

Report could get govt out of hot water

Financial and Fiscal Commission recommendations need consideration

writes **Jaya Josie**

RECENTLY the Constitutional Court and the Eastern Cape division of the high court made landmark rulings supporting the right of all citizens to constitutionally mandated basic services as prescribed by the bill of rights.

While these rulings set a precedent for future litigation against the executive and administrative arms of government, they also raise the issue of the state's responsibility and accountability in the provision of these constitutionally mandated basic socioeconomic services.

In the Constitutional Court, Judge President Arthur Chaskalson's made a ruling confirming the Cape High Court's finding that the Wallacedene squatter camp community was entitled to the provision of shelter and sanitation by government.

On September 28, Judge Johan Froneman of the Grahamstown High Court ruled that four disabled people who brought a claim to have their disability grants reinstated may bring a class action on behalf of an estimated 100 000 other disabled people whose grants have been unilaterally cut by the provincial authorities.

The financial implications of both decisions are enormous.

In the first case, the Western Cape government and the Oostenberg municipality must provide funds for the provision of toilets, taps and building materials.

In the second case it is estimated that the reinstatement of the grants to 100 000 recipients, backdated to August 1998, will amount to more than R1bn.

There may be several reasons why the administrative arms of government may be unable to provide constitutionally mandated basic services.

These include spending being not well targeted, especially to the needy; inadequate governance mechanisms; the absence of poverty-reduction strategies; inefficiency and lack of administrative capacity; inadequate financial allocations; and the absence of tax bases and revenue-raising efforts outside national government.

However, in allocating an equitable share of funds to provinces and local government, national

government is constitutionally obliged to take into account all of these issues. In addition the constitution established the Financial and Fiscal Commission, which makes recommendations to Parliament, provincial legislatures and any other authorities.

The constitution and various legislation provide for a transparent process for the determination of the equitable sharing of national revenue between and among the three spheres of government.

In deciding on the equitable share, government must take into account the interests of national, provincial and local government.

This includes the need to ensure that provinces and local governments are able to provide basic services and perform the functions allocated to them; their fiscal capacity and efficiency; their developmental needs; economic disparities within and among provinces; their legal obligations; and their need for predictable allocations of revenue.

In this regard, as an independent and impartial state institu-

tion, the commission performs an important check-and-balance function for ensuring an equitable sharing of national revenue.

Each year the commission provides Parliament and government with well-researched recommendations that should minimise the risk to government of defaulting on the delivery of constitutionally mandated basic services.

These recommendations have to be submitted to Parliament and the finance minister 10 months before the presentation of the budget, allowing for a process of consultation and discussion.

Addressing some of the socio-economic rights issues raised in recent court cases is an integral part of the commission's mandate.

Indeed, the recommendations for the medium-term expenditure framework for the 2001-2004 cycle, submitted in May this year, deal with the question of the rights of citizens to constitutionally mandated basic services.

If they are accepted, these recommendations may enhance government's ability to avoid costly lit-

igation related to the provision of basic services.

However, in the past, the commission's complementary role in the intergovernmental fiscal relations system was not fully appreciated nor fully used.

The recommendations were presented to Parliament after extensive research and consultation with government, the legislatures and international technical advisers. The recommendations go to the heart of the issues raised by the court decisions.

The commission recommended that basic levels of service in education, primary health and social security be provided for in the provincial equitable share allocations, and that provinces be held accountable for the delivery of such services.

The commission also proposes that its formula, based on a costed-norms approach, be used to ensure the adequate provision of basic levels of service.

It urges that implementation be as early as possible, taking into account the cycle of the medium-

term expenditure framework.

The costed-norms approach is a formula-based method for calculating the financial resources necessary for the provision of basic social services given nationally mandated norms and standards.

The report argues that arbitrariness should be eliminated from the system and that an approach that encourages policy-makers to place costing at the centre of their decision-making process will go a long way in achieving this.

It is good fiscal practice for policies, norms and standards to be formulated with due regard to their constitutional obligations as well as their financial and fiscal implications. In this regard the commission is one of the most important governance mechanisms.

Government and the legislatures, to avoid exposure to unnecessary and costly challenges, should use the commission effectively. Co-operative governance between and among the various organs of state is the key to making our democracy work.

[Josie is the acting deputy chairman of the Financial and Fiscal Commission.]

