

## **SPEAKING NOTES FOR MARK KINGON'S SUBMISSION TO NUGENT COMMISSION OF INQUIRY ON 19 OCTOBER 2018**

### **1. INTRODUCTION**

I was appointed Acting Commissioner on 19 March 2018 for a period of 90 days in terms of the SARS Act. Since then I have been reappointed for two further cycles of 90 days in July 2018 and September 2018, respectively. The current cycle ends on 13 December 2018.

I was parachuted into the position of Acting Commissioner. I went from being Group Executive: Relationship Management to Acting Chief Officer Business and Individual Tax (BAIT) to Acting Commissioner of SARS within a period of 5 days.

This propelled me into the very awkward situation of having to manage those who had been senior to me. In addition to that, I had to cooperate with and support the Nugent Commission of Inquiry and ensure that the organisation would do the same without compromising SARS operations or revenue collection. Moreover, the SARS budget was severely cut, bringing with it a set of new challenges.

To top it all, SARS had been in the media for all the wrong reasons; for example:

- The alleged rogue unit
- Being blamed for the increase in VAT in early 2018
- Not having achieved revenue target
- Fighting with the Auditor-General
- Covering up of alleged crimes committed by SARS officials.

In the past, SARS was accustomed to having the media focus on our operations, our media campaigns and the court cases in which we were involved.

Rarely, if ever, has SARS had to contend with weak leadership, blemished integrity, public distrust, operational lapses and breaches of the “higher purpose”. Certainly, SARS has never experienced a moment like the present one in which our very credibility and effectiveness is under question.

I was daunted by all of this. But I had to find the strength to keep SARS going for the sake of the country. That meant

there was no option but to work with what SARS has to ensure stability.

The situation was and remains tumultuous and uncertain. The suspension of Commissioner Tom Moyane by the President capped a period of upheaval that had begun in 2014 when the first allegations of the so called SARS rogue unit were made.

Since then, SARS employees have been on a rollercoaster ride caused by major changes in leadership, management and organisational structure.

Many current and past SARS people have had to contend with job displacements, retrenchments, resignations and dismissals triggered by the findings and recommendations of various investigations such as the Sikhakhane and KPMG reports and the implementation of the new operating model designed by Bain.

Cumulatively, these processes have damaged SARS' reputation and wrecked the personal lives, careers and reputations of directly affected staff. They have also had an impact on SARS employees who were not directly

affected by sowing uncertainty and division, and creating a climate of fear and distrust.

An additional pressure was the fact that SARS was embroiled in litigation on issues that are far removed from our mandate. SARS was the plaintiff in cases against the media, employees and ex-employees, the then Finance Minister and even the Auditor-General - a situation which is totally unheard of.

SARS has resolved each of these cases. I hope that this is the beginning of process of restoration where SARS can resume its place as a solid and robust tax administration with integrity and with the willingness to do the right thing in the country's interest.

Since taking over as Acting Commissioner I was and remain very concerned about the overall health of SARS. I would like to share some of my concerns:

- At the time, the Chief Officers for both BAIT and Customs had resigned, as had the Chief Financial Officer. All three posts were vacant. The former two positions are now filled by acting occupants, while the CFO has in the interim been

appointed. The executive leadership is broken and unstable and wracked by division and distrust.

- At the very time when SARS most needs visionary leadership, there is no shared common vision and commitment on how to steer the organisation through this very sensitive and troubled patch of its history. In some cases we may even be in denial about SARS' overall performance. This can be evidenced by an unwillingness to take accountability for decisions taken and, above all, for the consequences of such decisions.
- The SARS management has been disempowered because material and vital information was kept from it. This includes information about organisational issues such as the Bain diagnostic and proposed operating model. We have heard in testimony how senior IT management was not privy to the Gartner reports on SARS's modernisation programme and IT systems.

An extreme example of this withholding of information is the fact that nobody in SARS even today is able to provide any information about a trip that Commissioner Moyane made to Russia in 2017, despite the claim that it was on official business.

- The disturbing tone from the top has permeated all levels of the organisation, creating a fertile breeding ground for destructive gossip, fear and distrust. This has been further compounded by arbitrary and unsympathetic HR processes, cases of frivolous and mischievous internal investigations and litigation. Employee morale has been impacted negatively as was reflected by the plummeting employee engagement score in the 2017 Connexion Survey. One of the first things I did was to remove security devices at the entrance of the executive block which symbolised barriers and oppressiveness which incited fear.
- The cutting edge IT environment that had been created over the years has been dulled by four and a half years of neglect and inaction. The ill-considered decision to stop the modernisation programme has jeopardised the growth and operational progress of the organisation.

- Historically, SARS has always treated information in the strictest confidence and leaks of confidential information have been extremely rare. However, in the past few years, the leaking of confidential information has become disturbingly common place. This is a complete departure from our culture and values of the past. I am not surprised anymore to find details of my discussions with top managers in the newspapers the very next day. This cannot go on - we have to restore integrity and trust amongst ourselves.

## **2. AN UNRESERVED APOLOGY**

All of this may seem to be overwhelming. However, the Commission of Inquiry is a watershed moment in SARS' history. It has the possibility of opening a new chapter for SARS.

The upheavals of the past four years and the ramifications thereof will take time to heal and be fixed.

As a first step, leadership must stand up and take accountability, individually and collectively, for the damage done.

**I would therefore like to unreservedly say sorry on behalf of the SARS leadership to our taxpayers, our many stakeholders, including the President, the Minister of Finance as well as the Deputy Minister of Finance, Government as a whole, our former and current staff members and their families, taxpayers and the citizens of our country for falling short of the high standards of performance we have always set for ourselves, for not living up to the SARS values and higher purpose, the poor communication, the unfair treatment and the fear and pain to which staff members may have been subjected.**

### **3. RESTORING ETHICAL LEADERSHIP**

The success of SARS was built on quality and stability of leadership. SARS had the same Commissioner and same Minister of Finance for over 11 of its 21 years of existence.

Many past SARS leaders have demonstrated unwavering ethical leadership and commitment to the “higher purpose” of effectively and efficiently administering and collecting taxes in order to provide the funds needed by government to deliver quality services to the people of South Africa.

This quality and stability of leadership enabled SARS to plan for long term changes to the organisation; to develop and implement systems over a long period and to encourage and embed a creditable culture. Above all, it also allowed SARS to make mistakes, to learn from these mistakes and to grow constructively.

Recent events have shown us that formal qualifications are but one component for successful leadership. The technical mastery derived from experience and a deep understanding of the SARS business is another.

However, **integrity** is by far the most important component of leadership.

The job of SARS leadership is primarily about creating culture, setting the tone from the top, embedding and living out the values. Most importantly, leaders must own up to their mistakes, take accountability for their mistakes and be humble enough to learn from their mistakes.

SARS leadership must take accountability, individually and collectively.

They must embed governance and maintain open and honest communication to build confidence and erase fear in SARS which - as you have heard in this Commission - is a most destructive force in any organisation.

More than ever, SARS needs strong and capable leaders at the top, who are able to provide the guidance, experience and wisdom needed to mould and grow the new generation of SARS managers and prepare them to effectively take over the mantle of leadership in the future.

During this very difficult time, as a first step, it is necessary that the SARS leadership commit to some fundamentals:

- We must commit to **investing in and nurturing our people** so that they are able to perform at their peak;
- We must commit to **offering taxpayers the best service we can**;
- We must commit to **ensuring that our treatment of all taxpayers is impartial and application of the law is fair**;
- We must commit to **doing our utmost to meet revenue and other operational targets**;
- We must commit to **regaining our cutting edge as a modernising organisation, alive to the challenges of the digital age**;

- We must commit to **continuing learning and improving and to constantly raising the bar;**
- We must commit to **safeguarding the confidentiality of taxpayer information.** This is central to the relationship of trust between a tax administration and taxpayers. The confidentiality and secrecy provisions are there exclusively to protect taxpayers and not SARS. SARS must never hide behind these rules to conceal wrongdoing or to protect itself from scrutiny.

The law however is quite emphatic that taxpayer confidentiality must be upheld except under very narrowly defined circumstances such as in the case of a Commission of Inquiry or High Court order. There is very little research into a general public interest override provision that could apply to taxpayer information. SARS is ready to conduct this research;

- We must commit to **being politically conscious but determined never to be partisan.**

It is said that great character is built in times of adversity and how well we rise above these events will be a true test for us as individuals and as an organisation.

Resilient institutions weather difficulties and are able to learn, grow and mature through those adverse experiences.

This is our hope and belief for SARS.

#### **4. CHARTING THE WAY FORWARD**

I have sketched the negative aspects of the SARS environment which existed when I was appointed as the Acting Commissioner exactly seven months ago to the day.

Despite the many challenges, the scenario is not totally bleak.

SARS is still a functioning organisation and we still have many committed employees who want SARS to succeed and who are willing to work hard to make this happen.

There are, however, specific areas that require urgent action. The first and most important is to restore confidence in SARS. I was very encouraged by the attitude of the tax practitioners at the recent Tax Indaba who called on SARS to endorse cooperative compliance and find practical ways to make it work.

As a step towards embracing such cooperative compliance, I want to set out some concrete actions that we have already taken.

## **Davis Tax Committee (DTC)**

We are in the process of analysing the Davis Tax Committee recommendations and preparing SARS' response to the DTC which will be shared by the Minister.

The DTC has performed a tremendous amount of work which is now being analysed. We are close to completing the review, which Judge Davis may, hopefully, review and advise us on further action. The work of the DTC will benefit the organisation of SARS.

## **ICT**

SARS recognises the challenges it faces in rebuilding, refreshing and modernising our IT infrastructure and systems. The evidence heard in the past week that the SARS IT infrastructure is aged and critically needs to be upgraded has kept me awake for many months.

I want to give South Africa the assurance that we will reverse this trajectory.

## **Service Charter**

To underpin our service offerings and to ensure that the public can hold SARS accountable to certain set standards, SARS published its service charter a few months ago. The charter sets out the levels of service that taxpayers can expect when they transact with SARS and clearly outlines what the obligations of taxpayers are. We are committed to attaining the measures specified in the charter and we will achieve them.

## **VAT Refunds**

VAT refunds need to strike a balance between the quick release of VAT refunds that are due and the need to counter VAT fraud.

This will require revisiting the SARS strategy to streamline and modernise the administrative steps in the VAT processes.

## **Objections and appeals**

The Minister of Finance has approved the Tax Ombud's request to conduct a systemic review of SARS'

administration of objections and appeals. I welcome this independent review as it is realised that that the number of disputes that are found in favour of SARS is far lower than international norms. The handling of objections is also one area where SARS fell short in the IMF Tax Administration Diagnostic Assessment Tool (TADAT) review conducted in 2014.

I have already allocated senior legal staff to assist in the Tax Ombud's systemic review.

### **Illicit economy unit**

I recognise that the destruction of the specialised investigative capability over the past four years has hurt the economy and the fiscus.

SARS is in the process of re-establishing a specialised unit to deal with the illicit economy, obviously including tobacco.

### **Large Business Unit**

As a matter priority, I am in the process of reconfiguring the specialised service offering for large business. High net worth individuals will also be managed in a specialised unit.

## **High Court Litigation unit**

The more intense tax-administration litigation was conducted within the High Court Litigation unit of Legal Counsel, which had also been disbanded. The unit is in the process of being re-established and steps are being taken to ensure that impactful litigation is handled by qualified practitioners in a time-conscious manner.

## **Compliance Strategy Unit**

SARS is re-establishing its Compliance Strategy Unit to actively monitor compliance across the SARS business which was disbanded in 2015. We will therefore again activate its Compliance Evaluation Monitoring Information System (CEMIS) to measure taxpayer compliance levels using compliance indicators.

## **Audit of disciplinary cases**

Human Resources will conduct a review of all disciplinary cases instituted against employees. This is to ensure that they were not pursued for spurious or malicious reasons and that the processes followed stand up to scrutiny.

To prevent the future abuse of disciplinary processes I will set up an oversight committee to review the information collected to advise and decide on disciplinary actions and prosecutions that should be instituted.

### **Project management governance and procurement governance**

The existing system for project management governance is cumbersome and experience has taught us it must be agile. Changes will be made to the process to make sure that the process is more efficient, effective and time conscious.

As part of the overall enhancement of project management changes will also be made to the governance of procurement, including terminating the revolving chair principle. Going forward, the CFO must assume full responsibility for procurement.

## **Review of governance of compromises (debt management)**

The 250% increase in the compromise of debt last year is unacceptable. The entire process and governance of compromises will be reviewed. As a first corrective step, a portion of the debt management function has been moved from Enforcement to Operations.

## **International peer reviews**

SARS does not exist in isolation and we rely on international peer reviews to develop. Accordingly, I have requested that IMF Tax Administration Diagnostic Assessment Tool (TADAT) perform an assessment on SARS in its current state. Similarly, the World Customs Organisation will be requested to conduct a peer review of SARS' Customs operations.

## **Protected disclosure policy**

With the advent of the SARS Commission of inquiry, the "whistle-blower" policy was reviewed and replaced by a

protected disclosures policy that better protects SARS officials who need to make disclosures.

### **People plan for displaced staff**

Around 200 experienced employees were displaced in the operating model review. Very many of them were highly skilled, vastly experienced people who had accumulated years of experience and institutional knowledge. Their expertise and contributions has been sorely missed as the inefficiencies and problems with the new operating model have become apparent.

I have started a process that will recognise each person's particular skill and match it with a position. It is intended that where it is possible, the process may involve reinstatement which process needs to be worked out.

The process is unprecedented and I invite my colleagues who have been affected to work with me to achieve an outcome that is beneficial to everyone, to SARS and to the country.

As another concrete step, I have reversed the hurtful process of grade demotions which were meted out on a number of our administrative staff.

### **Customs actions**

Customs is the other pivotal functional arm of SARS. Customs is experiencing a number of challenges in the quality of its service. We are looking at fundamentally changing the way in which we execute our mandate. In addition to simply being an administrative authority that exerts control over the cross border movement of goods, we will be enhancing our **Customs service**.

This includes a mind-set shift that requires Customs officers to have a better appreciation of the impact of their actions (or lack thereof) in the economy.

Unwarranted delay of legitimate trade is unacceptable and is a cost to the economy particularly in the current economic climate.

We are overhauling our training and ensuring that officers are well skilled to carry out their duties.

We have enhanced our engagements with trade so that we are able to respond to their needs, co-create solutions and jointly address non-compliance and corruption.

We will be enhancing our international engagements at a bilateral, regional and multilateral level to ensure that South Africa is able to influence global customs developments, reaps practical benefits for local companies in foreign markets and leverages good relations to enhance SARS capability and skills.

## **RECOMMENDATIONS TO THE COMMISSION**

We are at a historic milestone in our development. Although we are not proud of why we are here, we recognise that this is an opportunity to make amends and to ensure that the same mistakes are not made again in the future.

We are mature enough to recognise that SARS' conduct has opened it up to criticism and censure and we are humble enough to accept whatever corrective action our principals may recommend.

In my view, if SARS leadership is mature, has integrity and the required technical expertise, any governance model will work.

However, we are not perfect and we have to seek a more appropriate and robust practical governance framework that enables us to do our job but also monitors us more effectively.

I would like to use this opportunity to request the Commission to make recommendations on such a governance framework.

Having listened to the evidence before this Commission, and especially the evidence of Judge Davis on 31 August 2018, it is clear to me that it is essential to maintain SARS' autonomy with regard to the administration of tax and customs.

SARS must have the independence, within the framework of tax policy as determined by National Treasury, to determine its own **strategy, enterprise and operational policy and processes, to set its own budget and to appoint and allocate its human resources.**

The challenge for the Commission of Inquiry is how to balance that autonomy with effective oversight. Some of the proposals that have been made to the Commission of Inquiry include the appointment of a Board and / or setting up a body such as the Inspectorate of Taxes and Customs.

In my view, a board has a number of challenges. It is periodic. It most likely will not have the dedicated resources, required infrastructure or permanency to act as a constant presence overseeing SARS.

I would prefer a body similar to a **statutory permanent Inspectorate of Taxes and Customs** that has the legal authority and supporting infrastructure to access SARS confidential and taxpayer information in order to execute its performance monitoring role and impose itself on SARS when necessary. In this way, the integrity of taxpayer information can remain intact.

**In addition to the traditional powers of oversight over the performance of SARS, such an Inspectorate could also have the power to oversee internal investigations of staff.**

**It could also have the power to act as a nominations committee for the appointment by the Minister of Finance of the Commissioner and Deputy Commissioners.**

**The Inspectorate could report to the Minister of Finance.**

In the coming weeks, SARS will step up to the plate, do research on the options that are available and make a submission to the Commission in this regard.

## **CONCLUSION**

Even though this has been a very busy and challenging time for me, I have not been able to avoid introspection.

I, and many of my colleagues, ask ourselves why did we not do more to stop the destruction of SARS.

Each one of us must answer that question for ourselves.

However, we should not be paralysed by guilt and self-doubt. We have a higher duty right now to rebuild SARS.

Before closing, I wish to send a message to each and every one of my colleagues in SARS. Since I have been the Acting Commissioner, I see your hardships and challenges in very different light. Across the board, I see the loss of the pride that we all used to have in working for SARS.

But I also see vast potential and the commitment to do the right things. I realise that all is not lost. Together we can rebuild SARS and once again be proud.

Extremely heartening is the fact that a large number of former and retired SARS employees - let's call them SARS alumni - have contacted me because they still subscribe to the higher purpose. They want to offer their skills and services to SARS and we welcome that. This reinforces that SARS belongs to all the people of South Africa.

I therefore appeal to the nation for their support during this difficult period.

I appeal to them to be good fiscal citizens and work with us as we begin the process of rebuilding SARS and restoring trust in this vital institution.

I wish to thank the Commission for their work and all SARS officials who approached and supported the Commission in their work.

**SARS has not seen its best yet!**