



**HELENSUZMAN**  
FOUNDATION

Gauteng Department of Economic Development  
Johannesburg

For attention: Ms Reeva Welman

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29 October 2020

Dear Ms Welman

**Submission on the Gauteng Township Economic Development Draft Bill, 2020**

We attach our written submission in response to the Gauteng Township Economic Development Draft Bill, 2020.

Should you have any queries, it would be appreciated if you could contact Catherine Kruyer (Email: [catherine@hsf.org.za](mailto:catherine@hsf.org.za)).

Yours sincerely

Francis Antonie  
Director



**Submission in response to the Gauteng Township Economic Development Bill, 2020**

**1. Introduction**

The Helen Suzman Foundation (“HSF”) welcomes the opportunity to make submissions to the Gauteng Provincial Legislature (“the Legislature”) on the Gauteng Township Economic Development Draft Bill, 2020 (“the Bill”), as published on 30 September 2020.

The HSF is a non-governmental organisation whose main objective is to promote and defend the values of our constitutional democracy in South Africa, with a focus on the rule of law, transparency and accountability. The HSF views this submission as a way of making a constructive contribution to the achievement of an inclusive and thriving economy, and a more just and equal society.

**2. Background to this Submission**

The HSF recognises the intentions of the Legislature to facilitate and promote inclusive economic growth, and to promote and develop the township economy in the Province. We recognise that the Bill seeks to address this in light of the constitutional right of equality and the power conferred on the State to promote the achievement of equality by undertaking legislative and other measures designed to protect and advance persons, or categories of persons, disadvantaged by unfair discrimination.<sup>1</sup>

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<sup>1</sup> Sections 9(1) and (2) of the Constitution.

The township economy has long been overlooked in both policy and legislative initiatives, despite providing many people in South Africa with their livelihoods. We view the development of the township economy as essential for the realisation of the rights to dignity and equality, and socio-economic rights.<sup>2</sup> In principle, we therefore welcome the Legislature’s focus on the township economy.

However, the Bill, as presently formulated, also raises major concerns. There are extensive gaps and failings in the Bill, which will hinder the achievement of its objectives. In addition, certain provisions in the Bill do not pass constitutional muster – inviting a constitutional challenge if enacted.

Our concerns cover a range of issues, as the following list demonstrates:

- unconstitutional exclusion of certain categories of foreign nationals from participation in the township economy;
- imposition of onerous and wide-ranging obligations on a multiplicity of actors;
- inadequate safeguards to prevent corruption and misuse / abuse of public funds;
- failure to guide the exercise of the discretion held by the Member of the Executive Council responsible for economic affairs in the Province (“the responsible Member”) in connection with the designation of township areas; and
- the Bill’s lack of detail on major aspects precludes meaningful public participation.

Each one of these will be dealt with in detail below.

### **3. Unconstitutional exclusion of certain categories of foreign nationals**

Section 3(b) of the Bill provides that its object is to designate business activities within township areas that are reserved for South African citizens and persons who have permanent residency status in South Africa. This object is given effect in section 7 of the Bill.

Section 7(2) provides that certain business activities designated in the Bill, in a designated township, are “exclusively and solely reserved for ownership and operation” by citizens or

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<sup>2</sup> The Legislature’s efforts to provide greater economic opportunities in townships may be seen as a means of fulfilling the rights to housing, healthcare, food and water, enshrined in sections 26 and 27 of the Constitution.

persons who have permanent residency status. The list of reserved business activities referred to in section 7(2) may be amended by the responsible Member.<sup>3</sup> Section 7(4) prohibits foreign nationals who do not have permanent residency status from owning or operating certain business activities designated in the Bill, while section 7(5) criminalises any contravention of this prohibition.

The drafting of section 7 leads to some confusion, as the designated business activities referred to in sections 7(2) and (4) are not found where they are indicated to be.<sup>4</sup> In fact, nowhere does the Bill list the business activities reserved for citizens and persons who have permanent residency status or the business activities in which foreign nationals who do not have permanent residency status are prohibited from participating. It is, thus, impossible to assess the full impact of sections 7(2) and 7(4). The HSF submits that this hinders the possibility of meaningful or effective public participation in the law-making process.<sup>5</sup>

The HSF recognises that the Legislature is constitutionally empowered to take steps designed to advance certain categories of persons to promote the achievement of equality.<sup>6</sup> We further recognise that the development and promotion of township enterprises owned or operated by South African citizens and persons who hold permanent residency status in South Africa is a legitimate government aim.<sup>7</sup> However, the Legislature may not run roughshod over the constitutional rights of foreign nationals who are lawfully in South Africa, but who do not have permanent residency status, in its attempt to achieve this aim. The Constitutional Court

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<sup>3</sup> Section 7(3) of the Bill empowers the responsible Member, after consultation and after consideration of several listed factors, to amend this designation to add new or delete listed business activities.

<sup>4</sup> A Table appears in Schedule 1 purporting to reserve certain business activities for citizens and persons with permanent residency status in terms of section 7(2). However, it is column 6 – not 3 – that purportedly lists the reserved business activities. There is no Table in the Bill that purports to list the business activities in which foreign nationals are prohibited from participating.

<sup>5</sup> The duty to facilitate public participation in law-making entails the duty to provide meaningful and effective involvement by the public. See *Doctors for Life International v Speaker of the National Assembly* [2006] ZACC 11; 2006 (12) BCLR 1399 (CC); 2006 (6) SA 416 (CC) at paras 129 and 131.

<sup>6</sup> Section 9(2) of the Constitution confers this power on the State.

<sup>7</sup> *Larbi-Odam v Member of the Executive Council for Education (North-West Province)* [1997] ZACC 16; 1997 (12) BCLR 1655; 1998 (1) SA 745 at paras 30-1.

has made it clear that foreign nationals who are present in South Africa are entitled to all the fundamental rights enshrined in the Bill of Rights except those expressly limited to citizens.<sup>8</sup>

The HSF submits that the exclusion of foreign nationals who are lawfully in South Africa, but who do not have permanent residency status, from participating in the township economy in Gauteng unjustifiably infringes upon their rights to dignity and equality. In particular, we submit that the Bill infringes upon the constitutional rights of refugees<sup>9</sup> and asylum seekers<sup>10</sup> who have the right to seek employment, including self-employment, in terms of the Refugees Act 130 of 1998, and of persons who have the requisite visas to engage in business activities in South Africa in terms of the Immigration Act 13 of 2002.<sup>11</sup>

### **3.1.1. Section 7 unfairly discriminates against certain categories of foreign nationals**

Section 9(3) of the Constitution provides that the State may not unfairly discriminate against anyone. In the HSF's view, section 7 of the Bill constitutes unfair discrimination in violation of section 9(3) of the Constitution.

Section 7 differentiates between persons who have citizenship or permanent residency status in South Africa and foreign nationals who do not have permanent residency status. As indicated above, the group of foreign nationals who are impacted by the differentiation

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<sup>8</sup> *Lawyers for Human Rights v Minister of Home Affairs* 2004 (4) SA 125 (CC); 2004 (7) BCLR 775 (CC) at paras 26-7. See also *Union of Refugee Women v Director, Private Security Industry Regulatory Authority* [2006] ZACC 23; 2007 (4) BCLR 339 (CC); (2007) 28 ILJ 537 (CC); 2007 (4) SA 395 (CC) at para 46.

<sup>9</sup> Section 27(f) of the Refugees Act confers on refugees the right to "seek employment". In *Somali Association of South Africa v Limpopo Department of Economic Development Environment and Tourism* [2014] ZASCA 143; 2015 (1) SA 151 (SCA); [2014] 4 All SA 600 (SCA) at para 40, the Supreme Court of Appeal held that this right is not restricted to wage-earning employment. It viewed the right as encompassing self-employment. This understanding of section 27(f) accords with South Africa's international obligations under Article 18 of the 1951 Convention Relating to Status of Refugees.

<sup>10</sup> Sections 22(1) and 27A(b) of the Refugees Act confer on asylum seekers the right to reside in South Africa temporarily pending the finalisation of their applications for asylum. Section 22(8) of the Refugees Act confers on asylum seekers a qualified right to work depending upon their ability to sustain themselves and their dependants. The right to work will be endorsed on the asylum seeker visas of those who qualify for the right to work in terms of section 22(8).

<sup>11</sup> This would include persons who have a business visa in terms of section 15 of the Immigration Act. It may also include persons who have a work visa in terms of section 19 of the Immigration Act. The Bill does not infringe upon the rights of foreign nationals who do not, in any event, have the right to own and / or operate a business in South Africa. For instance, foreign nationals who have a study visa or a medical treatment visa entitling them to be present in South Africa.

includes refugees and asylum seekers, and persons who have been granted the requisite visas to engage in business activities in South Africa.

This differentiation clearly constitutes discrimination on an analogous ground that has the potential to impair human dignity. The relevant ground upon which the differentiation is based is citizenship or permanent residency status. The Constitutional Court has held that citizenship is a ground that is based on attributes and characteristics that have the potential to impair human dignity.<sup>12</sup> In reaching this conclusion, the Court highlighted that “citizenship is a personal attribute which is difficult to change” and that “foreign citizens are a minority in all countries, and have little political muscle.”<sup>13</sup>

Moreover, the discrimination is unfair. The HSF recognises that foreign nationals do not have the right to choose their trade, occupation or profession freely in terms of section 22 of the Constitution and that this must factor into the unfairness enquiry.<sup>14</sup> However, this is not the only or most important factor. The unfairness enquiry is concerned with the impact of the discrimination on the complainants – in particular, whether it has the potential to impair their human dignity or affect them adversely in a comparably serious manner.<sup>15</sup> Section 7 clearly has the potential to impair human dignity, as it will strip foreign nationals who do not have permanent residency status and who engage in business activities in the township economy in Gauteng of their livelihoods.

The discrimination at issue here is immediately distinguishable from that under consideration in *Union of Refugee Women*.<sup>16</sup> *Union of Refugee Women*, which concerned the rights of refugees to work in the private security industry in South Africa, must be seen within its “proper context”.<sup>17</sup> In this regard, the Constitutional Court said:

“The private security industry is a very particular environment. At stake is the safety and security of the public at large. Section 12 of the Constitution guarantees everyone the right to freedom and security of the person, which

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<sup>12</sup> *Larbi-Odam* above n 7 at paras 19-20.

<sup>13</sup> *Id.*

<sup>14</sup> *Union of Refugee Women* above n 8 at para 46.

<sup>15</sup> *Harksen v Lane NO* [1997] ZACC 12; 1997 (11) BCLR 1489; 1998 (1) SA 300 at paras 45-53.

<sup>16</sup> *Union of Refugee Women* above n 8.

<sup>17</sup> *Id.* at para 37.

includes the right to be free from all forms of violence from either public or private sources. In a society marred by violent crime, the importance of protecting this right cannot be overstated.”<sup>18</sup>

The Legislature can call on no consideration of such countervailing importance to justify its discrimination against foreign nationals who do not have permanent residency status in the Bill. For this reason alone, *Union of Refugee Women* is distinguishable and section 7, accordingly, cannot pass constitutional muster.

Even so, there are additional bases upon which *Union of Refugee Women* may be distinguished. In that case, the Constitutional Court considered the “entire statutory scheme” in declining to hold that the discrimination was unfair.<sup>19</sup> It said:

“The scheme is for a limited fixed period; it is not a blanket ban on employment in general but is narrowly tailored to the purpose of screening entrants to the security industry; it is flexible and has the capacity to let in any foreigner when it is appropriate and to avoid hardship against any foreigner.”<sup>20</sup>

In contrast, section 7 of the Bill operates as a blanket ban on foreign nationals who do not have permanent residency status from participating in the Gauteng township economy. The Bill makes no provision for flexibility or attempt to avoid hardship to such foreign nationals. For these reasons too, section 7 cannot pass constitutional muster.

### **3.2. Section 7 infringes refugees’ and asylum seekers’ rights to dignity**

Section 10 of the Constitution provides that “[e]veryone has inherent dignity and the right to have their dignity respected and protected.” In the HSF’s view, section 7 of the Bill infringes refugees’ and asylum seekers’ rights to dignity.

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<sup>18</sup> Id.

<sup>19</sup> Id at para 67.

<sup>20</sup> Id at para 67.

In *Watchenuka*,<sup>21</sup> the Supreme Court of Appeal (“SCA”) held that asylum seekers may not be denied the right to work because such a prohibition would unjustifiably infringe upon the right to dignity.<sup>22</sup> The SCA held that depriving asylum seekers of the right to work through a general prohibition would threaten to degrade those asylum seekers who have no other means for support.<sup>23</sup> In the SCA’s words – “a person who exercises his or her right to apply for asylum, but who is destitute, will have no alternative but to turn to crime, or to begging, or to foraging.”<sup>24</sup>

The principle recognised in *Watchenuka* was extended to self-employment by the SCA in *Somali Association*<sup>25</sup> – a case concerning the rights of refugees and asylum seekers to earn a living by way of self-employment in the form of trading in spaza or tuck-shops.<sup>26</sup> In *Somali Association*, the SCA stated:

“. . . Watchenuka, referred to above, makes it clear that in circumstances such as this, where persons have no other means to support themselves and will as a result be left destitute, the constitutional right to dignity is implicated. I can see no impediment to extending the principle there stated in relation to wage-earning employment to self-employment. Put differently, if, because of circumstances, a refugee or asylum seeker is unable to obtain wage-earning employment and is on the brink of starvation, which brings with it humiliation and degradation, and that person can only sustain him - or herself by engaging in trade, that such a person ought to be able to rely on the constitutional right to dignity in order to advance a case for the granting of a licence to trade as aforesaid. In fact in those circumstances it would be the very antithesis of the very enlightened rights culture proclaimed by our Constitution for us by resorting to s 22 of that very Constitution . . . to condemn the appellants to a life of

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<sup>21</sup> *Minister of Home Affairs v Watchenuka* [2003] ZASCA 142; [2004] 1 All SA 21 (SCA).

<sup>22</sup> *Id* at paras 32-3.

<sup>23</sup> *Id* at para 32.

<sup>24</sup> *Id*.

<sup>25</sup> *Somali Association* above n 9 at paras 43-4.

<sup>26</sup> *Id* at para 1.



humiliation and degradation. That I do not believe our Constitution ought to countenance.”<sup>27</sup>

In reaching this conclusion, the SCA had regard to the fact that “South Africa, unlike some States, does not provide financial support to asylum seekers and refugees”.<sup>28</sup> It is because of this that destitution would follow a general prohibition against employment (including self-employment).

The SCA acknowledged the frustration experienced by the authorities as they deal with a “burgeoning asylum seeker and refugee population”, but held that this—

“must not blind them to their constitutional and international obligations. It must especially not be allowed to diminish their humanity. The authorities must also guard against unwittingly fuelling xenophobia. In the present case, one is left with the uneasy feeling that the stance adopted by the authorities in relation to the licensing of spaza shops and tuck-shops was in order to induce foreign nationals who were destitute to leave our shores. The answer to the frustration experienced by the respondents, and in particular by the [Department of Home Affairs], is to facilitate and expedite applications for refugee status.”

The SCA’s reasoning in *Watchenuka* and *Somali Association* applies with equal force here. The Constitutional Court has held that refugees and asylum seekers are a particularly vulnerable group in our society.<sup>29</sup> Depriving refugees and asylum seekers of the opportunity to earn their livelihoods through engaging in business activities in townships in Gauteng will leave those refugees and asylum seekers who live in these communities destitute. This will be a material and unjustifiable invasion of their right to dignity. It also adds potential danger to society as a result of the effects of such hunger and destitution.

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<sup>27</sup> Id at para 43.

<sup>28</sup> Id at para 44.

<sup>29</sup> See *Union of Refugee Women* above n 8 at para 28. In *Union of Refugee Women* at para 45, the Constitutional Court assumed that the distinction between citizens and persons with permanent residency status and refugees who do not have permanent residency status amounted to discrimination on a ground impinging human dignity.

The HSF notes that section 22 of the Refugees Act, governing asylum seeker visas, has subsequently been amended by the Refugees Amendment Act 11 of 2017.<sup>30</sup> The amended section 22(8) restricts the right to work to asylum seekers who cannot sustain themselves or their dependents and who do not receive an offer of shelter and basic necessities from the United Nations High Commissioner for Refugees (UNHCR) or any other charitable organisation or person.<sup>31</sup> We note that the constitutionality of the restrictions imposed upon asylum seekers' right to work by the amended section 22 has not yet been tested through judicial review. In any event, the amendment in no way detracts from the application of the SCA's reasoning in *Watchenuka* and *Somali Association* to section 7 of the Bill. Asylum seekers who have the right to work endorsed on their visa in terms of the amended section 22 would be deprived of the right to do so in the township economy in Gauteng in terms of section 7 of the Bill.

#### **4. Imposition of onerous and wide-ranging obligations on a multiplicity of actors**

Part II of Chapter 5 of the Bill, entitled 'Benefits and Incentives', imposes onerous and wide-ranging obligations on a variety of actors. These obligations include the provision of financial assistance,<sup>32</sup> the development of infrastructure,<sup>33</sup> the development of capacity building programmes,<sup>34</sup> the development of markets and the provision of marketing services<sup>35</sup> and the transfer or acquisition of technology.<sup>36</sup> The obligations listed in Part II are imposed on "every

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<sup>30</sup> The amendment took effect on 1 January 2020.

<sup>31</sup> The relevant sub-sections of the amended section 22 read:

"(6) An asylum seeker may be assessed to determine his or her ability to sustain himself or herself, and his or her dependants, either with or without the assistance of family or friends, for a period of at least four months.

(7) If, after assessment, it is found that an asylum seeker is unable to sustain himself or herself and his or her dependants, as contemplated in subsection (6), that asylum seeker may be offered shelter and basic necessities provided by the UNHCR or any other charitable organisation or person.

(8) The right to work in the Republic may not be endorsed on the asylum seeker visa of any applicant who—

(a) is able to sustain himself or herself and his or her dependants, as contemplated in subsection (6);

(b) is offered shelter and basic necessities by the UNHCR or any other charitable organisation or person, as contemplated in subsection (7)".

<sup>32</sup> Section 13 of the Bill.

<sup>33</sup> Section 14 of the Bill.

<sup>34</sup> Section 17 of the Bill.

<sup>35</sup> Section 18 of the Bill.

<sup>36</sup> Section 19 of the Bill.

provincial organ of state". This includes the Provincial Legislature, provincial departments and provincial public entities<sup>37</sup> as well as municipal entities and all municipalities within the Province.<sup>38</sup>

In formulating Part II of Chapter 5, little consideration appears to have been given to the fitness for task or the capacity of the actors upon whom these obligations are imposed. In addition, imposing this plethora of obligations on a multiplicity of actors will not encourage efficiency.

The HSF's concern is that this will render the Bill ineffectual, as the obligations imposed will simply not be performed or will be performed in an uncoordinated and haphazard manner. The HSF recommends the establishment of an entity specially tasked with the functions listed in sections 13, 14, 17, 18 and 19 of the Bill. It is envisioned that this entity would play a role in the Gauteng township economy similar to that played by the Small Enterprise Development Agency at a national level.<sup>39</sup> The entity must be adequately funded and appropriately staffed for it to perform the extensive functions contemplated in the Bill.

## **5. Inadequate safeguards to prevent corruption and misuse / abuse of public funds**

Chapter 6 of the Bill establishes the Gauteng Township Economic Development Fund ("the Fund").<sup>40</sup> The purpose of the Fund is to support the development of township-based enterprises.<sup>41</sup> To this end, the Fund is to provide affordable and accessible credit or loans, provide loan insurance / credit insurance, and finance capacity building and research, development, innovation and transfer of technology.<sup>42</sup> The Fund is to be financed with, among other means, public funds.<sup>43</sup>

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<sup>37</sup> 'Provincial organ of state' is defined in section 1 of the Bill.

<sup>38</sup> Section 27 of the Bill provides that any reference to a provincial organ of state must be construed as a reference to municipal entities and municipalities.

<sup>39</sup> The Small Enterprise Development Agency is established in terms of the National Small Enterprise Act 102 of 1996.

<sup>40</sup> Section 20 of the Bill.

<sup>41</sup> Section 21(1) of the Bill.

<sup>42</sup> Section 21(2) of the Bill.

<sup>43</sup> Section 22 of the Bill.

The years of corruption and state capture have created a heightened awareness of the need for safeguards to be put in place to protect public funds. The HSF submits that the Bill does not contain adequate safeguards to prevent the misuse / abuse of the public funds allocated to the Fund.

The Bill provides that the Fund is to be under the administration and control of a Board established in terms of the Bill.<sup>44</sup> The Board is to be appointed by and responsible to the responsible Member.<sup>45</sup> However, the Bill neither specifies the composition of the Board nor prescribes any qualifications required for appointment as a member the Board. This gives the responsible Member an almost unfettered discretion in making appointments to the Board. In addition, the appointment process prescribed in the Bill is entirely cloistered, as no requirements for openness or transparency are imposed. This provides a terrain for potential abuses of power. To safeguard against the misuse / abuse of funds, the Bill must prescribe the composition of the Board, qualifications required for appointment and an open appointment process.<sup>46</sup>

The Bill does not deal with the terms and conditions of appointment of Board members. In particular, the Bill does not provide whether members are entitled to any remuneration and allowances. This gap in the Bill should be remedied.

In addition, the Bill does not deal at all with conflicts of interest on the part of members of the Board. This is a significant failing in the Bill. Carefully detailed provisions governing conflicts of interest provide an important safeguard against the misuse / abuse of funds. The Bill ought to prescribe that members may not engage in any activities that conflict with the proper performance of their functions as members.<sup>47</sup> In addition, the Bill ought to prescribe that members who have an interest in a matter being considered by the Board must disclose this interest, and may not be present during deliberations concerning that matter or take part in the decision of the Board concerning that matter.<sup>48</sup>

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<sup>44</sup> Section 23(1) of the Bill.

<sup>45</sup> Section 23(1) of the Bill.

<sup>46</sup> Openness is enshrined in section 1(d) of the Constitution as a founding value. Openness has also been championed by the Constitutional Court as a safeguard against “secret lobbying and influence peddling”. See *Doctors for Life* above n 5 at 115.

<sup>47</sup> Compare section 13A(1) of the Small Business Enterprises Act.

<sup>48</sup> Compare sections 13A(2) and (3) of the Small Business Enterprises Act.

Finally, the Bill does not prescribe the terms of office of members of the Board or make any provision for the removal of members of the Board. Members should have fixed non-renewable terms of appointment. In addition, it is essential that the responsible Member be empowered, after following a fair and transparent process, to remove members of the Board for, among other things, misconduct, incapacity and failure to act as required with respect to conflicts of interest. This is essential good practice.

#### **6. Failure to guide the responsible Member's discretion in connection with the designation of township areas**

Section 6(1) of the Bill empowers the responsible Member to designate an area within a geographic area of a municipality a township for the purposes of the Bill. The section requires that the responsible Member exercises this power after consultation with the relevant municipality and in consultation with the Provincial Legislature.

The Bill prescribes no criteria that must be considered by the responsible Member in exercising the power to designate an area a township. The Bill, accordingly, confers an almost unfettered discretion on the responsible Member. (The responsible Member is, of course, subject to constitutional constraints in exercising the conferred power).<sup>49</sup>

Prescribing criteria for designation of an area as a township would guard against arbitrary or capricious decision-making – facilitating rational decision-making on the part of the responsible Member, as is required by the principle of legality.<sup>50</sup> In addition, prescribing criteria would serve to ensure that the responsible Member is able to justify the designation of certain areas as townships or the decision not to designate certain areas as townships.<sup>51</sup>

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<sup>49</sup> The responsible Member must exercise the power in accordance with the principle of legality and may not infringe constitutional rights.

<sup>50</sup> *Pharmaceutical Manufacturers Association of SA and Another: In re Ex Parte President of the Republic of South Africa* [2000] ZACC 1; 2000 (2) SA 674 (CC); 2000 (3) BCLR 241 (CC) at paras 85-6.

<sup>51</sup> The "culture of justification" is described by Mureinik in "A Bridge to Where? Introducing the Interim Bill of Rights" (1994) 10 SAJHR 31 at 32 as follows:

"If the new Constitution is a bridge away from a culture of authority, it is clear what it must be a bridge to. It must lead to a culture of justification – a culture in which every exercise of power is expected to be justified; in which the leadership given by government rests on the cogency of the case offered in defence of its decisions, not the fear inspired by the force at its command. The new order must be a community built on persuasion, not coercion."

Finally, prescribing criteria would also serve to facilitate judicial review of the responsible Member's designation decisions.

'Township' is defined in section 1 of the Bill.<sup>52</sup> The criteria for designation as a township must take the definition of 'township' in the Bill into account.

### **7. The Bill's lack of detail on major aspects precludes meaningful public participation**

In numerous places, the Bill imposes obligations on certain actors to "assist" in certain respects "township enterprises". However, the kind of assistance to be rendered and the categories of township enterprises to be assisted are not specified in the Bill. These matters are left for determination by the responsible Member, in consultation with the Member of the Executive Council responsible for finance in the Province, in guidelines.<sup>53</sup>

The potential impact and import of the Bill, for this reason, cannot be determined. In the HSF's view, the provision of insufficient detail on these important aspects of the Bill precludes the possibility of meaningful and effective public participation.<sup>54</sup> This leads to the Legislature effectively side-stepping its obligation to facilitate public participation in the law-making process by leaving such crucial aspects of the Bill to be determined in guidelines. In addition, the Bill does not require the publication of these guidelines in the Provincial Gazette or elsewhere. This needs to be remedied.

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<sup>52</sup> Section 1 of the Bill provides that "'township' means an area contemplated in section 6, and includes an urban living area which—

(a) at any time from the late 19th century until 27 April 1994, was reserved for black people; or

(b) has been developed for historically disadvantaged person after 27 April 1994."

<sup>53</sup> Section 30 of the Bill.

<sup>54</sup> *Doctors for Life* above n 5 at paras 129 and 131.