



13 February 2012

PUBLIC SERVICE AND ADMINISTRATION

A PUBLIC SERVICE AND ADMINISTRATION PERSPECTIVE ON THE 2012 STATE OF THE NATION ADDRESS

1. Introduction

The President of the Republic delivered the State of the Nation Address on 09 February 2012. He highlighted issues that the Fourth Parliament should conduct oversight on, as well as the priorities that the new Government has identified. This paper will highlight the priorities concerning the Public Service and Administration sector.

The key strategic areas identified in the State of the Nation Address are as follows:

- Meeting previously set target of 2% representation of people with disabilities in the public service.
- Accelerating the fight against corruption.
- Improving the performance of the state.
- Reviewing the entire state procurement system to ensure better value for money.
- Working with various provinces to improve governance, systems and administration.

2. IMPACT ON PUBLIC SERVICE AND ADMINISTRATION

2.1. Meeting previously set target of 2% representation of people with disabilities in the public service

As at June 2007 disability representation was 0.2 per cent in the public service, this was after the 2005 target which aimed at 2% representation of people with disabilities. As at 31 December 2010, the representation of people with disabilities in the public service was still at 0.23%. It is regrettable that the public service has paid lip service to this policy matter: It is high time that the public service devoted its urgent attention to this issue. The Portfolio Committee is aware that Cabinet reviewed the target date to address gender and disability issues and extended it to March 2010. But this target date has come and gone and the Committee is of the view that these targets have not been met, yet again. The following table illustrates this scenario.



Table 1: Staff complement with statistics on disability in the public service

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2.2. Accelerating the fight against corruption

The anti-corruption campaign is an ongoing process. Each year the State of the Nation Address identifies anti-corruption as a programme of action because criminality becomes more sophisticated on a daily basis. The Public Service Commission (PSC) had indicated on numerous occasions that the submission rate by the due date is unsatisfactory. There was, however, a 20% increase in the 2010/11 financial year as compared with the 2009/2010 financial year and it is the highest submission rate in the past 4 years. The disclosure forms received by the due date of 31 May for the last four financial years are as follows:¹

2007/2008	-	48%
2008/2009	-	49%
2009/2010	-	47%
2010/2011	-	67%

The status of disclosures in 2011, as at 01 September, indicates considerable improvement. But the ideal situation for financial disclosures should always be 100%. Failure to disclose financial interests by civil servants, especially the senior management service (SMS), amounts to corruption because it is not possible to detect and prevent the flouting of procurement procedures without knowing who has financial interests in which organisation. The said improvement is reflected in Table 2 as follows:

Table 2: Compliance with the financial disclosure framework: financial year 2010/2011

¹ Public Service Commission (2011).



DEPARTMENT / PROVINCE	MEMBERS	FORMS RECEIVED	OUTSTANDING	RECEIVED
National Departments	4805	4031	774	84%
Eastern Cape	629	526	103	84%
Free State	317	300	17	95%
Gauteng	743	651	92	88%
Kwazulu-Natal	529	487	42	92%
Limpopo	487	463	24	95%
Mpumalanga	317	290	27	91%
Northern Cape	221	173	48	78%
North West	294	232	62	79%
Western Cape	329	329	0	100%
OVERALL PROVINCIAL SUBMISSION	3862	3447	415	89%
COUNTRY TOTAL	8667	7478	1189	86%

Source: Public Service Commission, 2011

In the 2011 State of the Nation Address, the President of the Republic reported that a "Special Anti-Corruption Unit has been established in the Department of Public Service and Administration to handle corruption-related disciplinary cases involving public servants".² The State of the Nation Address of 2011 had highlighted that corruption in relation to civil servants illegally benefitting from housing subsidies and social grants was rampant.

However, it is gratifying that financial recovery is being made by the Special Investigations Unit (SIU), as this Unit has recovered about R44 million by 2011 already. In the Strategic Plan 2010-2014, the Department of Public Service and Administration had undertaken to implement the Public Service Anti-Corruption Strategy. The Department also undertook to revise and institutionalise this strategy in the 2011/12 financial year, with a view to evaluating same in 2013/14.

It is important to note that the partnership against corruption in South Africa was established on 15 June 2001 in the form of the National Anti-Corruption Forum (NACF). The NACF was established to combat and prevent corruption, build integrity and raise awareness about corrupt activities. Furthermore the NACF is comprised of three sectors, namely civil society, business and government. Each sector is represented by ten members nominated by their respective constituencies. The Forum is committed to:³

- Contributing towards the establishment of a national consensus through the co-ordination of sectoral strategies against corruption.
- Advising government on national initiatives on the implementation of strategies to combat corruption.
- Sharing information and best practice on sectoral anti-corruption work.
- Advising sectors on the improvement of sectoral anti-corruption strategies.

² Zuma (2011).

³ National Anti-corruption Forum website (n.d.).



Regarding the partnership against corruption, it is disturbing to realise that the public service with which a partnership is forged, sometimes shows a lack of commitment in rooting out corruption. Officials who commit corrupt activities that warrant a specific action sometimes get away with it. The PSC reported in 2011 that “departments tend to be lenient in imposing disciplinary sanctions against corrupt officials found guilty of fraud and corruption. Apart from the internal disciplinary procedure which departments have to follow in cases of fraud and corruption, departments are required to report offences relating to fraud and corruption involving an amount of R100 000 or more, to the South African Police Service in terms of section 34(1) of the Prevention and Combating of Corrupt Activities Act, 2004. It is important to note that section 34(4) read with section 34(1) of the Act, expresses a zero tolerance approach to corruption and corrupt activities”.⁴

2.3. Reviewing the entire State procurement system to ensure better value for money

In some departments tender procedures are still flouted by officials. For instance at the South African State Information Technology Agency (SITA), some departments were, over the years, allowed to tender with SITA without signed service level agreements. The Auditor-General keeps reporting on these matters in certain sectors of the public service. At SITA alone, the following anomalies had happened in recent years:

- The invitation to tender occurred without an approved business case.
- The business cases did not include a budget for the required goods and services.
- A procurement schedule for the execution of a request to bid was not submitted to the designated government official for approval.
- Bid responses received after the approved bid closing date were still evaluated.
- The form for the Declaration of Interest was not completed and signed at meetings.
- The information used in the evaluation reports did not correspond with bid responses submitted by the bidder.
- The list of preferred suppliers was ignored and quotations requested from un-listed suppliers.

Parliament passed the Public Finance Management Act (PFMA), 1999 (Act No. 1 of 1999) (as amended by Act No. 29 of 1999) as one of the most important pieces of legislation. The Act

⁴ PSC (2011).



promotes the objective of good financial management in order to maximise service delivery through the effective and efficient use of the limited resources.

The key objectives of the Act are summarised as follows:

- Modernising the system of financial management in the public sector.
- Enabling public sector managers to manage, but at the same time be held more accountable.
- Ensuring the timely provision of quality information; and
- Eliminating the waste and corruption in the use of public assets.

The Act, which came into effect from 1 April 2000, gives effect to sections 213 and 215 to 219 of The Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) for the national and provincial spheres of government. These sections require national legislation to establish a national treasury, to introduce uniform treasury norms and standards, to prescribe measures to ensure transparency and expenditure control in all spheres of government, and to set the operational procedures for borrowing, guarantees, procurement and oversight over the various national and provincial revenue funds. The PFMA adopts an approach to financial management, which focuses on outputs and responsibilities rather than the rule-driven approach of the previous Exchequer Acts. The Act is part of a broader strategy on improving financial management in the public sector.

The National Treasury has a definite policy on how procurement processes are to be conducted and in addition, the people dealing with processes are required to meet certain standards. All government staff associated with procurement, particularly those dealing directly with suppliers or potential suppliers, are required to:⁵

- Recognise and deal with conflicts of interest or the potential thereof.
- Deal with suppliers even-handedly.
- Ensure that they do not compromise the good standing of the State through acceptance of gifts or hospitality.
- Be scrupulous in their use of public property; and
- Provide all assistance in the elimination of fraud and corruption.

The policy on procurement succinctly states that there should be guarantees in the awarding of service contracts. In this regard, all accounting officers/accounting authorities are required to adhere to the following strict guidelines regarding all procurement practices:

⁵ National Treasury (2003).



- Performance guarantees should be commensurate with the degree of contractual risk to which organs of State are exposed.
- In cases of large and complex contracts, it is advisable to call for bid guarantees to circumvent the submission of irresponsible bids.
- Performance guarantees should spread the cost of the risk of failure between the contracting parties and should be set at such a level that all the State's costs relating to such failure are likely to be recovered.

In this case, it should have been relatively easy to prevent fronting by small and large service providers. Shoddy work should have been easy to detect immediately at the point of assumption of contract to provide a service, rather than only checking on the issue of quality when the service had already been provided and paid for. A typical example is at the Department of Human Settlements, where many completed housing projects had to be demolished and started all over again as a result of shoddy work. However, it is highly appreciated that the State of the Nation Address has given a directive to government departments to review the entire state procurement system.

The concern of the national government over supply chain management systems is as a result of events that emanated in national as well as provincial departments. To highlight this matter, Cabinet issued the following press statement on the 5th December 2012:

*“Cabinet has been concerned about the state of financial management and governance in certain provinces for some time. Cabinet has received reports on trends in provincial under spending, overspending and challenges with supply chain management. The three provinces affected in varying degrees are Limpopo, Free State and Gauteng”.*⁶

It was reported that Limpopo alone had used up its R757, 3 million overdraft facility with the Corporation for Public Deposits (CPD). The CPD is the subsidiary of the South African Reserve Bank which facilitates banking arrangements that national, provincial governments and state owned entities have with the Reserve Bank within which they inter-lend to each other with the approval of the National Treasury. In light of these challenges, the Limpopo Government had requested from the National Treasury an overdraft facility of R1 billion so that it could pay the salaries of public servants.

It is highly appreciated that South Africa, as a state, was able to come up with reforming laws and policies within a short space of time after 1994. The challenge of Government is that the public service sorely lacks the ability to implement and comply with legislation and policies. If legislation and policies were fully and religiously implemented, the public service would have been an ornament of the liberation struggle. The following table indicates how the public service fares when it comes to set standards of good governance and financial management.

⁶ <http://www.gcis.gov.za/newsroom/releases/cabstate/2011/111205a.htm>



Table 3: Departments compliance against the specific standards ⁷

Evaluation cycle	Standards	Adequate Internal financial controls are in place	An operational performance management system is in place	A thorough risk assessment has been done	Fraud Prevention Plan	
					Plan is in place	% Strategies implemented
2009/10 evaluation cycle		52%	88%	86%	77%	53%
2010/11 evaluation cycle		64%	95%	91%	91%	52%
Average performance of 51 departments		58%	92%	89%	84%	53%

Source: PSC, 2011.

Table 3 above reflects fairly good compliance with specific standards of financial management in the public service. What is a concern is the quality of compliance, which is unsatisfactory. For instance, 84% of departments had a Fraud Prevention Plan but only 53% of the strategies of those plans were implemented. The public service can have all policies and management prescripts in place, but if these are not properly and adequately implemented, the ultimate outcome will always create space for the flouting of procurement processes.

2.4. Working with various provinces to improve governance, systems and administration

2.4.1 Context

In 2006, the South African Cabinet had realised challenges facing service delivery in the entire public service but mostly at the local government level. To this effect, on 31 May 2006 Cabinet took a decision to introduce measures to bring about the implementation of the concept of a “single public service”. The broad goal of establishing a single public service was ultimately about aligning and harmonising the administration of the machinery of the State across the three spheres so as to sharpen it in its orientation, thereby achieving improved co-ordinated public administration. Government was and is still of the firm belief that a public service and local government administration with harmonious systems, conditions of service and norms would reduce fragmentation and promote more efficient co-ordination between the different spheres of government.

⁷ PSC (2011).



Little progress has been made regarding the Public Administration Management Bill [B47-2008], the legislation charting the way forward for the establishment of a Single Public Service. This is due to the fact that the Bill was withdrawn by the Minister in 2008 for further consultation with the stakeholders. It was confirmed that after the consultation process and thorough interrogation and processing by Parliament, this legislation would become law and the Single Public Service would be established.

The Single Public Service concept is meant to address the following strategic objectives:⁸

- Creating a common culture of service delivery across the three spheres, based on the precepts of Batho Pele, in order to ensure a consistently high standard of service.
- Establishing common norms and standards for employment Single Public Service, including employment practices and employee relations frameworks and mandating arrangements
- Providing a mechanism for the transfer of functions and staff between institutions or spheres of government, within the framework provided by the Constitution and the Labour Relations Act.
- Providing for an anti-corruption strategy and standards of conduct for the Single Public Service.
- Creating seamless and integrated service delivery through the single window approach.
- Creating a single senior management service cadre, thereby facilitating the mobility of these managers within the Single Public Service
- Providing a framework for remuneration and conditions of service for the Single Public Service.
- Providing for a human resource development strategy for the Single Public Service and the development of an integrated skills database to support human resource planning.
- Interoperability of information communication technology (ICT) transversal systems, financial and human resource systems (e.g. Integrated Financial Management System).

Issues of corruption, integration, collaboration, supply chain management and weaker systems of management (financial and project) are meant to be addressed by the Single Public Service legislation. In case the legislation is not in place as envisaged to address these governance systems, the national government has a constitutional obligation to make an intervention in provincial administration by invoking Section 100 of the Constitution. The Section states as follows:

⁸ DPSA (2012).



“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 any 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 stating any steps required to meet its obligations; and*
- 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; or*
 - iv. prevent that province from taking unreasonable action that is prejudicial to the interests of another province or to the country as a whole”.*⁹

As a result of the Section 100 intervention, effective from 05 December 2011, the following events and processes took place:

- The Limpopo Provincial Government was placed under a section 100 (1) (b) intervention of the Constitution.
- The Free State was placed under section 100 (1) (a) intervention of the Constitution.
- The Gauteng Premier signed an agreement with the Minister of Health and the Minister of Finance to address financial management challenges in the Department of Health in Gauteng Province and other matters.
- Forensic investigations with strict timelines were instituted.
- Cabinet resolved that there should be consequences for any illegal conduct or maladministration that might be uncovered in the course of such investigation.
- MEC’s, Heads of Departments, Chief Financial Officers and any other appropriate official were supposed to be replaced by National acting deployees on a case by case basis.
- A monitoring committee under the leadership of National Treasury and comprising of the Departments of Higher Education and Training, Basic Education, Transport, Health, Public Works, Justice, and Public Service and Administration, was established. This committee was empowered to co-opt any other ministry as it deems appropriate.¹⁰

In the Limpopo Province, members of the National Executive assumed responsibility for the following departments in line with section 100 (1) (b) of the Constitution:

- Provincial Treasury.
- Education.

⁹ Constitution of the Republic of South Africa.

¹⁰ Adapted from GCIS (2011).



- Transport and Roads.
- Health.
- Public Works.

In the Free State Province with the agreement of the Premier, directives were issued in line with section 100 (1) (a) by the relevant members of the National Executive for the following departments:

- Provincial Treasury; and
- Police/Roads and Transport.

In Gauteng Province, the Department of Health was facing chronic problems with large accruals and other financial issues. The Ministers of Health and Finance were assigned the task to assist the Premier and MEC with financial management as well as supply chain management issues.

On the foregoing, it is evident that the decision by the President to prioritise the issue of working with various provinces to improve governance, systems and administration is not misplaced. The crux of the matter still lies in dealing with corruption, supply chain management, good project management as well as prompt political oversight.

3. IMPLICATIONS FOR PARLIAMENT IN 2012

3.1. Meeting previously set target of 2% representation of people with disabilities in the public service

Parliament will have to stamp its oversight authority regarding this matter. The Executive has been paying lip service to this issue since 2005. All the targets, previous and revised, the Executive had set itself to achieve have not been achieved. Parliament, through its Portfolio Committee on Public Service and Administration raises this issue every year. Parliament should begin at cluster level across the board to determine how far the targets have been met or not been met so that the public service will be tied down to specified measurable targets. Failure by the public service to meet newly set targets should warrant Parliament to impose a sanction regarding budget allocation on the Administration or Human Resource Management and Development, whichever is applicable. The budget allocation on either of these programmes should not be approved before measurable targets have been identified and set.

3.2 Accelerating the fight against corruption



On the 17th of November 2010, the Portfolio Committee on Public Service and Administration resolved to work closely with the Parliamentary Cluster on Governance and Administration, the Standing Committee on Public Accounts (SCOPA) and the Auditor-General to conduct oversight on anti-corruption practices across the public service. On the foregoing, it is advisable for Parliament to ensure that the following steps are carried out:

- Parliament should deal with the issue of corrupt practices in the public service at a Parliamentary Cluster level so that it is addressed by all sectors and by all parliamentary portfolio committees. As from 2011, the issue must therefore be addressed at the level of the Governance and Administration Cluster.
- Parliament must ask relevant Members of the Executive to harshly sanction the repeat offenders among its ranks regarding the lack of financial disclosure.
- Parliament must ask relevant Members of the Executive to harshly sanction repeat offenders from its ranks who flout tender and procurement procedures.
- Parliament must ask for an annual progress report regarding the newly established Special Anti-Corruption Unit of the Department of Public Service and Administration.
- Since supply chain management legislation prevents political influence and senior administration's subjectivity, Parliament must hold accountable the Executive for not imposing harsh sanctions on senior managers who bypass governing laws related to supply chain management.
- Parliament must ensure that good governance becomes normative in government by calling on the Executive to account and by making it hard for delinquent departments to get increased budget in the subsequent year, regarding poor governance.
- Parliament must ensure that the rule of law applies across the board, including the Executive, Public sector corruption thrives where laws apply to some but not others and where enforcement of the law is often used as a device for furthering private interests rather than protecting the public interest.
- Parliament needs to impress upon the Executive that anti-corruption strategies can never be static. Corruption alters its character in response to changing socio-economic, cultural and political factors. As these factors affect corruption, so does corruption affect them. As criminal activity becomes sophisticated, the agencies dealing with the combat of corruption must also come up with sophisticated strategies and measures.

3.3 Improving the performance of the state



There is a reasonable number of state institutions responsible for monitoring performance in the public service and spheres of government. Examples are the Public Service Commission (PSC), the Standing Committee on Public Accounts (SCOPA) [financial performance], the Auditor-General (financial performance), the Department of Public Service and Administration, the Department of Performance Monitoring and Evaluation and the Department of Co-operative Governance and Traditional Affairs.

Parliament must ensure coordination and collaboration of all the state institutions for monitoring performance in the public service and spheres of government. Collaboration can include shared oversight visits, study tours, meetings and information seminars as well as the utilisation of Parliamentary question times to the Executive. Parliament needs to ensure that the Executive carries out the evaluation of Heads of Department, a matter which had in the recent past been a concern to the Public Service Commission and the Portfolio Committee on Public Service and Administration.

For those Members of the Executive who fail to comply with this executive imperative, Parliament is within its constitutional right to lodge a letter of complaint with the Leader of Government Business, the Ministry for Performance Monitoring and Evaluation, where their Service Delivery Agreements are filed. From this process, a response should always be sought from both the Leader of Government Business, the Ministry for Performance Monitoring and Evaluation.

Parliament must ensure that not only the Senior Management Service (SMS) of the public service is exposed to the front office, through Project Khaedu, but also Members of Parliament. Members of Parliament must take it upon themselves to undertake inspection visits to service centres to observe how civil servants interact with the public, especially during the Project Khaedu period.

3.4. Reviewing the entire state procurement system to ensure better value for money

Parliament must seek detailed information from the National Treasury regarding the review of the entire state procurement system. Details would shed more light as to whether or not the review would include legislative amendment to the Public Finance Management Act or the emergence of entirely new legislation. Timelines must be sought by Parliament in order to ensure that budget allocations are spent fruitfully and that vested personal interests from officials are eliminated.

3.5. Working with various provinces to improve governance, systems and administration

Parliament must impress upon the Department of Public Service and Administration the need to table the long-awaited legislation on the integrated public service (Single Public Service). Also, Parliament must request for a detailed assessment of performance and evaluation of state departments and the Executive from the Ministry of Performance Monitoring and Evaluation. This



information must then be compared with the 2010 – 2011 State of the Public Service Reports from the PSC as well as Auditor-General's reports of the same period. The 2012 State of the Public Service Report can be a commissioned one to look specifically at governance and procurement systems as well as administrative systems. In this case, a comprehensive evaluation would be possible.

4. PROGRESS ON ISSUES RAISED IN THE 2011 STATE OF THE NATION ADDRESS

4.1 Filling all funded vacant posts in the public service

There was an improvement in the vacancy rate as at the end of March 2011. The average rate stood at 15.34% for the entire public service, and all departments indicated that it takes an average length of six months before a vacancy is filled. A few exceptions where the vacancy rate was high as at the end of March 2011 were at the following departments: Health (24.43%), Higher Education and Training (28.2%), Communications (28.6%), Economic Development (39.5%), Public Works (21.4%), The Presidency (32%) and Women, Children and People with Disabilities (77%).

4.2. Enhancing the fight against corruption

The fact that every year the State of the Nation Address has to include the fight against corruption is an indication that the rot in the public service is still continuing, if not worsening. An Inter-Ministerial Committee on Corruption was established in 2009 by Cabinet. Upon its establishment, the Committee was chaired by the Minister in the Presidency responsible for Performance Monitoring and Evaluation and Administration. It included the ministries for Public Service and Administration, Finance, Cooperative Governance and Traditional Affairs and Social Development.

In 2010 the Government established and launched a Special Anti-Corruption Unit (SACU) at the Department of Public Service and Administration. The Unit investigates, with a view to prosecuting, officials who fail to declare business interests, perform remunerative work outside the public service without permission and also solicit bribes in return for performing or not performing official duties as well as receiving grants or benefits unlawfully. It is incumbent upon Parliament to determine the progress made by this unit by soliciting an update report.

CONCLUSION

The Department of Public Service and Administration had some important achievements worth noting. It had demonstrated its desire to root out corruption by establishing the Special Anti-Corruption Unit to deal specifically with corrupt activities. The Department has made an undertaking to table the Single Public Service legislation in order to integrate systems to improve public service performance. Project Khaedu is one of the efforts aimed at improving the quality of service and it ensures that senior management comes down to the level of service recipient and a



public servant providing a service, in order to observe and understand holistically the challenges faced by those who provide a service and those who receive it.

Parliament needs to interrogate the sector analysis of the State of the Nation Address so as to follow up on the implications for the sector and to identify the problems encountered during the implementation of identified policy areas. This is crucial for the execution of the oversight function of Parliament. Parliament should also call upon Ministries and Departments to account on their mandate so that service delivery is not negatively affected.

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