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MY REFLECTIONS: Willy nilly, rough job: FFC might have hit nail on the head

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For those who take note of the goings on at the country's governance, would care to know more the good the bad and the ugly at the now fashionable provincial intervention by the central government.

Last week's submission on the issue by the Financial and Fiscal Commission (FFC) gave a clear picture that all is not so good, and the provinces affected may be short-changed by the top or should I say, as FFC puts it, by the relevant laws governing this crucial matter.

My idea here is, as our embedded politicians and non-state activists would say "to unpack" the FFC report and go beyond perhaps to put words in their mouths as old days English poet Alexander Pope would have said "… rush in where angels fear to tread."

We have seen the central government recently intervening in three provinces - Limpopo, Gauteng and Free State. The first shock was the unprecedented number of provinces that were affected by this action.

Of more significance in the process Limpopo where the whole five departments including the vital social services and traditional budget guzzlers, education and health, were placed under central administration.

I must admit or even confess that, then having not deeply analysed the applicable laws in the manner that the FFC has done, I'm one of those who quickly called for Limpopo's Premier Cassel Mathale's head to be chopped for what I saw as a very serious anomaly.

Without saying he should be spared for there may be a real deep-seated shortcoming in the way that Polokwane handled its finances, but the FFC submission to the National Council of Province's Limpopo Multi-Committee Delegation highlights that these provincial interventions by the centre may have been applied willy nilly (though the commission, in their fear to tread, did not use my terms).

While the interventions in Gauteng, Free State and Limpopo helped us to understand that no province is immune from to a financial emergency per the FFC, the fact that the intervention is left to the discretion of the national government may be problematic for other (or should I say ulterior) motives other that inadequacies in financial management by provinces, could be factors behind the intervention.

The intervention at both Gauteng and Free State were in terms of the less intrusive sections of the law or Constitution with Gauteng under 6 (2) (f to g) of Public Finance Management Act and Free State in terms of section 100 (1) (a) of the Constitution. The two were provided with directives on how to correct the wrongs committed. But in the case of Limpopo the much feared section 100 (1)(b) which provides for a takeover of the affected departments by the central government, was used.

A huge national team that broke into sub-teams of administrators for each department led by national treasury descended on Polokwane to run the five departments.
Interestingly, the FFC pointed at an issue that we almost all neglected to interrogate – the figures that caused the government to intervene in the three provinces.

While Limpopo has five departments that caused its financial stress or suspected corruption that resulted in the intervention, the FFC found that Limpopo is not so bad or it might be a scape-goat in interventions that are “fraught with unknowns”.

For instance, the commission found that the fiscal risk by the three provinces amounted to over R20 billion with Gauteng responsible for a large chunk at R9,4 billion, Free State R4,7 billion and Limpopo at R8.4 billion (all including accruals).

This shows that the fiscal exposure for Gauteng is higher than that of Limpopo, despite the north province having five departments in crisis. It’s for this reason that FFC questions the “criteria used to place the provinces under different types of interventions” FFC said: “These questions are difficult to answer because the intervention process is fraught with several unknowns, at least to an outsider.”

Numbers show that the province is squeeze by high expenditure on personnel as it is among the four provinces with highest expenditure on this programme. Others are Gauteng, KwaZulu-Natal and Eastern Cape. While Limpopo has many departments that had problem, the situation should be less offensive when comparing figures with those of Gauteng and Free State.

This calls into question whether there was a need to apply section 100 (1) (b) at all instead of (1) (a) as was the case in Free State. Another issue is whether the government should simply act on the report of the Auditor-General that would paint a bleak picture of a provincial financial management without have gone deeper.

Usually the AG looks at whether procedures were follow properly in the accounting process which may not necessarily mean a financial crisis but a need to apply proper guidance by the top on how the provinces should balance books properly.

It is my contention that province should not be merely isolated on the basis of continuous adverse audit report because those audit findings might not have interrogated other aspects of the administration, but only the following of relevant procedures and regulations. The centre tends to act so quickly after an adverse report by the Auditor-General without applying its mind to the political impact of intervention.

The question is if the national intervention team in Limpopo was so good at its job (assuming an intervener cannot have intervening power without possessing superior knowledge to the intervenee of the subject matter under question), why they failed to prevent the textbooks crisis in that province when in fact the intervention was started in December? Why that problem had to be detected six months later when in fact the “external experts” were running the provincial education department all along.

The commission, in its submission to the NCOP delegation said the Public Finance Management Act (PMFA) was failing to improve the management of finances in provincial administrations. The Act does not fully address the challenges faced by provinces while the intervention in turn faced regulatory, structural, incentive and capacity-related challenges.

There is a very important aspect that the commission fingered as among those impeding the provinces ability to function properly and that is the inadequate allocation of revenue resources for the provinces to meet their expenditure mandates.

This brings to mind what this same commission highlighted many years ago that the current funding formula for provinces as it is, was faulty, because it does not consider the population size and destitute nature of certain provinces in allocating budgets.

For instance provinces like the Eastern Cape and Limpopo ought to be allocated more funds than the rest on the basis of being poor and with huge infrastructure backlog. Additional the

Eastern Cape is not endowed with mineral resources nor is it in position to produces own revenue sufficiently and therefore deserves more funds.

The big population of KwaZulu-Natal justifies for it to get a sizeable amount of budgetary allocation from the national fiscus. Unless this is taken seriously and implemented, those provinces at the lowest rung of the economy and with historical backlogs will remain there until the biblical second coming (pun unintended).

The financial situation at provincial level is exarcebated by the fact that provinces have to use their allocated financial resources to operationalize decisions that fall outside their scope or mandate.

The decisions, when it comes for instances to remunerations for civil servants, are made centrally at the bargaining chamber and the provinces are expected to pay the exorbitant increase agreed there with trade unions.

In the last few years the unions both in the public and private sectors) demanded and won double digit wage increments that were far above the inflation level. This is another aspect that the commission highlights in its submission.

Personnel expenditure consumes the biggest chunk of the budget in all provinces and nothing much they could do to alleviate this burden imposed on them from the top. This was first imposed as part of the Kempton Park pre-democracy talks sunset clauses that provided for the retention of the public service from the apartheid era.

The bloated civil services was worsened by fact that in addition to the employees that were there pre-democracy, each office of the incoming democratic government came with own staff who earned huge salaries and lucrative perks.

That raised the non-capital expenditure at the expense of service delivery that is supposed to bring a better life for all including the black majority who were marginalised by the apartheid system for many decades.

So the provinces are unable to deliver efficiently to meet the requirements of the constitution and demands of the people on social services because the funds they are allocated by the Big Brother, by design have to first pay employees unfailingly while many service delivery issues have to be postponed. That is why it’s taking very long to change the lives of the people or to alleviate the infrastructure backlogs.

Another aspect is education’s occupation specific dispensation (OSD) compensation for educators that is mandatory and also emanating from a public service bargaining chamber decision. This OSD had been paid out over the last few years, and continues to be rolled out throughout the country with provinces having just to oblige.

Limpopo’s MEC for education Dickson Masemola, to a large extent is justified to blame the OSD process, as one of the reasons his department could not operate efficiently to meet its education service delivery mandates hence the textbook crisis in that province.

However, while Masemola is correct, this does not justify the dumping and shredding of existing textbooks in a province that is among the poor in the country with huge backlogs in education and lower pass rate at matric.

Besides the weaknesses of the PFMA, the Constitution’s section 100, as a pioneer law on intervention at provincial level, has also been unhelpful.

This legislation, together with the PFMA, as highlighted by FFC, helped to expose the provincial administration as poor in governance and completely inadequate in their handling of finances. Yet both the Constitution and the Act have failed to provide guidelines that should regulate the process.

It is interesting that the commission stresses that the Municipal Finance Management Act is more adequate and provides proper guidelines in case of intervention compared to the section 100 and the PFMA. “Broadly speaking, the framework for intervention at provincial level is less developed than that of local government,” said the commission’s report.

The commission praises the local level enabling legislations, MFMA, for being “more detailed,, explicit and objective…and also providing “a system of checks, balances and protection”. “Unlike the PFMA the MFMA also sets out criteria for determining the seriousness of financial problems, such as failure to make payments or approved budgets, adverse audit opinion etc.”

The FFC calls for the latter PFMA and Section 100 to be refined to be in line with the MFMA, a law that is supposed to be junior to the two but was properly made to function efficiently right from the start.

It is my contention that if legislations and even the Constitutional provisions for any situation, must be properly done if true transformation of our society is to be realised and imbalances of the past done away with. This is more significant with provinces which are at the coal-face of service delivery along with the municipalities that they control.

In a statement, FFC acting CEO Bongani Khumalo said: “Provincial governments need to be financial functional if they are to fulfil their traditional roles as effective institutions for social change.

However financial and service delivery breakdowns undermine the socio-economic rights of the poor citizens who are disproportionately dependent on public services.”

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