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The Portfolio Committee on International Relations and Cooperation

Foreign Service Bill and the consultations with Governmental Departments

1. The guiding mandate

The Department of International Relations and Cooperation (DIRCO) has developed the Foreign Service Bill (the Bill) to provide for a single Foreign Service system for South Africa. As South Africa's democracy is maturing and its international relations footprint is found across the globe; the difficulties in the management, administration and functioning of the fragmented Foreign Service system have equally increased. The Bill is meant to provide for a framework to address challenges posed at the operational level in a global environment which is different from the domestic context.

It is important, however, to note that these challenges relating to responsibility and accountability in the Missions is not unique to South Africa. Generally Missions of other countries experience similar problems which would often be addressed through legislation and understanding of the role of a Head of Mission at the Missions.

Below are some of the pertinent issues which the Committee could discuss with relevant departments, in order to establish whether the said departments concur with the sections of the Bill that would impact on their respective mandates. The discussions are meant to form part of submissions made by affected stakeholders in the content of the Bill before the Committee.

2. Department of Public Service

The Members of the Foreign Service of South Africa are, first and foremost, employees of the Government of the Republic of South Africa, as provided for under the Public Service Act, 103 of 1994. These employees become Members of the Foreign Service upon being appointed to represent the Republic abroad, in an effective, coherent and comprehensive manner, as indicated under Section 1 of the Bill on Definitions. According to Section 2 (2) thereto, such employees could also be appointed on contract for a fixed period. They could be employed by DIRCO or any national department.

Issues: Is the Department of Public Service agreeable to these provisions; and is it agreeable to Section 1 which provides for Definitions of "employee, national department, member of Foreign Service? Are these prescripts in line with the Public Service Act 1994?

According to Section 2 (3), this particular category of employees will be managed and administered by DIRCO. Is the Public Service agreeable and would it support these provisions in the Bill?

Section 3(1) provides that only citizens of the Republic are eligible to become Members of Foreign Service. Is this in line with the Public Service Act 1994 and is it in support of the provisions as stated?

Section 3 (2) provides for the requirement for security clearance for Members of the Foreign Service. Is the requirement supported by the Public Service Act 1994? It is a very important provision to ensure that fit and proper employees are transferred abroad.

Section 5 – Recall of a Member of Foreign Service – It provides for an inquiry and disciplinary process in respect of misconduct by a Member of the Foreign Service. Does this provision have support of the Public Service Act?

Section 9 – Policies, codes or directives – It provides that the Minister of International Relations and Cooperation (the Minister) may make such policies, codes or prescribe any necessary ancillary or incidental administrative or procedural matter. Is the Department of Public Service ready to collaborate with DIRCO in these efforts?

The Department of Public Service is also responsible for policy on allowances, which relate to determination and adjustment of overseas, living quarters, representation and family allowances. How does it come to the determination; and is the issue of foreign exchange fluctuations taken into account; and are different conditions in different countries taken into consideration?

Section 11 – Offences – The Section provides that a Member of Foreign Service may be charged in South Africa for criminal offences committed abroad. The other scenario is that a Member of Foreign Service may be found guilty if in contravention of the provisions of the Bill. Are the proposed fines and imprisonment adequate in relation to the Public Service Act 1994?

Section 12 – Regulations – Would Public Service collaborate with DIRCO in areas affecting its mandate in the regulations?

3. Department of Home Affairs

According to DIRCO, the primary objective is for the Bill to provide for a single Foreign Service system for the Republic. The obtaining situation is that a number of departments have representation/employees working in South African Missions abroad. This necessary phenomena has brought about difficulties in the management and administration of the current fragmented Foreign Service system. The employees from different national departments transferred to Missions abroad, are not necessarily directly accountable under the Heads of Mission in the countries they serve in. These officials directly report to their respective departments and often leaving out the Head of Mission in the information chain. It will be recalled that the Heads of Mission are responsible for the overall running of the

Missions, and they are the sole representatives of the President of South Africa in the country of their accreditation.

Many countries of the world experience this challenge of representatives from other departments not keen to report to the Head of Mission accredited. This has caused a disjuncture and dis-functioning of activities in Missions abroad.

The Department of Home Affairs (the DHA) has a high number of officials/employees in the Missions abroad. These employees' function, among others, is to cater for provision of visas to would-be visitors and investors to South Africa. The challenge is that these employees report on their activities abroad directly to the DHA, often by-passing the Head of Mission. There is a need for the Head of Mission to be given the space to be in-charge of all the activities in the Mission. Officials from Home Affairs should also report to the Head of Mission.

The other challenge is that operational costs of the Visa sections in the Missions, manned by DHA, often have to be paid by the Mission, especially where there are delays in making such payments by DHA. This causes liquidity problems in the Missions thus affecting the allocated budget for the particular Missions.

The Committee has discussed these challenges, and has recommended that DIRCO should seek to negotiate and sign Memorandum of Understanding MoUs with all national departments that have employees in the Missions abroad. These MoUs should undertake and facilitate transfer to DIRCO of the required budget for the operational costs of the Visa section.

Section 2- Foreign Service – This section stipulates how the Foreign Service will be composed. It specifically provides that DIRCO would manage and administer the Foreign Service. Is the DHA agreeable to this fundamental principle and allow the Head of Mission to take the overall responsibility of the running of the Missions abroad; and that all employees would be answerable to him/her?

Section 3-Requirements for members of Foreign Service – It the DHA taking into consideration the minimum requirements that any official being transferred to Missions abroad should be a citizen of South Africa; and should have undergone security clearance?

Section 4- Head of Mission – This section provides that the Head of Mission is responsible for the management and administration of the Mission; and all Members of Foreign Service are accountable to him/her. Is the DHA in agreement with this provision and the chain of command advocated?

Section 5 – Recall – It provides that any Member of Foreign Service may be recalled after an inquiry if found guilty of misconduct. This would also affect transferred employees from the DHA. Is the DHA in support of this provision?

Section 9 – Policies, codes and directives – This section gives the Minister power to make policies, codes and directives for the better running of Missions abroad. These prescripts will

also apply to employees of the DHA transferred abroad. Is the DHA agreeable to this provision?

Section 11- Offences – This section provides for offences of a criminal nature committed abroad; and on offences under the Bill. This provision would apply to the DHA employees abroad. Is the DHA agreeable to this provision?

Section 12 – Regulations –The provision empower the Minister to make regulations. These regulations would mutandi mutandis apply to transferred personnel from the DHA. Is the DHA agreeable to the provisions as stated?

4. Department of Public Works

Section 8 – Assets – The Bill provides the Minister with powers for the acquisition and disposal; lease or rent of immovable assets in the Missions abroad. This provision would extend to maintenance, construction, renovations of such properties in the Missions. Is the Department of Public Works (the DPW) agreeable to this new dispensation with regard to properties under the responsibility of Missions abroad?

What would be the arrangement regarding the revenue to be collected from these transactions relating to fixed assets?

Would the property management experts in the DPW assist DIRCO in carrying out this task? The Committee should be mindful that DIRCO has properties in 126 Missions abroad, and it has a recurring challenge to maintain an updated Asset Register.

5. National Treasury

Section 8 – Assets – The Bill provides for acquisition and disposal of fixed assets in the Missions abroad. Is National Treasury agreeable to this provision? Would National Treasury and DIRCO discuss details of how the revenue to be collected from these transactions would be utilised? Would such revenue be sent to the Consolidated Fund or would DIRCO be allowed to utilise it accordingly in its operations abroad?

Section 9 – Policies - The Minister may make policies, codes and directives for the proper running of the Missions abroad. The determination involving the expenditure from revenue shall be made in consultation with the Minister of Finance. Is National Treasury agreeable to this provision?

6. Department of Justice and Constitutional Development

Section 5 – Recall of a Member of Foreign Service – A Member may be recalled after an inquiry if found guilty of misconduct. Is Justice and Labour agreeable that these processes are in line with the applicable laws in the country?

Section 11 – Offences – Are the provided remedies, fines, imprisonment, in sync with obtaining laws regarding criminal conduct committed abroad? Is Justice in support of these provisions?

7. Department of Trade and Industry

The Department of Trade and Industry (the dti) has representation in some of the Missions of South Africa abroad. The issues affecting the dti are the same as those of Home Affairs. There is a need for an all-encompassing MoU to cater for the provisions of the Bill. This would include a dedicated budget for the operational costs of the dti's transferred employees; and that these employees should report their activities to the Head of Mission concerned. All provisions relating to Members of Foreign Service would apply to the transferred employees of the dti.

8. Defence, Police, State Security

Section 1 – Definitions – These departments have representation in some of the Missions abroad. Issues of concern are similar to those of Home Affairs. There is a need for a line of command, with the Head of Mission being recognised as the person responsible for the overall management and knowledge of activities of the Mission. The Committee would be reminded that the DIRCO has laid a concern that it finds itself not able to fill positions for Missions abroad, within stipulated timeframes due to the slow vetting processes. The Bill provides for security clearance as a condition for an employee to be transferred, would the relevant departments then assist DIRCO to expedite filling of the required positions abroad?

With regard to Defence, the Revised White Paper on South Africa's participation in International Peace Missions (2014), is a joint mandate of the Department of Defence and Military Veterans and of DIRCO. Participation in Peace Missions is a tool of foreign policy (Hard Currency) as it occurs in response to either a United Nations/African Union/SADC mandate. It also occurs under the national interest mandate. It is because of these cross-cutting mandates that DIRCO advocates for shared information on the activities of peace missions where South Africa is involved.

The relevant Head of Mission in the area of operation should be kept in the picture of developments regarding the Peace Missions. The personnel from these departments transferred to Missions abroad would be affected in the same manner by dictates of the Mission concerned.

9. Department of Higher Education and Training

Section 6 – Diplomatic Academy – The Diplomatic Academy provides training for DIRCO and for Missions abroad. Employees of other departments are also trained when joining the Foreign Service. The Academy intends to issue diplomas or certificates for those to be trained. It would therefore need accreditation and recognition of the Diplomatic Academy's qualifications. This would have to be done in collaboration with the Department of Higher Education and Training (the DHET) Would the DHET be agreeable to the provisions of this section?

10. Department of Cooperative Governance

Section 7 - Establishment of coordination and other mechanisms – The Bill empowers the Minister to issue guidelines regarding the coordination and alignment of activities, between the 3 spheres of government, relating to international relations. Section 2 (3) (b), also confirms that DIRCO leads and manages all activities of international relations nature on behalf of South Africa. Is the Department of Cooperative Governance agreeable to the provisions of the Bill in terms of coordination of activities of an international relations nature abroad?

11. Other relevant national departments and entities

All other affected national departments, which have some form of representation abroad, will be required to express their views on similar sections as Home Affairs, in writing. These departments are listed in the Explanatory Memorandum accompanying the Bill.