

The National Government's Intervention in the Provincial Government: A Case of Limpopo Province in South Africa

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Abstract

This paper seeks to highlight whether the administration of the Limpopo Province by the national government was necessary, and whether there has been a difference (improvement) in terms of the audit findings before and after the intervention of the national government. The South African national government, through the national treasury, placed the Limpopo Province under administration in 2011 to ensure sound financial footing and enable the province to exercise proper financial management, fair and transparent procurement. They also sought to address poor assets management, over expenditure, violation of supply management regulations and deliver appropriate services at the correct costs. However, the 2012/13 audit findings in the Limpopo Province indicate that there has not been an improvement regarding the audit outcomes in the specified areas. This has happened after the national government took control of the province in terms of section 100 (1) (b) of the Republic of South African Constitution of 1996. Nine departments did not achieve 20% or more of their planned targets compared to five in the previous year. The paper concludes that the intervention by the national government in the Limpopo Province did not bring about the desired improvement. Even worse, there has been an overall regression of provincial audit outcomes from the results of past years.

1. Introduction

The main objective of cooperative government is to ensure that all spheres of government are committed to securing the well-being of all the people of South Africa and, to that end, must provide effective, transparent, accountable and coherent government for the entire Republic (Layman, 2003: 9). It is, however, important to ensure that the distinctiveness (constitutional status, institutions, powers and functions) of all spheres are safeguarded. The intergovernmental relations legislative framework provides that the national government exercises a degree of supervision over provincial governments, while provinces do the same to municipalities (Department of Provincial and Local Government, 2006:6). Supervision refers to an instance whereby one sphere of government can, if need be, make final binding decisions affecting another sphere. Section 40 (1) of the *Constitution of the Republic of South Africa* of 1996 (hereafter referred to as the 1996 *Constitution*) states that "government is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated" (Department of Provincial and Local Government, 2006:5). Ababio (2007:4) concurs that despite being a unitary state; South African's three spheres of governments are distinctive, yet interdependent and interrelated. The 1996 *Constitution* allocates government functions on either an exclusive or shared (concurrent) basis.

Although provinces are "distinctive", they exercise their powers and perform their functions within the regulatory framework set by the national government, which is also responsible for monitoring compliance with that framework and, if need be, intervening when constitutional or statutory obligations are not fulfilled (Layman, 2003:8). Municipalities are likewise subject to both national and provincial regulatory and supervisory powers. It is this relationship of regulation and supervision that defines how the three spheres are "interrelated"; provinces and municipalities exercise their distinctive powers within imposed frameworks and under supervision. However, before these interventions, there are different informal intergovernmental relations forums existing since 1996, one of which includes national ministers and their provincial counterparts in so-called MinMECs (Ministers and Members of Executive Councils) (Layman, 2003:13). Mathebula (2011:1420) posits that in order to have effective service delivery in South Africa, the intergovernmental relations system will forever and inherently be dependent on the state's capacity to co-ordinate policy, planning, budgeting, implementation, monitoring and evaluation among the three spheres of government.

Should any sphere of government be unwilling or unable to meet its obligations, the 1996 *Constitution* provides for a system of interventions, in terms of which the national government may intervene in provinces and provinces may

intervene in municipalities (Department of Provincial and Local Government, 2006:1). Section 100 regulates national interventions in provinces, while section 139 provides for provincial interventions in South African municipalities. This national intervention is done through the executive, which includes the president of the republic together with his/her cabinet. The executive may also confer powers on a particular minister responsible for provincial affairs to perform an intervention.

Section 100 (1) (b) of the 1996 *Constitution* mandates the national government to intervene by taking any appropriate steps to ensure fulfilment of a particular obligation if ever 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. Such an intervention may include assuming responsibility for the relevant obligation in that province by maintaining essential national standards or meeting established minimum standards necessary for the rendering of a service. However, intervention could be done through monitoring of provinces, though this is a limited form of intervention without immediate or direct consequences (Department of Provincial and Local Government, 2006:1). The successful implementation of a monitoring process may either prevent the use of the corrective measures or, if it is unavoidable, make only the least intrusive measures necessary. Monitoring expenditure is one way through which Parliament (either national and provincial) can track and respond to government performance during the financial year, and provides an important point for more detailed enquiries into policy outcomes and delivery (Ababio, Vyas-Doorgapersad and Mzini, 2008:11). Monitoring and evaluation plays a significant role as far as service delivery is concerned. It is the only way of tracking government's process in terms of achieving realistic performance targets.

This paper explores the challenges which existed in the Limpopo Province before the arrival of the administrators, and compares the performance of the province with the (2012/13 financial year) performance when there are administrators in the province. The paper further makes an argument that intervention in the Limpopo province has not produced positive results in that the audit outcomes of the province are not desirable.

2. When is the Time for Intervention?

The discretion to intervene should be exercised in terms of the general principles of intergovernmental and co-operative government which provides in section 41(1) of the 1996 *Constitution* that all levels of government should "respect the constitutional status, institutions, powers and functions of government in the other spheres" and "exercise their powers and functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere" (Department of Provincial and Local Government, 2006:5). While the national government may use intergovernmental forums such as the President's Coordinating Council and MinMECs to secure compliance with executive obligations through peer pressure in terms of section 32 of the *Intergovernmental Relations Framework Act* (Act 13 of 2005), the nature of these structures is that they are consultative forums with no executive decision-making powers. The action of such forums cannot legally bind a province.

One of the measures which could be implemented according to section 216 (2) of the 1996 *Constitution* is for the National Treasury to stop the transfer of funds to a particular province in the case of serious or persistent material breach of national measures relating to transparency and expenditure control in financial management. The Constitutional Court did not exclude the use of court proceedings as a measure of last resort (Department of Provincial and Local Government, 2006:7). Before issuing a directive, the national executive must give a province notice of its intention to do so, the reasons why it is considering doing so, and the opportunity to respond. Section 41(1) (h) (iii) of the 1996 *Constitution* stipulates that the principles of co-operative government provide a basis for the duty to consult before one sphere encroaches on the functional or institutional integrity of another sphere. A provincial legislature is tasked with the scrutiny of its provincial executive; it should be informed about the failure of its executive to fulfil its executive obligations. Section 100 also provides that notice of the intervention must be tabled in the National Council of Provinces (NCOP) within 14 days after the intervention has begun. The notice period commences the moment the national government actually assumes responsibility. Should the national executive fail to table a notice within the 14 days' period, it is assumed that the intervention becomes invalid on expiry of that period.

The legislative branch of government is responsible for law making, exercising oversight over the executive, facilitating public participation and promoting cooperative governance. Legislatures are mandated to ensure that laws passed are properly implemented to address the needs of the citizens (Madue, 2012:431). Woodrow Wilson wrote in his classic *Congressional Government* (1885) that "Quite as important as law-making is vigilant oversight of administration". Murray and Nijzink (2002) are also of the view that amongst other functions of parliament, oversight is one of those important ones in that it monitors the activities of the executive to ensure that they are carried out legally and according to legislative intent.

The NCOP may immediately commence its review process and may terminate the intervention by positively disapproving it. It is incumbent on the NCOP to afford the affected province the opportunity to make representation; it has a right to a hearing when its executive powers are adversely affected. The NCOP must also consider whether the requirements of section 100(1) (b) of the 1996 *Constitution* have been met? One of the fundamental questions to be asked by the NCOP before it approves or disapproves is: are the measures appropriate to correct and remedy the problem that lies at the root of the non-fulfilment of an executive obligation? (Department of Provincial and Local Government, 2006:10). As an intervention is intended to be a temporary and corrective measure, there should be regular reviews to ascertain whether the objective of the intervention has been achieved or not. On approval of an intervention, the NCOP should also stipulate the review period. The national administrators should keep the provincial legislature informed of their actions because the provincial legislature remains the 'highest authority' in the province, being the democratically elected representative organ with an oversight function of the executive. After its first approval, the NCOP may at any stage terminate the intervention by withholding its further approval. Nevertheless, in executing its regular reviewing function, the NCOP may conclude that the objectives of the intervention have been achieved and any further intervention is unwarranted. The intervention remains lawful until such time that NCOP withholds its approval.

The appointed administrators also continue to report to the national government about progress in the province. In fact, they continue to perform their responsibilities wearing their "national hat" because they have been appointed by the national government through the national treasury. The challenge arises when the main reasons for the intervention came continue to exist or have not been addressed after a year or so. While there has been some improvement as, stated by the Auditor General, most of the performance outcomes have not been achieved. Even the concerns raised by the Auditor General have not been addressed. Supply chain management regulations continue to be violated even when the administrators were in the province. Other challenges include the human resource-related problems, lack of skills and capacity (including financial management skills), procurement without relevant quotations and advertisement in the national or local newspaper.

Intervention is not always innocent. It may be motivated by either national or provincial politics. This may include a situation when the provincial administration leadership does not support the national leadership. In cases like these, even when the intervention is legitimate, there may also be a suspicion that it is due to political reasons. It is for this reason that this paper argues that the national intervention in the provincial administration in the Limpopo Province was not necessary because it did not yield positive results in terms of producing better audit opinions than before the intervention. A discussion of the reasons for intervention follows in the next section.

3. Reasons for Intervention

The national government provided, amongst others, the following as reasons for intervention in the province:

- **Supply chain management violations.** Tenders are awarded without bidding processes being followed (GCIS, 2012:5). According to Munzhedzi (2013:284), public sector procurement is associated with lack of proper knowledge, skills and capacity. It must, however, be noted that lack of skills and capacity cannot only be said to exist in Limpopo only, but in the entire public sector including municipalities (Ambe and Badenhorst-Weiss, 2011). Van Zyl (2006) also states that other challenges associated with supply chain management in the public sector include: a lack of appropriate bid committees, use of unqualified (without capacity) suppliers, passing over of bids for incorrect reasons; utilisation of the incorrect procurement process in respect of the thresholds; extensions of validity periods; and incorrect utilisation of the limited bidding process.
- **Dysfunctional budget sections.** The dysfunctionality may be because there is often inadequate planning, including in financial planning, and linking of the budget with demand (Ambe and Badenhorst-Weiss, 2011). Demand management plays a significant role particularly in supply chain management (Munzhedzi, 2013:284). Poor planning and budgeting have negatively affected the implementation of supply chain management (SCM).
- **Poor asset management.** There is no proper record about the existing assets of the province and the register is not updated timeously. Some assets are even duplicated in the asset register (Auditor General, 2013:37). Another challenge is to assign values to these assets and to record them, a process which is bound to become an accounting nightmare (Van Wyk 2006:28). There has not been verifiable documentation which serves as a proof the millions of assets that were purchased (GCIS, 2012:3).
- **Unauthorised expenditure.** According to *Public Finance Management Act* (Act 1 of 1999), this refers to expenditure other than unauthorised expenditure incurred in contravention of or that is not in accordance with

a requirement of any applicable legislation, including the *Public Finance Management Act*. Over expenditure refers to overspending of budgeted funds of an item. Unauthorised expenditure in the Department of Education (in the Limpopo Province) even went to as high as 2.2 billion rand. Over expenditure went as high as R293 billion (GCIS, 2012:3-4).

- **Irregular expenditure.** This refers to expenditure, other than unauthorised expenditure, incurred in contravention of or that is not in accordance with a requirement of any applicable legislation (RSA, 1999). Financial management is a constitutional requirement for all three spheres of government and also for entities created and established by these spheres (Craythorne, 2006:249). Public financial management must adequately control the level of revenue and expenditure and appropriately allocate public resources among sectors and programmes.

The 2012/13 audit outcomes indicate that the majority of the challenges which were provided by the ministerial task team in 2011 are still rife (Auditor General, 2013:54). The national administrators came to the province to address the very challenges (reasons for intervention) which have been discussed above. Having been there for this long (December 2011- to mid-2014), the administrators have not successfully addressed the preceding challenges in that majority of them are still in their original state or worse. Amongst others, the challenges which still exist include, but are not limited to:

3.1 *Quality of submitted financial statements*

The best practices in the 2010/11 and 2011/12 financial years could not be sustained in the 2012/13 financial year as financial statements submitted for auditing contained material misstatements (Auditor General, 2013:59). Some departments even failed to submit their financial statements for review to the audit committee prior to submission to the office of the Auditor General of South Africa. Even worse, some departments' financial statements were not reliable enough to be analysed (Auditor General, 2013:15). Reliable financial statements and reports assist in better decision making, ultimately impacting service delivery (Munzhedzi, 2013:289). Further, the preparation of monthly/quarterly financial statements ensures that shortcomings are identified and addressed timeously, consequently facilitating better audit outcomes at end of the financial year. Ababio *et al.* (2008:12) argue that financial reporting forms part of the budget control process and are a generally-accepted practical instrument for continuous internal financial control. Such reports should not only compare the actual spending with the estimates provided in the approved budget, but also compare the physical results (performance) with the budget objectives. The financial reports should not only identify deviations and discrepancies but also the reasons for under-expenditure so that they could be corrected (Gildenhuys, 1997:53).

3.2 *Supply chain management*

The main finding regarding supply chain management in the province is that there is consistent non-compliance with supply chain management (SCM) legislative framework. The Auditor General (2013:14) also noted the following significant findings:

- Three price quotations not obtained/deviations not approved or justified.
- Competitive bids not invited and/or deviations not justified.
- Bids advertised for shorter period and/or deviation not justified.

The number of provincial departments which awarded contracts to its employees has remained unchanged from previous years while those which awarded contracts to close family members of employees have increased by 50% (Auditor General, 2013:31). There has been an increase of 31% in uncompetitive and unfair procurement processes at departments without reasons being provided. Some departments also amended or extended contracts without necessary approvals by relevant authority.

3.3 *Human resource management*

The average overall vacancy rate in the Limpopo Province is 22%; senior management is at 55% and finance units are at 23% (Auditor General, 2013:14). Of particular concern are the findings on procurement management, which indicates a regression, which is a reflection of the lack of requisite skills and competencies of the incumbents appointed in these positions. Lack of adequate skills often causes ineffective contract and procurement management results in massive losses and leaves the door open to fraud and corruption (Deloitte & Touche, 2012:1). Ababio *et al.* (2008:8) also concur that capacity and lack of skilled staff has negative consequences in realising the objectives of the organisation.

The most common findings on the management of vacancies and acting positions were senior management positions that were vacant for longer than 12 months as well as employees acting in positions for more than 12 months. The Auditor General (2013:14) found that, in some cases, members of senior management did not sign performance agreements or middle managers were paid performance bonuses without signing performance agreements. Competencies of key officials and consequences for poor performance are part of the root causes which prevents the provincial administration from improving its overall audit outcomes.

3.4 Financial health

Several of the provincial departments continue to receive disclaimed audit opinions as their financial statements are not reliable enough to be analysed (Auditor General, 2013:15). Under-spending by departments on capital budgets and conditional grants is also a trend in the province. This is reflected by the fact that expenditure for majority of public sector departments exceeded revenue. A huge amount of debt has not been recovered. Kanyane (2011) admits that revenue collection is one of the biggest challenges facing the public sector, particularly rural municipalities. Revenue collection challenge is often associated with lack of skills in government. Deloitte and Touche (2012:2) are also of this view and suggest that lack of sound financial management will have a direct adverse impact on service delivery as there is a strong correlation between sound financial management and effective service delivery. In some cases, these challenges are due to revenue that is overstated, resulting in unrealistic budgets (Kanyane, 2011).

4. Conclusion

According to Deloitte and Touche (2012:1), accounting officers are not taking reasonable steps to prevent unauthorised, irregular and/or fruitless and wasteful expenditure. This failure cannot only be attributed to poor financial skills, but to a lack of commitment and disregard for financial management and supply chain legal framework and a lack of accountability and good stewardship of public (financial) resources (Munzhedzi, 2013:284). Accountability refers to a process that is hierarchical and flows from one who confers responsibility to one who must execute the responsibility and account to the former (Ababio, 2007:5). This is a function of internal control, which involves not only the internal check and internal audit, but the whole system of controls, financial and otherwise, established by management for purposes of effecting accountability (Visser, 2003:111). It, therefore, means that the provincial legislature may play a significant role in ensuring accountability by the provincial executive other than being spectators and rubber stamper of the decisions taken by the national executive (the cabinet). The assertion made by Ababio (2007:4) that both politicians and appointed public officials should be answerable to their constituencies and superiors is true. However, the superiors, in this case are not the national cabinet, but the provincial legislature.

5. Recommendations

It is recommended that section 100 of the 1996 *Constitution* be amended to reflect a constitutional imperative, so that it may give more powers to the provincial legislatures, instead of the national executive. The national executive and the NCOP should only be given advisory powers. The provincial legislature should be the only statutory body that can intervene whenever necessary in the administrative functioning of the province. Section 41 of the 1996 *Constitution* which provides that both the national, provincial and local government should be autonomous of each other, should supersede section 100 in its current format. However, if such powers were to be delegated to the provincial legislature, Madue (2012:431) argues that it must have some capacity to monitor the executive and the executive needs to be willing to comply with legislative enactments.

Oversight is an important legislative means of ensuring that laws passed are implemented, approved budgets well spent and the executive held accountable in accordance with democratic principles. However, legislatures often lack the independence, expertise and resources to perform their oversight role (Madue, 2012:432). As a result, the importance of exercising oversight over the executive tends to be overlooked and treated as a mere compliance activity. Section 114(2) (b) of the 1996 *Constitution* stipulates that provincial legislatures are to maintain oversight over the provincial executive authority and any provincial organ of state. In other words, the executive authority is constitutionally accountable to the legislature, which means that government departments are obliged to account for the services they render to the citizenry. It is, therefore, suggested that provincial parliament, be beefed up to effectively address inadequacies, ineffectiveness and incapacities of the provincial executive and section 100 of the 1996 *Constitution* be amended to give more intervention powers to the provincial parliament, rather than the national executive.

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