



MONITOR

A monthly briefing sheet to keep CBOs informed about what is happening in Parliament

Did you know?

Cooperatives wishing to apply for grant funding and capacity building assistance should contact the Social Housing Regulatory Authority, through the Department of Human Settlements: (012) 444 5223.

The Department of Rural Development and Land Reform

had originally expected that land restitution would be resolved by 2009, but claims still persist and funding was moved over from the land reform programme. National Treasury did not approve this Department's plans for funding of new programmes and restitution grants, because of underspending in land reform. The Department fears that it will not be able to honour its commitments of R5.4 billion. The Department and National Treasury must now quantify their requirements over the next three years and report back to Parliament.

The South African Institute of Professional Accountant has published an article on its website on the implications of the new Companies Act on public benefit organisations. It is accessible at www.saipa.co.za/articles/167389/public-benefit-organisations-under-new-companies-act

Our lead story

The Public Service Commission recently presented an analysis of the most common instances of corruption, and its related risks, in the Public Service. The National Anti-Corruption Hotline was set up to try to stop instances of corruption, by allowing callers to report incidents, to investigate any alleged corruption, and then to provide feedback to whistle blowers and provide the information to institute disciplinary action and criminal prosecutions. By 30 June 2010 there had been 7 766 cases of alleged corruption reported to the Hotline. The largest number of allegations related to fraud and bribery (1 511 cases) and the mismanagement of Government funds (985 cases). Other reports included abuse of Government resources, identity document fraud and procurement irregularities. However about 63% of cases still had to be finalised.

The Public Service Commission found that although 50% of the departments assessed did have clearly written objectives on fighting corruption, they actually put little emphasis on investigating allegations of corruption. Fraud prevention plans not only differed from one department to another, but were inadequately implemented. There were often insufficient staff allocated to anti-corruption units, and sometimes those staff lacked practical knowledge. The Public Service Commission and Parliamentarians criticised departments for being too lenient in imposing disciplinary sanctions against officials found guilty of fraud and corruption, and not bothering to refer the cases on for criminal prosecution. Many officials, when they became aware that they were being investigated, simply resigned and moved to other departments, and their cases were not pursued. Most departments were taking more than 60 days to finalise even minor disciplinary cases, and because officials being investigated were suspended with full pay, the cost was huge. The Public Service Commission called on departments to do unannounced procurement audits of selected projects, to identify weaknesses and malpractices in procurement processes, and to report all fraud and corruption cases to SAPS. It also recommended that Heads of Departments must be held accountable if disciplinary enquiries were not finalised within the 60-day period, or a reasonable additional time for complex cases, and more must be done to protect whistle-blowers.

The Public Service Commission also noted that although the Financial Disclosure Forms procedure required all senior managers to submit details of their financial and business interests outside of their public service employment, this was not always done, and no senior managers had been charged with misconduct for failing to submit the forms, despite Ministerial reminders. A sample investigated by the Public Service Commission suggested that about 20% of all senior managers were potentially likely to have conflicts of interest. The mere holding of other interests was not objectionable, but if private interests were not identified, and then did develop into actual conflicts, they could not be managed. Some Heads of Provincial departments shared business interests with heads in other departments, and would refer work to each other. This was of concern because they had the authority to disburse public funds, to authorise programmes and had access to privileged or sensitive information. The identification of risks would ensure greater honesty and promote professional ethics. The main problem was that the Public Service Commission had no disciplinary power over departments. Parliament may have to deal with by amendment to legislation.

Recent Work in Parliamentary Committees

The **Standing Committee on Appropriations** has been investigating the spending of government departments in the fourth quarter of the 2010/11 financial year. A recurring theme across most departments has been under-expenditure of budget allocation, which was apparent in all but three national departments. The explanations for this include delays in the implementation of capital works projects, vacancies in posts, interest costs, funds withheld from provinces, slow spending on social assistance grants and delays on grant requests. This Committee suggested that National Treasury should intervene to address chronic underspending, because it affects service delivery. Of particular concern was poor performance on the Infrastructure Grant for Provinces (IGP), a conditional grant intended to supplement the existing infrastructure budgets for education, health, roads and transport, and on the Neighbourhood Development Partnership Grant (NDPG), which was intended to increase the quality of life in townships. The Department of Human Settlements was criticised for only 66% spending on the Rural Housing Infrastructure Grant and under-spending on sanitation, and it was noted that some provinces spent but did not achieve their targets. The Department of Health underspent on AIDS tenders and provision of condoms, despite motivating for more funds. The Department of Social Development under spent on social assistance grants. The Department of Public Enterprises underspent mostly in its transport programme. The Department of Water Affairs was struggling to fill vacancies, and delayed in starting on drought intervention programmes. In education, there was poor spending of library grants, which are critical to literacy skills.

The Portfolio Committee on Health has been briefed on the tariff structures of private hospitals. The importance of the private sector has been acknowledged, although it has been suggested that utilising spare capacity in these hospitals for public purposes may help to bring costs down. The Council for Medical Schemes is concerned with cost containment as well as governance of medical schemes. Normal competition does not apply in the healthcare market, and asymmetry of information makes pricing very difficult, but there is a need to protect vulnerable members of medical aid schemes. The Hospital Association of South Africa addressed some general misperceptions and breakdowns of hospital costs, and indicated that it might not be averse to regulation, provided that all price determinations were taken into consideration, and that a scientific methodology was used to determine tariffs, with pricing overseen by an independent regulator. This Committee also took a preliminary briefing from the Department on the proposals for the National Health Insurance (NHI), but the Committee is still busy asking further questions and hearing more on a number of issues, including costs. The NHI proposals will be covered in a future newsletter.

The Portfolio Committee on Labour recently held a seminar on decent work for domestic workers. The International Labour Organisation had adopted Convention C189 on Domestic Work, and Resolution 201, on 16 June 2011, although these must still be ratified by the South African Parliament. Seminar participants said that the important of domestic work must be recognised and emphasised. Domestic workers, by looking after homes and families, allow their employers to engage in other work. Domestic workers – most of whom are female – can be empowered and allowed better economic participation and support for their own families by imposition of decent working conditions and pay. Special protection is needed for domestic workers whose age, nationality, live-in status and one-on-one relationship with their employers can make them particularly vulnerable. Domestic workers should enjoy the same basic labour rights as all other workers, including freedom of association, the right to collective bargaining, the right to data confidentiality and privacy. It has been suggested that labour inspectors should monitor the situation. Problems that were highlighted included the fact that “domestic work” covered a variety of functions, that occupational health and safety legislation do not apply in this sector, and that monitoring mechanisms are inadequate. Many foreign workers reported that their employers would not return their documents and passports. There is also no retirement fund, and there is fragmentation in the sector. Further work is still needed on occupational health and safety, as well as discussion on the position of labour brokers.

The Portfolio Committee on Communications asked some very searching questions of the Independent Communications Authority of South Africa and the Department of Communications. The Minister had said that there would be 100% wireless broadband penetration by 2020, but most of the rollout to date had been the result of private investment. The Committee felt there should be more focus on the role of municipalities in Set Top Box manufacturing, and more benefit to individuals. It criticised the insufficient focus in the rural areas, especially on broadband and unbundling of the local loop, and suggested that operators were benefiting at the expense of the poor. Members of Parliament asked whether the SABC would be able to handle the increased competition resulting from the Digital Migration, and if it would be affordable. They were disappointed that, despite earlier announcements that the training entity NEMISA would be offering training to community radios, this had now been abandoned. The Committee insisted that concerns about possible loss of frequencies by community radio stations after digital migration must be addressed, and also stressed the need to bridge the digital divide between the rural and urban areas. ICASA said it was considering imposing penalties for under-utilisation, and capping the spectrum, or reclaiming unused spectrum. The Committee for its part said that more stringent penalties should be imposed on operators who failed to meet their universal access obligations.

Reports from Departments and Entities to Parliament

The Department of Social Development reported on successful development of a consolidated management guideline for non-profit organisations (NPOs), a framework for institutional arrangements and capacity in the provinces and an NPO registration and compliance system and work model. This Department had developed a code of good practice for NPOs and finalised the NPO governance (Norms and Standards) document. The NPO funding guideline was to be implemented by all provinces for the 2011/2012 financial year. The Department had managed to register all NPOs within two months of application, and had also managed to get 30% of NPOs to comply with the NPO Act.

The Department of Human Settlements has revived the National Sanitation Task Team. Although the backlog in access to sanitation was reduced to 2.7 million households in 2010, there are still another 2.3 million informal households requiring sanitation. Almost 150 000 jobs were created in this field, many through the National Youth Service Training Programme. There are still problems with ineffective collaboration across and within departments, lack of alignment of sector plans and strategies, old infrastructure, poor maintenance and non-aligned reporting systems. The Department also acknowledged inadequate education of users, and the need to offer more support for farm schools and clinics. Pilot projects in ecological sanitation, directing human waste to fertiliser, were run in Kimberley and Buffalo City, but communities were unwilling to participate. MPs urged better community education, using community radio stations, more investigation of other technologies, and the need to help those with disabilities. They also insisted that it was up to this department's officials to ensure that there was proper collaboration and budgeting.

The 2011 Annual National Assessment of school learners has been released, based on studies of Grade 3 learners at 827 schools, and Grade 6 learners at 840 schools. Over half did not achieve the 35% pass rate, with very few reaching 70% or higher. Learners performed relatively well in grades 1 and 2, because of expansion of Grade R, the introduction of standardised learning materials, and improvements in literacy and numeracy teaching. However, they struggled with the transition from mother tongue to second-language teaching. Both this and the backlogs from former years would hopefully be addressed by the Curriculum Revision process. Principals and Deputy Principals must now enter into performance agreements, with clear targets that measured academic performance and quality of management. Only some schools had introduced remedial measures from March, as required. The Accelerated Schools Infrastructure Delivery was trying to ensure that all schools would function properly by 2014, but revitalisation of technical schools was still lagging behind. All Gauteng and Western Cape should have basic services by March 2012, and remaining provinces should get electricity, sanitation and water in all schools by 2013/14.

The South African Social Security Agency (SASSA) has reported a steady increase in the demand for services. SASSA does not have sufficient human or office capacity, and most of its systems are still manual. Plans for improving service delivery include more funding for standardisation and coordination of services across provinces, better training for staff, more permanent staff appointments and improvement of conditions at service and pay points, including one-stop services. SASSA needs better integration with other departments who assist with social benefits, like Health and Education. There are ongoing efforts to improve filing systems, align the database with other agencies, introduce biometric access and chains of automated processes, and encourage beneficiaries also to use services for social relief of distress and early childhood development, which are available at clinics. Negotiations with the staff unions hope to achieve permission for extended working hours, to ensure that beneficiaries are assisted on the day they first attend the offices. Management of records and storage is improving. The Special Investigating Unit is continuing to investigate the fraud from previous years.

The Department of Labour, which is also represented on the Immigration Board, advised Parliament that South African graduates, even those with scarce skills such as engineering, often remain unable to find jobs, whilst highly-skilled foreigners had been given permits to seek the same jobs. Companies are still recruiting without discussing matters with the Department of Labour. The value of foreign skills had to be recognised, but one of the major problems is that, although the current labour laws embrace the spirit and intentions of the International Labour Organisation conventions, there is no specific legislation dealing with migrant and immigrant labour, to balance foreign contributions against rights and expectations of nationals. There is a need to balance screening, and securing of borders against threats, against facilitating movement of people and goods. Problems with integration of systems have resulted in some individuals managing to access multiple benefits under assumed identities. The new Employment Services Bill should strengthen the existing employment service functions that remained within the Department of Labour, and cater for labour migration, as well as new requirements for skills transfer to locals. Further possible amendments might include mandatory transferring of information from Home Affairs passenger processing forms, revision of permanent resident provisions, rationalisation of the permit regime, and issuing of intra-company permits for four years. Members of Parliament expressed concerns whether the regulations around illegal employment of migrants were being enforced, noted the huge influx of economic migrants, and urged the Department of Home Affairs to find a way to deal with the backlogs around asylum seekers.

Public hearings in Parliament

Acid Mine Drainage was discussed during public hearings in June. This is particularly serious in the Western Basin of Gauteng, following closure of mine shafts, although it was stressed that other areas could potentially be affected. Although there has been temporary treatment of water, to try to reduce acidity and improve the quality of the water spilling, a long-term solution is needed. Water levels in the Central and Eastern Basin are likely to start overflowing in two years time, and although there was no immediate danger to residents, there are concerns that the seepage could affect underlying dolomitic rock and affect water quality in rivers. All mines were urged to calculate the amount of grey water that the industry could use, and stop polluted water reaching the environment. Parliamentarians urged better coordination between the Department of Mineral Resources, mining communities and municipalities. They were concerned that although the Council for Scientific and Industrial Research had an Alkaline Barium Calcium process, which converted the acid mine drainage water into potable water, the Department of Water Affairs was reluctant to adopt it, partially because it would take some time to implement. Parliament asked the Department to look again at these proposals. R553 million had been budgeted for combating acid mine drainage in 2011. Private institutions had also contributed R78 million to finding long-term solutions. National Treasury was studying how other countries dealt with this problem. One possible option might be to have an acid mine water levy, together with penalties for water pollution. It was vital to set time frames and find permanent solutions, including desalination. The Chamber of Mines also urged government to find owners of mines and stop pollution.

The Walmart/Massmart Merger public hearings had for some time been postponed, pending the Competition Tribunal's ruling on the merger, but the Portfolio Committee on Economic Development decided, in July, that it should continue with the hearings. It did, however, emphasise that there could be no discussion around the conditions relating to the approval of the merger, which formed the basis for the appeal. The majority of submissions focused on the impact of mergers on employment, industrial development, local manufacturing and economic development. The Department of Economic Development said that because South Africa had an open trade regime, with lower aggregate tariffs, and because its trade policy was aligned with the industrial policy, there was unlikely to be a change in foreign ownership resulting from the merger. South Africa was seeking foreign direct investment that would help rebuild the productive sectors of the economy. Government would try to protect the public interest by ensuring that the merger did not undermine employment, industrial development, small business and firms controlled by historically disadvantaged individuals.

Public hearings on the Mining Charter started on 24 August. The Charter now includes health and safety issues and requires companies to improve housing and living conditions of mine employees. Parliament has already asked that women in mining should receive more attention.

In this sector, a Health and Safety Summit will be held in September and an HIV/Aids summit at the end of the year.

The Regulations for Interactive On-line Gambling will be discussed in public hearings that are set to commence on 2 September 2011.

Public hearings on the minerals beneficiation strategy will begin on 14 September 2011. The 1994 RDP White Paper, and the 1998 White Paper on Minerals and Mining Policy, had both emphasised the need for incentive structures to increase mineral beneficiation and employment, and to add more value to exports. Minerals accounts for 67% of all exports, and the mining industry employs about half a million workers. The new beneficiation strategy was adopted by Cabinet in June 2011. The main target markets for minerals are the developing economies. Although South Africa enjoys a large advantage over other countries in terms of natural resources, this must be translated into a competitive advantage, and South Africa must overcome current constraints around limited access to raw materials, shortage of infrastructure, limitations in research and development and lack of specialist skills. Ten commodities and five value chains (energy, iron and steel, pigment and titanium metal production, auto catalytic converters and diesel particulate, and jewellery fabrication) have been identified for a pilot project, and plans will be presented to Cabinet in September. The Department says it is likely that mining licence conditions would be amended to require a licensee to make a portion of local production available for local consumption.

The problems experienced by Medium and Small Enterprises in accessing funding were discussed recently in public hearings held by the Portfolio Committee on Economic Development, but the Report of that Committee still needs to be published.

An update on the progress of Bills and Acts can be accessed from the PMG website

A redrafted **Intellectual Property Laws Amendment Bill** is under consideration by a Task Team of the Portfolio Committee on Trade and Industry. There were problems with the previous version of the Bill, and those considering it noted that not even the World Intellectual Property Organisation (WIPO) processes on protection of indigenous knowledge systems are finalised or certain, so that it is not possible simply to base it on best practice elsewhere. The new draft now identifies specific issues requiring protection, and suggests that the current intellectual property system be used to protect indigenous knowledge within each sphere of the law. The Bill distinguishes between “hereditary” matters - such as the performance of a musical work, expression, term or design recognised by a community as having an indigenous origin and a traditional character – and “derivative” matters – which derive from a work taken from a particular community or owner. It is intended to set up a trust to have a custodial role, and, where a community dies out, the State will deal with the rights. Hereditary traditional intellectual property is unlikely to be able to be transferred. The Bill will also not have retrospective application.

The Basic Education Laws Amendment Bill has been adopted. It contains technical and substantive amendments aimed at aligning various pieces of legislation with the new educational dispensation resulting from the split, during 2009, into the Departments of Basic Education and Higher Education and Training. Some of the changes relate to the role of the principal, who must be a member of the school’s Finance Committee and part of the decision-making process of School Governing Bodies (SGBs), because it is recognised that availability of finance impacts on the work of the principal and the education of the learner. There will be restrictions on trade union or political party activity being conducted during school time, because teachers already had eight hours a year to engage in these activities. Loaning out of school property now needs to be approved by the MEC for Education.

The Constitution 17th Amendment Bill is under consideration by the Portfolio Committee on Justice and Constitutional Development, which has so far held public hearings, and heard the Department’s responses on some of the issues. This Bill proposes that the Chief Justice should be the head of the judiciary, that the various high courts should be converted into a single “High Court of South Africa”, that Magistrate’s Courts will be referred to as “Lower Courts” and that there will be a single line of judicial authority. It also proposes that the Constitutional Court would be the apex court for all matters, with the Supreme Court of Appeal as an intermediate appeal court. This may affect the position of some courts – such as the Labour Appeal Court and Competitions Appeal Court – as the court of final instance in some matters.

The Constitution 18th Amendment Bill, also under consideration by the Portfolio Committee on Justice and Constitutional Development, was drawn with the intention of addressing the national and provincial competency to make legislation in relation to education institutions. The aim was that education, at school level only, should remain a concurrent national and provincial legislative competence, but that tertiary education should be a national competence only. However, the wording of the Bill is ambiguous and there have been concerns that this might have the unintended consequence of making pre-school, as well as tertiary education, into a national competence only. The Department must still report back and the Committee consider the matter more fully.

The Gambling Review Commission Report has been briefly introduced but the Department of Trade and Industry will report more fully to the Portfolio Committee on Trade and Industry in the next few weeks.

The Department of Home Affairs has also introduced a transit visa for all foreigners who are subject to visa requirements when travelling from another country, through South Africa, to any of South Africa’s neighbouring countries. These transit visas will be processed within five working days. Many countries are visa-exempt. Although South Africa does not have visa waiver agreements with Nigeria, India, China and Angola, it does allow frequent travellers from these countries to have multi-entry visas.