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Research Input to the Oversight Report of the Ad Hoc Committee on North West Section 100 Intervention

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1. Introduction

The Ad Hoc Committee on North West Inquiry (hereafter referred to as the Committee) had briefings by the Inter-Ministerial Team, the National Treasury, the Auditor-General, the National Prosecuting Authority (NPA), the Hawks, the Special Investigation Unit (SIU) and the Independent Police Investigative Directorate (IPID) reporting on the progress of the Section 100 Intervention.

The aim of this research brief is to specifically report on the observations of the Committee with respect to the briefings held on 19 February 2021 and 22 February 2021.

2. Committee Observations

This section summarises the key findings emanating from the deliberations which took place during the Meetings. The National Treasury and the Auditor-General briefed the Committee on 19 February 2021. While, the National Prosecuting Authority, the Hawks, the Special Investigation Unit and the Independent Police Investigative Directorate briefed the Committee on 22 February 2021.



2.1. Briefing of the 19 February 2021

2.1.1. National Treasury Presentation

National Treasury's presentation highlighted the spending trends of the provincial departments under Section 100 administration and noted the poor spending of Conditional Grants in particular. It was noted that a number of Grant allocations were withdrawn due to poor planning and delivery on projects. Compensation of Employees as a share of provincial budgets are also increasing and this needs to be monitored. There is a slight improvement in the incurrance of irregular, unauthorised, and fruitless and wasteful expenditure as there are reductions in the annual recorded amounts. Lastly, National Treasury notes that more needs to be done to improve the infrastructure governance structures and that the Supply Chain Management units of provincial departments need to be capacitated.

2.1.2. Auditor-General's Presentation

The Auditor-General presented the 2019/20 audit outcomes and noted a slight improvement in audit outcomes compared to 2018/19. Three departments moved from a qualified audit opinion with findings in 2018/19 to an unqualified audit opinion with findings in 2019/20. The Auditor-General also addressed the matter of management continuing to rely on auditors to identify material misstatements in the financial statements for them to correct, as it is not sustainable and results in undue pressure on the audit and increased audit fees due to the time taken to correct the misstatements.

The credibility of reported performance information remains questionable given the lack of appropriate audit evidence to support the reported achievements. Non-compliance with legislation remains a recurring issue, particularly related to the areas of the prevention of unauthorised, irregular, and fruitless and wasteful expenditure, effecting consequence management, procurement and contract management, the quality of financial statements and strategic planning and performance management. In 2019/20, the Auditor-General identified material irregularities, some of which are still in progress, within the departments of Community Safety and Transport Management, Health, and Public Works and Roads. Lastly, the Auditor-General noted that the management and political leadership and oversight bodies do not act on audit outcomes with the required urgency, which is further aggravated by a lack of consequence management.

The Committee noted the following:

- That the intervention team has yet to implement a number of things such as ensuring the credibility of departmental budgets, the recruitment of capable and competent officials in key management and leadership positions, eradicating irregularities with respect to procurement and spending, as well as improving grant expenditure and performance of the departments under Section 100 administration.



- Despite the progress reported, the Committee noted that the National Treasury could not provide a timeframe as to when the intervention team would be in a position to withdraw from the Province.
- In addition, the Committee noted that for the State's intervention in the Province to be effective and sustainable, the intervention team require the Provincial leadership to enact political will and the support of oversight structures such as the Provincial Legislature and Parliament.
- Regarding the Auditor-General's extended powers in terms of the Public Audit Amendment Act (No.5 of 2018), the Committee questioned the Auditor-General's intentions to enact and enforce the provision that allows the Auditor-General to issue a certificate of debt to an official found to be in contravention of laws governing public expenditure. The Office of the Auditor-General explained that they have implemented a phased-in approach of identifying material irregularities to build capacity. The Office of the Auditor-General also elaborated on the many steps involved that may or may not result in an outcome whereby a certificate of debt will be issued. Once a certificate of debt is issued it becomes a matter for the entity (i.e. municipality, provincial or national department) and law enforcement agencies to pursue.

2.2. Briefing of 22 February 2021

2.2.1. Joint Presentation of the National Prosecuting Authority (NPA) and the Hawks

The joint presentation of the NPA and the Hawks highlighted that of the 51 cases that are being handled, 16 of the cases being investigated by the NPA are on the court roll, where the Hawks has secured the attendance of 25 accused persons in court. Thirteen cases are awaiting decision and guidance, while 9 cases are being investigated. Eleven cases have been finalised and 2 cases are to be enrolled. The presentation further honed in on cases relating specifically to the Ventersdorp, Maquassi Hills, Dr Kenneth Kaunda District, Rustenburg, Ramotshere Moiloa, Naledi, Ratlou, JB Marks, Lekwa Teemane municipalities and the Departments of Health and Social Development, where most of the cases have been remanded to February 2021.

2.2.2. Special Investigation Unit Presentation

The SIU presentation highlighted that 44 cases were investigated (these exclude the COVID-19 investigations). With respect to allegations in respect of the Moretele municipality, the investigation has been finalised, whilst the investigations in the Madibeng municipality, Department of Public Works, Roads and Transport, Department of Health as well the North West development cooperation, are still ongoing.



2.2.3. Independent Police Investigative Directorate Presentation

The IPID presentation covered the progress of cases that related to deaths in police custody, deaths as a result of police action, rape, torture, assaults, corruption and non-compliance with section 29 of the IPID Act. They indicated that the completion rate of investigated cases between 2015/16 and 2019/20 was consistently good, except for the year 2017/18. They highlighted that the number of criminal referrals over the 5 years under review was not consistent with the number of outcomes. They further highlighted that, whilst there were successful convictions, there is a slow movement in respect of the implementation of IPID recommendations by the South African Police Service (SAPS). IPID noted that there has been consistent growth in the number of cases on the court roll over the five years. They indicated that it takes on average over a year for a decided case to be on the court roll and on average three years for cases that are on the court roll to be disposed of. Apart from internal challenges, they highlighted that a key impediment to the finalisation of cases was the lack of cooperation by SAPS.

The Committee noted the following:

- The Committee noted that the presentations of the various law enforcement agencies did not address progress with regard to allegations and forensic findings that are specific to the departments under Section 100 administration. Whilst the Committee welcomed the update on outcomes of investigations conducted in municipalities, it highlighted that emphasis should have been on matters relating to provincial departments as it would have been more relevant to the Committee and aligned to the mandate of the Committee.
- The Committee said that it would have appreciated more detail and more information around challenges relating to delays and any other factors that hinder the finalisation of investigations.
- The Committee noted that the investigation and legal process is a very protracted process that may take a number of years to conclude. More needs to be done to accelerate the legal process for citizens to be assured that justice will be served.
- The Committee highlighted that bigger cases, particularly the ones relating to provincial departments, need to be prioritised and cases should be attended to as soon as they are reported to combat corruption.
- The Committee raised concerns around the lack of consequence management when it comes to some of the cases and the lack of urgency in finalising investigations.
- The Committee noted that the law enforcement agencies experienced a lack of capacity and resources over the last few years and that efforts are underway to restore capacity and improve resources.
- The Committee also questioned the level of collaboration between the law enforcement agencies and oversight bodies such as the National Treasury and the Auditor-General's Office with respect to forensic and audit investigations that have been concluded or are underway.
- The Committee also called on the Head of the National Prosecuting Authority to publicly comment on the resignation of the North West's Director of Public Prosecutions and the criminal allegation of the Head of the North West Special



Commercial Crimes Unit and assure citizens that agencies mandated to uphold the law can be trusted to do so.

3. Conclusion

The briefings by the various stakeholders have indicated some progress in setting the North West Administration on a sound financial and governance path. However, there remains much to be done before the intervention can be withdrawn with any confidence that the intervention has been effective in meeting its objectives and that it can be sustained by the incumbents within the various management and leadership roles in the Province.

Issues for the consideration of the Ad Hoc Committee on NW Inquiry:

- The Inter-Ministerial Task Team should be able to report to the Committee what are the minimum measures (i.e. measures that would effectively meet the intervention objectives and ensure sustainability) that need to be in place for the intervention to be terminated.
- The Inter-Ministerial Task Team should be able to report to the Committee what resources are required to put the minimum measures in place.
- The Inter-Ministerial Task Team should be able to report to the Committee, progress with regard to forensic investigations and findings as well as disciplinary processes. This report should provide a break-down per department (i.e. departments placed under Section 100 administration) and provide detail on the alleged offence, disciplinary outcome, and any wrongdoing that has led to criminal proceedings.
- The law enforcement agencies need to provide a comprehensive report to the Committee on the number of viable cases (i.e. cases that can be prosecuted) that can and have been placed before the courts. This report should provide a break-down for each department (i.e. departments placed under Section 100 administration) and provide detail on the alleged offence and judgement handed down by the courts.

References

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