

OUTA

ORGANISATION UNDOING TAX ABUSE



February 2022

MPs dragging their feet

Wheels are turning but we are going backwards

OUTA 2021 Report on Parliamentary Oversight in South Africa

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QUICK LOOK: WHAT THIS REPORT IS ABOUT

On 2 January 2022, a fire started in Parliament which ultimately destroyed both the old and the new National Assembly buildings. This report is not about that fire. Instead, it is about the way Parliamentarians have metaphorically been burning down the institution of Parliament over the years, threatening South Africa's democracy.

This is the third 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. Despite government's claimed opposition to the erosion of state institutions due to state capture, this report finds no significant improvement in accountability by Parliament.

OUTA's 2019 report is [here](#).

OUTA's 2020 report is [here](#).

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1. Executive Summary: Parliament has failed South Africa

A crucial part of Parliament’s job is to exercise oversight over the executive. It has failed in this, allowing state capture and corruption to become entrenched, and continues to fail, including by protecting and promoting those deeply implicated in wrongdoing.

This report looks at how Parliament is failing and the implications of that failure.

This is OUTA’s third annual report on parliamentary oversight. In this report, OUTA has concentrated on trying to understand how Parliament’s support staff and political leadership have responded to our findings of 2020, whether they agree and how oversight might be strengthened for this year.

Is Parliament a failed institution? This report attempts to answer this question systematically, and we believe there is significant space for improvement to protect our democracy.

The improvement we are looking for is a responsive Parliament, that holds the executive accountable, whose operations take place in a transparent manner and which shows a welcoming and proactive stance towards public participation. It is difficult to escape from the perception that Parliament has been hollowed out and filled with unethical people and, until that is addressed, we cannot expect any real accountability.

At its core, this report aims to give effect to Section 42(3) of the Constitution, which provides that:

“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.”

2. Key messages and recommendations

1. The Constitutional requirement for oversight: Failed.

Parliament is constitutionally required to maintain oversight over the executive, but continues to fail in this crucial role.

2. The Parliamentarians' oath of office: Failed by some MPs.

Public representatives promise, in terms of the Constitution, that they will "obey, respect and uphold the Constitution and all other law of the Republic" but not only do too many blatantly break this promise, but others reward and promote them.

3. Public communication: YouTube helps but it is not participation.

Parliament's move to virtual committee meetings has improved public access to the meetings via YouTube. While this is an important tool, watching a Parliament meeting via YouTube or on Zoom or Teams is not participation.

Participation is about having your voice heard in Parliament. There is still a need for Parliament to hear more from its stakeholders.

OUTA recommends the use of hybrid physical and virtual meetings to improve access.

4. Public participation: Often ignored.

The Standing Committee on Appropriations routinely hears public input on the Budget and mini-Budget each year, but the Budget is never changed to reflect these inputs, thus reducing



the public consultation process to a meaningless pretence. There has never been an appropriation that has been adjusted due to public input. It is difficult to understand why MPs continue with pretence of public participation as it appears that the results of all such processes have been worked out in advance. This is also a failure of oversight: if Parliament reduced department budgets when departments fail to account adequately, we would anticipate a rapid turnaround in the executive being accountable to Parliament. But that takes political will.

5. Oversight: Inadequate.

Members of Parliament represent citizens. Citizens should hold Parliament to account. If citizens are excluded from meaningful engagement with Parliament, this disables their oversight function of MPs.

6. Oversight: Insufficient independent information.

Members of Parliament (MPs) appeared to rely solely on the very departments that they are supposed to oversee for information. Failure to consult with other stakeholders including civil society limits their effectiveness. The committees should broaden their interactions with experts, civil society and the public, and use this information to help inform oversight.

7. Oversight: What happened to OVAC?

Parliament's Oversight and Accountability model (OVAC) was proposed in 2009 and has gone through three Parliaments but has still not been fully implemented. This needs urgent attention.



8. Oversight: Even MPs may not be heard.

Although some MPs raise their frustrations and voice valid concerns in their committee discussions, this does not translate into any meaningful consequence management for the executive.

9. Oversight: Absenteeism.

Ministers' attendance at portfolio committee meetings ranged from 70% to a low of 13%. Despite the ongoing crisis in the energy sector, Minister of Mineral Resources and Energy Gwede Mantashe attended just 13% of the meetings of the PC on Mineral Resources and Energy, and the committee appears to have failed to hold him to account for this. This is a failure of oversight.

10. Constituency work: No oversight of constituency offices.

Parliament provides substantial funding to political parties to run constituency offices, but there is no monitoring of such offices or the work that MPs are supposed to do during Parliament's constituency breaks. There is also concern about the length of such constituency periods.

11. Structural reform: Overhaul required.

In 2018, the High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change noted that despite good laws, there was poor implementation, and Parliament's narrow interpretation of its powers of oversight enabled the executive to "get away with poor implementation"; the Panel called for a more active Parliament which ensures strict enforcement of penalties for lack of



performance by the executive. We concur with this and other key findings by the Panel, and call for an overhaul of the oversight system.

12. Ethics: Inadequate leadership.

People with serious, yet unresolved, allegations of corruption, bribery, treason and general maladministration against them have been deployed in parliamentary positions of power.

There should be no place for such individuals in the very institution mandated to represent the People and champion public interest in the face of obvious political bias and agendas. Rather, Parliament should be at the forefront of incentivising ethical leadership.



3. Introduction

The people shall govern. These were the slogans of the democratic movement to overthrow apartheid, but the last decade of state capture has eaten away at democracy.

Parliament's failure is central to the erosion of democracy, specifically the failure of the majority of parliamentarians to hold the executive to account.

"I think in the current system of oversight... the evidence that I have heard in this commission is as if there is no oversight in Parliament," said Deputy Chief Justice Raymond Zondo while listening to evidence about Parliament's failures before the Commission of Inquiry into State Capture which he chairs. *"So it is like people can just engage in wrongdoing and not only nothing happens, not only that there are no consequences, adverse consequences, but they continue or get given higher positions and nothing happens. It is like there is complete impunity."*¹

In 2021, how do we expect the people to govern? What do we expect from our political representatives? Members of Parliament have a sworn duty to uphold the Constitution, to hold the Executive to account, and to involve the public in their oversight and policymaking.

Parliament's failure is central to the erosion of democracy, specifically the failure of the majority of parliamentarians to hold the executive to account

¹ 5 February 2021. The Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State. Transcript of Day 338, page 14 and page 112. Available online here: https://www.statecapture.org.za/site/files/transcript/352/Day_338_-_2021-02-05.pdf

The Constitution makes clear the responsibilities of parliamentarians to uphold the Constitution, to hold the executive to account and to involve the public in governance. See these extracts:

“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 scrutinizing and overseeing executive action.”²

“The National Council of Provinces represents the provinces to ensure that provincial interests are taken into account in the national sphere of government. It does this mainly by participating in the national legislative process and by providing a national forum for public consideration of issues affecting the provinces.”³

“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.”⁴

“The National Assembly must ... facilitate public involvement in the legislative and other processes of the Assembly and its committees...”⁵

Our parliamentarians are not living up to their responsibilities.

The National Assembly must facilitate public involvement in the legislative and other processes

² 1996. *The Constitution of the Republic of South Africa*. Chapter 4, section 42(3).

³ *The Constitution*. Chapter 4, section 42(4).

⁴ *The Constitution*. Chapter 4, section 55(2).

⁵ *The Constitution*. Chapter 4, section 59(1)(a).

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

In October 2019, the Ahmed Kathrada Foundation and the Public Affairs Research institute hosted a civil society conference called *Civil Society – Defeating State Capture and Rebuilding the State*⁶. At that conference, a civil society charter was drafted which stated that in the fight against state capture, civil society committed to, amongst others, “Strengthening Parliamentary oversight and addressing Parliament’s weaknesses in relation to holding the executive to account”.⁷

In May 2019, OUTA completed its first oversight report on Parliament⁸. That report reviewed the performance of the Fifth Parliament, attempting to evaluate whether the parliamentary portfolio committees addressed the issue of state capture. In November 2020, OUTA compiled an affidavit⁹ as a submission to the Commission of Inquiry into State Capture, motivated by our professional conviction that measurable, impactful parliamentary oversight is often lacking in South Africa.

In 2020, OUTA completed its second oversight report, *MPs asleep at the wheel*.¹⁰ One key finding of concern was that Members of

Measurable, impactful
parliamentary oversight is
often lacking

⁶ 23 October 2019. Ahmed Kathrada Foundation and Public Affairs Research Institute. *Civil Society: Defeating State Capture and Rebuilding the State: Report*. Available online here: https://47zhcvti0ul2ftip9rxo9fj9-wpengine.netdna-ssl.com/wp-content/uploads/2020/04/AKF_PARI_Civil-Society-ConferenceReport_Oct2019.pdf

⁷ *Civil Society: Defeating State Capture and Rebuilding the State: Report*.

⁸ May 2019. Organisation Undoing Tax Abuse. *OUTA Introductory Report on Parliamentary Oversight in South Africa*. Available online at: <https://www.ouata.co.za/web/content/22111>

⁹ November 2020. Matt Johnston. Untitled affidavit on Parliament, submitted to the Commission of Inquiry into State Capture. An overview is available online here: <https://ouata.co.za/web/content/151524>

¹⁰ November 2020. Organisation Undoing Tax Abuse. *MPs Asleep at the Wheel: OUTA 2020 Report on Parliamentary Oversight in South Africa*. Available online at: <https://ouata.co.za/web/content/151086>

Parliament (MPs) appeared to rely solely on the very departments that they are supposed to oversee for information. As highlighted in the report,

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

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

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

The trend of concern is that despite many meetings and some public hearings, Parliament has not challenged in a substantive way any of the proposals or governance issues that lead to corruption over the past and continue to allow mismanagement of scarce financial resources.”¹¹

For our 2021 report, OUTA has concentrated on trying to understand how Parliament’s support staff and political leadership have responded to our findings of 2020, whether they agree and how oversight might be strengthened for this year.

Is Parliament a failed institution? This report attempts to answer this question systematically.

Is Parliament a failed institution?

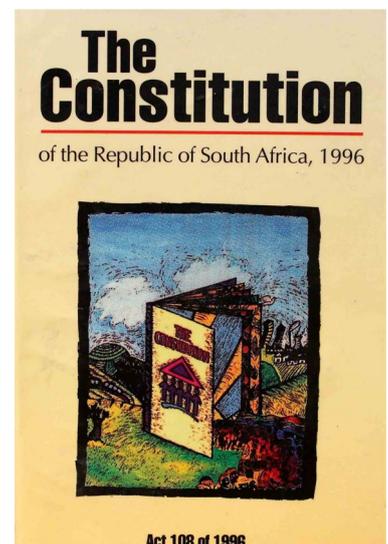
¹¹ *MPs Asleep at the Wheel: OUTA 2020 Report on Parliamentary Oversight in South Africa*. Page 39.

3.1. What do we expect from our politicians?

South Africa had 26.2 million voters registered to vote in the November 2021 local government elections, of whom just 46% voted¹² but those registered were only 62% of the 42.6 million people who were eligible to vote¹³. In December 2020 it was reported that the African National Congress (ANC), the majority party in Parliament, has 1.4 million members¹⁴ with other parties being quite coy about revealing their members. If 230 seats (57.5%) belong to a party with about 1.4 million members, other major parties, such as the Democratic Alliance and the Economic Freedom Fighters with 21% and 11% of the Parliament seats, are unlikely to have more members. With 42.6 million eligible voters¹⁵, this means that far less than 10% belong to political parties. In the last national elections, 10 026 475 people (57.5%) voted for the ANC¹⁶, which translates to a 7:1 ratio of supporters vs members. In other words, a political party draws its mandate to govern, not from its party members but from its supporters who come out to vote.

Once in Parliament, those MPs then represent the people, but can they then ignore “the people” once in Parliament and derive a mandate narrowly from the party leadership or should we expect them to engage with the public to gauge their opinions and views on matters of public interest, and laws that are being made?

MPs should uphold the highest moral code and act with integrity: they swear to uphold the Constitution



¹² 5 November 2021. Electoral Commission. IEC election results portal. *Voter Turnout Report*. Available online here: <https://results.elections.org.za/home/LGEPublicReports/1091/Voter%20Turnout/National.pdf>

¹³ 27 October 2021. Ipsos. *A third of South Africans will decide the outcome of the local government elections*. Available online here: <https://www.ipsos.com/en-za/third-south-africans-will-decide-outcome-local-government-elections>

¹⁴ 4 December 2020. Ferial Haffajee. *Daily Maverick*. *Ace boosts ANC membership to 1.4 million – highest ever*. Available online here: <https://www.dailymaverick.co.za/article/2020-12-04-ace-boosts-anc-membership-to-1-4-million-highest-ever/>

¹⁵ Ipsos. *A third of South Africans will decide the outcome of the local government elections*.

¹⁶ 10 December 2019. Electoral Commission. IEC election results portal. *Detailed results, 2019 National Election, All Provinces*. Available online here: <https://results.elections.org.za/home/NPEPublicReports/699/Results%20Report/National.pdf>

OUTA assumes that politicians should be active citizens, engaged with the broader society and that they should not only be open to hearing and considering the views of the public at election times, but that they should actively seek out input from their public throughout their parliamentary term.

OUTA also assumes that Members of Parliament should uphold the highest moral code and act with integrity in their role of representing the people.

OUTA also assumes that in their role of overseeing the executive, MPs would ensure that they always act in the public interest. When they are elected to office, our political representatives swear an oath or an affirmation to uphold the Constitution. They promise that:

“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 ... to the best of my ability.”¹⁷

As South Africa is a democracy committed to transparency and open government, it should also be expected that the institution of Parliament should strive to encourage the participation of the public within parliamentary processes and encourage transparency and the open dissemination of information.

According to a report emanating from an internal Planning Session of the National Assembly that occurred on 12 and 13 September 2019, focused on Parliament’s Oversight and Accountability Model:

Oversight includes
accounting for how
taxpayers’ money is used

¹⁷ *The Constitution*. Schedule 2, section 4.

“The functions of oversight are:

- To detect and prevent abuse, arbitrary behaviour or illegal and unconstitutional conduct on the part of the government and public agencies. At the core of this function is the protection of the rights and liberties of citizens.
- To hold government to account in respect of how taxpayers’ money is used. It detects waste within the machinery of government and public agencies. Thus it can improve efficiency, economy and effectiveness of government operations.
- To ensure that policies announced by government and authorised by Parliament are actually delivered. This function includes monitoring the achievement of goals set by legislation and the government’s own programmes.
- To improve the transparency of government operations and enhance public trust in the government, which is itself a condition of effective policy delivery.

Accountability can be broadly defined as –

A social relationship where an actor (an individual or an agency) feels an obligation to explain and justify his or her conduct to some significant other (the accountability forum, accountee, specific person or agency).

Accountability is the hallmark of modern democratic governance. Democracy remains clichéd if those in power cannot be held accountable in public for their acts or omissions, for their decisions, their expenditure or policies. The functions of accountability include the following:

- To enhance the integrity of public governance in order to safeguard government against corruption, nepotism, abuse of power and other forms of inappropriate behaviour.
- As an institutional arrangement, to effect democratic control.

Accountability is the
hallmark of modern
democratic governance

- To improve performance, which will foster institutional learning and service delivery.
- In regard to transparency, responsiveness and answerability, to assure public confidence in government and bridge the gap between the governed and the government and ensure public confidence in government.
- To enable the public to judge the performance of the government by the government giving account to the public.
... Parliament needs to be informed of the complete picture of the performance of the functions reported on. The consideration of the annual report of the department alone may not give the complete picture of the performance of the functions ... their activities may not be reported.”

Departmental annual reports are not enough for a complete picture for oversight

3.2. Methodology

Qualitatively, OUTA analyses the workings of Parliament from July of each year to June the following year. This timeframe enables us to look at the Budgetary Review and Recommendation Report (BRRR) process, the State of the Nation Address (SONA) and how the next year’s departmental Annual Performance Plans (APPs) and budgets reflect the recommendations of the previous year. Quantitatively, OUTA examines indicators such as the number of meetings a portfolio committee held each year, whether the minister attended, how many times the committee held public hearings (this relates to oversight) and whether their reports reflect the inclusion of civil society inputs.

This report assessed 11 committees: nine portfolio committees, one standing committee (all National Assembly committees) and one joint

committee (National Assembly and National Council of Provinces) relevant to OUTA's existing projects; some committees received greater focus than others.

- Portfolio Committee on Communications;
- Portfolio Committee on Cooperative Governance and Traditional Affairs (PC on CoGTA);
- Portfolio Committee on Environment, Forestry and Fisheries (PC on EFF);
- Portfolio Committee on Health;
- Portfolio Committee on Home Affairs;
- Portfolio Committee on Mineral Resources and Energy (PC on DMRE);
- Portfolio Committee on Public Enterprises (PC on DPE);
- Portfolio Committee on Transport (PC on Transport);
- Portfolio Committee on Water and Sanitation (PC on DWS) (from July 2019 to August 2021 this was part of the PC on Human Settlements, Water and Sanitation)¹⁸;
- Standing Committee on Appropriations (SCOA); and
- Joint Committee on Ethics and Members' Interests.

Of the above committees, our particular focus was on the PCs on DPE, DMRE and Transport, due to lack of capacity.

See **Appendix A** for details of the methodology.

These are the 11 committees which OUTA assessed

¹⁸ We have referred to this committee through the document as the Portfolio Committee for Water and Sanitation for simplicity.

4. Theory and Practice

In our 2020 report, OUTA outlined the constitutional mandate for Parliament's oversight function, highlighting that

"In most democracies, Parliament has a constitutional mandate to represent the people and to protect fundamental democratic values. 'Facilitating public involvement in political decision-making is a key function through which Parliament fulfils this mandate. In a global political context increasingly marked by shrinking civic space, Parliament's watchdog role is more critical than ever.'¹⁹" Why is it important for people to have a voice in Parliament?

"In South Africa, Parliament has a constitutional obligation to involve the public in its functioning, but to date has been reluctant to implement this to the full."²⁰

The theory of how Parliament should operate does not match the practice in certain respects.

On 16 April 2020, Parliament went virtual holding all its Parliamentary meetings online.²¹ The IT section of Parliament enabled the video recording of all committee meetings, with several committee meetings streamed via YouTube in real time (the MPs participate in the meetings, while the public may watch). As the Covid-19 pandemic's various waves washed over the country, MPs continued to carry out their work in the virtual space.

While the live streaming of meetings has meant that potentially increased numbers of people could watch their MPs in action, in practice of course, this is limited to those who can afford the data needed to watch a three-hour YouTube meeting.

The theory of how
Parliament should operate
does not match practice

¹⁹ 2018. Open Government Partnership. *Parliaments as Partners for Open Government Reform*. Available online here: https://www.opengovpartnership.org/wp-content/uploads/2018/01/OGP_Parliaments-Partners_January2018.pdf

²⁰ *MPs Asleep at the Wheel: OUTA 2020 Report on Parliamentary Oversight in South Africa*. Page 7.

²¹ 16 April 2020. Parliament of the Republic of South Africa. *Statement by the Presiding Officers of Parliament on the Resumption of the Business of Parliament Thursday, 16 April 2020*. Available online here: <https://www.parliament.gov.za/press-releases/statement-presiding-officers-parliament-resumption-business-parliament-thursday-16-april-2020>

Who did watch the meetings?

Table 1 below shows the number who watched the APP meetings on YouTube for the following portfolio committees: Public Enterprises (DPE), Mineral Resources and Energy (DMRE), Water and Sanitation, and Transport. The tables show the number of viewers in 2020 when Parliament first went online compared to the same month in 2021.

Table 1: Number of YouTube views of Parliament’s virtual portfolio committee meetings

Periods	Report	Committee	YouTube views
2020			
6 May 2020	2020/21 APPs	Transport	2 697 views
21 May 2020	2020/21 APPs	CoGTA	123 views
21 May 2020	2020/21 APPs	WS*	64 views
27 May 2020	2020/21 APPs	DMRE	63 views
2 June 2020	2020/21 APPs	DPE	220 views
2021			
22 Apr 2021	2021/22 APPs	CoGTA	267 views
4 May 2021	2021/22 APPs	Transport	309 views
12 May 2021	2021/22 APPs	DPE	105 views
14 May 2021	2021/22 APPs	DMRE	96 views
21 May 2021	2021/22 APPs	WS*	120 views ²²

When Parliament’s meetings first went on YouTube, thousands watched, but this soon dropped steeply

The results are encouraging and for both years, show a much larger number of people attending parliamentary portfolio committee meetings than prior to covid, given the limited capacity of parliamentary venues. Thus the Covid-19 restrictions have resulted in increased exposure to the work of Parliament and increased accessibility. OUTA notes that such accessibility is limited to people with access to Wi-Fi or unlimited data or those where mobile coverage is available. For those from outside Cape Town the expense of data for YouTube is still an improvement compared to incurring the expense of travelling to Cape Town to listen to a parliamentary hearing. The Executive has also benefited as it has reduced the expenses incurred for government delegations to fly to Parliament from Tshwane each week.²³

However, MPs should also need to take the temperature of stakeholders and assess their reaction to these plans and priorities. Watching a Parliament meeting via YouTube or on Zoom or Teams is not participation. There is a need for Parliament to hear from its stakeholders in person.

Watching a Parliament meeting via YouTube or on Zoom or Teams is not participation



Online meetings provide more public access, but not participation

²³ Parliament’s budget vote does not provide specifics, but Budget 2021 includes R440.4 million for its Support Services programme (which includes MPs travel) 2021/22, down about 8% from Budget 2020’s projection of R477.8 million.

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In the 2020 report, OUTA outlined how portfolio committees may oversee issues where specific expert knowledge is needed, which means there is a need to engage with academics, researchers and civil society organisations who hold that knowledge and can strengthen the capacity for MPs to conduct meaningful oversight. Such parliamentary engagements took place in the past (refer to oversight report 2020).²⁴

Holding public hearings via virtual platforms has limitations. As explained above, it is limited to wealthier groups in areas with good internet coverage. Some committees have held public hearings on virtual platforms but there is no opportunity for further clarification and discussion that takes place informally when members of the public attend committee meetings in person. Such informal exchanges build the understanding of MPs. The public is also able to engage with MPs and see them as people whom they can trust, not faces on a screen who are mostly silent or ask one or two questions in a formal setting. OUTA would therefore recommend that a hybrid situation should be followed in future, where MPs would sit in Parliament with the public in a public hearing. However, where people are unable to attend in person or simply wish to attend the hearing and not present, such stakeholders should be given the opportunity to observe or participate through virtual platforms.

By holding public hearings and carrying out investigations, Parliament can direct the executive to update their plans to ensure that the country responds adequately to the challenges it faces. Most plans were created pre-Covid-19, for example, and many departments have failed to integrate the impact of other global crises such as climate change into their plans.

A hybrid situation of meetings is recommended, at which the public can physically attend and which are also broadcast on line for those who wish to listen but not participate

²⁴ *MPs Asleep at the Wheel: OUTA 2020 Report on Parliamentary Oversight in South Africa.*

5. Public participation

As we highlighted in the 2020 report, enabling more people to watch the proceedings of Parliament increases the communication of what Parliament is about, but it is not participation. Participation is about having your voice heard in Parliament, and having that hearing translate into practical change.

Why is public participation important? For OUTA, it is important for the public to have a voice in Parliament to help ensure that scarce public resources are not abused with impunity. There is also an onus on the public to participate in such structures.

In the last report, OUTA analysed which committees had public hearings, and whose voices were considered. Our measure for judging whether civil society voices were heard was the extent to which these voices were captured in the committee reports which reviewed the department's progress, the BRRRs.

We have used the same matrix this year. We looked at four measures: (1) how often committees met, (2) if there were public hearings and, if so, how many days of committee time were used for hearings, (3) the number of non-governmental stakeholders the committee invited to present or who did present, and (4) whether there were any general open public meetings where topics relevant to the committee portfolio were discussed with the expert stakeholders including the public. These last indabas were used a decade ago to unpack issues that MPs might not be familiar with, and to hear contrary views to those posed by the department or stakeholders close to the state.

Due to capacity constraints, we focused on three key portfolios for this year: Mineral Resources and Energy, and Public Enterprises, which are at the heart of solving the energy crisis, and Cooperative Governance and Traditional Affairs (CoGTA), which is a key department regarding oversight of collapsing municipalities and has a focus on service delivery.

Figures 1 to 3 below give an indication of public engagement in these portfolio committees.

Public participation in Parliament is important to help ensure that scarce public resources are not abused with impunity

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Figure 1: 2014-2021. Public Engagement by the PC on Mineral Resources and Energy

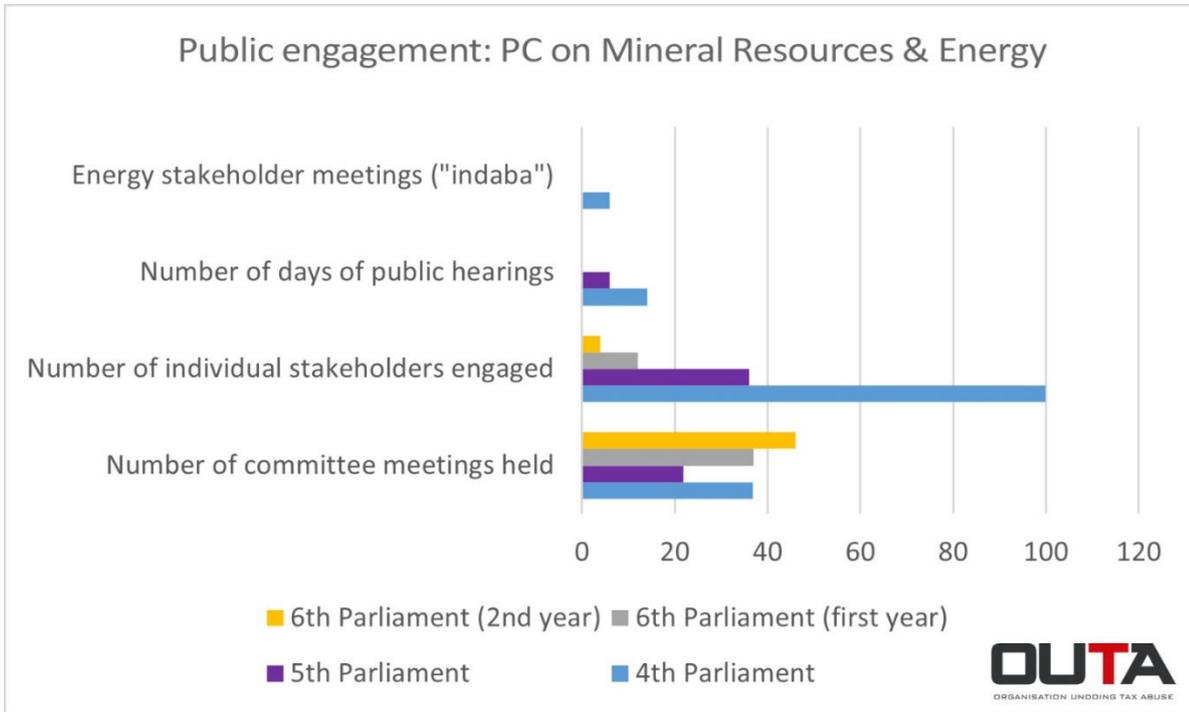
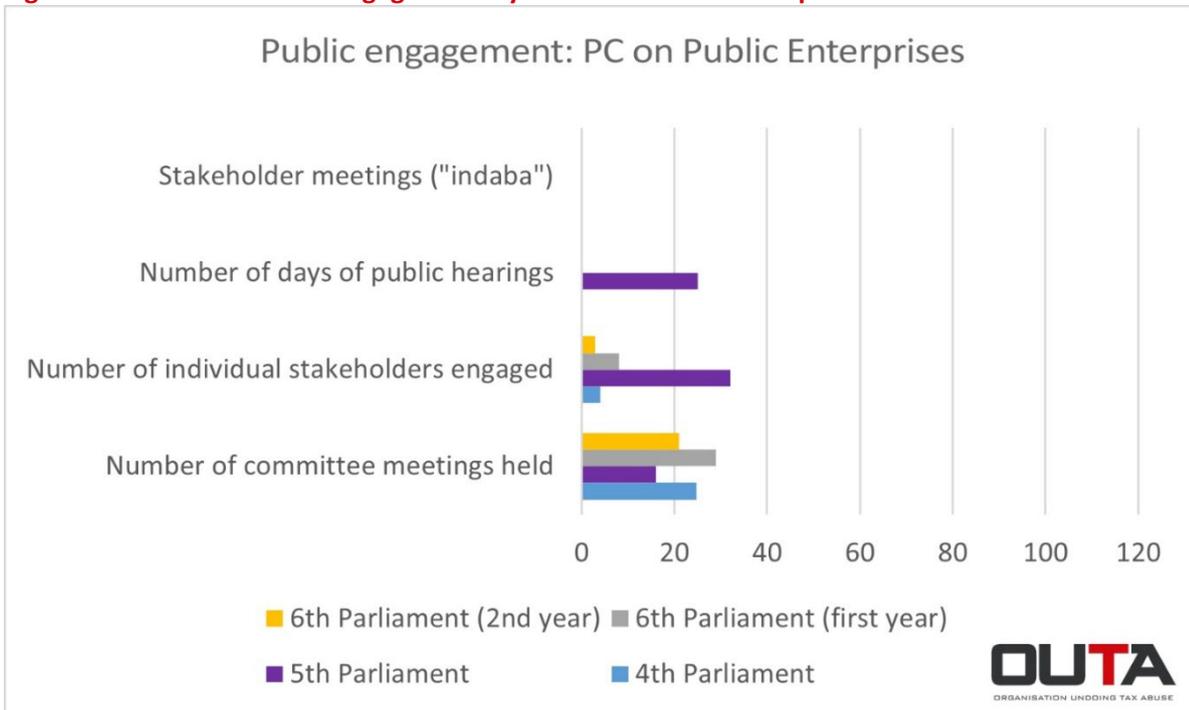
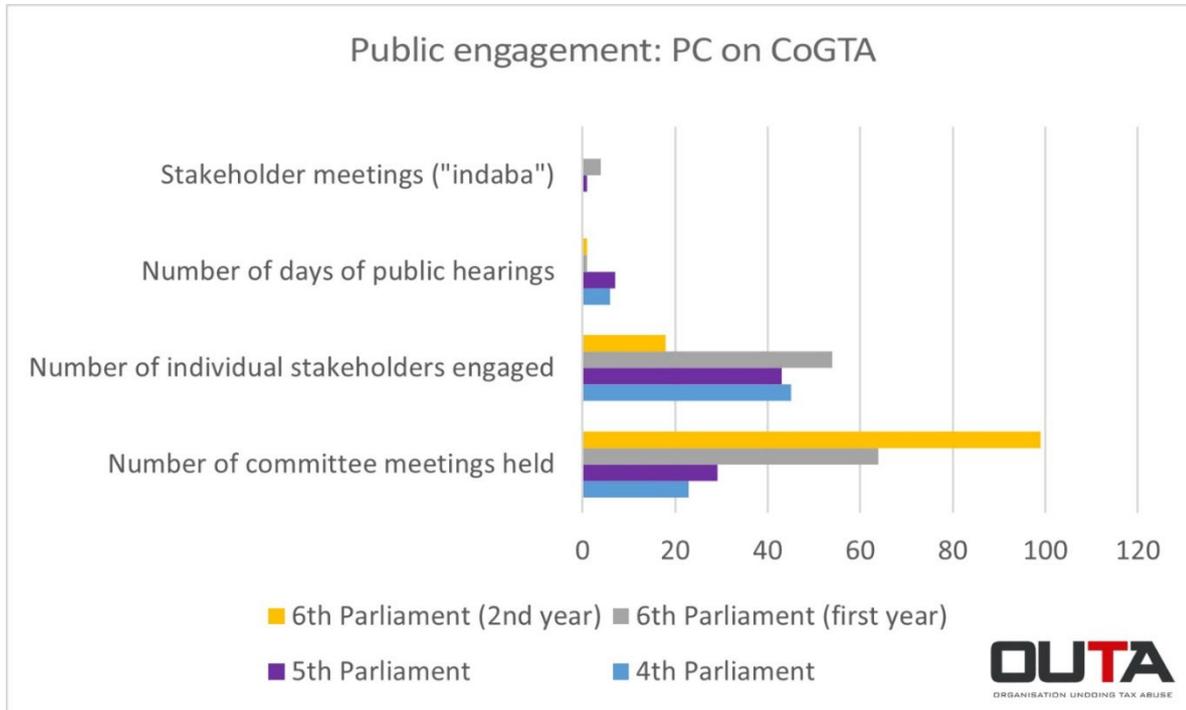


Figure 2 2014-2021: Public Engagement by the PC on Public Enterprises



MPs dragging their feet
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Figure 3: 2014-2021: Public Engagement by the PC on Cooperative Governance and Traditional Affairs



This preceding year (July 2020 to June 2021) was a full year of Parliament operating in the virtual space as a result of Covid-19 restrictions. It is therefore unsurprising that there were no stakeholder indaba or town hall style meetings. However, given that virtual meetings meant that stakeholders could engage from anywhere in the country, one might expect that MPs might have taken advantage of this to solicit engagement.

CoGTA was the only committee that continued to engage with many of its stakeholders and had several meetings online. However, although this committee held 99 meetings in total, and responded to 18 stakeholders, mostly petitioners who asked Parliament for help, this was only a third of the stakeholders it engaged with in the previous year. As part of the committee’s Covid-19 responsibilities, one public hearing was held, with various religious organisations who petitioned the committee to enable their religious programmes to continue during lockdown. The PC on DPE met stakeholders at only two of 21 meetings and held no public hearings. The PC on DMRE had two meetings in

From July 2020 to June 2021, there were no stakeholder indaba-style meetings

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which stakeholders presented. However, despite the looming energy crisis, already apparent before 2020, none of these engagements were about energy, they were mining related. In April 2021, the PC on DMRE received a petition from 15 organisations asking for it to investigate the Karpowership contracts. Initially refusing to investigate, the PC on DMRE was requested by the Speaker to investigate due to a further petition by 14 organisations which was sent to the Speaker after the committee failed to respond in any meaningful way. By November 2021, the PC on DMRE had failed to take any action to initiate an investigation despite being informed by the parliamentary legal service that it had every right to do so.



Karpowership contracts: No investigation by Parliament

There may have been other portfolio committees that held public hearings and engaged with stakeholders to elicit understanding and advice from sources other than the departments they oversee, but for two of the three crucial portfolios, where the country needs solutions, no attempt has been made by MPs to engage relevant civil society stakeholders or the public at large.

One other measure that OUTA has used to determine if MPs receive any non-government inputs has been to look at the BRRRs from the

15 organisations asked the Portfolio Committee on Mineral Resources and Energy for an investigation into the Karpowership contracts, but the committee failed to respond

relevant year and ascertain if the reports reference any sources other than the very department that Parliament is supposed to oversee.²⁵

For 2021, we assessed nine portfolio committees. With a total of 26 portfolio committees in the National Assembly (NA), this amounts to approximately a third of the NA Portfolio committees. It may be that others do reference non-government sources much more, but we reiterate that at this time with Eskom no longer able to provide a reliable energy supply, the DMRE seemingly unable to react to these circumstances to solve the problem, and with only 27 municipalities (11%) able to gain a clean audit for 2019/20 (the most recent available)²⁶, it might be time for MPs to seek solutions from the citizens that they represent and are accountable to.

OUTA assessed nine of the National Assembly's 26 portfolio committees

Portfolio Committees assessed

- Communications
- Cooperative Governance & Traditional Affairs
- Environment, Forestry & Fisheries
- Health
- Home Affairs
- Mineral Resources & Energy
- Public Enterprises
- Transport
- Water & Sanitation

²⁵ The Budget Review and Recommendations Reports are available online here: <https://pmg.org.za/page/BRRR>

²⁶ 30 June 2021. Auditor-General South Africa. *Consolidated general report on the local government audit outcomes: MFMA 2019/20*. Available online here: <https://www.agsa.co.za/Portals/0/Reports/MFMA/201920/2019%20-%2020%20MFMA%20Consolidated%20GR.pdf>

We have examined the BRRRs in our sample and see few references to any non-governmental sources that MPs made use of in their consideration of the presentations from the departments. This failure to look outside of government is captured in a comment from the DMRE 2020 BRRR: “The Committee, in undertaking this process, used a number of source documents, including the 2014-2019 Strategic Plan of the DMRE, Annual Performance Plans, Annual Reports, Financial Statements, 2018/19 and the 2018 Estimates of the National Expenditure (ENE). It also reviewed briefings by the Department and its entities during the year, as well as the State of the Nation Address (SONA). The Committee also used the Constitution as a reference point.”²⁷

In contrast, CoGTA in its BRRR referred to the views of traditional leaders and to its experience while on an oversight visit to motivate its concerns. CoGTA also made the following recommendation for its 2022 programme: “In the next year, the Committee must consider hosting a colloquium on male cultural initiation to address the challenges associated with the practice.”²⁸ CoGTA heard from traditional leaders and had received reports of abuses connected with initiation schools during the year and it appears as if MPs were planning to act in 2022. The PC on Transport mentioned oversight visits by the committee as having informed the BRRR but in others, there were no references other than to government institutions.

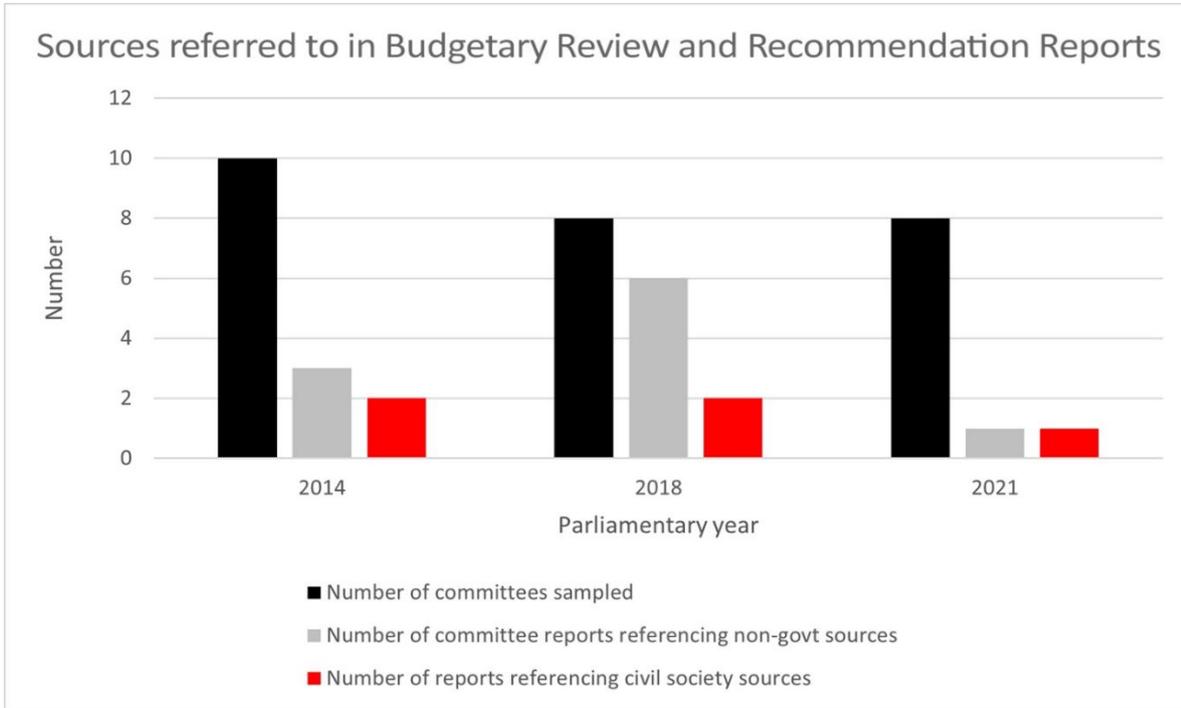
See **figure 4** below for sources used by committees.

MPs rarely use NGOs as sources for their oversight work

²⁷ 10 November 2020. Portfolio Committee on Mineral Resources and Energy. *Budgetary Review and Recommendation Report of the Portfolio Committee on Mineral Resources and Energy (Vote 26 & 29)*. Available online here: <https://pmg.org.za/tailed-committee-report/4400/>

²⁸ 3 December 2020. Portfolio Committee on Cooperative Governance and Traditional Affairs. *Budgetary Review and Recommendations Report of the Portfolio Committee on Cooperative Governance and Traditional Affairs*. Available online here: <https://pmg.org.za/tailed-committee-report/4470/>

Figure 4: Sources referenced in the 2020 Budget Review and Recommendations Reports



Having analysed approximately one third of all National Assembly BRRRs, our conclusion is that once again, committees continue to rely on the very same departments for inputs which they are supposed to oversee.

It is interesting to note that the PC on DPE made several energy related observations that should rightly have been put forward by the PC on DMRE. For example, the PC DPE made mention of climate change and the DMRE responsibilities of increasing electricity generation. This is not surprising given that the PC DMRE committee relies solely on the Department of Mineral Resources and Energy for information. This

Parliament’s committees
rely on the departments
they oversee for information
for that oversight

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highlights the failure of the PC on DMRE to understand or act on its oversight mandate. The DMRE has been roundly criticised for failing to act to resolve the energy crisis²⁹.



MTBPS 2021: We want public input used

Every year, the Standing Committee on Appropriations (SCOA) holds public hearings to hear input from the public, civil society and other stakeholders on how the budget should be adjusted. There have been various iterations of the budget, due to Covid-19 etc, and each year there is the Medium-Term Budget Policy Statement and accompanying appropriations adjustments, an opportunity to examine the government's expenditure to check if it is on track for the following period. OUTA looked at the public input from various organisations into the adoption of the Appropriations Bill by SCOA to see how the budget was changed due to civil society input. The results, as laid out in **Figure 5** below, are disappointing to say the least. Although acknowledging the validity of the public inputs in several meetings, there has never been an appropriation that has been adjusted due to public input. Parliament has simply adopted the budget put forward by the executive thereby reducing the public participation process to a

Every year civil society and the public comment on the Budget to the Standing Committee on Appropriations, but the Budget is never amended

²⁹ 10 December 2019. Terence Creamer. *DMRE's promise of urgency action on power supply fails to include timelines*. Mining Weekly. Available online here: https://www.miningweekly.com/article/dmres-promise-of-urgent-action-on-power-supply-fails-to-include-timelines-2019-12-10/rep_id:3650, <https://www.esi-africa.com/industry-sectors/generation/energy-policy-in-south-africa-are-changes-finally-coming/>

meaningless pretence at consultation. The failure to take public input seriously shows an apparent lack of respect for and accountability by MPs to the people that they expect to vote for them in the next election.



“Public participation” is a pretence in Parliament

Table 2 below shows the results of our investigation.

The conclusion is that although many more people were able to watch what Parliament was doing, and although some committees held public hearings, there is little acknowledgement of the time and effort civil society spends in making recommendations to Parliament, and nothing that is put forward leads to any change in the budget allocations for the executive. It is difficult to understand why MPs continue with pretence of public participation as it appears that the results of all such processes have been worked out in advance

Table 2: Public submissions to the Standing Committee on Appropriations

Report	Public hearings	Stakeholders who presented submissions	Stakeholder recommendation	Recommendation after consultation
Special Appropriation Bill [B5–2021]	Yes	OUTA Cosatu University of Johannesburg	Did not support funds for SAA	No change
Appropriations Bill [B4–2021] 1 June 2021	Yes	Equal Education COSATU OUTA Public Service Accountability Monitor PSAM Children’s Institute / Centre for Child Law	Recommended several changes https://pmg.org.za/tables/committee-report/4629/	No change
Appropriations Bill [B17–2021] 21 September 2021	Yes	FFC PBO SASRIA DSD DTIC COSATU	https://pmg.org.za/tables/committee-report/4717/	No change
Appropriations Bill [B17–2021] 17 September 2021	Yes	SASRIA SASSA DOD SAPS DTIC	https://pmg.org.za/committee-meeting/33628/	No change
Appropriations Bill [B5–2021] 1 June 2021	Yes	OUTA COSATU	https://pmg.org.za/tables/committee-report/4630/	No change
Division of Revenue Bill [B3–2021] 16 March 2021	Yes	SALGA FFC PBO Amandla.mobi SAICA COSATU	https://pmg.org.za/tables/committee-report/4522/	No change
2020 Medium Term Budget Policy Statement 1 December 2020	Yes	OUTA SANCR CEDC Western Cape Commissioner for Children	Recommended several changes https://pmg.org.za/tables/	No change

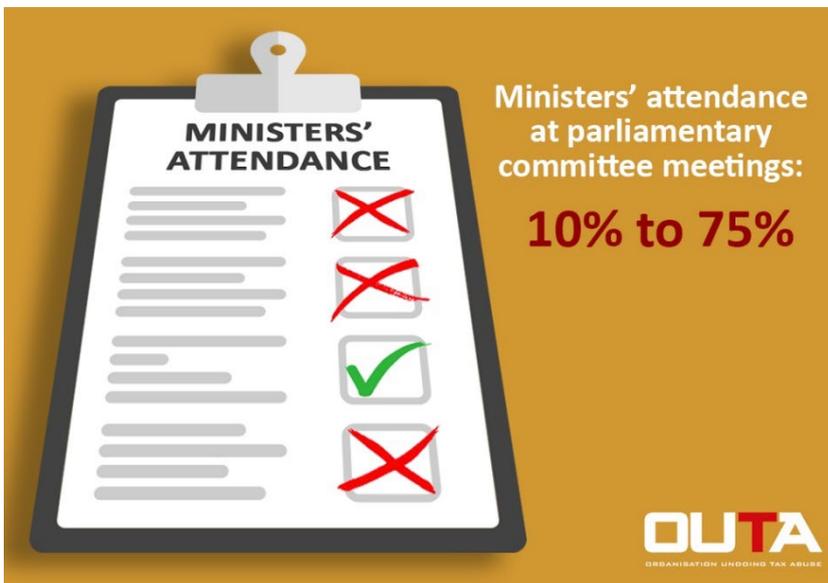
		UNICEF COSATU Amandla.Mobi Chipane Seloane DearSouthAfrica	committee-report/4442/	
Division of Revenue Second Amendment Bill [B24–2020] 17 November 2020	Yes	SALGA COSATU Equal Education	https://pmg.org.za/tables/committee-report/4402/	No change
Adjustments Appropriation Bill [B10–2020] 28 July 2020	Yes	Equal Education Section 27 Equal Education Law Centre COSATU OUTA EGSA IlifaLabantawana Agroecology SA Prof E Atmore	https://static.pmg.org.za/200728pcap/propreport.pdf	No substantive change

6. Public Interest

The previous section has shown that politicians pay little heed to the public during the normal operations of Parliament. Despite failing to carry out any meaningful public participation, is it possible that Parliament can hold the executive to account and ensure that Cabinet Ministers act in the national interest?

In our previous parliamentary oversight reports, OUTA used two indicators to measure whether MPs showed up to work. One was to look at the number of meetings that different committees held. The second was to see how many times Ministers attended committee meetings, under the assumption that attending a committee meeting related to a Minister's willingness to be accountable to Parliament, and to a desire for Parliament to want the Minister to attend.

How often do committees meet? Do MPs and ministers show up?



OUTA was able to examine nine committees for this exercise this year. **Table 3** shows the number of committee meetings that took place this year compared to last year. Although there were less committee

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meetings last year, probably due to the level 5 lockdown and adjustment that Parliament needed to make to operation virtually, it is encouraging to see that committees have been meeting extensively.

Table 3: Number of meetings of some National Assembly Portfolio Committees,

2019/20 compared to 2020/21

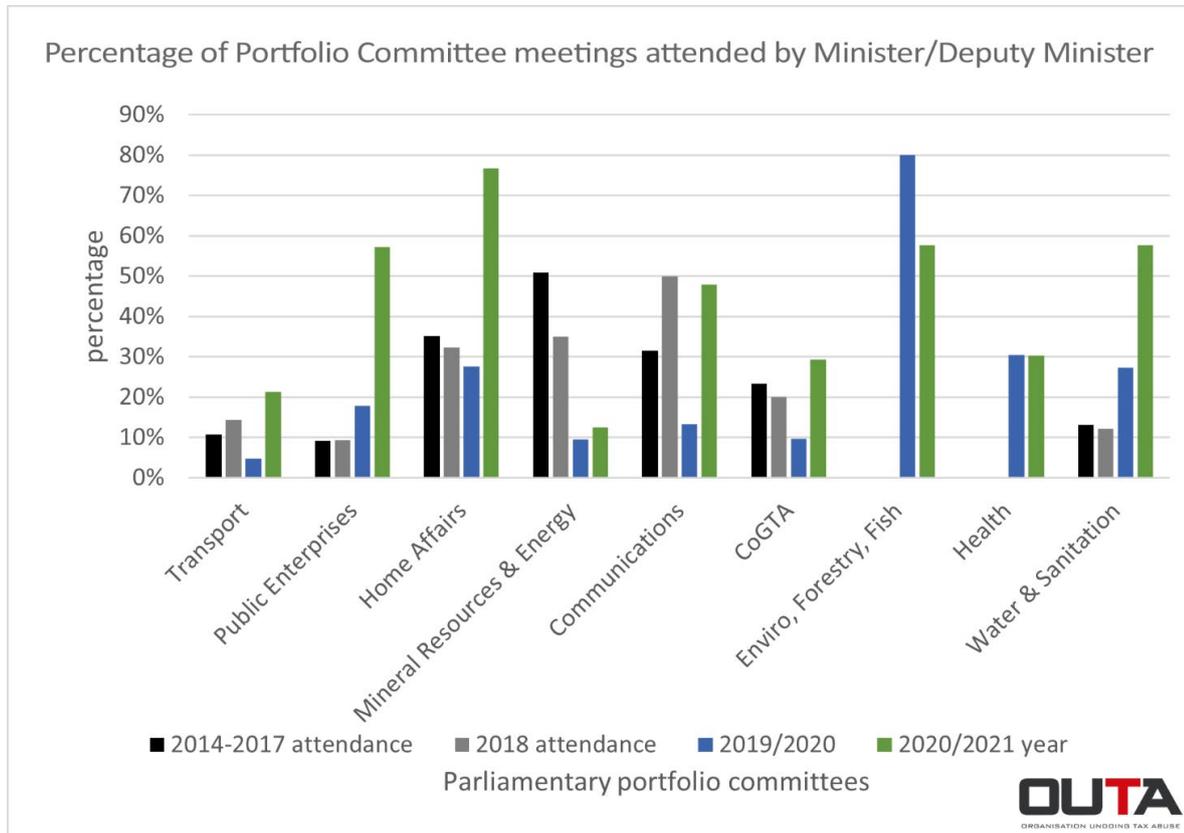
Number of meetings	2019/20	2020/21
PC on Communications	53	46
PC on Cooperative Governance & Traditional Affairs	62	99
PC on Environment, Forestry & Fisheries	20	33
PC on Health	23	53
PC on Home Affairs	29	30
PC on Mineral Resources & Energy	42	40
PC on Public Enterprises	28	21
PC on Transport	42	61
PC on Water & Sanitation	47	52
Average number of meetings per year	38	48

The PC on CoGTA has held an extraordinary number of meetings, whereas the PC on DPE appears to be underachieving by comparison. This may relate to the role of CoGTA in administration of the Covid-19 disaster. As we turn to the number of times Ministers appear before committees, the picture shifts.

Figure 5 below shows the appearance by Ministers at committee meetings. Given that the number of meetings any one committee holds varies widely, we have used the percentage of meetings that Ministers attend for an equitable comparison. It should be noted that the PC on Health and the PC on EFF were not examined in the 2019 report and therefore their data is relatively sparse. OUTA has an interest in following the progress of the portfolio committee that oversees water. However, this portfolio has migrated under different Ministers and in different departmental configurations. The graphs reflect the recent changes from DAFF to Human Settlements and it should be noted that in the latter part of this year, it has once again morphed, now becoming the Portfolio Committee on Water and Sanitation.

The Portfolio Committee on Cooperative Governance held the most meetings by far, probably because of the Covid-19 state of disaster

Figure 5: Percentage Attendance by the Minister or Deputy Minister at Portfolio Committee meetings during the period under review.



In the last year, in which Parliament has met virtually, Ministers (or deputy ministers) should have been available to attend a high proportion of meetings.³⁰ This makes sense as Ministers/deputy Ministers have not had to waste time on travelling to parliament but simply in connecting via their personal computers. In some cases, this is a marked difference from previous years. Ministers or their deputies have made the effort.

Virtual meetings make it easier for ministers to attend

³⁰ OUTA counted both ministers and deputy ministers in the attendance statistics.

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Minister of Home Affairs Aaron Motsoaledi has attended more than 70% of the PC on Home Affairs meetings, with Minister of Forestry, Fisheries and the Environment Barbara Creecy, Minister of Human Settlements, Water and Sanitation Lindiwe Sisulu³¹ and Minister of Public Enterprises Pravin Gordhan attending over half of the parliamentary meetings. At the PC on EFF, it seems Minister Creecy reduced the number of meetings she attended, for Water Affairs, Minister Sisulu nearly doubled her attendance rates and at the PC on DPE, Minister Gordhan now attends more than 50% instead of a dismal 18% during 2020. While most Ministers appear to be taking their reporting to Parliament seriously, at least in committee attendance, one exception is the Minister of Mineral Resources and Energy, Gwede Mantashe. With an enormous responsibility on his shoulders, the need to ensure energy security for the country, it could be assumed that he would be called to account at parliament quite often. He has attended only five committee meetings (13%) from July 2020 until June 2021. While this might reflect his prioritising of his workload, it also signals Parliament's seeming inability to call him to account. Another Minister who has failed to appear at many portfolio committee meetings is Minister of Transport Fikile Mbalula, who attended only 20% of the meetings held by that committee.

Pitching up to work does not necessarily equate with effective oversight.

For the 2021 report, OUTA attempted to understand what was in the national interest and whether MPs measured the Ministers' performance against such national interest. There are a number of guiding documents which illustrate what is in the national interest. These include the Constitution's Bill of Rights, the UN's Sustainable Development Goals (SDGs)³² and the World Bank's Millennium Development Goals (MDGs)³³, and the National Development Plan

Most ministers take their reporting to Parliament seriously, but not Minister Gwede Mantashe

Do ministers and MPs pay attention to the National Development Plan and international goals?

³¹ In September 2021, Lindiwe Sisulu was replaced and the ministry was split into the Ministry of Human Settlements, under Minister Mmamoloko Kubayi, and the Ministry of Water and Sanitation, under Minister Senzo Mchunu.

³² United Nations. The 17 Goals. Online here: <https://sdgs.un.org/goals>

³³ World Bank. Millennium Development Goals. Online here: <https://www5.worldbank.org/mdgs/>

(NDP)³⁴. Each year, the President uses the State of the Nation Address to speak to the national priorities for that year.

Members of the executive should therefore align their strategic plans with these agendas, and their performance agreements should reflect these as national priorities. Future reports will also assess whether these national priorities do align with the NDP and SDGs but for 2021, our comparison was to assess the executive alignment with SONA for a few of the committees.



The National Development Plan: Not obviously used as a guide for MPs' oversight

Table 4 below shows how the priorities outlined in SONA were picked up – or not – by the relevant departments in their presentation of their APPs and associated budgets. The table also attempts to document whether the MPs picked up issues in SONA in their interrogation of the departmental APPs.

³⁴ 15 August 2012. National Planning Commission. National Development Plan 2030: Our future – make it work. Available online here: <https://www.gov.za/issues/national-development-plan-2030>

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Table 4: The consideration of the national interest (as reflected in SONA) in portfolio committee oversight of the executive

PC on DMRE	PC on DPE	PC on CoGTA	PC on Transport	PC on Water & Sanitation
<ul style="list-style-type: none"> Developed an infrastructure investment project pipeline worth R340bn in network industries such as energy, water, transport and telecommunications. The Department of Mineral Resources and Energy will soon be announcing the successful bids for 2 000 MW of emergency power (RMIPPP). Government will soon be initiating the procurement of an additional 11 800 MW of power from renewable energy, natural gas, battery storage and coal in line with the Integrated Resource Plan 2019 (REIPPP). 	<ul style="list-style-type: none"> Restoring Eskom: Eskom has been restructured into three separate entities for generation, transmission, and distribution. Eskom will be looking to partner with investors to repurpose and repower part of its coal fleet. 	<ul style="list-style-type: none"> The necessary regulations have been amended and the requirements clarified for municipalities to buy power from independent power producers. Systems are being put in place to support qualifying municipalities. 	<ul style="list-style-type: none"> Resources have been committed from the fiscus to support the construction and rehabilitation of the major N1, N2 and N3 highways. The Infrastructure Investment Plan: R19bn in roads projects, work is underway to finalise finance structuring for these projects. 	<ul style="list-style-type: none"> Major water infrastructure projects: Phase 2A of the Mokolo and Crocodile River Project, and the uMkhomazi Water Project. Operation Vulindlela is focusing on reforms in the electricity, water, telecommunications, and transport sectors, as well as reforms to our visa and immigration regime. In the water sector, we are working through Operation Vulindlela to ensure that water licence applications are finalised within the revised timeframe of 90 days.

Departmental reflection of relevant SONA 2021 points in their 2021 APP. ³⁵				
DMRE	DPE	CoGTA	Transport ³⁶	Water ³⁷
6 800 MW RE, 3 000 MW gas, 1 500 MW coal, 513 MW storage	Eskom unbundling 2019. Progress report 2021.	Nothing specific but mention of service delivery improvements.	DoT presented on N2, N3 infrastructure build.	No mention of uMkhomazi, Crocodile in department's APP but was in Trans-Caledon Tunnel Authority (TCTA) presentation ³⁸ .
National Assembly PC comment on matters included in SONA				
PC on DMRE	PC on DPE	PC on CoGTA	PC on Transport	PC on Water & Sanitation
MPs raised issue of timing of roll out – not enough RE. (No specific reference to SONA.) MPs also queried RMIPP delays.	Small reference to Eskom transmission but no questions re progress.	Nothing regarding electricity.	MPs did not mention N2, N3 infrastructure but were focused on provincial roads.	MPs raised nothing about water infrastructure, although noted licence timeframes related to SONA (11 May 2021). In meeting on TCTA, MPs focused on Lesotho not on uMkhomazi or Crocodile (14 May 2021).

³⁵ 4 May 2021. Department of Mineral Resources and Energy. *Briefing by the DMRE on their Annual Performance Plan and Budget Vote for 2021/22*. Presentation to PC on DMRE. Available online here: <https://pmg.org.za/committee-meeting/32758/>

³⁶ 4 May 2021. Department of Transport. *Revised Strategic Plan (2020 – 2025) and Annual Performance Plan (2021/22)*. Presentation to PC on Transport. Available online here: <https://pmg.org.za/committee-meeting/32763/>

³⁷ 11 May 2021. Department of Water and Sanitation. *Overview of the 2021/22 Medium Term Strategic and Annual Performance plans (SP/APP) of the Department of Water & Sanitation (Vote 41)*. Presentation to PC on Water and Sanitation. Available online here: <https://pmg.org.za/committee-meeting/32832/>

³⁸ 14 May 2021. Trans-Caledon Tunnel Authority. *Trans-Caledon Tunnel Authority (TCTA) briefing on the Corporate Plan & Budget for 2021/22*. Presentation to PC on Water and Sanitation. Available online here: <https://pmg.org.za/committee-meeting/32906/>

In general, it appears that MPs did not see the priorities outlined by the President at SONA as a specific focus for their oversight work.



State of the Nation Address, 2021

To understand in more detail how MPs conduct their oversight, we have looked at case studies of portfolios. Due to limited capacity, this year, our analysis was limited to two committees, the PC on DMRE and the PC on DPE.

Parliament undertakes the process of compiling the BRRs as part of conducting oversight and making recommendations to the executive, particularly informing the amendment of the national budget.

These two extracts from the PC on DMRE's 2020 BRR³⁹ are instructive:

MPs did not see the priorities in the President's State of the Nation Address as a specific focus for their oversight work

³⁹ 10 November 2020. Portfolio Committee on Mineral Resources and Energy. Budgetary Review and Recommendation Report of the Portfolio Committee on Mineral Resources and Energy. Available online here: <https://pmg.org.za/tables-committee-report/4400/>

“The Money Bills Procedures and Related Matters Amendment Act (Act 9 of 2009) sets out the process that allows Parliament to make recommendations to the Minister of Finance to amend the budget of a national department.

“In October of each year, Portfolio Committees must compile Budgetary Review and Recommendation Reports (BRRR) that assess service delivery performance given available resources; evaluate the effective and efficient use and forward allocation of resources; and may make recommendations on forward use of resources. The BRRR are also source documents for the Standing/Select Committees on Appropriations/Finance when they make recommendations to the Houses of Parliament on the Medium-Term Budget Policy Statement (MTBPS). The comprehensive review and analysis of the previous financial year’s performance, as well as performance to date, form part of this process.”

“The Money Act states that Parliament and its committees must annually assess each department’s performance i.e. the BRRRs. The Money Act requires that these assessments must, *inter alia*, refer to departmental annual reports and financial statements. These assessments are usually conducted in early October.”

The BRRR goes on to describe the mandate of the portfolio committee as follows:

“The mission of the Portfolio Committee is to contribute to the realisation of a developmental state and ensure effective service delivery through discharging its responsibility as a Portfolio Committee of Parliament. Its vision includes enhancing and developing the capacity of Committee Members in the exercise of effective oversight over the Executive Authority. One of the Committee’s core objectives is to oversee, scrutinise and influence the action of the Executive and its agencies. This implies holding the Executive and related entities accountable through oversight of objectives of its programmes, scrutinising its budget and expenditure (annually), and recommending through Parliament actions it should take to attain its strategic goals and contribute to service delivery.”

The same report notes that the purpose of the BRRR is also laid out in law as follows:

“Section 77(3) of the Constitution stipulates that an Act of Parliament must provide for a procedure to amend money bills before Parliament. This constitutional provision resulted in the Money Bills Amendment Procedure and Related Matters Act, No. 9 of 2009 (the Act), which sets

The Budgetary Review and Recommendation Reports must assess service delivery performance and make recommendations on the Budget

out the process that allows Parliament to make recommendations to the Minister of Finance to amend the budget of a national department.

Section 5 of the Act, states that the National Assembly (NA), through its Committees, must annually assess the performance of each national department with reference to the following:

- The medium-term estimates of expenditure of each national department, its strategic priorities and measurable objectives, as tabled in the NA with the national budget;
- Prevailing strategic plans;
- The expenditure report relating to such department published by the National Treasury in terms of section 32 reports of the Public Finance Management Act, No 1 of 1999 (PFMA), as amended in 2009;
- The financial statements and annual report of such department;
- The report of the Committee on Public Accounts relating to the department; and
- Any other information requested by or presented to a House or Parliament.

“Committees must submit the BRRR annually to the NA. The BRRR assesses the effectiveness and efficiency of a department’s use and forward allocation of available resources and may include recommendation on the use of resources in the medium term.

“Committees must submit the BRRR after the adoption of the budget and before the adoption of the reports on the Medium Term Budget Policy Statement (MTBPS) by the respective Houses in November of each year.

“The Act therefore makes it obligatory for Parliament to assess the Department’s budgetary needs and shortfalls vis-à-vis the Department’s operational efficiency and performance. This is done taking into consideration the fact that the Department has oversight responsibilities over five entities.”

In our oversight report of 2020⁴⁰, OUTA identified several indicators of accountability. Indicator 3, that of substantive accountability, asked

“The BRRR assesses the effectiveness and efficiency of a department’s use and forward allocation of available resources”

⁴⁰ *MPs Asleep at the Wheel: OUTA 2020 Report on Parliamentary Oversight in South Africa.*

several questions which were drawn from the Fifth Parliament's failure to address state capture. For 2021, we have assessed substantive accountability through asking the following questions:

1. Did the committee assess the departmental performance against SONA (which was taken as a proxy for the National priorities for 2021 as outlined by the president) in other words, did Parliament assess whether the actions of the department are in line with the national interest?
2. In terms of its own performance, what had the department achieved?
3. What reasons were given for poor performance and what concrete recommendations were made by the committee in its BRRR to correct this?
4. What audit outcomes were achieved?
5. What recommendations did the committee make to ensure that the department addresses any audit outcomes flagged by the AGSA?
6. If the shortcomings, wasteful expenditure, or failures of the department are recurring, what action did the committee recommend in its BRRR to address this?
7. How did the department APP and Budget presented in May 2021 respond to the BRRR of 2020?
8. What changes were recommended to the department budget by the committee in 2021?

For the detailed case studies see **Appendix B**, which looks at the Portfolio Committee on Mineral Resources and Energy and the Portfolio Committee on Public Enterprises. We acknowledge the limitation of choosing only two case studies, but we have intentionally chosen these two portfolios as without a secure, sustainable, and affordable energy supply, any post-Covid-19 recovery plan will falter and be undermined. We would therefore expect that MPs in those portfolios would be focused on delivery.

In both case studies, MPs ask many questions and do make very critical comments about their respective departments. **Table 4** shows how the committees do take SONA into account, and the PC on DPE does look at

This is how OUTA assessed substantive accountability in 2021

the NDP and issues such as climate change. However, there is still relatively poor correlation between what the BRRRs recommend and what goes into the APPs. Recommendations regarding audit outcomes and recommendations to the Minister regarding governance have been acknowledged as having been repeated in previous years but with no satisfactory outcomes. In the PC on DPE, MPs raised the issue of the Government Shareholder Management Bill, in addition to the existing Shareholder's Compacts required by National Treasury with state-owned companies (SOCs),⁴¹ which was raised in 2019 as something that the outgoing Fifth Parliament felt would make a difference in how SOCs are governed. Given that this committee in the Fifth Parliament was the only one to investigate allegations of state capture and pass its subsequent report⁴² over to the Commission of Inquiry into State Capture, it would be assumed that Parliament would focus on this to call a halt to corrupt practice. But this committee has become lacklustre in its insistence that the Minister act in this regard.

The PC on DMRE is facing issues in the department of non-compliance, large amounts of wasteful expenditure, and consequence management cases where no resolution takes place, in one case, since 2012. MPs are frustrated by the lack of progress, but at no time do they ever use the power that they have, which is to apply consequence management to the department and reduce its budget.

A clear case is with Nuclear Energy Corporation (NECSA), which has received an outcome of "disclaim with findings" for both 2017/18 and 2018/19 and has an outstanding audit in 2019/20, yet the PC on DMRE continues to approve increasing amounts of funds to be allocated to this programme, even though under the Covid-19 period, this meant the failure of the department to electrify 43 000 households.

The PC on Transport provides one mechanism that might encourage recalcitrant departments to be more accountable. The PC on Transport has directed National Treasury and the Presidency to step in.

There is relatively poor correlation between what the BRRRs recommend and what goes into the Annual Performance Plans

Committees do not use their powers to impose consequences on departments

⁴¹<https://pmg.org.za/committee-meeting/17404/>

⁴² 28 November 2018. Portfolio Committee on Public Enterprises. *Report of the Portfolio Committee on Public Enterprises on the Inquiry into Governance, Procurement and the Financial Sustainability of Eskom*. Available online here: https://static.pmg.org.za/Final_Report_-_Eskom_Inquiry_28_NOV.pdf

Here is an extract from this committee’s 2020 report:

“The Committee remains concerned that the measures listed below for the current year under review only differ by one measure from those which were taken from the previous annual reports of the Department that were identical to the measures put in place in the annual reports for 2014/15, 2016/17, 2017/18 and 2018/19. The concern is valid given that the Transport portfolio still incurred irregular expenditure in the current period under review, which would indicate that the measures were either insufficient or ineffective or that the Department had not implemented these measures appropriately.

“The Committee also noted with dismay that the previous measure that sought to ensure training was provided to staff involved in the procurement process had been removed from the measures in place during the current year under review. This is especially concerning as the Committee extended recommendations to the Minister, as well as the Minister of Finance to assist with ensuring that officials in SCM⁴³ were sufficiently trained to ensure that irregular expenditure is prevented. The Department has therefore not improved or reviewed these measures, as requested by the Committee specifically during the 2018 and 2019 BRRR.”⁴⁴

In its 2020 BRRR report, the PC Transport expresses its dissatisfaction not only to the Minister of Transport, but also recommends to Minister of Finance to intervene to strengthen supply chain management (SCM) policies and compliance, and further recommends to the Minister in the Presidency that there needs to be urgent resolution on the future funding model for the South African National Roads Agency (SANRAL). Despite its harsh criticism of the Minister of Transport, opposition parties appear to have rejected the adoption of the report. However, it appears on the ATC list⁴⁵ as a report that was tabled and did not reflect any change to the departmental budget.

Our observation is that although MPs raise their frustrations and voice valid concerns in their committee discussion, this does not translate into any meaningful consequence management.

Our observation is that although MPs raise their frustrations and voice valid concerns in their committee discussion, this does not translate into any meaningful consequence management

⁴³ Supply Chain Management

⁴⁴ 25 November 2020. Portfolio Committee on Transport. *Budgetary Review and Recommendation Report (BRRR) of the Portfolio Committee on Transport*. Available online here: <https://pmg.org.za/taled-committee-report/4432/>

⁴⁵ 26 November 2020. Parliament. *Announcements, Tablings and Committee Reports*. Number 175.

Our conclusion is that Parliament is failing to exercise the powers it possesses to amend the budgets. There is a saying, “follow the money”. If Parliamentary committees reduced department budgets as part of the consequences of failing to account, we would anticipate a rapid turnaround in the executive being accountable to Parliament. But that takes political will.

Both Minister Mantashe and Minister Gordhan are prominent stalwart politicians in the ruling party, the ANC. MPs Sahlulele Luzipo, chair of the Portfolio Committee on Mineral Resources and Energy, and Khaya Magaxa, chair of the Portfolio Committee on Public Enterprises, are junior politicians by comparison. Is this what is preventing effective oversight? Corruption and state capture continue to haunt South Africa and, once again, Parliament needs to act swiftly and decisively to counter such regressive forces.

As part of their oversight function, MPs should ensure that the executive acts in the national interest. However, many of the influential MPs in the current Parliament are disgraced members of the executive with allegations of misconduct hanging over them.

The Commission of Inquiry into State Capture has shone a bright light into the practice of the way the ruling party makes decisions. What has emerged from the testimony given at the commission is that political party agendas have been assumed to be in the national interests, and that if there is a situation where party interests are undermining the national interest, then loyalty to the political party trumps national interest.

Further than an abstract national or public interest, some testimonies from former ANC MPs such as Makhosi Khoza suggested that “the situation in the ANC was that anyone who sought to uphold the rule of law would be punished”.⁴⁶ In his evidence to the commission, Mantashe was clear about the expectation that ANC MPs should toe the party line because it was through the party that they were elected. He said that “Breaking the position of the party is a betrayal of the

Parliament fails to exercise its powers to amend the department budgets when those departments fail to account adequately

⁴⁶ 4 February 2021. Jan Gerber. *Makhosi Khoza tells Zondo Commission why she became disillusioned with the ANC*. News24. Available online here: <https://www.news24.com/news24/southafrica/news/makhosi-khoza-tells-zondo-commission-why-she-became-disillusioned-with-the-anc-20210204>

party’s position”.⁴⁷ Despite acknowledging that the party-political determination of senior public sector appointments is strictly speaking unconstitutional, our current President and former chairperson of the ANC deployment committee, Cyril Ramaphosa, defended the practice as something that happens in democracies around the world.

This argument came despite him also acknowledging that no record or minutes of deliberations and decisions of that deployment committee had been kept, meaning there was and never can be any accountability for those deliberations and decisions – or their ultimate impacts – since there is no transparency whatever. This problem can be observed in the performance of parliamentary committees’ duty of oversight as well. Other senior ANC MPs who testified at the commission stated categorically that “study groups” behind closed doors are often the locus of real decision-making, where inter-party-political deliberation in full public view cannot take place. This transparency issue has also constrained civil society’s ability to monitor and hold accountable some of Parliament’s own internal accountability mechanisms, such as the Code of Conduct as championed by the Joint Committee on Ethics and Members’ Interests.

ANC party “study groups”
behind closed doors often
make the real decisions, out
of public view



⁴⁷ April 2021. Nthakoana Ngatane. *Forcing ANC MPs to toe party line not unconstitutional – Mantashe*. Eyewitness News. Available online here: <https://ewn.co.za/2021/04/20/mantashe-tow-the-party-line-or-face-the-music>

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A prominent excuse put forward by current National Assembly House Chairperson for Parliament's failure to hold state capture culprits to account, and for its delay in dealing with associated allegations seriously and timeously, is financial constraints. Cedric Frolick told the commission that "I can make the statement with confidence that the oversight function of Parliament is not properly funded".⁴⁸

Yet, the High-Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change, a panel of highly experienced political and academic experts chaired by former Deputy President Kgalema Motlanthe and commissioned by government, wrote in 2017: "The consensus appears to be that financial resources are not the main binding constraint to the realisation of positive outcomes. Instead, there are instances where weak outcomes reflect a lack of political will to pursue stated policy objectives... These breakdowns in execution occur despite an extensive machinery designed to monitor the executive and to hold it accountable for outcomes. This brings into focus questions concerning the effectiveness of governance and accountability mechanisms, including the role of Parliament in providing oversight."⁴⁹ Like the High-Level Panel, we have proposed ways to deepen the relation between constituencies and their representatives to ensure more direct accountability to the public, especially insofar as holding representatives of the executive to account is concerned.

Further, OUTA has released a report wherein we argue that Parliament's budget has been mismanaged. In essence, we found that transfers to political parties and (over and above the MPs' generous salaries at the taxpayers' expense) outweigh all other current and potential expenditures.⁵⁰ It is therefore not surprising that little remains to be allocated to the commission and operation of Parliamentary committee inquiries. To remedy this situation, we

Parliament transfers more money from its own budget to political parties than it spends on anything else, including oversight

⁴⁸ 6 February 2021. Jan Gerber. 'Parliament's oversight function is not properly funded' – Cedric Frolick tells Zondo Commission. News24. Available online here: <https://www.news24.com/news24/southafrica/news/parliaments-oversight-function-is-not-properly-funded-cedric-frolick-tells-zondo-commission-20210206>

⁴⁹ November 2017. *Report of the High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change*. Available online here:

https://www.parliament.gov.za/storage/app/media/Pages/2017/october/High_Level_Panel/HLP_Report/HLP_report.pdf

⁵⁰ 14 October 2021. Organisation Undoing Tax Abuse. Holding onto power: How political parties have taken R13.879 billion from the fiscus since 2009. Available online here: <https://outa.co.za/blog/newsroom-1/post/this-is-who-really-funds-political-parties-you-the-taxpayer-1094>

recommend that Parliament's budget of more than R2 billion a year⁵¹ be fundamentally reprioritised to ensure that provisions are made for oversight.

The following extracts from the High-level Panel Report echoes findings in OUTA's research and analysis, as well as its recommendations:

"1.A recurrent theme emerging from research, public voices and expert round tables is that while good laws have been made, failed implementation has resulted in poor outcomes. This raises the question of how the executive is able to, simply put, get away with poor implementation. The Panel is of the view that part of the answer lies in the narrow interpretation by Parliament of its powers of oversight. The Panel would like to see a more active Parliament, one that ensures the strict enforcement (or, where lacking, the introduction) of penalties for lack of performance by the executive. Parliament should also facilitate meaningful and effective public participation in the legislative and policy-making cycle."

OUTA agrees that there must be an overhaul of consequence management as well as public participation processes – which have proven to be ineffective. Lastly, Parliament's narrow interpretation of its own powers must be publicly checked.

"2. A process should be in place to appoint key officials in a transparent manner. The challenge of implementation is also linked to the capabilities and values embodied by key leaders at state institutions. Parliament should consider opening up debate on the desirability and feasibility of a system that incorporates public participation and Parliamentary oversight for certain categories of appointments to public office to increase independence (where required) and accountability, to achieve the objectives of a capable developmental state."

Rather than defending cadre deployment as the President has, Parliament should initiate proceedings to change legislation in such a way that the People, through the Legislature, can influence appointments.

"3.The legislative process should be overhauled. There have been a series of judgments from the Constitutional Court about the need for

Parliament should not interpret its own powers so narrowly

⁵¹ Budget 2021 shows that Parliament's budget for 2021/22 is R2.144 billion, excluding MPs salaries paid directly from the National Revenue Fund.

effective public participation in the legislative process. There is concern about repeated failures to sufficiently engage those directly affected through inclusive public hearings, as evidenced by these judgments. Many experts also warned of developing laws ‘in silos’, rather than adopting a cross-sectorial and integrated approach to deep-seated structural problems such as spatial inequality. Parliament currently appears overly dependent on government departments to develop Bills, which reinforces the problem of siloed interventions. We recommend that more use be made of ad hoc committees spanning several interconnected areas, and that legal drafting capacity be developed in Parliament.”

OUTA concurs especially with the Panel’s observation that policymaking in Parliament has become inappropriately dependent on government departments, as have financial oversight practices.

“4.The accountability of Parliament to the public should be strengthened, by more direct linkages between Members of Parliament and their constituencies. The feedback loop from communities to legislation depends in part on the electoral system in place. The Panel recommends that Parliament amend the Electoral Act to provide for an electoral system that makes members of Parliament accountable to defined constituencies in a proportional representation and constituency system for national elections.”

OUTA is compiling a forthcoming report on the ongoing development of an amendment, as ordered by the Constitutional Court in June 2020, to the Electoral Act to provide for independents to stand for election to the National Assembly and National Council of Provinces in Parliament, as well as to the Provincial Legislatures.

In all these recommendations, the Joint Committee on Ethics and Members’ Interests lack of action in response to legitimate complaints lodged with it by civil society should be considered. **Appendix C** to this report is an account of interactions OUTA has with this committee over the past four years, which led to naught. The essence of those complaints is that persons with serious, yet unresolved, allegations of corruption, bribery, treason, and general maladministration against them have been deployed in parliamentary positions of power. Chairpersons of key committees in the National Assembly such as Communications, International Relations, Transport, and Environment, Forestry and Fisheries have been individuals with questionable histories that may be unethical at best and criminal at worst. We argue that such individuals have no place in the very institution that is constitutionally

OUTA complaints to the Joint Committee on Ethics and Members’ Interests over four years have been ignored

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mandated to represent the People and champion the public interest in the face of obvious political bias and agendas. Our experience engaging directly with the Ethics Committee and other structures suggests that this mandate has not been met. Parliament's Code of Conduct has been violated on several occasions in full public view, with little to no consequences to mention.

In October 2017, OUTA have lodged a complaint with Parliament's Joint Committee on Ethics and Members' Interests as an alternative to mainstream law enforcement channels, which have been inactive in acting on our allegations. Still, for three years, we have consistently attempted to interact with the Ethic & Members Interest committee staff to get a basic understanding of the status of our complaints. Thus far, we have not received any substantive response to our requests for feedback. OUTA are mindful that the procedures of the joint committee are strictly confidential, but this has developed into a barrier to keep officials accountable rather than empowering the Code of Ethics. The purpose of this joint committee is twofold. Its task is, firstly, to implement the Code of Conduct and secondly to develop standards of ethical conduct for Members of Parliament. A breach of the Code of Conduct is dealt with by the Joint Committee, which may investigate and recommend to the Assembly sanctions or other steps that it deems necessary.

We are concerned that this matter has been unresolved for too long, despite the committee having all the evidence to deal with misconduct. We have sent various letters and emails asking members of parliament to reach a decision and hold transgressors accountable for their unethical and unlawful behaviour. But wrongdoers get shifted into chairperson positions.

We have called for transgressors to be held to account, but instead they are promoted to chair committees

7. Constituency Engagement

OUTA's recent report⁵² on the amount of money that Parliament distributes to political parties, seemingly without worrying about that they do with it, raises concern. This report notes that the AI Jamah-ah party told OUTA that there was no monitoring by Parliament of the spending or of the constituency offices it is supposed to fund. If MPs are in their constituencies, they should be engaging with local constituents and bringing those issues back into their parliamentary agendas. In our monitoring of committee discussions, we see very little evidence that this is happening.

In our case studies, both the PC on DMRE and the PC on DPE have delayed bringing critical legislation to Parliament, and in the case of the PC DPE the committee admitted that there had not been sufficient time to hear from several entities that should report to it. The PC on DMRE also acknowledged that time was a constraint in its abilities to listen and engage with departments.

OUTA is concerned at the trend that MPs appear to be in their constituencies for longer periods of time and their parliamentary programme has been curtailed considerably this year. Given that this is an election year, and as MPs are operating virtually, they are in their constituencies permanently, so the worrying conclusion might be drawn that MPs are more concerned with ensuring that their political parties do well at the polls than in ensuring that their Cabinet colleagues are held to account. It should be noted that 2021 is not a national election year and these MPs' positions are not at risk. This is a local elections year, a completely different sphere of government.

Parliament disburses substantial funds to political parties but does not monitor this spending

⁵² Holding onto power: How political parties have taken R13.879 billion from the fiscus since 2009.

Table 6 below shows the amount of leave, much of it justified as “constituency” work periods, taken by MPs for 2021 compared to preceding years.

Table 6: National Assembly mid-year leave periods

Year	Start	End	Length
2007	2 July	27 July	3 ½ weeks
2008			No record found
2009	13 July	31 July	2 weeks
2010	7 June	16 July	5 weeks
2011	4 July	22 July	2 weeks
2012	25 June	20 July	3 ½ weeks
2013	24 June	19 July	4 weeks
2014			No record found
2015	29 June	20 July	3 weeks
2016	27 June	22 July	4 weeks
2017	3 July	31 July	4 weeks
2018	2 July	30 July	4 weeks
2019			No record found
2020	17 June	27 July	6 weeks
2021	7 June	16 August	10 weeks

Over the last two decades, Parliament has had a mid-year recess. In Parliament’s schedule for 2021, this entire period is specifically listed as a “constituency period” for the National Assembly and NCOP. This period is for MPs to engage with the communities which they represent in Parliament. Traditionally, the recess period has included leave for MPs, usually involving two or three weeks for constituency work and then a further two weeks for leave. Parliamentary programmes show that in 2010 the recess was five weeks and, in subsequent years, two to four weeks. In 2020, the year when Covid-19 arrived, MPs took six weeks. But in 2021, it is much longer: the National Assembly closed on 7 June for 10 weeks, and the National Council of Provinces closed on 21 June for eight weeks. Both houses resumed on 16 August. This is a substantial amount of time, for which MPs do not account.

During recess, the National Assembly and NCOP do not sit, although there is a mechanism for tabling reports. The dozens of parliamentary committees are the engine rooms, where the work happens. These

MPs get weeks and weeks of “constituency period” time away with no accounting for how they spend this time

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committees are where oversight of departments and state entities, and processing of legislation is meant to take place.

In the working programme for the term, the 26 National Assembly committees meet sometimes more than once a week. During recess, the committee work slows considerably. This year, possibly due to the introduction of virtual committee meetings, there have been more committee meetings during the recess than usual, most apparently catching up on unfinished work. However, there is little transparency over the constituency work done or the use of the public money funding it. Instead, the public must rely on the honesty and work ethic of individual MPs.

During recess periods, work slows considerably

8. Structural Reform

Unfortunately, it is difficult for the public to have any trust in the institution of Parliament when it is populated by those who have the shadow of corruption hanging over them. This is a direct failure in that it contradicts Parliament’s own conception of its role in terms of accountability and oversight as referenced, verbatim, in Section 3.1 of this report.

MPs have a five-year term. They may then depart or return on the whim of their political party leaders. For some MPs who hold powerful positions such as whips or chairpersons of committees, any progressive ways of functioning that may be put in place during their term can be reversed by their successors. Some politicians in influential positions have retained these positions for more than a decade and, under their watch, there has been almost no meaningful progress in realising the constitutional obligation to involve the public in Parliament’s functioning. As we highlighted in our 2020 Parliamentary oversight report, according to OUTA’s affidavit to the Commission of Inquiry into State Capture: “To our profound disappointment, we have repeatedly experienced – in several Portfolio Committees of the National Assembly in Parliament – the brazen flouting of genuine and non-partisan oversight of executive conduct. This challenge is, in our view, a fundamental barrier to the realisation of basic human rights through accountable targeted expenditure in the public sector, as implied in the Bill of Rights under the Constitution”.⁵³

In our 2020 report, OUTA highlighted the oversight and accountability model of Parliament (OVAC), which identifies the consideration by committees of annual reports of organs of state and the Auditor-General’s reports as one of the most important aspects of oversight.⁵⁴ According to the OVAC report, the current practice of committees is as follows: to evaluate the work of government from a broader perspective, committees may invite experts from outside government

It is difficult for the public to have any trust in the institution of Parliament when it is populated by those who have the shadow of corruption hanging over them

⁵³ *MPs Asleep at the Wheel: OUTA 2020 Report on Parliamentary Oversight in South Africa*. Page 7.

⁵⁴ *MPs Asleep at the Wheel: OUTA 2020 Report on Parliamentary Oversight in South Africa*. Page 8.

to provide background knowledge and analysis on relevant issues.⁵⁵ In addressing public participation, the OVAC report referred to the Constitution but felt that there needed to be a separate model on public participation. The OVAC report provides an insight into how Parliament believes oversight and accountability should function in Parliament and, given that this is the guiding document referred to on the Parliament website, it is assumed that this is the current model of oversight and accountability. Civil society organisations make regular submissions to Parliament, for example, to put forward their views on how funds should be allocated to departments, but as we have shown none of these submissions have resulted in any change to the national Budget. Parliament has research units, legal advisors and content advisors all dedicated to support parliamentarians in their work, including their oversight work.

There are political structures such as the Chairpersons' forum, the political party whips, and Parliament itself is headed by a politician, the Speaker with her Deputy Speaker. Parliament has a management committee, which meets weekly to determine the programme of Parliament. With this system in place, why is Parliament unable to conduct oversight and why do politicians seem completely dependent on the very same departments that they are supposed to hold accountable, for information? It is unlikely in the least that departments would show their bad sides and the only credible way for MPs to get a different perspective is to engage with stakeholders, including civil society organisations.

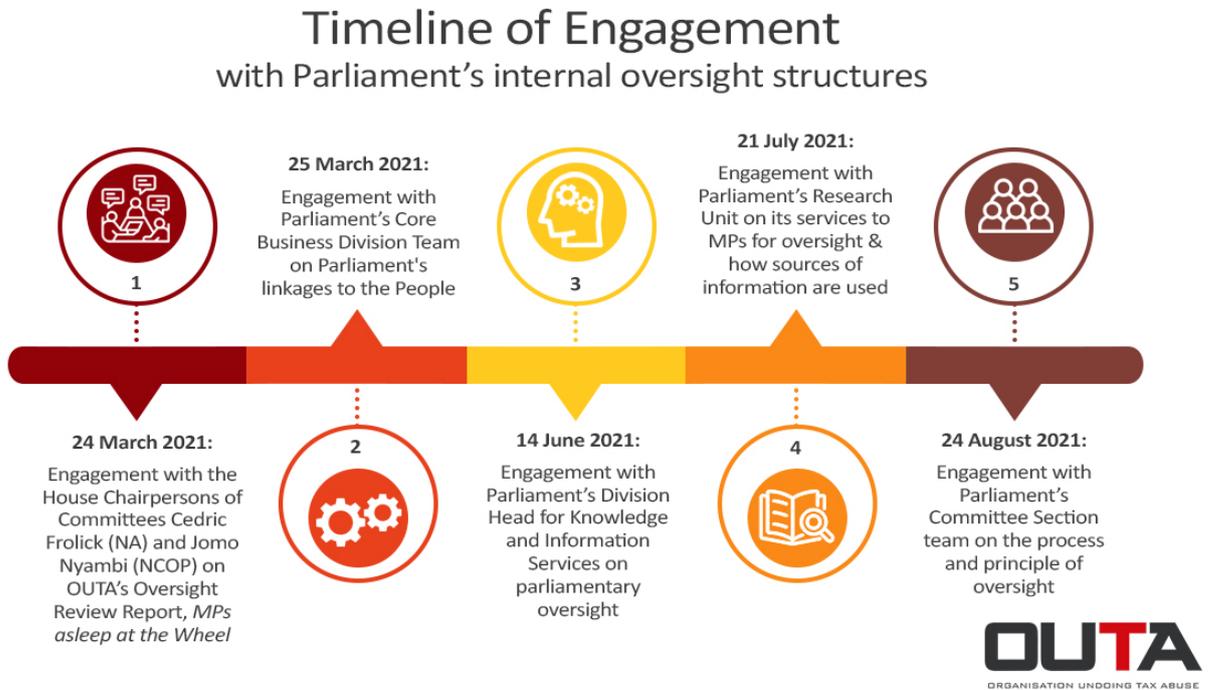
As a result of our investigations into the workings of the institution of Parliament, OUTA resolved to engage with the internal structures with a view to understanding their constraints and improving transparent governance and accountability. The timeline in Figure 6 below reflects OUTA's systematic engagement with the parliamentary institution in terms of actual interactions.

The timeline in **Figure 6** below relates our engagement with the parliamentary institution in terms of actual engagements.

Civil society organisations make regular submissions to Parliament on how funds should be allocated to departments, but none of these submissions have resulted in any change to the national Budget

⁵⁵ 13 January 2009. Parliament. *Report of the Independent Panel Assessment of Parliament*. Available online here: <https://www.parliament.gov.za/storage/app/media/BusinessPubs/PanelAssessmentParliamentReport.pdf>

Figure 6: Timeline of Engagement with Parliament Internal structures on Oversight



We simultaneously started an engagement process with the political structures and the management of Parliament; and wrote to the NA’s Chair of Chairpersons, Cedric Frolick, eventually meeting with him and his counterpart, Archibold Jomo Nyambi from the NCOP. The meeting was cordial and constructive with the MPs agreeing that they would set up further engagements where we might present the findings from our 2020 oversight report. Then followed a series of postponements, and we were then referred to the Deputy Speaker who, until now, has been unable to meet with us.

The aim of that engagement was to discuss mechanisms of how civil society could strengthen the parliamentary oversight process, enabling politicians to gain alternative sources of information, for example through a series of public hearings ahead of the BRRRs. This would

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address one of our key findings, that MPs appear to rely on the very government departments that they are supposed to hold to account, for the information they need to do so.

In our engagement with the Parliament management structure, we started with the Speaker's Office and were then referred to the Division Manager: Core Business, Ressida Begg. She and her team met with us, and we provided some input into the participation model that Parliament was at that time finalising. Ms Begg was constructive and efficient and facilitated a follow-up meeting with the Committee Section and the Research Section. These meetings then took place, with the research unit expressing willingness to be open, and to engage. OUTA produces several reports which we expressed willingness to share with parliamentary researchers.

OUTA would also like to understand why committee reports compiled by the Research Section and Committee Section are not available on Parliament's website. These reports obviously inform the MPs' deliberations during their meetings and, once finalised, there appears no acceptable reason why these reports should be withheld from the public. A cornerstone of evidence-based research should be the importance of such research to be subject to peer review. It would also strengthen the research reports should researcher have an open relationship with NGOs and academia. The research reports and committee reports would be referenced, and specific gaps or biases would then be picked up during such reviews.

Unfortunately, despite follow up emails, OUTA is still waiting for the Committee Section and Research Section to confirm that OUTA (and others) are free to contact the researchers and to receive the research reports.

It therefore appears that despite the welcoming and constructive nature of the engagements with Parliament to date, there is something hidden in the woodwork, that appears actively working against making Parliament part of an open and accountable democracy. There is also an apparent slowness to take any real action, which manifests in many promises which do not get delivered on.

OUTA will continue to engage with parliamentary structures for the following year but our emphasis is likely to include broadening our engagement with other like-minded civil society organisations.

Why are committee reports compiled by Parliament's researchers not available to the public?

9. Conclusion

This report has looked at different aspects of Parliamentary workings, to try to establish how best to improve parliamentary performance. In our view, the improvement we are looking for is a responsive Parliament, that holds the executive accountable and whose operations take place in a transparent manner and shows a welcoming and proactive stance to public participation.

The OVAC model has gone through three Parliaments since 2009 but has still not been operationalised. It is difficult to escape from the perception that Parliament has been hollowed out and filled with unethical people and, until that is addressed, we cannot expect any real accountability. However, Parliament has taken the opportunity provided by the global pandemic to institute increased communication with its voters. Communication is not participation, but we have hopes that going into next year, Parliament will once again open its doors and operate a hybrid system of physical attendance and virtual viewing. This will strengthen organisations like OUTA's ability to engage with parliamentary processes.

The BRRR process and its importance for oversight cannot be over-emphasised and OUTA is concerned that certain SOEs have opted not to account to Parliament. CEF and NECSA produced legal opinions to support their views that they did not need to account. We believe this is a dangerous precedent and, whether legally bound to submit to parliamentary oversight or not, OUTA is very concerned at the attitude that such SOEs exhibit regarding open governance. Secrecy is the friend of corruption and transparency is the watchword of good governance.

Open governance and transparent operations should mean that researchers should engage with academics and civil society organisations, and exchange information to improve accountability. Similarly, OUTA believes that MPs would benefit from listening to experts who are familiar with the subject content of their portfolios but espouse a different view to government.

In the beginning of this report, OUTA put forward the view that parliament is a failed institution. In our analysis, OUTA concludes, in agreement with Judge Zondo, that there is no meaningful oversight and that MPs are marking time, making a noise but not making any

We want a Parliament that holds the executive to account and welcomes public participation

Our conclusion: Parliament does not conduct meaningful oversight, the MPs make a noise but no discernible progress in addressing state capture

discernible progress in addressing state capture. This is not surprising given that many powerful people in parliament have allegations of unethical conduct hanging over their heads.

Parliament has played a role in asking hard questions after media exposure of alleged wrong doing, but stronger leadership is needed if parliament is to take its rightful place as a pillar of democracy.

As South Africa emerges from a pandemic that shut down spaces for engagement and participation, OUTA calls on Parliament to be at the forefront of incentivising ethical leadership and to use its powers to direct funds to where these are efficiently and effectively used in the public interest. OUTA also reminds MPs that they are the servants of the people and should work together with citizens to hold the executive accountable.

As the guardian of our democracy, Parliament has failed South Africa



10. Acknowledgements

This report would not have been possible without the detailed and timely reporting of minutes and other parliamentary matters undertaken by Parliamentary Monitoring Group and the People's Assembly.

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11. This is OUTA

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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Appendix A: Methodology

In our qualitative analysis, looking at our expectations of MPs, OUTA's mandate is generally focused on examining how money is spent, how monies collected by the fiscus are allocated by the National Treasury to ensure that South Africa is a healthy society, with an economy that serves its people.

Parliament has 26 national assembly portfolio committees⁵⁶ aligned to the executive departments in cabinet. The new economic cluster of ministries consists of Finance, Public Enterprises, Small Business Development, Mineral Resources and Energy, Employment and Labour, and Trade and Industry⁵⁷.

These six economic cluster committees should be the focus of the OUTA 2021 Parliament report. However, due to capacity constraints, OUTA has examined those committees where OUTA has existing projects.

OUTA, together with many other civil society organisations, submits comments on the proposed direction that the executive plans to spend its money. This process involves the processing of money bills and is overseen by the Standing Committee on Appropriations. The reports of this committee were analysed to see how civil society

comments were considered and what changes to the allocation of money were implemented as a result.

The National Assembly portfolio committees are also required to peruse the plans of the relevant departments and their budgets, and make recommendations as to changes that must be made. In this report, OUTA was able to analyse only a small number of committees relevant to OUTA's projects, to ascertain what the committees put forward. It was also noted whether these portfolio committees held public hearings or reflected civil society input in their reports. The portfolio committees assessed for 2021 were the PC on Mineral Resources and Energy, and the PC on Public Enterprises.

In October, as per the parliamentary cycle, departments and state-owned entities are required to report to Parliament on their progress for the year. The Auditor-General South Africa and the Department of Performance Monitoring and Evaluation in the Presidency also report. Each portfolio committee then produces a Budgetary Review and Recommendation Report (BRRR).

Each year, the President presents the State of the Nation Address (SONA) which provides some

⁵⁶ The number of committees in the National Assembly is not necessarily constant as committee configurations change as executive departmental portfolios shift. For example, water is now with sanitation, and Forestry moved to Environment with Fisheries.

3. ⁵⁷ 3 June 2019. Justin Brown and Lesetja Malope. *New economic cluster ministers under pressure as SA faces jobs and energy calamity*. City Press. Available online here: <https://www.news24.com/citypress/business/new-economic-cluster-Ministers-under-pressure-as-sa-faces-jobs-and-energy-calamity-20190603>

direction to year's priorities. Annual Performance Plans (APPs) and Budgets of the departments should then reflect those priorities.

OUTA uses the BRRRs and compares them to the APPs presented by departments in May the following year. This qualitative analysis attempts to ascertain if recommendations from MPs have been acted on by the executive and changes are then reflected in the APPs of the following year.

For 2021, due to capacity constraints, this in-depth qualitative analysis was restricted to a small number of committees.

There is one other committee which is not related to the executive but is concerned with the conduct of Members of Parliament (MPs). The Joint Committee on Ethics and Members' Interests is a multiparty committee which deals with complaints and investigations related to the conduct of MPs. This is a necessary part of checks and balances and, in our view, this committee should help to meet the public's expectation that MPs should act with integrity in their responsible office. OUTA has laid several complaints with this committee and future reports will look at what the outcome has been to date.

Limitations of our study: One of the criticisms that OUTA received in our interaction with Parliament this year was that there are many committees, and our findings are drawn from a relatively small number of committees. Our quantitative analysis covers nine committees, which is 35% of the National Assembly portfolio committees. We feel that is fair coverage and stand by our results.

With respect to qualitative studies, however, for 2021, we had limited capacity. We therefore

focused on committees whose portfolios underpin the economy of South Africa, namely the PC on Public Enterprises, which should be delivering significant oversight and driving a legislative reform process to get Eskom back on its feet, as well as the PC on Mineral Resources and Energy, for similar reasons. It is acknowledged that secure, sustainable affordable energy supply is the enabler needed for economic recovery. In OUTA's view, the success of Parliament's functioning can be judged in how it is handling this issue.

As with the 2021 report, OUTA has analysed the performance of the NA committees through the following matrix:

1. The number of times the Ministers attend committee meetings;
2. The number committee meetings that each portfolio held;
3. The number of public hearings held; and
4. The extent to which the 2020 BRRR finds its way into the 2021 APP.

To assess whether the MPs are ensuring that they consider current affairs, corruption allegations etc, the BRRR recommendations of 2020 were compared with the departments' APPs to see whether any of the recommendations changed the way that the executive carried out its work.

To assess whether MPs are including current affairs and important trends in their oversight work, the committee's interrogation of the APP was analysed in terms of its response to SONA, Covid-19, climate change and corruption.

Appendix B: Parliamentary Oversight Case Studies

Portfolio Committee on Mineral Resources and Energy

The following questions were used to measure performance:

1. Did the committee assess the departmental performance against the State of the Nation Address and the National Development Plan? In other words, did Parliament assess whether the actions of the department are in line with the national interest?
2. In terms of its own performance, what had the department achieved?
3. What reasons were given for poor performance and what concrete recommendations were made by the committee in its Budgetary Review and Recommendation Report (BRRR) to correct this?
4. What audit outcomes were achieved?
5. What recommendations did the committee make to ensure that the department addresses any audit outcomes flagged by the Auditor-General South Africa?
6. If the shortcomings, wasteful expenditure, or failures of the department are recurring, what action did the committee make in its BRRR to address this?
7. How did the department's Annual Performance Plan (APP) and Budget presented in May 2021 respond to the BRRR of 2020?
8. What changes were recommended to the department budget by the committee in 2021?

Context

In our 2020 Parliamentary oversight report, we noted that the 2019 BRRR contained 22 recommendations to the Department of Mineral Resources and Energy (DMRE). Several of these included investigating the failure of the Nuclear Energy Corporation (NECSA) to table its annual financial statements timeously, to provide robust oversight on the Central Energy Fund (CEF) and NECSA, and several investigative issues, including ensuring that there is consequence management and investigations. They also made recommendations regarding various pieces of legislation that have not been finalised. During the 2020 APP presentation and several subsequent meetings, the same issues were raised, and the committee once again asked for follow up progress reports.

There is a history of the PC on DMRE asking and recommending action but not seeing action. One of the legacy mining issues is the South African Human Rights Commission on the mining impacts on affected communities and the necessity of instituting measures to protect the rights of mining-affected communities.

1. Did the committee assess the departmental performance against SONA and the NDP? In other words, did Parliament assess whether the actions of the department are in line with the national interest?

As can be seen from the table, the PC did raise the issue of renewable energy delays, but it does not

seem that the NDP or other documents have been considered by the committee.

2. In terms of its own performance, what had the Department achieved?

The department has performed poorly but had spent all its money. See Table 1 below.

The BRRR states that the department “had 41 performance targets and it only achieved 13 or 32 per cent of the set targets. During the year under review, the Department achieved 17 or 52 per cent of the set performance targets. As evident in table one (1) below, although not significant, the Department has improved in its performance”.

Table 1: Summary of financial and performance information 2014/15 – 2019/20

Year	No. of targets set	No. of targets achieved	% Targets achieved	% Budget Spent
2014/15	39	17	44%	83.6 %
2015/16	76	39	51%	98%
2016/17	77	32	42%	99.5%
2017/18	67	28	42%	97.54 %
2018/19	41	13	32%	98.9%
2019/20	33	17	52%	96.4%

3. What reasons were given for poor performance and what concrete recommendations were made by the committee in its BRRR to correct this?

The department referred to legal matters underway to excuse its failure to act. The committee was displeased as wasteful expenditure had been happening since 2012. The committee was unhappy with the perpetual postponement of legislation to Parliament and the department cited stakeholder discussions and the need to align some legislative reform with Eskom restructuring.

The committee made 13 recommendations to the Minister:

1. Ensure that there should be the required urgency by management in

responding to the AGSA’s requests relating to addressing risks identified and improving internal controls that will improve the audit outcomes of both the department and its entities.

2. Ensure and emphasize that there should be regular and timely reviews of performance information by senior management to ensure that valid, accurate and complete reporting is done to minimise reporting errors.
3. Provide feedback on the implementation and progress of action plans to ensure improvement in the audit outcomes of the portfolio.
4. Address the non-compliance with key legislation which remains a challenge

especially in Supply Chain Management (SCM), which has led to irregular expenditure and fruitless and wasteful expenditure being incurred.

5. Develop intervention to ensure that management implement the necessary controls and checks in place to ensure that annual financial statements prepared are of a good quality.
6. Focus more on gold and coal mines when devising a strategy to achieve the zero-harm goal.
7. Identify all activities that are likely to be negatively affected by level one regulations and develop a mitigation plan to address these.
8. Present the findings of the legislative reviews that were performed during the last financial year, as well as the programme of action before the Committee.
9. Present a medium-term plan to deal with obsolete ICT system, which was identified by the internal audit, as posing risk to the sustainability of the departments operation.
10. Present on the licensing regime, including the SAMRAD system, so as to evaluate turnaround time and efficiency in relation to revenue collected.
11. Provide a comprehensive report relating to the incident of the employee who incurred fruitless and wasteful expenditure on travelling. The report should detail how the cost was incurred, how the department intend addressing the issue and who was responsible for this loss. The aim of the information requested is to ensure that

the wasteful expenditure does not flow into the next financial year.

12. Ensure that the outstanding audits are finalised by 30 November 2020,
13. Engage the National Treasury regarding the financing of the ICT system as to minimise risks to the department's operations.

None of the recommendations dealt with performance except in the mining portfolio (to do less harm in the gold and coal mines). There were no recommendations regarding solar water heater rollout, or renewable energy achievements.

There was no substantive recommendation regarding climate change, although Covid-19 was identified as something that needed to be mitigated against.

The committee asked for plans to be presented to it on various matters such as outstanding legislation, but no implementation actions were required by the Minister.

4. What audit outcomes were achieved?

Most of the disclosed fruitless and wasteful expenditure for the current year was caused by storage costs for solar water heater units to various suppliers by the Department of Energy (DoE) (R90.118 million).

According to the AGSA, R48.878 million of this represents non-compliance in 2019/20. Irregular expenditure for the prior year was restated due to correction of prior period error at the DoE and subsequent disclosure of Irregular expenditure of R162.450 million.

According to the AGSA there was regression in supply chain management (SCM) compliance, i.e., 2019/20: 0 with no findings. The AGSA stated that

all SCM findings should be investigated. Findings on SCM included:

- Contracts awarded to suppliers whose tax matters had not been declared to be in order (Department of Mineral Resources);
- Goods, works, or services were not procured through a procurement process

which is fair, equitable, transparent and competitive (State Diamond Trader SDT, National Nuclear Regulator and MINTEK); and

- Payment more than original quotation (Council for GeoScience CGS).

Table 9: Audit outcomes of portfolio over 5 years – Department of Energy

	2019/20	2018/19	2017/18	2016/17	2015/16
Unqualified with no findings		NERSA, NRWDI	NERSA, NRWDI, SANEDI	NERSA, NNR, SANEDI	DoE, NERSA, NNR
Unqualified with findings	DoE, NNR	CEF, NNR, SANEDI	CEF, NNR	CEF, NECSA, NRWDI	CEF, NECSA, NRWDI, SANEDI
Qualified with findings		DoE	DoE	DoE	
Adverse with findings					
Disclaim with findings		NECSA	NECSA		
Outstanding audits	CEF, NECSA, NERSA, NRWDI, SANEDI				

Source: AGSA presentation to the PC on DMRE on 03 November 2020

5. What recommendations did the committee make to ensure that the department addresses any audit outcomes flagged by the AGSA?

Of the 13 recommendations made by the committee, six refer to measures to improve audit outcomes. One concrete action was to ensure that outstanding audits are finalised by 30 November 2020. The committee has also asked for feedback on progress for ensuring improvement in the audit outcomes.

However, it should be noted that in 2019, the PC on DMRE made recommendations regarding NECSA's failure to table its annual financial statements, which ended up as a disclaim with findings audit outcome. In 2020, NECSA has once again an outstanding audit.

6. If the shortcomings, wasteful expenditure, or failures of the department are recurring, what action did the committee make in its BRRR to address this?

In one case, there is a case of R500 000 in wasteful and fruitless expenditure. The committee has requested a report that details what happened and what the department intends to do to ensure that the wasteful expenditure does not flow into the next financial year.

There is wasteful expenditure identified by the AGSA and the need for consequence management, but this is not reflected as a recommendation to the Minister to act on.

7. How did the department's APP and Budget presented in May 2021 respond to the BRRR of 2020?

On 5 May 2021 date, the chairperson spoke to the entities that were presenting their APPs. "The Chairperson said that he had picked up a problem across most presentations and asked if the entities knew what an APP was. He said it was meant to highlight what an entity intended to do and its target for the year, as well as how this would be achieved. However the presentations seemed to be the same as the presentations from October 2019 in the introductory meeting". He emphasised that if the entities were presenting budgets to the committee, then they needed to know what they were approving and said that a blueprint for an APP should be given to the director-general⁵⁸. However, despite this, nothing has changed.

The PC on DMRE did obtain a legal opinion from the parliamentary legal services as it did not agree with

the DMRE proposal that NECSA and CEF did not have to present an annual performance plan to the committee.

8. What changes were recommended to the department budget by the committee in 2021?

In its APP report⁵⁹ the PC on DMRE made 17 recommendations. This included many of the same issues that had been raised in the BRRR discussions of 2020. However, the PC on DMRE did not recommend any changes to the Budget.

The PC on DMRE appears to live in a bubble with no reference to the outside world. In none of their documents or discussions do they refer to or ask for any input regarding any issue that might be taking place in the real world. The behaviour of the portfolio committee regarding the allegations of corruption and a call on the committee from civil society to investigate the Karpowerships matter can best be described as dithering (April 2021). The Presidential Climate Change Commission has been established and is tasked with implementing a just energy transition, but this has not formed part of the Committee agenda. Community activist Fikile Nshangase was gunned down for opposing a coal mine on 22 October 2020⁶⁰, but this was not mentioned, while the chair gave specific condolences to a Rio Tinto Richard Bay Minerals (RBM) general manager who was also gunned down⁶¹ (May 2021). In December 2020, the oil

⁵⁸ <https://pmg.org.za/committee-meeting/32782/>

⁵⁹ 14 May 2021. Report of the Portfolio Committee on Mineral Resources and Energy on the Annual Performance Plan and Budget Vote No. 34 for 2021/22 Financial Year of the Department of Mineral Resources and Energy and its entities. Available online at: <https://pmg.org.za/taled-committee-report/4581/>

⁶⁰

<https://www.news24.com/news24/southafrica/news/anti-mining-activist-gunned-down-in-her-kzn-home-20201023>

⁶¹ <https://www.news24.com/fin24/companies/the-shooting-of-richards-bay-minerals-gm-highlights-the-spectre-of-bloodshed-looming-over-the-mine->

refinery caught fire in South Durban⁶² with seven people injured and consequences for communities in the area, but none of these real-life issues have been part of the committee's agenda.

Conclusion

More than 90% of the budget has been spend in achieving barely 50% of its targets. This is an ongoing problem as outlined in the narrative above. The response of the committee is to continually encourage the DMRE to do better, but while asking

for consequence management from the DMRE, it is not imposing any consequences on DMRE for failing to deliver as per the committee's recommendations.

The PC on DMRE could be regarded as largely irrelevant in that it fails to impose any change on the DMRE, has not adjusted the budget and seems oblivious to the energy and mining related issues in the real world.

Portfolio Committee on Public Enterprises

1. Did the Committee assess the departmental performance against SONA? In other words, did Parliament assess whether the actions of the department are in line with the national interest?
2. In terms of its own performance, what had the department achieved?
3. What reasons were given for poor performance and what concrete recommendations were made by the committee in its BRRR to correct this?
4. What audit outcomes were achieved?
5. What recommendations did the committee make to ensure that the department addresses any audit outcomes flagged by the AGSA?
6. If the shortcomings, wasteful expenditure, or failures of the department are recurring,

what action did the committee make in its BRRR to address this?

7. How did the Department APP and Budget presented in May 2021 respond to the BRRR of 2020?
8. What changes were recommended to the department budget by the committee in 2021?

Context

In OUTA's 2020 parliamentary oversight report, it was stated that the financial viability and the future of South Africa's SOEs are of crucial public interest.

Parliament's PC on DPE was the only committee in Parliament that took its public interest duties seriously and held an inquiry into state capture in the Fifth Parliament.

[20210526#:~:text=When%20Rio%20Tinto's%20Richards%20Bay,the%20mine%20may%20be%20resurfacing.](https://www.dailymail.co.uk/news/health/20210526#:~:text=When%20Rio%20Tinto's%20Richards%20Bay,the%20mine%20may%20be%20resurfacing.)

⁶² <https://www.dw.com/en/south-africa-seven-injured-in-durban-oil-refinery-explosion/a-55819337>

The Fifth Parliament's PC on Public Enterprises held public hearings and drew up a report which was forwarded to the Commission of Inquiry into State Capture on what it had uncovered during its tenure. However, the committee's legacy report also made several recommendations to the Sixth Parliament, with matters such as the Government Shareholder Management Bill addressing systemic shortcomings which the Fifth Parliament had identified during its term.

Other issues included:

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

These issues were carried forward from the 2019 BRRR report were not part of the APP of the department. The committee did identify this but then accepted the DPE excuses and did not insist on its return. This meant that the committee was complicit in weak and ineffective governance.

The 2020 BRRR of the PC on DPE was tabled on 18 November 2020⁶³.

1. Did the committee assess the departmental performance against SONA? In other words, did Parliament assess whether the actions of the department are in line with the national interest?

As noted in Table 4 of this report, SONA focused on Eskom unbundling as well as the transition of Eskom fleets from coal to something more climate friendly and the need for investment for this. The unbundling issue was picked up in the APP.

The 2020 BRRR refers to the NDP and the potential of state-owned companies to build a capable state.

2. In terms of its own performance, what had the department achieved?

The DPE manages seven entities: Eskom, Denel, Alexkor, Transnet, South African Airways, South African Express and SAFCOL.

in 2019/20 Cabinet approved baseline reductions amounting to R9.6 million over the medium-term expenditure framework (MTEF) period on the department's compensation of employees, and goods and services budgets. The department is in the process of implementing a realigned organisational structure, which is expected to enable it to be responsive and efficient in fulfilling its oversight and monitoring role.

The department has put in place an assessment of risk and governance shortfalls. Additional allocations to state-owned companies will be used to settle government-guaranteed debt and for working capital in certain instances, and are subject to conditions that include restructuring, the implementation of turnaround plans, the review of business models, the sale of non-core assets and the

⁶³ <https://pmg.org.za/taled-committee-report/4408/>

identification of strategic equity partners, amongst other things. Over the MTEF period, the department intends to closely monitor and assist the state-owned companies in implementing and complying with these conditions.

3. What reasons were given for poor performance and what concrete recommendations were made by the committee in its BRRR to correct this?

The department has identified a sustainability risk for its SOCs. This includes several factors: unsustainable business model; failure of the SOCs to deliver on their mandates; corruption, fraud, and maladministration; composition of SOC boards does not provide independence for value-chain oversight; and negative turnaround sentiment. The mandate of the department is to provide oversight of the SOCs. The department already developed mitigating factors. The committee will provide oversight over these mitigating factors. Resources such as human, process and financial remain crucial to the department discharging its mandate.

The full list of committee recommendations was:

1. Ensure that shareholder compacts are concluded by the third quarter of the year preceding the year covered by the compact.
2. Ensure that the Accounting Officer improves controls and systems to ensure the department achieves an unqualified audit outcome and matters of emphasis from each year must be addressed in the subsequent year.
3. Ensure that SOCs protect jobs in particular highly advanced technical skills to advance the manufacturing capability of the state. SOCs should

invest in labour intensive infrastructure programmes to create employment.

4. Ensure that the follows through on cases opened with South African Police Services on corruption allegations at Alexkor and that the recommendations of Gobodo Forensic report are implemented.
5. Ensure that the R10.5 billion allocated to SAA is used for the intended purpose, particularly the payment of severance packages and legal obligations.
6. Ensure that the restructuring of Eskom is completed within the set timeframes and maintenance of power stations is done on time.
7. Outline the impact of the Section 34 Ministerial Determination on Eskom to the Committee on the current generation ability of Eskom.
8. Introduce specific targets for costs containment and revenue “output” generation in the Shareholder Compacts.
9. Review SOC Business Model to enhance sustainability of the companies, which is revenue enhancement and cost containment.
10. Ensure that SOCs invest in Research & Development to improve on innovation and creativity.
11. Align remuneration, performance and consequence management with remuneration guidelines.
12. Ensure the Department of Public Enterprises adhere to the Logical Planning Framework.

13. Enhance and streamline the DPE's internal processes to ensure rapid response and timeous decision making in the department.
14. Focus on capacitating core technical functions, develop and enhance technical skills and ensure implementation of sound operational and systems engineering business processes to ensure effective technical oversight.
15. Ensure the implementation of a methodology and manner in which Boards are appointed to ensure independence and enable effective performance review with due consequence management.

4. What audit outcomes were achieved?

The AGSA has expressed an unqualified audit opinion⁶⁴ with findings for the year 2019/20. DPE regressed due to material misstatements identified on financial statement submitted for the audit. The areas of material misstatement in the annual financial statements subsequently corrected by management were:

- Related parties – relationships and transactions between DPE and SOEs not adequately disclosed;
- Impairment of investments; and
- Contingent liabilities.

The department's overall objectives are to provide an effective shareholder management system and to support and promote economic efficiency within

each of the SOCs. The performance of SOCs has deteriorated in the period under review, with some entities unable to satisfy the going concern criteria, which prevented the entities from submitting their annual reports to Parliament by 30 September 2020.

5. What recommendations did the committee make to ensure that the department addresses any audit outcomes flagged by the AGSA?

The Committee made 15 recommendations to the Minister, which included to "Review SOC Business Model to enhance sustainability of the companies, which is revenue enhancement and cost containment" and "Ensure that the Accounting Officer improves controls and systems to ensure the department achieves an unqualified audit outcome and matters of emphasis from each year must be addressed in the subsequent year".

6. If the shortcomings, wasteful expenditure, or failures of the department are recurring, what action did the committee make in its BRRR to address this?

The PC on DPE made several recommendations which focused on consequence management, ensuring that monies end up for the purpose for which they are intended, and introduce specific targets for cost containment and revenue generation in the Shareholder Compacts.

7. How did the department APP and Budget presented in May 2021 respond to the BRRR of 2020?

The department stated that several of the SOCs under the department's oversight have financial

⁶⁴ <https://pmg.org.za/taled-committee-report/4408/>

challenges, due to not only operational inadequacies and the legacy of state capture, but also the increasingly difficult and complex challenges of sustainably balancing financial and commercial viability and the needs of the markets they serve, with meeting the socio-economic commitments of the NDP.

The department has implemented a programme of strengthening governance and promoting institutional alignment.

8. What changes were recommended to the department budget by the committee in 2021?

The committee put forward a list of 19 recommendations after making several critical observations. The committee notes that the Government Shareholder Management bill didn't feature as a deliverable for this year, and noted that recoveries of monies, assets, and intellectual properties from SOCs during the state capture era has been slow.

However, the recommendations do not include recommending that the shareholder compact bill is included into the DPE targets. However, the PC on DPE did welcome the efforts of the department in starting the SOE Integrity Risk Unit which will review forensic reports and follow up on Special Investigating Unit (SIU) in pursuing those implicated in corruption and looting of the SOCs.

The committee, despite raising similar concerns as it did in its BRRR, did not make any changes to the budget and recommended that the House pass the budget⁶⁵.

⁶⁵ 19 May 2021. *Report of the Portfolio Committee on Public Enterprises on Budget Vote 10: Public Enterprises, and the Annual Performance Plan for 2021/22 of the*

Conclusion

DPE, despite overseeing SAA and Eskom, was able to report to Parliament on progress with its programme implementation and it has largely received a satisfactory audit report.

This committee appears to be acting less in isolation but is more aware of outside events that affect the work, particularly SAA and Eskom. The committee also referred to Alexkor workers, and made a recommendation regarding the Northern Cape issues, to "work with the Departments of Cooperative Governance and Traditional Affairs, and of Rural Development and Land Reform to ensure that the Richtersveld Mining Company and Communal Property Association are properly constituted to facilitate the successful implementation of the deed of settlement, and delivery of socio-economic development programmes to the beneficiaries".

The Committee has strongly criticised the lack of a legislative solution which would enable SOCs to operate efficiently, and it noted that the shareholder compact bill has still not progressed. The PC on DPE referenced load shedding, the need to take climate change into account and the DMRE responsibilities of increasing electricity generation in its APP report.

The bottom line is that the PC on DPE continued to approve the budget exactly as it was presented to it by the department, thereby signaling it is satisfied with poor performance in various areas

Department of Public Enterprises. Available online here: <https://pmg.org.za/taled-committee-report/4604/>

Appendix C: OUTA engagement with Parliament’s Ethics Committee

Date	Action	Response
5 March 2020	Email requesting if there was any development with OUTA’s submission on Mosebenzi Zwane and Faith Muthambi	Received a response from Adv A. Gordon revealing there has been no updates but that the administrative process was underway
17 April 2020	Email requesting if there was any development with OUTA’s submission on Mosebenzi Zwane and Faith Muthambi	Received a response from Adv A. Gordon revealing there has been no developments
5 May 2020	Followed up on whether there have been any developments	Received a response from Adv A. Gordon revealing to not request any further updates during the Covid-19 lockdown
29 July 2020	Reached out to committee secretary, Mr Myoli via telephone on whether there have been any developments	He advised that the committee did not meet during the lockdown period & members wished not to discuss such matter via virtual platforms because of online security measures. He also could not provide clarity on when the next meeting will resume
7 Oct 2020	Reached out to committee secretary, Mr Myoli via telephone on whether there have been any developments	He advised that it is best that our office should reach out to Adv Gordon as she has been nominated as spokesperson of the committee & communicate on behalf of the committee
7 Oct 2020	Email requesting if there was any development with OUTA’s submission on Mosebenzi Zwane and Faith Muthambi	Received no response or acknowledgement from the committee re our correspondence
6 Nov 2020	Letter was sent to committee	Received no response or acknowledgement from the committee re our correspondence

Outcome – After reaching out to staff on 5 March, a week later 17 March 2020, parliament has decided to officially close due to the COVID 19 pandemic. Yet, the return date for MPs after their constituency remains open which is on the 15 April 2020.

Observation – On 5 August 2021, during the National Assembly programming committee (NAPC) the chief whip from the opposition party, Ms Mazzone has expressed her disappointment for the second time that the Powers & Privileges as well as the Ethic Committee must recommence. She said that it has come to a point that there are matters

outstanding for 2 years and the reason for not meeting virtually is irrational. She encouraged the Program Whips to intervene. The Z-list, dated 20

Aug 2021, state that the joint committee on Ethics and Members' Interest is meeting on 23 Aug 2021 in room V475, Old Assembly building.

Reports tabled by the by the Ethics and Members' Interest Committee:

5th Parliamentary term (2014- 2019)

Year	ATC No
2014	<p>2 report(s) was tabled:</p> <ul style="list-style-type: none"> - ATC140324: Annual Report of the Joint Committee on Ethics and Members' Interests, dated 12 March 2014: - ATC140710: Report of Joint Committee on Ethics and Members' Interests, 9 June 2014:
2015	<p>1 report was tabled:</p> <ul style="list-style-type: none"> - ATC151029: Report of the Joint Committee on Ethics and Members Interests, 28 October 2015
2016	<p>4 report(s) was tabled:</p> <ul style="list-style-type: none"> - ATC160316: Report of Joint Committee on Ethics and Members Interests 16 March 2016 - ATC160316: Report of Joint Committee on Ethics and Members Interests 16 March 2016 - ATC160316: Report of Joint Committee on Ethics and Members Interests 16 March 2016 - ATC160518: Report of the Joint Committee on Ethics and Members' Interests as agreed at its meeting held on 18 May 2016 at M315
2017	<p>8 report(s) was tabled:</p> <ul style="list-style-type: none"> - ATC170216: Report of the Joint Committee on Ethics and Members' Interests, dated 16 February 2017 - Report on Members' disclosures for 2016 - ATC170614: Report of the Joint Committee on Ethics' and Members Interests on late Disclosures for 2016, dated 14 June 2017 - ATC170614: Report of the Joint Committee on Ethics' and Members Interests on alleged maladministration, dated 14 June 2017 - ATC170614: Report of the Joint Committee on Ethics' and Members Interests on alleged breach of the Constitution, dated 14 June 2017 - ATC170906: Report of the Joint Committee on Ethics and Member's Interests on the alleged Contravention, by Hon. B Mbete, Of Clauses 4.1.3 And 4.1.5 of the Code of Ethical Conduct and Disclosure of Members' Interests, Dated 06 September 2017 - ATC170906: Second Report of the Joint Committee Ethics and Member's Interest's, on the late disclosures for 2016, dated 6 September 2017 - ATC171101: Annual Report of the Joint Committee on Ethics and Members' Interests (2016), dated 01 November 2017 - ATC171129: Report of the Joint Committee on Ethics and Members Interests on the Complaint against Hon. Figlan, MP, dated 29 November 2017

2018	No report was tabled during this year
2019	4 report(s) was tabled: <ul style="list-style-type: none"> - ATC190308: Report of the Joint Committee on Ethics and Members' Interest on the Complaint against Hon. A. Dlodlo, Mp: Minister of Public Service and Administration - ATC190308: Report of the Joint Committee on Ethics and Members' Interest on the Complaint against Hon. M.Booi, MP - ATC190328: Report of the Joint Committee on Ethics and Members' Interests on the complaint against the Honourable Deputy Minister of Correctional Services, Mr Thabang Makwetla, MP - ATC190328: Report of the Joint Committee on Ethics and Members' Interests on the Complaint Against Honourable M. Dirks, MP

6th Parliamentary term (2019 – 2024)

Year	ATC No
2021	ATC210607: Report by the Joint Committee on Ethics and Members' Interests on the 2019 Register of Members' Interests: Late and Non-Disclosures. Contravention of the Code of Ethical Conduct and Disclosure of Members' Interests

The Outcome

In October 2017, OUTA have lodged a complaint with Parliament's Joint Committee on Ethics and Members' Interests as an alternative to mainstream law enforcement channels, which have been

inactive in acting on our allegations. Still, for three years, we have consistently attempted to interact with the Ethic & Members Interest committee staff to get a basic understanding of the status of our complaints. Thus far, we have not received any substantive response to our requests for feedback. OUTA are mindful that the procedures of the joint committee are strictly confidential, but this has developed into a barrier to keep officials accountable rather than empowering the Code of Ethics. The purpose of this joint committee is twofold. Its task is, firstly, to implement the Code of Conduct and secondly to develop standards of

ethical conduct for Members of Parliament. A breach of the Code of Conduct is dealt with by the Joint Committee, which may investigate and recommend to the Assembly sanctions or other steps that it deems necessary.

We are concerned that this matter has been unresolved for too long, despite the committee having all the evidence to deal with misconduct. We have sent various letters and emails asking members of parliament to reach a decision and hold transgressors accountable for their unethical and unlawful behaviour. But wrongdoers get shifted into chairperson positions.

MPs dragging their feet

February 2022