



# OUTA

ORGANISATION UNDOING TAX ABUSE

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## MPS ASLEEP AT THE WHEEL

**OUTA 2020 Report on Parliamentary  
Oversight in South Africa**

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# 1. Executive summary

**Parliamentary oversight is weakened by MPs who are busy but ineffectual. MPs rely primarily on official information to assess the effect of government delivery.**

One of Parliament's core functions is oversight of government and the executive, on behalf of the public.

OUTA's assessment of the first year of oversight by the 6<sup>th</sup> Parliament found significant limitations in this oversight.

Parliamentarians do not take sufficiently effective action against corruption and maladministration, too often allowing themselves to be distracted by emotional issues or simply failing to pursue matters to finality.

OUTA assessed oversight during 2019 by eight National Assembly committees, three of them in depth, and found that the committees failed to use any sources other than from the entities which they are supposed to hold to account.

This means that Members of Parliament are relying on the very departments that they hold to account for the information on which that oversight is based. It is extremely unlikely that departments would present their weaker sides to Parliament, and the opportunity to strengthen oversight through the involvement of civil society inputs is lost.

Despite calls by the President for government leadership to act with integrity, and the need for personal values of integrity, accountability, honesty and justice to be visibly engrained in the day-to-day behaviour of influential public office bearers, MPs remain very busy but not directed towards rooting out systemic corrupt practice, to prevent the continuation of state capture and looting of taxpayers' money.

Accountability mechanisms and core oversight committees such as the Joint Committee on Ethics and Members' Interests are in place, but these must be used with the highest degree of duty and responsibility for them to be effective. Whether this has been the case thus far is evidently doubtful.

This report is part of OUTA's support for the civil society campaign to push for greater accountability of the executive and to ensure that Parliament puts the interests of the public first. It is OUTA's second annual report on parliamentary oversight.

The National Assembly committees focused on in particular are:

- The Portfolio Committee on Mineral Resources and Energy (PC on DMRE);
- The Portfolio Committee on Public Enterprises (PC on DPE); and
- The Portfolio Committee on Cooperative Governance and Traditional Affairs (PC on CoGTA).

Findings include:

- Parliament's oversight and accountability (OVAC) model needs clearer standards for public participation, the use by committees of such information to influence governance, and feedback to the public. The current system conflates communication and information sharing with qualitative public participation, which is not necessarily the case. Public participation is a cornerstone of good governance and can provide an alternative view of departmental performance.

- During the 6<sup>th</sup> Parliament, few committees took the opportunity to involve external stakeholders; indeed, during the first year of the 6<sup>th</sup> Parliament there was less formal interaction at committee level with NGOs than during the 5<sup>th</sup> Parliament. Of 10 committees assessed in 2014 (these were amalgamated to eight committees by 2019), 30% drew on sources other than government in their oversight reports. This improved in 2018 but for 2019, these eight committees failed to include any sources other than the entities they hold to account.
- MPs are thus almost entirely reliant on information from the very entities which they are supposed to hold to account. The notable exception is the Portfolio Committee on Cooperative Governance and Traditional Affairs, which has managed more inclusive involvement through acting on public petitions.
- While OUTA found parliamentary officials usually helpful, a fundamental flaw is the inability of MPs to respond to queries or emails.
- There is a lack of continuity from the previous parliaments, which means that governance challenges identified by the 5<sup>th</sup> Parliament are not being addressed.
- The average number of meetings each portfolio committee holds rose three-fold from 2014 to 2020, with the PC on CoGTA holding the most at 45 meetings in the first year of the 6<sup>th</sup> Parliament. Committees were able to move their work to the virtual meeting space. This is heartening, as the committees are the engine room of Parliament.
- The executive is becoming more accountable to Parliament, based solely on the number of meetings which ministers and deputy ministers attend.
- Committees are busy, but overlook substantive issues, partly due to time constraints but also to choices of issues, failure to set timeframes or deadlines for responses from ministers and officials, and lack of follow through. Priority should be given to systemic changes which prevent abuse of public funds and enable the recovery of wasteful expenditure from miscreants.
- Committee legacy reports on the 5<sup>th</sup> Parliament were of varying degrees of usefulness. The PC on CoGTA report wasn't available, which was a problem.
- The committees made varying attempts to address problems of state capture and corruption, which was influenced by the legacy reports of the 5<sup>th</sup> Parliament. This ranged from the PC on DPE carrying out an inquiry into Eskom and submitting a strong report to the Zondo Commission on State Capture, to the PC on DMRE which failed to take decisions specifically regarding state capture or corruption. There is a lack of action by committees around corruption and maladministration generally.
- During October and November 2020, Parliament was instructed by the executive to finalise the crucial Budget Review and Recommendations Reports (BRRR) process without even the Auditor-General reports on the financial reports. Parliamentary oversight of 2020 is thus effectively nullified. We would like to see mandatory public hearings in September each year as part of MP preparation for the BRRR process.
- The current political system appears to reward unethical behaviour. For example, three former ministers who were heavily implicated in state capture are no longer ministers but were promoted by Parliament from ordinary MPs to chairs of committees. The two committee chairs who ran the only effective inquiry into state capture (the PC on DPE inquiry on Eskom) are no longer in Parliament. The chair of the committee which oversaw the illegal nuclear power deal is now a deputy minister. If Parliament is truly to be the third pillar of governance, independent from the executive and the judiciary, then senior parliamentary politicians should not be eligible for executive positions, and those in the

executive should not be able to return to Parliament once they have served their term of office.

- The concern is that the 6<sup>th</sup> Parliament, despite continuing to meet and deliberate, and to engage with the relevant ministers, will continue to be asleep at the wheel, to be accused next year of once again aiding and abetting state capture and being unable to stem the systemic problems that the looters have honed to a fine art over many years.

## 2. Introduction

After the 2019 national elections, a new set of Members of Parliament (MPs) arrived in Parliament. This new Parliament has a dual task, that of picking up the oversight legacy of cleaning up state capture that the 5<sup>th</sup> Parliament left behind, and of ensuring that the new executive is held to account.

In 2019, OUTA completed its first oversight report<sup>1</sup>. This report reviewed the performance of the 5<sup>th</sup> Parliament, attempting to evaluate whether the parliamentary portfolio committees addressed the issue of state capture. Further, OUTA compiled an affidavit submission to the Zondo Commission of Inquiry into State Capture, motivated by our professional conviction that measurable impactful parliamentary oversight is often lacking in South Africa.

The Ahmed Kathrada Foundation and the Public Affairs Research institute hosted a civil society conference in October 2019, entitled “Civil Society – Defeating State Capture and Rebuilding the State”<sup>2</sup>. At that conference, a civil society charter was drafted which stated that in the fight against state capture, civil society committed to, amongst others, “Strengthening parliamentary oversight and addressing Parliament’s weaknesses in relation to holding the executive to account”. It also included that “we will determine what strategies should civil society be adopting to ensure greater participation in parliamentary committees and public engagement consultations”.

This report forms part of that civil society drive to push for greater accountability of the executive and to ensure that Parliament puts the interest of the public first and cooperates with civil society in order to strengthen its oversight role.

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<sup>1</sup> May 2019. Organisation Undoing Tax Abuse. OUTA Introductory Report on Parliamentary Oversight in South Africa. Available online at: <https://www.oua.co.za/web/content/22111>

<sup>2</sup> [https://47zhcvti0ul2ftip9rxo9fj9-wpengine.netdna-ssl.com/wp-content/uploads/2020/04/AKF\\_PARI\\_Civil-Society-ConferenceReport\\_Oct2019.pdf](https://47zhcvti0ul2ftip9rxo9fj9-wpengine.netdna-ssl.com/wp-content/uploads/2020/04/AKF_PARI_Civil-Society-ConferenceReport_Oct2019.pdf)

### 3. Parliamentary Oversight

Parliament defines one of its core functions as oversight of the executive. Parliament's website<sup>3</sup> defines oversight as a function granted by the Constitution to Parliament to monitor and oversee government actions, and states that in carrying out its oversight, it focuses on the following areas:

- Implementation of laws;
- Application of budgets;
- Strict observance of laws of Parliament and the Constitution; and
- Effective management of government departments.

Parliament emphasises the importance of its oversight role in ensuring that service delivery takes place, so that all citizens can enjoy higher quality of life. Parliament identifies the following goals of oversight<sup>4</sup>:

- To detect and prevent abuse;
- To prevent illegal and unconstitutional conduct on the part of government;
- To protect the rights and liberties of citizens;
- To hold the government answerable for how taxpayers' money is spent; and
- To make government operations more transparent and increase public trust in the government.

South Africa is a member of the Open Government Partnership (OGP), a mature partnership of 78 national country members, a growing number of local governments and thousands of civil society participants. It has co-created over 4 000 open government reforms<sup>5</sup>.

As part of their OGP commitments, South Africa has launched the VulekaMali open budget portal and its aim, according to the South African report and plan to OGP, is "Opening up the budget process through the continuous publication of extensive budget and reporting information and data will be leveraged through organised engagement with civil society and will enable grass-root participation in governance, to ensure accountability in public financial management"<sup>6</sup>. However, Parliament has not featured in South Africa's OGP report or plan for furthering open governance.

Since the launch of OGP in 2011, different parliaments have taken up new laws on open government. These include legislation on lobbying and conflicts of interest in Chile and fiscal transparency in Uruguay<sup>7</sup>. The OGP has identified how parliaments can be formidable champions of the principles and values of open government. In a 2018 briefing note<sup>8</sup>, OGP outlines how once laws governing freedom of information, public participation etc are in place, "Parliaments can model these principles by being deliberative, open and inclusive in their own work".

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<sup>3</sup> <https://www.Parliament.gov.za/oversight>

<sup>4</sup> <https://www.Parliament.gov.za/oversight>

<sup>5</sup> <https://www.opengovpartnership.org/mission-and-strategy/>

<sup>6</sup> <https://www.opengovpartnership.org/members/south-africa/>

<sup>7</sup> [https://www.opengovpartnership.org/wp-content/uploads/2018/01/OGP\\_Parliaments-Partners\\_January2018.pdf](https://www.opengovpartnership.org/wp-content/uploads/2018/01/OGP_Parliaments-Partners_January2018.pdf)

<sup>8</sup> [https://www.opengovpartnership.org/wp-content/uploads/2018/01/OGP\\_Parliaments-Partners\\_January2018.pdf](https://www.opengovpartnership.org/wp-content/uploads/2018/01/OGP_Parliaments-Partners_January2018.pdf)

## Constitutional mandate for an open Parliament

As per the Constitution, Parliament's National Assembly must ensure that all executive organs of state in the national sphere of government are accountable to it (Section 55.2 of the Constitution). Section 56 provides for Parliament to gain information or evidence from summoning any person to give evidence or receiving petitions or submissions or representations from any interested persons or institutions. Section 59 of the Constitution states that Parliament must facilitate public involvement in the legislative and other process of the Assembly and its committees, and includes the right of people and the media to attend any committee session unless it would be reasonable not to do so in an open and democratic society<sup>9</sup>.

In most democracies, Parliament has a constitutional mandate to represent the people and to protect fundamental democratic values. "Facilitating public involvement in political decision-making is a key function through which Parliament fulfils this mandate. In a global political context increasingly marked by shrinking civic space, Parliament's watchdog role is more critical than ever."<sup>10</sup> Why is it important for people to have a voice in Parliament?

In South Africa, Parliament has a constitutional obligation to involve the public in its functioning, but to date has been reluctant to implement this to the full. According to OUTA's affidavit to the Zondo Commission<sup>11</sup>: "To our profound disappointment, we have repeatedly experienced – in several Portfolio Committees of the National Assembly in Parliament – the brazen flouting of genuine and non-partisan oversight of executive conduct. This challenge is, in our view, a fundamental barrier to the realisation of basic human rights through accountable targeted expenditure in the public sector, as implied in the Bill of Rights under the Constitution".

According to Mukelani Dimba, OGP civil society co-chair (2017-2018)<sup>12</sup>, "Successful partnerships are rarely born out of sympathy or generosity of spirit. They are born out of necessity: when faced with a challenge or opportunity we cannot fully embrace by ourselves; we seek the support of others"<sup>13</sup>. Opening governments to public input and oversight, government is more effective and credible. Examples given by Dimba included an example from the Philippines where government disclosed spending data on major programmes, inviting communities to check whether textbooks or roads existed.

Citizens were able to identify several ghost roads, saving an estimated \$300 000. In Ukraine, public purchasing data were made searchable online. This increased the number of bids for tenders and resulted in \$250 million saved over two years. Other examples included Mongolia's "check my services" app which has improved service delivery, and Macedonia's Moj Vozduh (My air) app that engaged citizens around air pollution, prompting government action. These examples show that it

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<sup>9</sup> The Constitution of the Republic of South Africa 1996. (act 108 of 1996)

<sup>10</sup> [https://www.opengovpartnership.org/wp-content/uploads/2018/01/OGP\\_Parliament-Partners\\_January2018.pdf](https://www.opengovpartnership.org/wp-content/uploads/2018/01/OGP_Parliament-Partners_January2018.pdf)

<sup>11</sup> November 2020. Matt Johnston. Untitled affidavit on Parliament, submitted to the Zondo Commission of Inquiry into State Capture.

<sup>12</sup> <https://www.opengovpartnership.org/people/mukelani-dimba/>

<sup>13</sup> <https://govinsider.asia/connected-gov/open-governments-future/>

pays to open government and it is costly not to. “When public funds are siphoned off to line private pockets, citizens get fewer roads, schools, or doctors than they deserve or pay for”<sup>14</sup>.

No-one would deny that South Africa is faced with an overwhelming necessity to deal with government monies that are mismanaged or fraudulently siphoned off in ways that undermine service delivery.

According to the Auditor-General of South Africa, Kimi Makwetu, in a report to Parliament in September 2020, the 2018/19 irregular expenditure rose to R61.3 billion from R50.1 billion the previous financial year, and is a clear “reflection of non-compliance with the discipline of supply chain management.”<sup>15</sup>

In 2018, in response to a parliamentary question about the cost of a house, the Minister of Human Settlements responded that the national department provides the provinces with a subsidy which amounts to R168 852, which includes the land and service cost<sup>16</sup>. Acknowledging that not all irregular expenditure was a waste of money, a conservative estimate that only a third was looted, means that potentially an additional 120 000 RDP houses could have been built.

### How has Parliament valued public participation in its oversight model?

OUTA believes that it is self-evident that civil society involvement in government oversight is valuable. As Parliament’s key function is oversight of the executive, one means of evaluating its effectiveness would be to see how Parliament’s operations, particularly the committee work (given that the committees are the “engine rooms” of Parliament) has involved civil society.

An undated report (circa 2009, published by Parliament) outlining the oversight and accountability model of Parliament (OVAC) identifies the consideration of committees of annual reports of organs of state and the Auditor-General’s reports as one of the most important aspects of oversight<sup>17</sup>. According to the OVAC report, the current practice of committees is as follows: In order to evaluate the work of government from a broader perspective, committees may invite experts from outside government to provide background knowledge and analysis on relevant issues<sup>18</sup>. In addressing public participation, the OVAC report referred to the Constitution but felt that there needed to be a separate model on public participation. The OVAC report provides an insight into how Parliament believes oversight and accountability should function in Parliament, and given that this is the guiding document referred to on the Parliament website, it is assumed that this is the current model of oversight and accountability.

On Parliament’s website, there is a report by an independent panel on the functioning of Parliament, dated January 2009<sup>19</sup>. This report raises the issue of public participation and the seeming failure of the constituency offices as spaces for MP accountability and oversight. The report once again emphasises the need for a public participation model that has clear standards for public participation,

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<sup>14</sup> <https://govinsider.asia/connected-gov/open-governments-future/>

<sup>15</sup> <https://www.dailymaverick.co.za/article/2019-10-24-auditor-general-lifts-lid-on-irregular-expenditure-its-ballooned-to-r61-35bn/>

<sup>16</sup> <https://pmg.org.za/committee-question/11599/>

<sup>17</sup> <https://www.Parliament.gov.za/storage/app/media/oversight-reports/ovac-model.pdf>

. <https://www.Parliament.gov.za/storage/app/media/oversight-reports/ovac-model.pdf> Section 3.1.1.

<sup>19</sup> <https://www.Parliament.gov.za/storage/app/media/BusinessPubs/PanelAssessmentParliamentReport.pdf>

and emphasises the need for Parliament to ensure that feedback is provided to members of the public and institutions that have made presentations to Parliament through public participation processes<sup>20</sup>. Parliament's annual report for 2016/17 alludes to public participation and presents some statistics to show how Parliament has been engaging with the public.

Unfortunately, the way such data is presented conflates communication and information sharing with qualitative public participation through public hearings for example. Page 50 of the parliamentary annual report provides the results of a survey showing ways that people have interacted with Parliament. While it is indicative of the need for improvement that 72% of respondents had not participated, it is encouraging to see that there was some awareness of the ability to participate in committee programme, the number of 6% of says that there is plenty of room for improvement. Watching or listening to debates as indicated by indicators such as the State of the Nation Address, or radio/television is not participation in any meaningful manner but is an indication of the success of the communication strategy.

In 2017, the Parliamentary Monitoring Group (PMG) produced a report on a survey it undertook on public participation in Parliament<sup>21</sup>. Overall, out of 1 134 meetings surveyed, 39 (3%) included submissions from the public. On being asked whether their submissions were taken seriously, about 30% felt they were listened to, or had seen their submissions translated into changes in policy or legislation. However, 37% felt that their comments are not taken seriously. A key concern was the lack of feedback and the feeling that decisions had already been taken and public participation was just a "window dressing" exercise.

In examining the barriers to public participation in Parliament, 50% of the respondents in this survey felt that time was a key challenge. To prepare a substantive submission takes time, and often is dependent on volunteers. Other time issues related to the short amount of time presenters were given to make their case, and there was a feeling that Parliament did not appreciate the time and effort involved for civil society to participate. Another core challenge to public participation is the lack of resources to travel to Parliament. One of the unintended consequences of Covid-19 has been the improvement in Parliament communications which has allowed people to engage in public hearings via the internet.

The request for public involvement should not be limited to legislation. Some form of standardisation could ensure that public views and inputs are institutionalised and not simply for matters concerned with legislation. Of the engagements analysed by PMG in 2017, only 15% were engagements on "issues of national importance", compared to 72% dealing with legislation.

An undated document (believed to be a 2016 draft) titled "Public participation model" on a Parliamentary letterhead provides some insights into how Parliament envisages public participation<sup>22</sup>. The document states that "The vision of Parliament is to be an activist and responsive people's Parliament that improves the quality of life of South Africans and ensures enduring equality in our

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<sup>20</sup> <https://www.Parliament.gov.za/storage/app/media/BusinessPubs/PanelAssessmentParliamentReport.pdf> pg. 73

<sup>21</sup> Monica Doyle. 2017. Public participation in Parliament – A survey of participants. PMG [www.pmg.org.za](http://www.pmg.org.za)

<sup>22</sup> Public participation model (circa 2016) (draft 2: version 6 English) – front page states with adv. ME Phindela acting deputy secretary – core branch and secretary to NCOP and project sponsor. Parliament of South Africa.

society... Public participation remains central to the mandate of Parliament to ensure the participation of South Africans in the decision-making processes that affect their lives.”

The document defines civil society organisations as “a wide array of organisations, community groups, charitable organisations, nongovernmental organisations, labour unions, indigenous groups, faith-based organisations, professional associations and foundations” and civil society as “non-governmental and not-for-profit organisations that have a presence in public life, expressing the interests and values of their members or others, based on ethical, cultural, political, scientific, religious or philanthropic considerations”. The public participation model acknowledges the public need to be informed and consulted, and that effective public involvement encourages two-way communication with the focus on consideration of public inputs, interests, issues and concerns.

Hearings, round table discussions, facilitated public meetings and interactive small group discussions are listed as possible forms of interaction. The model specifically speaks to the research and content support structure: the implementation of the model requires a dynamic interaction with content-context relevant to specific areas in which public participation is facilitated. Research and content support must play a critical role in collecting, analysing and presenting relevant information to Members to aid the processes of facilitating public participation.

The parliamentary public participation model envisaged a way civil society could be involved in the budget cycle, including the possibility of providing an alternative view of departmental performance to that presented by government departments under review.

Public participation takes on added importance during the MTBPS stage, since it is at this stage, more than at any other in the oversight cycle that an impact can be made on the department’s budget. All stakeholders should be requested to make submissions and must be provided with more time and opportunities during this stage to make presentations, from community members to community-based organisations and experts.

In addition, as many of the stakeholder representatives and groups as possible should be encouraged to attend presentations by departments and to witness the committee’s interaction with the department. This is to provide some form of immediate external verification to evidence by the department on its performance in respect of delivery over the years.

**Parliament’s Public Participation Model (draft)**

According to the PMG 2017<sup>23</sup> survey, at that time Parliament had still not adopted the public participation model, despite it being initiated in the 4<sup>th</sup> Parliament. Despite numerous documents and reports from as early as 2001, all highlighting the importance of public participation in enhancing parliamentary oversight and accountability, there is no published parliamentary participation model on the South African Parliament website as accessed on 9 September 2020.

Parliament’s annual report (2018/19) indicates that the public participation model has been adopted by Parliament. However, OUTA could not find it on the website and it is unclear how it is a public document. Figure 1 of Parliament’s participation model, taken from the annual report of 2018/19, is

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<sup>23</sup> Monica Doyle, 2017, Public participation in Parliament – A survey of participants. PMG [www.pmg.org.za](http://www.pmg.org.za)

reproduced below. This provides a broad description but there is no approved detailed model available.

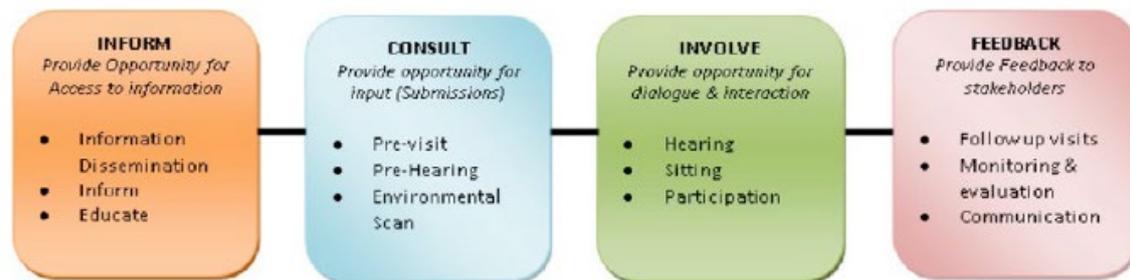


Figure 1: Key elements of Parliament's Public Participation Model

### How will Parliament operationalise civil society engagement with committees?

Parliament has the important role of approving the budgets of various departments and entities, and of then assessing executive performance through the Budget Review and Recommendations Report process, the BRRR. The involvement of civil society in preparation for budget approval and in preparing to assess the government performance would therefore indicate how well Parliament has embraced the value of civil society oversight.

Parliament has a parliamentary research unit, whose researchers serve the committees, drawing up reports on topics of interest and compiling draft recommendatory reports based on the committees' engagement with the departments and entities that report to them over the BRRR. Are these parliamentary researchers encouraged to draw on civil society oversight reports and experience in drawing up their reports?

Open governance and transparency are also part of the Parliament's constitutional mandate. Are the records/notes/minutes and reports of Parliament available through the Parliament website? Do MPs draw on civil society insights in their own preparation for engaging in parliamentary committee work?

In 2014, Parliament held a workshop on processing of BRRRs for committees of the National Assembly<sup>24</sup>. The workshop included presentations on the importance of the BRRR process, its processes and timelines, and it is deduced that it was intended as part of the induction for incoming MPs in the 5<sup>th</sup> Parliament. It is further assumed that such training is held at the beginning of each Parliament. In 2019, a PowerPoint presentation for induction to the incoming MPs on the Portfolio

<sup>24</sup> Parliament. Workshop on Processing of BRRR reports for committees of the National Assembly 2&3 September 2014. Parliament of the Republic of South Africa.

Committee on Public Enterprises once again raises the importance of public participation but fails to refer specifically to any public participation model<sup>25</sup>.



- Provides assessment of department's service delivery performance, given available resources;
- **Analysis must focus on:**
  - Programme performance
  - Key reported achievements
  - Key reported challenges
  - Quarterly performance assessments
  - Findings during oversight visits
  - Stakeholder concerns: public hearings and other public participation programmes
  - Relevant external research assessing service delivery of the department

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In the 2014 workshop, the training highlighted that the BRRR is part of assessing service delivery and listed what the analysis should include (see figure above). One of the presentations highlighted that the BRRR is an ongoing process and outlined three process steps to be followed. One was the presentations by support staff. This should include detailed briefing by the researchers to the committee to enable MPs to be empowered to oversee the issues effectively. A second step is headed civil society or engagement with entities/SOE. This refers to public hearings with invited stakeholders who would present on their analysis of the annual report of the department, and specifically enables “opportunity to bring to attention of the committee any issues of concerns that they are experiencing re functioning and or performance re how they are spending their funds. Unions are also invited, as well as the office of the AG. Outside experts/academics may also be requested to attend.” The third step involves a thorough engagement with the department. Based on this process, the committee can then make targeted recommendations in the BRRR regarding whether the department needs money in the forthcoming financial year.

In presenting on committee budget reports, the training workshop states that “one of the values of the budget reports is that it serves as a critical piece of information to the public”. It is therefore clear that Parliament provides tools and training on effective oversight to its new MPs.

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<sup>25</sup> <https://pmg.org.za/committee-meeting/28727/>

<sup>26</sup> Parliament. Workshop on Processing of BRR reports for committees of the National assembly 2&3 September 2014. Parliament of the Republic of South Africa. (not all pages are numbered but approximately page 44 of 73)

The report provides some assessment of how Parliament's oversight function has been implemented according to the processes and procedures gleaned from a short literature review and using several case studies.

## 4. Method

To be transparent and effective, parliamentary committees need to meet regularly and ministers, as well as deputy ministers (and directors-general), need to attend such committee meetings regularly to account for their departments' activities and spending.

In addition to MPs handing down their impartial judgment of executive performance, OUTA regards public participation as a cornerstone of good governance. One indicator of this in Parliament is the frequency and extent to which civil society is invited by committees to present their analyses and inputs into specific topics in the public interest.

However, routine public consultation processes do not necessarily result in stakeholders being heard or mean that their views are incorporated into governmental decision making. Portfolio committee reports provide insights into those issues MPs consider important and capture the views of the portfolio committees, including their decisions around recommendations made by external stakeholders.

Various civil society organisations, such as the Parliamentary Monitoring Group (PMG), People's Assembly, Ahmed Kathrada Foundation and others have their own research and experience looking at Parliament's actions. In compiling this report, OUTA has drawn on this experience. For our 2019 report, OUTA developed our own MP tracker that shows which parliament's National Assembly portfolio committees performed their oversight function relatively effectively. For this 2020 oversight report we developed an additional number of indicators, aiming to interrogate mechanisms with which Parliament claims it holds the executive accountable.

Over the 6<sup>th</sup> Parliament, OUTA's focus has been on the budget and where the money went. A good example of a focal point was the Department of Public Enterprises. Much attention was paid to how government will spend the limited resources at its disposal, and therefore how it will tackle issues such as wasteful and irregular expenditure and accountability for those who incurred such expenditure. The underlying question to help us understand whether Parliament is effectively holding the executive to account in the 6<sup>th</sup> Parliament is whether the mismanagement and irregular expenditure continues.

There is some overlap between last year and this year analysis, and the committees for this year include:

- Public Enterprises (also included in last year's report);
- Transport (included last year);
- Mineral Resources and Energy (DMRE) (Mineral Resources was part of the analysis last year but under the 6<sup>th</sup> Parliament Minerals and Energy have been amalgamated);
- Cooperative Governance and Traditional Affairs (CoGTA);

- Human Settlements, Water and Sanitation (Water and Sanitation was included last year; these ministries have now been amalgamated); and
- The National Assembly Planning Committee was observed to measure Parliament's response to Covid-19.

Most Parliamentary committees meet every week with the department or an entity over which they carry out oversight.

### Limitations of this report

OUTA has a small parliamentary engagement team and capacity is limited. It was therefore resolved to focus more on the oversight role than the legislative role although any public hearings on legislation are included in our public engagement indicators.

There are currently 30 committees operating in Parliament, and it was not possible to evaluate them all. Our quantitative indicators enabled us to look at eight to 10 committees, but for our qualitative indicator, we have examined three committee case studies. The choice of committees was based on OUTA's views on priority deliverables in the public interest. The governance of SOEs is self-evidently crucial to our economic prosperity, and so the Portfolio Committee on Public Enterprises was an obvious choice. Energy is an enabler of economic and social development and energy insecurity, particularly with regards to liquid fuels and electricity, has been in the spotlight over the last few years. It has been increasing apparent that local government operations have been a site for corruption and mismanagement. Ensuring that local government functions is key to service delivery, and this then appeared to be an important committee to evaluate.

This methodology of necessity means that there may be many committees which are operating optimally but which we will not cover. To attempt to prevent our report from accusations of negative bias, OUTA held a focus group discussion with other civil society organisations that monitor Parliament to obtain their views on our results. OUTA intends to repeat this oversight report, refining it year on year, and it is hoped that any unintended biases will be smoothed out over time.

Given that the report built on the first oversight report of last year, there is a small anomaly in how the committees were assessed. In our previous analysis, a sample of committee meetings were assessed over the calendar year from February to November of each year. However, given that elections were held in 2019, and the report this year was to look specifically at the 6<sup>th</sup> Parliament's performance, the report assesses the committees from July 2019 until July 2020. This means that the quantitative analysis is not continuous as it excludes the committee meetings that took place in the first half of 2019. However, the substantive analysis covers this period in our analysis of the 5<sup>th</sup> Parliament legacy reports which were finalised in that time. Six indicators were selected as outlined below.

### Indicator 1: Number of meetings

For the period between 2014 and 2019, the simple quantitative indicator of the number of meetings a specific committee held was used here to ascertain the degree to which committees executed their responsibility to oversee their respective organs of state. We have used the same indicator for this report.

## Indicator 2: Ministerial accountability

Ministers and deputy ministers have extensive responsibilities and cannot be expected to attend every committee meeting. However, it is expected that they should be available at regular intervals to meet with the committee and account for their actions. How frequently a minister or deputy minister attended a portfolio committee was recorded.

## Indicator 3: Substantive accountability

The number of committee meetings held provides some measure of activity but does not provide any qualitative insights on whether any given committee was able to use meetings efficiently for effective oversight. This Indicator is a qualitative indicator and provides an analysis of the recommendations of the October BRRR reports with the departmental annual performance plans (APPs) presented to the committees in May 2020. Several committee case studies are drawn on to substantiate our findings, which would attempt to answer the following questions. The Zondo commission has requested that OUTA provide an analysis of how Parliament contributed to or opposed state capture during the last Parliament. This report will continue with this area of work, looking at the committee legacy reports from the 5<sup>th</sup> Parliament, assessing:

1. **Responsiveness:** Was the issue of state capture or corruption addressed in the detail of the committee legacy report or discussed by the committee in its first term of officer after July 2019?
2. **Inclusivity:** Were any public engagements held to solicit civil society views on any of the issues raised in the legacy reports or issues broadly related to corruption or state capture?
3. **Action:** Were there any recommendations from the BRRR committee reports to address the state capture issues?
4. **Accountability:** Was there any action (from point 3) above detailed in the departmental APP in May 2020 that responded to the BRRR report of October 2019?

Indicator 3 is therefore an indicator of substantive accountability, whereas indicator 1 and indicator 2 refer more to administrative accountability. Indicators 1 and 2 provide some sense of whether people pitch up to work, but no indication if they sleep all day when they get there.

## Indicator 4: Public engagement

Public engagement is one of the areas that OUTA believes is an indicator of good governance, and which Parliament had indicated as significant. OUTA recognises that several committees held public hearings and this indicator measures how many public hearings were held in the past year. The term stakeholder engagement is also sometimes used in parliamentary reports. Unlike business and labour, civil society can offer insights that are less specific to vested interests and more aligned to public interests. This indicator looked very specifically at whether civil society had been included in parliamentary consultations.

## Indicator 5: Use of public input

According to Parliament's oversight model, public input should be used to strengthen oversight particularly regarding the budgetary cycle, particularly as it could provide some verification of departmental perspectives on their performance. This indicator will establish to what extent views expressed at such hearings were included in any committee report that was produced. This will be assessed by examining the BRRR reports of 2019 and seeing how these reports included any public inputs or insights into parliamentary oversight. This indicator is compared to the previous 2018 year, and is then compared to 2014, which was also an election year.

### Indicator 6: Parliament's relationship with civil society

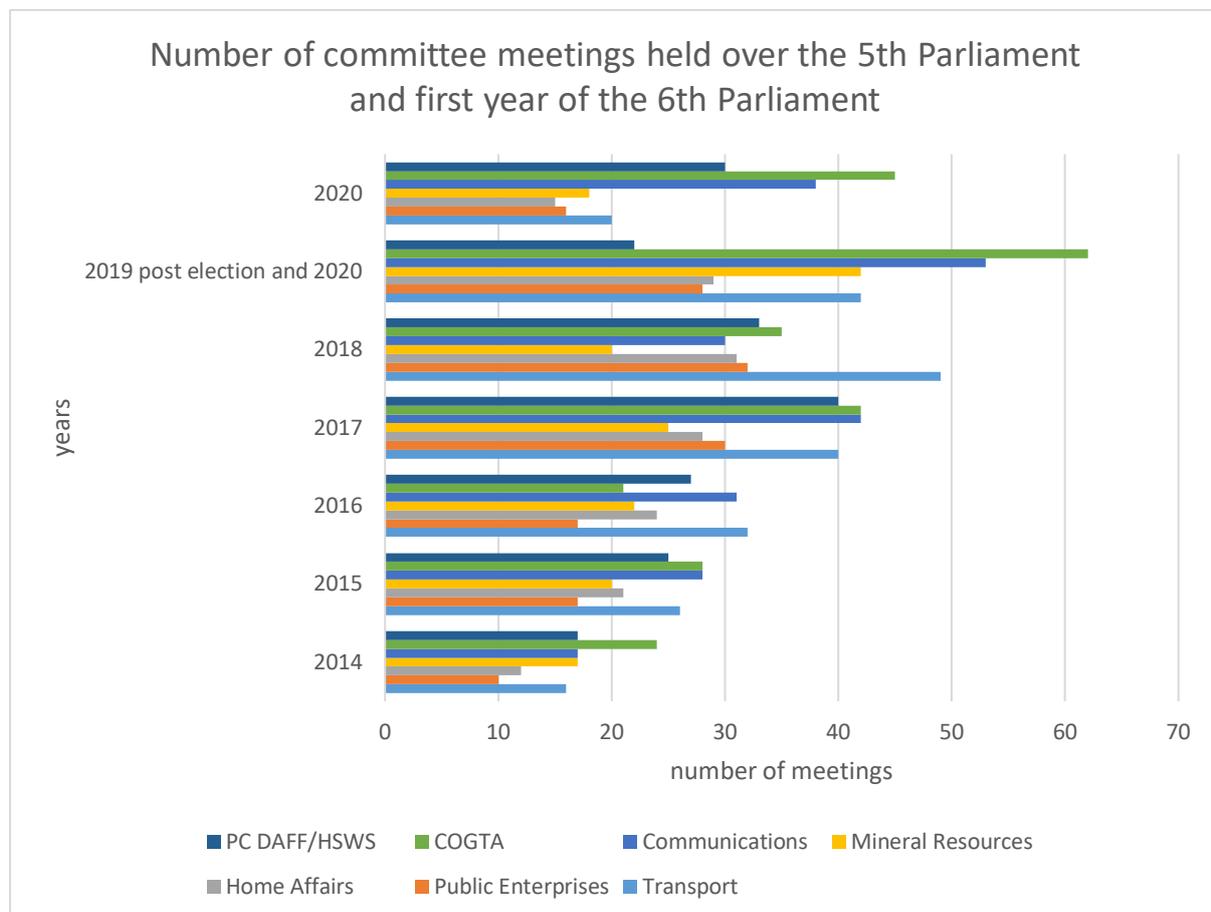
Public hearings are engagements where Parliament solicits the views of stakeholders. However, OUTA would also like to understand how MPs respond to an issue that is brought to their attention. In particular, OUTA would like to follow how letters written to Parliament or its committees are received and what procedures are in place to ensure that such letters are responded to, and how the issue raised by the public body is then considered at the relevant committee level. OUTA will use its own experiences to date and will also draw on other civil society organisations through its focus group reflections.

## 5. Results and Discussion

### Indicator 1: Number of committee meetings

The trend over the 5<sup>th</sup> Parliament was an increasing number of National Assembly portfolio committee meetings. In terms of days working, the average number of meetings per year rose three-fold from 2014 to 2020. The PC on CoGTA holds the most meetings almost every year, and its number of meetings per year almost doubled from 24 in 2014 to 45 in the first year of the 6<sup>th</sup> Parliament.

**Below:** The number of committee meetings held over the 5<sup>th</sup> Parliament and the first year of the 6<sup>th</sup> Parliament.

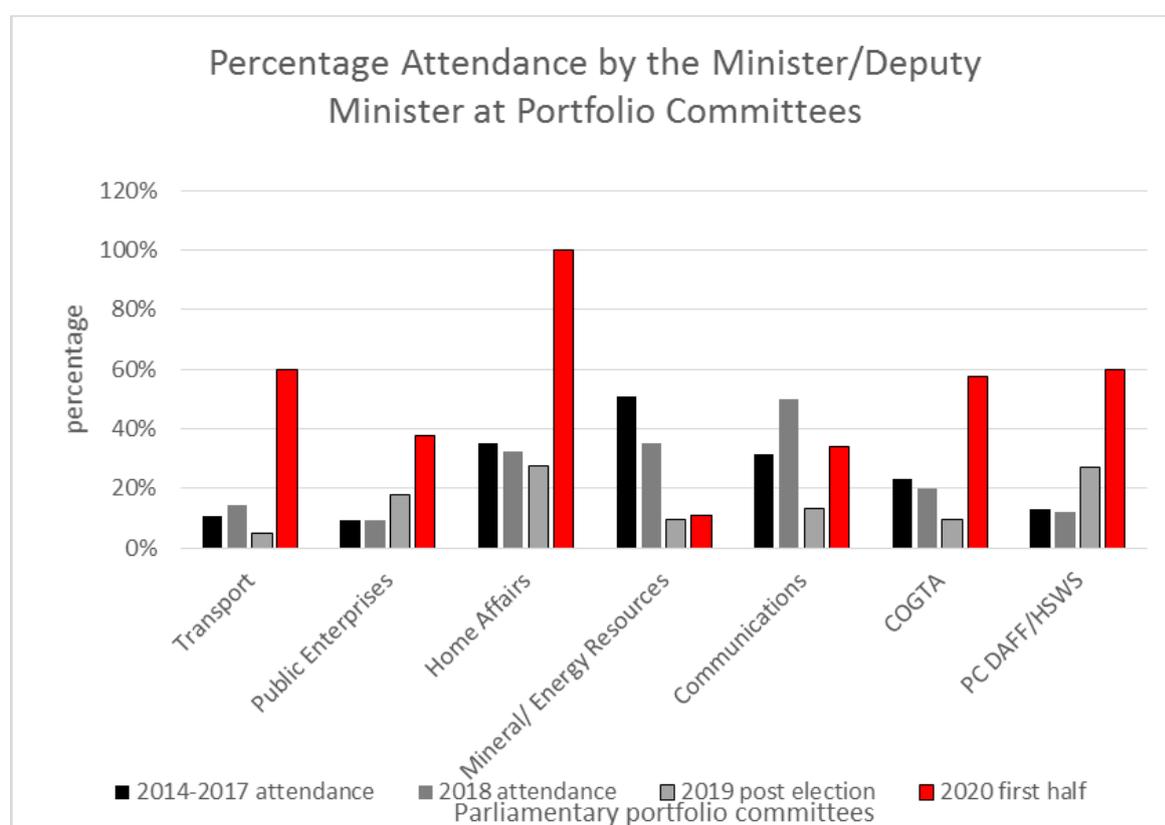


It is heartening to see that the 6<sup>th</sup> Parliament is spending more time at work in committee meetings, which are the “engine rooms” of Parliament. The impact of Covid-19 and the move to a virtual meeting space has not slowed down the parliamentary committees, with most committees holding as many if not more meetings in the first half of 2020 as they did in the post-election half of 2019.

## Indicator 2: Ministers accounting to Parliament

The same committees that were analysed for the 2019 report were returned to this year. However, the reduction of departments and their concomitant committees meant that these were reduced to seven committees. Mineral Resources and Energy now forms a single committee. From a quantitative analysis point of view, it is the Mineral Resources committee which is used in this indicator pre-2019. Oversight of the water sector was of interest to OUTA in 2019, and we therefore opted to include the committee that now deals with water and carries out oversight of the newly restructured Ministry of Human Settlements, Water and Sanitation.

**Below:** The percentage of committee meetings attended by ministers or deputy ministers:



If attending a committee meeting regularly is an indication of accountability, the executive is becoming more accountable to Parliament. It is worth noting that as far as we can gather from the

PMG minutes, the Minister of Public Enterprises did not appear in front of the parliamentary committee until 2020, but his deputy attended meetings to explain various restructuring moves that were underway. In this indicator, “Minister” includes deputy ministers.

However, for DMRE, the deputy minister passed away in 2019, leaving one minister in charge of an amalgamation of two large departments. His non-attendance at committee meetings has been a point of noting in the committee deliberations but no-one has suggested that there might be a need for a deputy minister.

### Indicator 3: Substantive accountability

#### Portfolio Committee on Mineral Resources and Energy.

The full case study is in appendix A. The following summarises the findings.

**1. Responsiveness: Was the issue of state capture addressed in the detail of the committee legacy report or discussed by the committee in its first term of office after July 2019?**

The committee held a meeting to discuss its priorities on 3 September 2019. This meeting resolved to hear all the court cases related to DMRE. Xolobeni, Lily Mine and the Somkhele mine were raised as concerns from MPs, and electrification and the fate of PetroSA were also raised. However, there was no decision taken specifically regarding matters of state capture or corruption as the legacy report failed to highlight this explicitly.

**2. Inclusivity: Were any public engagements held to solicit civil society views on any of the issues raised in the legacy reports or issues broadly related to corruption or state capture?**

Since the election, this committee has held 37 meetings, of which it has had five days of stakeholder engagements with business and labour, and has also additional stakeholders including business rescue practitioners and the representative of the family in the Lily Mine disaster. However, none of these were specifically targeted towards state capture or corruption but aimed more at generally familiarising MPs with the context of minerals and energy. The Portfolio Committee explicitly excluded civil society from this engagement.

Lily Mine has been one of those priority issues followed up by the committee but there is no rationale provided for ignoring other mining-affected community issues where the Minister has been taken to court by communities and this would seem to have been one area where MPs would have wanted to assist the communities.

Lily Mine is the only mine-affected community on the committee radar despite MPs stating the importance of other communities at the meeting to discuss committee priorities.

### **3. Action: Were there any recommendations from the BRRR committee reports to address the state capture issues?**

The 2019 PC DMRE BRRR<sup>27</sup> contains 22 recommendations to the Minister of DMRE<sup>28</sup>. Key issues of accountability, consequence management and delays in finalising legislation were covered in the BRRR<sup>29</sup>. These include:

- Ensure the finalisation of the turnaround strategies of the Central Energy Fund, PetroSA and NECSA.
- Investigate NECSA's failure to table its Annual Financial Statements timeously.
- Provide robust oversight on entities reporting to the department, especially NECSA and CEF.
- Ensure the start of the installation of the 87 000 solar water heater units by the third quarter of the 2019/20 financial year and provide a comprehensive update on the programme during the fourth quarter of 2019/20.
- Investigate whether the issue of an alternative audit to that of the Auditor-General of SA is not an act of misconduct on its own.
- Ensure that there is consequence management and encourage entities to undertake investigations if there is a suspicion of wrongdoing.
- Ensure that the five pieces of legislation that the department intends to finalise during the 6<sup>th</sup> Parliament are indeed finalised. Key amongst these is the National Radioactive Waste Management Fund Bill and National Energy Regulator Amendment Bill.

### **4. Accountability: Was there any action detailed in the Annual Performance Plan (APP) in May 2020 that responded to the BRRR report of October 2019?**

On 19 May 2020, The PC DMRE had a briefing from NECSA which reported on its turnaround strategy. The minutes of that meeting do not reflect any discussion on forensic investigations or the failure to deliver financial statements on time. However, the DG of DMRE concluded his presentations to the committee by referring to the BRRR and promising an update in BRRR 2020.

On 12 May 2020<sup>30</sup>, the PC DMRE met with the CEF which presented its APP. Overall the committee was not satisfied but, according to the meeting minutes, ran out of time and requested various responses in writing.

On 7 May 2020, the DMRE presented on its APP. There was no mention of any follow up from the BRRR recommendations. However, the Deputy Director General: Corporate Services, Pat Gamede, said that there had been four corruption cases. Two were currently with the labour court, one had been reported to the police, and one case was currently awaiting a court date.

On 2 June 2020<sup>31</sup>, the PC DMRE received a briefing on the solar water heater programme. The MPs grilled the department, which had prepared a report on the steps taken to implement the programme.

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<sup>27</sup> <https://pmg.org.za/page/MineralResourcesandEnergy2019BRRR>

<sup>28</sup> See the full list of recommendations below on page 45 of Appendix A.

<sup>29</sup> <https://pmg.org.za/committee-meeting/29113/> the BRRR report was adopted on 22<sup>nd</sup> October 2019

<sup>30</sup> <https://pmg.org.za/committee-meeting/30193/> presentation of app for CEF 12 may 2020

<sup>31</sup> <https://pmg.org.za/committee-meeting/30362/> presentation on swh programme

The chairperson asked for a follow up progress report by the end of September, will also undertake an oversight visit and asked for the results of investigations and consequence to be presented.

**Reflection:**

The implication is that MPs appeared to have not followed up on their BRRR reports, but also that there will be a year's lag between the parliamentary recommendations and the DMRE response. OUTA does not view this as effective accountability or consequence management.

In the solar water heater case, the committee is performing its oversight role, with MPs having read the reports and able to interrogate the DMRE on progress.

In the PC DMRE, in the 5<sup>th</sup> Parliament, seven planned pieces of legislation were never passed, but the minister was never held to account. In this first year of the 6<sup>th</sup> Parliament, the BRRR recommendation to investigate the controversial refusal to follow the AG ruling and subsequent irregular expenditure has not been followed up by the committee. Despite the committee asking for an investigation into why NECSA was consistently late with its financial reporting, the same committee, without any meaningful explanation, approved the DMRE's proposal to allocate a further R800 million to this failed SOE, rather than electrify 43 000 households.

In the Mineral Resources portfolio, the PC summoned DMRE to account for its Covid-19 response but without any independent means to verify if what the DMRE told the committee was correct. The 5<sup>th</sup> Parliament received a report from the SA Human Rights Commission (SAHRC) on the mining impacts of affected communities and the necessity of acting, including legislative and other measures to ensure the rights of mining-affected communities are assured. This was not addressed in the 5<sup>th</sup> Parliament legacy report and has not been on the PC DMRE agenda for the entire year of the 6<sup>th</sup> Parliament.

The PC DMRE has not asked for a briefing on the CEF court case (contesting the sale of South Africa's strategic oil stocks) which is currently underway or the various court cases where mining-affected communities are forced to resort to the courts as Parliament has failed to act on the SAHRC report.

The Committee has held two meetings on the Lily Mine issue including one during the Covid-19 lockdown period. The chairperson issued a statement expressing disappointment with the situation at the Lily Mine (24 June 2020<sup>32</sup>), in which the committee expressed a view that Members should visit the mine themselves to understand the delay. The way the committee had doggedly attempted to resolve the Lily Mine issue is commendable. However, despite two meetings, one of which had representatives of the affected families in attendance, there seems to be little progress. It is not sure how spending additional time visiting this mine will add any further impetus.

## Portfolio Committee on Public Enterprises

The financial viability and the future of South Africa's SOEs are of crucial public interest.

### **1. Responsiveness: Was the issue of state capture addressed in the detail of the committee legacy report or discussed by the committee in its first term of officer after the July 2019?**

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<sup>32</sup> <https://pmg.org.za/committee-meeting/30506/> 23<sup>rd</sup> June 2020

The financial viability and the future of South Africa's SOEs are of crucial public interest. The 5<sup>th</sup> Parliament PC on Public Enterprises held public hearings and drew up a report which was forwarded to the Zondo Commission into State Capture on what it had uncovered during its tenure.

However, the committee's legacy report also made several recommendations to the 6th Parliament, some of which matters such as the Shareholder Management Bill addressed systemic shortcomings which the 5<sup>th</sup> Parliament had identified during its term. Other issues included:

- A key area of focus of the committee should be to engage the department on the rationalisation of state assets and sale of non-core strategic assets of governance to maximise the financial position of state-owned companies (SOCs).
- Engage and guide the department on the formation of Eskom's three entities on distribution, generation and transmission.
- The committee should monitor Transnet's 4.0 strategy which migrates from the market demand strategy.
- Outstanding issues on future roles of Alexkor and SAFCOL should be prioritised and guidance should be provided to the department.

**2. Inclusivity: Were any public engagements held to solicit civil society views on any of the issues raised in the legacy reports or issues broadly related to corruption or state capture?**

Of the 15 meetings held in 2019, there were no public hearings or stakeholder engagements, the committee relied on the department and the relevant SOCs for information.

There were 14 meetings held in 2020, and there were two stakeholder engagements. On 4 March 2020, on the topic of Eskom challenges and solutions, three stakeholders (Cosatu, UCT and the Energy Intensive User Group) presented with OUTA giving a short oral input. One of the trade union representatives also attended but only as an observer.

On 11 March 2020, a second stakeholder engagement was held on the topic of Transnet and how it could contribute to socio-economic transformation. Submissions were heard from Cosatu, Business Unity South Africa (BUSA) and the United National Transport Union.

**3. Action: Were there any recommendations from the BRRR committee reports to address the state capture issues?**

The BRRR report for the PC DPE (16 October 2019) contained a list of about 20 recommendations, some of which were brought through from the legacy report. The selection listed below had some timeframes and progress could therefore be tracked accordingly. This was in response to government departments which fail to respond timeously. These included:

- Present quarterly progress reports on the development of the Shareholder Management Bill to the Committee.
- Present a model for SOC oversight per programme, with clear targets on monitoring, evaluations and reporting within this financial year.
- Provide the committee with progress update efforts to ensure Alexkor achieves its public and commercial mandate, especially addressing socio-economic outcomes of the Richtersveld and Alexandra Bay communities.

- Ensure that the future role of SAFCOL is clarified and that the commercial and public mandates are diversified and expanded, and community land claims issues are resolved.
- Institute timely consequences for executives and management who deliberately or negligently ignore their duties and contravene legislation. A list of action taken against transgressors must be provided quarterly to the committee for follow up of all irregular, fruitless and wasteful expenditure.
- Fast-track the introduction of the Shareholder Management Bill which will empower the department to carry out its oversight responsibilities over SOCs more effectively, especially in providing guidance on how to align SOCs' strategic priorities with government policies. The department should present the draft Bill to the committee by the end of March 2020.
- Present the committee with a funding plan, cost containment and revenue maximisation strategy for Eskom, SAA, Alexkor, SAX and Denel before the end of the financial year.
- Present quarterly progress reports to the committee on the SOC restructuring process and the unbundling of Eskom into three entities of generation, transmission and distribution.

**4. Accountability: Was there any action detailed in the APP in May 2020 that responded to the BRRR report of October 2019?**

Key issues such as an SOC oversight model and the Government Shareholder Management Bill were not part of the APP of the department, which was presented on 20 May 2020<sup>33</sup>.

**Reflection:**

The lesson from the 5<sup>th</sup> Parliament was to try to put timeframes to reports needed from the executive. In terms of public engagement, the committee did not advertise for interested parties to come forward but made its own decisions on who it should listen to. However, it was flexible in allowing OUTA to join in and present after OUTA had made a request to do so.

Systemic change to address many of the SOC challenges had been identified as the Shareholder management bill. <sup>34</sup> This was not carried through from the BRRR and in response to questions by MPs, the DPE responded "The nature of strategic plan is a pipe dream, and he believes it is an achievable dream. They wish they could have more budget, but they are working with what they have. He confirmed that the Government Shareholder Management Bill has not been mentioned in this APP. DPE had to reprioritise due to the constrained resources it had. DPE has used existing legislation such as the PFMA and the Companies Act to govern how SOEs behave. This may change as they go forward as resources allow."

Assuming that legislation should have been in the pipeline from at least October last year, the use of Covid-19 reduction in expenditure as an excuse for non-completion appears weak.

Although the committee did at least pick up that this legislation had slipped off the APP, they failed to insist on its return. The Committee accepted the Department's excuses, seemingly failing to appreciate that the DPE official could have been part of the problem that previous MPs were attempting to resolve with their legislative recommendations. In this way, Parliamentarians become complicit with weak and ineffective governance.

<sup>33</sup> <https://pmg.org.za/committee-meeting/30266/> 20 May 2020

<sup>34</sup> <https://pmg.org.za/committee-meeting/30266/> 20 May 2020

## Portfolio Committee on Cooperative Governance and Traditional Affairs (CoGTA)

### **1. Responsiveness: Was the issue of state capture addressed in the detail of the committee legacy report or discussed by the committee in its first term of office after the July 2019?**

The CoGTA case study was slightly more difficult to compile as CoGTA has not made its 5<sup>th</sup> Parliament legacy report available. The 2018 BRRR was used as an indication and helpfully, the BRRR reports for 2018 and 2019 contain sections comparing previous year's recommendations and progress made. There were many issues of maladministration, corruption and missing money which the committee had to deal with. It was clear that the delay in the finalisation of the Municipal Systems Amendment Bill, and the issue of corruption at municipal level were concerns carried over from the 5<sup>th</sup> to the 6<sup>th</sup> Parliament but without the legacy report it is not possible to answer this question completely.

The 2018 BRRR contained the following recommendation: "Where there are allegations of corruption, misappropriation of funds and maladministration, the Minister for CoGTA should approach the Hawks to pursue criminal investigation in all those cases."

### **2. Inclusivity: Were any public engagements held to solicit civil society views on any of the issues raised in the legacy reports or issues broadly related to corruption or state capture?**

Without the legacy report, the case study looked at the civil society engagements which the committee held since the election. These were related to the reports of abusive religious practices and traditional leaders but did not appear to be related directly to corruption.

### **3. Action: Were there any recommendations from the BRRR committee reports to address the state capture issues?**

The 2019 BRR contained the following recommendation: "The Portfolio Committee on Cooperative Governance and Traditional Affairs should develop mechanisms to ensure that there are consequences for inadequately explained failures to adhere to the prescribed timeframes for the tabling of annual reports".

### **4. Accountability: Was there any action detailed in the APP in May 2020 that responded to the BRRR report of October 2019?**

Due to Covid-19, the departmental APP dealt with Covid-19-related budget amendments. There was some discussion on consequence management.

There also appeared to be a difference of opinion regarding the use of non-profit organisations (NPOs) in community work programmes. The committee had highlighted the corruption, irregular expenditure and lack of accountability in earlier report recommendations and wanted to halt the use of NPOs. However, the department sidestepped the issue stating it would address this again in future.

However, prior to the department's APP, the committee had been briefed by the SIU, NPA and Hawks. The meeting was comprehensive, and Members raised issues that had not been prioritised in the previous Parliament, asking for progress on consequences for officials even if they resigned to avoid disciplinary proceedings, as well as the VBS Bank issues.

## Reflection:

This committee, based on the minutes and schedule of meetings, had taken on several of the issues that were not dealt with in the 5th Parliament.

On 4 December 2019<sup>35</sup>, after the BRR, the Committee had one meeting with Merafong City local municipality, regarding the impact of the VBS Bank investment, wherein the committee raised issues of how there no consequences for the officials had been who had transgressed municipal investment regulations. On 3rd March 2020<sup>36</sup>, the SIU, NPA, Hawks and COGTA met with the committee who were briefed on prosecution of municipal officials and the recovery of assets. The meeting was comprehensive, and Members raised issues that had not been prioritised in the previous Parliament, asking for progress on consequences for officials even if they resigned to avoid disciplinary proceedings, as well as the VBS Bank issues.

The committee held two meetings on the Municipal Systems Amendment Bill in March and held an indaba where stakeholders could present on “harmful religious practises”, an oversight issue directly arising from concerns raised by the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities and of direct public interest.

This committee also makes regular contact with at least some of its constituents, the traditional leaders, in dialogue platforms at regular intervals (26 November<sup>37</sup> and 27 November 2019<sup>38</sup>). These traditional indabas were held specifically to “provide a platform for a dialogue on the functioning of the institution of traditional leadership and the Khoisan, and to present the status of their individual provinces”. Issues that emerged were the patriarchal nature of the institution, and its engagement and role in municipalities. Traditional leaders also raised the issue of being volunteers and having no budget to employ anthropologists for research or fighting disputes.

Given its unique mandate, this committee has a better-defined constituency and has therefore engaged not only with its stakeholders such as traditional authorities, but also appears to be dealing with petitions from the ground as well. The model could be applied to other committees, but some proactive effort would be needed to identify a “constituency” for the DPE or DMRE committees.

## Overall reflections on indicator 3:

Committees fail to set deadlines for follow up action by ministers or department officials. If there are timelines for responses, there is no follow up. Where departments do response, there is no transparency as such responses are not made public.

It seems that committees only look at their BRRR reports in October when it is time to review the department performance again. This means that there will a year’s lag in any feedback. OUTA does not view this as effective accountability or consequence management.

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<sup>35</sup> <https://pmg.org.za/committee-meeting/29526/>

<sup>36</sup> <https://pmg.org.za/committee-meeting/29942/>

<sup>37</sup> <https://pmg.org.za/committee-meeting/29428/>

<sup>38</sup> <https://pmg.org.za/committee-meeting/29457/>

Instead of following its own BRRR recommendations, the committee compounds the problems of mismanagement and in so doing fails in its oversight role and undermines service delivery. One example: Despite the committee asking for an investigation into why NECSA was consistently late with its financial reporting, the same committee, without any meaningful explanation, approved the DMRE's proposal to allocate a further R800 million to this failed SOE, rather than electrify 43 000 households.

Issues of national importance and crucial to public interest in the sector are not addressed at parliamentary level. There has been no parliamentary meeting on the SAHRC report on the rights of mining affected communities which was left as part of the 5<sup>th</sup> Parliament's legacy.

Parliamentary committees hold several meetings on the same topic without resolving the issue. This can give an impression of working hard, but without being effective. An example here is Lily Mine.

Government appears to be driving the agenda of committees. In the DPE committee, the key Shareholder Management Bill was dropped off the APP in 2020, yet Parliament did not insist on its completion. The committee accepted the department's excuses, seemingly failing to appreciate that the DPE official could have been part of the problem that previous MPs were attempting to resolve with their legislative recommendations. In this way, Parliamentarians become complicit with weak and ineffective governance.

Similarly, in the PC on CoGTA, the committee highlighted the corruption, irregular expenditure and lack of accountability in earlier report recommendations and wanted to halt the use of NPOs. However, the department sidestepped the issue stating it would address this again in future. And in this way, the tail continues to wag the dog and oversight fails.

Key parliamentary reports are not available but there is no consequences for erring politicians or parliamentary officials. Given the shocking state of municipal financial accountability that has come to light, the 6<sup>th</sup> Parliament should have been able to draw on the 5<sup>th</sup> Parliament legacy report and not have to reinvent the wheel.

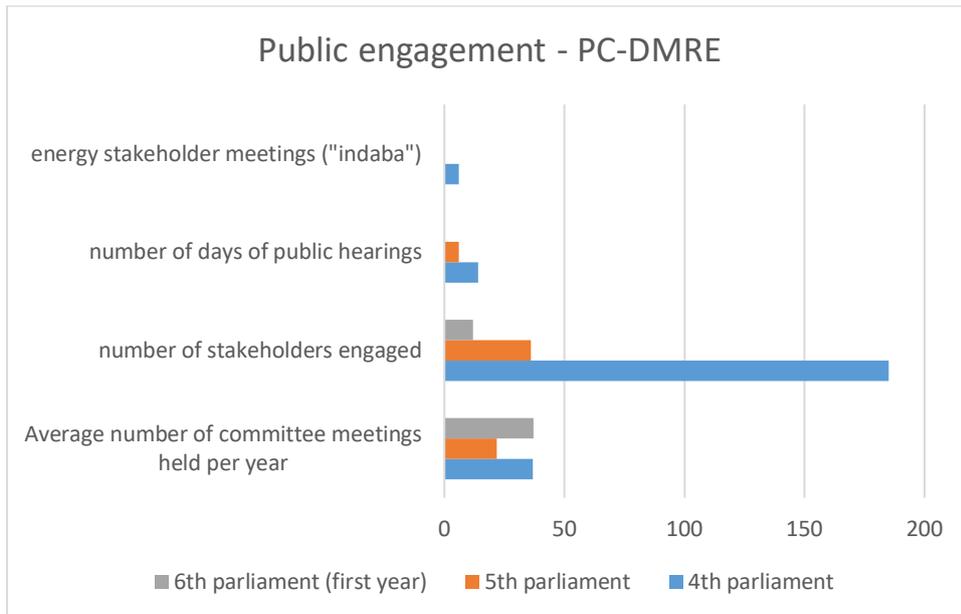
Some parliamentary committees have stepped up in the time of crisis. The PC on CoGTA has managed to continue to engage with its constituencies, attempt to hold municipalities accountable and take on the burden of Covid-19. Its members have held far more meetings than any other committee in their attempt to conduct their oversight role and their commitment should be acknowledged as something other committees should emulate.

#### **Indicator 4: Public Engagement**

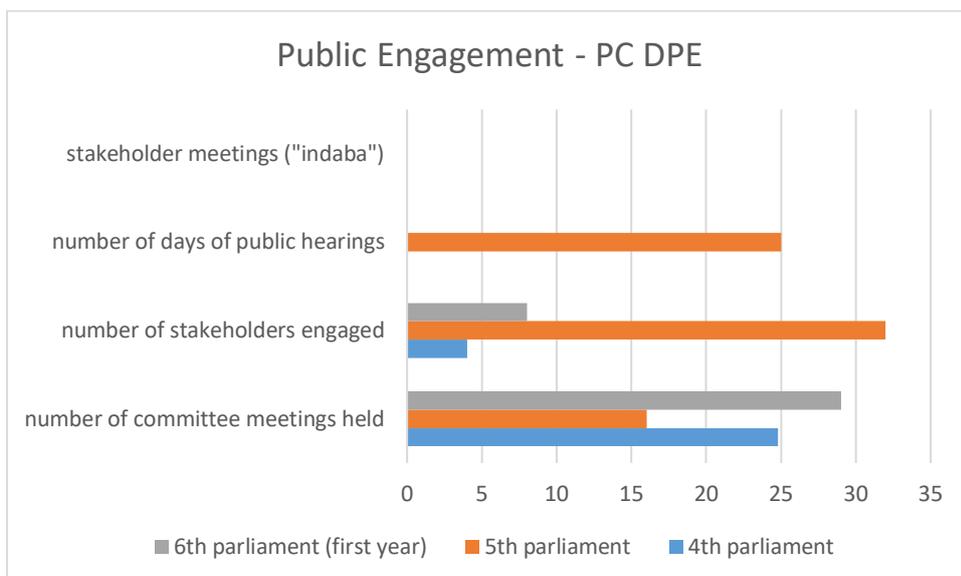
This indicator was used to directly assess how many stakeholders (non-government) were engaged, and how many days of public hearings were held, and then to specifically look at whether the committee had any civil society engagements which would fit into a more open dialogue or public meeting style of indaba. In looking at stakeholders, these did not include other government departments that the committee would routinely engage with but where a committee brought in an external expert such as the Financial and Fiscal Commission or the SIU, these were considered stakeholders.

For this indicator, it was not possible to examine all 10 committees used in other indicators due to time constraints. Three committees were selected: the PC on Public Enterprises, as SOEs have been in the spotlight due to mismanagement; the PC on DMRE as energy security is an important issue of national interest, and DMRE was rated extremely poorly in performance by the Public Service Commission; and the third committee selected was the PC on CoGTA, given the increasing focus on municipal accountability.

**Figure below:** Public Engagement – PC on Mineral Resources and Energy showing the trends and types of public engagement held over the previous three Parliaments.

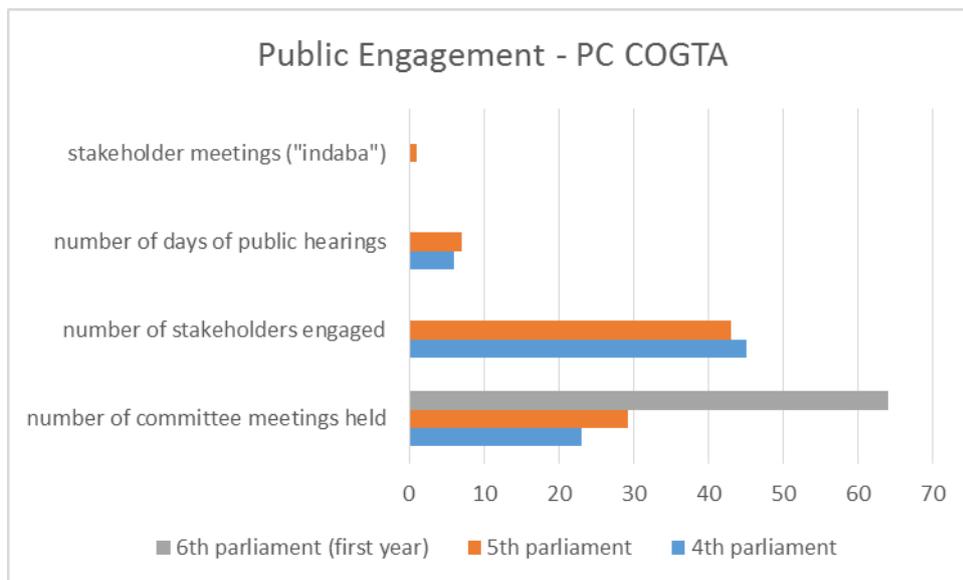


**Figure below:** Public Engagement – Portfolio Committee on Public Enterprises showing the trends and types of public engagement held over the previous three Parliaments.



The PC on DPE held public hearings into the state capture of Eskom and, in that time, many stakeholders came before the committee to account and provide evidence which has now ended up at the Zondo Commission. However, apart from that, there appears to be little engagement with the public, and there has not been any attempts to hold a civil society public meeting where all stakeholders could attend to look at solutions to, for example, SAA or Eskom.

As part of the case studies, OUTA also looked at whether the committees held any public engagements over Covid-19-related issues. The PC on DMRE held a meeting to hear from the DMRE how mining health and safety was affected but did not engage the mining communities to verify any of the statements made by the DMRE. However, the PC on COGTA, which found itself amid the storm around Covid-19-related municipal irregularities, held a number of engagements.



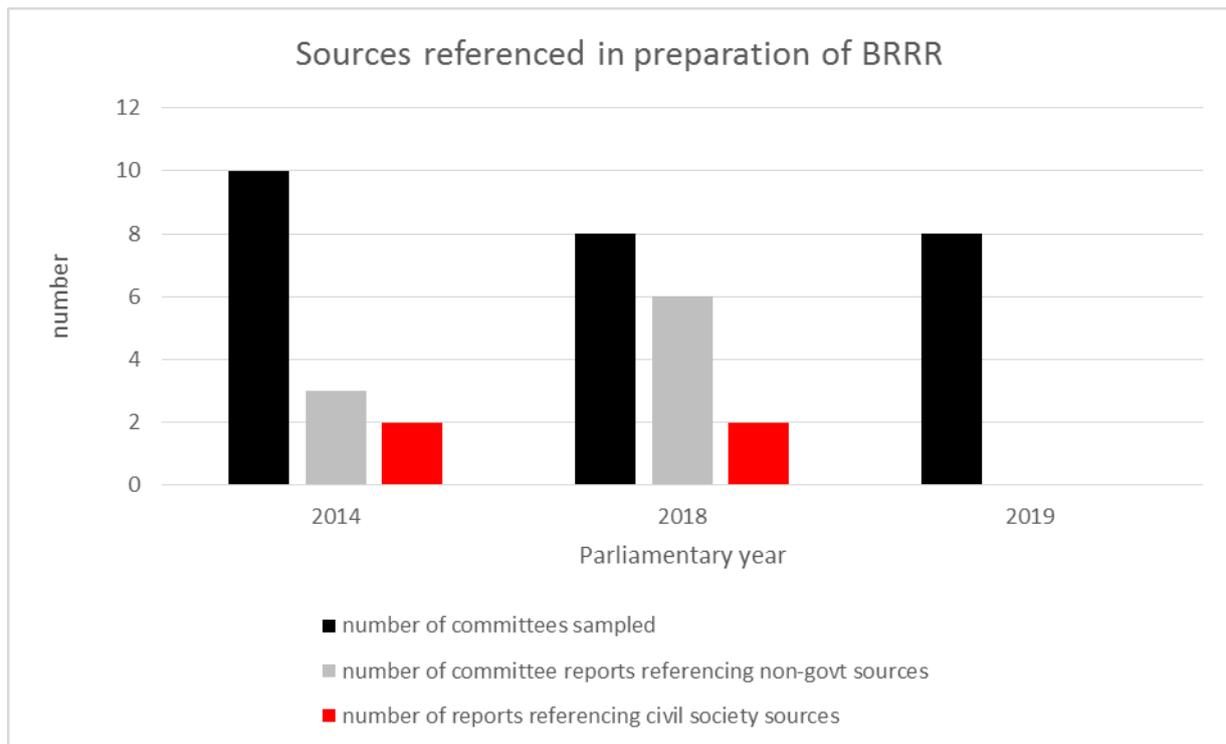
After lockdown, the Committee held 15 meetings relating to Covid-19, including its first briefing by the minister and deputy minister on the disaster management regulations and their amendments on 21 April 2020. These meetings were oversight meetings regarding Covid-19 responses but also included an investigation into evictions under lockdown. They also addressed issues of corruption as a response to petitions from residents regarding Knysna local municipality, and a petition from eThekweni metro’s ward 52, and from Tshwane metro’s Nellmapius Ext 22.

The committee brought local municipalities to account when discussing the various petitions received but it did not appear to invite any of the residents groups, for example, to present to the committee.

### Indicator 5: Consideration of public input

This indicator looked at a number of committees, and then examined the BRRR reports of each committee and assessed whether there was reference to non-government sources of information, and then specifically whether the reports referred to civil society organisational input.

**Figure below:** sources referenced in the BRRR reports.



The same analysis was performed for 2014, an election year and the first year of the 5<sup>th</sup> Parliament, and for 2018 (the year of the change from President Zuma to President Ramaphosa), and compared to 2019 (also an election year).

Of the 10 committees (Agriculture, Communications, CoGTA, Mineral Resources, Energy, Transport, Environment, Public Enterprises, Water and Sanitation, and Human Settlements) sampled in 2014, 30% drew on sources other than government in their oversight reports, and only 20% referenced civil society inputs. Sources were academic papers, oversight visits and specific civil society inputs quoted. For 2018, there was a reduction of ministries and accordingly, there were less committees. In attempting to align similar departments, a sample of eight committees were used, with 75% referencing non-government sources and 25% specifically drawing on civil society. The reports referred to public hearings, oversight visits and briefings in a workshop by outside experts. For 2019, however, the same eight committees failed to include any sources other than the entities they are supposed to hold to account.

Although 2018 was an improvement on 2014, 2019 is a stark deviation. One can only conclude that the trend of reducing civil society spaces for engagement, which has been acknowledged as part of a global trend<sup>39 40</sup>, has found its place in the South African Parliament. This means that Members of Parliament are relying on the very departments for information that they are to use to hold the same departments accountable. It is extremely unlikely that departments would present their weaker sides

<sup>39</sup> <https://carnegieendowment.org/2019/06/18/opening-government-closing-civic-space-resolving-paradox-pub-79321>

<sup>40</sup> <https://www.tandfonline.com/doi/full/10.1080/13642987.2018.1492916>

to Parliament, and the opportunity to strengthen oversight through the involvement of civil society inputs is lost.

Included here are some extracts from several BRRR reports over a number of years.

“The Committee’s mandate is to maintain an oversight responsibility that ensures a quality process of scrutinising and overseeing government’s action. It is driven by the ideal of realising a better quality of life for all people in South Africa. It is also required to facilitate public participation and oversees compliance with regulatory legislative frameworks related to human settlements” (Human Settlements BRRR 2014). But the actual BRRR contains no references to any public hearings, reports on civil society issues or oversight visits.

Detailing the method the PC on Mineral Resources took in 2018: “Moreover, the Committee undertook visits to the Mpumalanga, North West and Gauteng Provinces, to look at issues pertaining to the role played by the Department of Mineral Resources in regulating the mining industry in areas such as community consultation, the environment, illegal mining and mine health and safety”.

In the PC on DPE (2018), stakeholders and oversight visits do not seem to include civil society as indicated in this extract from the BRRR method: “This report is a culmination of the Committee’s engagement and interactions with the Department and the State-Owned Companies that report to it. This entailed a very intense and thorough analysis of the strategy and operations of the Department and its entities through briefings, oversight visits and interaction with relevant stakeholders.

“These included a briefing from the Department of Public Enterprises on its annual report on 5 September 2017, a briefing from the Office of the Auditor-General of South Africa (AGSA) on the audit outcomes of the Department and its entities on 4 October 2017, and deliberations on the analysis done by the Parliamentary support staff on the financial and non-financial performance of the Department and its entities. The report incorporates inputs from the Internal Audit unit of the Department of Public Enterprises”.

The 2018 BRRR of the Portfolio Committee on Water and Sanitation refers to briefings held by the National Planning Commission at a Workshop of the Portfolio Committee, 14-16 September 2016. One of the presentations was by Mike Muller (2012), “The role of water in development, Commissioner, National Planning Commission”. It is unclear how a workshop attended two years previously should count towards stakeholder engagement in the relevant year, but at least the report does allude to opinions outside the department.

In contrast to the above extracts, it is worth quoting the DMR 2014 BRRR which specifically referred to consultations with affected communities. The BRRR refers to public hearings that were held wrt a particular piece of legislation and then reflects on the public concerns that were raised. “Many of the concerns that were raised reflected directly on key performance/service delivery issues related to the DMR. Stakeholders expressed dissatisfaction about many aspects of the performance and service delivery of the DMR”. The BRRR then quotes from various stakeholders: “The Mining and Environmental Justice Community Network (MEJCON) told the PC that their member communities are denied copies of Social and Labour Plans (SLPs) by the DMR”; “ActionAid South Africa also questioned the fact that SLPs are not made public by the DMR”; and “The Centre for Environmental Rights, ... said

that vulnerable rural communities and emerging farmers are usually without the resources to challenge applications for mining or mitigate its impacts”<sup>41</sup>.

This recent trend of failing to include public inputs in the BRRR reports also seems to deviate 180 degrees from the various parliamentary oversight and public participation models OUTA was able to source, albeit if such parliamentary procedures were draft or more than a decade old.

## Indicator 6: Parliament responsiveness to civil society

This indicator is largely dependent on OUTA’s own experience in engaging with Parliament, as well as those of other civil society organisations which have attempted to get a response from Parliament.

On 31 July 2020, the PC on DPE heard a petition from the Jamestown residents regarding electricity infrastructure transfer iro Eskom and the Stellenbosch municipality. The committee heard all parties, and it was resolved that as the chairperson said that he believed all parties to be “on the same wavelength” that the Committee should allow the process to happen. This is an example of how civil society was able to engage with Parliament to facilitate a good solution.

OUTA has had mixed experiences in its engagement with Parliament. The committee secretary section of Parliament is responsive to the public, responding to requests for clarity regarding meeting times, agendas and providing copies of presentations considered in the committee on request.

This section of Parliament has also responded at short notice, providing links to meetings, or presentation document during the time of the meeting. The IT section of Parliament responded promptly once alerted to a communication error when a committee broadcast was interrupted. The relevant official also sent the correct link to the committee meeting on YouTube.

However, a fundamental flaw is the inability by Members of Parliament to respond to queries, emails etc. OUTA has a particular example where an email query concerning the process of public participation with regard to the Independent Electricity Management Operator Bill was sent, first to the Chairperson of DMRE, followed up and then sent to the Chairperson of Committees, copied to the secretaries and administration staff, and to which not a single response was received. After which point, the inquiry was moot, as the matter had been addressed in committee.

**Table below:** Indicates OUTA engagement on energy issues of national importance:

Date	Action	Response
5 May 2020	Letter requesting timetable for public hearings for IMEO (cc’d to secretary)	None
7 May 2020	Email following up	None
27 May 2020	Email follow up cc’éd to committee secretaries/ and phone call	None

<sup>41</sup> <https://static.pmg.org.za/141030pcminbrrr.htm>

10 June 2020	Letter to house chairperson, Hon Frolick requesting assistance in gaining a response from committee chairperson	None
15 July 2020	To Hon Luzipo Report on appropriations analysis of the proposed DMRE budget	None
15 July 2020	To Hon Mahlaule (acting chairperson) Report on appropriations analysis of DMRE	None
23 July 2020	To committee secretary Outa submission on energy – annexure to Appropriation submission	None
23 July 2020	To chair of NCOP committee considering energy – submission on supplementary budget	Acknowledgement of receipt from secretary. [Topic subsequently removed from committee agenda]

## Impact of Covid-19

Covid-19 meant that there were no longer any physical meetings in Parliament and MPs had to engage with internet technology and hold virtual meetings. Such experiences had their own frustrations. The IT section of Parliament rapidly set up virtual meetings. There were some teething problems, but Parliament eventually settled on Teams meetings that were broadcast to the public via YouTube. Given that Parliament appears to have the capacity to livestream only about six committees, on certain days other committees are not accessible to the public.

It is possible to be provided with a Microsoft team's link via the committee secretary in order to sit in on the committee meeting. However, there is a need for some engagement with civil society to strengthen communication channels so that the general public knows how to participate virtually.

The shift to virtual Parliament also meant that members were dependent on the relative capability of their own devices and the local internet servers or phone companies. It was quickly observed that South Africa has very poor internet coverage, particularly in rural areas.

At the time of lockdown, Members were holding meetings from their own homes. Frustrations meant that tempers ran high and there were at least two meetings where MPs behaved in such a manner as to prevent the meeting from continuing.

Public participation in public hearings, or in presenting to Parliament, was also dependent on decent internet experience. A group of small-scale fishers were unable to participate in a Parliament meeting, despite the provision of data by Parliament to enable them participation, due to the limitations of the local internet/cell phone coverage as well as the broadcast platforms using large amounts of data to connect.

OUTA asked for an opportunity to present and was given a slot. However, the meeting was not broadcast and some OUTA staff who had wanted to present were unable to do so.

The Parliamentary Planning Committee is a multi-party committee that meets weekly under the chairperson of the Speaker of the National Assembly and assisted by the Secretary to Parliament. The committee is the implementation arm of parliamentary management changes, and its response to Covid-19.

Hopefully, Parliament will soon return to a physical meeting place. However, the lessons learnt from Covid-19 should enable increased broadcasting of parliamentary meetings and, in addition, public participation could be enhanced as those who live far from Parliament could be helped to participate via the internet. Physical attendance in Parliament is hampered by an inefficient access system that relies on antiquated technology and results in media, civil society monitors and government officials arriving late for meetings. Such frustrations could be addressed through a willingness by Parliament for meaningful engagement.

Government could also save on transport costs if its officials could present at least part of the time via a virtual platform. However, the importance of face-to-face contacts should not be underestimated but the Covid-19 experience could be a steep learning curve for using modern communication methods to improve the open governance of Parliament.

It is interesting to report on the work of the CoGTA committee at this time.

Given that CoGTA was directly responsible for the Disaster Management Act and regulations, this department was most affected by Covid-19.

After lockdown, the PC on CoGTA held 15 meetings relating to Covid-19, including its first briefing by the minister and deputy minister on the disaster management regulations and their amendments on 21 April 2020. These meetings were oversight meeting regarding Covid-19 responses but also including an investigation into evictions under lockdown. There were also addressing issues of corruption as a response to petitions from residents regarding Knysna local municipality, and a petition from eThekweni metro's Ward 52, and from Tshwane metro's Nellmapius Ext 22.

During lockdown, despite the committee's necessary preoccupation with Covid-19-related matters, it also managed to hold a total of six meetings on the Municipal Systems Amendment Bill, almost finalising it by the end of July 2020. The committee also called the Municipal Demarcation Board to account twice and the board assured the committee it would hand over the finalised ward information to the Electoral Commission of SA (IEC) by November, despite its challenges of conducting public consultations during lockdown.

The CoGTA committee also undertook its own oversight in its constituency, instituting a formal process of asking its members to conduct oversight at their local level. On 3 June 2020<sup>42</sup> the committee held a meeting discussing the various issues of conduct, concerning accusations of a councillor wearing ANC regalia handing out food parcels. The committee had requested the mayor to account for this and he had responded that this matter was before the council's ethics committee. The CoGTA committee managed to continue to focus on its oversight issues despite being at the centre of the Covid-19 storm. It is also to be commended that this committee continued to interact with its

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<sup>42</sup> <https://pmg.org.za/committee-meeting/30374/>

constituency, receiving petitions and proactively going to conduct oversight locally to report on local council Covid-19 responsiveness<sup>43</sup>.

The ability to engage Parliament is largely dependent on existing social networks that civil society might have forged with support staff of Parliament or through their own personal relationships with MPs. Parliament could proactively engage with those civil society organisations that attend Parliament regularly in order to address the shortcomings in both the communication and participation processes.

## Lessons from the past: Strengthening accountability through civil society

Critics and society commentators allude to a decade of state capture and corruption. OUTA has therefore highlighted some of the practices from the past Parliaments, which the 6<sup>th</sup> Parliament might look towards in order to improve its oversight role.

Public engagements were characteristic of the 4<sup>th</sup> Parliament, when Parliament hosted discussions where civil society representatives questioned government officials and MPs were able to hear the key points of an informed debate. Such rich discussions then add to the information available to MPs to aid them in their decision-making.

The PC on Energy chairperson Sisa Njikelane, in describing such stakeholder meetings, said “...this was the sixth meeting where stakeholders were invited *en masse*. The stakeholder meetings were different to public hearings as everyone would be allowed to make inputs. This was a more flexible approach and allowed for diverse input. The stakeholders’ common vision was to see the country attain an adequate and sustainable supply of energy.”<sup>44</sup> At the end of the 4<sup>th</sup> Parliament, In closing, “the Chairperson expressed his gratitude that so many stakeholders had again proven the value of these stakeholder meetings and would welcome inputs in future. He hoped that the Fifth Parliament would continue with this type of valuable engagement.”<sup>45</sup>

The aim of such engagements was provided in his opening statements for the energy efficiency hearings. “The Chairperson stated that these public hearings would be part of the roadmap to engage with the Department of Energy (DoE) and make recommendations so that the Department’s revised strategy on energy would be amended accordingly.”<sup>46</sup>

The importance of access to information from alternative sources than the department cannot be emphasised enough. For new MPs, it is also important to understand best practice in some of the institutes that they oversee. One lesson from the past comes from 2015, with the PC on DPE which received a briefing from the Institute of Directors of Southern Africa (IoDSA). IoDSA facilitated a capacity building session with the committee focusing on corporate governance practices and board effectiveness in the public sector. The briefing identified critical points around issues of shareholder expectations, value-adding by means of good governance, understanding the strategy, risk, performance and sustainability, the role of the board and each director, best practice, how they should

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<sup>43</sup> <https://pmg.org.za/committee-meeting/30168/>

<sup>44</sup> <https://pmg.org.za/committee-meeting/16418/> 19 September 2013

<sup>45</sup> <https://pmg.org.za/committee-meeting/16965/> 20 February 2014

<sup>46</sup> <https://pmg.org.za/committee-meeting/14816/5> September 2012

be applied and roles of audit and risk committees. An explanation was given of the roles of the chairman, directors, chief executive officer, board and auditors, and how the committee should exercise its oversight function.<sup>47</sup>

In the 4<sup>th</sup> Parliament, the PC on COGTA held three days of public hearings on service delivery as well as holding public hearings in the provinces. This consultation, which included civil society organisations, other government departments and business as well as the SAHRC, would have informed MPs on their work for their term of office. In the provincial hearings, the chairperson outlined the purpose, advising Members to find out what the problems were, what was working and not working in those municipalities.<sup>48</sup>

In the 5<sup>th</sup> Parliament, the PC on CoGTA used a similar method of conducting public engagement. Public hearings were held on three pieces of legislation. Stakeholders tended to be government departments and academic institutions. On the Initiation Bill, a public hearing was held with 21 representatives of different public and traditional groups. In addition, in each case of legislation before the committee, provincial hearings were also held.

The previous government under President Zuma was emphatic in its attempts to sign the nuclear deal with Russia and certain individuals were even prepared to break the law to get the deal through. Parliament was complicit in failing to do due diligence on the international agreements that were presented. It was civil society which finally took the government to court and won the case, overturning the deal. OUTA would argue that it is a distinct failing for Parliament to fail to identify civil society as stakeholders.

A recent report produced by the Joint Standing Committee on the Financial Management of Parliament (JSCFMP) in the 5<sup>th</sup> Parliament indicated that constituency offices, which are funded by Parliament and therefore by taxpayers, are inadequately monitored. The implication is that oversight visits rarely, if ever, emanate from the work parliamentarians perform in their constituencies. In the general course of parliamentary business, representatives of executive departments attend committee meetings cyclically and present on their progress toward achieving agreed annual performance plans (APPs) and popular expectations of the public they serve.

However, MPs are limited in their ability to perform oversight for several reasons. The same report from the JSCFMP raised the question whether the current model allows for effective oversight of the executive in a manner that ensures that the broad objectives of the National Development Plan (NDP) are realised. The way oversight has been conducted has made it difficult to identify inefficiencies within the executive.

One reason for poor oversight is a lack of meaningful key performance indicators (KPIs). On the other hand, direct accounting from the representatives of the departments or organs of state being overseen often results in selective reporting and unrealistically optimistic feedback. More accurate, alternative sources of performance measurements may include community leaders representing respective constituencies and/or public hearings where civil society organisations can present their own views on whether organs of state are performing. Through such avenues, MPs may be better

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<sup>47</sup> <https://pmg.org.za/committee-meeting/20907/> 20<sup>th</sup> May 2015

<sup>48</sup> <https://pmg.org.za/committee-meeting/11187/> 15 Feb 2010

equipped to critically engage departmental staff and ministers robustly. OUTA argues that Parliament would then be better able to uncover corruption, abuse and mismanagement of state resources.

These views are not new, but the translation into new practice is still a major challenge. According to the Report of the High-Level Panel on the Assessment of Legislation and the Acceleration of Fundamental Change – an extensive governmental review document that was compiled by a panel of renowned South African politico-economic experts and headed by former President Kgalema Motlanthe – effective Parliamentary oversight is dependent on MPs acting in the best interests of the people of South Africa without fear, favour or prejudice. “At the heart of whether government delivers on its Constitutional mandate, and whether Parliament legislates to bring about change and exercises oversight effectively, are issues of accountability.”

## Capacity to act

Parliament is structured in such a way that the average number of meetings a committee holds in a year is about 25. Key functions of parliamentary committees are to pass the budget, hear the plans of the departments, and to then receive progress reports, quarterly reports from the departments and, at the end of the year, from the various institutions and the specific departments, as well as the AG and the annual report.

This BRRR process is vital part of the committees’ oversight function and takes approximately four or five meetings. Quarterly reports would take an additional four days, and the approval of plans and the budgets would take a minimum of a further two days.

This leaves the committee with an effective 12 meetings for additional oversight matters. If we assume that there will be at least one piece of legislation to be considered per year, and that involves public hearings and committee deliberations (five meetings), that would leave the committee an effective seven days with which to conduct oversight over the entire department, so committees need to choose which issues to tackle. In our analyses of the various committees, committees appear to need at least two meetings and potentially a site visit before they believe that they have exhausted their oversight. This then reduces the potential challenges that committees could address to one or two per year. It is therefore important for committees to plan their programmes quite carefully and tackle key strategic or structural challenges that, if solved, could ensure that similar problems do not occur in future.

A further challenge is that some committees are dealing with massive departments, for example the combined Mineral Resources and Energy departments, or committees with many bodies that report to them, for example DPE. It is also relatively easy for MPs to be distracted into a less contentious issue and to spend large amounts of time on one emotive issue without resolution. The Lily Mine is one case where the PC on DMRE held no less than four meetings on the Lily Mine issue (when it was the PC on DMR in the 5<sup>th</sup> Parliament) and has continued with this saga into the 6<sup>th</sup> Parliament.

However, the same committee is under the same chairperson and yet this committee failed to bring the then Minister of Mineral Resources to account for his alleged role in state capture. According to the OUTA submission to the Zondo commission, the PC on DMR was asked to investigate then Minister

Mosebenzi Zwane in June 2017. This inquiry was never carried out and was supposedly abandoned due to a lack of “time, resources and power to do anything about prospective findings”<sup>49</sup>.

This raises questions about the effective use of South African’s tax income. It is taxpayers’ money that sustains Parliament and it cannot be acceptable for a portfolio committee not to perform its oversight function due to lack of money. It also raises the uncomfortable allegation that politically sensitive inquiries are set up deliberately to fail. According to the OUTA submission on Parliament to the Zondo Commission, “It is worth noting that the same Presiding Officer who sent a letter to the Portfolio Committee on Mineral Resources instructing it to investigate allegations of state capture disabled staff from doing just that.”

According to OUTA’s submission to the Zondo Commission, MPs were not well prepared for their oversight meeting over the relationship between Denel group (Denel Asia) and the company VR Laser, a controversial matter given the 25% ownership of VR Laser by the Gupta family and the President’s son Duduzane Zuma. “As a result of being uninformed, Members appear to have confused issues relating to VR Laser South Africa with those pertaining to VR Laser Asia. Most of the questions were applied to VR Laser Asia and Denel representatives could easily sidestep real challenges by capitalising this confusion. VR Laser South Africa did have a longstanding relationship with Denel, but VR Laser Asia did not. Members of Parliament evidently do not have to properly prepare for oversight meetings – and are often at a disadvantage due to a lack of impartial sources of information on performance in organs of state”.

## Structural challenges Parliament faces in holding its own Members accountable

The separation of powers outlined in the Constitution relies on MPs to act honourable and ethically in the interest of the state, above narrow party-political interests. Unfortunately, Parliament has shown itself to be woefully lacking in this regard.

The failure to include any other source of information than the very same departments over which MPs are supposed to conduct oversight weakens such oversight. As highlighted by various examples, Members “depend on oral presentations of information from the same public officials who are implicated in allegations of maladministration, improper conduct, and/or corruption”.<sup>50</sup>

One issue that Parliament has been consistent in is the failure to implement a public participation model proposed more than a decade ago. Such a system that formally included regular civil society input into parliamentary briefings would alert MPs to information deliberately massaged or excluded from parliamentary presentations from affected departments.

As highlighted by OUTA’s submission to the Zondo Commission, there is a lack of consequences and promotion of political leaders who undermine the principle of accountability and good governance.

This is illustrated by several extracts from the submission:

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<sup>49</sup> OUTA submission to Zondo

<sup>50</sup> Outa Zondo commission submission

“5.4.18. Despite both the former President Zuma and former Minister Joemat-Petterson having entered into multilateral agreements, tantamount to procurement negotiations, that were later found to be unlawful in a court of law – neither have suffered any real consequence. Former Minister Joemat-Petterson is currently the Chairperson of the Portfolio Committee on Police in the National Assembly (6th Parliament).”

In a joint parliamentary committee meeting (27 March 2018), consisting of the PC on Water and Sanitation and the Standing Committee on Public Accounts meeting with the AG and Treasury on challenges facing the departments: “Irregular expenditure, because of deviations not approved by Treasury, amounted to R2.4 billion while fruitless and wasteful expenditure was flagged in the Department’s Giyani, Nandoni and Mopani Water projects. Such wasteful expenditure was attributed to excessive project management and professional fees, alongside excessive construction costs. Members were deeply concerned that it seemed to appear the Department of Water and Sanitation had completely collapsed and expressed their doubts about the financial sustainability of the Department”<sup>51</sup>. The committee noted that it would have a responsibility to probe into various issues in this regard. However, “5.9.13. The inquiry was abandoned without a legitimate reason being stated on record. Off the record, the upcoming National and Provincial elections were cited as the reason by the Chairperson of the Portfolio Committee on Water and Sanitation, Mr Lulu Johnson”<sup>52</sup>. The minister of Water Affairs and Sanitation from 2014 to 2017 was Minister Nomvula Mokonyane.

The Portfolio Committee on Communications, met on 27 March 2018 to discuss an inquiry into state capture allegations against Minister Faith Muthambi. Despite evidence that Muthambi had violated the confidentiality of Cabinet, and that a complaint had been laid with the Ethics Committee, and that the Communications Committee then wrote to the Speaker to ask “what had been done in relation to the recommendations of the Ad Hoc Committee report”<sup>53</sup>, disappointingly, OUTA’s submission reports that “No consequences have been evident since submission in October 2017, nor have any consequences resulted from the proceedings and report of the Ad Hoc Committee on SABC as far as Ms F Muthambi is concerned. Despite the allegations contained therein she is, at the time that this affidavit is being prepared, the Chairperson of the Portfolio Committee on Cooperative Governance and Traditional Affairs in the National Assembly.

5.9.22. This illustrates that the determinations of Portfolio Committees are empty. Party political decision-making determines the fate of all senior politicians – including their deployment in Ministerial or Parliamentary positions, regardless of performance or unresolved allegations of misconduct”.

In effect, “Parliamentary positions have increasingly become known as placeholders for tainted politicians to ‘cool down’ whilst retaining financial and political privileges at the taxpayers’ expense.”<sup>54</sup>

The current political system appears to reward unethical behaviour. For example, Chairperson Sahlulele Luzipo remains a chairperson in the 6<sup>th</sup> Parliament, ex Ministers Mosebenzi Zwane, Faith Muthambi, and Tina Joemat-Petterson, all of whom have complaints and allegations of corruption around them, are now chairpersons in Parliament. The 5<sup>th</sup> Parliament’s PC on DPE chairpersons Zukiswa Rantho and Lungi Mnganga-Gcabashe, who held the only thorough inquiry into state capture

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<sup>51</sup> OUTA submission to Zondo Commission

<sup>52</sup> OUTA submission to Zondo Commission

<sup>53</sup> OUTA submission to Zondo Commission

<sup>54</sup> OUTA submission to Zondo Commission

in Parliament, are no longer in Parliament, while Fikile Majola who, as the chair of the Portfolio Committee on Energy, oversaw the signing of the unlawful nuclear deal is now a deputy minister.

If Parliament is truly to be the third pillar of governance, independent from the executive and the judiciary, then senior parliamentary politicians should not be eligible for executive positions, and those in the executive should not be able to return to Parliament once they have served their term of office. This would provide some separation of powers and would negate accusations of senior politicians such as chairpersons of committees pandering to Ministers to serve their own political careers.

## 6. Conclusion

There appears to be a lack of action taken by various important committees around corruption and maladministration generally.

Despite calls by the President for government leadership to act with integrity, and the need for personal values of integrity, accountability, honesty and justice to be visibly engrained in the day-to-day behaviour of influential public office bearers, MPs remain very busy but not directed towards rooting out systemic corrupt practice to prevent the continuation of state capture and looting of taxpayers' money. Parliament is imbued with the power and responsibility to oversee the executive without fear or favour, and when its Members are driven primarily by the mandated purpose of representing the public interest, accountability can be the result. Accountability mechanisms and core oversight committees such as the Joint Committee on Ethics and Members' Interests are in place, but these must be utilized with the highest degree of duty and responsibility for them to be effective. Whether this has been the case thus far is evidently doubtful.

Admittedly, the prevailing political machinery and its structure can impede transparent governance and self-discipline among powerful public officials. That is why civil society's inclusion in the various mechanisms of accountability in government is so important. OUTA aims to enhance and utilize the existing mechanisms by monitoring and evaluating their effectiveness and efficiency.

In a year of immense social upheaval, which has been accompanied by widespread looting, even of funds set aside to combat the Covid-19 pandemic which has wrought devastation worldwide, Parliament appears to be the most ill-prepared it has been in many years to hold the executive to account.

In this first year of the 6<sup>th</sup> Parliament, MPs have interacted the least with non-government entities that would provide an "alternative truth" to government departments. Despite the dedicated response of parliamentary management to ensure that MPs could continue to meet, few committees took the opportunity to involve external stakeholders in their deliberations.

Despite much business of holding meetings, and which has not slowed down during the Covid-19 lockdown, MPs appear to be almost entirely reliant on information received from the very entities that they are supposed to hold to account. The notable exception is the PC on CoGTA which has managed to act on petitions received regarding Covid-19-related maladministration and has initiated a system of its MPs overseeing Covid-19 responses at local level. Before lockdown, this committee

had a number of stakeholder engagements and indaba-style dialogues, but after lockdown, the committee has held municipal officials to account based on petitions received but not with the public participating in the actual discussion (as far as we can ascertain)<sup>55</sup>.

The parliamentary oversight and public participation models and the various induction training sessions that Parliamentarians undergo emphasise the need and importance of public engagement in order to potentially offer an alternative insight into the executive's performance.

The parliamentary practice of relying on the very entities that they are supposed to hold to account renders their oversight meaningless. Given that this is the first year of the 6<sup>th</sup> Parliament, it would be expected that MPs would be more eager and willing to involve external experts and community experiences in their specific portfolios.

Many of the researchers and parliamentary staff that supported the 4<sup>th</sup> and 5<sup>th</sup> Parliament are still there and could play a role in passing on their institutional knowledge, and directing committee chairpersons towards external stakeholders that have provided capacity building in the past.

The failure to do this means that governance challenges that were identified in the 5<sup>th</sup> Parliament are not being addressed.

The trend of concern is that despite many meetings and some public hearings, Parliament has not challenged in a substantive way any of the proposals or governance issues that lead to corruption over the past and continue to allow mismanagement of scarce financial resources.

The institutional failing and potentially lack of political will to implement the public participation model which would strengthen oversight has certainly contributed to the inability of Parliament to prevent the R63 billion of irregular expenditure that the AG reported on for 2018/19.

On 7 October 2020, the Daily Maverick<sup>56</sup> pointed out that Parliament has now been instructed by the executive to finalise its BRRRs without even the AG reports on the financials. Parliamentary oversight of 2020 is effectively nullified. If there was a system in place of civil society hearings ahead of the BRRR, MPs might have had some chance of gleaning an alternative view of government performance but as of today, MPs are simply rolling over and potentially closing their eyes to any accountability of the executive's actions.

The concern is that the 6<sup>th</sup> Parliament, despite continuing to meet and deliberate, and to engage with the relevant ministers, will continue to be asleep at the wheel, to be accused next year of once again aiding and abetting state capture and being unable to stem the systemic problems that the looters have honed to a fine art over many years.

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<sup>55</sup> There are some minutes which are not available on PMG. Some of those meetings could have contained actual complainants

<sup>56</sup> <https://www.dailymaverick.co.za/article/2020-10-07-Parliament-57-channels-and-nothing-on-budget-oversight-sans-annual-reports-and-audited-finances/>

## 7. Recommendations

The Ahmed Kathrada Foundation and the Public Affairs Research Institute hosted a civil society conference in October 2019, entitled “Civil Society – Defeating state capture and rebuilding the state”<sup>57</sup>.

At that conference, a civil society charter was drafted which included that “we will determine what strategies should civil society be adopting to ensure greater participation in Parliamentary committees and public engagement consultations”.

As part of contributing to this civil society initiative, OUTA has the following recommendations:

South Africa has committed to the Open Government Partnership. Access to information, public participation and accountability are watchwords of good governance. Parliament can strengthen its oversight role through:

- The meaningful implementation of the oversight and accountability (OVAC) model and the public participation model, specifically:
  - o Providing guidelines for public participation to all people who visit Parliament (virtually or physically). Establishing a standard best practice “rules of engagement” would enable Parliamentarians and civil society and external stakeholders to manage their expectations.
  - o Implementing the name-and-shame recommendation of the independent panel (2009 report).
- Support for such models, through the strengthening of the IT section of Parliament in order to support additional monitoring and attendance at committee meetings by civil society.
- In the OVAC model report, recommendations were made to consider the “development of mediums for deliberation, engagement and debates on broader and complex issues in traditional South African channels which include Lekgotleng, Inkundleni and Bosberaad”<sup>58</sup>.
- The reinstatement of some of the best practices from previous Parliaments, for example, the indaba-style public engagements in specific portfolios which successfully enabled MPs to become aware of key issues of public interest in a specific sector, for example, energy.
- The inclusion of mandatory public hearings in September as part of MP preparation for the BRRR each year. This would allow alternative perspectives to those of government entities, exposing weaknesses in performance that need addressing.
- Given the limited time that Parliament committees have to conduct oversight, priority should be given to systemic changes that will prevent the abuse of public funds, and enable the recovery of wasteful expenditure from past miscreants.
- Parliament should set clear reporting timeframes for the executive to respond to and address BRRR recommendations, to avoid repeats of bad practice, or the problem of issues taking an entire year to resolve.

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<sup>57</sup> [https://47zhcvti0ul2ftip9rxo9fj9-wpengine.netdna-ssl.com/wp-content/uploads/2020/04/AKF\\_PARI\\_Civil-Society-ConferenceReport\\_Oct2019.pdf](https://47zhcvti0ul2ftip9rxo9fj9-wpengine.netdna-ssl.com/wp-content/uploads/2020/04/AKF_PARI_Civil-Society-ConferenceReport_Oct2019.pdf)

<sup>58</sup> <https://www.Parliament.gov.za/storage/app/media/oversight-reports/ovac-model.pdf> section 4.1.1

- Research units, the library and other specialised units in Parliament should engage academia and civil society, including affected communities and portfolio experts, to strengthen the substantive quality of the advice they provide to MPs.
- Parliament management, as part of the implementation of oversight and public participation models, should establish a platform for engagement with civil society, in order to address issues of access to information and public participation in Parliament's operations.
- Feedback reports should be provided which detail how submissions made at public hearings are considered and incorporated into committee recommendations. Committees do produce reports for members summarising the issues raised in public participation and minutes might reflect the discussion of the meeting, but a specific report made publicly available would enable South Africans to see how their inputs were responded to and why their input was taken on board or not. Such reports should include the next steps in the process of decision-making.
- Transparency of information from Parliament should be improved. Committees often allow government to respond in writing to questions raised in committee, particularly if they run out of time. But those responses are never publicly available. Nor are the minutes of Parliament or parliamentary committee reports available on the Parliament website. These are low-hanging fruits for improving good governance practices in Parliament.
- Parliament should establish a forum where civil society and parliamentary management can engage to strengthen participatory democratic practice in Parliament.
- Parliament needs to consider the failings of its current structure which rewards unethical behaviour and restructure itself to incentivise strong ethical leadership.

As the 6th Parliament embarks on its second year and the country emerges from the Covid-19 pandemic, which has exposed the serious corrupt mind-set of those who continue to loot irrespective of the suffering they inflict, OUTA will continue to examine and publicise Parliament's performance and to contribute towards empowering citizens to hold our MPs accountable.

## Appendix A

### DMRE case study:

Pc committee on energy identified several priorities in their legacy report.

The 5<sup>th</sup> Parliament PCE vision was to be a “vibrant and effective Portfolio Committee that legislates and conducts oversight over the implementation of departmental programmes and related entities to improve service delivery, achieve universal access to electricity and a transformed energy sector”

- Strengthening oversight and accountability.
- Enhancing public involvement.
- Deepening engagement in international fora.
- Strengthening co-operative government; and
- Strengthening legislative capacity.

The table below provides an overview of the number of meetings held, legislation and international agreements processed and the number of oversight trips and study tours undertaken by the committee, as well as any statutory appointments the committee made, during the 5<sup>th</sup> Parliament<sup>59</sup>:

Activity	2014/15	2015/16	2016/17	2017/18	2018/19	Total
Meetings held	18	20	21	24	26	109
Legislation processed	0	0	0	0	0	0
Oversight trips undertaken						
Study tours undertaken	1	0	0	0	0	1
International agreements processed	1	5	0	0	1	7
Statutory appointments made	0	0	0	0	0	0
Interventions considered	0	0	0	0	0	0
Petitions considered	0	0	0	0	0	0

### Legislative mandate:

There were 7 pieces of legislation proposed to the 5<sup>th</sup> Parliament, none of which were processed by the end of the 5<sup>th</sup> Parliament. Although there was an acknowledgement that the planned legislation has not been processed, there was no explanation as to why the PCE failed to carry out its mandate of holding the executive to account for its failure to deliver.

It is discussion of the legacy reports of the 5<sup>th</sup> Parliament, the PC DMRE were provided with key recommendations wrt energy<sup>60</sup>:

- The Department provide status updates on each outstanding bill.
- Ensure continued quarterly reporting from the Department and its entities.
- Monitor the implementation of Auditor General Recommendations.
- Conduct regular oversight visits to the Department and the entities.
- Monitor the turnaround strategy of the Central Energy Fund (CEF).

<sup>59</sup> [https://static.pmg.org.za/PC\\_ON\\_ENERGY\\_2014\\_-\\_2019\\_LEGACY\\_REPORT\\_5TH\\_PARLIAMENT.pdf](https://static.pmg.org.za/PC_ON_ENERGY_2014_-_2019_LEGACY_REPORT_5TH_PARLIAMENT.pdf) pg. 16

<sup>60</sup> <https://pmg.org.za/committee-meeting/28796/> 3 September 2019 PMG

- Process the report on the Strategic Fuel Fund (SSF) once finalised.
- Address the Electricity Distribution Industry challenges with the Inter-Ministerial Task Team.
- Monitor the implementation of the Solar Water Heater programme.
- Ensure the Integrated Resource Plan is reviewed every two years.
- Ensure the Integrated Resource Plan is finalised.

However, other issues were raised with in the legacy report<sup>61</sup>:

- Monitor the implementation of the national solar water programme
- Improving the implementation of the Auditor-General of SA's recommendations by the Department of Energy and its entities.
- Once the investigations regarding the sale of strategic fuel stock at the SFF is finalised, the Committee must be briefed on these

In unpacking the AGSA concerns, the legacy report made the following points:

An important concern raised by AGSA was that the oversight of state-owned entities had to be strengthened, and that senior and accounting officer management had to act with greater urgency to resolve concerns raised on key controls and risk management. This was evident at Central Energy Fund (CEF), Strategic Fuel Fund (SFF), PetroSA, DoE, NECSA, NTP, Pelchem and Gammatec 14.2.2. The South African Nuclear Energy Corporation (NECSA) and its subsidiary, PELCHEM received Disclaimer Audit Opinion from AGSA during the 2017/18 financial year. 14.2.3. There is uncertainty regarding PELCHEM's ability to continue as a going concern. 14.2.4. Delivering her Budget Speech in 2017, the former Minister of Energy, Ms Kubayi stated that CEF would undergo rigorous restructuring in the 2017/18 financial year to ensure more transparency and better accountability. The process of restructuring CEF started as early as 2013, but to date, the restructuring has not yet been finalised.

The 6<sup>th</sup> Parliament BRRR report provides an insight into the PC DMRE priorities for addressing the challenges identified by the 5<sup>th</sup> Parliament, but which it had failed to resolve.

The 2019 PC DMRE BRRR<sup>62</sup> contains 22 recommendations to the Minister of DMRE (attached as appendix x). Key issues of accountability, consequence management and delays in finalising legislation were covered in the BRRR<sup>63</sup>.

- Ensure the finalisation of the Turnaround Strategies of the Central Energy Fund, PetroSA and NECSA, respectively.
- Investigate NECSA's failure in tabling its Annual Financial Statements timeously.
- Provide robust oversight on entities reporting to the Department, especially NECSA and CEF.
- Ensure the start of the installation of the 87 000 solar water heater units by the Third Quarter of 2019/20 and provide a comprehensive update on the programme during the Fourth Quarter of the 2019/20 financial year.
- Investigate whether the issue of an alternative audit to that of the AGSA, is not an act of misconduct on its own.

<sup>61</sup> [https://static.pmg.org.za/PC\\_ON\\_ENERGY\\_2014\\_-\\_2019\\_LEGACY\\_REPORT\\_5TH\\_PARLIAMENT.pdf](https://static.pmg.org.za/PC_ON_ENERGY_2014_-_2019_LEGACY_REPORT_5TH_PARLIAMENT.pdf)

<sup>62</sup> <https://pmg.org.za/page/MineralResourcesandEnergy2019BRRR>

<sup>63</sup> <https://pmg.org.za/committee-meeting/29113/> the BRRR report was adopted on 22<sup>nd</sup> October 2019

- Ensure that there is consequence management and encourage entities to undertake investigations if there is a suspicion of wrongdoing.
- Ensure that the five pieces of legislation that the Department intends to finalise during the Sixth Parliament are indeed finalised. Key amongst these is the National Radioactive Waste Management Fund Bill and National Energy Regulator Amendment Bill.

Since the tabling of the BRRR in October 2019, the PCDMRE has held 26 meetings. 14 meetings have been held since covid related lockdown, in other words, in the virtual Parliamentary space of zoom, teams and YouTube. Of these,

- 2019 – 8 meetings, 2 general admin, 5 related to energy issues,
- 1 ISMO/IMEO 1 CEF
- 2020 pre covid
- 4 meetings – 3 energy 2 on ISMO
- 2020 post lockdown
- 14 meetings – 7 normal reporting on apps, 2 on post Covid adjustments, 3 on issues of which 1 on SWH, 1 on ISMO and 1 on international treaty.

On 19<sup>th</sup> May 2020, The PCDMRE had a briefing from NECSA who reported on their turnaround strategy.

The minutes<sup>64</sup> of that meeting do not reflect any discussion on forensic investigations or the failure to deliver financial statements on time. However, the DG of DMRE concluded his presentations to the committee by referring to the BRRR and promising an update in BRRR 2020.

The implication is that MPs appeared to have not followed up on their BRRR reports, but also that there will be a year's lag between the Parliamentary recommendations and the DMRE response. OUTA does not view this as effective accountability or consequence management.

On 12 May 2020<sup>65</sup>, the PCDMRE met with CEF who presented their APP. Overall the committee was not satisfied but according to the meeting minutes, ran out of time and requested various responses in writing.

On 7<sup>th</sup> May 2020, the DMRE presented on its APP. There was no mention of any follow up from the BRRR recommendations. However, Ms Pat Gamede, Deputy Director General: Corporate Services, said that there had been four corruption cases. Two were currently with the labour court, one had been reported to the police, and one case was currently awaiting a court date.

On 2<sup>nd</sup> June 2020<sup>66</sup>, the PCDMRE received a briefing on the solar water heater programme. The MPs grilled the depts. who had prepared a report on the steps it had taken to implement the SWHs. The chairperson asked for a follow up progress report by the end of September, will also undertake an oversight visit and asked for the results of investigations and consequence to be presented.

In this case, the committee is performing its oversight role, with MPs having read the reports and able to interrogate the DMRE on progress.

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<sup>64</sup> <https://pmg.org.za/committee-meeting/30257/> presentation of app of necsa

<sup>65</sup> <https://pmg.org.za/committee-meeting/30193/> presentation of app for CEF 12 may 2020

<sup>66</sup> <https://pmg.org.za/committee-meeting/30362/> presentation on swh programme

## **Bias of the committee**

There have been 3 meetings to follow up the Lily Mine case. However, in 2019, concern was raised over other mine issues such as Xolobeni. During 5<sup>th</sup> Parliament, the Committee heard the findings of a Human Rights Commission report, which had very specific recommendations to address the abuses that had occurred in mining affected communities.

One must therefore question how come the HR Commission report has not found its way onto the committee agenda. The committee held a meeting to discuss their priorities, (3 September 2019), and resolved to hear all the court cases related to DMRE. Xolobeni and Lily Mine as well as the Somkhele mine were raised as concerns from MPs, whereas electrification and the fate of PetroSA were also raised. The PC has focused entirely on Lily Mine, holding two meetings and wanting an oversight visit, whereas none of the other mining issues have been addressed.

However, there was no decision taken specifically regarding matters of state capture or corruption as the legacy report failed to explicitly highlight this.

There have been 2 meetings on international agreements on nuclear treaties. Again, there are various pressing issues and outstanding legislation but the Dept. is focusing on nuclear and the committee is not questioning this.

What about Eskom?

Given that the DMRE Minister has a mining background and the 5<sup>th</sup> Parliament PC Mineral Resources chairperson is now the chairperson on Minerals and Energy committee in the 6<sup>th</sup> Parliament, it is concerning that energy security does not feature as an item for discussion. In the period under review, the PC DMRE has not called Eskom to account. However, wrt the proposed IMEO bill which concerned the restructuring of Eskom, the PC DMRE did attempt to hold a joint meeting with the PC DPE.

Full list of recommendations from the 2019 BRRR:

Informed by its deliberations, the Committee recommends that the House request that the Minister of Mineral Resources and Energy should:

- Ensure that Department and its entities consistently submit their Annual Reports as per the deadline prescribed by the PFMA.
- Ensure that there is not a repeat of a dispute between the Department and AGSA.
- Ensure that decisive action will be taken by the Executive Authority against any official who challenge the authority of the AGSA.
- Conduct an investigation whether the issue of an alternative audit to that of the AGSA, is not an act of misconduct on its own.
- Consider conducting forensic investigations on the expenditure of public funding with specific reference to the Central Energy Fund (CEF) and its subsidiaries, and any other entity reporting to the Department.
- Conduct an investigation into NECSA's failure in tabling its Annual Financial Statements timeously.
- Ensure that governance issues at the entities are addressed.
- Expedite the filling of vacancies of Boards and Senior Executives in State- Owned Entities.

- Should include in the performance agreements of the Board Members a provision that always commits them to upholding their fiduciary responsibilities.
- Ensure the start of the installation of the 87 000 solar water heater units by the Third Quarter of 2019/20 and provide a comprehensive update on the programme during the Fourth Quarter of the 2019/20 financial year.
- Revisit the areas where the 400 000 imported solar water heater units installed to establish if they are still functioning.
- Ensure that there is consequence management and encourage entities to undertake investigations if there is a suspicion of wrongdoing.
- Finalise the Bio-fuels Framework within the current financial year.
- Provide robust oversight on entities reporting to the Department, especially NECSA and CEF.
- Ensure the finalisation of the Turnaround Strategies of the Central Energy Fund, PetroSA and NECSA, respectively.
- In consultation with the SFF review the Strategic Fuel Stock policy.
- Explore projects and initiatives to address the decline (from 2023) of production supply from the Rompco pipeline.
- Carefully consider the issue of overlapping mandates between entities during the merger process and provide the Committee with the outcome of the above analysis, as well as any applicable legislative proposals.
- Expedite the finalisation of the Integrated Resource Plan for Electricity and provide timeframes for review thereof.
- Address the Electricity Distribution Challenges, the impasse between Eskom and Municipalities.
- Support NERSA in the execution of its duties as an institution which protects public interests.
- Ensure that the five pieces of legislation that the Department intends to finalise during the Sixth Parliament are indeed finalised. Key amongst these is the National Radioactive Waste Management Fund Bill and National Energy Regulator Amendment Bill.

## DPE case study

Over the course of the 4<sup>th</sup> Parliament, the PC DPE held 124 meetings, and while engaging with the various SOEs under their ambit, failed, in the main, to consult any other parties. The PC DPE heard from Eskom about labour disputes, but no trade unions presented. There were no public hearings and only one stakeholder engagement with four coal mining companies over Eskom and its coal challenges. There is no record of any other engagement and no meeting where civil society engaged.

For the 5<sup>th</sup> Parliament, the PC DPE continued to only engage with its SOEs until 2017. In 2017, the PC DPE resolved to address state capture. It held a preparatory meeting with three civil society stakeholders and then held a further 11 days of public hearings on Eskom state capture. In 2018, the public hearings into state capture continued with a further 9 days of hearings out of 35 meetings. The Eskom Inquiry report finally adopted by the PC DPE on 28 November 2018<sup>67</sup>. In 2018, there were a further 5 meetings held, but no further stakeholder engagements or public hearings. Although the PC DPE has been lauded for their efforts in exposing and investigating state capture at Eskom, in their other work, public engagement appears to have been the exception rather than the norm.

The 5<sup>th</sup> Parliament legacy report recommendations (attached as annexure b)<sup>68</sup>, included some general points such as: address areas of policy alignment areas with policy departments; to monitor procurement spend in all SOCs and the impact on socioeconomic outcomes.

The report also noted that they committee had not been able to learn from other countries about best practice in configuring of SOCs, and that this should be prioritised.

The Committee also stated that the 6<sup>th</sup> Parliament should consider following up on the need to find a lasting solution to the ever-rising municipal debt, and the culture of non-payment for electricity among South Africans. [There is a note that the committee visited three communities in this regard which should be added to the stakeholder engagements).

- A key area of focus of the Committee should be to engage the Department on the rationalisation of State assets and selling of non-core strategic assets of governance to maximise the financial position of SOCs.
- Engage and guide the Department on the formation of Eskom's three entities on Distribution, Generation and Transmission.
- The Committee should monitor Transnet's 4.0 strategy which migrate from the Market Demand Strategy.
- Outstanding issues on future roles of Alexkor and SAFCOL should be prioritised and the guidance should be provided to the Department

The BRR report for PC DPE (16<sup>th</sup> October 2019)<sup>69</sup> contained a list of about 20 recommendations, some of which were brought through from the legacy report.

The selection listed below had some timeframes and progress could therefore be tracked accordingly:

- Present quarterly progress reports on the development of the Shareholder Management Bill to the Committee.

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<sup>67</sup> <https://pmg.org.za/committee-meeting/27676/> 28 November 2018

<sup>68</sup> <https://pmg.org.za/page/LegacyReports>

<sup>69</sup> <https://pmg.org.za/page/PublicEnterprises2019BRR> 16 October 2019

- Present a model for SOC oversight per programme, with clear targets on monitoring, evaluations and reporting within this financial year.
- Provide the Committee with progress update efforts to ensure Alexkor achieves its public and commercial mandate, especially addressing socio-economic outcomes of the Richtersveld and Alexandra Bay communities.
- Ensure that the future role of SAFCOL is clarified and that the commercial and public mandates are diversified and expanded, and community land claims issues are resolved.
- Institute timely consequences for executives and management who deliberately or negligently ignore their duties and contravene legislation. A list of action taken against transgressors must be provided quarterly to the Committee for follow up of all irregular, fruitless and wasteful expenditure.
- Fast-track the introduction of the Shareholder Management Bill which will empower the department to carry out its oversight responsibilities over SOCs more effectively, especially in providing guidance on how to align SOCs' strategic priorities with government policies. The Department should present the draft Bill to the Committee by the end of March 2020.
- Present the Committee with a funding plan, cost containment and revenue maximisation strategy for Eskom, SAA, Alexkor, SAX and Denel before the end of the financial year.
- Present quarterly progress report to the Committee reports on the SOC restructuring process and the unbundling of Eskom into three entities namely: Generation, Transmission and Distribution.

There was nothing specific on Transnet although many of the broader management strengthening mechanisms would apply.

### **How did the committee perform?**

The first two substantive meetings that the PC DPE held after its induction covered progress on Denel and Alexkor and SAA. The MPs appeared to have no major complaints with Denel except a concern about financial sustainability<sup>70</sup>, but were more critical of Alexkor, impressing the need for urgent action.

SAA appeared to be commended: "The Chairperson complimented SAA for the comprehensive report. He asked if the Acting CEO could envision SAA coming out of its current crisis and become efficient, proficient and profitable, in order to contribute to the national economy. How long would it take? How could the Committee be of assistance to help realise this?"<sup>71</sup>

On 20<sup>th</sup> November, the PC DPE received a presentation outlining the road map for Eskom<sup>72</sup>. Members asked about job losses and the need for legislation for the unbundling.

On the 27<sup>th</sup> November, after the BRRR, the PC DPE returned to Alexkor to receive a progress report from the administrator. There were some concern: "Members noted that it appeared government was unable to bail out the state owned company so there are three options: sell Alexkor, close it down or put it into business rescue. They asked for Alexkor management's view on this. Some Members believed that state owned company must be saved. The Committee would meet on Alexkor again in the new year."

<sup>70</sup> <https://pmg.org.za/committee-meeting/28807/> 4 September 2019

<sup>71</sup> <https://pmg.org.za/committee-meeting/28926/> 18 September 2019

<sup>72</sup> <https://pmg.org.za/committee-meeting/29385/> 20 November 2019

Of the 15 meetings held in 2019, there were no public hearings or stakeholder engagements, the committee relied on the department and the relevant SOCs for information.

There were 14 meetings held in 2020, and there were two stakeholder engagements, which were so called as the committee decided who it would hear, as opposed to public hearings which are advertised. The committee chair was flexible however and OUTA could give a short input after the organisation requested the opportunity, as it was not on the official selected list. Given the short notice, there was not time to prepare a formal input.

On the 4 March 2020, on the topic of Eskom Challenges and solutions<sup>73</sup>: three stakeholders (COSATU, UCT and EIUG) presented with a fourth being OUTA which gave a short oral input. One of the trade union representatives also attended but only as an observer.

On 11 March 2020, a second stakeholder engagement was held on the topic of Transnet<sup>74</sup> and how it can contribute to socio-economic transformation. Submissions were heard from Congress of South African Trade Unions (COSATU), Business Unity South Africa (BUSA) and United National Transport Union (UNTU).

On 31 July, 2020<sup>75</sup>, the committee heard a petition from the Jamestown residents regarding electricity infrastructure transfer IRO Eskom and Stellenbosch municipality. The committee heard all parties, and it was resolved that as the Chairperson said that he believed all parties to be “on the same wavelength,” and that the Committee should allow the process to happen.

During the first half of 2020, the Committee held follow up meetings on progress with Denel, SAFCOL, Eskom unbundling, and Alexkor.

Key issues such as an SOC oversight model and the shareholder management bill were not part of the APP of the Dept. which was presented on 20 May 2020<sup>76</sup>. In response to questions by MPs, the DPE responded “The nature of strategic plan is a pipe dream, and he believes it is an achievable dream. They wish they could have more budget, but they are working with what they have. He confirmed that the Shareholder Management Bill has not been mentioned in this APP. DPE had to reprioritise due to the constrained resources it had. DPE has used existing legislation such as the PFMA and the Companies Act to govern how SOEs behave. This may change as they go forward as resources allow.”

Assuming that legislation should have been in the pipeline from at least October last year, the use of COVID19 as an excuse for non-completion appears weak.

Putting aside this observation, the PC DPE has held a number of follow up meetings with SOCs that are under their eye and have followed up on their 2019 BRRR. The more strategic legislation and management issues appear to be lagging and as these were to be in place by the end of the financial year (end of February 2020), Covid19 does not appear an adequate excuse.

The unbundling of Eskom legislation has now dragged on for more than eight years, and this Parliament seems no closer to getting it right. Eskom has not pointed to government as the delaying

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<sup>73</sup><sup>73</sup> <https://pmg.org.za/committee-meeting/29961/> 4 March 2020

<sup>74</sup> <https://pmg.org.za/committee-meeting/30020/> 11 march 2020

<sup>75</sup> <https://pmg.org.za/committee-meeting/30828/> 31 July 2020

<sup>76</sup> <https://pmg.org.za/committee-meeting/30266/> 20 May 2020

point<sup>77</sup>. PC DMRE has held several meetings on the DA proposed IMEO legislation, and despite most members wanting the ISMO legislation passed, nothing has happened.

PC DPE legacy report (5<sup>th</sup> Parliament) recommendations pg. 39

### **Recommendations**

- The Committee to have more joint meetings with the Committees on the Economic Cluster.
- The Committee should provide members orientation into the Department of Public Enterprises and State-Owned Companies.
- Capacity building should on financial and economic governance in preparation of the new role of SOCs.
- International oversight should be prioritised, and best practices be adopted for improved SOCs oversight.
- The report into investigations on the Eskom Inquiry and recommendations from the State Capture Inquiry should be followed up in conjunction with the Portfolio Committees on Justice and Constitutional Development and Police.
- Transnet's road to rail strategy should be fast tracked the Portfolio Committee on Public Enterprises.
- Transnet should present to the Committee progress on employees implicated on cable theft.
- The Committee should meet internal and external auditors to address issues faced by SOCs.
- The reconfiguration of the State should be prioritised by the Committee.
- The Committee should engage and guide Government in its plan to turnaround SOCs.
- A key area of focus of the Committee should be to engage the Department on the rationalisation of State assets and selling of non-core strategic assets of governance to maximise the financial position of SOCs.
- Engage and guide the Department on the formation of Eskom's three entities on Distribution, Generation and Transmission.
- The Committee should provide guidance on the competitive advantage, economy, efficiency, effectiveness and performance of SOCs.
- Sustainability issues in forms of corporate social investment in communities should be prioritised by the SOCs and they should set the agenda for the Committee.
- The Committee should monitor Transnet's 4.0 strategy which migrate from the Market Demand Strategy.
- Outstanding issues on future roles of Alexkor and SAFCOL should be prioritised and the guidance should be provided to the Department.
- The Committee should the work of the Presidential task team on Eskom.
- The Committee should continue to monitor the financial aspects of SOCs and develop mechanisms with which to curb guarantee utilisation in SOCs.
- The Committee should invite the Department to outline guidelines and criterion to be adhered to when choosing a strategic equity partner for SOCs. The Committee should design a framework to assess suitability of the strategic equity partner based on South Africa's macro environmental factors.

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<sup>77</sup> Daily Maverick article Sunday 16<sup>th</sup> August - <https://www.dailymaverick.co.za/article/2020-08-11-the-state-of-eskom-changing-but-slowly/>

## COGTA case study

The COGTA case study was slightly more difficult to compile as COGTA has not made its 5<sup>th</sup> Parliament legacy report available. It was not available via PMG and PMG themselves indicated that despite requesting it, the legacy report had not been provided<sup>78</sup>. In the NCOP listings of Legacy reports on the PMG website, there is a note indicating that the report was not adopted.<sup>79</sup>

For the 4<sup>th</sup> Parliament, the only legacy report that could be sourced was the Report of the Select Committee on Cooperative Governance and Traditional Affairs (i.e. the NCOP report). There is nothing available for the National Assembly.

An important key challenge noted in the 4<sup>th</sup> Parliament legacy report was that “Interventions are usually made far too late – when a municipality is about to collapse. It takes considerable effort to put the municipality back on a stable footing. Yet if the intervention had been made earlier, when the first signs of a failure emerged, it could have reduced the harm to service delivery, be less costly and be more effective.”<sup>80</sup>

Recommendations from that report included:

- An intervention should be used as a ‘last resort’; ‘early-warning’ and pre-intervention support mechanisms are needed. Some of the interventions could have been prevented if an early warning system, leading to proper support, had been in place.
- Where there are allegations of corruption, misappropriation of funds and maladministration, the Minister for COGTA should approach the Hawks to pursue criminal investigation in all those cases.
- SALGA in co-operation with Local Government Sector Education and Training Authority should facilitate training and capacity building for municipal councillors; to further deepen their understanding of the oversight role; legal framework and policies that govern the activities of municipalities.

The 2018 BRR Report for COGTA has a summary of previous key financial and performance recommendations of the committee which were 2016/17 recommendations, followed by progress in 2017/18. Below is an extract from this table (the full summary is to be found here - <https://pmg.org.za/taled-committee-report/3601/>).

<b>2016/2017 Recommendation</b>	<b>Progress made in 2017/18</b>
The Department and its entities must heed and act on the Committee’s recommendations of the previous financial year, particularly in respect of reducing irregular expenditure and ensuring that there is no unauthorised, fruitless and wasteful expenditure incurred.	The Department and its entities incurred irregular expenditure to the value of R716.6 million, which represents a 70 per cent increase from the R423 million incurred in the previous financial year.
The Department and its entities must heed and act on the Committee’s recommendations of the previous financial year, particularly in respect of	Ongoing.

<sup>78</sup> Email from PMG to OUTA 18<sup>th</sup> September 2020

<sup>79</sup> <https://pmg.org.za/page/LegacyReports>

<sup>80</sup> 4<sup>th</sup> Parliament legacy report NCOP <https://pmg.org.za/page/LegacyReports>

ensuring that all municipalities enforce competency standards for Managers and appoint persons with the requisite skills, expertise and qualifications, and that the Department takes corrective measures in instances where municipalities contravene the Systems Act and its regulations	
Where a municipality is in serious or persistent breach of its service delivery or financial performance obligations, the Committee must assist to ensure timely provincial executive intervention in terms of s139 (5) of the Constitution.	Ongoing

The 2018 report looks at the Dept. itself and then at the Dept. of traditional Affairs, the Municipal Infrastructure Support Agent and SALGA, the CRL and the Municipal Demarcation Board.

Comments from the Dept. section, and MISA report include “The Department did not take disciplinary steps against officials who incurred irregular expenditure”; while that of the MDB said “Incurred irregular expenditure amounting to R17 million, which is nearly six times higher than that incurred in the previous financial year.”

The Recommendations to the Dept. included the following:

- The Department of Cooperative Governance must address the weak levels of assurance, which the Auditor-General identified in respect of the Executive Authority, Accounting Officer and Senior Management.
- The Department of Cooperative Governance must consider undertaking a comprehensive review of the Community Work Programme, including identifying the key problem areas and devising mechanisms to deal effectively with the identified challenges.
- The Portfolio Committee must invite all the municipalities with deposits in the VBS Mutual Bank in order to understand better the impact of the Bank’s possible liquidation on the financial and service delivery performance of these municipalities.
- The MDB should explore the possibility of submitting its proposed amendments to the Demarcation Act directly to the Portfolio Committee, which can deal with the amendments as a Committee Bill.

The 6<sup>th</sup> Parliament 2019 BRRR contained a section which summarised previous key financial and performance recommendations of the Committee, comparing 2017/18 to progress made in 2018/19.

Extracts are included below<sup>81</sup>:

<b>2017/18 Recommendations</b>	<b>Progress made in 2018/19</b>
The Department of Cooperative Governance must address the weak levels of assurance, which the Auditor-General identified in respect of the Executive Authority, Accounting Officer and Senior Management.	The Department's failure to table its Annual Report within the stipulated timeframes suggests that the Executive Authority, Accounting Officer and Senior Management have not addressed these audit issues.
The Department of Cooperative Governance must table its Annual Reports within the stipulated timeframes, to afford the Committee opportunity to assess the Department's financial and service delivery performance in line with its oversight mandate.	The Department has once again failed to table its Annual Report within the stipulated timeframes. In the explanatory letter to the Portfolio Committee, the Director cites the Auditor-General as the reason for the delay.
The Portfolio Committee must invite all the municipalities with deposits in the VBS Mutual Bank in order to understand better the impact of the Bank's possible liquidation on the financial and service delivery performance of these municipalities.	The Committee has concluded oversight visits to most of the municipalities that lost investments in VBS. It also anticipates concluding oversight to the outstanding municipalities during the financial year.
The MDB should explore the possibility of submitting its proposed amendments to the Demarcation Act directly to the Portfolio Committee, which can deal with the amendments as a Committee Bill.	Discussions are still ongoing.

Even without the legacy report, COGTA is failing to account, thereby undermining the ability of Parliament to conduct its oversight. The Demarcation Act amendments are a systemic issue that if delayed, would impact on the integrity of the 2021 elections, but this process seems to have stalled for 2 years.

The AG report was more favourable than the previous year for the various entities with MISA having zero irregular expenditure for example.

The Committee 2019 recommendations included<sup>82</sup>:

- The Portfolio Committee on Cooperative Governance and Traditional Affairs should develop mechanisms to ensure that there are consequences for inadequately explained failures to adhere to the prescribed timeframes for the tabling of Annual Reports.

<sup>81</sup> <https://pmg.org.za/page/COGTA2019BRRR>

<sup>82</sup> <https://pmg.org.za/page/COGTA2019BRRR>

- The Portfolio Committee should commence with the process of introducing the proposed amendments to the Demarcation Act as a Committee Bill to ensure that the Bill is in time for the post 2021 municipal demarcation cycle.
- The Portfolio Committee should make it a standard Committee agenda item for Committee Members to report on the current issues affecting their constituencies, instead of waiting for petitions.
- The Portfolio Committee should engage more robustly with the work of the National House of Traditional Leaders and assess the House’s impact on traditional communities.

On the 4<sup>th</sup> December 2019,<sup>83</sup> After the BRR, the Committee had one meeting with Merafong city local municipalities regarding the impact of VBS investment, wherein the Committee raised issues of how there had been no consequences for the officials who had transgressed Municipal investment regulations.

On 5<sup>th</sup> December 2019<sup>84</sup>, the Committee discussed the Municipal systems Bill ...” had been amended in 2011, but subsequently declared invalid by the Constitutional Court because the National Council of Provinces (NCOP) had not been consulted. Parliament had been given 24 months to process it correctly but had failed do so during the Fifth Parliament. It was now going through the same process over again. The bill provided for the monitoring and checking of appointments of senior managers to ensure they had the required skills and qualifications; introduced standardised competency tests across the provinces; prohibited the appointment of senior staff found guilty of misconduct in other municipalities; made it mandatory for them to sign employment and performance contracts; and dealt with the limitation on their political rights.”

This committee meeting also discussed the issue of reports of religious freedom and how much people’s spiritual beliefs were being abused. The committee resolved to consult stakeholders.

This Committee also makes regular contact with at least some of its constituents, the traditional leaders, in dialogue platforms at regular intervals. (26<sup>th</sup> November<sup>85</sup> and 27<sup>th</sup> November 2019)<sup>86</sup> These traditional indaba’s were held specifically to “provide a platform for a dialogue on the functioning of the institution of traditional leadership and the Khoisan, and to present the status of their individual provinces.” Issues that emerged was the Patriarchal nature of the institution, and its engagement and role in municipalities. Traditional leaders were also raising the issue of being volunteers and having no budget to employ anthropologists for research or fighting disputes.

In a committee meeting on 25<sup>th</sup> February 2020<sup>87</sup>, COGTA presented on how it was addressing its adverse financial findings, including lack of urgency in implementing recommendations. In this meeting, the Minister was there to account, and very clear progress was presented. The committee further opted to recommend monthly reporting as it was still not totally satisfied with the timeframe for the turnaround strategy.

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<sup>83</sup> <https://pmg.org.za/committee-meeting/29526/>

<sup>84</sup> <https://pmg.org.za/committee-meeting/29539/>

<sup>85</sup> <https://pmg.org.za/committee-meeting/29428/>

<sup>86</sup> <https://pmg.org.za/committee-meeting/29457/>

<sup>87</sup> <https://pmg.org.za/committee-meeting/29892/>

On 3<sup>rd</sup> March 2020<sup>88</sup>, the SIU, NPA, Hawks and COGTA met with the committee who were briefed on prosecution of municipal officials and the recovery of assets. The meeting was comprehensive, and Members raised issues that had not been prioritised in the previous Parliament, asking for progress on consequences for officials even if they resigned to avoid disciplinary proceedings, as well as the VBS issues.

The Committee held two meetings on the Municipal Systems bill in March and held an indaba where stakeholders could present on “harmful religious practises”, an oversight issue directly arising from concerns raised by the CRL and of direct public interest.

Given that COGTA was directly responsible for the Disaster Management act and regulations, this department was most affected by Covid.

After lockdown, the Committee held 15 meetings relating to COVID including their first briefing by the Minister and deputy minister on the Disaster management regulations and their amendments on 21<sup>st</sup> April 2020. These meetings were oversight meeting regarding Covid responses but also including an investigation into evictions under lockdown. There were also addressing issues of corruption as a response to petitions from residents regarding Knysna local municipality, and a petition from Ethekewini Ward 52, and from Nellmapius Ext 22.

During lockdown, despite the committee’s necessary preoccupation with Covid related matters, they also managed to hold a total of 6 meeting on the municipal system amendment bill, almost finalising it by the end of July 2020. The committee also called the Municipal Demarcation Board to account twice and the board assured the committee it would hand over the finalised ward information to the IEC by November, despite its challenges of conducting public consultations during lock down.

The COGTA committee also undertook its own oversight in its constituency, instituting a formal process of asking its members to conduct oversight at their local level. On 3<sup>rd</sup> June 2020, <sup>89</sup>the committee held a meeting discussing the various issues of conduct, concerning accusations of a councillor wearing ANC regalia handing out food parcels. The Committee had requested the Mayor to account. He had responded that this matter was before the local council ethics committee. The COGTA committee managed to continue to focus on its oversight issues despite being at the centre of the COVID19 storm. It is also to be commended that this committee continued to interact with its constituency, receiving petitions and proactively going to conduct oversight locally to report on local council Covid responsiveness<sup>90</sup>.

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<sup>88</sup> <https://pmg.org.za/committee-meeting/29942/>

<sup>89</sup> <https://pmg.org.za/committee-meeting/30374/>

<sup>90</sup> <https://pmg.org.za/committee-meeting/30168/>