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**JUSTICE AND CORRECTIONAL SERVICES**

**REPUBLIC OF SOUTH AFRICA**

**NATIONAL ASSEMBLY**

**QUESTION FOR WRITTEN REPLY**

**PARLIAMENTARY QUESTION NO: 2145**

**DATE OF QUESTION: 02 JUNE 2023**

**DATE OF SUBMISSION: 19 JUNE 2023**

**Prof C T Msimang (IFP) to ask the Minister of Justice and Correctional Services:**

Whether, with reference to his maiden Budget Vote on 16 July 2019, wherein he affirmed that fighting corruption and fraud forms part of his department’s core mandate, he has found that his department has won, or at least made positive strides in the war against the levels of brazen corruption and avarice; if not, what is the position in this regard; if so, what are the relevant details?

**NW2436E**

**REPLY:**

In the anti-corruption sphere, we significantly expanded the capacity of the Investigating Directorate (ID) and are institutionalising its operations as an integral part of the National Prosecuting Authority (NPA). The ID has enrolled eighteen (18) new matters this financial year, meaning a total of thirty-four (34) matters have been enrolled with 203 accused over the last four (4) years. Thirteen (13) new investigations were authorised, totalling ninety-seven (97) matters authorised over the last four (4) years.

A significant success of the ID during the financial year was its contribution to the recovery of R2.5 billion, which was paid into Criminal Asset Recovery Account (CARA). Whilst it is acknowledged that there is still a long way to go, this represents a significant milestone in the recovery of assets that were illegally obtained through state capture.

Over the last year, the NPA’s Asset Forfeiture Unit (AFU) secured freezing orders valued at R570 million as part of its strategy to pursue the monies stolen by the perpetrators of corruption and the enablers and facilitators of state capture. The finalisation of two (2) high value corruption cases contributed to the AFU obtaining recoveries in corruption and related matters to the value of R2.83 billion during the financial year.

Cumulatively, R10.2 billion has been frozen over the past four (4) years of the five-year Medium-Term Expenditure Framework (MTEF) period. The NPA has recovered R2.55 billion in state capture cases alone.

An Integrated Task Force chaired by the Deputy National Director of Public Prosecutions (DNDPP): NPS was introduced early in 2022 to coordinate the response of the NPA and DPCI to the recommendations of the Zondo Commission. The establishment of an Advisory Panel of experienced prosecutors and investigators to hear and advise on cases has been a very successful initiative, increasing the confidence of prosecutors and investigators dealing with complex matters.

Following additional funding from National Treasury, the NPA establishment was increased from 4 967 to 5 353. The capacitation of specialised units, especially the SCCU and the ID, remained a priority as a response to the Zondo Commission. The filling of the Aspirant Prosecutor posts and newly appointed Prosecutors allowed for more experienced staff to be promoted to specialised areas such as the ID, Specialised Commercial Crimes Unit (SCCU) and Specialised Tax Units.

With the assistance of the Chief Justice and the Department of Justice and Constitutional Development (DoJ&CD)’s Capacity Enhancement Committee, the SCCU set up dedicated Specialised Commercial Crime Courts (SCCCs) in regions that did not have such courts. There are currently twenty-two (22) dedicated courts throughout the country with a footprint of dedicated commercial crime courts in all Provinces – Limpopo, North-West, Northern Cape and Mpumalanga previously in 2019 did not have such courts. SCCU Prosecutors increased from 105 to 225. Support staff stand at thirty-seven (37) with additional twelve (12) posts created between 31 December 2019 and 31 March 2023.

The additional SCCCs allowed the NPA to focus on backlog cases resulting in a 2% decrease (from 823 to 808) in the past financial year. This represents a 22% decrease from the end of the 2021 financial year (1 040 to 808).

In the 2022/2023 financial year, the DoJ&CD took steps to enhance six (6) of the SCCC with technological tools to enable virtual testimony and the receipt of digital evidence. This will go some way to avoiding postponements that may arise when witnesses, etc are not physically available. In the 2023/2024 financial year, a further two (2) SCCC will be enhanced in the same manner.

The focus on old cases had a slightly negative impact on the conviction rate as there were challenges with some of these cases. However, the additional courts did result in a 5.8% increase in the number of cases finalised, from 344 to 364. An increase in percentage of accused being sent to direct imprisonment from 29.2% in 2020/21, then to 34.9% in 2021/22 and now currently at 38.2% has also been significant in the fight against serious commercial crimes. Furthermore, an increase in compensation orders granted, from 39 in 2020/21 to 65 by the end of March 2023, was also noted.

The SCCU actively participated in the Fusion Centre, which serves as a good example of stakeholder collaboration. As a result, thirty-four (34) cases of fraud and related offences related to COVID-19 and South African Social Security Agency grants have been enrolled in the past year.

On the Anti-Corruption Task Team (ACTT) Priority List of identified cases, seventy-nine (79) cases are enrolled with 363 accused (21 enrolled in High courts). Nineteen (19) of these cases are already partly heard.

With effect from 1 April 2022, a Special Director of Public Prosecutions responsible for the General Prosecutions and Specialist Tax Component portfolios was appointed in the NPA. The regional capacity of the Specialist Tax Component has increased in the past financial year. The approved establishment throughout the country has grown to hundred (100) posts, of which eighty-five (85) are filled. The upward performance trajectory of the Unit continued. Prosecutors finalised 138 cases and achieved a conviction rate of 96.4%. This success is underpinned by the component’s ability to attract and retain highly experienced staff.

The impact of COVID-19 during the 2020/21 financial year can be seen in the Table below. However, since middle of 2020, a remarkable improvement in all areas of corruption and fraud related matters has been recorded.



Although significant impact can already be seen, a lot of work is still in progress with refinement and changes to be effected. The ID still needs to broaden its establishment and be capacitated as a permanent structure. I have already approved Regulations that bestow peace officer powers on ID Investigators. These Regulations are significant as they provide investigators with the necessary powers to conduct their work prior to arresting suspects.

Details of specific inroads to arrests, prosecutions and convictions will be released in the Annual Report of the National Director of Public Prosecutions.

Over and above the progress noted by the NPA, from a policy and legislative perspective, I have recently released the discussion document on whistle-blower protection which contains far reaching proposals to amend the Protected Disclosures Act, 2000 (Act No. 26 of 2000) and the Witness Protection, 1998 (Act No. 112 of 1998).

The definition of occupational detriment should be expanded to include persons who are not employees but who have disclosed in terms of the PDA.

* ‘Occupational detriment’ should be changed to ‘detrimental action’ or improper conduct to avoid a narrow interpretation of who may make a disclosure.
* Improved measures to keep a protected disclosure confidential where information might identify the discloser.
* The creation of a reverse onus where any conduct or threat against a whistleblower is presumed to have occurred as a result of a possible or actual disclosure that a person makes.
* The creation of an offence where a person uses force, coercion, threats, intimidation, or any other coercive means against another person with intent to prevent that person from, or influence that person to refrain from, making a disclosure.
* Creation of a mechanism for the provision of legal assistance to whistleblowers.
* Proactive measures by appointing a “whistle blower champion” who is responsible for ensuring and overseeing the integrity, independence and effectiveness of the firm’s policies and procedures on whistleblowing; and to establish, implement, and maintain appropriate and effective internal arrangements.
* The creation of a fund for whistleblowers. This will assist whistleblowers who have been dismissed, and who face severe financial hardship in meeting their basic needs and that of their dependents.
* Make it an offence if a person or body does act upon a protected disclosure after it has been made to it.
* Protection by the state to whistleblowers and their immediate family members in instances where their lives or property is endangered.
* Inclusion of whistleblower in the definition of witness in terms of the Witness Protection Act.

Parliament has also introduced legislation through the Judicial Matters Amendment Bill, 2023 to amend the section 34 of the Prevention and Combatting of Corrupt Activities Act, 2004 to hold the failure by members of the private sector or incorporated state-owned entities to prevent corrupt activities by creating a criminal offence in that regard.

Legislation has also been drafted to create amend the National Prosecuting Act, 1998 to make the Investigating Directorate a permanent entity instead of one declared by the President by way of a proclamation.

The Department of Justice and Constitutional Development is also finalising the review of the anti-corruption architecture of South Africa, with a view to introduce legislation to further strengthen the fight against corruption.