceptional circumstances exist to dissolve the municipal council"</p> <p>We propose that the following be</p>	<p>To support public participation and consultation obligations contained in s.195 of the Constitution and various subordinate laws applicable to municipalities.</p>



	<p>included:</p> <p>“Failure to adhere to or implement High Court Orders relating to the municipalities constitutional and statutory obligations”</p> <p>“Failure to suspend a municipal manager when prima facie evidence exists of financial misconduct against such person”</p> <p>“Failure to meaningfully address adverse and disclaimer Auditor General findings and recommendations”</p> <p>“Ignoring or being unreasonably obstructive toward Promotion of Access to Information Act requests concerning the municipality”</p> <p>“Repeated failure to promptly ensure payment of significant creditors”</p> <p>“Repeated failure by a municipal council to implement consequence management.”</p> <p>“Recurrent shifts in council leadership positions that disrupt their oversight and executive obligations and impact negatively on municipal service delivery”</p>	<p>To support clear interpretation and accountability.</p>
<p><b>Section 61(2)(e)</b></p>	<p>We don't think suspension from running as an incumbent councillor should be restricted to a particular municipality. The suspension should apply to all municipalities and should endure for 5 years.</p> <p>We don't think prohibiting a councillor from any kind of employment should be limited to a particular municipality. The prohibition should apply to</p>	<p>To support consequence management and deterrence.</p>

	employment in all municipalities and should endure for 5 years.	
<b>Section 69(5)</b>	<p>We propose that this section contains a further sentence that reads as follows: "The public notice of the intervention must contain a statement that the provincial executive is intervening in the province in terms of section 139 of the Constitution because of a failure by the municipality to fulfil an executive obligation, and stipulate at least the following: (a) a short description of the executive obligation(s) which the municipality failed to fulfil; (b) the extent to which the municipality failed to fulfil the obligation(s); (c) the intervention step or combination of intervention steps the provincial executive is imposing; (d) particulars of the intervention step or each intervention step; (e) the date on which the intervention will commence; (f) the period for which the intervention is expected to be in force; and (g) the action the provincial executive may take should the intervention step not secure fulfilment of the obligation(s)."</p>	<p>To foster transparency by providing the public with timely, accessible and accurate information as required by section 195 of the South African Constitution. Such information is also required by section 140(3).</p> <p>For instance, should the intervention involve the suspension of certain persons, together with the deployment of certain persons, these and other pertinent details should be made public to support consequence management and to limit the potential for undue interference.</p>
<b>Section 72(3)</b>	<p>We propose that the provincial executive must publicise the amended notice of intervention in a Government Gazette and a newspaper circulating in the province within 14 days.</p>	<p>To foster transparency by providing the public with timely, accessible and accurate information as required by s.195 of the South African Constitution. Such information is also required by section 140(3).</p>



<p><b>Section 73(3)</b></p>	<p>We propose that the provincial executive must publicise the notice of a revised intervention in a Government Gazette and newspaper circulating within the province within 14 days of its submission to the organs of state referred to in 69(3).</p>	<p>To foster transparency and accountability by providing the public with timely, accessible and accurate information as required by s.195 of the South African Constitution. Such information is also required by section 140(3).</p>
<p><b>Section 84</b></p>	<p>We propose a further subsection requiring that the report referred to in section 84(1) must appear in a Government Gazette within 14 days of submission to the various entities listed at sections 84(1)(a) - (g).</p>	<p>To foster accountability and transparency by providing the public with timely, accessible and accurate information as required by s.195 of the South African Constitution. Such information is also required by section 140(3).</p>

