

Once
Upon
A Time...



September 2023

Parliament: The fairytale that became a nightmare

OUTA 2023 Parliamentary Oversight Report

Submitted by:
OUTA Parliamentary Engagement Office



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1. Abbreviations used in this report

AGSA	Auditor-General of South Africa
APP	Annual Performance Plan
BDM	Broadcasting Digital Migration
BRRR	Budgetary Review and Recommendation Report
CGE	Commission for Gender Equality
COGTA	Cooperative Governance and Traditional Affairs
CWP	Community Works Programme
DCOG	Department of Cooperative Governance
DMRE	Department of Mineral Resources and Energy
GPW	Government Printing Works
IEC	Electoral Commission
MP	Member of Parliament
NCOP	National Council of Provinces
Nersa	National Energy Regulator of South Africa
NHI	National Health Insurance
NSF	National Skills Fund
NSFAS	National Student Financial Aid Scheme
OUTA	Organisation Undoing Tax Abuse
OVAC	Parliament's Oversight and Accountability Model
PC	Portfolio committee
RMIPPPP	Risk Mitigation Independent Power Producer Procurement Programme
Samsa	South African Maritime Safety Authority
Scopa	Standing Committee on Public Accounts
SETA	Sector Education and Training Authority
SIU	Special Investigating Unit
SOC	State-owned company
SOE	State-owned entity
UIFW	Unauthorised, irregular and fruitless and wasteful expenditure

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2. OUTA's Parliamentary Oversight Reports

OUTA's *Parliamentary Oversight Report 2023* is OUTA's fifth annual report on parliamentary oversight. Each year, OUTA has attempted to provide a review of some of the detailed workings of parliament, focusing on those aspects which would demonstrate an accountable and robust parliamentary institution.

The first report (OUTA *Introductory Report on Parliamentary Oversight in South Africa*, published in May 2019) covered the last year of the fifth parliament, which included the fifth parliament's legacy report which was passed on to the sixth parliament. The legacy reports give an account of developments during that parliament and provide direction and recommendations to the parliamentarians of the next parliament. Next year we will look at the sixth parliament's legacy report.

In this *Parliamentary Oversight Report*, the period under review is 1 July 2022 to 30 June 2023.

The content of this research analysis is sourced from the following policy documents:

1. Parliament's Budgetary Review and Recommendation Reports (BRRRs) 2022, which cover the 2021/22 financial year;
2. The national departments' and entities' Annual Performance Plans (APPs) and / or audit outcomes reports 2022/23;
3. The Estimates of National Expenditure from Budget 2021 to 2023;
4. Annual reports for the departments and entities for 2021/22;
5. Reports of the Auditor-General of South Africa (AGSA) for 2021/22; and
6. Minutes of meetings of 11 portfolio committees (PCs) (as captured by the Parliamentary Monitoring Group¹).

In OUTA's *Parliamentary Oversight Report*, the period under review is 1 July 2022 to 30 June 2023

Parliamentary documents

The Parliamentary Monitoring Group (PMG) runs an online collection of parliamentary documents.

www.pmg.org.za

See these pages:

[BRRRs](#)

[APPs](#)

[Annual reports](#)

[Portfolio committee minutes](#)

The National Treasury website has the Estimates of National Expenditure documents in the annual budgets.

www.treasury.gov.za

The AGSA reports are in the departments' and entities' annual reports.

¹ We are grateful to the Parliamentary Monitoring Group for its records, accessible at www.pmg.org.za

Parliamentary Oversight Report 2019: *OUTA Introductory Report on Parliamentary Oversight in South Africa*, published in May 2019. Available [here](#).

This report found that MPs often failed to hold the executive to account, either due to incapacity or lack of political will. Despite the lack of action by various committees around corruption and maladministration, there are signs of hope in the determination of many individual MPs to ensure that the rule of law reigns in the public sector, showing that personal values of integrity, accountability, honesty and justice can and must be visibly ingrained in the day-to-day behaviour of influential public office bearers.

Parliamentary Oversight Report 2020: *MPs asleep at the wheel*, published in November 2020. Available [here](#).

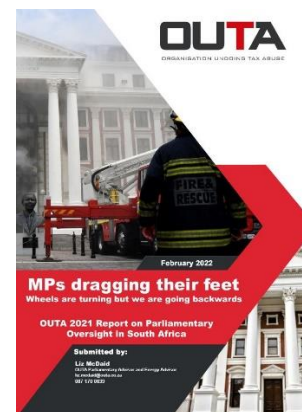
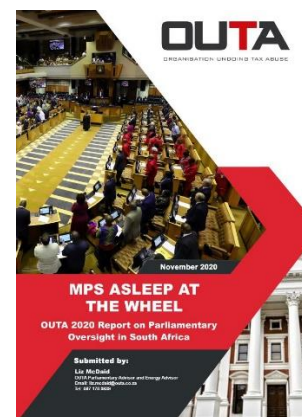
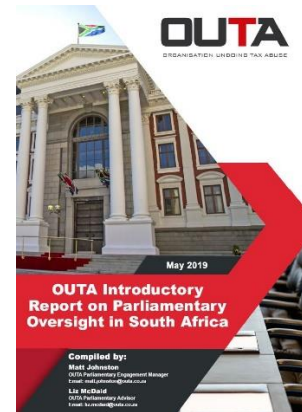
This report emphasises that public participation is a cornerstone of good governance, and how parliament largely pays lip service to this. Parliament's own public participation policy is not implemented. That policy calls for the public to be encouraged to provide verification of the performance of government departments, for example, to confirm that schools have indeed been built. Portfolio committees were found to be using significantly less non-government sources than previously. This means that MPs are relying on the very departments that they hold to account for the information on which that oversight is based.

Parliamentary Oversight Report 2021: *MPs dragging their feet*, published in February 2022. Available [here](#).

This report found that parliament continues to fail to hold the executive to account. This allowed state capture and corruption to become entrenched, and parliament continues to fail, including by protecting and promoting those deeply implicated in wrongdoing. Some MPs have failed to uphold their constitutional oath of office, the public participation processes are still inadequate, even some MPs are not heard by parliament, there is no sign of the party constituency offices funded by parliament, and structural reform is needed.

Parliamentary Oversight Report 2022: *Kicking the can down the road*, published in October 2022. Available [here](#).

This report found that there were spots of good work but too many disappointments. We found a parliament mired in the aftermath of state capture, unable or unwilling to hold the executive to account, routinely approving budgets despite flagrant financial mismanagement, continuing to regard public participation as a tick-box exercise, resisting the responsibility of implementing electoral reform to serve party interests. Our report included recommendations for strengthening oversight.



3. Executive summary

Parliament and our Members of Parliament (MPs) have been central to allowing state capture to go unchecked. Although parliament accepted the recommendations of the Commission of Inquiry into State Capture² on action for parliament to take, parliamentarians have failed to act on these recommendations within the timeframe they gave themselves.

Parliament as an institution is so weak that it appears to be a rubber stamp for executive malfeasance instead of a mechanism to act for the people of South Africa who voted for them.

OUTA is issuing a serious warning in this report: our parliament is not living up to its promise. Our parliament has moved away from the fairytale promise of being a guardian of democracy to becoming a burnt-out institution, a nightmare in which this has become an institution which is not just physically burned down, but with parliamentarians' commitment to democratic values and our Constitution similarly burnt out. Without serious reform as an institution, parliament cannot rise to take its proper place in democracy. New parliamentarians who arrive in 2024 will find themselves hamstrung and frustrated by an institution which appears designed to oppose transparent and accountable government and is no longer truly the people's parliament.

This is the fifth report in OUTA's annual series of reports on the oversight of parliament. Each of our previous reports was strongly critical of the failure by parliamentarians to hold the executive to account.

² Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State. See the commission's website at www.sastatecapture.org.za

This report is again strongly critical, as we are concerned that parliament has failed to grasp the need to defend our democracy. This year, we voice our concern even more strongly, as parliament's failure to hold the executive to account has become an entrenched position which threatens our democracy.

This report includes a section of case studies: a look at particular examples in 11 portfolio committees which illustrate aspects of oversight and accountability (see section 7).

The sixth parliament has been characterised by the focus on state capture, the removal of President Jacob Zuma and his replacement by President Cyril Ramaphosa. The State Capture Commission was finally established in January 2018 under the then Deputy Chief Justice Raymond Zondo (now Chief Justice). The commission started public hearings in August 2018 and handed over the volumes of its final report to President Ramaphosa from January 2022 to June 2022.

The State Capture Commission's final report contained a section on how parliament had aided and abetted state capture and what it should do to avoid this happening again.³ The initial deadline for implementing these recommendations was May 2023, so part of this report will focus on parliament's progress on this. OUTA's view is that implementing the State Capture Commission recommendations on parliament is the bare minimum that is needed ahead of our elections in 2024.

South Africa is a youthful nation. However, it is not clear that the youth see democracy and elections and MPs as a preferred means of government.

Youth turnout in the last elections was poor.

We are concerned that parliament has failed to grasp the need to defend our democracy

It is not clear that the youth see democracy and elections and MPs as a preferred means of government: in the last elections, only 19% of eligible 18- and 19-year-old registered to vote and only 15% of those registered actually voted

³ Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State. 22 June 2022. *Judicial Commission of Inquiry into State Capture Report Part VI Vol 2: State Capture Established, President Ramaphosa's Evidence and the Role of the ANC and Parliamentary Oversight*. Available at: https://www.statecapture.org.za/site/files/announcements/670/OCR_version_-_State_Capture_Commission_Report_Part_VI_Vol_II_-_CR.pdf

For example, only 19% of the eligible 18- and 19-year-olds registered to vote and only 15% of those registered actually voted.⁴

While youth have been instrumental in demanding democracy in autocratic regimes, there is a need for South African youth to use their strengths to ensure society is democratised, instead of focusing on service delivery protests.⁵



The participation of youth in elections is crucial.

Picture: Flickr/GovernmentZA

⁴ Muhammad Hussain. 16 June 2023. "IN-DEPTH: If the 14 million unregistered young South Africans voted they could unseat the ANC." News24. Available at: <https://www.news24.com/news24/opinions/fridaybriefing/in-depth-if-the-14-million-unregistered-young-south-africans-voted-they-could-unseat-the-anc-20230615>

⁵ Democracy Works Foundation. 14 July 2022. *Working Paper 14: African youth participation is crucial to building democratic societies*. Available at: <https://www.democracyworks.org.za/african-youth-participation-is-crucial-to-building-democratic-societies/>

4. What is parliamentary oversight and why is it important?

Chapter 4 of the Constitution stipulates how parliament must conduct its work, its composition, functions and powers. Section 42(3) and 55(2)(b) of the Constitution further detail the function of its constitutional obligation.⁶

The oversight role of the MPs should enable parliament:

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

Consider for a moment why accountability is so important. People in positions of power should be held accountable to the people who elected them and, when they fail, they ought to be sanctioned or even recalled. Without accountability to the people, politicians may become a liability that costs money, and undermine public trust in government. Even worse than not being able to hold someone to account is when the electorate doesn't even know whom to hold to account. Although parliament has constituency periods, there is no parliamentary public record of how to contact MPs and where one might expect to find them during constituency periods. This is the essence of the need for the electoral reform process, which needs to place MPs into positions of representation and accountability whereby political representation is no longer faceless or nameless.

Parliament's oversight of the executive is aimed at protecting the rights and liberties of citizens

**The MPs' job:
Hold the executive to
account**

"The National Assembly is elected to represent the people and to ensure government by the people under the Constitution. It does this by choosing the President, by providing a national forum for public consideration of issues, by passing legislation and **by scrutinising and overseeing executive action.**"

**The Constitution, Chapter 4,
Section 42 (3)**

⁶ The Constitution of the Republic of South Africa. 1996. Available at: <https://www.gov.za/documents/constitution-republic-south-africa-1996>

All public representatives must take an oath or affirmation of office once appointed.

Below are the oaths or affirmations which MMPs and National Council of Provinces (NCOP) delegates must take, and those which the minister and deputy ministers must take.

The oaths of office

When public office bearers are elected to office, they must swear an oath or an affirmation to uphold the Constitution.

These oaths or affirmations are set down in the
Constitution.

These are their promises.

The MPs' oath of office

"I will be faithful to the Republic of South Africa, and will obey, respect and uphold the Constitution and all other law of the Republic; and I solemnly promise to perform my functions as a member of the National Assembly / permanent delegate to the National Council of Provinces / member of the legislature of the province of [province] to the best of my ability."

The ministers' and deputy ministers' oath of office

"I will be faithful to the Republic of South Africa and will obey, respect and uphold the Constitution and all other law of the Republic; and I undertake to hold my office as Minister/Deputy Minister with honour and dignity; to be a true and faithful counsellor; not to divulge directly or indirectly any secret matter entrusted to me; and to perform the functions of my office conscientiously and to the best of my ability."

5. Aspects of oversight and accountability

5.1. A history of parliamentary oversight and neglect

Christi van der Westhuizen's insightful work *Working Democracy: Perspectives on South Africa's Parliament at 20 years*⁷ (2014) is a journey through the complex relationship between parliamentary oversight and the evolution of South Africa's democracy. It's like a magnifying glass on how well our parliament holds the executive and political parties accountable, and notably, it is not a happy fairy tale.

Looking back at those early years – the first parliament's term from 1994 to 1998 – one could almost feel the optimism in the air. It was a period when the building blocks of democracy were being carefully put together, given the shadow of apartheid. But then came the second term, from 1999 to 2004 and, as Van der Westhuizen says, there was a “messy politics” turning point.

At this time, there was an increasing influence of political party interests over public interests. This becomes evident when parliament's authority and constitutional mandate seems to take a back seat compared to the governing political party interests. There's an uncomfortable mix – a domineering executive, party hierarchies calling the shots (with senior politicians using political-party positions to avoid accountability), and constitutional mandates getting pushed aside. No wonder parliamentary oversight has been weakened. Citizens of South Africa were largely ignored and the need for active participation by civil society and keeping tabs on accountability have become crucial for keeping the democratic engine running.

Parliamentary oversight is part of the debate surrounding South Africa's party-based proportional representation system, which raises concerns about MPs' faithfulness to the Constitution and their oath of office. The proportional representation system, while ensuring diverse

Parliamentary oversight has been weakened and citizens largely ignored

⁷ Van der Westhuizen, C. 2014. *Working Democracy: Perspectives on South Africa's Parliament at 20 years*. Available at: <https://pmg.org.za/policy-document/1100/>

representation, can inadvertently lead to MPs becoming more beholden to their respective parties than to the public interest – and the Constitution – undermining their ability to advocate for their constituents effectively. The 2003 Van Zyl Slabbert report⁸ illuminates the challenges faced in reforming the system. MPs end up more loyal to their parties than to their constitutionally set roles, losing some public interest focus along the way. It is like trading one kind of representation for another. Despite substantial efforts, the proposed electoral reforms have been met with resistance, particularly from the ruling ANC. This resistance epitomises the clash between desired reforms and the reluctance of entrenched political powers to embrace change. It is like trying to change the tires on a moving car – the resistance to reform shows how tough it can be to align aspirations with political realities.

As we approach the 30th anniversary of democracy in 2024 and gear up for the national and provincial elections, one thing is clear: the balancing act between parliamentary oversight, party interests, and citizen involvement is crucial. Our democracy is not static: it's a living, breathing entity that needs care. Strengthening oversight mechanisms and nurturing a culture of accountability and participation is the path forward.

The balancing act between parliamentary oversight, party interests and citizen involvement is crucial

5.2. The State Capture Commission recommendations, Parliament's implementation plan and the lacklustre implementation

Parliament and our MPs have been central to allowing state capture to go unchecked. Despite public criticism and the strongly critical final report of the State Capture Commission, many parliamentarians continue with business as usual, failing to hold the executive to account, maintaining MPs sullied by state capture in senior positions, continuing to choose political party over public interest, and resisting electoral reform in defence of the existing power play. The executive – the

⁸ Electoral Task Team. 2003. *Report of the Electoral Task Team*. Available at: <https://static.pmg.org.za/docs/Van-Zyl-Slabbert-Commission-on-Electoral-Reform-Report-2003.pdf>

cabinet – retains ministers who are deeply compromised and seem to act contrary to South Africa’s interests and even in conflict with the Constitution. This necessitates fair and firm oversight of the executive by parliament, to defend the public interest and the Constitution.

In November 2020, OUTA submitted an affidavit to the State Capture Commission detailing how parliament had failed to act to prevent state capture, and gave oral testimony on this. On 22 June 2022 the commission issued the final report section which included damning findings against parliament and its failure to oppose state capture.⁹

Despite parliament having taken up some investigation into state capture prior to the appointment of the commission, parliament took only limited proactive measures after the commission’s reports, largely waiting until President Ramaphosa tabled in parliament his response¹⁰ to the report in October 2022. The 76-page document sets out the approach to the commission’s findings and recommendations, the methodology for developing the response plan and the implementation of the response. At the time, OUTA expressed disappointment in President Ramaphosa’s response to the commission’s recommendations¹¹. Though we welcomed the President’s report, we had hoped for a more informative and action-based response. It is concerning that the biggest proposed changes to prevent future state capture are left in the hands of parliament, which OUTA has found wanting, as reported in our series of reports on parliamentary oversight. We found that parliament has failed South Africa, particularly because it failed to stop state capture. Many current MPs, ministers and deputy

It is concerning that the biggest changes proposed to prevent future state capture are left in the hands of parliament, which itself failed to stop state capture

⁹ Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State. 22 June 2022. *Judicial Commission of Inquiry into State Capture Report: Part VI. Vol 2: State Capture Established, President Ramaphosa’s Evidence and the Role of the ANC and Parliamentary Oversight*. Available at: https://www.statecapture.org.za/site/files/announcements/670/OCR_version_-_State_Capture_Commission_Report_Part_VI_Vol_II_-_CR.pdf

¹⁰ Ramaphosa, C. October 2022. *Response by President Cyril Ramaphosa to the recommendations of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud*. Available at: <https://www.stateofthenation.gov.za/assets/downloads/State%20Capture%20Commission%20Response.pdf>

¹¹ Organisation Undoing Tax Abuse. 24 October 2022. *Underwhelming response on the Zondo recommendations, Mr President, South Africa needed more*. Available at: <https://www.ouata.co.za/blog/newsroom-1/post/underwhelming-response-on-the-zondo-recommendations-mr-president-south-africa-needed-more-1199>

ministers have been implicated by the commission's report as beneficiaries of state capture.

On 3 November 2022, parliament produced its 31-page Implementation Plan¹². Although the commission recognised the positive efforts of certain committees and MPs, it revealed that there is still a substantial need for improvement in general. Therefore, the commission's report and suggestions, particularly those related to parliament's oversight function during the fourth and fifth parliaments, demand that parliament implements measures to reinforce its mechanisms. The commission made 16 recommendations on parliament's role, mainly in relation to its oversight mandate. Parliament's implementation plan addresses each recommendation, provides a status, and designates an authority to take responsibility for the implementation and monitor progress. The plan also includes a recommendation on the interface between the executive and parliament. The Joint Rules Committee, the Secretary to Parliament and the Joint Standing Committee on the Financial Management of Parliament are responsible for this. According to parliament, to ensure that these recommendations achieve the required outcomes, the structures identified must report quarterly to the Chairpersons for Committees in the two houses of parliament. Progress reports on matters relating to the mandates of National Assembly committees will be submitted to these committees on a bi-annual basis. The parliamentary administration, led by the Secretary to Parliament, will ensure the requisite support to the respective governance structures for the successful implementation of this plan.

In addition, parliament should improve its training of current or future MPs – current and incoming – to increase their ethical competence. There is a continued trend of MPs unable to use their existing tools to hold the executives accountable. The current mechanisms maintain the prioritising of party interests above those of the public interest.

The State Capture Commission made 16 recommendations on parliament's role, mainly in relation to its oversight mandate

¹² Parliament of the Republic of South Africa. 3 November 2022. *Consideration of the report of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State and the President's response to the commission's recommendations*. Available at: https://static.pmg.org.za/1/221104RESPONSE_BY_PARLIAMENT_OF_SOUTH_AFRICA_TO_Zondo_C_reports_31102022_0000003_-_Incl_Annexure.docx

One glaring example is the manner in which the transgressions of former Minister Mosebenzi Zwane were dealt with by Parliament, announced on 2 May 2023. The committee's investigation followed separate complaints about Zwane to the committee in 2017 (during the fifth parliament) by OUTA¹³ and the DA, and, nearly five years later, the Speaker of the National Assembly's referral to the committee in May 2022 of the State Capture Commission's report on Eskom¹⁴.

The recommendations by the Joint Committee on Ethics and Members' Interests for Mosebenzi Zwane's "punishment" – and their implementation – are lacklustre. Zwane's involvement in state capture has been confirmed in three separate instances. In May 2023, when parliament announced the censure¹⁵, OUTA commented as follows:

On 2 May 2023, the National Assembly approved the committee's recommendation of a fine of five days' of salary (less than R20 000) for taking benefits from the Guptas which would have been worth considerably more (it included a flight on the Gupta private jet from Switzerland to Dubai), his suspension from his seat in Parliament debates for one parliamentary term (effectively a paid holiday for up to eight weeks), and ordered him to apologise to the National Assembly for the incorrect media statement he issued in defence of the Guptas while a member of an Inter-Ministerial Committee, and for the appointment of Gupta associates as his advisors.¹⁶

Parliament had a golden opportunity to show its commitment to oversight of the executive and to demonstrate opposition to those implicated in state capture, but it failed. In fact, parliament's actions appear to demonstrate parliamentarians' defence of such behaviour.

Parliament had a golden opportunity to show its commitment to oversight of the executive and to demonstrate opposition to those implicated in state capture, but it failed

¹³ OUTA's complaint to the Joint Committee on Ethics and Members' Interests was made in October 2017. The affidavit outlining the complaint is available online here: <https://www.oua.co.za/web/content/79136>

¹⁴ Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State. 29 April 2022. *Judicial Commission of Inquiry into State Capture Report: Part IV. Vol 3 & 4: The Capture of Eskom*. Available at: <https://www.statecapture.org.za/site/information/reports>

¹⁵ Parliament of the Republic of South Africa. 8 March 2023. *Announcements, Tablings and Committee Reports*. No 30 of 2023. See: "Report of the Joint Committee on Ethics and Members' Interests on the alleged contravention of the Code of Ethical Conduct and disclosure of members' interests: Honourable Mosebenzi Zwane, MP", page 3. Available online: <https://www.parliament.gov.za/storage/app/media/Docs/atc/d33a1520-1246-4aaf-ad76-d7cc802cfd30.pdf>

¹⁶ Organisation Undoing Tax Abuse. 3 May 2023. *No integrity, no problem for our MPs*. <https://www.oua.co.za/blog/newsroom-1/post/no-integrity-no-problem-for-our-mps-1258>

Adding insult to injury, Zwane failed to attend the sitting and failed to apologise. For this too, there seem to be no consequences.

Months earlier, in November 2022, the ethics committee took similarly limited action against Deputy Minister in the Presidency Pinky Kekana, believed to be the committee's first action against a parliamentarian implicated by the State Capture Commission. This followed a referral by the Speaker arising from the State Capture Commission's report¹⁷, which found that Kekana, then an MP, received R170 000 from Blackhead Diamond Hill Joint Venture linked to businessman Edwin Sodi. The committee ordered Kekana to be reprimanded in the House, and said she told the committee she received the money, due to friendship, that it was not a bribe, that she had not been the deputy minister at the time, and that she had shared unspecified confidential information with the committee¹⁸.

If ethics training and awareness programmes were effective, it would have resulted in more ethical behaviour. And if the mechanisms of the Joint Committee on Ethics and Members' Interests were sufficient to deter unethical behaviour, then the penalties should have been more severe. The penalties levelled against Zwane are not only insignificant, and not implemented, but provide evidence to support accusations that addressing state capture is just a tick-box exercise without political will to address the root cause or to effect system change.

Weeks after the Zwane decision, on 25 May 2023, that ethics committee told the National Assembly Programme Committee that "there were no adverse findings" against House Chairperson Cedric Frolick, former Minister Tina Joemat-Petersson and Minister of Employment and Labour Thulas Nxesi, who had been referred to the committee by the

The ethics committee made no adverse findings against three of those implicated in the State Capture Commission reports

¹⁷ Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State. 29 April 2022. *Judicial Commission of Inquiry into State Capture Report: Part IV. Vol 2: The Free State Asbestos Project Debacle. The Free State R1 billion Housing Project Debacle*. Available at:

<https://www.statecapture.org.za/site/information/reports>

¹⁸ Chairpersons of the Joint Committee on Ethics and Members' Interests. 16 November 2022. *Media statement: Ethics Committee finalizes matter relating to allegations of misconduct against Ms Pinky Kekana*. Available online:

<https://www.parliament.gov.za/press-releases/media-statement-ethics-committee-finalises-matter-relating-allegations-misconduct-against-ms-pinky-kekana>

Speaker as implicated by the State Capture Commission¹⁹. No reasons for the decisions were provided to the committee.

The commission made several recommendations relating to Parliament's procedures and oversight duties. In terms of procedural reform, six recommendations have been considered:

1. House resolutions emanating from oversight activities and responses to that;
2. Executive reports and submissions to Parliament;
3. Executive attendance;
4. The selection of office-bearers in state institutions;
5. The establishment of an oversight committee over the Presidency; and
6. The appointment of committee chairpersons.

The National Assembly engaged in a debate regarding the recommendations, and the outcomes of the discussions were as follows:

1. Regarding House resolutions stemming from oversight activities, it was agreed that the Speaker would provide biannual reports to the National Assembly's Rules Committee.
2. In terms of executive accountability, the Leader of Government Business and the Speaker reached an agreement to present an annual status report on this matter.
3. Concerning the selection of office-bearers in state institutions, there was no political consensus. Some MPs believed the commission's recommendations were inappropriate, while others avoided discussing the issue of political affiliation.
4. Regarding oversight over the Presidency, no agreement was reached. However, the majority of members agreed that further research should be conducted on this subject. The Speaker

"Parliament remains fully committed to implementing the State Capture Commission's recommendations... Parliament assures the public that it is dedicated to implementing the Commission's recommendations diligently and transparently, ensuring accountability, and safeguarding the integrity of our democratic institutions."

– Statement by Parliament, 29 June 2023, in response to criticism by Chief Justice Zondo of Parliament's inability to withstand state capture

¹⁹ National Assembly Programme Committee. *Draft minutes of proceedings*. 25 May 2023.

expressed intentions to organise a study tour to explore best practices in other countries.

5. Concerning the appointment of committee chairpersons, no vote was taken, and ANC MPs strongly expressed their opposition to this recommendation, considering it undesirable.

Further evidence suggests that there is not much of a rush to prioritise and fast-track the commission's recommendations. In reviewing the minutes of the National Assembly Programming Committee meetings, that reflect on aspects of the commission, some observations can be made. On 20 April 2023, the secretary to the National Assembly, Masibulele Xaso, said that some portfolio committees had been briefed on parliament's implementation plan and further discussions would be held with House Chairperson Frolick. In addition, on 20 April and 4 May 2023 Frolick advised that there would be a comprehensive report and quarterly reports on progress from committees on this aspect. Frolick was absent during the meeting on 11 May 2023 and, when he returned on 18 May 2023, he did not provide reasons for the delays in the reports. Based on our research, no reports have been submitted to date. In addition, there are no set dates on when the committees will focus on Parliament's Implementation Plan to give effect to the commission's recommendations. From this, some deductions can be made:

- Lack of expedited action: There seems to be a lack of urgency in parliament to prioritise and promptly address the commission's recommendations.
- Delays and absences: There are instances of delays and absences that hinder the expected reporting and discussions. For example, Frolick's absence on 11 May 2023, raising concerns about commitment to transparency and timely communication.
- Lack of specific timelines: The committee section reports do not provide dates for when portfolio committees will engage with parliament's implementation plan. This lack of concrete timelines raises concerns about the extent of commitment to the effective execution of the recommendations.

There is not much of a rush to prioritise and fast-track the commission's recommendations

The commission's final report highlighted parliamentarians' failure to hold the executive accountable and resist the influence of state capture. Despite public criticism and the damning findings of the report, most parliamentarians have neglected their responsibilities, prioritising party interests over the public interest. This disregard is evident in their failure to implement the commission's recommendations or acknowledge their significance in strengthening our democracy.

It is concerning that the majority of parliamentarians do not seem to grasp their crucial role in defending government against organised criminal groups.

Chief Justice Raymond Zondo, speaking at a conference on 22 June 2023 marking one year since the commission's last reports were submitted to the Presidency, expressed his belief that parliament would fail to prevent another attempt at state capture. He emphasised that state capture had placed South Africa's democracy at risk.

Following the Chief Justice's comments, parliament's presiding officers met him, seemingly to object to his remarks, and later provided an update on their implementation plan, publicly stating parliament's full commitment to implementing the commission's recommendations.²⁰ However, the progress has been insufficient, and there is a real concern that parliament fails to recognise the need for urgent and substantive action against poor governance.

Parliament's delays, or inability, to apply the State Capture Commission's recommendations with rigour, have also been observed by the Parliamentary Monitoring Group (PMG).

In its June 2023 report, PMG notes that "while much work has gone into identifying structures, reporting mechanisms and other procedural considerations, overall, our sense is the implementation of the Zondo recommendations has been a tick-box exercise and a missed

Despite public criticism and the damning findings of the report, most parliamentarians have neglected their responsibilities, prioritising party interests over the public interest

In June 2023, Chief Justice Raymond Zondo said that parliament would not be able to stop another attempt at state capture

²⁰ Parliament of the Republic of South Africa. 29 June 2023. *Press statement: Speaking notes by the Presiding Officers on Parliament's implementation of the State Capture Commission's recommendations*. Available at: <https://www.parliament.gov.za/press-releases/press-statement-speaking-notes-presiding-officers-parliaments-implementation-state-capture-commissions-recommendations>

opportunity in some respects”²¹. With the sixth parliament coming to an end, and focus shifting to the upcoming legacy report, it can be expected that the commission’s recommendations will remain gathering dust. However, it will be another ghost that haunts the legacy of yet another parliament that failed to stand up to state capture.

The National Assembly’s Rules Committee has been leading the work on the commission’s recommendations, but progress has been hindered by repetitive and unproductive discussions instead of tangible actions. Furthermore, despite a wealth of information passing through parliament highlighting state failures, these findings are often acknowledged but rarely utilised to improve governance.

Parliament must prioritise the commission’s recommendations, particularly those related to reinforcing oversight and accountability. However, parliament has resisted implementing oversight over the President and, while citing funding constraints for oversight, has been willing to allocate extra funds to political parties.²²

Parliament must also ensure that recommendations requiring new legislation and the establishment of new oversight bodies are effectively processed. Some of these matters, such as whistleblower protection and improved oversight over the appointment of state-owned entity boards, CEOs, and CFOs, require urgent attention. Unfortunately, there has been much talk but little action while state-owned entities continue to deteriorate.

What will the sixth parliament’s legacy report say about implementing the State Capture Commission recommendations?

²¹ PMG. 21 June 2023. *A PMG Review of Parliament’s Processing of the State Capture Commission Report, 2023*. Available at:

<https://pmg.org.za/blog/A%20PMG%20Review%20of%20Parliament%E2%80%99s%20Processing%20of%20the%20State%20Capture%20Commission%20Report>

²² Organisation Undoing Tax Abuse. 12 June 2023. *Fund the IEC properly rather than political parties*.

<https://www.وتا.co.za/blog/newsroom-1/post/fund-the-iec-properly-rather-than-political-parties-1266>

5.3. How can MPs exercise real oversight?

In 2009, parliament's Joint Rules Committee produced an Oversight and Accountability Model (OVAC) which the committee adopted and submitted to parliament with a recommendation that it be adopted.²³

"The model focused, among other things, on institutional characteristics of oversight and accountability, existing oversight mechanisms used by parliament and proposed new mechanisms. The model was adopted by the Assembly on 17 February 2009 and by the NCOP on 19 March 2009," reported the National Assembly at the time.²⁴ While OVAC may have been adopted, it does not appear to have been implemented. The State Capture Commission also noted the failure to implement OVAC.

In parliament, there are several ways in which MPs can gain information as part of their oversight function, in order to review how the executive has performed. This includes:

1. Asking questions in parliament to the executive to which relevant ministers must respond;
2. Asking questions in committee meetings. Portfolio committees are organised into themes, aligned with the executive departments. Departments must present their plans and budgets to the relevant committee in May of each year, for questioning and approval;
3. In October each year, MPs scrutinise the performance of the relevant department and state entities and make recommendations to the departments to improve performance.

Based on information gained and public hearings, including interrogation of the executive, what can we observe about what happens if ministers fail to heed the recommendations of the portfolio committees or fail to attend meetings?

"Accountability refers to the institutionalised practices of giving account of how assigned responsibilities are carried out"

– Parliament's Oversight & Accountability Model

²³ Parliament. 27 January 2009. *Announcements, Tablings and Committee Reports* No 8 of 2009. Page 64 (page 3 of digital copy). Available at: https://www.parliament.gov.za/storage/app/media/Docs/atc_rep/114147_1.pdf

²⁴ March 2009. National Assembly Table Division. *Procedural Developments in the National Assembly*. Page 11. Available at: <https://www.parliament.gov.za/storage/app/media/NA-Procedural-Devs/14.pdf>

1. Parliament is empowered to subpoena any person to attend any committee meeting and to sanction ministers for failing to listen to committees. However, the sanctions to date have not fitted the crime. For example, see the Zwane case referred to above.
2. Parliament has to approve the national budget each year. This gives the portfolio committees the power to refuse to approve the budget and to make amendments. By withholding approval – and thus money – for activities that parliament feels are not in the public interest, MPs can effectively hold the executive to account.

Such actions would improve oversight and show that MPs are serious about their role of representing the people of South Africa and not merely rubberstamping the executive's actions.

However, in our five years of reviewing parliament's oversight function, OUTA has never seen parliament recommend amendments to the budget. This applies to all parliamentary committees, including the Standing Committee on Public Accounts (Scopa), which is chaired by an opposition party MP. When it comes to oversight, there are many mechanisms that MPs can use but it appears that political will is lacking when it comes to implementation.

In our five years of reviewing parliament's oversight function, OUTA has never seen parliament recommend amendments to the budget

5.4. How are MPs accountable to ordinary citizens?

MPs are elected during national elections. To date national and provincial elections have only involved political parties but that is about to change. The case study on electoral reform shows how the current batch of MPs are strongly resistant to system change that would ensure that the public interest and constitutional requirements are put ahead of political party interests.

MPs are supposed to have constituency offices where they can account to their citizens, but OUTA's preliminary investigations in 2021 and 2022 show that although MPs obtain funds from parliament for constituency work, there are no performance indicators to hold them to account. OUTA's research indicates that MPs can be unwilling to engage and

parliament is unable to provide valid contact details for such constituency offices. See OUTA's *Holding onto Power* report in October 2021 for more on this²⁵. We have not seen improvements on this.

Parliament works in portfolio committees which deal with issues of policy and delivery that are of interest to all citizens. The committee system isn't easily accessible to the general public, but does allow interest groups, NGOs or individuals to write to MPs on these committees, to petition the Speaker of Parliament calling for action, and to present to the committees when calls for public comment are made.

The case studies which we present in this report (see section 7) provide some insights into how well the accountability mechanism works. These case studies can be likened to fairy stories: the public is fed the idealised version of how a government policy or programme is intended to work, but government failures and parliament's failure to exercise effective oversight result in some situations which are more like nightmares.

It is useful to look at the theory of how MPs should be able to act in an accountable way, using the Budgetary Review and Recommendation Reports (BRRRs) to review the performance of the relevant departments and ministers, and amending budgets where money has been wasted. MPs have tools which enable them to call for public input, and to provide for feedback to the public to whom they are accountable.

5.5. Structural issues: The Oversight and Accountability Model

As OUTA has highlighted before, Parliament's own Oversight and Accountability Model (OVAC)²⁶ was drafted in 2008 by the Joint Rules Committee, which had worked on it since 2002, and suggested censure mechanisms for MPs and the need for departments to provide

OUTA's research indicates that MPs can be unwilling to engage and parliament is unable to provide valid contact details for constituency offices

²⁵ Organisation Undoing Tax Abuse. October 2021. *Holding onto power: How political parties have taken R13.879 billion from the fiscus since 2009*. Summary and full report available online here: www.oua.co.za/newsroom-1/post/this-is-who-really-funds-political-parties-you-the-taxpayer-1094

²⁶ <https://www.parliament.gov.za/storage/app/media/oversight-reports/ovac-model.pdf>

information timeously. This model was adopted by the committee in January 2009²⁷ and by the National Assembly and NCOP in February and March 2009²⁸.

The model focused, among other things, on institutional characteristics of oversight and accountability, existing oversight mechanisms used by parliament and proposed new mechanisms.

OVAC provides mechanisms primarily to source information to help MPs to determine how the executive performs. These are the tools for OVAC. See **figure 1** below.

Other mechanisms such as the BRRRs provide a mechanism for recommending action for the executive to take. However, what is missing is a mechanism to take action when ministers fail to act. The OVAC model itself acknowledges this failing and says this: “It is recommended that parliament develop rules to assist it further in sanctioning cabinet members for non-compliance after all established existing avenues and protocols have been exhausted, for example naming the cabinet member by the Speaker of the National Assembly or the Chairperson of the Council based on a full explanation”.

For this 2023 report, OUTA has investigated how effective this mechanism has been.

The OVAC model mechanisms include naming and shaming of errant politicians and the ethics committee can investigate and impose sanction. But, as we saw in the Zwane case, such sanctions are minimal and there appears to be no mechanism to hold anyone to account who fails to heed any sanctions. Another fault in the OVAC model is it fails to address timeframes. This serious flaw enables matters to be dragged on for years without being addressed.

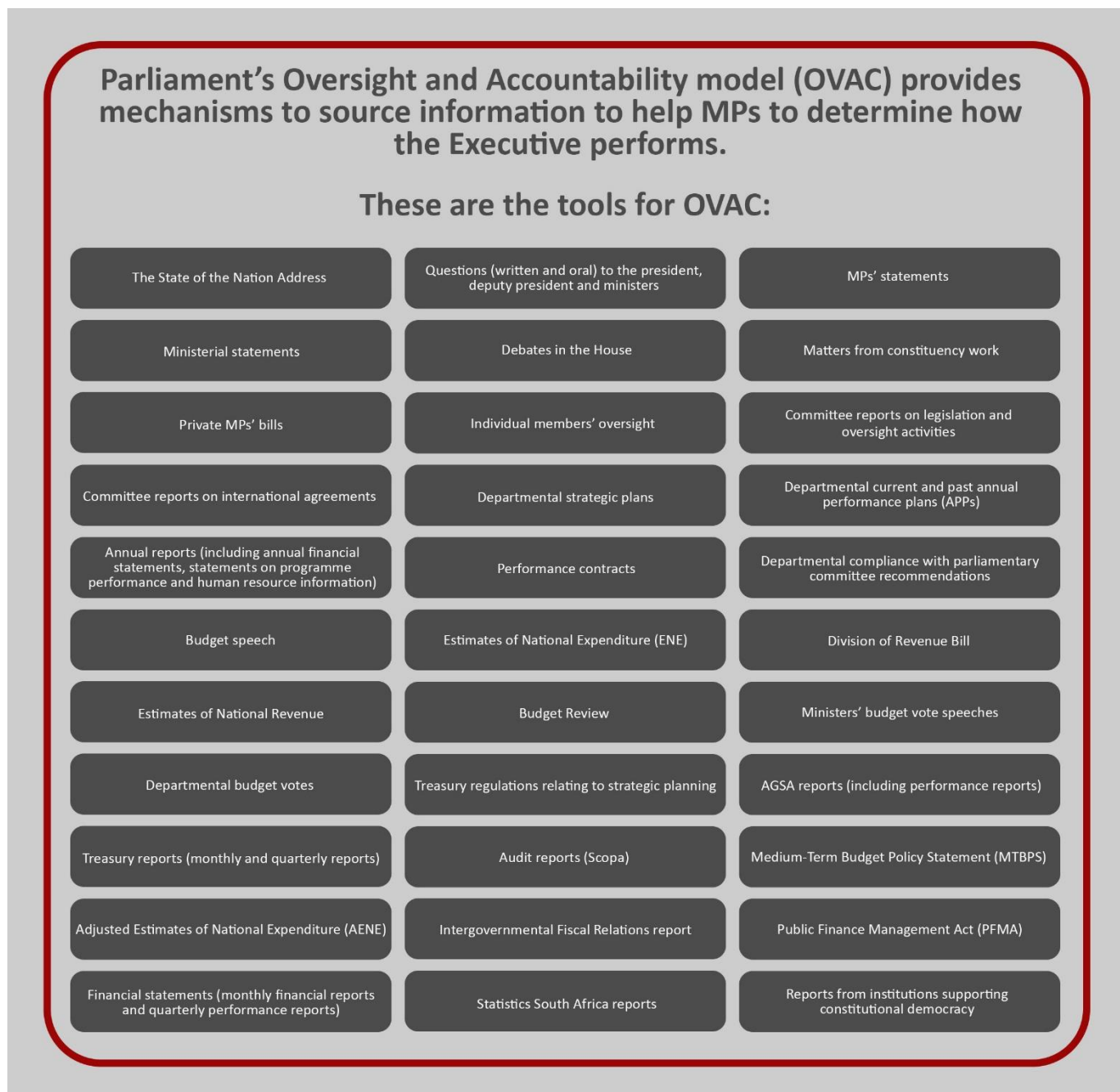
“Parliament’s strategic vision is to build an effective people’s Parliament that is responsive to the needs of the people, and that is driven by the ideal of realising a better quality of life for all the people of South Africa and its mission is to represent and act as a voice of the people in fulfilling Parliament’s constitutional functions of passing laws and overseeing executive action”

– Parliament’s Oversight and Accountability Model, 2009

²⁷ Parliament. 27 January 2009. *Announcements, Tablings and Committee Reports* No 8 of 2009. Page 64 (page 3 of digital copy). Available at: https://www.parliament.gov.za/storage/app/media/Docs/atc_rep/114147_1.pdf

²⁸ March 2009. National Assembly Table Division. *Procedural Developments in the National Assembly*. Page 11. Available at: <https://www.parliament.gov.za/storage/app/media/NA-Procedural-Devs/14.pdf>

Figure 1: Parliament's Oversight and Accountability Model tools



Although not spelt out specifically in the OVAC, in our 2022 report, OUTA raised the issue of the Parliamentary Budget Office which is there to provide advice to MPs: “the main objective of which is to provide independent, objective and professional advice and analysis to parliament on matters related to the budget and other money Bills”.

In our 2022 report, OUTA concluded that, while the committees and their advisory office were set up and the money Bills are processed through these committees, MPs have failed to make use of their powers to amend money Bills (the budget) to block misappropriation and mismanagement.

There is therefore a strong oversight and accountability mechanism that is available and could be used by MPs, that of amending or refusing to approve the department budget until and unless corrective action is taken. This mechanism has not been used.

MPs fail to make use of their powers to amend the budget to block misappropriation and mismanagement

5.6. The Budgetary Review and Recommendation Reports: a crucial oversight tool

The Budgetary Review and Recommendation Reports (BRRRs) are a crucial tool for the MPs for oversight.

According to the Money Bills Amendment Procedure and Related Matters Act 9 of 2009, the BRRRs have a specific purpose and process:²⁹

[The BRRRs] allow Parliament to make recommendations to the Minister of Finance as well as the cabinet minister responsible for the vote to ensure the effectiveness and efficiency of the use of resources to ensure optimal service delivery. According to Section 5 of the Money Bills Amendment Procedure and Related Matters Act, the National Assembly, through its Committees, must annually assess the performance of each national Department. The Committee must submit an annual Budgetary Review and Recommendation Report (BRRR) for the Department, as it falls under its oversight responsibilities, for tabling in the National Assembly.

²⁹*Budgetary Review and Recommendation Report of the Portfolio Committee on Communications, date 1 December 2020.* Available at: <https://pmg.org.za/taled-committee-report/4445/>
See also section 5 in the Money Bills Amendment Procedure and Related Matters Act 9 of 2009, especially sub-sections (2) and (3). Available at: <https://www.gov.za/documents/money-bills-amendment-procedure-and-related-matters-act>

In addition, the BRRRs fall within the larger mandate of the Constitution.³⁰

In terms of Chapter 4 of the Constitution of the Republic of South Africa, Act 108 of 1996 (the Constitution) gives a mandate to Portfolio Committees to legislate, conduct oversight over the Executive Authority and also facilitate public participation... Lastly, this performance report is also in line with Section 195 of the Constitution and other legislative prescripts that guide performance management in the public sector to display and promote transparency and accountability to stakeholders and the general public concerning matters under their control.

The implication of the foregoing is that portfolio committees, through the powers vested in them by virtue of being part of the National Assembly can – and should – exercise oversight. Sections 55 and 56 of the Constitution are of particular relevance³¹:

Section 55: Powers of National Assembly

1. In exercising its legislative power, the National Assembly may
 - a. consider, pass, amend or reject any legislation before the Assembly; and
 - b. initiate or prepare legislation, except money Bills.
2. The National Assembly must provide for mechanisms -
 - a. to ensure that all executive organs of state in the national sphere of government are accountable to it; and
 - b. to maintain oversight of -
 - i. the exercise of national executive authority, including the implementation of legislation; and
 - ii. any organ of state.

Section 56: Evidence or information before National Assembly

The National Assembly or any of its committees may -

- a. summon any person to appear before it to give evidence on oath or affirmation, or to produce documents;
- b. require any person or institution to report to it;

The Constitution gives the portfolio committees the mandate to legislate, to conduct oversight over the executive and to facilitate public participation

³⁰ *Budgetary Review and Recommendation Report of the Portfolio Committee on Communications, date 1 December 2020.* Available at: <https://pmg.org.za/tabled-committee-report/4445/>

³¹ The Constitution, Chapter 4: Parliament. <https://www.gov.za/documents/constitution-republic-south-africa-1996-chapter-4-parliament>

- c. compel, in terms of national legislation or the rules and orders, any person or institution to comply with a summons or requirement in terms of paragraph (a) or (b); and
- d. receive petitions, representations or submissions from any interested persons or institutions.

5.7. Public participation: Crucial for oversight and accountability

A separate public participation model has also been developed which sees itself as part of the Oversight and Accountability Model (OVAC) but a separate supportive pillar.

Figure 2 below highlights the importance of information in order for consultation and participation to take place. The public participation ladder is presented in the report on *Public Participation Framework for the South African Legislative Sector*³² (page 28). The concept of parliamentary public participation operates on a hierarchical structure where different tiers of engagement correspond to varying degrees of public influence and input within the pertinent processes.

This framework facilitates public involvement by offering avenues for their insights. The initial stage is to “**Inform**” the public about the project’s status or the relevant procedure. Here, comprehensive and impartial information is disseminated to aid the public in comprehending the issues, alternatives, and potential solutions.

Moving up the ladder, the subsequent level is to “**Consult**”. During this phase, the public is invited to offer feedback, opinions, or commentary on analyses, options, and decisions. Advancing further is the “**Involve**” phase, characterised by active dialogue and interaction with the public. This stage ensures continuous comprehension and consideration of issues and concerns through direct public engagement throughout the process. It is important to note, however, that ultimate decision-making power remains vested in the legislative body.

Inform, Consult, Involve,
Collaborate: Parliament’s
model for public
participation

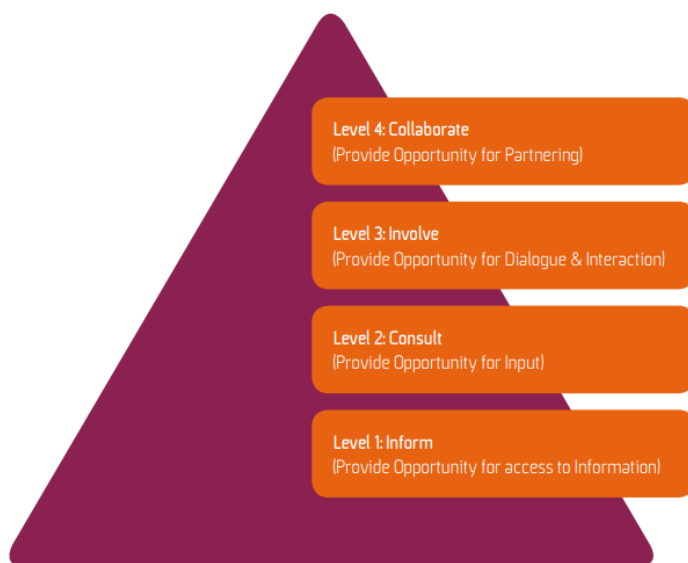
³² June 2013. *Public Participation Framework for the South African Legislative Sector*. Available at: [https://www.parliament.gov.za/storage/app/media/Pages/2019/august/19-08-2019_ncop_planning_session/docs/Public Participation Framework for the South African Legislative Sector.pdf](https://www.parliament.gov.za/storage/app/media/Pages/2019/august/19-08-2019_ncop_planning_session/docs/Public%20Participation%20Framework%20for%20the%20South%20African%20Legislative%20Sector.pdf)

Evolving to the fourth tier, we encounter “Collaborate”. In this advanced stage, the public is presented with opportunities to collaborate and join forces with decision-makers in identifying the preferred solution. Similar to the “Involve” level, it’s emphasised that the legislature retains its role as the final arbiter of decisions.

Ultimately, all input garnered from the various stages is taken into account, contributing to the legislative body’s final determination.

Parliament has taken the view that meaningful participation cannot take place unless information has first been provided and concludes that informing therefore becomes an absolute prerequisite for effective public participation (page 16).

Figure 2: The “Ladder of Participation” from the Public Participation Framework for the South African Legislative Sector



The public is flooded with information, on short notice, and is expected to understand the content, the terms, and the consequences of matters at hand

To ensure a successful engagement, parliament must fulfil all the phases illustrated in the diagram as relevant to the specific context of promoting public participation.

Unfortunately, what has been observed in most instances is that the public is flooded with information, on short notice, and is expected to understand the content, the terms, and the consequences of matters at hand. Very rarely does education take place beforehand, and pre-hearing consultations often do not take place (if at all).

The following case study illustrates an instance where parliament failed to provide feedback to interested parties who had taken part in public participation. This is not an oversight issue but illustrates a serious weakness in parliament. If information is the cornerstone of the public participation model, then parliament has failed in this instance, as there was no mechanism to provide feedback to stakeholders who made the effort to make submissions to parliament. Parliament's public education office, which has done a sterling job of encouraging people to participate in hearings, does not give feedback to those participants on the result of their efforts. The Public Education Office recently piloted a WhatsApp group. However, it appears that while the aim is to extend their reach to the public there is still no serious commitment to ensuring that those who do participate receive feedback on the success or otherwise of their participation. Recently the Public Education Office hosted quarterly stakeholder engagement sessions, but the minutes do not appear to be publicly available.

**Gas Amendment Bill:
withdrawn after public
consultation, but no
feedback was provided to
public who participated**

Drafting gas legislation: Ensuring that public participation is not just a box-ticking exercise

OUTA's Parliamentary Oversight Report 2022 noted the public participation on the Gas Amendment Bill was an example of how many diverse voices were heard and the willingness of the Portfolio Committee on Mineral Resources and Energy to hear the voices of the people from various provinces. After a call for written public submissions, 19 submissions were received, of which 15 made oral submissions. The committee held hearings in seven provinces and in the National Assembly.¹

However, while parliament deliberated on the hearings, and produced a report on the views it held, that report was not made public, and no feedback was provided to the stakeholders who participated. The Gas Amendment Bill was withdrawn from parliament on 8 September 2022.²

1. OUTA *Parliamentary Oversight Report 2022*, pages 58-59
2. <https://pmg.org.za/bill/1019/>

5.8. Issues undermining MPs' ability to carry out effective oversight

In 2022, OUTA highlighted structural issues that we believe have undermined the ability of parliament to carry out its oversight role effectively. These issues align with the findings of the State Capture Commission as well as the July 2023 situational analysis of the Secretary to Parliament who was appointed in 2022.³³ Here we assess whether there was any progress in addressing these.

1. *Career paths:* Our observation is that ministers who have been associated with corruption and unlawful actions are rewarded by being put into parliament and often in positions of power such as chairs of portfolio committees. Over the intervening 12 months, we saw how MP Mosebenzi Zwane – implicated in state capture for his conduct while a minister, replaced as minister in February 2018 but retained as an MP, and later appointed as chair of the Portfolio Committee on Transport – was finally in May 2023 found guilty by the Joint Committee on Ethics and Members' Interests and given a weak sanction which he ignored with impunity. Zwane has since apparently been referred to the Powers and Privileges of Parliament Committee. We have yet to see any consequences.
2. *Secrecy:* In 2022, we found that committee reports prepared by the committee section, content advisors or researchers are not made public. The official parliamentary meeting minutes are also not available to the general public. In 2023, there has been no change.
3. *Political will and the code of ethical conduct:* The Zwane case shows some light at the end of the tunnel in that the committee finally acted on the allegations that OUTA had put forward. However, the sanctions proposed by the committee and

Ministers who have been associated with corruption and unlawful actions find themselves rewarded by being put into parliament and often in positions of power such as chairs of portfolio committees

³³ Parliament of the Republic of South Africa. 31 July 2023. *Speaking notes by the Secretary to Parliament, Mr Xolile George to the Parliamentary Press Gallery Association, 31 July 2023*. Available at: <https://www.parliament.gov.za/press-releases/speaking-notes-secretary-parliament-mr-xolile-george-parliamentary-press-gallery-association-31-july-2023>

Zwane's failure to abide by them showed that accountability is only on paper.

4. *State capture and the State Capture Commission:* Parliament received the State Capture Commission report in June 2022, and so far, has treated it like a hot potato, passing it along, delaying any actions and instead opting to question the entire process.

In 2022, OUTA analysed what MPs could do to carry out effective oversight. As highlighted above these include a variety of mechanisms for gaining information and recommend action to the executive.

In summary, here is the list:

1. *Amending the budget:* MPs could reduce funds to non-performing entities and provide additional funds to those that deliver.
2. *The power to summon:* MPs have the power to summon any person they feel should appear before the committee to provide an explanation on any oversight matter.
3. *Consult with civil society:* MPs could organise to visit civil society organisations or to hold in-depth indabas on specific issues, as was done in the early days of our democratic parliament.
4. *Preparation:* MPs can ask probing questions. Government often fails to provide documents timeously or to provide responses to requests for additional information. MPs can postpone meetings and demand answers.
5. *Minority reports:* Opposition parties need to make use of minority reports as well as questions in the House to gain information that is not forthcoming from the executive.
6. *Action from the Speaker:* Where individual MPs might feel intimidated, committee reports which are adopted by the House have the full weight of parliament and, after that, it is the Speaker who must then engage with the executive to obtain a response.

For this report, we opted to look at public interest issues that OUTA has

MPs have the power to
reduce funds to non-
performing entities

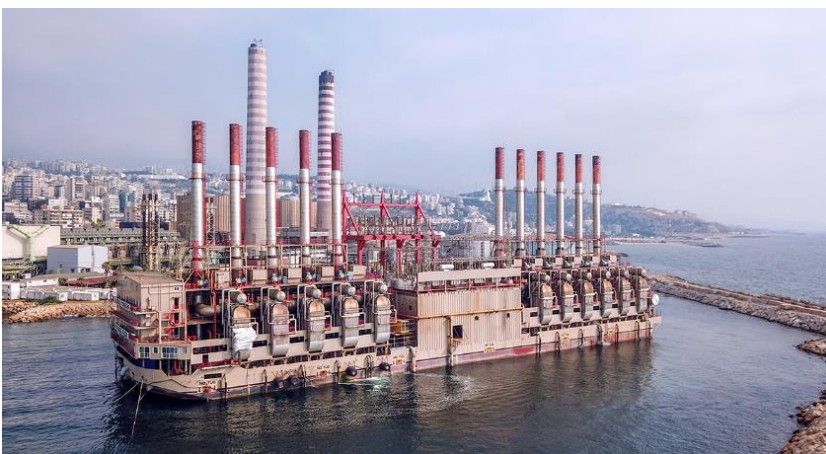
worked on and how parliament dealt with such issues. The case studies cover 11 portfolio committees (see section 7).

5.9. Information gathering: What information did the committee use in its oversight role?

In our analysis of effective oversight, one of our indicators is to assess where parliament finds its information, particularly if it looks for information outside of the government department over which it has oversight.

In the case study on the Portfolio Committee (PC) on Cooperative Governance and Traditional Affairs, the PC concluded it needed further information on the Community Work Programme from September to November 2022, and conducted site visits at various municipalities. In 2023, the PC questioned the validity of the information received from the department and, in May 2023, a workshop was held to investigate further. This process has resulted in informed MPs who have influenced the minister's delivery.

In the PC on Mineral Resources and Energy, MPs had relied on the department for their information on the Karpower issue and, despite civil society asking the PC for a hearing, the PC resolved not to hold a hearing and so chose to not hear any alternative information. The PC restricted itself to engaging the Minister of Energy and failed to look at any alternative evidence, simply accepting the version provided by the minister and department officials, and the matter was buried.



On Karpowership, MPs listened to the minister and did not listen to alternative information.

Picture: Shutterstock

5.10. Benchmarking oversight against the NDP, SDGs and other non-governmental reports

From the BRRRs reviewed, it is evident that several government departments attempt to reference the National Development Plan³⁴ (NDP) and sometimes the Sustainable Development Goals³⁵ (SDGs) to guide their policies and actions. It must be noted that in most instances it is just done as a nod to the fact that these goals exist, whilst intentional integration and concerted benchmarking do not occur.

The NDP is a long-term plan that aims to combat poverty, inequality, and unemployment by achieving better growth rates by 2030. The NDP officially commenced in 2012. The SDGs are a set of global goals adopted by United Nations member states to address various social, economic, and environmental challenges by 2030.

Not all portfolio committees reflect on and use the NDP as a guiding mechanism. It begs the question whether in 2029/30 there will be a sudden rush to tick the boxes, with massive amounts of funds thrown at covering the inadequacies of the past two decades. OUTA sees this coming and will monitor the NDP and SDG 2030 deadline and how parliament and government plan on dealing with it, either substantively or superficially.

Below is a summary of how each portfolio committee's BRRRR – which included references to the NDP and SDGs – reflects on the NDP and SDGs.

1. *Department of Communications and Digital Technologies:* The department's report is in line with the NDP's aims of job creation, poverty alleviation, fighting crime and corruption, rural development, education and health. It evaluates the

Measure government performance against policies & promises

South Africa

- New Growth Path Framework (2010)
- National Development Plan 2030 (2012)
- Industrial Policy Action Plan (2018)
- Framework on Gender-Responsive Planning (2018)
- Economic Reconstruction & Recovery Plan (2020)
- Operation Vulindlela (2020)
- Ministers' performance agreements (2020)
- Revised Medium-Term Strategic Framework (2021)
- President's Energy Plan (2022)
- State of the Nation Address (annual)

International

- UN Sustainable Development Goals
- Paris Agreement on Climate Change
- United Nations Convention Against Corruption
- African Union: Agenda 2063

³⁴ National Planning Commission (2012) *National development plan 2030: Our future - make it work*, South African Government. At: https://www.gov.za/sites/default/files/gcis_document/201409/ndp-2030-our-future-make-it-workr.pdf

³⁵ For more on the SDGs, see here: <https://sdgs.un.org/goals>

department's actions to ensure that the NDP's priorities are carried out.

2. *Department of Health:* The department's strategic plan responds to the NDP's health-related goals, including increasing life expectancy, reducing mortality rates and addressing non-communicable diseases. The President's State of the Nation Address highlights the government's efforts to combat the Covid-19 pandemic, strengthen the health system, and implement a vaccination programme, aligning with the NDP's focus on health and well-being.
3. *Department of Higher Education, Science and Innovation:* The department's strategic plan and policies respond to the NDP's goals of improving education, skills and job opportunities. The National Skills Development Plan and other initiatives align with the NDP's focus on economic growth, job creation and skills development.
4. *Department of Home Affairs:* The department acknowledges its contribution to the NDP's objective of combating poverty, inequality and unemployment. It emphasises its role in facilitating the acquisition of critical skills, enabling regional development through efficient movements of people, and providing citizens with identity documents. These actions align with the NDP's goals.
5. *Department of Mineral Resources and Energy:* The department's mandate is aligned with the NDP's goal of combating poverty, unemployment and inequality while considering environmental issues. Its objective is to regulate, transform and promote the minerals and energy sectors, which aligns with the NDP's focus on economic expansion and environmentally responsible development.
6. *Department of Public Enterprises:* The department's core functions involve oversight of state-owned companies to support the achievement of the NDP's strategic goals, including

**“South Africa's principal
challenge is to roll back poverty
and inequality”
– National Development Plan 2023**

employment creation and equitable enhancement. The department emphasises economic transformation and job creation, aligning with the NDP's focus on addressing unemployment, poverty, and inequality.

7. *Department of Transport:* The department's focus on improving public transportation, road upkeep and rail investments directly impacts the NDP's motivation to address poverty, unemployment, and inequality. The transportation sector's contributions align with the NDP's vision of improved social and economic development.
8. *Department of Women, Youth and Persons with Disabilities:* The department aligns its mandate with the NDP's vision, which prioritises the significant role of women, youth, and people with disabilities in society. The department's country gender-indicator framework is based on the NDP, SDGs, Agenda 2063 and other international conventions.

Overall, although the reports show that some of the South African government departments are aware of the NDP and the SDGs, they do very little to align their actions accordingly, to contribute to the country's development and progress towards sustainable development goals. It remains a question as to the extent of the progress, and there is much doubt cast as to whether South Africa will achieve the goals set for the NDP and SDG deadline of 2030.

Some of the departments are aware of the NDP and SDGs but do very little to align their actions to these



5.11. Deadlines for executive response: Did MPs use this tool for accountability?

Part of effective oversight is to deal with the various matters brought before it timeously.

Our case studies show that parliament is plagued by constant delays in getting the correct answers out of the executive, and such delays are accepted by committees, for months or even years at a time.

In December 2021, the PC on Mineral Resources and Energy agreed on the terms of reference for an investigation into the Risk Mitigation Independent Power Producer Procurement Programme (RMIPPPP) process³⁶, as the selection of Karpowership as one of the preferred bidders was controversial and a matter of serious public interest. In March 2022, the inquiry was stopped in its tracks by a majority vote of the PC, consisting of a majority of ANC members.³⁷ Since the launch of various court challenges against Karpowership generation licences, and despite the Karpower deal being in the public eye, we have not witnessed any proactive plans by parliament to scrutinise and publicise the factual circumstances surrounding Karpowership over a period of 18 months.

The PC on Communications and Digital Technologies has a long history of missed deadlines on the broadcasting digital migration process. Under the administration of former Minister of Communications Ivy Matsepe-Casaburri, the cabinet approved a digital switch-on date of 1 November 2008, and an analogue switch-off date of 1 November 2011, whereas the latest deadline is now December 2024. It is worth noting that between the start of dual illumination process and present day, the deadline has been moved a total of 11 times. This is the same as the number of ministers appointed to oversee the migration process.

The PC on Communications and Digital Technologies has a long history of missed deadlines on the broadcasting migration process, with the latest deadline pushed to 2024

³⁶ Luzipo, S. (2021) *Mineral Resources and Energy Committee agrees in principle on the terms of reference for RMIPPPP inquiry*. Parliament. Available at: https://static.pmg.org.za/211207pcmin_Media_statement.docx

³⁷ Portfolio Committee on Mineral Resources and Energy (2022) *Rescission of RMIPPPP Committee Inquiry* 8 March 2022. Available at: <https://pmg.org.za/committee-meeting/34501/>

The PC on Forestry, Fisheries and the Environment case study provides an illustration of the PC's failure to hold the minister to account. The PC was concerned about various issues raised by the AGSA. Minister Barbara Creecy assured the PC on 18 October 2022 that attention would be paid to the items. The PC finally put a timeframe in place requiring that the minister provide a detailed response to the BRRR report to the committee within 90 days from 20 October 2022 (late January 2023). Nothing happened and it was only on 2 May 2023³⁸ that the PC expressed its dismay. The minister was then given another 60 days to table a response which would have been due at the end June. Parliament rose on 19 June with the response still outstanding.

In the Department of Higher Education case study, MPs were only given the relevant documents the night before the meeting. This is not an isolated incident and this failure to provide sufficient time for MPs to be familiar with the reports undermines the MPs' ability to analyse the documents prepare questions for the minister and in general conduct their oversight. Under the Department of Transport, the South African Maritime Safety Authority (Samsa) has been without a permanently appointed CEO from 2016 – seven years. Several complaints were lodged with the Samsa board and the minister without any successful outcome. At every appearance of Samsa before the PC, the issue of appointing a permanent CEO was discussed, yet to date neither Samsa nor the minister has acted on the PC's recommendations and instructions.

This report is concerned with oversight and not Parliament's legislative mandate. However, in a country where we have a national electricity crisis, the PC on Mineral Resources and Energy must also account to the public for its failure to follow up with the executive which has led to a six-month delay in tabling the urgently needed Electricity Regulation Amendment Bill, which was finally introduced to parliament on 16 August 2023.

The South African Maritime Safety Authority hasn't had a permanent CEO for seven years

³⁸ Portfolio Committee on Forestry, Fisheries and the Environment. 2 May 2023. *DFFE Budget: Committee Report; Sustainable Small Scale Fisheries*. Available at: <https://pmg.org.za/committee-meeting/36784/>

The failure of committees to obtain effective responses from ministers exacerbates service delivery delays. It also results in committees having their schedules filled with repeat offenders, rather than freeing up time to address current and urgent public interest matters.

5.12. Budgetary oversight: Was there any change made to the budget by the MPs?

Part of the public concern over the Karpower deal was a procurement issue and this should have been referred to the Standing Committee on Public Accounts (Scopa) as there were allegations of financial abuse. This did not happen. In the case of broadcasting digital migration, managed under the Department of Communications and Digital Technologies, OUTA found that between the period of 2016/17 and 2020/2021 a total of R668.385 million was paid by taxpayers for dual illumination, but parliament did not amend the budget or attempt to recover this expenditure.

At the PC on Forestry, Fisheries and the Environment, PC members expressed concerns about unauthorised, irregular and fruitless and wasteful expenditure (UIFW) but no penalties were put in place, nor was there any mention of the outstanding official response to the BRRR by Minister Creecy. PC members were placated that irregular expenditures are being investigated and dealt with, but this does not inspire confidence based on past experience, especially with unaddressed irregular expenditure now at more than R5 billion.

In the PC on Higher Education, Science and Innovation, on 21 September 2022³⁹, the PC was supposed to hear a presentation from the Ministerial Task Team on the student funding model, and on the forensic investigation into the National Skills Fund (NSF) but this was delayed, to the annoyance of the committee. On 26 October 2022 the PC heard the

Dual illumination due to the endless delays in broadcasting digital migration has cost taxpayers R668.385 million

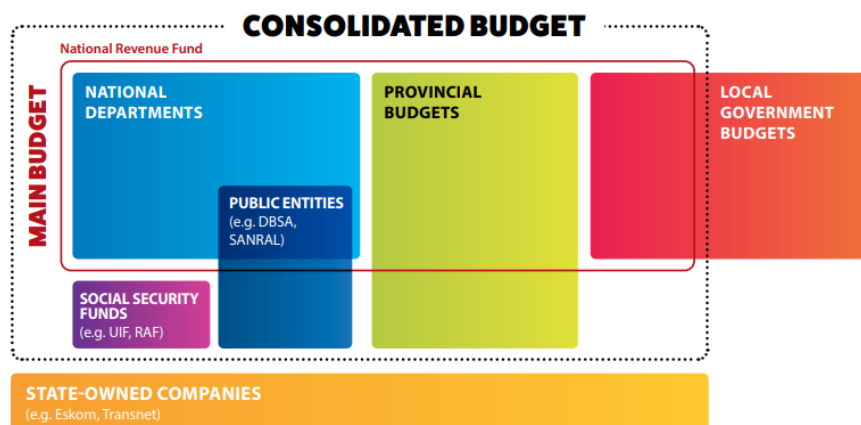
³⁹ Portfolio Committee on Higher Education, Science and Innovation. 21 September 2022. *Postponement: National Skills Fund: Task Team Review, Investigation Report & implementation of audit action plan; Ministerial Task Team on funding of PSET; with Deputy Minister*. Available here: <https://pmg.org.za/committee-meeting/35609/>

presentations⁴⁰. It was noted that R5 billion had been misappropriated. Although the meeting minutes reported that “Members were not pleased with the report, and most were shocked at the findings made by the forensic investigator”, when the BRRR was published a week later on 4 November 2022⁴¹, none of the recommendations dealt with NSF.

In the PC on Transport, the failure to appoint the CEO of Samsa for seven years could have been raised as a budgetary issue and would have been a good opportunity for the committee to have intervened in the budget approval and demanded that there be sufficient resources to appoint the CEO. But this has not been adopted by the committee nor has there been any specific budgetary recommendations in this regard.

In the various committees under review, different state-owned entities (SOEs) under the relevant departmental authority have incurred vast sums of irregular and wasteful expenditure. However, although every committee has expressed outrage, MPs continue to sanction such abuse through failing to amend the budgets of the departments, thereby giving them licence to continue business as usual.

MPs continue to sanction financial mismanagement by failing to amend departments' budgets



The consolidated budget, showing how state-owned entities fit in.
Image: National Treasury

⁴⁰ Portfolio Committee on Higher Education, Science and Innovation. 26 October 2022. *National Skills Fund investigation: Ministerial Task Team Review & Forensic report; Implementation of audit action plan; with Deputy Minister*. Available here: <https://pmg.org.za/committee-meeting/35846/>

⁴¹ Portfolio Committee on Higher Education, Science and Innovation. *Budgetary Review and Recommendation Report (BRRR) of the Portfolio Committee on Higher Education, Science and Innovation on the 2021/22 Annual Report of the Department of Higher Education and Training and Entities*, tabled on 4 November 2023. Available online at: <https://static.pmg.org.za/1/221108pchigherbrrr2.pdf>

5.13. Sanctions: Did committees recommend any sanctions when the executive failed to act?

The parliamentary Oversight and Accountability Model (OVAC) itself identified a weakness in failing to include satisfactory sanction for non-performance.

OUTA case studies assess whether any committee was able to implement effective sanction as part of its oversight.

In the PC on Higher Education, Science and Innovation, the misappropriation of the National Skills Fund (NSF) funds was exacerbated by the NSF's poor performance in its 2021/22 Annual Report⁴², which reported that only seven of its 29 targets were met. The NSF was also plagued by vacancies for years. This creates concern that this vacancy rate is created intentionally, as it could be argued that filling these posts might curb irregularities from occurring.

In the PC on Cooperative Governance and Traditional Affairs, the MPs were able to source information outside the department and, whilst the workshop and revised policy are all steps in the right direction, it certainly does not equate to active and effective oversight. Despite concerns raised by MPs, they allowed the Community Work Programme budget to rise 21% and did not exercise their ability to amend the budget. However, issues such as the implementing agent contracts which had been part of the PC concerns had been addressed. In addition, the contracts of implementing agents which ended on 31 March 2023 were not renewed in order to avoid further irregularities. It is heartening to also note that the department has handed over cases to law enforcement agencies to conduct forensic investigations, specifically regarding improper financial management and inadequate consequence management.

The Minister of Transport has failed to appoint a CEO for Samsa for seven years and there has been no sanction recommended by the PC.

The parliamentary Oversight and Accountability Model itself identified a weakness in failing to include satisfactory sanction for non-performance

⁴² National Skills Fund. 2022. National Skills Fund Annual Report 2021/22. Available here: https://static.pmg.org.za/NSF_Annual_Report_2021-22.pdf

Since 2016, the failure to appoint a CEO for Samsa has been part of the agenda for every Transport meeting where Samsa is discussed. However, seven years later, there is still no CEO.

In the BRRR for Water and Sanitation of 2022⁴³, the committee specifically recommended that “The Portfolio Committee resolved that a non-negotiable timeframe, with a ring-fenced budget for this programme, should be prioritised”. Our case study found that the department did not manage to replace a single bucket toilet during 2021/22, which is astonishing. The PC has not sanctioned the minister despite this astonishing lack of delivery with regard to a specific service.

Another issue that needs further analysis is whether the indicators and targets that the departments use are relevant to their mandates, or simply prepared to make them look good. For example, the Department of Water and Sanitation budget vote in 2022 no longer included the bucket toilet eradication indicator. This raises questions about removing the indicator to hide the failure of this programme, what happened to the funds allocated, and even whether this programme is still officially in the budget.

The conclusion from the case studies is that even while MPs attempt to look for evidence of wrongdoing and/or ask questions to get answers, they fail to implement sanctions against those who repeatedly perform poorly. In cases where the solution is obvious and committees have made recommendations, these recommendations are not implemented, and it seems that the MPs just accept a minister’s excuses. Some issues have dragged on for more than a decade and MPs have not attempted any sanction of any member of the executive.

Disappointingly, the OVAC model has still not been properly implemented. OUTA believes that unless and until parliament implements its oversight and accountability model in full and with revisions to address issues of state capture, the 2024 election results will

The Department of Water and Sanitation did not manage to replace a single bucket toilet during 2021/22, but the portfolio committee did not sanction the minister

Parliament’s Oversight and Accountability Model, presented to parliament in 2009, has still not been properly implemented

⁴³ Portfolio Committee on Water and Sanitation. *Budgetary Review and Recommendation Report (BRRR) of the Portfolio Committee on Water and Sanitation on the Annual Reports and Financial Statements of the Department of Water and Sanitation and its Entities for the 2021/22 Financial Year*. Tabled 18 October 2022. Available here: <https://static.pmg.org.za/221021pcwaterreport.pdf>

not result in any change in parliament. MPs will find themselves unable to hold the executive to account as a system of planning to fail appears to have been systematically implemented with the outcome that we have a failed and toothless parliament.



Graphic: People's Assembly

6. Qualitative indicators: What evidence is there that the current MPs are working hard?

In our previous parliamentary oversight reports, OUTA used two quantitative indicators to measure some aspects of MPs' work. One indicator looks at how many committee meetings are held each year. The other indicator looks at the effectiveness of a committee's ability to hold the minister to account by looking at whether the minister decided to turn up to committee meetings, under the assumption that attending these meetings relates to a minister's willingness to be accountable to parliament, and to parliament's desire to have the minister attend.

While simply showing up to work does not necessarily mean working effectively, it is a useful indicator. OUTA believes it may be worth considering compiling indicators to help assess the value of MPs' work.

There is evidence that MPs are working very hard in terms of holding meetings, and there is some evidence that some ministers have increased their attendance at committee meetings. However, parliament is not able to ensure that the MPs' written questions to the executive are responded to timeously and there are still long gaps of time where MPs are not accountable, as oversight and transparency over constituency times is still missing.

While simply showing up to work does not necessarily mean working effectively, it is a useful indicator

6.1. Portfolio committee meetings

With the advent of Covid-19, committee meetings went virtual and hybrid, and, due to the parliamentary fire at the beginning of 2022, MPs are still mostly meeting in a virtual mode. Monitoring parliamentary meetings streamed live, and archived, on the dedicated parliament YouTube⁴⁴ channel, is uncomplicated. The majority of meetings tabled

⁴⁴Parliament of the Republic of South Africa YouTube channel. Available online at: <https://www.youtube.com/channel/UC-JR9Vog8LwxPCxKwgjeRpQ>

in the Z-list⁴⁵ take place as planned, with some minimal instances of meetings either being postponed, or not recorded.

Table 1 below shows the number of PC meetings over the period of the sixth parliament to date. (The OUTA parliamentary report analysis runs from July to June.) During the year, the PCs studies held an average of 36 meetings, up from the previous period's average of 33. There is no prescribed number of meetings for PC. According to the PMG⁴⁶:

With the agreement of members, the Committee staff sets the dates and times of committee meetings. The frequency of committee meetings is determined by a committee's work programme, but it is normal for a committee to meet weekly. From time to time, committees can meet more than once a week if they work programme so demands.

The frequency of committee meetings is determined by a committee's work programme

OUTA, by way of monitoring this rate, seeks to establish a form of benchmark based on historical data. As there are a number of public interest issues that the PCs should address, in terms where there is also legislation it could be assumed that PCs would hold more meetings.

The decrease in the number of meetings held by the PC of Health is significant, since it has been dealing with the National Health Insurance (NHI) Bill [B11-2019], which will have a significant impact on the nation. One would assume that PC would meet more, not only on account of the importance of in-depth NHI deliberation, but also to ensure that other crucial Health-related matters are not overlooked. Similarly, the PC on Forestry, Fisheries and the Environment is dealing with the crucial Climate Change Bill [B9-2022]. This begs the question: shouldn't MPs meet more frequently when bills are presented to their committees, to ensure the bill and other matters get equal attention? For example, our Forestry, Fisheries and the Environment case study highlights the continued failure of the minister to provide a meaningful response to the BRRR recommendations, despite extensions.

⁴⁵ National Assembly and National Council of Provinces. *Meetings of Committees*. This document is known as the Z-List and is frequently updated. Look for the current version here: <https://www.parliament.gov.za/parliament-programme>

⁴⁶ Committees in Practice. See "About this committee" link. Available online at: <https://pmg.org.za/committee/51/?filter=2022>

On the basis of applying this same logic to another instance, OUTA commends the PC on Home Affairs, whose meetings increased from 30 to 44, and which dealt with the Electoral Amendment Bill [B1-2022]. OUTA stands by its argument that the bill, which was signed into an act (see the case study) in April 2023, still has problematic elements. But at least the PC increased its total number of meetings.

Table 1: Portfolio committee meetings July 2019 to June 2023⁴⁷

Portfolio committees: Number of meetings	2019/20	2020/21	2021/22	2022/23
Communications and Digital Technologies	45	46	37	39
Cooperative Governance and Traditional Affairs	51	99	39	45
Forestry, Fisheries and Environment	31	33	39	31
Health	23	53	44	36
Higher Education, Science & Innovation	52	53	42	49
Home Affairs	27	30	30	44
Mineral Resources and Energy	41	41	37	32
Public Enterprises	26	21	18	27
Transport	38	61	27	34
Water and Sanitation	47	52	25	25
Women, Youth & Persons with Disabilities	28	58	37	31
Average number of meetings per year	37	50	34	36

⁴⁷ Data is compiled from meeting records on the Parliamentary Monitoring Group website, www.pmg.org.za. Each year historical data is rechecked and verified, and updated where needed, to reflect the most accurate version of the data. Note also that committees change and re-form, as ministries and departments change, which affects the numbers. OUTA's counts cover meetings for a year from 1 July to 30 June, as that is the period which our annual reports cover.

6.2. Attendance by the executive: ministers and deputy ministers

It is important for ministers to actively participate in and attend parliamentary portfolio committee meetings for several key reasons:

- *Accountability and transparency:* Ministerial presence at these meetings ensures that the executive is held accountable for its actions, decisions, and policies. It allows for open dialogue where ministers can explain their rationale behind various initiatives, policies, and budget allocations. This transparency strengthens public trust in the government by showcasing a willingness to address concerns directly.
- *Oversight and scrutiny:* Portfolio committees play a vital role in scrutinising the budget and performance of departments under each minister's purview. Their oversight is intended to ensure that government functions effectively and efficiently, and that public resources are used appropriately. Ministerial attendance facilitates comprehensive discussions on departmental performance and allows for direct responses to committee queries.
- *Informed decision-making:* When ministers attend committee meetings, they have the opportunity to gain insights from committee members who possess diverse expertise as well as from those members representing opposition parties. These insights can inform and enhance the decision-making process within government departments, leading to more informed and well-rounded policies and actions.
- *Public participation and stakeholder input:* Committee meetings provide a platform for MPs to represent their constituencies⁴⁸

When ministers attend portfolio committee meetings, it enables them to respond directly to MPs' questions

⁴⁸ It is noted here that South Africa does not have a constituency based electoral system. Instead, it has a proportional representation (PR) system. However, since MPs do go on constituency leave, it is assumed they represent the needs of their constituencies. This is however a contentious point, since it is very difficult to track and monitor the effectiveness of constituency engagement by MPs, if it takes place at all.

and raise concerns about specific issues within their regions. Ministerial engagement allows MPs to voice their constituents' perspectives directly to the responsible ministers, fostering a more inclusive and representative decision-making process.

- *Effective legislation:* Portfolio committees play a crucial role in the development and review of legislation related to their respective departments. Ministerial input during these discussions ensures that proposed laws align with the government's objectives, address practical challenges, and consider potential impacts.
- *Problem resolution:* Committee meetings allow for direct discussions between ministers and committee members, enabling timely identification and resolution of challenges and bottlenecks faced by departments. This proactive approach helps streamline processes and improve service delivery.
- *Public confidence:* The presence of ministers at committee meetings demonstrates their commitment to the democratic process and their willingness to engage with parliamentary representatives and the public. This fosters public confidence in the government's commitment to addressing national issues and working collaboratively with other branches of government.

With executive accountability on top of the national agenda, we have looked at how many times ministers or deputy ministers attended their parliamentary portfolio committee meetings.

Table 2 below shows the percentage of portfolio committee meetings attended by the minister or deputy minister, over the period of the sixth parliament to date.

When ministers attend portfolio committee meetings, it improves transparency and public trust

Table 2: Percentage of portfolio committee meetings attended by the minister or deputy minister

Committee meetings	2019/20	2020/21	2021/22	2022/23
Communications & Digital Technologies	29%	40%	39%	36%
Cooperative Governance and Traditional Affairs	59%	28%	38%	47%
Forestry, Fisheries & Environment	58%	56%	67%	55%
Health	29%	28%	39%	36%
Higher Education, Science & Innovation	21%	28%	31%	29%
Home Affairs	70%	50%	63%	66%
Mineral Resources & Energy	11%	5%	7%	39%
Public Enterprises	44%	52%	61%	48%
Transport	25%	26%	33%	24%
Water & Sanitation	0%	0%	76%	72%
Women, Youth & Persons with Disabilities	29%	21%	18%	26%
Average	34%	30%	43%	43%

Once again, it is noted that there is no prescribed number of, or percentage of, meetings which ministers and/or deputy ministers must attend. OUTA, by way of monitoring this attendance rate, seeks to establish a form of benchmark based on historical data. The average percentage of meeting attendance is 43%. Of the 11 committees we assessed for ministerial attendance, eight ministries (Communications and Digital Technologies; Cooperative Governance and Traditional Affairs; Health; Higher Education, Science and Innovation; Mineral Resources and Energy; Public Enterprises; Transport; and Women, Youth and Persons with Disabilities) attended less than half of the meetings that took place. The Ministry of Forestry, Fisheries and the Environment scrapes by at 55%, which is a significant decrease from the previous term's 67%. The Home Affairs Ministry has an attendance rate

Despite the energy crisis, the Ministry of Mineral Resources and Energy attended only 39% of the committee meetings

of 66%, an increase on the previous term's 63%. The highest attendance rate is from the Ministry of Water and Sanitation at 72%.

OUTA notes with dismay the poor attendance rate of the Ministry for Women, Youth and Persons with Disabilities at 26%. Granted, the current minister, Dr Nkosazana Dlamini-Zuma, was only appointed on 6 March 2023 (her ministry attended 4/9 meetings during the period, or 44%). The previous minister was Maite Nkoana-Mashabane (her ministry attended 4/22 meetings during the period, or 18%). This PC conducts oversight of a ministry and two entities which arguably attend to the needs and concerns of the absolute most vulnerable members of society. These entities are the Commission for Gender Equality (a Chapter 9 institution) and the National Youth Development Agency.

Public Enterprises Minister Pravin Gordhan, who had a relatively high attendance rate of 61% for the 2021/22 committee meetings dropped to 48% for 2022/23. However, given the energy crisis in the country, it is noteworthy that the Minister of Mineral Resources and Energy attended just 39% of meetings. Although this is less than 50% it is a notable increase from the 7% of the 2021/22 period. Last year, noting his key executive position in the ruling ANC political party, OUTA questioned whether the parliamentary chairperson and his MPs can hold such a minister to account, given that he is effectively their political party boss.

Overall, most committees under review (seven out of 11) saw their respective ministers less than in the previous year. For all the reasons outlined above, this would indicate a less transparent and accountable executive and correspondingly weaker governance.

6.3. Questions and answers

One of the mechanisms that parliament can use to hold ministers accountable is to ask them specific questions. Ministers who receive written and oral questions must respond within 10 days. The deputy minister may reply to a question on behalf of the minister, if they are authorised to do so, and "provided the Deputy Minister is able also to

The Ministry of Women, Youth and Persons with Disabilities attended only 26% of the portfolio committee meetings, although this ministry's responsibilities include for the most vulnerable members of society

Seven of 11 committees saw their respective ministries less than in the previous year, which would indicate a less transparent and accountable executive and correspondingly weaker governance

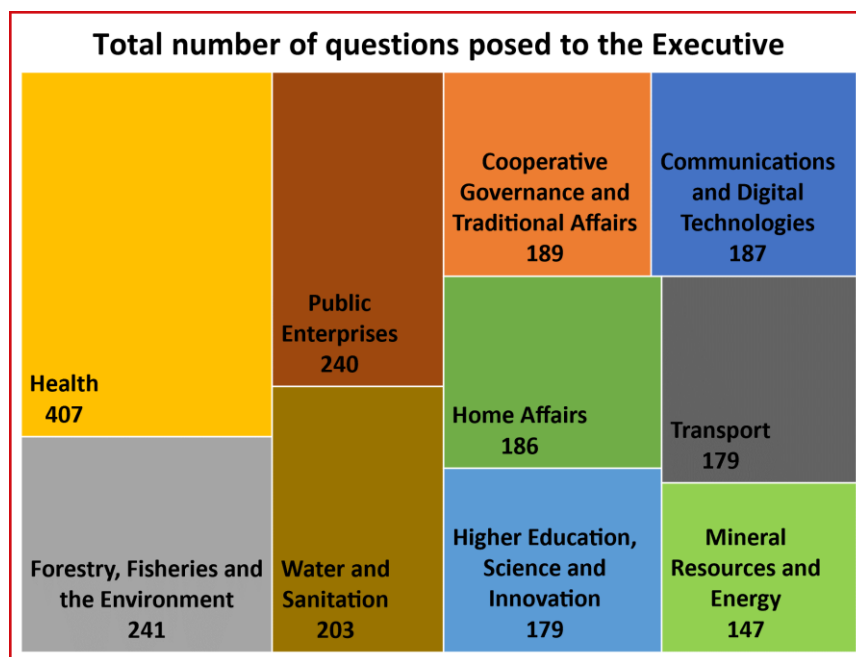
respond competently to any permissible supplementary questions that may be asked”⁴⁹.

There are certain timelines in which written questions must be responded to. According to the National Assembly rules⁵⁰:

Question for written reply must be replied to within 10 working days, provided that the responsible Minister may in writing request the Speaker for an extension not exceeding a further 10 working days on good cause shown.

OUTA monitored written and oral questions submitted to the executive, from the period 1 July 2022 to 30 June 2023. Based on our observations, Health received the highest number of combined questions of the period (407), whereas Mineral Resources and Energy received the least (147).

Figure 3: Total number of questions posed to the executive



Responses to the questions can be on time, late or left unanswered. We have found that most members of the executive respond late to written questions. The best response rate is from Minister Creecy, from Forestry, Fisheries and the Environment, who responded on time to 84%

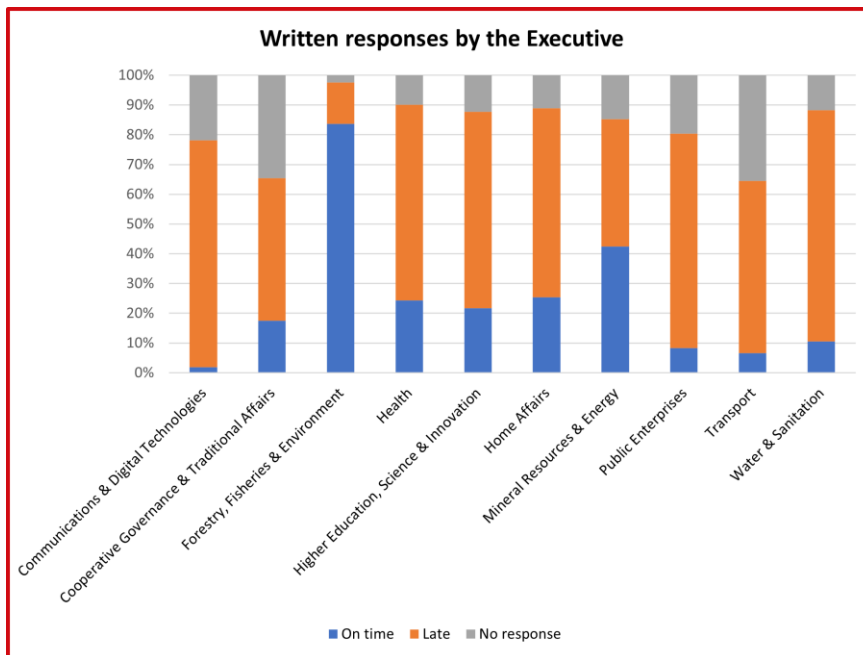
Questions from MPs to ministers for written reply must be replied to within 10 working days

⁴⁹ Parliament of the Republic of South Africa. 26 May 2016. *Rules of the National Assembly*. 9th edition. Section 138(3), page 100. Available online: https://www.parliament.gov.za/storage/app/media/Rules/NA/2016-09-28_NA_RULES.pdf

⁵⁰ Section 145(5)(a). Page 106

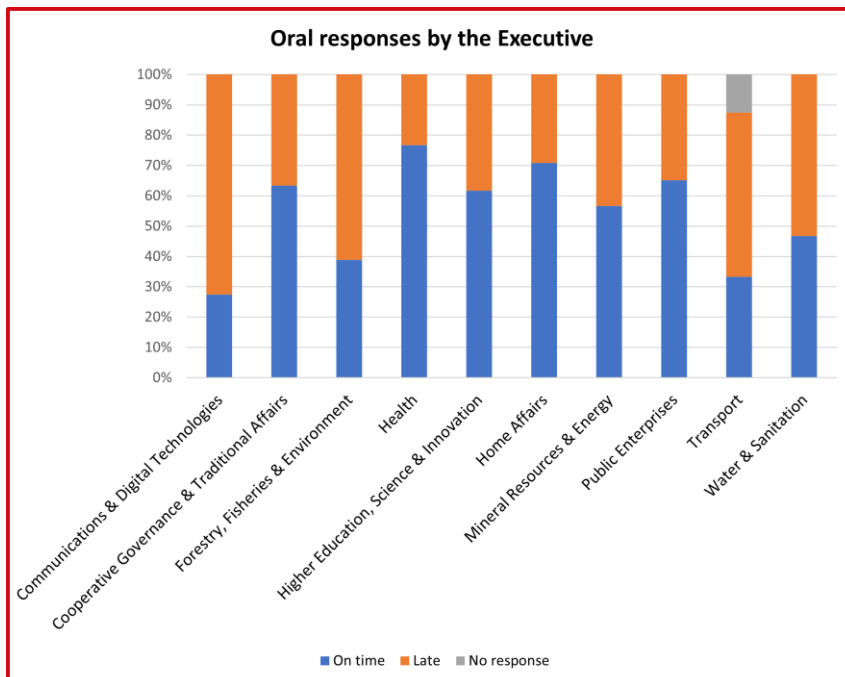
of questions. The worst response rate is 2%, from Minister of Communications and Digital Technologies, Mondli Gungubele.

Figure 4: Written responses by the executive



We found that most members of the executive respond on time to oral questions. The Minister of Health, Joe Phaahla, is the best performing minister at 77%. The worst response rate is 28%, again from Minister Gungubele, Communications and Digital Technologies.

Figure 5: Oral responses by the executive



The worst response rate to both written and oral questions is by Minister of Communications and Digital Technologies Mondli Gungubele: 2% response to written questions and 28% to oral questions

In terms of general trends, it is evident that most members of the executive respond late to written questions. On average, 24% respond on time, 58% late and 17% do not respond at all. Members of the executive respond better on time with oral questions, which makes sense, since they have to be there in person in most instances. On average, 54% respond on time, 45% late and 1% do not respond at all.

The analysis demonstrates that the executive appears not to take parliament's timeframes seriously, with more than half of the written questions being responded to too late.

Almost one in six questions are not answered at all, and there is no evidence of any action that parliament has taken to hold ministers to account for their failures.

Almost one in six questions are not answered at all, and there is no evidence of any action that parliament has taken to hold ministers to account for their failures

6.4. Constituency Periods

In our previous reports, OUTA has noted how MPs are being given long periods of time in the middle of the year, supposedly to consult their constituencies. **Table 3** below shows the length of the constituency leave period each year during the sixth parliament. In addition, Mondays are generally allocated to MPs for constituency work.

Apart from the 22-week constituency leave length of 2021, which was drastically higher than any other period, there has been a systematic increase of weeks allocation. Compare the 16 weeks allocated during the 2022 parliamentary calendar year (January to December 2022), with the proposed 18 weeks allocated during the 2023 parliamentary calendar year (January to December). OUTA is cognisant that the third and fourth term proposed dates still need to be adopted by the National Assembly Programming Committee when it will resume in the third term⁵¹.

⁵¹ As captured during the period of the *Parliamentary Oversight Report* compilation. The figure might likely change in the third and/or fourth terms.

Table 3: National Assembly mid-year constituency periods for sixth parliament

Year	Constituency period starts	Constituency period ends	Constituency period length	Term	Total weeks for year
2019	5 August	19 August	2 weeks	1 st term	5 weeks
2019	23 September	7 October	2 weeks	2 nd term	
2019	9 December	13 December	1 week	3 rd term	
2020	13 January	27 January	2 weeks	1 st term	15 weeks
2020	23 March	13 April	3 weeks	1 st term	
2020	17 June	27 July	5 weeks	2 nd term	
2020	7 September	5 October	4 weeks	3 rd term	
2020	7 December	11 December	1 week	4 th term	
2021	11 January	25 January	2 weeks	1 st term	22 weeks
2021	23 March	3 May	6 weeks	1 st term	
2021	7 June	16 August	10 weeks	2 nd term	
2021	13 September	1 November	3 weeks	3 rd term	
2021	6 December	10 December	1 week	4 th term	
2022	10 January	24 January	2 weeks	1 st term	16 weeks
2022	4 April	14 April	2 weeks	1 st term	
2022	20 June	15 August	8 weeks	2 nd term	
2022	26 September	10 October	2 weeks	3 rd term	
2022	5 December	15 December	2 weeks	4 th term	
2023	9 January	23 January	2 weeks	1 st term	18 weeks
2023	3 April	17 April	2 weeks	1 st term	
2023	19 June	28 August	10 weeks	2 nd term	
2023	26 September	9 October	2 weeks	3 rd Term	
2023	4 December	15 December	2 weeks	4 th Term	

Given that delivery is generally acknowledged as failing, and yet parliament claims that it has a full schedule and few oversight matters are seen to conclusion, a simple way of increasing MPs' time on the job, should be to reduce the constituency period.


Given the lack of transparency about constituency offices and contact details, it would appear that the public would be justified in querying if the constituency period is simply an additional holiday period, with little value to the country. OUTA would like to see parliament cut this constituency period and for the time to be used to conduct oversight of the executive in a more effective manner.

In 2022, MPs had 18 weeks allocated to constituency work plus most Mondays

CONSTITUENCY OFFICES


WHAT ARE CONSTITUENCY OFFICES AND WHAT SERVICES DO THEY OFFER?

The Parliamentary programme consists of two main components: parliamentary sessions & constituency periods. MPs use constituency periods to attend to the public & solve problems in communities where they have been assigned to assist with access to basic services such as social grants, housing, and health care. MPs also use constituency periods to report back to their constituents on parliamentary proceedings. MPs do this work at Constituency Offices, which serve as a direct link between elected officials and the public. When Parliament is in session, an administrator is sometimes available at the constituency offices to assist members of the public.



HOW ARE CONSTITUENCY OFFICES FUNDED?

Parliament funds Constituency work. Each political party with a seat in Parliament is entitled to a monthly allowance that is allocated to each MP to do constituency work at an assigned area or a constituency office.




INTERESTING FACTS

MPs are assigned constituencies by their political parties. Even though an office is linked to a political party, the public may visit any constituency office to raise an issue.

Every Monday is dedicated to constituency work. In addition, there are constituency weeks in the Parliamentary calendar dedicated for Constituency work.

The purpose of constituency periods is to encourage MPs to remain in contact with the people they represent.


WHERE CAN YOU FIND YOUR NEAREST OFFICE?



Use the REPLICATOR tool on the www.pa.org.za to find your nearest constituency office & the MP that is allocated to that office or area.

There are many constituency offices located across the country, where the public can approach elected representatives for assistance related to accessing basic services.

The more seats a political party has in Parliament, the more constituency offices they will have. Contact the political party you support to find the nearest constituency office in your area and the contact details of your MP.



Graphic: People's Assembly

7. The case studies

In this section, OUTA looks at issues in each of 11 portfolio committees (PCs) which we believe help illustrate concerns around inadequate oversight.

These are the portfolio committees we considered:

1. PC on Communications and Digital Technologies;
2. PC on Cooperative Governance and Traditional Affairs;
3. PC on Forestry, Fisheries and the Environment;
4. PC on Health;
5. PC on Higher Education, Training, Science and Innovation;
6. PC on Home Affairs;
7. PC on Mineral Resources and Energy;
8. PC on Public Enterprises;
9. PC on Transport;
10. PC on Water and Sanitation; and
11. PC on Women, Youth and Persons with Disabilities.



President Cyril Ramaphosa addresses parliament. Picture: GroundUp

7.1. Case study: Portfolio Committee on Communications and Digital Technologies

This committee conducts oversight over the Department of Communications and Digital Technologies (Vote 30).

- Number of committee meetings, 1 July 2022 to 30 June 2023: 39 meetings.
- Meetings attended by the minister and/or deputy minister/s: 36% of meetings.
- Department's budget for 2021/22: R3.693 billion.

Issues highlighted

- Broadcasting digital migration.

The BRRR was tabled on 18 October 2022⁵².

The PC's 39 meetings included at least seven meetings to specifically address the broadcasting digital migration (BDM) process.

However, it is evident that the PC has severely neglected its oversight duties. According to the 2022 BRRR, the department could not comply with the targeted switch-off date, which was due 31 March 2022, because of litigation. Yet the PC does not acknowledge that the switch-off date has been missed several times. Together with the dismal progress on BDM, the AGSA also observed that the department's leadership lacked "adequate internal controls in collecting, collating and verifying the data related to the BDM project, which resulted in material findings on the reliability of the reported performance information"⁵³.

The BDM process is the migration of broadcasting services from analogue to digital technologies (in line with international requirements and in order to clear the radio frequency spectrum currently occupied

Department of Communications & Digital Technologies

Budget for 2021/22:
R3.693 billion

Department of Communications & Digital Technologies

Entities

1. Broadband Infraco
2. Film & Publications Board
3. Independent Communications Authority of SA
4. National Electronic Media Institute of SA
5. SA Broadcasting Corporation (SABC)
6. SA Post Office
7. Sentech
8. State Information Technology Agency
9. Universal Service & Access Agency of SA
10. Universal Service & Access Fund
11. .ZADNA

⁵² The Budgetary Review and Recommendation Report (BRRR) of the Portfolio Committee on Communications, dated 18 October 2022. Available online at: <https://static.pmg.org.za/221025pccombrrr.pdf>

⁵³ BRRR 2022, page 13.

by broadcasters), with the aim of enabling the provision of wireless mobile broadband services and other innovative applications. Despite this migration being implemented worldwide, South Africa to date has failed to successfully implement this migration, at a massive cost to South African taxpayers. The South African BDM process kicked off in 2008, with the deadline of being fully digitally compliant by 2016. Unfortunately, seven years after the initial deadline was introduced, South Africa is nowhere near being fully digital. South Africa missed its twelfth deadline for turning off terrestrial analogue TV broadcasting signals in May 2023. The country's original goal was to turn off all analogue TV signals in November 2011, but a slew of legal, political, and technical obstacles delayed that by more than a decade.

Under the administration of former Minister of Communications Ivy Matsepe-Casaburri, the cabinet approved a digital switch-on date of 1 November 2008, and an analogue switch-off date of 1 November 2011, as well as the BDM policy to guide the digital migration process⁵⁴. The Independent Communications Authority of South Africa ordered that transmission cease in early 2013⁵⁵.

On 9 December 2022, then-Minister Khumbudzo Ntshavheni announced that the department proposed 31 March 2023 as the new switch-off date for analogue⁵⁶ and that installing the remaining set-top box installations (to transform digital TV signals into a format that older TVs with analogue tuners can display) would take just over three months. The minister also stated that the analogue switch-off must be

Abbreviations

AGSA	Auditor-General of South Africa
APP	Annual Performance Plan
BDM	Broadcasting digital migration
BRRR	Budgetary Review & Recommendation Report
PC	Portfolio committee
UIFW	Unauthorised, irregular, fruitless & wasteful expenditure

⁵⁴ Minister of Communications. 2008. *Broadcasting Digital Migration Policy*. Notice no.958. Government Gazette no. 31408 of 8 September 2008. Available online:

https://www.gov.za/sites/default/files/gcis_document/201409/31408958.pdf

⁵⁵ Independent Communications Authority of South Africa. 2010. *General notice – Reasons document on Digital Migration*. Notice no. 132. Government Gazette no. 32957 of 15 February 2010. Available online:

https://www.gov.za/sites/default/files/gcis_document/201409/32957132.pdf

⁵⁶ Department of Communications and Digital Technologies. 2022. *Broadcasting Digital Migration Policy (as amended): Consultation on date for final switch-off of the analogue signal and the end of dual illumination*. Notice 1513. Government Gazette no. 47697 of 9 December 2022. Available online: <https://gazettes.africa/archive/za/2022/za-government-gazette-dated-2022-12-09-no-47697.pdf>

completed as soon as possible in order for telecom network providers to decongest networks with the implementation of 4G and 5G.

In June 2023, the newly appointed Minister Mondli Gungubele announced that the dual illumination period would conclude on 31 December 2024, when all remaining analogue broadcasting services below 694 MHz will be turned off. He also announced an interim deadline of 31 July 2023 for all analogue TV services broadcasting on frequencies above 694 MHz to be switched off and all remaining analogue to be returned to operate on frequencies below 694 MHz in order to clear the 694 to 862 MHz frequency band of broadcasting services.⁵⁷

OUTA believes that the biggest issue at hand is the wasteful and irregular expenditure that has been taking place due to the ineffective roll out of the BDM process. The wasteful and irregular expenditure has been taking place for over a decade and is still taking place due to the government's inability to successfully conclude the BDM project.

As an example of the ineffectiveness of the government to implement the BDM process properly, we refer to the dual illumination aspect of the programme. Dual illumination is the process of illuminating both analogue and digital terrestrial television signals, as some households had already migrated to digital terrestrial television while others were still using the analogue input signal received through outdated TV antennae. This part of the programme was envisioned to continue for three years until the analogue switch-off failed deadline of 1 November 2011. OUTA found that from 2016/17 to 2020/21 a total amount of R668.385 million was paid by South African taxpayers for dual illumination.

The failure to finalise the broadcasting digital migration process resulted in R668.385 million being spent on dual illumination from 2016/17 to 2020/21

⁵⁷ Department of Communications and Digital Technologies. No date. *Media statement by the Minister of Communications and Digital Technologies, Mr Mondli Gungubele, MP regarding analogue switch off and the end of due illumination on broadcast digital migration*. Available online: <https://www.dcdt.gov.za/media-statements-releases/410-media-statement-by-the-minister-on-analogue-switch-off-and-the-end-of-dual-illumination-on-broadcast-digital-migration.html>

Despite numerous feedback sessions (from the entities responsible for the roll out of the BDM programme) to the PC during the last decade, South Africa has still not successfully rolled out the BDM project. No excuses are valid, since as stated in both the Constitution and the Money Bills Amendment Procedure and Related Matters Act 9 of 2009, the PCs must conduct oversight. They have the power to summon any person – such as the department’s director-general and the minister – to account for their neglect. This poor performance has severe reputational impacts on South Africa, as well as economic and rights implications for citizens. South Africa is very late to the party on this crucial issue that directly impacts millions of South Africans and it would seem that parliament is unable to provide effective oversight and hold to account those responsible for the roll out.

OUTA firmly believes that there is a dire need for consequence management and that parliament has a duty to ensure that these types of programmes are rolled out effectively. One way to ensure the successful roll out of the BDM programme is to ask the right questions to those entities responsible for the roll out, which includes questioning why deadlines are not being met and why the money is being spent without delivery, and to act with a sense of urgency in order to obtain the right answers. BDM is a core component of the department’s programme activities, falling under Programme 5: ICT Infrastructure Development and Support, and must therefore be prioritised and managed strictly. As can be seen in the purpose of Programme 5, its aim is “to promote investment in robust, reliable, secure, and affordable ICT infrastructure that supports the provision of multiple applications and services”, something which clearly has not been achieved in a decade.

Only once adequate answers to the right question are obtained, will parliament be in a position to act. To date, there has been no effective intervention from parliament or any consequence management implemented. Parliament merely accepts the explanations given and does not question whether the information provided is correct or accurate. This is evident in the 2022 BRRR where the PC notes with

No excuses are valid for the failure to roll out the broadcasting digital migration process: the portfolio committee must conduct oversight

The department’s programme which includes the broadcast digital migration process (ICT Infrastructure Development and Support) cost R1.564bn in 2021/22

concern many relevant issues, such as the detrimental effect of BDM on its related entities, poor consequence management, internal control deficiencies, and all entities experiencing a leadership crisis. However, during the PC meeting on 18 October 2022, no concerns were raised and the BRRR was adopted⁵⁸. Although the PC did not request the department and its entities to provide responses to the BRRR, on 22 November 2022, an audit action plan⁵⁹ was presented to address the AGSA's findings. The action plans related to finances, performance management, human resources, information technology and BDM. The BDM action plan was lacklustre and contained outdated due dates: this due date of 30 September 2022, presented in the 22 November 2022 Audit Action Plan, speaks to the due date set by the minister following the Constitutional Court judgment⁶⁰. The judgment "found the initial March [2022] deadline for the switch-off of the analogue signal unconstitutional and invalid", and also stated that the minister has the authority to set the due date as part of their executive authority and was a point of discussion in a PC meeting on 23 August 2022[10]⁶¹ and reiterated again on 27 September 2022⁶².

The PC met on 13 June 2023, where it was indicated that the analogue broadcasting will be switched off no later than end of July 2023⁶³, a deadline which has again been missed. OUTA will continue to monitor parliamentary and departmental progress on this matter.

The PC met on 13 June 2023, where it was indicated that the analogue broadcasting will be switched off no later than end of July 2023¹, a deadline which has again been missed

⁵⁸ PC on Communications and Digital Technologies. *DCDT & GCIS BRRRs meeting*. 18 October 2022. Available online at: <https://pmg.org.za/committee-meeting/35763/>

⁵⁹ PC on Communications and Digital Technologies. *SA Postbank Limited Amendment Bill: deliberations; SITA, SABC, SAPO, DCDT and USAASA/USAF on material irregularities and action plan to address the AG concerns*. Meeting and presentation, 22 November 2022. Available online at <https://pmg.org.za/committee-meeting/36069/>

⁶⁰ On 28 June 2022, the Constitutional Court handed down a judgment on the matter between eTV et al and the Minister of Communications and Digital Technologies. The court set aside the Gauteng high court decision of switching off analogue by the end of June 2022. Source: <https://www.gov.za/speeches/minister-khumbudzo-ntshavheni-progress-broadcast-digital-migration-7-jul-2022-0000>

⁶¹ PC on Communications and Digital Technologies. *Governance Matters at MDDA, DCDT on: Quarterly Performance, BDM Policy update, status of SAPO funding; with Minister*. 23 August 2022. Available online at: <https://pmg.org.za/committee-meeting/35334/>

⁶² ⁶² PC on Communications and Digital Technologies. *Minister Update on Broadcasting Digital Migration; SABC Board recommendations*. 27 September 2022. Available online at: <https://pmg.org.za/committee-meeting/35647/>

⁶³ PC on Communications and Digital Technologies. *SA Post Office Amendment Bill: DCDT briefing; Broadcast Digital Migration Update; with Minister and Deputy Minister present*. 13 June 2023. Available online at: <https://pmg.org.za/committee-meeting/37217/>

7.2. Case study: Portfolio Committee on Cooperative Governance and Traditional Affairs

This committee conducts oversight over the Department of Cooperative Governance (DCOG, Vote 3) and the Department of Traditional Affairs (Vote 15).

- Number of committee meetings, 1 July 2022 to 30 June 2023: 45 meetings.
- Meetings attended by the minister and/or deputy minister/s: 47% of meetings.
- Department's budget for 2021/22: R100.876 billion.

Issues highlighted:

- The Community Work Programme; and
- The equitable share.

DCOG is the only department with qualified auditing findings and is one of – if not the highest – contributor to UIWF expenditure, according to the AGSA's findings. For 2021/22, the irregular expenditure was R500 million, and there was an unresolved R3.3 billion dating back to 2013. DCOG achieved only 73% of its 2021/22 APP targets, an increase from 68% of the previous year. According to the BRRR this is the lowest achievement rate of all the Cooperative Governance and Traditional Affairs (COGTA) entities which have been audited.

In the BRRR 2021/22⁶⁴, it is acknowledged that several COGTA entities did perform well.

Department of Cooperative Governance

Budget for 2021/22:
R100.876 billion

Department of Cooperative Governance

Entities: DCOG

1. SA Local Government Association (Salga)
2. Municipal Demarcation Board
3. Municipal Infrastructure Support Agent
4. National Disaster Management Centre
5. SA Cities Network

Entities: DTA

1. Commission for the Promotion & Protection of the Rights of Cultural, Religious & Linguistic Communities
2. National House of Traditional & Khoi-San Leaders

⁶⁴ Budgetary Review and Recommendations Report of the Portfolio Committee on Cooperative Governance and Traditional Affairs, Dated 20 October 2022, page 1. Available online here: <https://static.pmg.org.za/221020pccoopbrrr.pdf>

- The Municipal Infrastructure Support Agent: achieved 92% of its APP targets, and incurred no UIFW. However, R528 689 remains unresolved from previous years;
- Department of Traditional Affairs: achieved 100% of its APP targets. There is an unresolved UIFW of R2.2 million from previous years;
- Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities : achieved 82% of its APP targets (up from 81%). Whilst no UIFW was incurred this year, there is still an outstanding balance of R2.79 million;
- South African Local Government Association: achieved 92% of its targets (up from 85%). Its UIFW is R4 732;
- Municipal Demarcation Board: achieved 95% of its targets, down from 100% of the previous year. The board incurred R500 000 of irregular expenditure following the “appointment of a service provider whose tax matters were not in order”⁶⁵.

In the BRRR submitted on 20 October 2022, the PC made several pertinent observations. A recurrent concern related to the Community Work Programme (CWP).

The department is currently reviewing the implementation model of the CWP, which falls under Programme 5 in the Department of Cooperative Governance. However, as observed by the PC, there seems to be a lack of urgency to solve these issues by a set deadline and hence it remains a major concern.

The objective of the CWP is:

The CWP is designed to help address poverty, unemployment, and social exclusion by providing income support and skills development to participants, while also contributing to community development and social cohesion.⁶⁶

Abbreviations

AGSA	Auditor-General of South Africa
APP	Annual Performance Plan
BRRR	Budgetary Review & Recommendation Report
COGTA	Cooperative Governance and Traditional Affairs
CWP	Community Work Programme
DCOG	Department of Cooperative Governance
PC	Portfolio committee
UIFW	Unauthorised, irregular, fruitless & wasteful expenditure

⁶⁵ BRRR 2022, page 3

⁶⁶ Department of Cooperative Governance. Undated. *2023/24 Annual Performance Plan*. Page 6. Available online here: https://static.pmg.org.za/DCOG_APP_2023_24_FINAL_as_tabled.pdf

The failure to prioritise change in the CWP ultimately negatively impacts citizens who are highly dependent on this programme. As presented during the PC workshop on the CWP, “participants receive a daily payment of R110, while supervisors receive R130. They work for two days per week, eight days per month, or a total of 100 days annually, for as long as they require assistance”⁶⁷. The CWP had 263 000 participants enrolled in the programme. The CWP is implemented in all nine provinces, with 223 sites and approximately 6 000 subsites, currently being managed by the department using provincial and districts’ site staff⁶⁸. The CWP has the potential to benefit society at large, especially the poor and unemployed, if managed properly.

The CWP is mostly responsible for the department’s high UIFW, totalling R4.4 million, contributed to by failing to follow supply chain management protocol. The appointment of implementing agents is raised as a cause of concern.

The BRRR says this⁶⁹:

Most problems in the CWP arise from the actions of the non-profit organisations (NPOs) hired by the Department as CWP Implementing Agents (IAs). Fundamentally, the IAs have insufficient experience with financial reporting obligations, including proper asset management systems. Their experience with procurement from a public sector perspective is also limited. According to the Minister, the Department would ideally not have IAs, if it was at liberty to do so.

The PC has also observed with disappointment that the (former) Minister, Nkosazana Dlamini-Zuma, failed to take responsibility for this poor performance, pleading her so-called “non-involvement in the Programme’s SCM [supply chain management]” processes⁷⁰.

Community Work
Programme participants
receive a daily payment
of R110, for two days per
week, eight days per
month or a total of 100
days a year

Former Minister
Nkosazana Dlamini-Zuma
refused to take
responsibility for the
non-performance of the
Community Work
Programme

⁶⁷ Parliamentary Communication Services. 31 May 2023. *Media Statement: Committee on COGTA welcomes new draft Community Work Programme Policy*. Available online at: https://pmg.org.za/files/230531pccogta_Media_Statement.docx

⁶⁸ Department of Cooperative Governance. 31 May 2023. *Portfolio Committee Workshop 31 May 2023*. Available online at: <https://pmg.org.za/files/230531WORKSHOP.pptx>

⁶⁹ BRRR 2022, page 1

⁷⁰ BRRR 2022, page 3

Towards addressing these, the PC has made two specific recommendations speaking to implementing agents and the CWP⁷¹:

1. The Auditor-General and the Department of Cooperative Governance should strive to find common ground regarding the potential irregularities identified in the process of appointing the latest cohort of Implementing Agents. In the next BRRR reporting cycle, both the AG and DCoG should update the Portfolio Committee on how this matter has been resolved.
2. The Portfolio Committee should, at the earliest convenience, convene a workshop with the Department of Cooperative Governance to discuss the Community Work Programme in more detail.

During the PC meeting of 20 October 2022⁷², when the BRRR was adopted, the PC members indicated they must improve their oversight efforts, including by conducting oversight visits.

Between September and November 2022, multiple PC meetings were held during which local municipalities reported on various stakeholder engagements, financial management issues and service delivery concerns. These meetings continued in March 2023. The PC members asked probing questions, but despite these questions, the follow-through on consequence management and change is not clear, specifically with regards to the BRRR recommendations on implementing agents and the CWP. For example, on 2 November 2022 a meeting was held on State of Msunduzi Local Municipality: stakeholder engagement⁷³. During this meeting the KwaZulu-Natal COGTA representative reported on measures implemented on addressing UIFW and supply chain management concerns in the municipality, specifically by appointing governance, financial and engineering experts. This calls into question the concern regarding the appointment of external implementing agents. In the DCOG APP, Minister Thembi Nkadameng indicated that there will be emphasis placed on being less reliant on implementing agents. But whether this will be the case is doubtful, based on past experience.

Multiple meetings were held where local municipalities reported on matters including service delivery issues and, while PC members asked probing questions, the follow-through on consequence management and change is not clear

⁷¹ BRRR 2022, page 4

⁷² *Budgetary Review and Recommendations Report of the Portfolio Committee on Cooperative Governance and Traditional Affairs*, 20 October 2022. Available online: <https://pmg.org.za/committee-meeting/35799/>

⁷³ *State of Msunduzi Local Municipality: stakeholder engagement*, 2 November 2022. Available online: <https://pmg.org.za/committee-meeting/35906/>

On 28 February 2023, The PC met on the Quarter 3 2022/23 performance of COGTA and the Municipal Infrastructure Support Agent⁷⁴. The minister and two deputy ministers were not present, though they were expected to be. In the opening of the meeting, Hlengiwe Mkhali (EFF) pointed out that it is difficult to hold ministers to account if they are not present, recommending instead that the meeting be postponed, which it was not. Minister Dlamini-Zuma and Deputy Minister Obed Bapela did arrive later. During the meeting, Mkhali indicated that the PC had not been receiving proper information on the CWP. A strategic meeting was supposed to be set up for between 28 and 30 March 2023, which resulted in a workshop on the CWP on 31 May 2023⁷⁵. One of the outcomes of this meeting is a commitment by DCOG to regularly revisit the CWP implementation model based on the revised implementation policy that set out “clear guidelines on the roles and responsibilities of the various role-players in the CWP”⁷⁶. As is so often seen in South Africa, we do not lack good policies, frameworks and legislation, but it is the lack of enforcement and implementation that cripples the ability of government departments to deliver on their promises.

On 18 April 2023, during the DCOG presentation of its 2023/24 APP, it was reported to the PC that past audit irregularities were due to the implementation of the CWP, and that by end of March 2023 the department no longer had contracts with implementing agents. The department admitted it has limited capacity, despite taking over the operations⁷⁷. This spotlights a couple of intersecting concerns faced by

Hlengiwe Mkhali (EFF)
pointed out that it is
difficult to hold ministers
to account if they are not
present

⁷⁴ DCoG, DTA & MISA Quarter 3 2022/23 Performance, with Ministry, 28 February 2023. Available online at: <https://p0mg.org.za/committee-meeting/36419/>

⁷⁵ Workshop on Community Works Programme; Municipal Support & Intervention Plans; with Ministry, 31 May 2023. Available online at: <https://pmg.org.za/committee-meeting/37129/>

⁷⁶ Parliamentary Communication Services. 31 May 2023. Media Statement: Committee on COGTA welcomes new draft Community Work Programme Policy. Available online at: https://pmg.org.za/files/230531pccogta_Media_Statement.docx

⁷⁷ DCOG, DTA & MISA 2023/24 Annual Performance Plans; with Deputy Minister, 18 April 2023. Available online at: <https://pmg.org.za/committee-meeting/36682/>

the department, including the lack of CWP performance, the reliance on implementing agents with their own resulting negative consequences, and the lack in capacity within the department itself. Eleanore Spies (DA) observed this, indicating the CWP must form the habit of updating the PC, which it omits to do. However, this skirts the PC's responsibility to conduct proper oversight and insight on such reporting.

In both the 2022/23 and 2023/24 APPs targets reached in the five different DCOG programmes are not indicated. Only the output indicators for annual and quarterly targets are indicators, but no results. This makes it difficult to track progress on the CWP, especially in consideration of the budget allocated to this programme, which is R4.251 billion for 2022/23. On 7 March 2023, Mkhalihi called out the CWP, saying: "The CWP was the Committee's nightmare. If people wanted to loot, they took money from the CWP"⁷⁸. The same sentiments were echoed by Spies, but the opaqueness of progress on targets met and financial performance leaves much to be desired. Concerns have also been raised about the target verification methods employed by COGTA on the CWP. For example, the department's budget shows that 263 259 people participated in the CWP in 2021/22 and a programme cost of R3.526 billion. What evidence is there that they participated, and really benefit from the CWP? If those 263 259 people were all paid for the maximum of 100 days at the rate of R110 per day, which seems very unlikely, it would be a total cost of R2.895 billion. If they were all paid at the supervisor's rate, the total spend would have been R3.422 billion. Were they all paid at supervisor's rates? Or is money going missing? How many days of work were paid? Why doesn't the PC ask these questions?

On 31 May 2023 Gcinikhaya Mpumza (ANC) raised a number of concerns, expressing his disappointment that "a programme that had existed for ten years had not produced tangible results and instead had further marginalised the poor".

DCOG's Community Works Programme

EFF MP Hlengiwe Mkhalihi:
"The CWP was the Committee's nightmare. If people wanted to loot, they took money from the CWP"

ANC MP Gcinikhaya Mpumza: "a programme that had existed for ten years had not produced tangible results and instead had further marginalised the poor"

CWP budget

2021/22: R3.526bn

2022/23: R4.251bn

⁷⁸ Status update on Material Irregularities in DCOG: AGSA briefing; with Minister, 7 March 2023. Available online: <https://pmg.org.za/committee-meeting/36480/>

During the sixth parliament, the PC has had ample opportunity since 2019 to put pressure on the deliverables and proper management of this programme. Why did the PC not take a harsher stance, since it clearly observed critical issues? The PC has the ability to block, approve or reject budgets but failed to use this power over the CWP despite the questions around the programme. Instead, the CWP budget rose by 21% from R3.526 billion in 2021/22 (actual spending, which was lower than budgeted) to R4.251 billion for 2022/23.

In reviewing the 2022 BRRR recommendations, the PC did convene the workshop which entailed a detailed discussion on the CWP (31 May 2023). In addition, the contracts of implementing agents which came to an end 31 March 2023 were not renewed in order to avoid further irregularities. It is heartening to note that the department has handed over cases to law enforcement agencies to conduct forensic investigations, specifically regarding (improper) financial and consequence management. As aligned with the BRRR, AGSA findings and the revised CWP policy, the implementing agents' performance, together with the departmental performance on deliverables and UIFW expenditure, require constant scrutiny. Whilst the workshop and revised policy are all steps in the right direction, it certainly does not equate to active and effective oversight.

It is heartening to note that the department has handed over cases to law enforcement agencies to conduct forensic investigations



The equitable share transfer is also a concern due to inadequate oversight. This is the department's biggest spend: the transfer of R76.169 billion in 2021/22, a 10% increase to R83.711 billion in 2022/23, and a 15% increase to R96.546 billion in 2023/24. The equitable share funds free basic services to the indigent and supports greater institutional capacity in weaker municipalities. However, in the APPs there is no indicator measuring how many indigent households are supplied with such services by municipalities, or even how many municipalities maintain a register of indigents receiving this subsidy. COGTA does not appear to be measuring how many households have access to water, electricity, sanitation and refuse removal, or how many municipalities have unfunded budgets or have collapsed. The DCOG performance targets have been updated in APP 2023/24 to at last reflect more relevant indicators. However, considering the enormity of the funds involved, this is still insufficient. Government's response to the crisis in municipalities seems to be to throw more money at them, which the PC seems to endorse. The BRRR does not mention the equitable share transfer.

The equitable share is the department's biggest expenditure: a transfer of R76.169bn in 2021/22, increasing to R96.546bn in 2023/24

Table 5.10 Community development expenditure

R million	2022/23	2023/24	2024/25	2025/26	Percentage of total MTEF allocation	Average annual MTEF growth
	Revised estimate	Medium-term estimates				
Community development	230 002	259 708	276 175	289 878	100.0%	8.0%
<i>of which:</i>						
Human settlements	38 606	41 135	42 929	45 002	15.6%	5.2%
Public transport, including commuter rail	43 547	53 223	59 054	63 224	21.3%	13.2%
Local government equitable share	83 711	96 546	103 772	109 368	37.5%	9.3%
Municipal infrastructure grant	16 842	17 545	18 331	19 150	6.7%	4.4%
Regional and local water and sanitation services	10 844	15 584	16 430	16 025	5.8%	13.9%
Electrification programmes	6 023	6 328	6 619	6 912	2.4%	4.7%
Total	230 002	259 708	276 175	289 878	100.0%	8.0%
<i>of which:</i>						
Compensation of employees	17 456	18 195	18 917	19 576	6.9%	3.9%
Goods and services	16 239	16 180	16 842	17 563	6.1%	2.6%
Transfers and subsidies	183 240	201 830	213 241	223 186	77.3%	6.8%
Buildings and other fixed structures	6 798	11 524	14 545	15 365	5.0%	31.2%
Machinery and equipment	5 384	10 281	11 145	12 730	4.1%	33.2%

Source: National Treasury

Local government equitable share increases from R83.711bn in 2022/23 to R109.368bn in 2025/26. Source: National Treasury

7.3. Case study: Portfolio Committee on Forestry, Fisheries and the Environment

This committee provides oversight over the Department of Environment, Forestry and Fisheries (Vote 32).⁷⁹

- Number of committee meetings, 1 July 2022 to 30 June 2023: 31 meetings.
- Meetings attended by the minister and/or deputy minister/s: 55% of meetings.

Issues highlighted:

- Poor financial performance and inadequate consequence management.

According to the AGSA 2021/22 report, the overall audit outcomes in the portfolio for the department remained unchanged when compared with the previous year. Unfortunately, the department remained stagnant with a qualified audit opinion with findings on the APP and compliance with legislation, and it was also found that deficient performance information was submitted, together with a failure to back up performance claims with credible evidence⁸⁰. Compounded by material misstatements in the financial statements, the portfolio (including the department and all the sub-entities), the amount of UIFW – of the most recent financial year and historic balances – is staggering. According to the 2022 BRRR, “the department and all its entities incurred irregular expenditures amounting to R975 million for the 2021/22 financial year” and the closing balance of irregular expenditure rose to R5.41 billion because the irregularly awarded contracts in the

Department of Environment, Forestry & Fisheries

Budget for 2021/22:
R8.717 billion

Department of Environment, Forestry & Fisheries

Entities

1. SA National Biodiversity Institute (Sanbi)
2. iSimangaliso Wetland Authority
3. SA Weather Service
4. SA National Parks (SANParks)
5. Marine Living Resources Fund

⁷⁹ In 2021/22, the department was named the Department of Environment, Forestry and Fisheries. The following year it was renamed the Department of Forestry, Fisheries and the Environment. The Portfolio Committee is now the PC on Forestry, Fisheries and the Environment and is referred to as such throughout this report.

⁸⁰ *Environment Portfolio Audit Outcomes; DFFE & MLRF Annual Report 2021/22; with Minister and Deputy Minister.* Indicated as R5.6 billion in the meeting on 11 October 2022. Available on: <https://pmg.org.za/committee-meeting/35696/>

2017/18 financial year are still in place”⁸¹. This poor financial performance is further exacerbated by poor activity performance. Much of these problems are recurring, which means that internally at the department and its entities the necessary changes are not affected, nor are the penalties in place to avoid future such occurrences. In addition, the PC itself – despite raising concerns – fails to use all the tools at its disposal to conduct oversight over the department and its entities. Each year poor performance is reported on, with recommendations made for improvement, but with limited follow-through and hardly any repercussions.

BRRRs are crucial oversight tools, but if not used effectively, they will fail in their function. As captured in a PC media statement⁸², the PC chair said that: “the BRRR process is necessary for government departments to assess, evaluate and monitor both financial and operation performance and that the audit opinion of AGSA must be taken seriously and that actionable audit plans must be reported regularly to the committee, and that must become standing items on the agenda until all the issues that are picked up are resolved”.

On 28 February 2023, the department briefed the PC on its performance reports for the first and second quarters of the 2022/23 financial year⁸³. Again, during this meeting PC members expressed concerns about UIFW, but no penalties were put in place, nor was there any mention of the outstanding official response to the BRRR by Minister Barbara Creecy. PC members were placated that irregular expenditure was being investigated and dealt with, but this does not inspire confidence based on past experience, especially with the unaddressed R5.41 billion in irregular expenditure.

Evidently poor financial and activity performance, and by extension the lack of consequence management, are of extreme concern. The PC listed

Abbreviations

AGSA	Auditor-General of South Africa
APP	Annual Performance Plan
BRRR	Budgetary Review & Recommendation Report
PC	Portfolio committee
UIFW	Unauthorised, irregular, fruitless & wasteful expenditure

⁸¹ *Budgetary Review and Recommendations Report (BRRR) of the Portfolio Committee on Environment, Forestry and Fisheries, 20 October 2022*. Available online at: <https://static.pmg.org.za/221025pcenvironbrrr.pdf>

⁸² *Media statement: Environment Committee Urges Department of Environment, Forestry and Fisheries to Improve Performance*. 11 October 2022. Available online at: https://pmg.org.za/files/221011pcenviron_Media_Statement.docx

⁸³ *DFFE & SAWS Q1 & 2 2022/23 Performance; with Minister*, 28 February 2023. Available online at: <https://pmg.org.za/committee-meeting/36426/>

all these issues in the BRRR, and made several recommendations regarding addressing the AGSA findings, improving performance and consequence management, adhering to the SMART principles not just by way of ticking boxes, but also to achieve responsible service delivery. Minister Creecy assured the PC on 18 October 2022 that attention will be paid to the items the AGSA flagged⁸⁴. Although repeatedly raising these concerns, it is evident that the PC itself did not put in any mitigation mechanisms, or penalties in place, for the lack of doing so. Finally, the PC indicated that “The Minister should submit a detailed response to the Committee on all the recommendations made in this report within 90 days after the adoption of this report by the National Assembly”, which if tabled on 20 October 2022, would have been end of January 2023. This response has not been tabled within the specified timeframe. Instead, on 2 May 2023⁸⁵, the PC only sounded its dismay at the outstanding responses by the minister and the entities. Apparently, the responses have been prepared, but required sign-off by the minister, who seems to be delaying the matter. After tabling the 2023/24 APPs, the minister was given another 60 days to submit the responses to the report, which would be at the end of June 2023. In consideration of constituency leave having commenced on 19 June 2023, the responses have not yet been tabled.

Lastly, it must be acknowledged that the PC held numerous public hearings on the Climate Change Bill (B9-2022)⁸⁶. These took place between September and October 2022 and again in May and August 2023. On 30 November 2022 another meeting took place on municipal, land and agriculture issues raised during the public hearings. Unfortunately, the specifics of the engagements and meeting minutes are not available. While it is encouraging that there are public engagements, OUTA would like to see more public engagements on general matters that concern the public, not only those on legislation.

The PC repeatedly raised concerns about the financial problems flagged by the AGSA, but did not put in place any mitigation mechanism or penalties

⁸⁴ *South African Weather Services, South African National Biodiversity Institute, South African National Parks and iSimangaliso Wetland Park Annual Reports 2021/22; with Minister and Deputy Minister*. 18 October 2022. Available online at: <https://pmg.org.za/committee-meeting/35770/>

⁸⁵ *DFPE Budget: Committee Report; Sustainable Small Scale Fisheries*, 2 May 2023. Available online at: <https://pmg.org.za/committee-meeting/36784/>

⁸⁶ Climate Change Bill (B9-2022), Section 76. Available online at: <https://pmg.org.za/bill/1065/>

7.4. Case study: Portfolio Committee on Health

This committee conducts oversight over the Department of Health (Vote 18).

- Number of committee meetings, 1 July 2022 to 30 June 2023: 36 meetings.
- Meetings attended by the minister and/or deputy minister: 36% of meetings.

Issues highlighted:

- Passing the BRRR: The blunt instrument of oversight or majority party oppressing the voices of the opposition; and
- Passing the NHI Bill: Public participation: Hundreds of thousands of submissions on NHI, but were they really heard? Were even the opposition MPs heard?

The 2022 BRRR⁸⁷ was tabled on 19 October 2022⁸⁸.

Ultimately the BRRR was passed with the majority view being the only view officially recorded, raising concern that this report became a blunt instrument of oversight. In the BRRR submitted on 19 October 2022, the PC made several recommendations to both the department and its entities. The majority of these spoke to addressing the AGSA's findings, providing reports to the committee on highlighted items dealing with accruals, financial managements, reducing UIFW and other inefficiencies. The implementation of the Mental Health Policy Framework and how the department is going to address gender-based violence were also matters that required reporting on. The recommendations on four of the entities (National Health Laboratory Service, Office of Health Standards Compliance, Compensation Commissioner for Occupational Diseases and the Council for Medical

Department of Health

Budget for 2021/22: R62.5bn

Expenditure for 2021/22:
R65.9bn

Department of Health

Entities

1. Council for Medical Schemes
2. SA Medical Research Council
3. National Health Laboratory Service
4. Compensation Commissioner for Occupational Diseases
5. Health Professions Council of SA
6. SA Nursing Council
7. SA Pharmacy Council
8. Dental Technicians Council
9. Allied Health Professions Council
10. Interim Traditional Health Practitioners Council
11. Office of Health Standards Compliance
12. SA Health Products Regulatory Authority

⁸⁷ *The Budgetary Review and Recommendations Report (BRRR) of the Portfolio Committee on Health, dated 19 October 2022.* Available online here: <https://static.pmg.org.za/221020pchealthbrrr.pdf>

⁸⁸ *Health BRRR meeting.* 19 October 2022. Available online here: <https://pmg.org.za/committee-meeting/35788/>

Schemes) were minimal, with most indicating again the AGSA's findings must be addressed.

In reviewing the 2022 BRRR, the findings of both the AGSA and the Financial and Fiscal Commission are included. The AGSA's report indicated that the department received a qualified audit, whereas the seven entities listed in the BRRR received unqualified audits (some with and some without findings). The AGSA did find that overall, the outcomes have improved.

Conversely, the AGSA's report on UIFW is concerning:

During the period under review, the Department and Entities incurred irregular expenditure amounting to R1.3 billion. Irregular expenditure increased by 42% compared to the prior year.

The department's budget for 2021/22 was R62.543 billion, which was adjusted to R64.771 billion in the Medium-Term Budget Policy Statement, but the department ultimately spent R65.9 billion. For argument's purposes, it means that of every R66 spent, R1.30 is irregularly spent. This does not even consider expenses and contracts accounted for, of which the costs have been over-inflated. During the APP meetings on 18 April⁸⁹ and 21 April 2023⁹⁰, the amended budgets were tabled: "the total departmental budget for the 2023/24 financial year is R60.1 billion, down from R64.6 billion for the 2022/23 adjusted appropriation (R64.5 billion in 2022/23 Main Budget)", noted the meeting of 18 April. It remains to be seen, in the 2022/23 AGSA report and BRRR, what the financial audits and UIFW will amount to. In the 2023/24 APP the PC noted a decrease of 41.6% in money allocated to primary healthcare services⁹¹. This decrease – and its subsequent pressure on the public healthcare system – will be exacerbated by the NHI.

Abbreviations

AGSA	Auditor-General of South Africa
APP	Annual Performance Plan
BRRR	Budgetary Review & Recommendation Report
NHI	National Health Insurance
PC	Portfolio committee
UIFW	Unauthorised, irregular, fruitless & wasteful expenditure

For every R66 spent by the Department of Health, R1.30 is irregularly spent

⁸⁹ FFC analysis of Health Sector Budget; AGSA APP review; CCOD & OHSC 2023/24 APP. 18 April 2023. Available online here: <https://pmg.org.za/committee-meeting/36696/>

⁹⁰ Department of Health 2023/24 Annual Performance Plan, with Deputy Minister. 21 April 2023. Available online here: <https://pmg.org.za/committee-meeting/36739/>

⁹¹ NDoH Annual Performance Plan 2023/2024 presentation to the PC, 21 April 2023. Available online at: [https://pmg.org.za/files/230421NDOH_APP_PRESENTATION - 21 APRIL 2023.pptx](https://pmg.org.za/files/230421NDOH_APP_PRESENTATION_-_21_APRIL_2023.pptx)

On 19 October 2022 the BRRR was adopted with the majority's support, but not without much dispute. The majority party adopted and approved the report, blocking the voices of the opposition parties.

The meeting minutes by PMG captured these disputes in its summary⁹²:

The meeting later descended into chaos, as Members disagreed on whether the BRRR report should be adopted in its current form or to include the inputs that had just been made by Members of the different political parties.

Among those inputs, there were suggestions such as asking the Minister for a report on the plans to tackle corruption, mismanagement and maladministration in the Department of Health; a report on the plans to improve audit outcomes; an update on the upgrade of 121 state health facilities; the negotiation between Eskom and the Department on the exemption of load shedding in state hospitals and clinics; medical-legal claims; the economic-social impact of National Health Insurance Fund, etc.

The majority of the Committee Members were of the view that the report should be adopted as it was. It would be uncalled for to discard a BRRR report that Parliament's administrative staff and researchers had put so much work into. Furthermore, it was the majority's view that Members' inputs, which they had just made in this meeting, should not be automatically included without further discussion and deliberation.

A minority of the Committee viewed that stance as an unfair process and an attack on their constitutional rights. Members further clashed on the view of how the performance of the Minister of Health should be assessed, and whether the Portfolio Committee had the authority to do that.

The adoption of the report was put to vote.

The Economic Freedom Fighters (EFF) rejected the BRRR in its entirety. The Democratic Alliance Members had made it known that they would leave the meeting because the Chairperson did not recognise their constitutional rights.

Of particular note is the observation made by Naledi Chirwa (EFF), that the minister was left out of the BRRR. She and others felt that the performance of the minister should also be assessed, but Nhlanhla Xaba (ANC) countered that "it is not the job of the Committee to assess the

The majority party adopted and approved the Health BRRR, blocking the voices of the opposition

⁹² Health BRRR meeting. 19 October 2022. Available online here: <https://pmg.org.za/committee-meeting/35788/>

Minister of Health because the Minister is appointed by the President”. This is indeed a point of concern, since it is exactly Parliament’s duty to conduct oversight of the executive, and hold them accountable, which not only includes the government departments, but also the cabinet ministers themselves. Chirwa continued to insist that the BRRR must reflect the views of the entire PC, not only the majority party’s opinion. This was further substantiated by Evelyn Wilson (DA) who said: “We have a constitutional obligation regarding our oversight to amend the recommendations.” Evidently there are PC members who strongly disagree with how matters are managed by the chairperson and majority party and how this is affecting their own oversight duties.

During this meeting two clear problems were identified: firstly, the opinion that it is not the PC’s job to assess the performance of the minister and, secondly, the views of opposition party members are oppressed. The Health BRRR has been adopted, giving the impression that it has been stamped with approval by the entire PC, whereas in reality, there have been accusations of bullying within the meeting itself. This same incidence of the majority oppressing the minority has been noted time and again within the same PC with regards to the NHI Bill.

As captured in the BRRR’s conclusion, the department was given three months to respond to these recommendations. This would have made the expected due date of responses end of January 2023, but upon scrutinising the meeting minutes, no evidence of the report and responses were available.

The processing of the NHI Bill was controversial among the public and among the PC members.

Of the PC on Health’s 36 meetings, 20 dealt with the NHI Bill, either exclusively or as part of the general agenda. Public participation is a key responsibility of parliament and OUTA appreciates the PC’s efforts to include public consultations. However, OUTA also notes that, firstly, public participation only extends to legislative matters and, secondly, public participation is too often a tick-box exercise with substantive

During this meeting two clear problems were identified: firstly, the opinion that it is not the PC’s job to assess the performance of the minister and, secondly, the views of opposition party members are oppressed

The NHI Bill was controversial among the public and among the committee members

comments and input from experts ignored so as to forge ahead with the bill at all costs.

The PC members expressed their concern about the bill in the meeting of 21 April 2023:

A contentious issue for Members was the yet to be adopted, National Health Insurance (NHI) Bill. A minority of Members argued that the country did not require NHI, as it already had universal healthcare coverage. What the Department had to focus on, they reasoned, was on addressing the shortages of staff within hospitals, particularly doctors and nurses; the refurbishment of existing infrastructure; and the construction of new hospital infrastructure.

Despite numerous PC members raising their concerns regarding the NHI Bill in multiple meetings, the minister and deputy minister remained adamant to implement the bill. The bill's A-list (the amendments agreed by the committee) was subsequently considered and adopted on 24 May 2023, but as can be expected, it was not done so unanimously:

As captured in the meeting minutes⁹³:

The Members of the ANC supported the adoption of the amended A-List. The Members of the DA, FF+, and EFF rejected the amended A-List. The Members of the ANC supported the adoption of the B-Bill in its entirety. The DA, EFF, FF+ rejected the B-Bill in its entirety.

Unfortunately, as is seen regularly, the majority party tends to oppress the views of the opposition. Ultimately, the NHI Bill was passed by the National Assembly on 12 June 2023⁹⁴.

The processing of the NHI Bill raises the issue of how public participation is considered. This bill was contentious and of massive public interest. In the PC's report on the NHI Bill to parliament on 26 May 2023⁹⁵

Despite numerous PC members raising their concerns, the minister and deputy minister remained adamant to implement the Bill

The majority party suppressed the views of the opposition and pushed the NHI Bill through

⁹³ National Health Insurance (NHI) Bill: adoption; Cholera Outbreak; with Deputy Minister, 24 May 2023. Available online at: <https://pmg.org.za/committee-meeting/37050>

⁹⁴ Parliament of the Republic of South Africa. 12 June 2023. Press release: The National Assembly passes the National Health Insurance Bill and the Land Court Bill. <https://www.parliament.gov.za/press-releases/press-release-national-assembly-passes-national-health-insurance-bill-and-land-court-bill>

⁹⁵ Parliament of the Republic of South Africa. 26 May 2023. Announcements, Tablings and Committee Reports. No. 73 of 2023. See: Report of the Portfolio Committee on Health on the National Health Insurance Bill [B11-2019] (National

immediately after the PC adopted the Bill, it outlined the extensive public participation process, recording that there were in-person public hearings in all provinces attended by 11 564 members of the public, 961 oral submissions heard, virtual public hearings with 114 stakeholders participating, “oral presentations from individuals and various groups such as professional associations, civil society organisations, faith-based organisations, researchers, lobby groups, academics, traditional healers, public health entities, statutory bodies, government departments, sector experts, healthcare funders, medical aid schemes, healthcare administrators, hospital groups, political organisations, labour unions and other interested stakeholders” and, in addition to the hearings, approximately 338 891 written submissions from the public.

This is an enormously successful public participation exercise. But the question is: how much did the public participation influence the ultimate form of the Bill? *That committee report does not tell us about those submissions or how they influenced the bill.* Astonishingly, there is a hint in that report that the PC’s MPs themselves may not have seen all the submissions – or summaries – or known how many were for or against the Bill, as the summary of the FF+ legal opinion included in the PC’s report notes:⁹⁶

Sections 59 and 72 of the Constitution compel Parliament to facilitate public involvement in its legislative and other processes. Our courts have rejected the argument that the public need not participate in the legislative process as its elected representatives are speaking on the public’s behalf. It is therefore recommended that the PCH should, in the Thematic Report, report on the exact numbers for and against the proposed NHI Bill and, if necessary, have the necessary supporting documentation available for scrutiny by all members of the committee.

We wonder if this committee was overwhelmed by the public response, and if parliament has considered strengthening measures to process such volumes of responses, in the hope of improving the value.

The public made 338 891 written submissions on the NHI Bill – an enormously successful public participation exercise – but it is not clear how many supported or opposed the Bill, or how those submissions influenced the final Bill

Assembly – sec 76]], dated 26 May 2023, page 9. Available online here:

<https://www.parliament.gov.za/storage/app/media/Docs/atc/74e4a11b-9807-4dfc-aeb8-4b48c036ac61.pdf>

⁹⁶ ATC 73 of 2023, page 20

The Department of Health responded to the public input at the PC meetings of 29 March 2022⁹⁷ and 17 November 2022⁹⁸. One of the key controversies around the bill has been the lack of clarity on financing the NHI and the costs; in the 17 November 2022 meeting, one of the MPs reiterated that no finance model had been given to the PC. That November meeting, attended by the minister who responded to concerns raised by the public, was fractious, with members squabbling, disagreeing over the bill and asking why key issues had not been resolved. In a meeting on 22 November 2022⁹⁹, the PC argued over a matrix summary of public concerns linked to the Bill's clauses and additional issues, including financing and governance, with opposition parties raising concern over unanswered issues particularly on funding.

One of the key controversies around the bill has been the lack of clarity on financing the NHI and the costs

From this meeting:

Ms M Clarke (DA) said a lot of issues were raised in the summary of submissions but there was very little feedback in addressing those concerns, which she found very disappointing. She hoped that the Department would address the issues about the feasibility study, the financial model and the critical matter about transparency in the Bill. Many of these concerns were also raised during the clause-by-clause deliberations. The document did not have any real feedback on what would be done to address the array of issues that have been raised, which is what the Committee would need...

Mr P van Staden (FF+) ... noted that the Committee still needed to get feedback on the 38 000 written submissions, particularly on how many of those submissions were in favour or against the NHI Bill...

Ms N Chirwa (EFF) ... was concerned that the document did not fully encompass the issues that were raised in this Committee....

Ms H Ismail (DA) said that 85 to 90% of the recommendations and concerns raised by stakeholders are not effectively addressed in the matrix document. Most of the time, there are no real amendments that have effectively addressed the matters raised. There is no guidance on how a particular issue is going to be addressed, or the monies necessary to address it. The document

⁹⁷ NHI Bill: DoH response to public submissions, with Minister & Deputy; CCOD 2022/23 Annual Performance Plan. 29 March 2022. Available online: <https://pmg.org.za/committee-meeting/34691/>

⁹⁸ NHI Bill: Health Minister's response to comments. 17 November 2022. Available online: <https://pmg.org.za/committee-meeting/36051/>

⁹⁹ National Health Insurance (NHI) Bill: summary of public comments. 22 November 2022. Available online: <https://pmg.org.za/committee-meeting/36077/>

7.5. Case study: Portfolio Committee on Higher Education, Science and Innovation

This committee conducts oversight over the Department of Higher Education and Training (Vote 17) and the Department of Science and Innovation (Vote 35).

- Number of committee meetings, 1 July 2022 to 30 June 2023: 49 meetings.
- Meetings attended by the minister and/or deputy minister/s: 29% of meetings.

Issues highlighted:

- NSFAS and the National Skills Fund: The looting of funds meant for students and skills development.

OUTA currently focuses only on the PC's oversight of the Department of Higher Education and Training. The 2022 BRRR for this department was tabled on 4 November 2022¹⁰¹. Only in this report were responses to the previous year's BRRR (2020/21) captured: only one year later.

OUTA has been conducting investigations into National Student Financial Aid Scheme (NSFAS) and has subsequently revealed significant alleged tender corruption involving multimillion-rand contracts at the government student bursary and loan scheme. The investigation, prompted by previous corruption findings in the Services Sector Education and Training Authority (Services SETA), raises concerns about financial mismanagement and unethical practices within NSFAS.

OUTA's initial findings were published on 15 September 2022. The core issues included:

Department of Higher Education & Training

Budget for 2021/22:
R97.784bn

Department of Higher Education & Training

Entities

1. 20 Sector Education & Training Authorities (SETAs)
2. Council on Higher Education
3. Mining Qualifications Authority
4. National Skills Fund (NSF)
5. National Student Financial Aid Scheme (NSFAS)
6. Quality Council for Trades & Occupations
7. SA Qualifications Authority

¹⁰¹ *Budgetary Review and Recommendation Report (BRRR) of the Portfolio Committee on Higher Education, Science and Innovation on the 2021/22 Annual Report of the Department of Higher Education and Training and Entities*, 4 November 2023. Available at: <https://static.pmg.org.za/1/221108pchigherbrrr2.pdf>

Grayson Reed / Services SETA investigation: OUTA's investigation stemmed from concerns about irregularities in a R170 million tender awarded to the Grayson Reed consortium for a biometric attendance monitoring system. The contract was terminated early due to maladministration, corrupt activities, and non-performance.

Special Investigating Unit (SIU) involvement: President Cyril Ramaphosa authorised the SIU to investigate NSFAS's maladministration, and OUTA shared its findings with the SIU. The collaboration aimed to provide insights into individuals linked to NSFAS involved in questionable activities.

Potential impact: Irregularities at NSFAS could lead to annual costs of up to R1 billion, hindering the institution's ability to provide effective financial aid to disadvantaged students.

NSFAS challenges: Operational failures within NSFAS, such as delayed student allowances and unpaid tuition fees, adversely affected students' education and undermined the purpose of government funds allocated for educational support.

OUTA's action: OUTA pledged to continue its investigations into questionable tenders at NSFAS, collaborating with the SIU to ensure accountability and student well-being.¹⁰²

OUTA's subsequent media release on 16 February 2023¹⁰³ delved further into the issue and highlighted:

Irregular tender awards: The investigation revealed irregularities in NSFAS's tender awards, such as hiring service providers without proper licences, awarding contracts to businesses with questionable backgrounds, and renting expensive office spaces while cutting student accommodation subsidies.

SIU investigation continues: The SIU's investigation, initiated in August 2022, is ongoing. OUTA recommended that the identified tenders be included in the SIU's scrutiny for a comprehensive review of potential irregularities.

Specific tenders examined: OUTA focused on three specific tenders within NSFAS, highlighting irregularities in: SCMN022/2021 Direct Student Allowance Payment (awarding a contract for student allowance payments without proper banking licences, resulting in costly student accounts); SCMN004/2021 Digital Tool for Allowance Calculation (awarding a contract to

Abbreviations

AGSA	Auditor-General of South Africa
APP	Annual Performance Plan
BRRR	Budgetary Review & Recommendation Report
NSF	National Skills Fund
NSFAS	National Student Financial Aid Scheme
PC	Portfolio committee
SETA	Sector Education and Training Authority
SIU	Special Investigating Unit
UIFW	Unauthorised, irregular, fruitless & wasteful expenditure

¹⁰² Organisation Undoing Tax Abuse. *OUTA uncovers multimillion rand tender corruption at NSFAS*, 15 September 2022. Available at: <https://www.ouata.co.za/blog/newsroom-1/post/ouata-uncovers-multimillion-rand-tender-corruption-at-nsfas-1187>

¹⁰³ Organisation Undoing Tax Abuse. *NSFAS, what are you doing with student funds?*, 16 February 2023. Available at: <https://www.ouata.co.za/blog/newsroom-1/post/nsfas-what-are-you-doing-with-student-funds-1233>

Futgenx Technology, a company with a history of varied projects, including supplying masks to the National Treasury); SCMN015/2021 Leasing of Head Office (leasing an expensive office space for five years instead of the initially planned two-year lease).

Financial impact: NSFAS's significant budget from the Department of Higher Education and Training raised concerns about financial allocation and management practices.

Transparency issues: OUTA's attempt to access tender documents through the Promotion of Access to Information Act was denied by NSFAS. The organisation's appeal was pending, as NSFAS argued that sharing information could prejudice the SIU investigation.

OUTA's investigations into NSFAS's alleged tender corruption reveal a complex web of irregularities that could potentially compromise student funds and hinder educational opportunities. Collaboration with the SIU and transparency are vital in addressing these issues, restoring accountability, and ensuring that financial aid programmes effectively support disadvantaged students.

NSFAS falls under the department's Programme 3: University Education. In the BRRR observations on this programme, the PC notes the following¹⁰⁴:

The Committee noted the report by the Department that the Cabinet will consider the Ministerial Task Team Report and the proposed Student Funding Model in November 2022. The Committee is concerned about the readiness of the institutions and NSFAS to implement funding decisions that will arise from the new funding model for the 2023 academic year, given that the implementation of the new funding model is targeted for 2023.

The Committee was seriously concerned about the dual registration of students at universities, as this has implications for the ability of NSFAS to pay students on time.

Already on 31 August 2022, the PC was notified that the SIU would commence with its investigations into NSFAS maladministration. On 30 November 2022¹⁰⁵ a presentation was made by NSFAS on reviewing

In August 2022, the portfolio committee was notified that the SIU would investigate NSFAS maladministration

¹⁰⁴ BRRR 2022, page 24

¹⁰⁵ *Portfolio Committee meeting on NSFAS forensic report into allegations of corruption and maladministration; Follow-up engagement with VUT on governance, administration and related matters*, 30 November 2022. See additional documents linked the minutes, available online at: <https://pmg.org.za/committee-meeting/36190/>

the allegations of maladministration¹⁰⁶. It is noted that the investigations focus on matters other than those OUTA has identified, however, it does add to the ecosystem of concerns experienced within the NSFAS. According to the media statement released by the PC on 2 December 2022¹⁰⁷, the allegations were that:

NSFAS procured laptops for students, which it was alleged was not in keeping with its mandate, nor were the correct procurement processes followed in their purchase. Other allegations related to the appointment of employees, the conversion of fixed-term contracts to permanent employment and the administrator's role in appointing a bloated organisational structure.

No mitigation measures were proffered to address these allegations and subsequent investigations. Ranging from questionable policy gaps, maladministration, staff appointments and equipment procurement, one would have expected more. Conversely, it is also evident that the PC itself did not seem intent on recommending stringent action. To address the NSFAS concerns, the PC made only two (rather weak) recommendations in the BRRR¹⁰⁸:

1. The Department institutes a forensic investigation to determine the extent of dual registration and double dipping by students in universities and the implications of this on funding of the NSFAS beneficiaries.
2. Working in collaboration with NSFAS, the Department ensures that the NSFAS applications portal is user-friendly.

NSFAS has continued to be a critical topic at PC meetings. On 23 November 2022¹⁰⁹ the state of readiness for the 2023 academic year was discussed, during which NSFAS noted challenges “relating to NSFAS’ mechanisms for centralising the payment of student accommodation and accreditation; capping accommodation costs to R45 000; and the proposal to implement direct payments to students from the 2023

The portfolio committee did not seem intent on recommending stringent action

¹⁰⁶ Presentation on NSFAS Review in allegations of maladministration made 30 November 2022. Available at: https://static.pmg.org.za/221130PCHET_Review_Report_presentation.pdf

¹⁰⁷ Portfolio Committee on Higher Education, Science and Innovation. Media statement: NSFAS must close policy gaps contributing to maladministration, Committee recommends, 2 December 2022. Available at: https://pmg.org.za/files/221130pchigher_Media_Statement.docx

¹⁰⁸ BRRR 2022, page 27

¹⁰⁹ 2023 Academic Year: DHET & stakeholder preparations, 23 November 2022. Available at: <https://pmg.org.za/committee-meeting/36102/>

academic year”. Interestingly, during this meeting it was mentioned that the current student debt of South African students stands at R16.5 billion, and is continuing to increase. NSFAS presented updates again on the 2023 academic year in the 22 February 2023 meeting on its funding disbursement¹¹⁰. The PC was told:

It was explained to Members that the NSFAS received 978 402 first-time applications, which was a 14% growth compared to last year. NSFAS had funded over 657 000 new applicants, representing 66% of those who applied. 81% of these were SASSA beneficiaries.

Regarding funding, the NSFAS budget was projected at R47 billion, the highest ever in the history of the NSFAS to fund an estimated number of 1.835 500 million students or applicants.

Members raised their concerns as to how students can register without knowing whether their funding has been approved. The PC also wanted to know how the R45 000 cap was decided on. The minister was asked to respond to the concerns raised in the media regarding NSFAS (examples of which related to OUTA’s investigations). NSFAS provided another update to the PC on 22 March 2023¹¹¹ on the funding cap and accommodation allocation. NSFAS, by 22 March 2023, was still unable to provide sufficient accommodation for students. By 20 March 2023, only 393 227 beds were registered (for 657 000 applicants). Allowance allocations and claims for registration data were also outstanding. Shockingly, the SIU has also found that between 2018 and 2021, NSFAS incorrectly transferred funds to over 40 000 students who did not qualify for funding¹¹². To date, only R349 million¹¹³ has been recovered from the staggering amount of R5 billion.

The NSFAS budget for 2023/24 is R47 billion, the highest ever in NSFAS history, to fund an estimated 1 835 500 students

By 20 March 2023, only 393 227 beds were registered (for 657 000 applicants)

¹¹⁰ NSFAS funding disbursement; 2023 Public Sector Education and Training (PSET) Sector Academic Year; Sectoral Response to Loadshedding, with Ministry, 22 February 2023. Available at: <https://pmg.org.za/committee-meeting/36375/>

¹¹¹ NSFAS on student accommodation; with Deputy Minister, 22 March 2023. Available at <https://pmg.org.za/committee-meeting/36603/>

¹¹² More than R5 billion paid to over 40,000 students who did not qualify for NSFAS, News24, 18 April 2023. Available at: <https://www.news24.com/citypress/news/more-than-r5-billion-paid-to-over-40-000-students-who-did-not-qualify-for-nsfas-20230418>

¹¹³ Special Investigating Unit welcomes R311 million payment to NSFAS, 2 May 2023. Available at: <https://www.gov.za/speeches/special-investigating-unit-welcomes-r311-million-payment-nsfas-2-may-2023-0000>

Annual financial statements

23. The financial statements submitted for auditing were not prepared in accordance with the prescribed financial reporting framework and supported by full and proper records, as required by section 55(1)(a) and (b) of the PFMA.
24. Material misstatements of non-current assets, liabilities and disclosure items identified by the auditors in the submitted financial statements were corrected, but the uncorrected material misstatements and supporting records that could not be provided resulted in the financial statements receiving a qualified opinion.

Expenditure management

25. Resources of the National Skills Fund were not utilised economically, as required by section 57(b) of the PFMA.

Consequence management

26. I was unable to obtain sufficient appropriate audit evidence that disciplinary steps were taken against officials who had incurred irregular expenditure as required by section 51(1)(e)(iii) of the PFMA. This was because investigations into irregular expenditure were not performed.
27. Disciplinary steps were not taken against some of the officials who had incurred or permitted fruitless and wasteful expenditure, as required by section 51(1)(e)(iii) of the PFMA.

National Skills Fund finances: These comments are from the AGSA report in the NSF's Annual Report for 2021/22.

Unfortunately, NSFAS isn't the only skills fund experiencing maladministration. On 21 September 2022¹¹⁴, the report from the Ministerial Task Team on the student funding model for the National Skills Fund (NSF) was supposed to be presented, but unfortunately the report was delayed. The PC gave the department until the end of November 2022 to submit the report. A follow-up meeting was held on 26 October 2022¹¹⁵, and findings of the forensic report were discussed. It was noted that R5 billion has been misappropriated, of which only R300 million is recoverable. Although the meeting minutes captured that "Members were not pleased with the report, and most were shocked at the findings made by the forensic investigator", none of the BRRR recommendations dealt with the NSF. The misappropriation of the NSF funds was exacerbated by the NSF's poor performance in its 2021/22 annual report¹¹⁶, which reported that only seven of its 29 targets were met. The NSF is also plagued by vacancies for recurring

R5 billion has allegedly been misappropriated from the National Skills Fund

¹¹⁴ Postponement: National Skills Fund: Task Team Review, Investigation Report & implementation of audit action plan; Ministerial Task Team on funding of PSET; with Deputy Minister, 21 September 2022. Available at:

<https://pmg.org.za/committee-meeting/35609/>

¹¹⁵ National Skills Fund investigation: Ministerial Task Team Review & Forensic report; Implementation of audit action plan; with Deputy Minister, 26 October 2022. Available at: <https://pmg.org.za/committee-meeting/35846/>

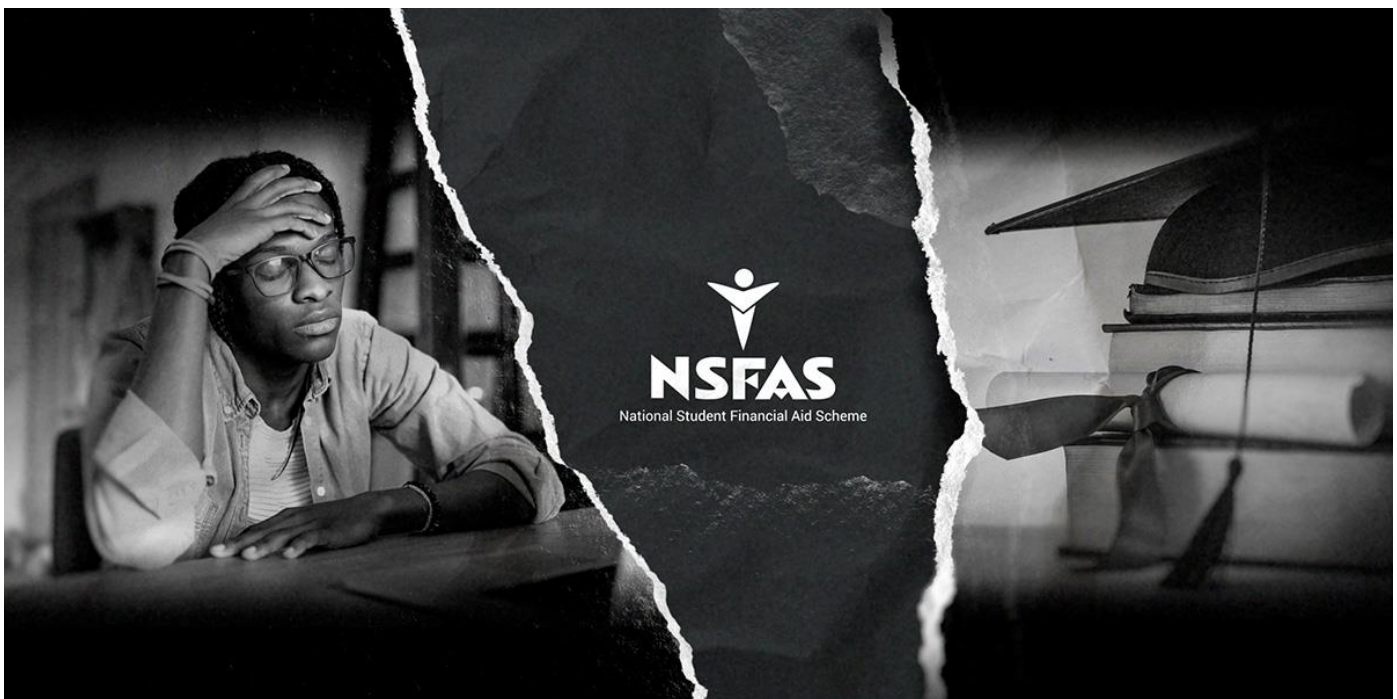
¹¹⁶ National Skills Fund (NSF) Annual Report 2021/22; NSF investigation: Ministerial Task Team Review & Forensic report response; Implementation of audit action plan response, 28 October 2022. Available at: <https://pmg.org.za/committee-meeting/35872/>

years. This creates a suspicion that this vacancy rate is created intentionally, for filling these posts might curb irregularities occurring.

On 29 March 2023 the department provided an update to the PC on the progress it had made towards implementing the recommendations of the Ministerial Task Team on the strategic review of NSF and the Nexus Forensic Report¹¹⁷. The report was only shared the night before, not giving the portfolio committee much time to read through and prepare for the meeting. In general, some of the progress is sufficient, but improvements are necessary, such as addressing the issue of vacancies.

Despite there being fairly regular meetings with the PC on NSFAS, NSF and other compelling matters, the PC does not interrogate, or place the entities under pressure for poor performance. The PC input is lacklustre and fails to underscore the immense impact that funding irregularities, poor management, debt and misappropriation of funds have on those who most need it: students and the unemployed.

The portfolio committee input on NSFAS and the NSF is lacklustre and fails to underscore the immense impact that funding irregularities, poor management, debt and misappropriation of funds have on those who most need it: students and the unemployed



¹¹⁷ Implementation of Ministerial Task Team recommendations on the NSF & Nexus Forensic Report; Audit Action Plan Update; with Deputy Minister, 29 March 2023. Available at: <https://pmg.org.za/committee-meeting/36640/>

7.6. Case study: Portfolio Committee on Home Affairs

This committee conducts oversight over the Department of Home Affairs (Vote 5).

- Number of committee meetings, 1 July 2022 to 30 June 2023: 44 meetings.
- Meetings attended by the minister and/or deputy minister: 66% of meetings.

Issues highlighted:

- Government Printing Works;
- Electoral Commission; and
- Electoral reform.

The Home Affairs entities include the Government Printing Works (GPW) and the Electoral Commission (IEC). The BRRR¹¹⁸ was tabled on 25 October 2022¹¹⁹. For 2021/22, the department and its entities were allocated R8.7 billion but ultimately spent R9.4 billion. The department incurred a combined R46 million in UIFW, resulting in a recommendation that the department reduce the irregular expenditure to become compliant with related legislation. The BRRR was adopted by the committee, but it should be noted that the DA and EFF abstained from adopting the BRRR.

OUTA's *Parliamentary Oversight Report 2022* commended the Minister of Home Affairs, Dr Aaron Motsoaledi, for submitting a response and progress report on the 2021 BRRR recommendations to both the PC and the Speaker of Parliament, Nosiviwe Mapisa-Nqakula. It seems as though no such report on the 2022 BRRR was submitted to the Speaker in 2023. However, it is noted that on 6 June 2023, the department, IEC

Department of Home Affairs

Budget for 2021/22: R9.4bn

Department of Home Affairs

Entities

1. Government Printing Works
2. Electoral Commission
3. Represented Political Parties' Fund
4. Border Management Authority

¹¹⁸ Portfolio Committee on Home Affairs 2022/23 Budgetary Review and Recommendation Report dated 25 October 2022. Available online at: https://static.pmg.org.za/201025pchomebrrr_1.pdf

¹¹⁹ Home Affairs BRRR; IEC office-bearer job profiles, 25 October 2023. Available online at: <https://pmg.org.za/committee-meeting/35824>

and GPW provided their responses to previous BRRR recommendations, extending all the way back to the 4th Parliament¹²⁰. Albeit six months later than the previous year, it is the only instance – across all reviewed portfolio committees – where any responses to BRRRs have been submitted. OUTA acknowledges the efforts of the department and its entities to submit these, though it ought to be standard practice. Together with this, credit is also due to the PC for regularly following-up on issues raised. OUTA would like to see more firm attempts to hold the department accountable and implement oversight penalties should the department and entities fail to adhere to standard protocol (such as the GPW’s yearly delays in submitting its annual financial and activity reports).

The process surrounding electoral reform makes for an interesting case study, because it featured predominantly as an agenda point in the PC meetings. Of the 44 committee meetings, 23 dealt with the Electoral Amendment Bill/Act as specific agenda items, and there were no public participation meetings on the matter. The PC only invited written responses. Electoral reform also impacts these entities: the IEC and the GPW. The IEC is responsible for implementing the changes legislated in the Electoral Amendment Act of 2023 to ensure successful and reputable 2024 national and provincial elections. Voter registration and voting are inextricably linked to the identity documents (IDs) of South African citizens, and production of these is the responsibility of the GPW. Home Affairs has been plagued by IT challenges over the years, and it has annually been instructed by the PC to “provide an update on how it is addressing its on-going IT challenges, system down-time, long queues and lengthy waiting times at its offices”¹²¹. Weaknesses in the IT-supply chain lead to delays, frustration and security breaches, and give criminals the opportunity to profit from making and distributing fake IDs.

Abbreviations

AGSA	Auditor-General of South Africa
APP	Annual Performance Plan
BRRR	Budgetary Review & Recommendation Report
GPW	Government Printing Works
IEC	Electoral Commission
NCOP	National Council of Provinces
PC	Portfolio committee
Scopa	Standing Committee on Public Accounts
UIFW	Unauthorised, irregular, fruitless & wasteful expenditure

¹²⁰ *Political Party Funding Act, Electoral Act proposed amendments; DHA, IEC, GPW on Committee recommendations*, 6 June 2023. Available online at: <https://pmg.org.za/committee-meeting/37155/>

¹²¹ BRRR 2022, page 77

The PC recommends that:¹²²

The DHA must improve the eHomeAffairs system and contact centre response times. In addition, the DHA should improve on its coordination of responding to queries raised by the public and the Committee more timeously. At the root of these challenges is the DHA ensuring that it meets its service delivery targets on issuing of documents in time.

The GPW has been instructed for years that the State Security Printers Bill must be submitted to parliament by 2020, which still has not happened. Back in May 2020, the PC on Home Affairs recommended that the GPW be the “preferred printer of secure government documents”, because the state’s intellectual property and citizens’ data must be secured and protected. On 29 May 2022 the intent was clearly set to modernise and integrate the DHA’s IT system¹²³. To this day, IT and technical challenges plague both the GPW and IEC. Not only are the security controls weak, but the GPW has experienced extensive data loss. The 2022 BRRR states that the “GPW specialises in the printing and development of security media, including passports, visa, birth certificates, educational certificates, smart identity documents, examination materials, and a wide range of other high security printed documents”¹²⁴, but it is evident the GPW lacks the required speciality to manage its financial data.

According to the GPW Annual Financial Statements and Audit outcome captured in the 2022 BRRR¹²⁵:

GPW experienced the first data loss on the 4 February 2021. The data loss impacted opening balances on 1 April 2020 and transactions for the 10-month period to January 2021. On the 25th March 2022 and the 1st April 2022, further system crashes occurred which wiped out the data captured from 2nd September 2021 to 31st March 2022. The second data loss also eroded the data recaptured for February 2021 and March 2021.

To this day, IT and technical challenges plague both the GPW and IEC, with the GPW having experienced extensive data loss

The GPW has had three major IT system crashes

¹²² PC on HA BRRR, 25 October 2022. Available online at: https://static.pmg.org.za/201025pchomebrrr_1.pdf

¹²³ Press Release: Committee Calls for GPW to Be Preferred Printer for Secure Government Documents. 29 May 2020. Available online at: <https://www.parliament.gov.za/press-releases/committee-calls-gpw-be-preferred-printer-secure-government-documents>

¹²⁴ BRRR 2022, page 3

¹²⁵ BRRR 2022, page 45-46

It is extremely worrying that such crashes can occur in an entity that is seen to be so crucial in ensuring state security. During the 25 October 2022 PC meeting, Adrian Roos (DA) recommended that the GPW and its related concerns be referred to Scopa and this too was captured in the BRRR.

According to the recommendations made in the 2022 BRRR¹²⁶:

GPW: The Minister of Home Affairs should ensure that all the recommendations of the Ministerial Review Panel Report on the Data loss at GPW are implemented, particularly the consequence management, upgrade and maintenance of IT infrastructure and multiple redundancy backups (page 76).

IEC: The IEC must address the technical and training issues with the new Voter Management well before the 2024 National and Provincial Election. Training, particularly of temporary staff, should ensure that there is better uniformity of implementation of legislation and regulations at voting stations without political bias.

In OUTA's *Parliamentary Oversight Report 2022*, we observed that the PC held several public participation meetings on the Electoral Amendment Bill. These engagements continued in August and September. OUTA commended the PC for this engagement, whilst noting that the process generally remained a tick-box exercise. Substantial commentary submitted by the public was not seriously considered, and after the National Assembly adopted the A-list on 20 October 2022¹²⁷, the National Council of Provinces (NCOP) was left to deal with these concerns¹²⁸. The Select Committee on Security and Justice had the responsibility to grapple with the legal and technical implications of the Bill, collect responses from the public, deliberate on these and make its own amendments. This all took place between 2 November and 25 November 2022, with the bill being passed and amended by the NCOP on 29 November 2022. Consider for a moment the seeming unfairness between the periods given to the PC to put

While the portfolio committee held several public participation meetings on the Electoral Amendment Bill, the process generally remained a tick-box exercise as substantial comment submitted by the public was not considered

¹²⁶ BRRR 2022 page 79

¹²⁷ Electoral Amendment Bill (B1-2022) tracking. Available at: <https://pmg.org.za/bill/1054/>

¹²⁸ For a detailed elaboration on the Electoral Reform processes relating to the Electoral Amendment Bill and Electoral Amendment Act, visit OUTA's website on Electoral Reform, available at: <https://www.oua.co.za/projects/special-projects/electoral-reform>

together the legislation (June 2020 to October 2022) versus the period given to the Select Committee (November 2022). Between 30 November 2022 and 10 February 2023, the PC had seven more meetings on the Electoral Amendment Bill – inclusive of another public participation round – before the National Assembly passed the bill and sent it for the President’s assent on 22 February 2023. On 16 April 2023 the President signed the bill into law and the Electoral Amendment Act commenced on 19 June 2023.

The Constitutional Court’s judgment in June 2020 gave Parliament, and specifically the PC on Home Affairs, two years to amend the Electoral Act, making the due date 20 June 2022. The amendments were finalised only one year later, after having missed three deadlines (June 2022, December 2022 and February 2023). This is important. The Electoral Amendment Bill was introduced only in January 2022, effectively giving the public, parliament and the President six months to achieve that which they ultimately did only after three years. The bulk of that period was wasted by the PC, which then suddenly expected a well-informed public to participate meaningfully, and then expected the NCOP’s Select Committee on Security and Justice to perform miracles in one month. On paper, the process surrounding the bill, now the act, seems successful. But in reality it was, and still is, a nightmare. The PC essentially failed to meet the requirements of the Constitutional Court to achieve substantial electoral reform, which is why the act includes a section requiring the establishment of the “Electoral Reform Consultation Panel”, a Ministerial Advisory Committee (MAC) version 2 of sorts:

The inclusion reads:

The inclusion of an entirely new clause 23 in the Bill (which will not form part of the Electoral Act) establishing an Electoral Reform Consultation Panel to investigate, consult on and make recommendations in respect of potential reforms of the electoral system. The following specifically refers:

(3) The Panel must—

(a) prior to the 2024 elections, engage in research and consider the issues falling within its functions;

In June 2020, the Constitutional Court gave parliament two years to amend the Electoral Act, but parliament took three years

On paper, the process surrounding the Electoral Amendment Act seems successful, but in reality it was, and still is, a nightmare

(b) after the 2024 elections, undertake a public participation process regarding the issues falling within its functions; and

(c) from the date of its establishment, submit a report to the Minister every three months on its progress.

(4) The Panel must, within 12 months of the date of the 2024 elections, submit a report to the Minister on the possible options for electoral reform for the election of the National Assembly and the election of the provincial legislatures which must include—

(a) reasons, potential advantages and disadvantages;

(b) legal and constitutional implications; and

(c) financial implications,

for each proposed electoral system or electoral reform identified by the Panel.

If the work was done correctly, consistently and with due care for both the public's interest and substantial reform, this electoral reform consultation panel would not have been necessary. Luckily, it is better having this inclusion of the panel than not, since the current version of the Electoral Amendment Act is still problematic. It is due to the Select Committee on Security and Justice that this inclusion has been made, as a way to address the same concerns, raised numerous times, during the public participation processes. One can only hope that this is again not delayed for months on end, with watered down attempts when the deadline looms again. Unfortunately, past experience and evidence point to this being the case, for upon stating that the public wants broader electoral reforms, the Department of Home Affairs responded to the minister saying that "the debate about broader electoral reforms would take place after the 2024 elections because electoral reforms would need so much time and there was not enough time in these 24 months. Electoral reforms could not be affected within 24 months¹²⁹". Shall we remind the department and PC that this was mandated back in June 2020, 36 months ago?

If parliament had done its job of amending the Electoral Act correctly and with due care, the inclusion of a new electoral reform consultation panel in the amendment would not have been necessary

¹²⁹ *Electoral Amendment Bill: consideration of NCOP amendments; Department response to Members' Queries, with Minister*, 30 November 2022. Available at: <https://pmg.org.za/committee-meeting/36185/>

7.7. Case study: Portfolio Committee on Mineral Resources and Energy

This committee oversees the Department of Mineral Resources and Energy (DMRE, vote 34).

- Number of committee meetings, 1 July 2022 to 30 June 2023: 31 meetings.
- Meetings attended by the minister and/or deputy minister/s: 39% of meetings.

Issues highlighted:

- National solar water heater programme;
- Engaging with the committee;
- Karpowership; and
- Electricity Regulation Amendment Bill.

According to the BRRR¹³⁰, the department's programmes spent an average of 96.3% of the budget. However, the department achieved an average of only 72% of its targets, lower than the 80% benchmark set by the National Treasury (see **Table 4** below). The underspend is attributed to lower payment arrangements for goods and services, reduced travel expenses due to Covid-19, and vacancies. The details on missed targets are captured in the BRRR. There is also a current vacancy rate of 9.7%, which equates to 157 vacant posts. One of the BRRR recommendations is to address the vacancy rate.

During the meeting the PC noted that the irregular expenditure was one of its biggest concerns. The DMRE also recorded R20.695 million in fruitless and wasteful expenditure, and the DMRE annual report for 2021/22 notes that this was mainly for storage for solar water heaters

Department of Mineral Resources and Energy

Budget 2021/22: R9.181bn

Department of Mineral Resources and Energy

Entities

1. Central Energy Fund group (CEF)
2. Council for Geosciences
3. Mintek
4. Mine Health and Safety Council
5. National Energy Regulator of SA (Nersa)
6. National Nuclear Regulator (NNR)
7. National Radioactive Waste Disposal Institute
8. SA Diamond and Precious Metals Regulator
9. SA National Energy Development Institute (Sanedi)
10. SA Nuclear Energy Corporation group (Necsa)
11. State Diamond Trader

¹³⁰ PC on Mineral Resources and Energy. 20 October 2022. *Budgetary Review and Recommendations Report of the Portfolio Committee on Mineral Resources and Energy Dated 20 October 2022*. Available at: <https://static.pmg.org.za/221021pcminbrrr.pdf>

that had not been installed. The PC recommended that the National Solar Water Heater Programme be cancelled and, although the minister agreed the programme and its associated waste of funds is terrible, indicated that the problem is being dealt with.

On 15 November 2022¹³¹ a follow-up meeting took place during which feedback on the solar water heater programme was provided. Issues identified included the storage costs, legal battles, payments being withheld, manufacturers refusing to supply missing and faulty components, as well as solar water heater components that are stolen from or vandalised in the storage units. Although incidents have been reported to the police, no cases have been solved or finalised.

The PC members reiterated their concerns and indicated many of these concerns were the same as those raised years ago. Phiwaba Madokwe (EFF) even noted that “previously when the Department had presented to the Committee on the solar water heater programme, they had highlighted six major challenges. Two years down the line, the same six challenges were still being cited, with two extra ones to boot. It seemed like the previous report was just copied, pasted and presented to the Committee word for word”. Assurances have been given since 2019 that these problems will be fixed, yet how can the PC believe the department when it makes those same promises? The chairperson of the PC, Sahlulele Luzipo (ANC), indicated they will continue to “check from time to time” whether there are improvements and implementation of the recommendations. However, sadly, no penalties for failure to do so were provided. On 23 May 2023¹³² the DMRE was asked to provide

Abbreviations

AGSA	Auditor-General of South Africa
APP	Annual Performance Plan
BRRR	Budgetary Review and Recommendation Report
DMRE	Department of Mineral Resources and Energy
Nersa	National Energy Regulator of SA
PC	Portfolio Committee
RMIPPPP	Risk Mitigation Independent Power Producer Procurement Programme
Scopa	Standing Committee on Public Accounts
UIFW	Unauthorised, irregular, fruitless and wasteful expenditure

¹³¹ DMRE 2022/23 Q1 & Q2 Performance and solar water heater programme, with Minister, on 15 November 2022. Available at: <https://pmg.org.za/committee-meeting/36021/>

¹³² Performance Reports for Third and Fourth Quarters 2022/23; updates on cadastral mining licensing system and licensing backlog—briefings by Department of Mineral Resources and Energy, on 23 May 2023. Available at: <https://pmg.org.za/committee-meeting/37019/>

further updates on the solar water heater programme and when it will be completed.

Based on the feedback, a total of 87 206 solar water heaters were secured by the DMRE, of which about 24 000 have been installed, 5 100 were deemed unusable, 13 429 were with installers, and 8 602 were allocated to City Power. Now 41 contractors are expected to install the remaining 36 312 heaters at a rate of 20 heaters per installer per day. Another follow-up presentation was made on 30 May 2023¹³³, during which the recurrent issues of non-compliance, poor implementation and UIFW expenditure were discussed. Minister Gwede Mantashe acknowledged to the PC that the solar water heater programme “was one of the most defective programmes the DMRE has inherited. However, efforts are in place to correct many of the challenges.” KPMG was appointed to conduct a forensic investigation into the fruitless and wasteful expenditure incurred due to the storage costs. This report was handed over to counsel and from there advice will be compiled on whether charges will be laid. Despite the challenges, according to the department the project is expected to be completed within the next couple of months. However, performance on this programme has been so poor that it seems unlikely that this will be achieved.

OUTA will continue to monitor the progress, which should be evident by October 2023, based on the DG’s assurances on 11 October 2022 that “he was committed to coming before the Committee especially to brief it on this programme. Installers have been appointed and will be working within the space of 12 months.” The PC does regularly meet on the solar water heater programme and asks probing questions. However, raising concerns alone will not fix the issues. Charges must be laid against those found implicated, companies involved must be blacklisted, and disciplinary action must be taken. Overall, it is the PC which should ensure that there are consequences by holding the department to account. Parliament includes the justice cluster and the PC on Police, but there appears little appetite for crosscutting action.

The National Solar Water Heater Programme ran up R20.695m in fruitless and wasteful expenditure for storing solar water heaters that were not installed

41 contractors are now expected to install the remaining 36 429 solar water heaters at a rate of 20 heaters per installer per day

¹³³ *Shale gas developments & Solar Water Heater Programme – updates by Department of Mineral Resources and Energy, with Minister, on 30 May 2023.* Available at: <https://pmg.org.za/committee-meeting/37088/>

One possibility to speed up action in the solar water heater case could have been to hold a joint committee meeting with the PC on Police to determine how to prioritise accountability but this was not done, and there is, once again, a reliance on the very culprits to take action against themselves.

Engaging with the committee

From the onset OUTA acknowledges, and appreciates, the PC's efforts to reach out to civil society organisations, and OUTA encourages the PC – as well as all other portfolio committees – to do so frequently. The PC invited OUTA to present on 30 September 2022¹³⁴ on its Parliamentary Oversight Report of 2020/21. The PC had a follow-up meeting on 21 February 2023¹³⁵ where the September meeting report was considered.

In September 2022 and February 2023, noteworthy discussions took place within the PC during virtual meetings. The initial 30 September 2022 meeting included a presentation by OUTA, noting that OUTA's *Parliamentary Oversight Report 2022* critically assessed the lack of progress in Parliament's role of holding the executive accountable. The importance of a more responsive, transparent, and proactive parliament with enhanced public participation was underscored. OUTA urged increased engagement with civil society and advised the PC to expand stakeholder involvement, including civil society representatives. OUTA pointed to the PC's struggles with entity accountability and suggested considering budget adjustments for improved performance.

While some PC members disagreed on parliament's stakeholder engagement, they questioned OUTA's assessment methodology. Specific aspects of the report were acknowledged and accepted, particularly the criticism of inadequate follow-up on recommendations. Unresolved issues stemming from raised concerns were a significant

OUTA appreciates the portfolio committee's efforts to reach out to civil society organisations

¹³⁴ OUTA 2021 Report on Parliamentary Oversight in SA, on 30 September 2022. Available at: <https://pmg.org.za/committee-meeting/35669/>

¹³⁵ Committee update: MACUA/WAMUA; OUTA; Swartkops Sea Salt; Energy crisis; Auditor-General, on 21 February 2023. Available at: <https://pmg.org.za/committee-meeting/36346/>

point of contention. The extent of the PC's authority to amend or refuse to pass budgets was also questioned.

The subsequent meeting on 21 February 2023 involved follow-up discussions.

Karpowership

In OUTA's *Parliamentary Oversight Report 2022* concerns were again raised where MPs prioritise party over public interests. It was noted that in many instances PCs failed to hold ministers to account. The case study presented in the report spoke to the Karpowership project and government's insistence that it is a solution to the country's electricity woes.

On 18 February 2020, Minister Mantashe issued a Determination on the need to procure 2 000 MW of generation capacity from a range of energy technologies, through the Risk Mitigation Independent Power Producer Procurement Programme (RMIPPPP). In March 2021, the department listed eight preferred bidders, including three Karpowerships which were to provide 1 220 MW between them on 20-year contracts. Minister Mantashe has been very much at the forefront of punting Karpowerships as a solution to the energy crisis¹³⁶. OUTA and other civil society organisations objected to the Karpowerships due to the hidden costs and procedural irregularities and, in April 2022, OUTA and The Green Connection separately filed applications in the Pretoria High Court calling for a review of the decisions by the National Energy Regulator of South Africa (Nersa) to grant Karpowership generation licences. Since then, OUTA has demanded access to the full record of Nersa's decisions to grant the licences – which would include the costs of the electricity – but this has not been forthcoming.¹³⁷

In April 2022, OUTA and The Green Connection separately filed applications in the high court calling for a review of the Nersa decisions to grant Karpowership generation licences

¹³⁶ Organisation Undoing Tax Abuse. 20 January 2023. *It's time for government to generate electricity not confusion*. Available at: <https://www.outha.co.za/blog/newsroom-1/post/it-s-time-for-government-to-generate-electricity-not-confusion-1222>

¹³⁷ Organisation Undoing Tax Abuse. 31 January 2023. *Challenging secrecy: OUTA demands full record of Karpowership decision*. Available at: <https://www.outha.co.za/blog/newsroom-1/post/challenging-secrecy-outha-demands-full-record-of-karpowership-decision-1223>

This procurement process was to have been done on an emergency basis, but we are now in 2023 – more than two years later – with Minister Mantashe still pushing for Karpowership “emergency” contracts.

OUTA reflected on this matter in the *Parliamentary Oversight Report 2022*, and criticised parliament’s inadequate response, including failing to investigate the Karpowership saga, and noted that it was due to civil society’s interventions that the project came to a halt.

In December 2021, the PC agreed on the terms of reference for an investigation into the RMIPPPP. In March 2022, the inquiry was stopped in its tracks by a majority vote of the PC, consisting of a majority of ANC members. A judgment by the Pretoria High Court (the DNG case) was cited as the primary reason for scrapping the inquiry. This matter dealt with alleged procurement irregularities filed by a bidder that was part of the RMIPPPP. OUTA believes that the inquiry should have proceeded irrespective of the court judgment, so that an independent assessment of the process could be done.

It is common cause that Karpowerships would cost South Africa a truck-load of money – initially calculated at being in excess of R200 billion over a 20-year period. The likely cost is expected to have skyrocketed since then, possibly to as much as R500 billion, due to the war in Ukraine and the effect on the international price of gas. Parliament has a duty to establish the facts and uphold the principles enshrined in the Constitution. There has been significant rhetoric on the notion of a five-year versus a 20-year deal – government has remained mute on this issue, and we believe parliament is in a prime position to solicit accountability and transparency from the ministers responsible for the implementation of the RMIPPPP. As parliament is purportedly representative of the South African public, the electorate expects parliament to seek answers in instances where the executive and government departments fail to provide it.

The prospect of Karpowerships mooring in South African ports is an issue undoubtedly falling within the public interest. Although civil

The proposed Karpowership deal has not been investigated by the portfolio committee. In December 2021, the PC agreed on the terms of reference for an investigation into the RMIPPPP. In March 2022, the inquiry was stopped in its tracks by a majority vote of the PC, consisting of a majority of ANC members.

society (representative of the public interest) is challenging Karpowership on various fronts, the lack of parliamentary action through the appropriate parliamentary mechanisms and committees is reflective of parliament's regard for the public interest.

Since the launch of various court challenges against Karpowership, we have not witnessed any proactive plans by parliament to scrutinise and publicise the factual circumstances surrounding the Karpowership bid.

On the issue of procurement irregularities, this falls under the scope of Scopa. OUTA believes that Scopa ought to have obtained a mandate to proceed with an independent inquiry into all facts surrounding the Karpowership bid¹³⁸. This is so irrespective of whether any money had been spent already. All Scopa inquiries subsequent to the initial inquiry by the PC dealt with load shedding and the energy crisis in general, not Karpowership distinctively.

In the BRRR, no mention is made of either the RMIPPPP or Karpowership. The same can be said of the APP 2023/24, submitted on 18 April 2023, which contains no references to Karpowership¹³⁹. The BRRR includes a total of 33 recommendations, which generally fall under six thematic areas:

1. Performance and accountability;
2. Operational enhancements;
3. Financial and economic considerations;
4. Organisational improvements;
5. Industry collaboration and development; and
6. Mineral exploration and utilisation.

Given the load shedding and energy security public interest issues that are in the media every day, it is OUTA's view that not addressing the national energy crisis, and the DMRE's role and responsibility in mitigating it, together with holding the department and its minister accountable, is a glaring omission.

Since the launch of various court challenges against Karpowership, we have not witnessed any proactive plans by parliament to scrutinise and publicise the factual circumstances surrounding the Karpowership bid

¹³⁸ *Karpowership deal: way forward, on 12 May 2021*. Available at: <https://pmg.org.za/committee-meeting/32864/>

¹³⁹ *Department for Mineral Resources and Energy, Annual Performance Plan for 2023-2024*. Available at: https://static.pmg.org.za/2023-24_APP_-_Final.pdf

Our case studies illustrate repeated failures by the PC to hold the executive to account. In the case of the solar water heater programme this has dragged on over years, while Karpowership is another public interest issue where civil society attempted to engage with the PC but was shut down.

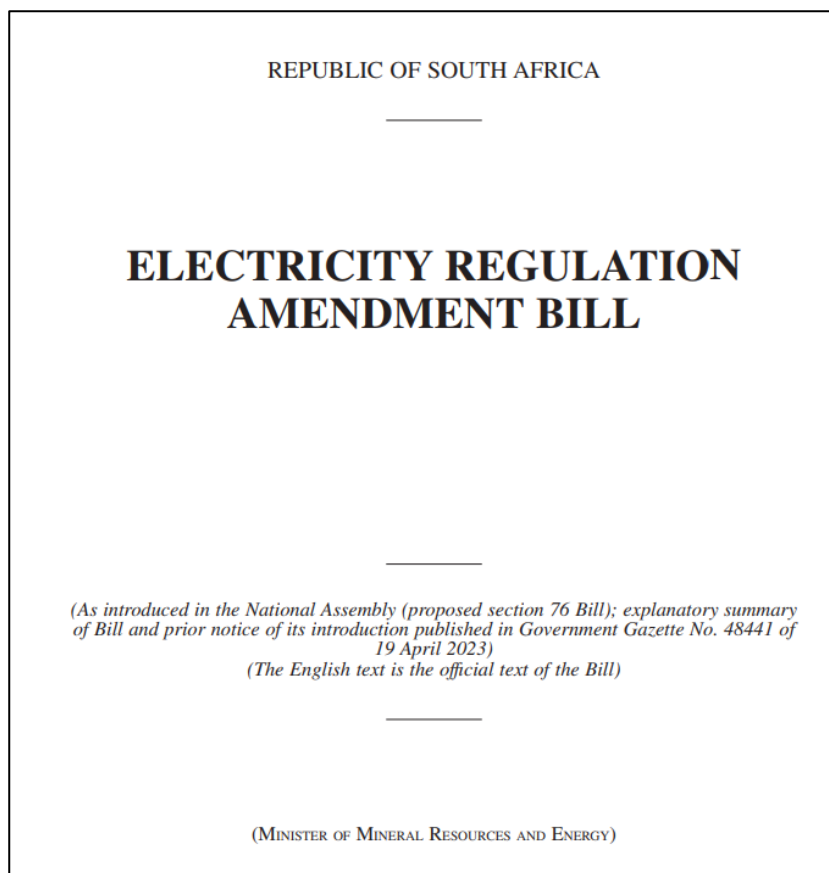
The PC has actively heard diverse voices from all around the country in its legislative mandate but in its oversight mandate and representing the public issues of the day, it is woefully lacking.

Electricity Regulation Amendment Bill

The PC must also account to the public for its failure to follow up with the executive which has led to a six-month delay in tabling the urgently needed Electricity Regulation Amendment Bill, which was finally introduced to parliament on 16 August 2023.

This bill will provide for the establishment, duties, powers and functions of the Transmission System Operator SOC Ltd, and allow for competitive electricity trading.

The portfolio committee has actively heard diverse voices from all around the country in its legislative mandate but in its oversight mandate and representing the public issues of the day, it is woefully lacking



7.8. Case study: Portfolio Committee on Public Enterprises

This committee oversees the Department of Public Enterprises (vote 10).

- Number of committee meetings, 1 July 2022 to 30 June 2023: 27 meetings.
- Meetings attended by the minister and/or deputy minister/s: 48% of meetings.

Issues highlighted:

- Shareholder Management Bill.

OUTA has followed the response by parliament to state capture, and the PC on Public Enterprises was the only committee to hold a public inquiry into state capture. The PC decided in June 2017 to hold the oversight inquiry into the governance, procurement and financial sustainability of Eskom. The report of that inquiry¹⁴⁰ – which was scathing about the governance failures at Eskom which enabled the abuse of public resources to benefit private businesses and individuals – was adopted unanimously by that committee¹⁴¹, tabled in the National Assembly, and later handed over to the State Capture Commission. The inquiry report's recommendations to improve governance included this:

The Executive must introduce the Shareholder Management Bill that was supposed to be introduced to Parliament in the 2017/18 financial year as promised by former minister Lynne Brown in her last budget speech. This piece of legislation is essential for strengthening oversight and defining the roles of SOCs and the Shareholder.

After the inquiry struggled to get some key witnesses to appear before it, the report also included this recommendation:

¹⁴⁰ Portfolio Committee on Public Enterprises. 28 November 2018. *Report of the Portfolio Committee on Public Enterprises on the Inquiry into Governance, Procurement and the Financial Sustainability of Eskom*. Available at:

https://static.pmg.org.za/Final_Report_-_Eskom_Inquiry_28_NOV.pdf

¹⁴¹ Zukiswa Rantho. 28 November 2018. Committee adopts Eskom inquiry report. Available at:

<https://www.parliament.gov.za/press-releases/committee-adopts-eskom-inquiry-report>

Department of Public Enterprises

Budget for 2021/22:

R36.292bn

Department of Public Enterprises

Entities

- Alexkor
- Denel
- Eskom
- SA Express
- SAA
- Safcol
- Transnet

The Portfolio Committee on Public Enterprises was the only parliamentary committee to hold a public inquiry into an aspect of state capture – Eskom – and handed the resulting report to the State Capture Commission in 2018

The Committee recommends to Parliament to develop mechanisms through which individuals and institutions that refuse to appear before parliamentary portfolio committees after being duly summonsed in terms of section 56 of the Constitution, sections 14, 15 and 16 of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, No 4 of 2004 and Rule 167 of the National Assembly Rules, could face consequences.

In May 2019, the fifth parliament's legacy report to the sixth parliament (the current parliament), the PC highlighted a specific piece of legislation that it felt would help to prevent state capture in future: the Shareholder Management Bill.

The bill has been delayed since 2017/18. In 2022, the PC's MPs highlighted their dissatisfaction with the lack of progress with the bill and, in 2023, the Department of Public Enterprises has the processing of the bill in its APP.

The BRRR of 2022¹⁴² recommendations include that the department "Finalise and implement the SOC's reforms that have been announced by government, including the Government Shareholder Management Bill and SOC's funding criteria". The BRRR notes that this is also one of the AGSA's recommendations.

In July 2022, Minister of Public Enterprises Pravin Gordhan said in reply to a question in parliament about the bill: "While evidence of state capture has recently been confirmed concerning the affairs of some but not all SOEs, the development of the shareholder management bill is based on the intent of building a capable state through among others, the adoption of globally recognised practices in managing all SOEs owned by the government of the Republic of South Africa. The work that informs the establishment of the Holding Company predates state capture and is meant to among others, insulate SOEs from undue influence based on insights derived from global best practices."¹⁴³

Abbreviations

AGSA	Auditor-General of South Africa
APP	Annual Performance Plan
BRRR	Budgetary Review & Recommendation Report
PC	Portfolio Committee
SOC	State-owned company
SOE	State-owned entity
UIFW	Unauthorised, irregular, fruitless & wasteful expenditure

¹⁴² Budgetary Review and Recommendation Report of the Portfolio Committee on Public Enterprises, dated 19 October 2022. Available online here: <https://static.pmg.org.za/221025pcpubentbrrr.pdf>

¹⁴³ Reply by Minister of Public Enterprises to question RNW2202. 22 July 2022. Available online here: <https://pmg.org.za/committee-question/19655/>

In 2021 civil society and the state seemed to be at odds regarding what the role of the state should be in directing the function of SOEs, for example, with civil society concerned about government being shareholder, policy maker and regulator of entities.¹⁴⁴

This bill has been raised in three PC meetings during 2023.

On 1 February 2023¹⁴⁵, in an update on the Shareholder Management Bill, the department told the PC it had drafted a National State Enterprises Bill that aimed to provide a mechanism for the state to enhance the operational efficiency of its SOCs to achieve its developmental objectives. The bill aims to ensure unity of governance at SOCs and promote their commercial sustainability, and addresses SOE national strategy and governance.

On 1 March 2023, referring to the Shareholder Management Bill, the department told the PC that the purpose was to streamline, standardise, and coordinate oversight over the SOEs. They needed to separate policy, shareholding, and regulation, as this would ensure effective oversight in terms of balancing it, bringing efficiency and accountability.

In the meeting of 10 May 2023¹⁴⁶, two ANC MPs has asked for clarity on the Shareholder Management Bill, and the department responded that the “SOE Bill” had been drafted but had yet to go to cabinet.

It’s not clear if the Shareholder Management Bill is being replaced by the National State Enterprises Bill or if these are two separate bills. The later appears to be aimed at setting up a National State Enterprise Holding Company (Hold Co). The department’s APP 2023/24¹⁴⁷ refers to both under “Updated key risks and mitigation from the strategic plan”, under efforts to improve governance: “Review National State

The core recommendation on the need for stakeholder compacts and a stakeholder management bill remains elusive

¹⁴⁴ Dullah Omar Institute. Undated. *SOE Bill should be expedited: Deputy Minister*. Available at:

<https://dullahomarinstitute.org.za/women-and-democracy/parlybeat/soe-bill-should-be-expedited-deputy-minister>

¹⁴⁵ *DPE progress in addressing AGSA findings & implementation of BRRR recommendations; Update on Shareholder Management Bill; with Deputy Minister present*. 1 February 2021. Available at: <https://pmg.org.za/committee-meeting/36291/>

¹⁴⁶ *Department of Public Enterprises 2023/24 Annual Performance Plan (incl Shareholder Compacts); with Deputy Minister*. 10 May 2023. Available at: <https://pmg.org.za/committee-meeting/36886/>

¹⁴⁷ *Department of Public Enterprises. 2023/24 Annual Performance Plan*. Available at: https://static.pmg.org.za/DPE_APP_2023.pdf

Enterprises Bill (NSEB) principles and secure buy-in on the Green Paper” and “Establish a dedicated Project office to drive the development of the Shareholder Management Bill”.

We can only repeat our 2022 conclusion:

The core recommendation on the need for stakeholder compacts and a stakeholder management bill remains elusive. The only parliamentary portfolio committee that held an inquiry into state capture recommended the stakeholder management legislation. However, four years later, neither the minister nor the committee has initiated this legislation, which is an indication of the ineffectiveness of parliamentary oversight for this committee.¹⁴⁸

In 2023, this is another indication of the ineffectiveness of parliamentary oversight for this committee.



The Shareholder Management Bill is still awaited, while state-owned entities like Eskom continue to fail. Picture: OUTA

¹⁴⁸ Organisation Undoing Tax Abuse. October 2022. *Kicking the can down the road: OUTA 2022 Report on Parliamentary Oversight in South Africa*. Available at: <https://www.ota.co.za/web/content/229927>

7.9. Case study: Portfolio Committee on Transport

This committee conducts oversight over the Department of Transport (Vote 40).

- Number of committee meetings, 1 July 2022 to 30 June 2023: 34 meetings.
- Meetings attended by the minister and/or deputy minister/s: 24% of meetings.

Issues highlighted:

- The South African Maritime Safety Authority: Seven years without a permanent CEO.

The BRRR¹⁴⁹ was tabled on 18 October 2022¹⁵⁰. At the time the report was presented, the Road Traffic Infringement Authority, the Road Accident Fund and the Driving Licence Card Account hadn't tabled their annual reports, a recurring failure to adhere to deadlines. According to the BRRR, the department did not incur any irregular or unauthorised expenditure for the financial year in review. The BRRR was not adopted by all PC members (the DA rejected it and EFF abstained).

Vacancies do seem to be an issue that has not been attended to sufficiently, as captured in the BRRR¹⁵¹:

[The BRRRs] The advertising and filling of Board, CEO, as well as senior management vacancies, as indicated in the paragraphs above, should be prioritised in the Department and the affected entities. In order to achieve the SONA 2018 commitment made by the Government to change the way Boards of SOEs are appointed, the positions filled should be with people who have the relevant expertise, experience and integrity to serve in these vital positions. This will allow the Department, as well as the

Department of Transport

Budget 2021/22: R66.692bn

Department of Transport

Entities

1. Airports Company SA
2. Air Traffic & Navigation Services
3. Cross-Border Road Transport Agency
4. Passenger Rail Agency of SA (Prasa)
5. Ports Regulator of SA
6. Railway Safety Regulator
7. Road Traffic Management Corporation
8. Road Traffic Infringement Agency
9. Road Accident Fund
10. SA Civil Aviation Authority
11. SA Maritime Safety Authority (Samsa)
12. SA National Roads Agency
13. SA Search & Rescue Organisation
14. Driving Licence Card Account

¹⁴⁹The Budgetary Review and Recommendation Report (BRRR) of the Portfolio Committee on Transport, dated 18 October 2022. Available at: <https://static.pmg.org.za/221021pctransportbrrr.pdf>

¹⁵⁰Transport BRRR, 18 October 2022. Available at: <https://pmg.org.za/committee-meeting/35760/>

¹⁵¹BRRR 2022, page 63

entities to operate and report effectively, and do so within the parameters of applicable legislation.

The vacancies within the department are above the state's recommended 10%. It was further noted by Thamsanqa Mabhena (DA) during the PC meeting of 18 October 2022 that "there was no optimised talent acquisition and retention strategy and a lack of stability in leadership, which contributed to a toxic working environment and loss of experienced and valuable staff members". This toxic work environment could also be one of the causes for the concerning drop in performance of strategic output, 62% for the period under review, compared with the 87% in the 2020/21 review. The filling of vacancies in executive management is imperative to address the lack of consequence management, financial management, internal controls and other interventions to address non-compliance with procurement and contract management¹⁵². In addition, Matodzi Ramadwa (ANC) indicated that the filling of vacancies must be more specific. This concern can particularly be seen to play out in the case of South African Maritime Safety Authority (Samsa).

Samsa has been without a permanent appointed CEO since 2016 – seven years.

Despite the PC being fully aware of the vacancy rate in the department, and in particular in Samsa, the PC made only one recommendation on the department and one on Samsa in the BRRR¹⁵³:

Department: The Department should give a quarterly update on the filling of vacancies in senior positions within the Department and its entities.

SAMSA: The entity should ensure that adequate review processes are in place to detect material misstatements prior to the submission of its financial statements to the AGSA.

Samsa is responsible for ensuring maritime safety, preventing ship-related pollution, and advancing the nation's maritime interests. Under

Abbreviations

AGSA	Auditor-General of South Africa
APP	Annual Performance Plan
BRRR	Budgetary Review & Recommendation Report
PC	Portfolio Committee
Samsa	South African Maritime Safety Authority
SOE	State-owned entity
SONA	State of the Nation Address
UIFW	Unauthorised, irregular, fruitless & wasteful expenditure

¹⁵² BRRR 2022, page 60

¹⁵³ BRRR 2022, pages 61 & 69

the Samsa Act of 1998, it operates as a Schedule 3 national public entity overseen by the department.

Several complaints were lodged with the Samsa board and the minister without any successful outcome. At every appearance of Samsa before the PC, the issue of appointing a permanent CEO was discussed, yet no appointment has been made.

In January 2021, the CEO position was advertised, and the board made an appointment recommendation after final interviews in November 2021. However, due to the minister's delayed response and the board's lack of decision, another acting CEO was appointed. In April 2022, Minister Fikile Mbalula suggested an official from Transnet National Ports Authority as an acting Samsa CEO, but due to procedural delays and unresolved board decisions, he was not appointed.

During Samsa's appearance before the PC on 11 October 2022¹⁵⁴, Deputy Minister of Transport Sindisiwe Chikunga stated that certain processes needed to be completed before a permanent CEO could be appointed, without elaborating.

Samsa has failed to address historical irregular expenditure of R535 million, which was increased by R29 million during the year under review. Samsa has failed to address complaints from the Disabled People of South Africa, a group involved in maritime economic empowerment. Despite numerous complaints and a court application, Samsa and the minister acted only after legal action, initiating a forensic investigation into DPSA's allegations.

Samsa appears once a year before the PC. The minutes of the meetings indicate that the PC spends very little time with the Samsa board and the entity is not very high on the PC's agenda, leaving serious issues neglected.

The leadership crisis puts Samsa in a vulnerable position, potentially escalating into a national and international crisis. This raises questions

Samsa appears once a year before the PC. The minutes of the meetings indicate that the PC spends very little time with the Samsa board and the entity is not very high on the PC's agenda, leaving serious issues neglected.

¹⁵⁴ *Transport Portfolio Audit outcomes; Department of Transport, SAMSA & PRASA annual report 2021/22; with Ministry.* 11 October 2022. Available at: <https://pmg.org.za/committee-meeting/35690/>

about Samsa's ability to respond to emergencies like major oil spills and protect marine life, which also poses a reputational risk to the country.

OUTA received information from several whistleblowers regarding irregularities at Samsa. In April 2023 OUTA, having observed Samsa's challenges in terms of leadership and financial inefficiency, communicated its concerns to the PC and called on it to investigate¹⁵⁵.

OUTA fears that Samsa's internal issues could hinder its ability to fulfil its responsibilities. With many executive positions occupied by acting officials and a dysfunctional board unable to make decisions, Samsa faces threats of litigation from partners and service providers, resulting in wasteful spending.

On 14 June 2023¹⁵⁶, the PC was briefed by Samsa, in response to the concerns raised by OUTA on irregularities and the CEO vacancy. The PC raised its concerns, noting that "it was one of the root causes of the instability in the entity". A new board is due to be appointed, which is expected to appoint a CEO.

The portfolio committee noted that the CEO vacancy was one of the root causes of instability in Samsa



Samsa has a crucial role in prevention and management of oil spills.
Picture: Shutterstock

¹⁵⁵ Organisation Undoing Tax Abuse. 2 May 2023. *South Africa's marine and maritime interests at risk if decisive action not taken*. Available at: <https://www.oua.co.za/blog/newsroom-1/post/south-africas-marine-and-maritime-interests-at-risk-if-decisive-action-not-taken-1257>

¹⁵⁶ SAMSA forensic Investigation & ensuing disciplinary action; Railway Safety Bill: deliberations, 14 June 2023. Available at: <https://pmg.org.za/committee-meeting/37241/>

7.10. Case study: Portfolio Committee on Water and Sanitation

This committee conducts oversight over the Department of Water and Sanitation (Vote 41).

- Number of meetings, 1 July 2022 to 30 June 2023: 25 meetings.
- Meetings attended by the minister and/or deputy minister/s: 72% of meetings.

Issues highlighted:

- Monitoring infrastructure build;
- The bucket toilet replacement programme;
- Independent water regulator; and
- Blue Drop, Green Drop and No Drop reports.

During the financial year under review, irregular expenditure of R209 million was incurred on the department's main account¹⁵⁷, bringing the total unresolved irregular expenditure to R9.3 billion¹⁵⁸. Similarly, the Water Trading Entity incurred irregular expenditure of R240 million bringing it to a total of R8.1 billion in unresolved irregular expenditure. Typically, the PC responded to this "with concern" as noted in the BRRR. The issue of irregular expenditure was not raised at all during the PC's meeting on the BRRR on 18 October 2022¹⁵⁹. During the follow-up meeting on 25 October 2022, it occurred once, but in a very watered-down manner¹⁶⁰.

Department of Water & Sanitation

Budget 2021/22: R16.910bn

Department of Water & Sanitation

Entities

1. Trans Caledon Tunnel Authority (TCTA)
2. Water Research Commission
3. Inkomati-Usuthu Catchment Management Agency
4. Breede-Gouritz Catchment Management Agency
5. Water Trading Entity (WTE)

Water boards

6. Amatola Water
7. Bloem Water
8. Lepelle Northern Water
9. Magalies Water
10. Mhlathuze Water
11. Overberg Water
12. Rand Water
13. Sedibeng Water
14. Umgeni Water

¹⁵⁷ Department of Water and Sanitation. 2021/22 Financial Year Annual Report Department of Water and Sanitation. Available at: https://static.pmg.org.za/DWS_ANNUAL_REPORT_2021-221.pdf

¹⁵⁸ Budgetary Review and Recommendation Report (BRRR) of the Portfolio Committee on Water and Sanitation on the Annual Reports and Financial Statements of the Department of Water and Sanitation and its Entities for the 2021/22 Financial Year, Dated 18 October 2022. Available at: <https://static.pmg.org.za/221021pcwaterreport.pdf>

¹⁵⁹ Portfolio Committee on Water and Sanitation BRRR meeting, 18 October 2022. Available at: <https://pmg.org.za/committee-meeting/35757/>

¹⁶⁰ Portfolio Committee meeting on Turnaround plans to address Water Trading Entity challenges and audit outcomes; with Minister and Deputy Minister, 25 October 2022. Available at: <https://pmg.org.za/committee-meeting/35828>

Monitoring infrastructure build

The department records on infrastructure projects do not track actual spending which limits oversight. The department's APP lists the individual projects and most include the allocation for the coming financial year for each project and a total project cost¹⁶¹. The budget no longer includes project lists. While there is a wealth of information in the APPs, there is no record of actual spending or historical spending for each project, so there is no way for the public – or the parliamentary committees – to match spending against delivery. Some indicators provide some indication of progress on infrastructure projects, but inadequate information leaves some of these reports meaningless.

This is a significant omission, particularly in a department responsible for 15% (2023/24) of government's infrastructure spending.

The APPs provide updates on various indicators. Again, this is valuable information but more detail would give these more meaning. For example, the lists of the number of infrastructure project phases under construction or completed are just numbers, with no details linking them to projects. Some indicators give different results for the same indicators in the department's budget vote and in the APPs¹⁶². It would also be helpful to have clear indications of which projects are managed by which entity.

The bucket toilet replacement programme

The need for clear tracking of infrastructure spending and the difficulties around this are illustrated by the bucket toilet replacement programme. This programme was supposed to have been a priority but failed year after year to be completed.

Abbreviations

AGSA	Auditor-General of South Africa
APP	Annual Performance Plan
BRRR	Budgetary Review & Recommendation Report
PC	Portfolio Committee
UIFW	Unauthorised, irregular, fruitless & wasteful expenditure

¹⁶¹ Department of Water and Sanitation. *Annual Performance Plan (Vote 41) for the fiscal years 2021/22 to 2023/24*. Available at: https://www.dws.gov.za/documents/AnnualReports/APP%202021-2022_to%202023-24_09March2021.pdf

¹⁶² See the number of regional bulk infrastructure project phases completed: page 84 in APP2023/24 to 2025/26 (table 1.3.2 Outcomes, outputs, performance indicators and targets), compared to the department's budget vote for 2023 (table 41.1 Performance indicators by programme and related priority). The APP gives the "number of regional bulk infrastructure project phases completed" as 16 (2019/20), 11 (2020/21) and 18 (2021/22), while the budget records them (across three indicators) as 16, 18 and 20.

The BRRR says this:

For the number of bucket sanitation systems eradicated in formal areas, the department set the target of 23 019 over two (2) years (2019/20 and 2020/21), which is above the targets set by the Medium-Term Strategic Framework. The department achieved only 6 per cent of the set target. Of concern was that the department did not set any targets for the programme for the 2021/22 financial year. One key indicator in the MTSF not included in the annual performance plan was eradicating the bucket sanitation system.

The BRRR conclusion and recommendation:

Eradication of the Bucket System in Formal Settlements

The Portfolio Committee noted the shift in numbers with regard to the bucket eradication programme, but was concerned at the delay in completion of the remaining eradication of buckets in the Free State and Northern Cape. Of concern to the committee is the project's escalating costs due to procurement delays; and site challenges related to the inaccessibility of constructing toilets in certain areas, due to difficult geological terrains.

6.7.1 The Portfolio Committee resolved that a non-negotiable timeframe, with a ring-fenced budget for this programme, should be prioritised.

We would like to see better management and oversight of this programme. There are three key issues here. Firstly, what was delivered during 2021/22? Secondly, what was actually spent? Thirdly, why does the bucket replacement programme never reach completion?

According to the APPs, the target was to replace 12 221 bucket toilets in 2019/20 and 10 798 in 2020/21 and then 10 798 in 2021/22. While the BRRR adds the numbers for the first two years to reach a total of 23 019 over two years, it seems that this is a double count and that the amount to be replaced is being rolled over year to year due to lack of progress. In a reply to parliament in August 2018, the minister said that there were 14 539 toilets left to replace and the department's vote in Budget 2021 lists the target for 2021/22 as 10 798 buckets and nothing for the next two years as the programme would then be finished. Whatever the count, the department did not manage to replace a single bucket toilet during 2021/22, which is astonishing. Delivery in the previous two years was dismal: 692 replaced in 2019/20 and 592 in 2020/21. The only

The Department of Water and Sanitation did not manage to replace a single bucket toilet during 2021/22

explanation for the failed delivery is a vague reference to “inadequate project management” and “site challenges” and “procurement delays”.

The APP does not give an overall cost for the programme but the list of individual projects shows that the department allocated R218.354 million for eight bucket eradication projects for 2021/22. What happened to this money? This underlines the lack of clarity on what was actually spent per project.

The APPs show that almost identical allocations were made for those same projects for 2022/23. Assuming that 10 798 buckets were to be replaced over a year (this target appears to have been rolled over), that was an average cost of R20 222 per bucket if they had been delivered in 2021/22 or R23 019 if they had been delivered in 2022/23. However, nothing was delivered and the whole lot was rolled over again to 2023/24, with those same projects now costing an average of R37 840 per toilet. How is this increase possible? It is not clear if the projects listed include all the outstanding buckets as the number of buckets for each project are not included. Why is there no clear tracking?

The department’s budget vote in 2022 no longer included the bucket toilet eradication indicator. This raises questions about whether the indicator was removed to hide the programme’s failure, what happened to the funds, and whether this programme is still in the budget.

On 16 May 2023, Minister Senzo Mchunu said during the 2023/24 budget vote speech that the bucket eradication project was delayed because there was inadequate engineering planning and design for upgrading wastewater treatment works to receive additional sewage from the new household waterborne sanitation connections. The department has developed a National Sanitation Framework to address the issue regarding the bucket system.

The bucket toilet eradication programme has been a problem for years. OUTA has previously reported how the programme started in 2005 with a backlog of 252 254 buckets to replace and ended in July 2009 with

The department’s budget vote in 2022 no longer included the bucket toilet eradication indicator: was it removed to hide the programme’s failure?

7 996 buckets left¹⁶³. It then restarted in 2012, with no explanation, with a new backlog of 273 297 buckets to eradicate. Now it is supposedly down to 10 798 buckets, the target being rolled over each year.

What is government policy on bucket toilets? Are the municipalities implementing bucket toilet systems and the department follows along to remove them? This programme needs better management and oversight, with clear goals, clear budgeting and accurate reporting. It would perhaps also benefit from discussions between the PC on Water and Sanitation and the PC on Cooperative Governance and Traditional Affairs over policy on buckets. It is shameful that these toilets were not eradicated years ago.

Independent water regulator

OUTA started campaigning for the establishment of an independent water regulator in January 2019, together with Water Shortage South Africa¹⁶⁴. The APPs show that the department is working on establishing a “water economic regulator” or “water regulator”, with the business case developed during 2022/23. We ask the portfolio committee to encourage the department to develop this as a priority.

Blue Drop, Green Drop and No Drop reports

OUTA has for years called for these reports to be compiled and released to the public. We welcome the department’s release of the Green Drop Report 2022, the Blue Drop Progress Report 2022 and the No Drop Watch Report 2022 as a significant improvement in transparency. These were last seen in 2014. Even though these reports showed the dire state of South Africa’s infrastructure, it is better to know what the situation is than not have reports. We ask the PC to ensure these reports continue.

What is government policy on bucket toilets? Are the municipalities implementing bucket toilet systems and the Department of Water and Sanitation follows along to remove them?

OUTA calls on the portfolio committee to ensure that Blue Drop, Green Drop and No Drop reports continue to be published

¹⁶³ Organisation Undoing Tax Abuse. 22 May 2028. *Ongoing Indignity: Bucket toilets keep Department in business*. Available at: <https://outa.co.za/blog/newsroom-1/post/ongoing-indignity-bucket-toilets-keep-department-in-business-245>

Organisation Undoing Tax Abuse. 31 October 2018. *Deadlines, money disappear into bucket toilets*. Available at: <https://www.outa.co.za/blog/newsroom-1/post/deadlines-money-disappear-into-bucket-toilets-177>

¹⁶⁴ For more on this see OUTA’s webpage on this here: <https://outa.co.za/projects/water-and-environment/independent-water-regulator>

7.11. Case study: Portfolio Committee on Women, Youth and Persons with Disabilities

This committee conducts oversight over the Department of Women, Youth and Persons with Disabilities (Vote 20).

- Number of committee meetings, 1 July 2022 to 30 June 2023: 31 meetings.
- Meetings attended by the minister and/or deputy minister/s: 26% of meetings.

Issues highlighted:

- The Commission for Gender Equality, lack of meaningful public participation and poor transparency.

The Department of Women, Youth and Persons with Disabilities – according to AGSA’s findings – did not incur any unauthorised, irregular, fruitless or wasteful expenditure during 2021/22. However, it had UIFW from previous financial years that still needed to be addressed.

One of the key tasks that the PC had to deal with during the period of review was the appointment of commissioners for the Commission for Gender Equality (CGE). The CGE has a critical mandate as a Chapter 9 institution: it is charged with promoting respect for gender equality and its protection, development and attainment; and with monitoring, investigating, researching, educating, lobbying, advising and reporting on issues of gender equality¹⁶⁵.

The PC met on 23 August 2022¹⁶⁶ to discuss the criteria for appointment as a commissioner and to shortlist candidates on 24 August 2022¹⁶⁷.

**Department of
Women, Youth and
Persons with
Disabilities**

Budget 2021/22:
R1.196bn

**Department of
Women, Youth
and Persons with
Disabilities**

Entities

1. Commission for Gender Equality (CGE)
2. National Youth Development Agency (NYDA)

¹⁶⁵ Section 11 of the Commission on Gender Equality Act, 1996

¹⁶⁶ *Commission for Gender Equality vacancies: shortlisting*, 23 August 2022. Available at: <https://pmg.org.za/committee-meeting/35344/>

¹⁶⁷ *Commission for Gender Equality vacancies: shortlisting*, 24 August 2022. Available at: <https://pmg.org.za/committee-meeting/35370/>

OUTA, together with other organisations, had been anticipating the opportunity to participate meaningfully in the appointments process by making written comments on the shortlisted candidates. Unfortunately, the PC's call on 2 September 2022 for comment on the suitability of shortlisted candidates fell short of an appropriate and meaningful public participation process. This was due to a number of reasons.

Firstly, the time for comments was a mere 10 working days. This time allocation is entirely inadequate for fact-finding, discussion, and consideration by civil society, and sends the very unfortunate message that the appointment of CGE commissioners does not warrant careful consideration or proper background research. Secondly, the spreadsheet purporting to profile each candidate contained nothing other than at most five "qualifications". No work history or abbreviated resumes were provided, despite an undertaking by the PC to make these resumes public in the initial call for applications. Thirdly, the Google form which had to be used to comment permitted only 2 000 characters, which translates to roughly between 285 words and 500 words.

A letter¹⁶⁸ was submitted to the PC raising these concerns. A total of 45 organisations – including OUTA – and 17 individuals objected to the limited public participation process.

OUTA's assessment of the 24 shortlisted candidates revealed that eight raised serious red flags, leading OUTA to recommend these as unfit for consideration¹⁶⁹. OUTA identified another eight candidates who appeared generally suitable.

Despite the appointment process being ostensibly open to public input, it has been marred by a lack of transparency regarding the candidates themselves. Their CVs remain inaccessible to the public eye. This opacity prompted concerns from civil society organisations, which highlighted the need for greater transparency. In response, the PC defended its stance, asserting that a 14-day comment period was reasonable, and

Abbreviations

AGSA	Auditor-General of South Africa
APP	Annual Performance Plan
BRRR	Budgetary Review & Recommendation Report
CGE	Commission for Gender Equality
PC	Portfolio Committee
UIFW	Unauthorised, irregular, fruitless & wasteful expenditure

OUTA's assessment of the 24 candidates for CGE commissioners revealed that eight raised serious red flags while eight others appeared generally suitable

¹⁶⁸ OUTA joins 44 organisations calling for improved public participation in Gender Equality Commission appointments, 8 September 2022. Available online at: <https://www.outha.co.za/web/content/226870>

¹⁶⁹ Parliament's secrecy hinders gender commission appointments, 26 September 2022. Available online at: <https://www.outha.co.za/blog/newsroom-1/post/parliaments-secrecy-hinders-gender-commission-appointments-1189>

that the extent of information shared with the public would be determined by the PC. The committee cited the Protection of Personal Information Act as the rationale behind restricting public access to certain candidate information.

OUTA, however, views this approach as a deliberate exclusion of the public from meaningful participation and as a departure from the constitutional requirement of public involvement. We contend that while certain personal information like identity numbers and addresses should remain private, essential details about the candidates' experience should not be concealed. With the available information, OUTA evaluated the candidates, assessing the candidates' qualifications, publicly accessible information gleaned from national databases and social media platforms. The absence of CVs posed a significant hindrance, limiting the ability to scrutinise employment history and work experience. Consequently, assessing integrity, honesty, skills and expertise proved challenging, as did establishing whether the candidates possessed extensive knowledge of gender issues and the ability to advocate for gender equality.

OUTA's reasons for red flagging the eight candidates ranged from allegations of corruption or criminal behaviour to concerns regarding directorships and potential conflicts of interest, especially when co-directors held positions as state employees. Other disqualifying factors included political affiliations, lack of evidence of suitability, and individuals being under debt review. Despite the concerns raised and following the CGE recommendations, President Cyril Ramaphosa appointed a new chairperson and commissioners for the CGE in February 2023¹⁷⁰.

Refusing access to the candidates' CVs was a significant hindrance: we could not assess qualifications, work history and experience, or even whether candidates had any experience relevant to gender issues

¹⁷⁰ President Cyril Ramaphosa appoints new Chairperson and Commissioners for Commission for Gender Equality, 25 February 2023. Available online at: <https://www.gov.za/speeches/president-cyril-ramaphosa-appoints-new-chairperson-and-commissioners-commission-gender>

8. Conclusion

OUTA is issuing a serious warning in this report: our parliament is not living up to its promise. Our parliament has moved away from the fairytale promise of being a guardian of democracy to becoming a burnt-out institution, a nightmare in which this has become an institution which is not just physically burned down but with parliamentarians' commitment to democratic values and our Constitution similarly burnt out. Without serious reform as an institution, parliament cannot rise to take its proper place in democracy. New parliamentarians who arrive in 2024 will find themselves hamstrung and frustrated by an institution which appears designed to oppose transparent and accountable government and is no longer truly the people's parliament.

State capture: "Nothing to see here"

The sixth parliament has been characterised by the focus on state capture, the removal of President Jacob Zuma and his replacement by President Cyril Ramaphosa, and the public hearings of the State Capture Commission and the delivery of its final report. Parliament's attitude to state capture throughout has been of the "nothing to see here, move on" variety.

We are concerned that the sixth parliament will end its term next year still having failed to implement the recommendations of the State Capture Commission. We regard implementing these recommendations as a priority for parliament and urge parliamentarians to implement those recommendations with urgency and rigour.

In our report, we note parliament's limited attempts at oversight of those ministers and MPs implicated in state capture, particularly the example of former Minister Mosebenzi Zwane, who was fined less by

parliament than the value of benefits he took from the Guptas and didn't bother to turn up in the National Assembly to apologise as ordered.

Are MPs in awe of or even afraid of ministers?

MPs are taking a stronger position on demanding that ministers attend portfolio committee meetings when required, and often too on asking tough questions. But they stop short of real action. Committees too often make a noise but then rubber-stamp executive decisions. Our report quotes the astonishing comment of an ANC MP on the Portfolio Committee of Health: "It is not the job of the Committee to assess the Minister of Health because the Minister is appointed by the President". We disagree.

OVAC: Still missing

Disappointingly, Parliament's Oversight and Accountability Model (OVAC) has still not been properly implemented. OUTA believes that unless and until parliament implements this model in full and with revisions to address issues of state capture, the 2024 election results will not result in any change in parliament. MPs will find themselves unable to hold the executive to account as a system of planning to fail appears to have been systematically implemented with the outcome that we have a failed and toothless parliament.

Failure to use the budget as a tool of oversight

In our 2022 report, OUTA concluded that, while the committees and their advisory office were set up and the money Bills are processed through these committees, MPs have failed to make use of their powers to amend money Bills (the budget) to block misappropriation and mismanagement, even temporarily to ensure corrective action is taken.

This is a strong oversight and accountability mechanism that is not being used by MPs.

Indeed, parliament's failure to safeguard public funds by allowing budgets to run through unchanged benefits state capture: the institutions charged with investigating and prosecuting grand corruption still struggle for adequate funds to hire experts, there is no organised block preventing departments and entities from funding legal battles of constitutional delinquents who wish to avoid those investigations, and funds endlessly pour into programmes or funds or state-owned entities with uncontrolled spending and likely entrenched looting. See our case studies on the Department of Cooperative Governance's Community Works Programme, the Department of Forestry, Fisheries and the Environment's Environmental Programmes work programme, and the Department of Higher Education and Training's NSFAS and National Skills Fund mismanagement of funds.

Oversight of big funds needs improving

There is inadequate oversight of big funds. MPs do not appear to be provided with – or taking the trouble to demand – sufficient information for good oversight. The examples just referred to – the Community Works Programme (CWP) and the Environmental Programmes – illustrate the inadequacy of oversight when basic information such as the number of workdays being paid for is absent. These funds are enormous, are intended to benefit both the public from the work done and the indigent through the work provided, but they are left wide open to mismanagement. We note the comment of one MP on the Portfolio Committee on Cooperative Governance and Traditional Affairs: "The CWP was the Committee's nightmare. If people wanted to loot, they took money from the CWP." NSFAS and the National Skills Fund are further examples. Parliament should make such looting much, much harder. These gaping holes in oversight are a key reason for public concern over the creation of new NHI fund.

Tools of oversight: The BRRRs

The Budgetary Review and Recommendation Reports (BRRRs) are essential tools for oversight, but only work as well as they are used. We find that MPs may discuss the problems of a department or entity at length, ask the questions, note the problems in the ensuing BRRR, but then fall down on consequence management. We would like to see mitigation mechanisms or penalties in place, not just a report of the problems.

Indicators: What is measured?

The performance of departments and entities is measured through indicators, and MPs note these assessments in the BRRRs. These indicators are a key tool for oversight. However, we would like to see more discussion by the committees on the relevance of some of those indicators. How did the Department of Communications and Digital Technologies manage to miss the internationally set broadcasting digital migration deadline for eight years? We note that the Department of Cooperative Governance performance targets have been updated in its Annual Performance Plan for 2023/24 to at last reflect more relevant indicators.

SOEs: Oversight still insufficient

The many entities and funds managed from their departments complicate oversight, sometimes so much so that it appears deliberate. We would like to see more discussion in the portfolio committees about the relevance of some of these entities, their performance and whether they should be amalgamated or closed down. We also note the reports of vacancies open for years – for example, the failure to appoint a permanent CEO at the South African Maritime Safety Authority for seven years – and, while public finances now make filling vacancies a real problem, we wonder how much these vacancies contribute to the lack of internal financial controls. Failed internal controls lead to

increased looting, which manifests in increased unauthorised, irregular, fruitless and wasteful expenditure, and failure to implement the AGSA recommendations. We wonder if some of those vacancies are in fact deliberate.

Public participation: Still too much lip service

We are concerned that public participation is focused on legislation only, and MPs seem to avoid the public rather than look for ways to engage. Unfortunately, what has been observed in most instances is that the public is flooded by information, on short notice, and is expected to understand the content, the terms, and the consequences of matters at hand. Very rarely does education take place beforehand, and pre-hearing consultations often do not take place (if at all).

Feedback to those members of the public who do participate is limited. We would like to see the use of the Ladder of Participation, which is meant to support OVAC and encourage participation.

We are also concerned that even when there is a successful public participation process, it is not clear whether MPs really take on board the public comments and suggestions in the final product. The NHI Bill is an example here of an overwhelming public response, but seemingly little to show for it in the final act. Should parliament perhaps reassess its systems for processing huge numbers of responses effectively?

Parliament sets aside considerable funds and time for MPs to engage in constituency work (18 weeks plus Mondays during the 2023 calendar year) but there is still inadequate information enabling the public to access their MPs – or even identify their constituency's MP – during those periods. Given that delivery is generally acknowledged as failing, and yet parliament claims that it has a full schedule and few oversight matters are seen to conclusion, a simple way of increasing MPs' time on the job should be to reduce the constituency period.

Work and information overwhelm

MPs are deluged with information and meetings. OUTA's quantitative analysis – which looks at the number of meetings which committees hold, the number of those meetings attended by ministers or deputy ministers, and the number of parliamentary questions responded to within deadline by ministers – show that much work is going on and MPs are at least showing up to work. There is evidence that MPs are working very hard in terms of holding meetings and that some ministers have increased their attendance at committee meetings. However, parliament is not able to ensure that the MPs' written questions to the executive are responded to timeously and there are still long gaps of time where MPs are not accountable, as oversight and transparency over constituency times is still missing.

We also believe there are problems with prioritising and focusing on resolving key oversight issues. MPs are swamped with information, but we note that overwhelmingly they use government sources of information – often from the very departments which they oversee. We would like to see a concerted effort to identify and use alternative sources of information. Depressingly, despite a wealth of information passing through parliament highlighting state failures, these findings are often acknowledged but rarely utilised to improve governance.

Excellent work: When oversight works

There are two instances of bravery and hard work by MPs which are examples of excellent oversight: the 2017 – 2018 oversight inquiry into Eskom by the Portfolio Committee on Public Enterprises and the Committee for Section 194 Enquiry into the removal of the Public Protector.

Although the Public Enterprises inquiry was finalised some years ago – the final report was issued in November 2018 – it was Parliament's only oversight inquiry into aspects of state capture and, despite facing hostility and threats, produced a landmark report on the capture of

Eskom which was submitted to the State Capture Commission. Notably, the current PC on Public Enterprises does not appear to have encouraged parliament to implement that report's recommendations, such as reviewing legislation on the regulation of state-owned entities and ensuring that the executive introduce the Shareholder Management Bill. Nearly five years after that report we are still waiting for the Shareholder Management Bill and/or related legislation.

The Committee for Section 194 Enquiry was set up in mid-2021, with the brief of establishing the veracity of charges of misconduct and incompetence against Advocate Busisiwe Mkhwebane, the Public Protector. Although this committee is not one tracked in our report, we regard this as an example of the effective implementation of oversight. Despite endless legal manoeuvring by Mkhwebane and hostility from her supporters, the committee did its job and submitted its report to parliament recommending Mkhwebane's removal on 22 August 2023; the National Assembly adopted this report and voted in favour of her removal which the President subsequently implemented.

Both these cases show not just a willingness but a determination to stand up against wrongdoing and finish the job. We commend these committees, particularly the MPs in them who pushed for strong oversight and consequences, and encourage incoming MPs in 2024 to look to them as an example of MPs who take their oaths of office seriously and act in support of the Constitution and in the interest of the public.

Elections 2024

The sixth parliament's term is coming to an end. This is the parliament which delayed and then limited electoral reform as much as possible. The balancing act between parliamentary oversight, party interests and citizen involvement is crucial. Strengthening oversight mechanisms and nurturing a culture of accountability and participation is the path forward.

We urge the public to take ownership of parliament and participate more. Use the opportunities of public participation processes and demand them when these are not forthcoming on crucial issues. Register as voters and vote in the 2024 elections. Parliamentarians are in parliament to represent the people: it is incumbent on the public to assess how their parliamentarians perform and vote accordingly. We particularly urge the youth to participate: this is your future. When the new MPs are voted in, we remind them to carefully consider their oaths of office.

Will those MPs find an effective institution when they arrive in 2024? Will they have the courage to make that institution effective? For MPs arriving in parliament in 2024, OUTA concludes that without serious commitment to implementing the structural reforms needed in parliament, the incoming MPs will quickly find themselves frustrated and mired in the bureaucratic treacle of a parliament that has failed to hold the executive accountable and has failed to ensure that it is truly the people's parliament.

The oaths of office

When public office bearers are elected to office, they must swear an oath or an affirmation to uphold the Constitution. These oaths or affirmations are set down in the Constitution.

These are their promises.

The MPs' oath of office

"I will be faithful to the Republic of South Africa, and will obey, respect and uphold the Constitution and all other law of the Republic; and I solemnly promise to perform my functions as a member of the National Assembly / permanent delegate to the National Council of Provinces / member of the legislature of the province of [province] to the best of my ability."

The Organisation Undoing Tax Abuse (OUTA) is a civil action NGO

The Organisation Undoing Tax Abuse (OUTA) is a proudly South African civil action organisation set up in March 2012. It is a registered non-profit, overseen by an executive committee and a board of directors.

OUTA challenges inefficiencies, maladministration, and corruption in governance. It was originally set up to oppose the tolling of Gauteng's urban freeways but later expanded to challenge corruption in government and the abuse of taxpayers' money.

OUTA is crowd-funded by thousands of ordinary people and businesses.

Our vision is of a prosperous country with an organised, engaged and empowered civil society that ensures responsible use of tax revenues and public funds throughout all levels of government.

Our values are integrity, resilience, courage, tenacity, humility, honesty, inclusivity and accountability.

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