

Bulldozed Border Management Bill gets into stormy waters

The Border Management Authority (BMA) Bill has now been debated twice by the National Council of Provinces after being passed by the National Assembly in June in 2017, which is nine years after the concept of a “one stop border control authority” was originally proposed.

The idea of amalgamating all the public service functions across so many disciplines of interest in border control, from immigration and security to the customs and tourism, simplistic theory says the idea might be a good one. However, a working document to consolidate all the interests remains as problematic as ever. The feeling of Opposition MPs remain that BMA Bill is thin on detail and extremely vague on departmental relationships.



Empire building

The concept was cradled by Minister Nkosazana Zuma when in charge of the Department of Home Affairs (DHA) and twice driven by its now current minister, Malusi Gigaba. Haniff Hoosen, DA shadow minister in the Home Affairs Portfolio Committee, described the Bill when tabled as “one of the worst pieces of legislation ever to appear in Parliament”.



Within the minds of many, wary of any issues that may represent any form of state capture, there is an understandable and ingrained dislike of any extraordinary powers being granted to a department with such a dismal record of efficiency, leadership and moral correctness.

Strong opposition

The DA claim that the power driving the Bill is Cabinet wanting to deal with one entity on cross-border issues. Others are suspicious, including National Treasury, of Home Affairs dealing with an important contribution to the fiscus, that of customs dues and VAT.

Committee Opposition members have pointed out many times in meetings that this is the same department that took time out to allow the naturalisation of a Gupta; the exit of wanted human rights offender Omar al-Bashir; and a department that totally lost control of its IT system in dealing with its ordinary citizens. Only recently, it has had to develop a “strategy” to beat the long queues outside its offices.



Invitation for trouble

Hoosen summed it all up when the Bill was bulldozed through the NA’s Portfolio Committee, that the ANC in using its majority to install a system that was responsible for the defence of SA borders; the passage of all travellers over its borders; a yet to be defined system collection of all custom and VAT dues; and the passage of goods across all borders, “was inviting both corruption and the establishment of a new and doubtful political power base to a somewhat doubtful minister.”

It appears to be ANC policy to stick with the idea of a BMA, however, whomsoever is Minister of Home Affairs.

Deeply concerning business and industry and stated as such in public hearings is the question of customs dues and controls, but it now appears, according to Ms Yanga Mputa, Chief Director: Tax Policy Unit, that the new Minister of Finance, Nhlanelhla Nene is to have a meeting in May with the new again Home Affairs Minister, Malusi Gigaba.



What it does

What the Bill proposes is a single state entity known as the Border Management Authority (BMA) to oversee all aspects of the movement in the import/export of goods and to control movement of all persons either leaving or entering the country.



The idea is that all border law enforcement functions along South Africa's fragmented 5,000 kilometres of border will be the responsibility of the BMA. An MOU was accordingly signed with the South African Police services on policing but whether this relegation of powers would stand up to constitutional scrutiny is not clear. Apparently, the Department of Defence has said "OK, by us", probably glad to get on with its peace-keeping work on limited budgets.

Take over

It was originally proposed that the border-related functions of Agriculture, Forestry and Fisheries; Defence; Environmental Affairs; Health; Home Affairs; Public Works; Transport and the State Security Agency, as well as SAPS and SARS, were to be represented. Treasury, naturally, refused to sign any such MOU although approached.

The preamble and the objectives of the Bill, if combined, embrace the noble idea to better control drug-related crimes, human trafficking, illegitimate movement of goods and unauthorised movement of persons.

On paper only

On the face of it, the idea appears a good one, but the practicalities of implementation have given rise to many objections in parliamentary public hearings and public submissions. Many have condemned the proposals as utterly impractical and open to all kinds of abuse of powers.



National Treasury, then under Gordhan Pravin, was equally concerned about the collection processes and intricate import duties and taxes.

After much argument it was agreed that revenue from custom dues would not be used to fund the BMA itself. It still remains foggy how any revenues at the points of border control will be handled.



At the moment, the wording on this issue has been changed by Opposition demand and the Department of Home Affairs (DHA) has come up with the expression that the BMA "facilitates" SARS staff in the collection of customs dues.

Opposition members at the time wanted a specific definition of the word “facilitate” but this was never given.

One-sided approval

As a result, of this failure all Opposition parties either abstained from voting on the Bill or voted against it, claiming the Bill was giving DHA too many powers in too many departmental areas, all to a department with a poor track record on administration and immigration control.

ANC used its majority to power the Bill through to the NA, a process which usually indicates a pretty poor future for any legislation, a similar “yes” vote using a majority was recorded in the NA and the Bill has been passed to the NCOP for concurrence, where it is now.



Those had voted against the Bill in the Portfolio Committee promised further opposition to the whole concept right down the line unless proper definition is given on the powers of DHA and limitations on the extent of political interference in any of the many unusual powers granted to the BMA.

NCOP phase

In the new session of Parliament, and at the last of two NCOP meetings on the subject, National Treasury is still seen to be hammering away on the issue of their involvement on site, Ms Yanga of NT stating, “The bill is more like a framework with no detail and when it came to operations, if those issues are not dealt with there would be unintended consequences.”

She commented that revenue collection was not just revenue collected at the border but SARS staff “had to follow the goods way beyond the reach of the BMA because the goods were the actual money.”



New Minister

In the last meeting this May, the Institute of State Security (ISS) dropped another bombshell.

ISS asked what regulatory mechanisms will be in place to oversee other law enforcement agencies that perform “functions within their mandate that could be interpreted as border law enforcement functions, such as search, seizure, arrest and detention functions normally held by SAPS”.

Also, they questioned the overlap if “national security” as defined by the Department of Defence is applied by a new BMA.

Over reach

ISS said it understood the premise of a holistic government approach to border management, but they also saw that the Bill failed to clearly define the roles of other participating government departments, authorities and services and that DHA were entwining themselves in matters of state security, a matter which would make ISS particularly unhappy.



They said, “The proposed BMA under the direction of the Minister of Home Affairs would effectively be an additional/auxiliary police service, lending itself to the creation of “over-secritised zones within the Republic.”

Sending Bill back

More meetings are bound to take place unless the select committee decides in its wisdom that oversight was not fully exercised by National Assembly and the Bill is passed back, an unusual turn of events.

The question therefore remains. If it is ANC policy to power this Bill through with so many constituent parts under query by stakeholders within government, how is to become workable proposition on the ground, say parliamentary watchers.

With so many other issues of a higher profile before Parliament at present, further monitoring must still be exercised on the passage of this Bill.

