

Briefing to the Select Committee on Finance (SCOF) Limpopo Section 100 (1) Intervention

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national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

Outline

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Background and Context

On 30 July 2014 the Select Committee for Finance was briefed on the Limpopo Section 100 (1)(b) intervention. Among other things, the following information was shared:

- The Cabinet Resolution of 09 July 2014 for the transitioning of Section 100 (1)(b) to Section 100 (1)(a) for all five departments in Limpopo that were under administration.
- A detailed progress of the intervention, challenges, as well as the way forward related to each of the 5 departments was outlined in numerous presentations.
- The NCOP was also informed of a Memorandum of Agreement (MOA) that had been drafted as directed by Cabinet and which was to be entered into between the Premier and the Inter-Ministerial Committee (IMC), outlining the directives to the province in with line with section 100 (1) (a) of the Constitution.
- In implementing this decision, the IMC and Premier of Limpopo signed the Memorandum of Agreement on 15 December 2014.
- The agreement sets out the directives that must be met by the province to sustain the gains of Section 100 (1)(a) and provide for a phased out approach of winding down the Limpopo intervention, and
- Respond to Joint Select Committee observation and recommendations

Distinction between section 100 (1) (b) and section 100 (1) (a)

Section 100 (1) of the Constitution states:

“When a province cannot or does not fulfil an executive obligation in terms of the Constitution or legislation, the national executive may intervene by taking appropriate steps to ensure fulfilment of that obligation, including:

- a) issuing a directive to the provincial executive, describing the extent of the failure to fulfil its obligations and taking any steps required to meet its obligations;*
- b) Assuming responsibility for the relevant obligation in that province to the extent necessary to –*
 - i. maintain essential national standards or meet established minimum standards for the rendering of a service;*
 - ii. Maintain economic unity;*
 - iii. Maintain national security;*
 - iv. Prevent that province from taking unreasonable action that is prejudicial to the interests of another province or the country as a whole.*

Other Constitutional Provisions

Section 100 (2) of the Constitution states:

*“If the national executive intervenes in a province in terms of **section 100 (1) (b)** –*

- a) It must submit a written notice of the intervention to the National Council of Provinces within 14 days after the intervention began;*
- b) The intervention must end if the Council disapproves the intervention within 180 days after the intervention began or by the end of that period has not approved the intervention;*
- c) The Council must, while the intervention continues, review the intervention regularly and may make any appropriate recommendations to the national executive.*

Feedback and Update

- In November 2014, the NCOP adopted a report from the Select Committee on Finance (SCOF), which recommended the approval of the transition to section 100 (1) (a).
- On 15 December 2014, the IMC and the Premier of Limpopo signed the Memorandum of Agreement (MOA).
- The agreement sets out the directives or deliverables that must be met by the province in order to sustain the gains of the intervention.
- On 31 January 2015, the Minister of Finance released administrators from their appointments as accounting officers of the provincial departments.
- Since that time the authority of accounting officers has reverted back to provincial officials as determined by the provincial executive
- The team of administrators has been reconstituted into a Monitoring and Evaluation (M & E) Committee, notwithstanding that they have resumed their previous duties within national government structures.
- A provincial task team has been set-up by the Office of the Premier to work together with the M & E Committee to ensure that the directives of the MOA are achieved.

Further details (1): Implementation of Cabinet Directives in the MOA

The following presents the fundamentals of sustaining the gains of Section 100 (1)(b) during the transitioning phase (Section 100 (1)(a)):

- Implementation of Cabinet directives (MOA) by establishing an institutional mechanism for reporting;
- Actually reporting on progress thereto on quarterly basis;
- Validation of reports and physical verification of reporting within the province and by monitoring and evaluation committee for oversight purposes and reporting to Inter Ministerial Committee in order to make sound recommendations to Cabinet;
- Binding of each party by the utmost good faith to the other with regards to all matters as contemplated in Section 6 (1) of the Agreement.

Further Details (2): Progress Thus far on Implementation of Transition Phase in terms of S100 (1)(a)

- Handover Workshop with all HODs and top departmental officials was held on 27 January 2015
- Handover Meeting on Disciplinary Cases and related matters was held between the Office of the Premier and the M & E Committee on 03 March 2015
- M & E Committee met with the provincial team on 16 April 2015 to interrogate the quarterly reported for the period ended 31 March 2015
- The provincial team must address any concerns raised by the national team, and a final version must be submitted to the Ministry of Finance
- NB: A detailed reporting format/template has already been shared with HODs and top officials in the 5 departments.
- NB: The M & E Committee reserves the right to conduct site visits when necessary and where logistics allow
- NB: Regular interactions outside of these forums takes place as part of normal IGR processes

General Observations, Assessment of current status and challenges

- There is good co-operation and intergovernmental relations between the senior officials;
- The Office of the Premier has honoured all engagements & meetings with the national team
- However, there are challenges in the process:
 - Narrow interpretation of directives by departmental officials in respect of the intended outcomes of directives
 - Reports from some departments have been arriving late or had significant quality And accuracy shortcomings, making it difficult to provide reliable timely feedback to political principals.
 - Consolidation & evaluation of reports by the provincial task team is still a challenge
 - The M & E Committee has engaged with the province to on these issues in order to resolve them for the future reporting period.
 - Criminal and disciplinary processes of government are slow. Legal technicalities, procedural issues and management, etc. make it very difficult to reach finality on the issue of accountability;
 - Among the 5 departments there are some variances in the levels of senior management capacity due to slow progress of disciplinary cases of senior officials who have been suspended;
 - Consequently, critical departments such as Education and Public Works, as well as others such as COGHSTA, Office of the Premier have acting officials in place;



NCOP Report
Observations and recommendations
25 November 2014

Observations and Recommendations by the Joint Select Committees: Transport

- NB – See ANNEXURE A for a detailed outline of how the MOA addresses the committee's recommendations

Fundamentals of Sustainability:

Implementation of Cabinet Directives, Monitoring, Reporting and Oversight

Oversight and Reporting

- Oversight and Reporting in terms of Section 100 (1)(a)
 - Minister of Finance endorsed the constituting of Monitoring and Evaluation Committee, which
 - In terms of the agreement, the directives will be reviewed 3 month after the end of section 100 (1) (b). The Office of the Premier must provide a comprehensive report to the Minister.
 - In terms of the agreement, there is an undertaking by the Premier to ensure compliance with provisions of this agreement and this was also confirmed by the Acting DG at the Handover Workshop.
 - To that effect, the agreement requires the Office of the Premier to set an institutional arrangements for reporting within department and to appoint task team to assume responsibilities for the implementation of the agreement.

Conclusion

It is recommended that the NCOP:

- **Notes** that the Premier and members of the IMC have signed the MOA and this has been forwarded to NCOP for perusal and oversight.
- **Notes** the establishment of a Monitoring and Evaluation Committee of national government that will receive reports from the province and exercise oversight on the various elements of the MOA.
- **Notes** that a provincial reporting mechanism and reporting through national treasury, notwithstanding the need to address certain challenges
- **Notes** that due to the legal processes involved, progress on disciplinary and criminal cases remains slow and this has an impact on both the holding of officials accountable and the ability of the province to fill posts of suspended officials
- **Notes** that a full close-out report has been completed and pending an editorial process, will be submitted to Cabinet and the Provincial EXCO

THANK YOU