



TO: THE CHAIRPERSON, CoGTA AND e- GOVERNANCE

FROM: NCOP & LEGAL SERVICES UNIT

SUBJECT: CONSTITUTIONAL AND LEGAL IMPLICATIONS OF THE
INDEPENDENT MUNICIPAL DEMARCATION AUTHORITY BILL

DATE: 14 FEBRUARY 2024

I. INTRODUCTION

- [1] This opinion seeks to advise the Chairperson as well as Honourable Members on the Constitutional and legal implications of the Independent Municipal Demarcation Authority Bill B 14B—2022.
- [2] In terms of layout, this opinion is structured into five parts. Part I contains this introductory section, Part II sets out the background of the Bill and Part III its constitutional and legislative framework to place it into context. Part VI contains the clause-by-clause analysis. Part V contains a discussion regarding Tagging. Lastly, our conclusions and recommendations will be found in Part VI.

II. BACKGROUND AND PURPOSE

- [3] The Independent Municipal Demarcation Authority Bill, 2022 (the “Bill”), seeks to repeal and replace the Local Government: Municipal Demarcation

Act, 1998 (Act No. 27 of 1998) (hereinafter referred to as the “Act”), so as to align and update the legislation with current Demarcation Board practices.

[4] In summary, the Bill seeks to—

(a) rename the Municipal Demarcation Board so that the organisation is referred to as the Independent Municipal Demarcation Authority (the “Authority”);

(b) provide that the Chief Executive Officer is the accounting officer and that the Chairperson is the executive authority for the purposes of the Public Finance Management Act, 1999 (Act No. 1 of 1999) (“Public Finance Management Act”);

(c) provide that the Board members, in addition to the current criteria, have to possess appropriate knowledge of or experience in information technology;

(d) provide that the selection panel, for the appointment of members to the Board, includes a representative from the National Assembly and from the National House of Traditional and Khoi-San Leaders in addition to the current composition of the selection panel members;

(e) provide that vacancies which arise on the Board may be filled by persons that were on the initial “list” that was submitted to the President, at the time of the establishment of the Board;

(f) clarify that the term of office of members of the Board is five years, calculated from the date of appointment by the President, but may not exceed a period ending six months into the commencement of the term of the Municipal Councils, after which the Board members are appointed;

(g) ensure that all Board members serve on a part-time basis, except for the Chairperson, who may serve in either a full-time or part-time basis;

(h) ensure that major demarcation, which affects the movement of more than one whole ward in a municipality, may be done only after every 10 years;

(i) deviate from the present norm of 15% to 30%, when delimiting wards, but within strict conditions to avoid the splitting of communities;

(j) provide for the establishment of the Demarcation Appeals Authority to deal with appeals;

(k) provide for more extensive public participation and stakeholder consultation for any demarcation or delimitation;

(l) set timeframes for boundary redeterminations and ward delimitation after considering the programme of the Independent Electoral Commission (“IEC”).

(m) require the Authority to undertake municipal capacity assessments; and

(n) migrate the functions of the current Municipal Demarcation Board as contained in the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998) (“Municipal Structures Act”), to ensure that such functions are provided for in this Bill.

III. CONSTITUTIONAL AND LEGISLATIVE FRAMEWORK

- [5] The Constitution is the supreme law of South Africa. This means that all other laws and conduct must be consistent with the Constitution¹.
- [6] The Constitution distinguishes between four categories of Bills as follows: Bills amending the Constitution (section 74); Ordinary Bills not affecting provinces (section 75); Ordinary Bills affecting provinces (section 76); and Money Bills (section 77). A Bill must be correctly classified or tagged; otherwise it would be constitutionally invalid.
- [7] Section 40(1) of the Constitution provides that government is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated. In addition, section 151(1) of the Constitution provides that the local sphere of government consists of municipalities, which must be established for the whole of the territory of South Africa.

¹ Section 2 of the Constitution Act 108 of 1998

- [8] Section 152 deals with the objects of local government and identifies the following (to):
- 7.1 provide democratic and accountable government for local communities;
 - 7.2 ensure the provision of services to communities in a sustainable manner;
 - 7.3. promote social and economic development;
 - 7.4 promote a safe and healthy environment; and
 - 7.5 encourage the involvement of communities and community organisations in the matters of local government
- [9] We are of the view that the purpose of the Bill is related to the establishment of the Authority and Appeals Authority specifically, demarcation of municipal boundaries delimitation of municipal wards. Section 155(3)(b) of the Constitution provides that national legislation must establish criteria and procedures for the determination of municipal boundaries by an independent authority.
- [10] Part A of Schedule 4 of the Constitution lists the functional areas of concurrent national and provincial legislative competence, with Part B of that Schedule indicating local government matters which may be legislated upon within the framework provided for in section 155(6)(a) and (7) of the Constitution. We are of the view that the purpose and effect of the Bill will in a substantial measure impact on regional planning and development which is listed in Part A of Schedule 4 to the Constitution and municipal planning which is listed in Part B of Schedule 4 to the Constitution. Schedule 4 to the Constitution provides for matters which are functional areas of concurrent national and provincial competence.
- [11] Section 4 of the **Municipal Systems Act**:

“Application of criteria

(1) The Demarcation Board must-

(a) apply the criteria set out in section 2 and determine whether an area in terms of the criteria must have a single category A municipality or whether it must have municipalities of both category C and category B; and

(b) determine the boundaries of the area in terms of the Demarcation Act.
(2) The Demarcation Board may determine that an area must have a category A municipality only after consultation with the Minister, the MEC for local government in the province concerned and SALGA”.

[12] **MUNICIPAL FINANCE MANAGEMENT ACT 56 OF 2003 (“MFMA”)**

“Definitions: 'municipality'- (a) when referred to as a corporate body, means a municipality as described in section 2 of the Municipal Systems Act;
or
(b) when referred to as a geographic area, means a municipal area determined in terms of the Local Government: Municipal Demarcation Act, 1998 (Act 27 of 1998)”

[13] **SPATIAL PLANNING AND LAND USE MANAGEMENT ACT 16 OF 2013 (“SPLUMA”)**

'Municipal area' means the area of jurisdiction of a municipality in terms of the Local Government: Municipal Demarcation Act, 1998 (Act 27 of 1998)”

IV. CLAUSE ANALYSIS

Chapter 1

Clause 1 provides for the definitions to facilitate the interpretation of the new Act.

Clause 2 provides for the purpose of the Bill which is to provide for the establishment of the Independent Municipal Demarcation Authority and set the criteria and procedures for determination or redetermination of municipal boundaries and delimitation of wards by the Authority.

No proposed amendments for this chapter.

Chapter 2

Chapter 2 deals with the establishment, status, functions and powers of The Authority.

Clause 3 provides for the establishment of the Authority in accordance with section 155(3)(b) of the Constitution of the Republic of South Africa i.e. National legislation must establish criteria and procedures for the determination of municipal boundaries by an independent authority. The Municipal Demarcation Board will now be known as the Independent Municipal Demarcation Authority consisting of a Board and the administration. The aim of this provision is to differentiate between the Board and the administration (including employees) since, currently, this is not clearly defined in the Act.

Clause 4 provides that the Authority is a constitutional institution that is listed under Schedule 1 of the Public Finance Management Act.

Clause 5 provides for the functions of the Authority, which include the function of conducting municipal capacity assessments.

The four major functions of the Authority are:

- (i) Determination or redetermination of municipal boundaries in accordance with the criteria provided for in the Act, legislation enacted in terms of Chapter 7 of the Constitution, and any other applicable legislation;
- (ii) delimitation for all municipalities that must have wards;
- (iii) render an advisory service in respect of matters provided for in this Act and other appropriate legislation; and
- (iv) conduct municipal capacity assessments.

Clause 6 provides for the powers of the Authority. Various powers are conferred on the Authority, to do all that is necessary or expedient to perform effectively its functions, including that the Authority may determine its own staff establishment and appoint employees, as well as deal with other operational matters relating to the functioning of the Authority.

No proposed amendments for this chapter.

Chapter 2

Part 2

Clause 7 specifies that the Board will consist of no fewer than seven and no more than 10 members appointed by the President. The composition of the Board must also reflect the broad composition of South African society and must collectively represent a pool of knowledge concerning issues relevant to demarcation.

Clause 8 provides for the responsibilities of the Board. The business and affairs of the Authority must be managed by the Board. The Board is responsible for the corporate governance of the Authority and may exercise any other power and perform any other functions that the Board is authorised to do in terms of the Act or other legislation.

Clause 9 provides for the requisite qualifications that a person must possess to be appointed to the Board. The requisite qualifications, experience or knowledge in relation to information technology is now required among the Board members. This is necessary given that the work of the Authority is generally technical in nature, and it utilises information and communication technologies extensively for determination and delimitation. The prevalence of such skills within the Board will enhance decision-making. In addition, the holder of a political office in relation to a political party or structure thereof is not eligible

to become a member of the Board. However, employees in the service of an organ of state may be a member of a committee and may also be seconded to the Authority.

Proposal: that the bill also caters for instances where a person may be removed or disqualified from serving in the board in line with the Companies Act.

Clause 10 provides for the appointment of Board members. The Minister must invite suitable persons to apply for appointment to the Board, by notice, in the *Gazette* and in an advertisement in a national newspaper. After consultation with the President, the Minister must establish a selection panel to appoint members of the Board. The selection panel has been expanded to include the Chairperson of the Portfolio Committee responsible for local government (or a designee), and the Chairperson of the National House of Traditional and Khoi-San Leaders. When a vacancy arises in the Board, the Minister must, within 30 days of receiving the Board's written notification of the vacancy, recommend to the President to fill the vacancy from the additional names that were submitted by the Minister when the Board was being established, or initiate the process of establishing a panel if none of the additional names are available to fill the vacancy.

Clause 11 provides for the term of office, termination and resignation of Board members. The term of office for a member of the Board is five years, calculated from the date of appointment by the President. However, the term of the Board must end before a period of six months expires after the commencement of a new term of the Municipal Councils. This is to ensure that an appointed Board is responsible for the entire process for demarcation, as well as delimitation within municipalities in preparation for a general election of all municipal councils. A member of the Board may not hold office for more than two consecutive terms and ceases to be a member if he or she is absent from three Board meetings without being granted leave of absence by the Chairperson. Members of the Board will be appointed on a

part-time basis, except for the Chairperson who may be appointed on either a full-time or part-time basis.

Clause 12 provides for the conditions of appointment of the Board members. The conditions of appointment must be finalised by the Minister with the concurrence of the Minister of Finance.

Clause 13 provides for the appointment of the Chairperson and deputy chairperson, with specific reference to the Chairperson being the executive authority for the purposes of the Public Finance Management Act. This promotes the principle that the Authority, as a constitutional institution, is independent and impartial.

Clause 14 provides for meetings. The Chairperson convenes a Board meeting and must also do so at the request of the majority of the Board members. This clause also provides that the Chairperson has a casting vote when there is an equal number of votes cast for and against a decision.

Clause 15 provides that the Board must determine rules of procedure for conducting meetings and must keep minutes of the proceedings and decisions. The Board may make rules regarding ancillary or incidental administrative or procedural matters that are necessary for the proper performance of the functions of the Board.

Clause 16 provides for the establishment of committees. The Board must establish the Audit and Risk Governance Committee, and the Remuneration and Performance Committee. Provision is also made for the establishment and composition of other committees to assist the Board in performing its functions.

Clause 17 provides for the delegation of and instruction to exercise powers and perform functions of the Board. The Board may delegate any of its powers or functions to a member, employee or committee of

the Board, excluding the power to make a final decision on demarcation or delimitation. The Board may also confirm, vary or revoke any decision taken by a member of the Board, committee or employee, in consequence of a delegation or instruction.

Clause 18 provides for the conduct of Board members. This clause requires Board members to perform their functions in good faith and without fear, favour or prejudice, and must disclose all personal or private business interests. A Board member may not use his or her position or privileges for private gain, and may not compromise the credibility, impartiality, independence and integrity of the Board. A Board member who contravenes or fails to comply with the above will be guilty of misconduct and may be removed from office.

Proposed: that clear penalties be added for contravention of the code of conduct/ethics so as to avoid disputes which may result in many years of unresolved litigation .

Chapter 2

Part 3

Part 3 provides for the administration and staffing matters relating to the appointment of the Chief Executive Officer, conditions of employment for employees and contracting for services.

Clause 19 provides for matters relating to the Chief Executive Officer. The Chief Executive Officer is the head of the administration of the Authority, for a period not exceeding five years. The term may be renewed only once for the same or a shorter period, subject to the terms and conditions determined by the Board. The Chief Executive Officer is also the accounting officer and must perform the functions, as may be assigned to her or him, by the Board.

Clause 20 provides for conditions of employment. The Board determines the conditions of employment of employees, which must

comply with the principles of public administration as contained in the Public Administration Management Act. Officials from other organs of state that are seconded to the administration of the Authority must perform their functions under the control and direction of the Chief Executive Officer.

Clause 21 provides for contracting for services and stipulates that a person contracted to provide a service may be remunerated and reimbursed for expenditure incurred in terms of the Authority's policy and the written agreement between the Authority and that person.

Chapter 2

Part 4

Part 4 provides for the finances of the Authority.

Clause 22 provides that the Authority will receive funding from Parliament, or from any other source, through the National Revenue Fund, and must refund any monies that have not been utilised by the end of a financial year, unless there is an agreement by Minister acting with the concurrence of the Minister of Finance to act otherwise.

No proposed amendments

Chapter 3

Part 1

Chapter 3 provides for matters relating to demarcation, and Part 1 provides for the determination or redetermination criteria.

Clause 23 provides for the determination or redetermination objectives. The Authority must demarcate municipal boundaries in accordance with the objects of local government as set out in section 152 of the Constitution, but must also—

(a) ensure that the areas established enable effective local governance and integrated development; and

(b) have a tax base as inclusive as possible of users of municipal services.

The Authority must also consider the municipality's capacity to execute any other function in line with a Minister's or an MEC's allocated powers and functions when demarcating a municipal boundary. The Authority must also endeavour to attain the principles contained in the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013).

Clause 24 provides for the factors that must be taken into account. The Authority must consider approximately 17 different factors when determining or redetermining a municipal boundary, including the following:

- (a) Common geo-statistical building blocks, which facilitate and support a standard geographical hierarchy;
- (b) relevant national development policies and plans, which might impact on the nature of local government and its boundaries;
- (c) relevant policies and legislation relating to the institutional or functional reorganisation of local government;
- (d) natural endowments, resources, assets, business investments and other drivers of economic growth; and
- (e) the views of the people and the communities living in the area.

Proposal: That consultation with municipalities involved be added as an additional factor in addition to the consultation with the Members of the Executive Council responsible for local government as per clause 26.

Clause 25 provides for the determination of a category of municipality and in essence migrates sections 2, 3 and 4 of the Municipal Structures Act into the Bill. These sections in the Municipal Structures Act deal with the following matters:

- (a) Areas which must have category A municipalities;
- (b) areas which must have municipalities of both category C and B;

and

(c) application of criteria when determining category A, B or C municipalities.

Chapter 3

Part 2

Part 2 provides for the determination or redetermination of a municipal boundary.

Clause 26 provides for the initiation of determination or redetermination of a municipal boundary process. The Board will determine or redetermine a municipal boundary that affect more than one ward only after a period of 10 years. This will be done by the Authority or on request by stakeholders subject to clauses 23 and 24. The Minister may determine priorities and timeframes for determination or redetermination of a municipal boundary after consultation with the Members of the Executive Council responsible for local government, but not later than three years before the earliest possible date for the next local government elections. The Board may not make any determination or redetermination of municipal boundaries after the Minister has published the formula for the determination of the number of councillors, in terms of section 20 of the Municipal Structures Act.

Clause 27 provides for the notification of intention to consider a request for determination or redetermination of a municipal boundary. The Authority must publish a notice in a newspaper circulating in the area concerned stating its intention to consider a request for the determination or redetermination of a municipal boundary and will invite written representations and views from the public within a period not less than 30 days, before it considers any determination of a municipal

boundary. A copy of the notice must also be sent to various stakeholders inviting written representations or views on the matter.

Clause 28 provides for the conducting of investigations on determination and redetermination of a municipal boundary. After receiving inputs from stakeholders, the Board must institute an investigation (unless if it is a minor technical adjustment). This investigation may be undertaken by the Board, one or more members of the Board itself or an investigating committee. The investigation forum will have the power to summon persons and question such persons. A report must be submitted to the Board for consideration after the investigation is finalised. At this stage, the Board may either endorse the report or refer the matter for further investigation.

Chapter 3

Part 3

Part 3 provides for public participation for the determination or redetermination of a municipal boundary.

Clause 29 provides for public consultation for the determination or redetermination of a municipal boundary. A public participation process must be undertaken after an investigation is concluded, as follows:

- (a) The Authority must publish a notice informing the local community of a public meeting and communicate the same message through other means;
- (b) the report that was concluded by the investigating forum must be conveyed to the local community and written submissions must be invited;
- (c) the Authority must then present the report at the public meeting and respond to questions from attendees.
- (d) the affected municipalities may provide suitable facilities for the

engagement with the communities; and

(e) the Authority may conduct further public hearings after the initial public consultative engagements undertaken by the Authority.

Clause 30 provides for mechanisms, processes and procedures for public participation. This clause requires that public participation may take place through appropriate structures that represent communities, and through means that maximise public participation, including the use of virtual platforms.

Clause 31 provides for publication of and objection to determination or redetermination of a municipal boundary demarcation. The Authority is required to publish its decision for determination or redetermination of a municipal boundary in the relevant *Gazette* for comments to be submitted within 30 days, and after considering any objections, the Board must confirm, vary or withdraw its decision by publishing the final decision in the *Gazette*. The Board must also provide reasons, under certain circumstances, for such demarcation by publishing reasons on the website or by any other platform.

Clause 32 provides for when a determination or redetermination will take effect. The Authority must send particulars of the final decision on the determination or redetermination of a municipal boundary to the IEC and to the relevant Member of the Executive Council, for their views. The IEC and the relevant Member of the Executive Council must thereafter publish a notice in the relevant *Gazette*.

No proposed amendments .

Chapter 3

Part 4

Part 4 provides for the delimitation of wards.

Clause 33 provides for a delimitation of wards process. The Authority

must delimit metropolitan and local municipalities, after the Minister publishes the formulae for determining the number of councillors, into wards. The Authority must compile and publish a delimitation of wards timetable in the *Gazette* after the publication of the formula.

Clause 34 provides for the number of wards. The number of wards must be equal to the number of ward councillors determined for the municipality in terms of section 22(2) of the Municipal Structures Act.

Clause 35 provides for criteria for the delimitation of wards. The number of registered voters in each ward may not vary by more than 15% of the norm, i.e. where the norm is determined by dividing the total number of registered voters in a municipality by the number of wards in a municipality. The Board may deviate by not more than 30% of the norm in exceptional cases. In these instances, the Authority must first publish such intention in the *Gazette* for comment.

Clause 36 provides for public participation in delimitation of wards.

Clause 37 provides for the publication of and objection to delimitation of wards. The Authority must provide reasons for the final ward delimitation decision to those persons who may request such reasons. The Authority must confirm, vary or withdraw the decision and publish the final delimitation decision in the *Gazette*, after considering any objections that may have been received, and must simultaneously also provide reasons to those persons who submitted objections or to persons who request such reasons.

No proposed amendments.

Chapter 3

Part 5

Part 5 relates to the Demarcation Appeals Authority.

Clauses 38 to 46 deal with the establishment of the Appeals Authority. The present legislation does not provide for an appeal mechanism or dispute resolution process in relation to decisions taken by the current Demarcation Board, except for aggrieved persons to approach the courts to review the decisions of the current Demarcation Board.

Clause 38 provides for the establishment and constitution of the Appeals Authority. This provision requires the President to appoint, on recommendation by the Minister, an Appeals Authority of not less than three but not more than 10 members, who will serve on a part-time basis.

Clause 39 provides for the functions of the Appeals Authority. The Appeals Authority may adjudicate on disputes arising from the final demarcation decisions made by the Board, and if necessary, may impose any remedy. This clause also empowers the Minister to prescribe regulations for the functioning of the Appeals Authority.

Clause 40 provides for the requisite qualifications for the appointment of members to the Appeals Authority. The Chairperson and other members must—

- (a) be South African citizens and represent a broad cross-section of the population of the Republic;
- (b) have proven experience in demarcation issues; and
- (c) comprise of sufficient persons with legal training and experience.

Clause 41 provides for the term of office of members. Members of the Appeals Authority may serve a term not exceeding five years commencing from the date that they were appointed by the President.

Clause 42 provides for the Chairperson and deputy chairperson of the Appeals Authority. The President must, on the recommendation of the Minister, designate one member as Chairperson and another member

as deputy chairperson.

Clause 43 provides for the Appeals Authority proceedings. Any person aggrieved by a demarcation decision of the Board has up to 30 days from the date of decision to lodge an appeal. The Chairperson must allocate such appeal to a panel of three members. The panel must consider the appeal and either confirm the determination or refer it back to the Board for consideration. This must be done within 30 days from the date that the appeal was lodged.

Clause 44 provides for conflict and disclosure of interest by members of the Appeals Authority. A member of the Appeals Authority may not represent any person before a panel, and a member must immediately and fully disclose any interests in a specific matter.

Clause 45 provides for service by members of the Appeals Authority after their term of office has expired. If a member's term expires while that member has not concluded a matter before him or her, then that member, must continue to consider such matter until it has been concluded.

Clause 46 provides for the conditions of service, remuneration, allowances and other benefits of members of the Appeals Authority, which must from time to time be determined by the Minister, by notice in the *Gazette*, after consultation with the Minister of Finance.

No proposed amendments.

Chapter 4

Clause 47 provides for municipal capacity assessments. This clause requires the Authority to conduct municipal capacity assessments to support its decisions for demarcation and must also provide assistance and guidance, to the Minister and the respective Members of the Executive Council for local

government, regarding the assignment of functions and powers. The Authority must also conduct at least one municipal capacity assessment for all municipalities during the term of municipal councils. Subject to the availability of resources, the Authority may conduct a mid-term municipal capacity assessment. The Authority is also required to consider, amongst other things, the provisions in sections 9 and 10 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) and Chapter 5 of the Municipal Structures Act. Municipalities will be required to submit any information that is required by the Authority to fulfil this obligation.

No proposed amendments.

Chapter 5

Chapter 5 provides for miscellaneous matters.

Clause 48 provides for regulations and guidelines. This clause provides for the Minister, after consultation with the Authority, to make regulations or issue guidelines on any matter that must be prescribed in terms of the Act.

Clause 49 provides for offences and penalties. A person who does not comply with a summons or does not provide documents that are requested by the Authority, is guilty of an offence and may be fined or imprisoned.

Clause 50 provides for the amendment of laws. The Act will be repealed in totality. Sections that migrated from the Municipal Structures Act will be deleted from that Act.

Clause 51 provides for transitional arrangements. Any matter which is currently being dealt with by the Demarcation Board continues to be dealt with in terms of the Act. The Demarcation Board, at the date of

commencement of this Act, remains competent to function as the Board until the newly appointed Board contemplated under section 7 is appointed. The members of the Demarcation Board who were appointed before this Act takes effect, must be regarded as having been appointed in terms of the Act.

Clause 52 provides for the short title and commencement of this Act. It will be called the *Independent Municipal Demarcation Authority Act, 2022*, and will take effect on a date determined by the President by proclamation in the *Government Gazette*.

Schedule

The Schedule provides for the list of laws that will be amended or repealed.

No proposed amendments .

V TAGGING

- [14] The essence of tagging has been explained by the courts. In the case of *Tongoane and Others v Minister of Agriculture and Land Affairs* 2010 (8) BCLR 741 (CC), the court held that what matters for the purpose of tagging is not the substance or the true purpose and effect of the Bill, rather, what matters is whether the provisions of the Bill in substantial measure fall within a functional area listed in schedule 4.
- [15] The court further held in *Tongoane* that, the test for tagging must be informed by its purpose. The court continued to say that tagging is not concerned with determining the sphere of government that has the competence to legislate on the matter, nor is the process concerned with preventing interference in the legislative competence of another sphere of government.
- [16] Section 76(1) of the Constitution of the Republic of South Africa (“the Constitution”) provides that, when the National Assembly passes a Bill which fall within a functional area listed in Schedule 4 of the Constitution and

legislation envisaged in any of the sections listed in sections 76(3), (4) or 5 of the Constitution, the Bill must be referred to the NCOP.

- [17] In light of the principles in the Tongoane case, we submit that the Bill was correctly tagged as a section 76 Bill since the Bill to a great extent affects the interest, concerns and capabilities of provinces.

VI. CONCLUSION AND RECOMMENDATIONS

- [18] The proposed Independent Municipal Demarcation Authority Bill aims to transform the demarcation process, giving local residents a say in shaping their communities' boundaries. The bill prioritizes public consultation to avoid the pitfalls of past decisions, which often resulted in ill-suited demarcations , unlawful protests and endless litigation.
- [19] There should be clear boundaries to separate municipalities and wards to avoid instances where some neighbours reportedly belong in different wards in the same geographic area.
- [20] The reviews or changes of municipal boundaries after ten years will avoid instability and disruption of Integrated Development Plans at municipalities.
- [21] The establishment of an appeals board will ensure that this process is done impartially by giving affected communities recourse to raise any objections they have regarding a proposed demarcation. The litigation process is expensive and time-consuming. Also, in most instances, communities' resort to violent protests as they attempt to register their dissatisfaction. The establishment of the Appeals Authority will allow stakeholders to be heard by a competent and independent authority. The proposal that the board should not be composed of state employees and politicians to uphold its impartiality.
- [22] One of the major amendments to the previous Act is the inclusion of communities affected by any proposed demarcation. It is also commendable

that the usage of visual platforms as a means of public participation is catered for in this Bill , this will enhance public participation .

- [23] The heart of the bill lies in the creation of an independent demarcation authority with a selection panel led by a judge. This move ensures fairness, transparency, and reduced political influence in future demarcations. Oversight by both houses of Parliament further strengthens accountability and prevents undue bias.
- [24] The bill's emphasis on fairness and consultation strikes a cord between inclusion and informed governance process.
- [25] It is recommended that that when considering this Bill, the Committee notes the comments herein as well as the issues raised above pending public participation. Section 118(1) of the Constitution provides that “*a legislature must facilitate public involvement in the legislative and other processes of the legislature and its committees*”. In *Doctors for Life International v The Speaker of the National Assembly and Others [2006]*, the court held that legislatures must facilitate public participation at a point in the legislative process where involvement by interested members of the public would be meaningful. We therefore recommend that there be extensive public consultation which is inclusive of a roundtable discussion with primary stakeholders.