

The Budget and Legislature Oversight

The Eastern Cape Budget Crisis: A Failure of the Legislature?

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Introduction

1. What does the constitution say about the role in the budget process
2. What does the PFMA require of legislature oversight bodies
3. What happens in practice
4. The health budget crisis in the Eastern Cape
5. What has the provincial legislatures response been
6. Why has the legislature been so ineffective
7. What opportunities does the Money Bills Amendment procedures Act provide

1. Constitutional obligations

- + Section 114 (2) demands that a provincial legislature must provide for mechanisms to ensure that all provincial executive organs of state in the province are accountable to it
- + Section 115 states provides for the summoning of any government official or public institution to account for performance
- + Section 120 (3) rewires that 'A provincial Act must provide for a procedure by which the province's legislature may amend a money Bill

2. The PFMA

- + The Public Finance Management Act (PFMA), 1999 gives effect to financial management
 - + greater implementation responsibility on managers in the public service makes them more accountable for their performance.
 - + In the first instance, it is left to the Minister/ MEC or the Executive (Cabinet/EXCO) to resolve any management failures – however,
 - + National Assembly and provincial legislatures are vested with the power to oversee both the administration and the executive.

3. In practice this means...

- + Legislatures through relevant committees review budgets, expenditure reports and annual reports
- + Produce oversight reports
- + Debate budgets and annual reports
- + Call the executive to account for performance in legislature or comm meetings
- + Make recommendations on what needs to be fixed and how
- + But, no real power to compel the executive and administration to follow recommendations or even take appropriate action themselves

4. The EC health budget crisis

- + Provincial shortfall for 2012/13 estimated between R2.5 and R3 billion
- + Main allocation of R15.1 billion but only R12 billion available to meet current service delivery requirements
- + Overspending on compensation of employees in 2011/12 of R1 billion on main appropriation and R200 million on adjusted appropriation
- + Goods and services accruals of R1 billion due to shifting of funds to make up for COE over spending

- + Treasury committed to intervening but no support forthcoming
- + Commitment to bank overdraft of R1.5 billion in to cover shortfall 2011/12 but not added to baseline
- + Top-slicing of budget to finance the overdraft despite overdraft not added to baseline

- + Implementation of austerity measures (filling of posts, goods and services and infrastructure)
- + Collapse of services in the province
- + Special Investigations Unit has identified massive corruption in the province. It has been estimated that the Department has lost more than R800 million to fraud and corruption between January 2009 and June 2010
- + Resistance to the disciplining and prosecution of officials implicated in corruption

5. EC Legislature's response

- + Beyond the rumblings of DA MPLs the legislature has been conspicuously absent from public debates on the budget crisis
- + Reports from people from within ECDoH reveal that the provincial portfolio committee on health has not engaged with the underlying causes of the crisis—business as usual
- + Oversight reports do not accurately reflect the extent of the problem, causes or possible solutions
- + Only after civil society pressure has there been some commitment to try negotiate a solution with ECDoH and Provincial Treasury

- + SCOPA has been the most active oversight body
- + E.g. In 2008 The SCOPA argued that: **“the accounting officer failed to comply with the requirements of section 40(1)(a), (b), (c) and 40(3)(a) of the PFMA and the provisions of section 38(1)(h) should apply. *The accounting officer and other responsible officials should be charged with financial misconduct as required by section 81(1)(a) of the PFMA*”**
- + No action was taken
- + SCOPA reports continue to reveal that the ECDoH has failed to deal with corruption, even when it knows about it
- + The department continues to fail to address most of SCOPA’s recommendations

6. Why has the legislature been so ineffective

- + Lack of technical capacity to engage with budget issues and expenditure tracking
- + They are not being provided with accurate and timely information
- + No real power to take action and only make recommendations
- + Committee members are either political juniors or from the opposition. So little real political influence
- + Oversight of budgets viewed as the realm of treasury and the AG

7. What opportunities does the money Bills Act provide

- + The Money Bills Amendment Procedure and Related Matters Act (no. 9 of 2009) provides for a procedure to amend money bills before parliament and, importantly, for norms and standards for similar legislation at the provincial level
- + Unfortunately, no legislation at the provincial level yet

- + Money Bills Act details Parliaments responsibilities in terms of:
 - + Monitoring expenditure
 - + Review of the MTBPS (October)
 - + Review of National and Departmental budgets and their adjustment budgets
 - + Powers to amend both main appropriation and adjustment budgets
- + It requires the establishment of a Parliamentary budget office to ensure parliament has the technical capacity to review and amend budgets

- + Provincial legislation would provide similar powers
- + But, need for capacity within legislatures to monitor budgets and expenditure
- + MPLS must be provided with the political space to challenge budgets and make adjustments where reasonable
- + Power of Treasury at National and Provincial levels must be critically evaluated

Thank You.