

NATIONAL ASSEMBLY

QUESTION FOR WRITTEN REPLY

PARLIAMENTARY QUESTION NO: 129

DATE OF QUESTION: 21 FEBRURY 2020

DATE OF SUBMISSION: 6 MARCH 2020

Mr N Singh (IFP) to ask the Minister of Justice and Correctional Services:

Whether, given the high level of corruption in the Public Service and low levels of prosecution for corruption, he has considered the establishment of an independent corruption specific investigative and prosecutorial body to combat, investigate and prosecute graft in the Republic; if not, what is the position in this regard; if so, what are the further relevant details?

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REPLY:

Already, there is an existing independent corruption specific investigative and prosecutorial body, namely, the Investigating Directorate in the National Prosecuting Authority (NPA).

In this regard, the President, in terms of section 7(1) of the National Prosecuting Authority Act, 1998 (Act No.32 of 1998) (“the NPA Act”), on recommendation of the Minister of Justice and Correctional Services, Minister of Police and National Director of Public Prosecutions, proclaimed on 25 March 2019, the establishment of an Investigating Directorate in respect of the following criminal cases:

1. Common law offences of:

- (a) Fraud;
- (b) Forgery;
- (c) Uttering;
- (d) Theft; and
- (e) Any offence involving dishonesty.

2. Statutory offences including but not limited to contraventions of:

- (a) The Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004);
- (b) The Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998);
- (c) The Protection of Constitutional Democracy against Terrorist and Related Activities, 2004 (Act No. 33 of 2004);
- (d) The Public Finance Management Act, 1999 (Act No. 1 of 1999);
- (e) The Local Government: Municipal Finance Management, 2003 (Act No. 56 of 2003);
- (f) The Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001); and
- (g) Any other statutory offence involving dishonesty.

3. In addition, any unlawful activities relating to serious, high profile or complex corruption cases including but not limited to offences or criminal or unlawful activities arising from the following commissions and inquiry:
 - (a) The Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State promulgated under Presidential Proclamation No. 3 of 2018 published in Government Gazette No. 41403, 25 January 2018;
 - (b) The Commission of Inquiry into Tax Administration and Governance by the South African Revenue Service (SARS) established by Presidential Proclamation No. 17 of 2018 published in Government Gazette No. 41562 of 24 May 2018;
 - (c) The Commission of Inquiry into Allegations for Impropriety regarding the Public Investment Corporation established under Presidential Proclamation No. 30 of 2018. Published in the Government Gazette No. 41979 of 17 October 2018; and
 - (d) Any other serious, high profile or complex cases of corruption referred to the Directorate by the National Director in accordance with Section 28(1)(b) of the NPA Act.

The Head for the Investigating Directorate, Advocate Hermione Cronje, has been appointed, and the Investigating Directorate is functional.

It needs to be noted that, though the Investigating Directorate only deals with the high end corruption matters, the lower value corruption cases do, however, receive full attention as well through the normal processes. In this regard we have, for example, specialised courts to deal with serious commercial crime cases and corruption. They are called Specialised Commercial Crimes Courts (SCCCs), and are underpinned by dedicated prosecutorial Specialised Commercial Crimes Units (SCCUs) in the NPA and dedicated investigators from police (SAPS/ DPCI) side. The SCCUs and the SCCCs play an important role in dealing with corruption cases and in dealing with the investigation and prosecution of “graft”.

These measures are paying off dividends as NPA statistics indicate that 152 government officials were convicted for corruption or offences related to corruption in the first three quarters of the 2019/20 financial year, and a further 198 persons of private sector corruption. In 2018/19, 210 officials were convicted, and in the previous year 213 officials.

It needs to be pointed out that serious corruption matters are mostly complex and require significant investigations that take time. Fortunately, we also see lately, on a daily basis, media articles that mention cases of prosecution for corruption and convictions in that regard.

In an effort to fast track the recovery of funds lost to the state from corruption or irregular spending, His Excellency, President Cyril Ramaphosa has furthermore established a Special Investigating Unit (SIU) Special Tribunal in February 2019. This was done because of a need to fast-track the finalisation of matters that had been referred for civil litigation after the conclusion of an investigation. These are matters where the SIU would ordinarily have gone the normal High Court civil litigation route to have government contracts declared invalid or set aside.

Fast-tracking these matters through the Special Tribunal is currently enabling the SIU to recover monies and or assets lost by state institutions through irregular and corrupt means; thus ensuring that those who are responsible for the loss of monies and or assets by state institutions are held accountable. The litigation process includes both public and private sectors, persons and entities. Such civil proceedings will be based on the outcomes from the investigations by SIU.

Judge Gidfonia Mlindelwa Makhanya has been appointed as President of the Tribunal. The Special Tribunal is fully functional and is able to adjudicate any civil proceedings brought to it by the SIU, either in its own name or on behalf of a state institution or interested party, which stems from an SIU investigation.