

NATIONAL ASSEMBLY

OUTA

ORGANISATION UNDOING TAX ABUSE

October 2022

Kicking the can down the road

**OUTA 2022 Report on Parliamentary
Oversight in South Africa**

Submitted by:

OUTA Parliamentary Engagement Office

liz.mcdaid@outa.co.za

rachel.fischer@outa.co.za

Tel: 087 170 0639

www.outa.co.za



QUICK LOOK: WHAT THIS REPORT IS ABOUT

This is the fourth 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.

Our parliamentary team assessed the work of 10 parliamentary portfolio committees over the year from **July 2021 to June 2022**. We found a Parliament mired in the aftermath of state capture, unable or unwilling to hold the Executive to account, continuing to regard public participation as a tick-box exercise, resisting the responsibility of implementing electoral reform to serve party interests.

This is a Parliament which continues to resist the structural change required to strengthen democracy and combat state capture. This is a Parliament which, while appearing very busy, seems intent on kicking the can down the road, hoping to postpone the inevitable.

This report was compiled by OUTA's Parliamentary Engagement Office:

- Liz McDaid, OUTA Parliamentary and Energy Advisor
- Rachel Fischer, OUTA Parliamentary Engagement and Research Manager
- Christopher Scholtz, OUTA Parliamentary Liaison
- Thabile Zuma, OUTA Project Manager: Accountability and Governance Division

October 2022

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

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

OUTA's 2021 report is [here](#).

Kicking the can down the road
October 2022

Table of Contents

1.	Executive summary	5
2.	Key messages and recommendations	7
2.1.	Tell us how you will comply: We want ministers to provide implementation reports	7
2.2.	Ministers should submit to accountability.....	7
2.3.	Insist on timeous reporting	7
2.4.	Use minority reports	7
2.5.	Track those missing answers.....	7
2.6.	Appoint opposition MPs as chairs of PCs	8
2.7.	Activate OVAC	8
2.8.	Review ministers' performance agreements.....	8
2.9.	Where's the consequence management?	8
2.10.	Listen to the public	9
2.11.	Hold public hearings for BRRRs	9
2.12.	Improve access for those with limited resources	9
2.13.	Implement the Zondo recommendations	9
2.14.	The public should get involved.....	10
3.	Introduction.....	11
3.1.	Research and background	11
3.2.	Overview of Parliament and duties of MPs.....	12
	Parliament as an institution	12
3.3.	Critical questions.....	15
4.	What are MPs supposed to do?	18
5.	What evidence is there that MPs do their jobs?.....	26
5.1.	Do they come to work?	26

5.2.	Constituency periods.....	29
5.3.	Public engagement in Parliament	33
5.4.	Budgetary Review and Recommendation Reports (BRRRs)	41
5.4.1.	PC on Communications and Digital Technologies (CDT).....	42
5.4.2.	PC on Cooperative Governance and Traditional Affairs (COGTA)	42
5.4.3.	PC on Forestry, Fisheries and Environment (FFE)	43
5.4.4.	PC on Health.....	44
5.4.5.	PC on Home Affairs (HA).....	45
5.4.6.	PC on Mineral Resources and Energy (MRE).....	48
5.4.7.	PC on Public Enterprises (PE).....	60
5.4.8.	PC on Transport.....	62
5.4.9.	PC on Water and Sanitation (WS).....	64
5.4.10.	PC on Women, Youth and Persons with Disabilities (WYPD).....	65
5.4.11.	Concluding comments.....	66
5.5.	Budget.....	68
5.5.1.	Conclusion	73
5.5.2.	Is it time for a new approach?.....	74
5.6.	How do MPs understand acting in the public interest?.....	76
5.7.	Ministers' performance agreements.....	80
5.8.	Reactive oversight: Acting in the public interest	81
6.	Why doesn't Parliament do what it is supposed to do?	84
6.1.	Career paths	84
6.2.	Secrecy	86
6.3.	Political will and the Code of Ethical Conduct.....	87
6.4.	State capture and the State Capture Commission	89

7.	Why don't MPs do what they are supposed to do?	92
8.	Conclusion: What should we expect from our MPs and Parliament?	94
9.	Notes	101
10.	Appendix A	107



Parliament, 2022
Image: OUTA

1. Executive summary

Parliament and our Members of Parliament have been central to allowing state capture to go unchecked. Despite public criticism, including the strongly critical final report of the State Capture Commission, too many parliamentarians continue to fail to hold the Executive to account, keep MPs sullied by state capture in senior positions, choose party over public interest, and resist electoral reform in defence of the majority party. The Executive – the ministers in the Cabinet – retains ministers who are deeply compromised and sometimes blatantly acting contrary to South Africa's interests or are simply incompetent. We need fair and firm oversight of the Executive, the departments and state entities which report to them, to defend the public interest.

We assessed the work of 10 portfolio committees, the committees which are run by MPs of the National Assembly, using key documents from those committees.

This is what we found:

- MPs receive significant time out of Parliament specifically for constituency work – that is, connecting with the public – but there is still insufficient evidence of this work being undertaken;
- Some ministers still dodge attendance at committee meetings;
- Portfolio committees still obtain most of their oversight information from the very departments they watch over;
- Public participation remains a tick-box exercise;
- Where committees identify problems in departments and recommend solutions they are often ignored;
- Parliament approves the departmental budgets year after year without change despite flagrant financial mismanagement;
- Committees too often make a noise but then rubber-stamp Executive decisions.

Since our last report, the State Capture Commission has issued its final report. During November 2020, OUTA had submitted an affidavit to the Commission detailing how Parliament had failed to take action to prevent state capture, and subsequently gave oral testimony on this. The Commission's final report included damning findings against Parliament and its failure to oppose state capture. Although the final volume of this report was released on 22 June 2022, Parliament has made no attempt to address the issues raised in the report, instead apparently meekly waiting for the President to tell Parliament what he intends to do, if anything. Electoral reform aimed at strengthening oversight of the Executive by moving power over MPs from their parties to their constituencies – as ordered by the Constitutional Court two years ago, strongly supported by civil society including OUTA, and recommended by the State Capture Commission – is being resisted by Parliament in favour of a much watered-down version.

This is not oversight of the Executive and

government. This is submission to the Executive and active support of state capture. We expect more of our parliamentarians.

Thus, for the fourth year in a row, our report finds that Parliament is a failed institution.

In 2019, our report asked why non-performing MPs continue to appear on political party lists for election.

In 2020, we noted that the current political system appears to reward unethical behaviour, with former ministers heavily implicated in state capture losing ministerial positions but being promoted by fellow MPs to powerful positions as committee chairs.

In 2021, we said it was difficult to escape the perception that Parliament has been hollowed out and filled with unethical people and, until that is addressed, we cannot expect any real accountability.

This year, we want to warn that if our democracy is to survive, we need ethical, hard-working parliamentarians, who stand up against corruption and work in the public interest. We do not have enough of them.

We encourage the public to be more active, to demand engagement with Parliament and to

demand that their voices are heard.

We need active citizens to defend our democracy.

Abbreviations

AGSA	Auditor-General of South Africa
APP	Annual Performance Plan
BRRR	Budgetary Review & Recommendation Report
CSO	Civil society organisation
ENE	Estimates of National Expenditure
MFMA	Municipal Finance Management Act
MP	Member of Parliament
NA	National Assembly
NCOP	National Council of Provinces
OVAC	Parliament's Oversight and Accountability Model
PC	Portfolio committee
PFMA	Public Finance Management Act
SOC	State-owned company
SOE	State-owned entity
UIFW	Unauthorised, irregular and fruitless and wasteful expenditure

2. Key messages and recommendations

2.1. Tell us how you will comply: We want ministers to provide implementation reports

We call for ministers to provide implementation reports each, detailing how they will respond to Parliament's Budgetary Review and Recommendation Report (BRRR) recommendations. This echoes the State Capture Commission's call for a track-and-monitor system to gauge whether the Executive adheres to the BRRR corrective actions.

Who should do it:
Ministers

2.2. All ministers should promote accountability

We want to see significant improvements in ministers attending portfolio committee meetings, engaging with committees, taking criticism seriously and ensuring implementation of consequence management, accountability and improvements in the departments they oversee.

Who should do it:
Ministers

2.3. Insist on timeous reporting

Committees must insist on timeous reporting by departments and enforce non-performance by refusing to conduct meetings where they cannot adequately prepare. This has happened in the recent past, but more could be achieved if this was adopted by all committees.

Who should do it:
Portfolio committees

2.4. Use minority reports

Opposition parties should make use of minority reports to express their dissatisfaction with the ruling party decisions.

Who should do it:
Opposition MPs

2.5. Track those missing answers

Questions in the House are an oversight mechanism to obtain answers from ministers. The track-and-review mechanism must be enhanced and ministers who fail to respond timeously or in full should be punished as part of holding the Executive to account.

Who should do it:
Portfolio committees
responsible for oversight of
each minister

2.6. Appoint opposition MPs as chairs of PCs

Parliament should consider appointing members of opposition parties as chairs of portfolio committees.

Who should do it:
Portfolio committees

2.7. Activate OVAC

Parliament's Oversight and Accountability model (OVAC) must be activated and prioritised. This is also recommended by the State Capture Commission, which refers to it as the Oversight and Advisory Section. OVAC is imperative to ensure oversight by MPs and their respective PCs.

Who should do it:
Secretary to Parliament
and House Chairperson:
Committees, Oversight
and ICT

2.8. Review ministers' performance agreements

Parliament needs to include scrutiny and review mechanisms for Cabinet performance agreements and a monitoring mechanism to ensure that ministers' responsibilities are directed towards the public interest and are kept up to date.

Who should do it:
Portfolio committees
responsible for oversight
of each minister

2.9. Where's the consequence management?

Lack of consequence management comes up again and again, in MPs' comments in portfolio committee meetings, in Auditor-General reports, in criticism by civil society organisations. This is a severe problem. We call on portfolio committees to find solutions to this. Oversight without accountability fails. MPs could consider opening criminal complaints against individual officials who are serial offenders. MPs fail to use their most powerful weapon: amending budgets or refusing to approve budgets of erring departments and entities to reduce money flows to those who don't perform or who show flagrant financial mismanagement.

Who should do it:
All MPs

2.10. Listen to the public

Parliamentarians seem to regard public participation as a tick-box exercise. Once elected, MPs represent everyone, not just their own parties. We urge MPs to engage with the public more thoughtfully, consult a diverse range of stakeholders including civil society organisations, experts, academics and researchers, to consider such submissions and to provide a response report detailing how Parliament proposes to address the concerns and comments submitted by the public.

Who should do it:
All MPs,
in cooperation with the
public

2.11. Hold public hearings for BRRRs

There is no attempt by Parliament to hold public hearings in preparation for the BRRRs or AGSA reports. Such public hearings and engagements would provide some insights from civil society bodies whose focus is watchdogging what government does in a particular area.

Who should do it:
Portfolio committees
responsible for oversight
of each minister

2.12. Improve access for those with limited resources

Virtual meetings make Parliament more accessible to many, but we want to see better planning rather than last-minute arrangements. We also want to see more effort put into improving access for those who have limited online access or do not have smart phones.

Who should do it:
Secretary to Parliament

2.13. Implement the Zondo recommendations

The State Capture Commission final report contains comprehensive recommendations on Parliament, to help overcome state capture and ensure that Parliament conducts effective oversight. Parliament appears to be waiting for the President to announce what – if anything – he plans to do with the recommendations. But Parliament itself should action recommendations, without delay.

Who should do it:
House Chairperson:
Committees, Oversight
and ICT, and
all MPs

2.14. The public should get involved

We need active citizens. It is up to the public to defend our democracy. We call on the public to get involved in civil society organisations. Watch what your Parliament is doing. Participate when there are public hearings and calls for comment. Demand public participation when Parliament is considering key issues affecting your community. Look for your constituency office, where your MP is supposed to be available.

Who should do it:
All South Africans



Image: OUTA

3. Introduction

This is the Organisation Undoing Tax Abuse's fourth Parliamentary Oversight Report.

This annual hallmark publication critically engages with Parliament, which is one of the three key pillars of the State in South Africa (the judiciary and Executive form the other two). This year's report is of particular importance for two reasons:

1. It provides a longitudinal comparative overview of the past four years' findings; and,
2. It follows the release of the final report of the State Capture Commission. It would be remiss to not include the latter's recommendations, which unequivocally lament Parliament's lack of oversight which allowed state capture to occur. The recommendations will also function as a roadmap going forward.

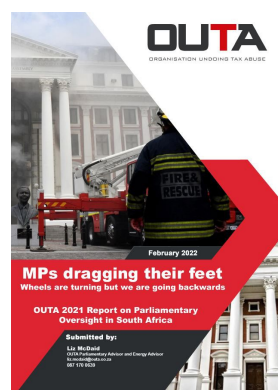
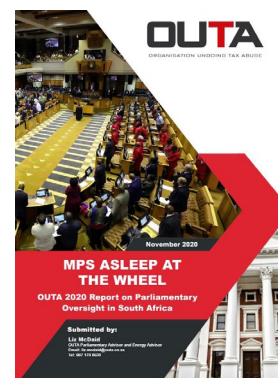
The purpose of this document is to present the research conducted and subsequent findings for the 2021/22 Parliamentary Oversight Report. The period under review is July 2021 to June 2022. The content of this research analysis is sourced from the following policy documents:

1. The Budgetary Review and Recommendation Reports 2021 (BRRRs);
2. The Annual Performance Plans (APPs) and / or Audit Outcomes reports 2021/22;
3. The Estimates of National Expenditure 2022 (ENE);
4. Report of the Auditor General of South Africa (AGSA) 2020/21¹; and
5. Minutes of meetings of the 10 portfolio committees (PCs) (as captured by the Parliamentary Monitoring Group).²

3.1. Research and background

For this year's OUTA Parliamentary Oversight Report, attention was turned to 10 portfolio committees, which fall under the National Assembly and have oversight over 10 government departments.

This is OUTA's fourth annual
Parliamentary Oversight Report



These are the portfolio committees:

1. PC on Communications and Digital Technologies (CDT);
2. PC on Cooperative Governance and Traditional Affairs (COGTA);
3. PC on Forestry, Fisheries and the Environment (FFE);
4. PC on Health;
5. PC on Home Affairs (HA);
6. PC on Mineral Resources and Energy (MRE);
7. PC on Public Enterprises (PE);
8. PC on Transport;
9. PC on Water and Sanitation (WS); and,
10. PC on Women, Youth and Persons with Disabilities (WYPD).

In addition to reviewing the various PCs, their BRRRs and APPs, the State Capture Commission recommendations will also be used as a grounding mechanism.

3.2. Overview of Parliament and duties of MPs

Parliament as an institution

Parliament has a distinct role to play and then Members of Parliament (MPs) themselves have a role to play, including opposition MPs. Parliament ought to be neither a (burned down) building, nor an ivory tower far removed from the citizens of South Africa. Sadly though, this is exactly the case. Two of the three legs of our democracy function dismally: the legislature (Parliament) and the Executive (Cabinet).

As South Africans we are holding tightly on to our faith in the judiciary (the courts), now headed by Chief Justice Raymond Zondo and our Constitutional Court. South Africans are losing trust in their government for it no longer listens to and represent the needs of the people, to whom Parliament needs to be accountable in the first place.

Portfolio Committees assessed

- Communications & Digital Technologies (CDT)
- Cooperative Governance & Traditional Affairs (COGTA)
- Forestry, Fisheries & the Environment (FFE)
- Health
- Home Affairs (HA)
- Mineral Resources & Energy (MRE)
- Public Enterprises (PE)
- Transport
- Water & Sanitation (WS)
- Women, Youth & Persons with Disabilities (WYPD)

Parliament also plays an oversight role of the Executive. It is done for the following reasons:

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

There are different oversight mechanisms, which include:

1. Budget votes;
2. Questions in Parliament to the Executive to which those ministers must respond;
3. Statements by MPs;
4. Notices of motion;
5. Plenary debates; and
6. Constituency work, especially during the constituency leave period.

Parliament uses public participation methods to engage with the public during National Assembly in-session periods as well as during the constituency leave periods. This provides the public with opportunities to give their input on matters relating to budgets, legislative amendments and even participate in the nomination of qualified individuals, for example, for commissioner vacancies in Chapter 9

This is why we need
oversight of the Executive

These are the mechanisms
for oversight

institutions. This means that the public should also actively reach out to Parliament by not only voting in elections, but also by attending portfolio committee meetings and debates, providing submissions and input on legislative amendments, or submitting petitions should they be dissatisfied with service delivery. Members of the public should be able to contact MPs directly.

Parliament is not just a building. It consists of portfolio committees, each responsible for overseeing the meetings, activities, budgets and targets of each government department it oversees. Every citizen of South Africa is entitled to contact the committee secretary or any MP, should they have concerns and questions. Every citizen has the right to comment on and engage in public participation activities on matters influencing their rights and livelihoods. Unfortunately, the majority of citizens do not know they have this right, they might not be interested, or they do not have sufficient funds to make calls, send e-mails, watch parliamentary proceedings on YouTube, etc. How can Parliament be the voice of the people when the majority of South Africa's citizens live on a minimum wage or less and can hardly afford transport, food and health care? Furthermore, the dismal failure of service delivery, and continuous deterioration of infrastructure, places additional burdens on the citizens.

While there is much wrong with how the institution of Parliament is structured which prevents strong oversight and accountability, there are existing tools that MPs can use to hold the Executive accountable but which they fail to use.

Why is accountability essential?

Consider for a moment why accountability is so important. People in positions of power should be held accountable to the people who elected them and, when they fail, they ought to be sanctioned or even recalled. Without accountability to the people, politicians may become a liability that cost money, and undermine public trust in government.

Every citizen has the right to comment on and engage in public participation activities on matters influencing their rights and livelihoods

Without accountability, politicians may become a liability

Even worse than not being able to hold *someone* to account, is when the electorate doesn't even know *whom* to hold to account. Although Parliament has constituency periods, there is no parliamentary public record of how to contact MPs and where one might expect to find them during constituency periods. This is the essence of the matter that needs to be addressed within the electoral reform process. It places MPs into positions of representation and accountability whereby political representation is no longer faceless or nameless.

3.3. Critical questions

1. What are MPs supposed to do?
2. What evidence is there that MPs do their jobs?
3. Why doesn't Parliament do what it is supposed to do?
4. Why don't MPs do what they are supposed to do?
5. What should we expect from our MPs and Parliament?

We have used our oversight reports for previous years for background and, for this 2022 report, we crystalise the questions and use our analysis to offer answers below.

Section 42(3) of the Constitution³ 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.

With regard to Parliament, the State Capture Commission found a failure of oversight.

"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

Critical questions

1. What are MPs supposed to do?
2. What evidence is there that MPs do their jobs?
3. Why doesn't Parliament do what it is supposed to do?
4. Why don't MPs do what they are supposed to do?
5. What should we expect from our MPs and Parliament?

Capture which he chaired. “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.”⁴

OUTA has been part of civil society initiatives aiming at electoral reform. If successful, this will allow independent candidates to stand as MPs in the next national elections in 2024. However, in OUTA’s view, Parliament is a broken institution, with successive cohorts of MPs unable or unwilling to fix it. The post-2024 Parliament will not function any more successfully with new MPs, with independent candidates or with coalitions, if Parliament is not fixed. OUTA started monitoring Parliament in the state capture years and was able to analyse the actions of MPs over the recalling of President Jacob Zuma and the installation of President Cyril Ramaphosa. Despite the stated shift against corruption, Parliament has not changed much. Many recommendatory reports are gathering dust.

OUTA is concerned that changing the MPs is not going to result in any increased accountability unless Parliament addresses its failures in a systematic way. For this report, OUTA has once again drawn on our experience in Parliament to highlight what we think are the critical failings together with recommendations to address the failings.

Once in Parliament, MPs represent the people. We are concerned that, once in Parliament, too many MPs ignore the people who elected them and instead derive a mandate narrowly from the party leadership. We believe that MPs should instead engage with the public to gauge their opinions and views on matters of public interest and the laws that are being made.

OUTA believes 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 and non-government

Parliament is a broken institution, with successive cohorts of MPs unable or unwilling to fix it

stakeholders throughout their parliamentary term. OUTA believes that MPs should uphold the highest moral code and act with integrity in their role of representing the people. OUTA also believes that in their role of overseeing the executive, MPs should ensure that they act in the public interest at all times.

As South Africa is a democracy committed to transparency and open government, it is 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.

The institution of Parliament is not fulfilling its constitutional mandate of oversight and accountability.

Parliament is not fulfilling
its constitutional
mandate of oversight and
accountability

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

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

4. What are MPs supposed to do?

The Constitution sets out Parliament's role⁵. In terms of section 55(2) of the Constitution, Parliament's National Assembly (NA) must ensure that all executive organs of state in the national sphere of government are accountable to it. Section 56 provides for Parliament to gain information or evidence from summoning any person to give evidence or receiving petitions or submissions or representations from any interested persons or institutions. Section 59 states that Parliament must facilitate public involvement in the legislative and other process of the NA and its committees, and includes the right of people and the media to attend any committee session unless it would be reasonable not to do so in an open and democratic society.

This covers the good governance principles of transparency, public participation and access to information, all essential to strong oversight.

The State Capture Commission put forward several recommendations⁶ aimed at electoral reform and legal amendments to strengthen parliamentary oversight. OUTA has also been working on electoral reform and has made recommendations for changes which would improve oversight.⁷

However, the Commission's report also stated that if Parliament was not of the view that new legislation be enacted, the Commission recommended that Parliament should consider amending its own rules to strengthen the ability of Parliament to hold the Executive to account.

OUTA has considered the Commission's recommendations in the context of the current situation in Parliament and is of the view that, given the calibre of some MPs in the current Parliament, it might be wishful thinking to hope for any rapid turnaround of parliamentary systems and it is likely that MPs will kick the can down the road.

In our 2021 report, we pointed out that less than 10% of voters actually belong to the political parties represented in Parliament. While political parties rely on their supporters, that is, the general public, to get

Critical questions

1. What are MPs supposed to do?
2. What evidence is there that MPs do their jobs?
3. Why doesn't Parliament do what it is supposed to do?
4. Why don't MPs do what they are supposed to do?
5. What should we expect from our MPs and Parliament?

Given the calibre of some MPs in the current Parliament, it might be wishful thinking to hope for any rapid turnaround of parliamentary systems and it is likely that MPs will kick the can down the road

elected, once they are elected, MPs seemingly pay little heed to the public. This results in Parliament carrying out very little public consultation, failing to draw on civil society for critiques of the departments that they oversee and, in their decision-making, seeming to ignore any of the inputs that they receive from the public.

Parliament's Oversight and Accountability Model

Parliament's own oversight and accountability model⁸ was drafted in 2008 by the Joint Rules Committee, which had worked on it since 2002, and suggested censure mechanisms for MPs and the need for departments to provide information timeously. This model was adopted by the committee and published in Parliament's Announcements, Tablings and Committee Reports (ATC) on 27 January 2009.⁹

"The model focused, among other things, on institutional characteristics of oversight and accountability, existing oversight mechanisms used by Parliament and proposed new mechanisms. The model was adopted by the Assembly on 17 February 2009 and by the NCOP on 19 March 2009," reported the National Assembly at the time.¹⁰

This is how OVAC explains accountability: "Accountability refers to the institutionalised practices of giving account of how assigned responsibilities are carried out." Its definition of oversight includes: "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 the citizen", to "hold the government to account in respect of how the taxpayers' money is used", and to "improve transparency of government operations and enhance public trust in the government".¹¹

The model was subsequently published (in 2010 or thereafter, for use in a National Assembly planning session) with a preface endorsing it by the Fourth Parliament's presiding officers, Speaker of the National Assembly Max Sisulu and Chairperson of the National Council of Provinces Mninwa Mahlangu, who said in their preface: "Parliament's critical role of ensuring that our government remains accountable to the people will

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

– Parliament's Oversight & Accountability Model

be enhanced when all in these corridors adopt the values and principles outlined in the Oversight Model.”¹²

The Fourth Parliament’s co-chairs, House Chairperson: Committees, Oversight and ICT, National Assembly, Cedrick Frolick, and House Chairperson: Committees and Oversight NCOP, Raseriti Johannes Tau, wrote in their foreword in the same document: “With the coming into being of the fourth Parliament the responsibility for the publication and implementation of the Model was transferred in the NCOP to Ms N [Nosilivere Winifred] Magadla and thereafter to Mr RJ Tau, House Chairperson for Committees and Oversight in the NCOP and on the side of the National Assembly, to Mr [Kopeng Obed] Bapela (NA), when he became House Chairperson for Committees, Oversight and ICT.” The NA responsibility would have been taken over by Frolick, who was appointed to his position (also known as Chair of Committees or Chair of Chairpersons) in November 2010.

The Fourth Parliament ran from 2009 and 2014, established after the April 2009 elections. This was the government headed by Jacob Zuma, who was inaugurated for his first term as President in May 2009. The OVAC was finalised at the end of the Third Parliament and should have been implemented by the Fourth. But once the Fourth Parliament – Zuma’s team – took over, the capture of Parliament started in earnest and the OVAC quietly died. It is worth noting that Frolick, who wrote that foreword and thus knew he was in charge of implementing the model, was himself subsequently implicated in state capture in the State Capture Commission report of March 2022 which recommended he be investigated for corruption¹³ and in May 2022 was referred to the Joint Committee on Ethics and Members’ Interests.¹⁴

It seems to be no accident that OVAC was not implemented.

The OVAC model refers to various focus groups which looked at aspects of oversight. These included the Budget Focus Group, which was tasked with developing procedure and drafting legislation on amending money bills.¹⁵

One of Parliament’s officers in charge of implementing OVAC was later linked to state capture

As a result, the Money Bills Amendment Procedure and Related Matters Act of 2009¹⁶ was signed into law by the President (then Kgalema Motlanthe) on 16 April 2009. The Preamble to this Act makes it clear that legislation to enable amending money bills (ie allowing MPs to change the national budget before passing it) is produced in terms of the Constitution and is a crucial part of oversight: “...the purpose of amending money Bills is to give effect to resolutions on oversight of the National Assembly and the National Council of Provinces”. It is in terms of this Act that the committees on finance and appropriations are set up in the National Assembly and NCOP. This Act also sets up a Parliamentary Budget Office (under Section 15(1)), “the main objective of which is to provide independent, objective and professional advice and analysis to Parliament on matters related to the budget and other money Bills”.

We believe that, while the committees and their advisory office were set up and the money bills are processed through these committees, MPs have failed to make use of their powers to amend money bills (the budget) to block misappropriation and mismanagement.

Reminders of the need for effective oversight

Other reports have also underlined the need for Parliament to implement effective oversight, sometimes repeatedly.

The Auditor-General’s report on national and provincial government audit outcomes for 2020/21 underlines the failure of financial oversight.¹⁷ Here are some points from the report:

- “A culture of responsiveness, consequence management, good governance and accountability should be shared vision for all involved, including executive authorities, Parliament and legislatures, and the coordinating ministries. We urge them to also play their designated roles in the accountability ecosystem by supporting, monitoring and overseeing the much-needed improvement in – and resolution of – material

“...the purpose of amending money Bills is to give effect to resolutions on oversight of the National Assembly and the National Council of Provinces”

– Money Bills Amendment Procedure and Related Matters Act

irregularities. When the auditor-general's powers of referral and remedial action (and to issue certificates of debt in future) are invoked, it not only reflects poorly on the accounting officer and authority, but also means that the whole accountability value chain has failed, up to executive and oversight level."¹⁸

- "The poorly prepared financial statements and significant activity to make corrections in response to the audit means that leadership makes financial decisions throughout the year based on financial information that is not credible. The treasuries and oversight bodies (such as portfolio committees) also use in-year reporting for monitoring purposes, and without reliable information, their monitoring process is ineffective."¹⁹
- "The executive authorities and oversight bodies (such as portfolio committees) also use in-year reporting for monitoring purposes, and without reliable information, their monitoring process is ineffective. It also hinders the accountability processes that those charged with oversight are tasked to implement, including the budget review and recommendations reports that portfolio committees are required to initiate. These reports guide the relevant executive authority in their priorities and associated budget requirements for the following performance period."²⁰
- "Portfolio committees should also ensure that they measure the progress made to improve outcomes."²¹
- "In 2020, we also launched our preventative controls guides, which aim to enable preventative oversight. [...] We encourage these committees to use these insights and guides to enable more effective oversight. They should also continue to monitor and oversee the resolution of material irregularities. Such oversight will lead to improved governance and elevate accountability in the public sector."²²

The High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change²³, a panel of highly experienced political and academic experts chaired by former Deputy President

"The executive authorities and oversight bodies (such as portfolio committees) also use in-year reporting for monitoring purposes, and without reliable information, their monitoring process is ineffective"

– AGSA report on national and provincial government 2020/21

Kgalema Motlanthe and commissioned by government, made some key recommendations in its 2017 report regarding Parliament. A recurrent theme emerging from research, public voices and expert roundtables 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 was of the view that part of the answer lies in the narrow interpretation by Parliament of its powers of oversight. The Panel wanted to see a more active Parliament, one that ensures the strict enforcement of (or, where lacking, introduces) penalties for lack of performance by the Executive. Parliament should also facilitate meaningful and effective public participation in the legislative and policy-making cycle²⁴. The High Level Panel produced its report with recommendations on improved oversight in 2017. In 2022, the State Capture Commission repeated some of the same recommendations on oversight.

While good laws have been made, failed implementation has resulted in poor outcomes

Parliamentary questions

One of the mechanisms whereby MPs can hold ministers accountable is through the ability to ask them questions in Parliament to which they are required to provide answers. However, there has been a tendency for questions to remain unanswered, and for too many of the questions to be inadequate for oversight purposes.

Written questions to ministers which are not answered within 10 days are regarded as unanswered, in terms of rule 146(3) of the National Assembly.²⁵

Table 1 below shows the number of questions posed by NA MPs to ministers, and the number that remained unanswered.

Table 1: Written questions posed in the National Assembly to ministers

Period	Questions submitted	Responses received	Percentage response
2021 3 rd term ¹	503	111	22%
2021 4 th term ²	601	217	36%
2022 1 st term ³	1196	701	59%
2022 2 nd term ⁴	1097	777	71%
<ol style="list-style-type: none"> 17 August 2021. PMG. <i>Third Term Review of Parliament (17 August to 10 September 2021)</i>. https://pmg.org.za/blog/Third%20Term%20Review%20of%20Parliament%20(17%20August%20to%2010%20September%202021) 15 December 2021. PMG. <i>Fourth Term Review 2021</i>. https://www.pa.org.za/blog/fourth-term-review-2021 7 April 2022. PMG. <i>First Term Review 2022</i>. https://pmg.org.za/blog/First%20Term%20Review%202022 29 June 2022. PMG. <i>Second Term Review 2022</i>. https://pmg.org.za/blog/Second%20Term%20Review%20of%20Parliament%202022 			

While there is a great improvement over the last year in questions being answered, there is still a staggering percentage of questions posed to ministers which are ignored by the Executive. The case study below (see box on “The unanswered questions”) illustrates how despite good intentions it has taken five years to put in place a mechanism that could strengthen a key means of holding the Executive to account.

At the end of the 2nd term of 2022, only 71% of questions in the National Assembly to ministers had been answered

Parliament’s five-year delay in implementing a system to address ministers’ failure to respond to parliamentary questions, and its failure to implement its own oversight and accountability model, effectively limit accountability

The unanswered questions

MPs spent five years trying to set up a system to overcome the problem of questions not answered by ministers, but there is still no solution

On 18 October 2017, the Rules Committee of the National Assembly resolved to set up a permanent sub-committee which would track questions to ministers by MPs which are not answered¹. It resolved that failure to answer would lead to censure of ministers².

At a Rules Committee meeting of 19 May 2020³, MPs referred to this October 2017 resolution which had not come before the House to be adopted. There was reference to over 300 unanswered questions where ministers are not accountable. This meeting resolved to reconsider this report. Finally, in 2021, a model for dealing with unanswered questions was adopted. However, the implementation is still not operating smoothly, as evidenced by the Rules Committee meeting of 13 May 2022⁴, which referred to 100 questions outstanding and some ministers being serial offenders. Although there was reference to further actions⁵, it appears that nothing happened.

On 2 September 2022, the committee again discussed⁶ the delays by the Executive in responding to questions. Opposition MPs have kept the issue on the Rules Committee agenda, although not consistently.

This case study demonstrates how Parliament's internal attempts to improve its oversight function are glacial in their inefficient attempts to resolve core functional issues. These consistent delays appear to represent a lack of political will to fix the system, evidenced by the continual postponement of censure mechanisms and the fact that MPs have discussed this problem for five years and yet ministers are still not accountable.

1. Minutes of meeting of 18 October 2017 of the Committee on Rules of the National Assembly. Available here: <https://pmg.org.za/committee-meeting/25288/>
2. 6 October 2017. *Report of the Subcommittee on the Review of the Assembly Rules*. Tabled at the meeting on 18 October 2017 of the Committee on Rules of the National Assembly. Available here: https://static.pmg.org.za/171017Report_of_Subcommittee_to_the_Rules_Committee.docx
3. Minutes of the meeting on 19 May 2020 of the Committee on Rules of the National Assembly. Available here: <https://pmg.org.za/committee-meeting/30250/>
4. Minutes of the meeting on 13 May 2022 of the Committee on Rules of the National Assembly. Available here: <https://pmg.org.za/committee-meeting/34919/>
5. Second Report of National Assembly Rules Committee, 2021. <https://pmg.org.za/tailed-committee-report/4692/>
6. Minutes of the meeting on 2 September 2022 of the Committee on Rules of the National Assembly. Available here: <https://pmg.org.za/committee-meeting/35454/>

5. What evidence is there that MPs do their jobs?

5.1. Do they come to work?

In our previous Parliamentary Oversight Reports, OUTA used two indicators to measure whether MPs showed up to work. One indicator looks at how many committee meetings are held each year. The other indicator looks at the effectiveness of a committee's ability to hold the minister to account by looking at whether the minister bothered to turn up to committee meetings, under the assumption that attending these meetings relates to a minister's willingness to be accountable to Parliament, and to a desire for Parliament to want the minister to attend.

With the advent of Covid-19, committee meetings went virtual and, due to the parliamentary fire at the beginning of this year, MPs are still mostly meeting in a virtual mode.

Table 2 below shows the number of PC meetings this year. (The OUTA parliamentary report analysis runs from July 2021 to June 2022.)

Most committees have dropped their number of meetings significantly compared to 2020/21, and only the PC on FFE increased the number of meetings for 2021/22. For example, the PC on CoGTA, the PC on Transport and the PC on WS more than halved the number of meetings for the reporting period.

Given that it would be difficult to say that service delivery has improved over the last year, this begs the question: why are MPs working less?

Critical questions

1. What are MPs supposed to do?
2. What evidence is there that MPs do their jobs?
3. Why doesn't Parliament do what it is supposed to do?
4. Why don't MPs do what they are supposed to do?
5. What should we expect from our MPs and Parliament?

Table 2: Portfolio committee meetings July 2019 to June 2022

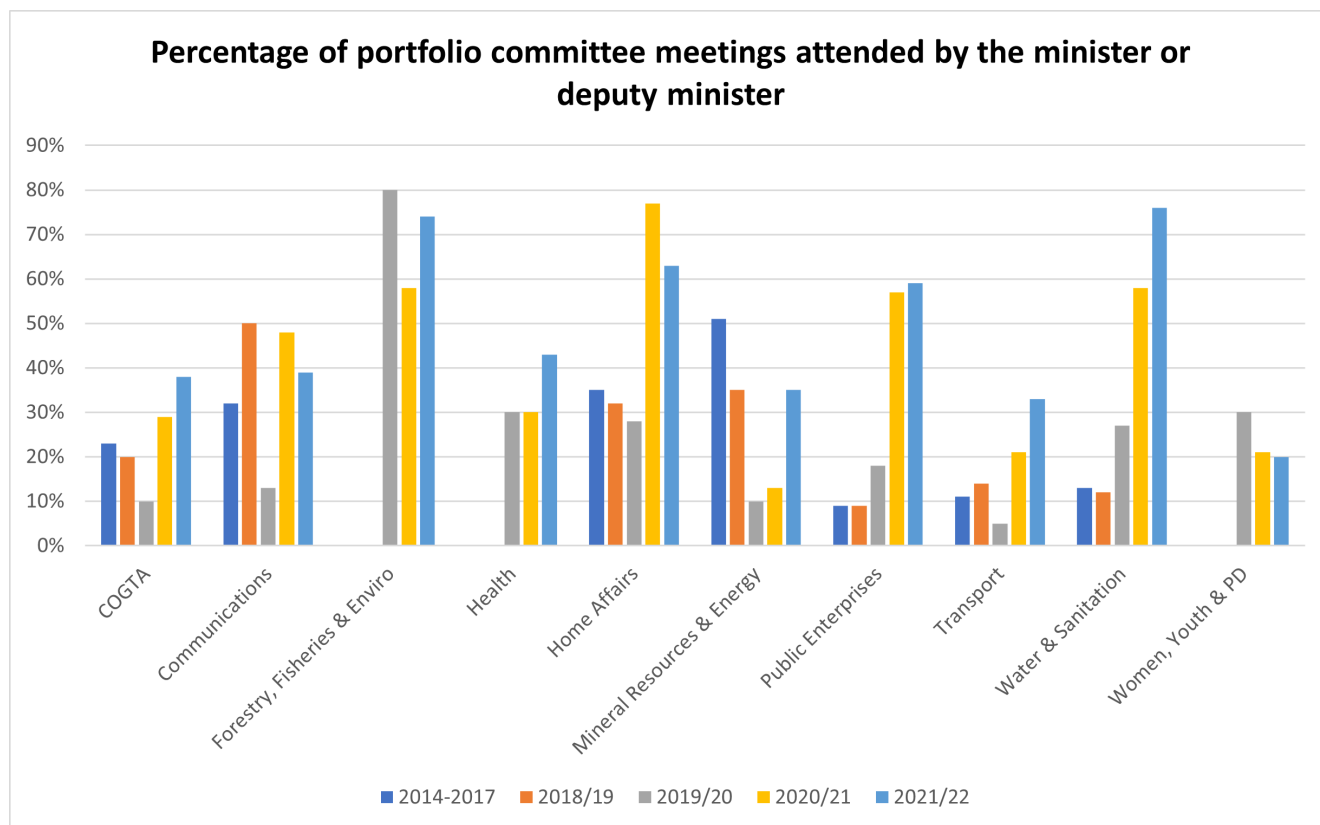
Portfolio committees: Number of meetings	2019/20	2020/21	2021/22
Communications and Digital Technologies	53	46	38
Cooperative Governance and Traditional Affairs	62	99	39
Forestry, Fisheries and Environment	20	33	39
Health	23	53	40
Home Affairs	29	30	30
Mineral Resources and Energy	42	40	37
Public Enterprises	28	21	17
Transport	42	61	27
Water and Sanitation	47	52	21
Women, Youth & Persons with Disabilities	27	58	40
Average number of meetings per year	37	49	33

In 2020/21, the busiest committee was COGTA, which met 99 times, and in 2021/2 it was Health and WYPD, which each met 40 times

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

Figure 1 below shows the percentage of portfolio committee meetings attended by the minister or deputy minister.

Figure 1: Percentage of portfolio committee meetings attended by the minister or deputy minister



(Note: The PC on FFE, the PC on Health and the PC on WYPD do not have data for earlier years because these committees were only added to the analysis later.)

Of the 10 committees we assessed for ministerial attendance, six ministries (COGTA, Communications, Health, Mineral Resources and Energy, Transport, and Women, Youth and Persons with Disabilities) attended less than half of the meetings that took place, with two ministers (Forestry, Fisheries and the Environment, and Water and Sanitation) having the highest attendance at more than 70%.

The Health Minister attended a large proportion of meetings which might have been related to the draft legislation for the National Health Insurance and associated public hearings.

The Public Enterprises Minister, who had shown very poor attendance

Six out of 10 ministries attended less than half of the committee meetings

in previous years, has improved since 2020, maintaining an almost 60% attendance at the committee meetings. However, despite an energy crisis in the country, one of the worst performing ministers of the committees we studied was the Minister of Mineral Resources and Energy. This minister also holds a key executive position in the ruling ANC political party and this certainly raises the question of whether an office bearer in a political party has the capacity or time to lead this ministry. It also raises the issue of whether the parliamentary chairperson and his MPs can hold such a minister to account, given that he is effectively their political party boss.

Can MPs hold a minister to account when he is also their party boss?

Ministers' absenteeism

"It is recommended that Parliament needs to make clear that non-attendance by ministers and others scheduled to attend portfolio committee meetings will not be tolerated and to ensure that consequences are visited on those who offend without adequate cause."

State Capture Commission final report, part VI volume 4

5.2. Constituency periods

In our previous reports, OUTA has noted how MPs are being given longer periods of time in the middle of the year, supposedly to consult their constituencies.

Table 3 below shows the length of the constituency leave period each year during the Sixth Parliament²⁶. In addition, MPs get a day each week for constituency work.

Kicking the can down the road
October 2022

Table 3: National Assembly mid-year constituency periods for Sixth Parliament

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

Although Parliament is officially closed during constituency periods, some committees request permission to continue working in order to address critical issues. In July 2022, six committees held meetings during the constituency period.

At work or not?

In 2021, there was a case where the PC on COGTA requested additional time to meet during the mid-year leave period. This was agreed but at the committee meeting on 6 July, the committee was informed that a directive had been received from the House Chair of Chairpersons (the House Chair: Committees, Oversight and ICT), instructing the committee not to carry on with its planned meetings, supposedly as a result of an anonymous complaint from a member that the workload was too taxing. All members denied complaining and vowed to continue with the work, and to write to the Chair of Chairpersons to ask to continue. The work did continue on 8 July, including receiving a presentation from the Special Investigating Unit (SIU) and the Auditor-General of South Africa, which included an SIU report on Covid-19 personal protective equipment procurement and a Special Audit Report on Covid-19 expenditure focused on municipalities.

However, on 12 July, Parliament issued a statement denying that any instruction had been given to cease meetings during the constituency period. Interestingly, on the 31 August, the PC on COGTA chairperson was moved to the PC on FFE and a new chairperson was elected to the PC on COGTA. There was no explanation for this series of events.

What was clear from the documents relating to the train of events is that the committee was prevented from continuing with its oversight into corruption through the instruction from Parliament's hierarchy. In this instance, Parliament denied it had issued such an instruction but because the chairperson chose to make the matter public before the committee, the air was cleared and the work continued. Was the instruction falsely issued to prevent the MPs learning of the corruption? If the chairperson had not challenged the instruction, would it have come to light that it was a bogus instruction? And why was an MP who took the initiative to pursue a path to expose corruption then moved from her post within the next month?

If MPs are in their constituencies, where are they and what are they doing?

MPs could claim that they engage with their constituencies and draw their insights from there.

There is significant public funding for constituency offices for MPs to engage with their constituencies.

In October 2021 OUTA published the report *Holding onto Power*²⁷ on constituency engagement and political party funding which reflected on the actual constituency offices and the amount of funding they receive. The report predominantly focussed on the public funding of political parties and how this leads to the failure of constituency engagement. It also looked at how South Africa's Parliament and provincial legislatures fund political parties, how political parties have benefitted from R13.870 billion from the fiscus since 2009, the use of "constituency work" to justify this, the failure to account for the spending, and the prioritisation of party over public interests. However, it was found that not much is known and made public about the roles and functions of constituency offices. Parliament's own website is outdated and contains very little information about constituency offices or their performances.

However, OUTA's subsequent internal report on constituency offices – a preliminary report on visits during July 2022 to five identified constituency offices in the Cape Town area – indicates that constituency offices are hard to find, if they even exist, never mind function as places to engage MPs, and most are drawn up along political party lines. OUTA has embarked on some action research to determine if constituency offices are functioning as a means of communication between the public and their MPs. OUTA will continue to monitor these offices.

In the *Holding onto Power* report, OUTA calculated that the public funds political parties at a rate of about R1 billion a year, most of this justified as support for constituency work. In addition, those 10 weeks that MPs and NCOP delegates got for the 2021 mid-year constituency period cost taxpayers about R339 million for their salaries for that period²⁸.

There is significant public funding for constituency offices for MPs to engage with their constituencies



Image: Shutterstock

Our visits found some offices functional and helpful, while others showed little value for money. There was a constant refrain of lack of funding, for computers and telephones for staff in the offices. Constituency offices are listed on a parliamentary list but in some cases, the address is not a constituency office at all: in one case it was a school and in another, OUTA was informed that the constituency office had moved. There seemed to be genuine confusion between ward offices and Parliamentary Constituency Offices. The idea of a Parliamentary Constituency Office rather than a political party constituency office was also something that officials in these constituency offices were not clear about. Some officials indicated that they served anyone who walked in, whereas in several instances the officials indicated that “it is not in my job description to assist members of the public with matters”. No MPs were available during the visits.

Parliament appears to have embarked on a programme of remodeling constituency offices. In April 2022, Nosiviwe Mapisa-Nqakula, the Speaker of the National Assembly, opened a Parliamentary Constituency Office for herself in Makhanda in the Eastern Cape.²⁹ This office appears to be intended for use by the Speaker herself, not MPs in general. It’s not clear which budget was used to fund this office.

Although this is preliminary research, covering only a few offices of the major political parties, the trend so far is not encouraging. There appears no easy way to reach the politicians who make decisions on your behalf each and every day, but who do not appear willing to consult about their decisions.

5.3. Public engagement in Parliament

To prepare themselves to conduct effective oversight, MPs need information and must consult with stakeholders to identify relevant issues for assessment.

Some constituency offices were functional and helpful, while others showed little value for money

During constituency periods MPs have a duty to be available to the public, help solve problems and report back to their constituents on what is happening in Parliament

– Parliament
www.parliament.gov.za/constituency-work

The *Global Parliamentary Report 2022*³⁰ emphasises the value of public participation in parliaments. The box below on “Public participation builds trust and strengthens parliaments” elaborates on the value of public participation.

Experience from parliaments around the world shows that taking action in each of these areas will help to build better and deeper engagement with the community. Through comprehensive, creative and collaborative engagement approaches, parliaments have the opportunity to boost public interest and participation in their work.

The illustration below provides a representation of how the Global Parliamentary Report saw the value of public participation in strengthening democratic oversight.



The Global Parliamentary Report 2022 emphasises the value of public participation in parliaments

South Africa's Parliament appears not to engage with the public. OUTA has been urging Parliament to listen more to the people of South Africa. This was in relation to the International Day of Parliamentarism, annually observed on 30 June³¹. It is clear that the role of Parliament is of extreme importance not only globally, but also especially in South Africa as seen in the wake of state capture.

In previous years, OUTA has looked at how the portfolio committees that we have studied engaged with their public stakeholders including civil society.

Table 4 below shows the number of engagements that the portfolio committees have had, including the number of stakeholder groups engaged, as well as the number of days of public hearings. The analysis also allows us to calculate how many indaba-style gatherings the portfolio committees hosted; over the last three years, these have been almost non-existent.

OUTA urges Parliament
to listen more to the
people



Table 4: Portfolio committee engagements with civil society 2021/22

	Number of individual stake-holders engaged	Number of CSOs engaged	Days of public hearings	Number of stake-holder meetings (indabas)
COGTA	5	0	0	x
Communications & Digital Technologies	0	0	0	x
Forestry, Fisheries & Environment	29	28	0	x
Health	8	0	0	x
Home Affairs	0	0	0	x
Mineral Resources & Energy	5	0	0	x
Public Enterprises	1	0	0	x
Transport	4	3	0	x
Water & Sanitation	3	3	0	x
Women, Youth & PD	1	1	0	x

Table 4: These public engagements are in connection with oversight only, and do not include engagements on drafting legislation

Note that in **Table 4** above, these engagements are in connection with the portfolio committees' oversight functions only, and do not include engagements on drafting legislation. This table illustrates Parliament's lack of engagement with the public in connection with its crucial function of holding the Executive to account and watching over taxpayers' money. The stakeholder meetings (indabas) are more interactive meetings than the formal public hearings, and may involve discussions between the public and department officials and MPs, but these kinds of discussions have not been held this year.

For this year, only the PC on Health, the PC on MRE and the PC on Home Affairs held more than five days of public hearings or other engagements. In these committees, the engagements were to solicit submissions regarding proposed legislation, rather than for oversight. In other committees, there was no engagement with civil society on any

issue of oversight that we can find.

While Covid-19 was a factor in Parliament's ability to engage civil society physically, it appears that committees did not take advantage of the virtual platforms to engage on topical issues.

As we highlighted before, less than 10% of the electorate belong to a political party and it is difficult to escape the conclusion that, effectively, the vast majority of the electorate are not consulted by the MPs for whom they voted.

In the energy sector, there are a number of civil society organisations that are active, and 16 of them wrote to Parliament on the issue of the Karpowerships, asking for an inquiry (see Karpowerships box in section 5.8 on page 82). At no time did the PC on MRE officially reach out to any of these organisations to ask them for their insights on any topical energy issue that the MPs might have been grappling with.

The Portfolio Committee on Home Affairs seemed to have fared better with its public participation process in the Electoral Amendment Bill. The committee held hearings and on 1 and 2 March, 13 interested parties, especially civil society organisations, made their presentation to Parliament. From 7 to 23 March 2022, the committee conducted a whirlwind national roadshow, hosting 27 public hearing meetings in different locations across the nine provinces. The meetings drew an overall attendance of 3 396 individuals (on the attendance register), some representing communities and organisations.

Key criticism resulting from this public participation process – although it appears great on paper – is that it is an example of a tick-box exercise. The portfolio committee presided over structuring the Ministerial Advisory Committee (MAC) to deal with the Constitutional Court's order to amend the Electoral Act. The MAC report delivered two viable options in June 2021: the minimalist option (Option 1) and the majority option (Option 2). The current bill tabled by Minister Dr Aaron Motsoaledi completely disregards the Option 1 which got more votes. In addition, the only other viable bill was the Electoral Laws Second Amendment Bill

16 civil society organisations wrote to the PC about Karpowerships but the PC did not engage with them

(B34-2020), submitted by opposition MP Mosiuoa Lekota in December 2020. Unfortunately, this bill was deemed undesirable by the portfolio committee. In summary, the committee gave very short timelines for the public to comment on the bill, they did not educate the public on the bill's complex content, and they removed the only other option. How can the public participate meaningfully on short notice, very little information, and no other options? It would appear that a parliamentary "Stalingrad" tactic has been deployed, with MPs regurgitating previous meeting discussions at the regular committee meetings, whilst ignoring substantial input, and alternative bills from civil society organisations and experts being suppressed, with the aim of ensuring the weakest possible version of a reformed bill is chosen.

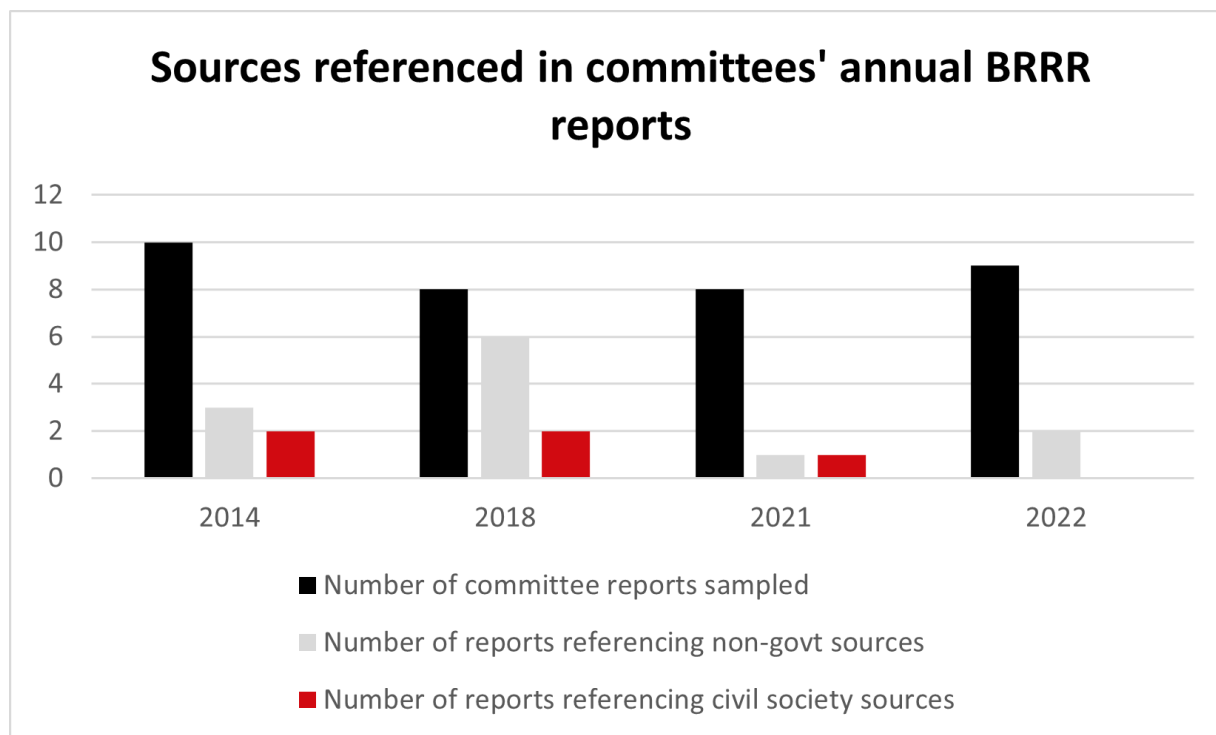
The ultimate goal is meaningful participation (more on this later).

Academia and civil society produce scientific papers and reports, many of which are related to issues and matters that the portfolio committees are dealing with. In their oversight of the departments, and particularly given the resource constraints that the committees may have in terms of research capacity, it would make sense for the committees to draw on these alternative sources of information in order to strengthen parliament's oversight, for example, in the annual Budgetary Review and Recommendation Reports (BRRRs) intended for oversight.

Figure 2 below illustrates which committees refer to sources other than government in their oversight BRRRs.

Committees could draw on alternative sources of information, such as reports from academics and civil society

Figure 2: Sources referenced in portfolio committees' annual Budgetary Review and Recommendation Reports



Parliament itself has produced various draft papers – such as *Public Participation*, *Public Involvement Index*, and *Public Accountability Index* – but these have yet to be approved by the political heads. In December 2021, Parliament launched the South African Parliamentary Institute³² to facilitate inter-relations between the national Parliament and the provincial legislatures, but it is unclear how civil society fits into this. Parliament is also setting up the Public Participation Working Group, which is a voluntary coalition of organisations working collaboratively with national Parliament and the broader legislative sector. This is a new initiative with the aim of encouraging comprehensive and inclusive public involvement at all levels and spheres of the state, and broader

societal institutions. OUTA hopes to continue to engage constructively with Parliament on such initiatives.

However, at this stage, minutes of portfolio committee meetings are still inaccessible on Parliament's website, so the public has to rely on civil society organisations like the Parliamentary Monitoring Group³³ (PMG) for a record of what was discussed and any decisions that might be taken. Research reports that are submitted by Parliament's research section are not available publicly and our own experience is that, despite promises, the research section remains opaque and does not publish its reports for access by the public. Under these circumstances, MPs may be reliant on information and research compiled by a parliamentary section that operates in secrecy and without peer review. This secrecy is not appropriate in a parliament operating in a democracy.

Parliament's research unit is understood to comprise about 60 researchers (part of the approximately 250 staff in the Knowledge and Information Services division of Parliament), yet portfolio committees are allocated only one researcher each and possibly one content advisor each. If such a researcher were to serve all MPs equally, this would be an impossible task, and researchers tend to work with the chairperson.

Opposition MPs are then reliant on an anonymous research section or must find their own resources to conduct their own research. MPs are able to meet with whoever they choose in order to receive information and research. However, there is no public record of who they meet and MPs might not be aware of – or may not have the capacity or possibly the willingness to engage with – universities, thinktanks and civil society organisations that they could approach for alternative views.

As our research in 2021 showed – and there is no change in 2022 – MPs are still reliant on the very departments which they are supposed to hold to account for information regarding their functioning. As our analysis of the BRRRs shows (see below), MPs express concern but consistently allow the Executive to escape real accountability.

Minutes of portfolio committee meetings are still inaccessible, so the public has to rely on civil society organisations like the PMG for records

MPs still rely on the departments they are supposed to hold to account for information on those departments

There are many organisations that are concerned with improving the functioning of Parliament and are willing to provide information to MPs both on issues of substance to their portfolios and to help them with improving democratic practice. As an example, 15 civil society organisations wrote to Parliament regarding the Karpowership issue in June 2021³⁴, and 622 individuals presented at the electoral reform hearings³⁵. There is a wealth of information out there, but Parliament is not structured to make such engagements with civil society easily available or meaningful. Having 10 minutes to make your input and then to respond to a question or two is not meaningful dialogue. Parliament has a long way to go in order to reach an acceptable standard of participatory democracy.

Parliament is not structured to make engagements with civil society easily available or meaningful

5.4. Budgetary Review and Recommendation Reports (BRRRs)

Each October, the AGSA, the relevant departments and the entities that those departments oversee report to parliamentary portfolio committees, and those committees then make recommendations to the departments to address the shortcomings that Parliament perceives. In May of the following year, the departments present their annual performance plans (APPs) and budgets. The portfolio committees then look at the departmental APPs, supposedly check to see which recommendations have been implemented, and then approve or amend the budgets.

Portfolio committees are the engine rooms of Parliament and, by examining the BRRRs and the APPs, and looking at the committee meetings that take place, it is possible to gain an understanding of what Parliament's concerns were, what they wanted to happen and whether their concerns were addressed.

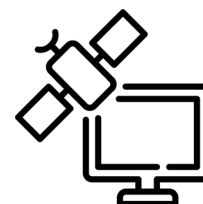
We have highlighted several instances which highlight how portfolio committees deal with the performance of their portfolios.

5.4.1. PC on Communications and Digital Technologies (CDT)

In the 2021 BRRR³⁶ the PC on CDT recommended ensuring that the department does not delay the implementation of broadcasting digital migration. This is the migration of broadcasting services from analogue to digital technologies, in line with international requirements and in order to clear the radio frequency spectrum currently occupied by broadcasters to enable the provision of wireless mobile broadband services and other innovative applications. This is a repeat issue in that the initial deadline was 2011 and the international deadline was June 2015, but all deadlines have been missed and implementation repeatedly delayed. In 2022, the committee held numerous meetings – on 1 March, 15 March, 22 March and 24 May – where the committee was assured that the final analogue switch-off date was 30 June 2022. However, despite the meetings, the deadlines are missed and the process is delayed.

Another issue which this committee faces and which is listed in the BRRR recommendations is to ensure that processes are in place to prevent delays in respect of high-demand spectrum processes. Meetings were held on 3 May and on 7 June. This is a long-delayed issue as the last time that South Africa released spectrum was 2004/05.

South Africa is very late to the party on these crucial issues and the portfolio committee seems unable to provide effective oversight.



Broadcasting digital migration deadlines are still being missed

5.4.2. PC on Cooperative Governance and Traditional Affairs (COGTA)

Overall, this department spent 96.6% of the allocated budget while achieving only 68% of its targets.

An issue of concern is the fact that nearly half of the National Disaster



Management Centre's R633.9 million was not spent. The BRRR³⁷ merely notes that the allocation was not spent according to projections and does not explain why this was the case. This underspending is puzzling in the context of municipalities desperate for disaster relief grants to address Covid-19 disaster requirements. Seven provinces have also needed disaster relief funding following the drought disaster declaration of 24 February 2021.

In the BRRR, one recommendation was that the Municipal Demarcation Board should develop and present to the committee a strategy for dealing with demarcation hotspot areas, including those areas that have challenges going back as far as 2016. This is a recurring issue and although a demarcation amendment bill is on its way to Parliament, a strategy to address the hotspot issue still seems to be outstanding.

5.4.3. PC on Forestry, Fisheries and Environment (FFE)

The BRRR³⁸ states that this portfolio committee noted with concern that for the period under review (2020/21), the department had finalised 51 disciplinary cases pertaining to serious audit findings, but only dismissed an individual based on irregular conduct. The committee raised concerns about resignations of officials who might wish to escape justice by not waiting to answer charges against them in the department or in court. The committee would like to know what happens to such officials who are not processed through department's disciplinary processes or against whom a case has not been opened with the police. This means that out of 51 cases only about 18 cases could eventually be processed.

The BRRR recommendation regarding the facilitation of effective allocation of small-scale fishing rights has been discussed and the minister has taken the fishing rights allocation process (FRAP) to court and successfully reviewed it and set it aside. This should result in a fairer and more effective FRAP. Additional recommendations regarding access

COGTA spent 96.6% of its budget but met only 68% of its targets



by small-scale fishers have been followed up again in April 2022 and also appear in the 2022 APP.

The PC stated in the BRRR that the minister should submit a detailed response to the committee on all the recommendations made in this report within 90 days after the report's adoption by the National Assembly. However, of the 27 recommendations, 10 (including this one), had not been followed through in the APP or in progress meetings.

This would tend to indicate that the PC on FFE is limited in its oversight function although some progress has been achieved.

5.4.4. PC on Health

During the meeting of 23 March 2022, AGSA Deputy Business Executive Thabelo Musisinyani indicated that the Department of Health's leadership does not implement AGSA recommendations, leading to a lack of improved audit outcomes. He further stated that leadership is not taking the AGSA's messages seriously, resulting in stagnant audit outcomes for the sector. There is a recommendation in the BRRR that the department should provide a turnaround plan to address the recurring issue related to quality of performance information as reported by the AGSA. Although there have been meetings to discuss this and other issues, no plan has been presented.

In response to a recommendation that the Compensation Commission for Occupational Diseases should put mechanisms in place to track and trace beneficiaries of unpaid funds, the committee held a meeting and raised this issue in the APP for 2022, noting with concern that unclaimed benefits by beneficiaries were at R1 billion.

There has also been no report on consequence management arising from non-compliance with legislation (another BRRR recommendation). It appears therefore that the minister lacks the political will to account to the committee and the committee is not able to hold the executive to account.



5.4.5. PC on Home Affairs (HA)

A progress report³⁹ addressing the PC's BRRR⁴⁰ recommendations was officially submitted on 5 February 2022, by Minister Dr Aaron Motsoaledi, to the Speaker, Nosiviwe Mapisa-Nqakula. The Department of Home Affairs' implementation report is based on the recommendations made by the portfolio committee. It is noteworthy that all the committee's BRRR recommendations have been captured in the BRRR adopted on 2 December 2021. This is not repeated across other portfolio committees.

On 22 February 2022 the committee met on a virtual platform to receive a briefing from the department on the 2021/22 BRRR; this was a detailed meeting. This was followed by another meeting on 26 April 2022 where the committee convened on a virtual platform to be briefed by the department on its APP and budget for 2022/23. On 3 May 2022, the department's entities – the Government Printing Works (GPW) and Electoral Commission (IEC) – briefed the committee through a virtual platform on their APPs and budgets for 2022/23. On 6 May 2022 the MPs considered their draft report on the department's budget, which included all the interactions the committee has had with the department, the GPW and the IEC on their APPs and budgets for 2022/23. On 13 May 2022 the committee adopted the department's budget vote report.

In comparing this portfolio committee's deliberations and engagements on BRRR items with other portfolio committees in this report, this committee must be commended.



In comparing this portfolio committee's deliberations and engagements on BRRR items with other portfolio committees in this report, this committee must be commended

There are a number of engaged MPs asking difficult questions. The minister also regularly attends and engages on issues raised. It is evident that the members of this committee are invested in seeing the BRRR recommendations through, and the department does take this into consideration and responds (adequately compared with others). However, it is clear that the minister is receptive to oversight and has taken the portfolio committee recommendations seriously. The notion of each minister preparing and providing a report explaining how the BRRR recommendations would be addressed is a welcome initiative and should be adopted by all committees.

This committee has also dealt with the Electoral Amendment Bill, where it needs to deliberate and potentially approve legislation which may not find favour with the ruling party. This case study (the box below: “Public vs Party: The Electoral Amendment Bill”), while not dealing with oversight, provides insights into the conflict between parliamentarians acting on the basis of a public mandate or falling back on a political party mandate which favours the political party over the public interest.

It is clear that this minister is receptive to oversight

Public vs Party: The Electoral Amendment Bill

This Electoral Amendment Bill provides minimally for independent candidates and potentially a constituency based electoral system. The Constitutional Court provided Parliament with an opportunity to amend the law towards addressing the declaration of unconstitutionality, which should have been amended by 11 June 2022. On 10 June an extension was granted until 10 December 2022. However, the Minister chose to put through a minimalist version of the bill and explained that this option would allow Parliament to meet the 2024 deadline, whereas the alternative option proposed would require extensive changes to the electoral system. It can be inferred that extended public engagements, together with recommendations by the National Assembly and the National Council of Provinces, compounded by alignment with the Electoral Commission of South Africa's requirements in preparation of the national elections in 2024, will all further delay meeting the deadlines as put forward by the Constitutional Court. It seems therefore that the public interest was to be sacrificed to meet political deadlines.

Accordingly, the primary reason for the resolution was the need for the committee to undertake an extensive and meaningful public participation process. Notwithstanding the recommendation, the deadline for public commentary – 21 February 2022 – has not been extended to meet the requirement of informed public participation. Requesting an extension based on the public's interest, without actively including the public in those extended processes, is a contradiction.

The committee hosted 27 public hearings across nine provinces and 3 396 individuals attended the hearings, with 48% of the speakers rejecting the bill and 51% supporting some variation. The oral presentations to Parliament took place on 1 and 2 March 2022, based on the written submissions due on 21 February 2022. The parliamentary presentations were substantial, whereas the majority of the provincial presentations were scripted and superficial.

Key criticism resulting from this public participation process – although it appears great on paper – is that it is an example of a tick-box exercise. Short notice periods were given to prepare the public. Only one bill was available for comment since the other constituency option was removed from the table at the end of February. The majority of the provincial responses appeared to be scripted because they captured the exact same comment. Finally, the PC on Home Affairs did not adequately accommodate the constitutional concerns raised by the civil society organisations which studied this bill in depth together with legal counsel. The whole process appears to have been rushed, with superficial changes made to an already problematic bill.

5.4.6. PC on Mineral Resources and Energy (MRE)

Each year, in October, the PC on MRE receives reports from the various entities within its oversight reach and the report from the AGSA which indicates how the entities are managing their money, particularly the funds that they receive from National Treasury.

The PC produces the BRRR which analyses the progress of the department and makes recommendations. In the following year, the PC reviews the departmental APP and proposed budget and produces a report. We would expect that recommendations to address shortcomings would be captured in the BRRR, that follow up action would take place through subsequent committee meetings and that further recommendations would be made when the PC reviewed the APP in May 2022. We would also expect that the PC would exert its power to amend the budget to reward well-performing entities and punish those who have transgressed.

We assessed this process and found the oversight inadequate.

In the BRRR 2021⁴¹, the PC notes that the department had “set itself 70 performance targets for the 2020/21 financial year. Of the 70 targets, the Department achieved 43 or 61 percent. This achievement is below the National Treasury benchmark of 80 percent for the National Departments. The performance is also in sharp contrast with the financial performance, wherein the Department spent 95 percent of the allocated budget”.

It is clearly ineffective to spend 95% of your budget while achieving only 61% of your outcomes.

The tables below are taken from the BRRR⁴² and show the department’s budget and spending for 2020/21 (DMRE table 1) and targets achieved during 2020/21 (DMRE table 2).



The Department of Mineral Resources and Energy spent 95% of its budget but achieved only 61% of its targets

Table 1: Overall Budget for the Department for 2020/21 Financial Year

Programme	Final Appropriation	Actual Spending		Variance
	R'000	R'000	%	R'000
Administration	617 281	566 592	91.8%	50 689
Minerals & Petroleum Regulation	529 949	508 438	95.9%	21 511
Mining, Minerals & Energy Policy Development	919 289	899 358	97.8%	19 933
Mine Health & Safety Inspectorate	211 680	196 349	92.8%	15 331
Mineral & Energy Resources Programmes & Projects	4 180 694	3 912 610	93.6%	268 084
Nuclear Energy Regulation & Management	1 108 157	1 101 604	99.4%	6 553
Total	7 567 050	7 184 949	95.0%	382 101

Economic Classification

Economic Classification	Final Appropriation	Actual Spending		Variance
	R'000	R'000	%	R'000
Compensation of Employees	1 014 239	956 939	94.4%	57 300
Good & Services	429 796	571 897	133.1%	- 142 101
Transfers and subsidies	6 099 993	5 647 279	92.6%	452 714
Payments for Capital Assets	18 394	4 152	22.6%	14 242
Payments for Financial Assets	4 628	4 683	101.2%	- 55
Total	7 567 050	7 184 949	95.0%	382 101

Source: Department of Mineral Resources and Energy, (2020)

Dept of Mineral Resources & Energy targets

Table 2: Overall Performance of the Department for 2020/21 Financial year

Programme	Total Targets	Achieved Targets	Partially Achieved Targets	Not Achieved Targets
Administration	12	11 (92%)	1	0
Minerals & Petroleum Regulation	14	4 (29%)	8	2
Mining, Mineral & Energy Policy Development	21	14 (67%)	5	2
Mine Health & Safety Inspectorate	6	4 (67%)	1	1
Programme & Projects Management	11	5 (45%)	0	6
Nuclear Energy	6	5 (83%)	1	0
Total	70	43 (61%)	16 (23%)	11 (16%)

Source: Department of Mineral Resources and Energy Annual Report, (2020/21)

Dept of Mineral Resources & Energy budget 2021/22

In **Table 5** below, we list the BRRR 2021 recommendations, compare them with the PC's work and examine how the department responded to the recommendations.

	BRRR recommendations (2021)	Progress	APP recommendations followed through (May 2022)	Recurring issue
1.	Ensure that the SA National Nuclear Energy Corporation (NECSA), Central Energy Fund (CEF) and SA Diamond and Precious Metals Regulator (SADPMR) table their outstanding annual reports for 2020/21 before the end of the 1st term of 2022.	22 Feb 2022: NECSA and CEF reports tabled. 1 March 2022: AG reports tabled.		Yes
2.	Ensure that the AGSA findings and recommendations are implemented.			
3.	Develop an Implementation Action Plan for department and entities to address the AGSA findings and recommendations, and brief the PC during the 1st term of 2022/23 and thereafter regularly.	15 Feb 2022: Concerns expressed.	.	
4.	Ensure that the department and entities consistently meet the PFMA deadline for submitting annual reports. Ensure uniformity regarding interest charged on outstanding debt.			
5	Ensure that the IT infrastructure shortcomings are addressed as highlighted by the AGSA.			
6.	Update the PC on the Roadmap for implementing the 2 500 MW nuclear build programme during the 1st term of 2022/23.		Address NERSA's suspensive conditions delaying procurement framework.	
7.	Update the PC on the Review of the Electricity Pricing Policy during the 1st term of 2022/23.			
8.	Present a Framework for a Just Transition to a low carbon economy, during the 1st term of 2022/23.			
9.	Expedite implementation of the solar water heater programme to avoid recurrence of fruitful and wasteful expenditure relating to storage costs.		Develop monitoring & consequence management for this programme.	Yes
10.	Brief the PC on the outcomes of the Council for Geo-Science's geo-environmental baseline study on shale gas in the Karoo.			
11.	Update the PC on the Artisanal Small Scale Mining Policy once finalised.			
12.	Brief the PC on the outstanding annual reports of the CEF, NECSA and SADPMR.	Meetings of 22 Feb & 1 March 2022.		Yes

Only two of the 12 BRRR recommendations found their way into the APP. Of the issues raised in the BRRR, the PC dealt with outstanding South African Nuclear Energy Corporation (NECSA) and Central Energy Fund (CEF) reports and financial statements to some degree in meetings during the first half of the year. There have been no committee meetings to address the other BRRR recommendations.

On 15 February, the minutes noted “Members were unable to effectively comment on the Implementation Action Plan against the audit report, as they were unaware of the issues since the Committee did not receive the South African Nuclear Energy Corporation’s latest audit report”.⁴³

The solar water heater programme was not implemented, with the excuse of insufficient staff capacity. In the BRRR, the PC “observed the consistent poor performance of the National Solar Water Programme. The Department incurred fruitless and wasteful expenditure amounting to R20.7 million, the majority of which was caused by additional storage costs for solar water heater geysers that had been manufactured, but were not installed”.

The PC conducted follow up meetings on the BRRR recommendations. However, NECSA had recurrent management issues and consequence-management failures, and the AGSA noted “The financial position of the group remained very concerning due to the company and group having recorded losses for the past four years. The total liabilities exceeded total assets at the 31 March 2021 year-end. NECSA was technically insolvent and illiquid. This had resulted in multiple material uncertainties that cast significant doubt regarding the entity’s ability to continue as a going concern.”

The AGSA noted that at NECSA “the irregular expenditure decreased from R34 million to R32 million. This was not a substantial decrease. Fruitless and wasteful expenditure decreased from R2 890 000 to

DMRE wasted R20.7m on
storing solar water
heaters it did not install

R174 000, which was a substantial decrease”.

The BRRR noted that the AGSA had not audited the CEF and NECSA annual financial statements for two consecutive years.

The BRRR indicates a recurring problem within CEF and NECSA of failing to submit legally required reports. “The Committee observed the failure of the CEF Group to table its Annual Report, as the reason for the failure to submit on time is not delays by the AGSA, as is the case with NECSA and the South African Diamond and Precious Metals Regulator (SADPMR). The CEF Group failed to submit, and therefore acted in breach of the law. The CEF Group’s last Annual Report (2018/19) was tabled on 27 September 2019. There is no record of the 2019/20 and 2020/21 Annual Reports. 3. Similarly, NECSA tabled its last Annual Report for 2016/17 on 28 September 2017. There is no record of any further reports tabled by NECSA in Parliament. 4. Moreover, the Committee notes with concern that the CEF Group and the NECSA group did not present to the Committee their Performance Plans for the 2021//22 financial years.”

Despite this, in May 2022 the PC approved the department’s budget and APP, with a number of recommendations.⁴⁴ However, the BRRR recommendations were not carried through even though the committee had been deeply concerned with issues of accountability and the entities’ failure to present their legally required reports to Parliament.

Despite the concerns over NECSA, the CEF and the department’s solar water heater programme, the PC did not adjust the budget. It would therefore appear that the PC paid lip service to its responsibilities in holding the executive to account.

In its May recommendations, the PC failed to address various BRRR recommendations and repeated other recommendations. The full list of recommendations are below:

1. Present the procedure followed with regard to the merger of

CEF and NECSA financials
were not audited for two
consecutive years

the two departments and provide a report on the number of offices of the Department of Mineral Resources and Energy (DMRE), with its cost differences (i.e. owning and leasing).

2. Develop mechanisms and initiatives to clear the licensing backlogs and update the Committee on progress made in clearing the backlog, including a detailed report on the average number of licensing applications for mining and energy per day, respectively, and a detailed breakdown of the steps to be followed for each application.

3. Update the Committee on progress made in addressing issues raised by the Fraser Institute regarding South Africa and mining investment prospects.

4. Ensure that the Integrated Resource Plan (IRP), is reviewed every two years, as per the legislative requirements.

5. Develop mechanisms, with the National Energy Regulator of SA (NERSA) to ease the regulatory requirements for the Independent Power Producer (IPP) projects.

6. Expedite the finalisation of the Risk Mitigation Independent Power Producers Procurement Programme (RMIPPPP), and other IPP projects.

7. Update the Committee on all pieces of legislation due for submission to Parliament in the MTEF period.

8. Expedite the Amendment of Diamonds Act, Precious Metals Act and Export Levy (Administration) Act.

9. Submit and present to the Committee the Exploration Strategy.

10. Consider reviewing the mandate or location of South African National Energy Development Institute (SANEDI).

11. Ensure that the degradation of safety culture at Koeberg Nuclear Power Station is addressed as a matter of urgency.

12. In consultation with the Minister of Finance, ensure that the issue of VAT included on diamonds imported to South Africa is addressed as a matter of urgency.

13. Address the suspensive conditions for NERSA that delay the procurement framework for the 2 500MW Nuclear Programme.

14. Consider identifying alternative investor(s) for the new oil refinery.

15. Develop measures to mediate issues timeously between Eskom, IPP Office, and NERSA that delay the signing of contracts for the programmes already procured.

16. Ensure that the professional service providers complete their studies within the set timeframe to expedite the drafting

BRRR recommendation:
Ease regulations for IPPs
and expedite the RMIPPPP

BRRR recommendation:
Address safety culture at
Koeberg

BRRR recommendation:
Draft and implement an
Electrification Master
Plan

and implementation of the Electrification Master Plan necessary to address the barriers to electrifying households in sparsely populated rural areas and informal settlements.

17. Fill the Department's funded vacant posts as well as align the training and development with its mandate to minimize dependence on consultants and service providers.

18. Implement the Social Contract for Mining as a platform to engage respective landowners to address the lack of access to land for exploration.

19. Engage with the National Treasury to increase South Africa's budget share in geoscience to diversify supply of minerals in support of the mining and energy industries.

20. Monitor social and labour plans to ensure that they address the challenges directly affecting the mining communities, particularly the triple challenges of poverty, inequality, unemployment as well as inclusivity.

21. Provide a report on the cadastral system as per the outstanding reports for the following regional offices: Mpumalanga, Limpopo and the North West provinces.

22. Develop a monitoring and consequence management mechanism with regard to the Solar Water Heater Programme.

23. Present, with the Central Energy Fund Board (CEF), the consequence management processes as and when they have been finalised.

BRRR recommendation:
Fill funded vacant posts

BRRR recommendation:
Report on the cadastral system

BRRR recommendation:
Present consequence management processes for CEF

The PC MRE has engaged with the minister and deputy minister who attended 10 out of 37 committee meetings (only 27%).

From January to June 2022, the PC held 21 meetings, with three at the beginning of the year following up on BRRR recommendations in the BRRR (to review audit improvement plans and on the missing entity plans) and three in May on the APPs and budget approval.

The PC chairperson highlighted the complications of the oversight work in that proper information was needed to be able to respond to the department.⁴⁵

How do MPs ensure that departments take into account national priorities?

In 2021, the PC met specifically to look at the State of the Nation Address and the implications for the work of the committee and the department, but there was no such meeting in 2022. The medium-term budget of October is another opportunity for the committee to note national priorities but there is no mention of this event or implications.

What about public interest issues?

Throughout 2022, the energy crisis has been top of the national agenda, both the need to address loadshedding and increase generation capacity, and the very high fuel price. The committee held four meetings including one which claimed to be a stakeholder meeting but involved only industry players in the fuel sector. There was no attempt to engage with civil society.

The PC did not engage the minister on loadshedding despite this minister being responsible for energy security. The only issue related to energy security raised was the risk mitigation programme (the RMIPPP), when the Karpowership issue was on the agenda, relating to corruption rather than energy security.

Forensic reports and consequence management

In 2019, the BRRR stated these intentions: “Ensure that there is consequence management and encourage entities to undertake investigations if there is a suspicion of wrongdoing”; and “Consider conducting forensic investigations on the expenditure of public funding with specific reference to the Central Energy Fund (CEF) and its subsidiaries, and any other entity reporting to the Department”.

In 2020, the BRRR said 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”,

There was no discussion about SONA 2022 priorities

No attempt to engage civil society on the energy crisis

The PC did not engage the minister on loadshedding despite this minister being responsible for energy security

and “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 intends 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”.

It is useful to review how the PC followed through on these recommendations to the Minister.

On 14 October 2020, the PC once again called on the department to take action against officials responsible for the problems with regard to the solar water heater programme.

On 31 August 2021, the PC met again to hear from the department on forensic reports and consequence-management matters.⁴⁶ However, the department failed to provide any final information that showed that there had been consequences and various investigations were purportedly only due to be finalised by the end of September. “Members expressed concern about the extent of irregularities across the Department’s entities and questioned whether enough was being done to ensure that wrongdoers faced consequences,” noted the meeting. The minutes recorded the chairperson as noting that “With regard to the issue of the Solar Water Heater Programme, at some point a lady had said that she would put her head on a block that by a certain date all of the units would be on the roofs. What had happened to the head of that person?”

So far, there has been no other meeting held to follow up on the results of such investigations.

Human capacity

The PC oversees two large departments that have been merged (Mineral Resources and Energy), with a combined budget of R10 billion in 2022/23 but the PC has only one researcher. Individual MPs do not have parliamentary researchers and might be reliant on their political

The department failed to provide any final information that showed that there had been consequences for irregularities

parties for this. The playing fields are very unfair and it is easy to see the difficulties that Parliament has in conducting oversight.

However, this committee has not engaged with civil society or academia to attempt to enhance its capacity to hold the Executive to account. It has not used the powers it has to subpoena individuals or entities that fail to respond, nor has it used the most powerful tool at its disposal, its power to recommend amendments or fail to approve the budgets of non-performing entities.

Insights

OUTA recognises that this committee works hard at attempting to hold the Executive to account and has shown tenacity in questioning over recurring problems such as the solar water heaters.

Over the last three years, there have been recurring problems of entities that have failed to report to Parliament, of AGSA reports which show shortcomings in the audit outcomes and, for 2021/22, a department which met a dismal 61% of its outcomes while spending 95% of its budget.

Consequence management is delayed and individuals leave the department before investigations are finalised.

The PC appears unable to address oversight issues efficiently as shown by the Karpowership investigation which, after almost a year, failed to get off the ground and was then dropped. (See the box on the Karpowership matter in section 5.8 below on page 82.)

The PC has a poor relationship with civil society stakeholders. It does not proactively engage with civil society despite there being a broad range of civil society organisations active in the energy space⁴⁷. These organisations respond to calls for inputs into legislation but there is no follow up after such engagements, and there is no evidence (no mention of civil society references in the BRRR) that civil society inputs are used to strengthen oversight of the Executive.

Consequence
management is delayed
and individuals leave the
department before
investigations are
finalised

OUTA acknowledges that many MPs work hard, and actively ask tough questions in their meetings, but keeping busy is not necessarily effective delivery. This case study therefore supports the hypothesis that Parliament is failing the people of South Africa, in seemingly being unable to hold the Executive to account despite its best efforts.

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

The Portfolio Committee on Mineral Resources and Energy held public hearings as part of its public participation process on the Gas Amendment Bill.

Although this was a public participation process for a legislative function rather than oversight, it provides a solid example of how Parliament can conduct public participation, and could provide a methodology for oversight as well.

The committee received the first briefing on the Gas Amendment Bill from the department on 26 May 2021. A call for written public submissions was published, with a closing date of 30 July 2021, 19 submissions were received, of which 16 asked to make oral submissions, and 15 ultimately made oral submissions between 30 June and 3 December 2021.

The committee held hearings in seven provinces and in the National Assembly.

The committee secretary sent out notices of the public hearings and Parliament's public education office reached out to civil society organisations who wished to present at the hearings. Communities who wished to present at and attend the hearings were transported to the venues, which were adequate for the hearings.

MPs listened to the inputs and committee support staff captured the public's comments. Parliament provided security to enable the sessions to run without disruption but people's right to protest was respected and community protests were held prior to participants entering the hearing to make their case to the committees.

(Continues on next page)

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

In a debrief on 8 February 2022¹ and a further meeting on 13 May², the committee reflected on the hearings.

MPs said the committee had been commended for taking Parliament to the people and not making assumptions on what they would say as, if it merely made assumptions, it would face accusations that it had participated in a box-ticking exercise and was not interested in what people had to say. The committee valued the public participation.

The committee took advice from Parliament's legal advisor on whether its public participation process had passed the test of reasonableness, and there was a strong feeling that the committee should visit the two provinces omitted, while acknowledging it did not need to visit everyone.

The committee's report on the provincial public hearings can now be used as a reference document when the committee deliberates on the bill, together with the written submissions and the Department of Mineral Resources and Energy responses.

On 20 May³, the department updated the committee on its responses to specific public comments.

In OUTA's view, this set of public hearings involved various sections of Parliament's administration and enabled a productive process, allowing diverse voices to be heard and technical submissions in a more traditional public hearing manner.

OUTA would like the committee's public hearings report made public. As the deliberations on the bill are not yet complete, it is not yet known how the substance of the comments will be included in the final bill, but OUTA will monitor this, hoping that the final law will reflect both a good process and sound decisions on the substance.

1. 8 February 2022. Minutes: Gas Amendment Bill: Debriefing on public participation. Available here: <https://pmg.org.za/committee-meeting/34274/>
2. 13 May 2022. Minutes: Gas Amendment Bill: public hearings report; DMRE Budget: Committee Report. Available here: <https://pmg.org.za/committee-meeting/34915/>
3. 20 May 2022. Minutes: Gas Amendment Bill: DMRE response to public submissions. Available here: <https://pmg.org.za/committee-meeting/35005/>

5.4.7. PC on Public Enterprises (PE)

If we look at the PC on Public Enterprises, of the 24 BRRR recommendations in 2021⁴⁸, a total of 11 found their way in some form into the APP for 2022. Some of these are overarching, for example, reporting on progress with governance or implementation on a quarterly basis. Others are specific to one entity, for example, relating to Denel, South African Airways or Alexkor.

The portfolio committee has become impatient with some slow progress as can be seen with one example. The BRRR recommendation is to “consider filling vacant posts” whereas in the APP, the tone has changed to “*ensure* vacant position permanently filled”⁴⁹.

The BRRR of 2021 recommends that the minister “institute consequence management for executive and management who deliberately or negligently ignore their duties and contravene legislation”. There is no follow-up committee meeting to look at progress with implementation and the May 2022 budget report does not repeat this recommendation.

It is of concern that the BRRR states that the amendment of the APP in June 2021 did not follow the guidelines but that there is no further reference to it and it appears to have been ignored by the portfolio committee from then on. From a national priority point of view, it should be of concern that the amended APP was to remove the outcomes that would reduce vulnerability to climate change and to transition to a low carbon economy by reducing emissions for state-owned companies (SOCs) like Eskom. This would seem to be a priority that the committee should have insisted be included in the



The BRRR recommends
that the minister institute
consequence
management

department's programme.

The committee has to oversee large state-owned entities (SOEs) such as Eskom and has had to attempt to oversee the collapse of several SOEs such as SAA and Denel. However, the committee still relies on the department to provide progress reports and fails to draw on other stakeholders, particularly civil society, to strengthen its oversight. Individual MPs do not have parliamentary researchers and might be reliant on their political party for research capacity.

However, this committee has not used the powers it has to subpoena individuals or entities that fail to respond, nor has it used the most powerful tool at its disposal, its power to amend the budgets of non-performing entities.

In the adoption of the budget report in May 2022, the minutes reflect that some MPs felt that there was not sufficient detail and refused to agree with the report. These MPs stated that "There was nothing concrete in the recommendations. Year on year, looking at last year's report, nothing much had changed", and "The report, as it stands, would not be supported. Perhaps the Secretary could tell the Committee why the recommendations were not addressed/ achieved so that they did not overlap this year? Who took accountability and what was happening to the Department for not addressing the recommendations put forward by the Committee? She would not comment on every one of them. All of them meant nothing and were just generic. It was like the Committee was just here to push paper and not add value."⁵⁰

These opposition MPs' views were reflected in the minutes of the meeting but not in the actual report⁵¹. No reason is given for this and all MPs appear to have accepted this. Unless one reads the minutes with the report, the impression is created that all MPs agreed, especially as the report concludes that "the Committee recommends that the House passes the budget" with no indication of dissent.

"Who took accountability and what was happening to the Department for not addressing the recommendations put forward by the Committee?"

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

5.4.8. PC on Transport

The Portfolio Committee recommends in the 2021 BRRR⁵² that the Department of Transport should ensure its targets meet the SMART (Specific, Measurable, Achievable, Realistic and Timely) principles. In addition, the department conducts situational analyses to best identify SWOTs (Strengths, Weaknesses, Opportunities and Challenges). These measures are good paper exercises, but do not translate into effective mitigation of actual problems.

The portfolio committee noted in 2021 the recurring non-compliance in the department's supply chain management. The committee stated that non-compliance should be investigated and appropriate action taken against transgressors, but it is not clear what has been done and what the actual penalty is for non-adherence.

Although the department has targeted eliminating and reducing governance deficiencies in financial and performance areas, it is evident that targeting a concern is not the same as fixing it. The zero-tolerance approach to fruitless and wasteful expenditure, irregular expenditure and unauthorised expenditure (UIFW) is also without substance, because UIFW still occurs. This begs the question whether MPs really have the power or the will to influence budget and financial reporting.

Another public interest matter is the administrative disaster surrounding the driving licence cards and their renewals. OUTA found the PC lacking in efforts to relieve pressure on South African drivers. The

The only parliamentary committee that held an inquiry into state capture is still waiting four years later for the legislation it recommended



Targeting a concern is not the same as fixing it

PC tasked the Driving Licence Card Account (DLCA) and the Road Traffic Management Corporation (RTMC) to submit quarterly reports on the progress made regarding the application for approval to move to a new card format and the acquisition of a new card manufacturing machine. Instructions were given that should there be a failure to obtain these approvals, the entity must immediately inform the committee of steps taken to limit service disruptions to card applicants. It could not be established whether these entities did in fact inform the PC of the various problems. This is all well on paper, but no real consequence management occurred. In January and May 2022, the PC raised concerns about the driving licence production issues and the immense driving licence card backlogs. But neither the DLCA nor the Minister of Transport, Fikile Mbalula, were taken to task.

OUTA had estimated that by 1 April 2022, South Africa would have had over one million motorists with expired driving licence cards. This is a significant problem exacerbated by administrative difficulties and significant backlogs in the renewal process of driving licence cards on the online booking system – issues for which Covid-19 cannot be the only excuse⁵³. According to OUTA's research in 2020, there was a backlog of about 320 000 driving licence card renewals due, with demand growing by 90 000 a month. The backlog has grown over the last two years, partly due to Covid-19 shutdowns. OUTA believes that approximately 2.8 million driving licence card renewal applications have been affected by the backlog, with possibly half of those motorists with expired cards.⁵⁴

Conducting SWOT analyses and requesting the department to work according to SMART principles will not fix the driving licence card and other transport-related fiascos.

Conducting SWOT analyses and requesting the department to work according to SMART principles will not fix the driving licence card fiasco

5.4.9. PC on Water and Sanitation (WS)

It is noted that before August 2021 the portfolio committee and the department were known as Human Settlements, Water and Sanitation. After that it became a stand-alone Water and Sanitation Department and portfolio committee. There was no BRRR presented in November 2021 and no Water and Sanitation items were captured in the BRRR of Human Settlements. However, due to the lack of the BRRR, there was insufficient data to include any examples in this oversight report.

The Department of Water and Sanitation is of crucial importance. This lack of oversight by the portfolio committee is unacceptable.

This department budget for 2021/22 was R17.735 billion, but there has been no detail of the infrastructure spending in the department's budget since Budget 2019, which significantly limits oversight. OUTA has previously commented to Parliament on problems in this department's budget, including possible duplicate projects, duplicate funding for some projects, and large spend on inadequately identified projects.⁵⁵



Where is the Water and Sanitation BRRR?



Sebokeng Waste Water Treatment Works
Image: OUTA

5.4.10. PC on Women, Youth and Persons with Disabilities (WYPD)

In 2020 OUTA⁵⁶ observed the PC's lack of oversight of the shortlisting process for new board members at the National Youth Development Agency (NYDA). The NYDA is one of the sub-entities of the DWYPD and has become embroiled in political interference. It was alleged that the shortlist was compiled in favour of the ANC National Youth Task Team (ANC NYTT) recommendations. One would think that since 2020 the portfolio committee would have done a U-turn on its lack of critical engagement.

Unfortunately, this seems to have not been the case with the filling of vacancies of the six commissioners of the Commission on Gender Equality (CGE), which is a Chapter 9 institution funded through this department. On 27 June 2022 the committee's advert for the vacancies went out, with a deadline for applications of midnight on 18 July. This gave the public a mere 22 days to share, prepare and submit their applications. By the time of publication, the monitoring of the CGE commissioner appointment process was still an ongoing matter. It is being closely scrutinised by more than 44 public-interest organisations.

Independent, impartial, and robust institutions, such as Chapter 9 institutions like the CGE, and that act in the public interest are imperative to safeguarding South Africa's constitutional democracy. The collapse of these institutions gives rise to a situation where public resources are misappropriated for private gain, where impunity prevails, and where the public is made vulnerable to abuse of our constitutional rights.



Independent, impartial and robust Chapter 9 institutions are imperative for guarding democracy: the collapse of some of these leaves the public vulnerable to abuse of rights

5.4.11. Concluding comments

If we look at all the BRRRs and the APPs, there is some attempt to capture some of the BRRR recommendations in the APPs. Most committees have held meetings to ask for progress from the Executive on issues that arise in the BRRR. Key themes include non-operational IT systems, the failure to implement consequence management and the delays in service delivery. Holding several meetings on an issue does not result in its resolution.

It is also clear that, once again, MPs are still reliant on government departments to report on their own performance, and oversight fails as departments continue to delay and provide excuses that MPs have no way of verifying.

It does seem that a minster should be able to provide a detailed response report to the BRRR by the end of the year. This then becomes a discussion point for the first committee meeting in the following year and informs the next year's APP.

However, we note that many BRRR recommendations do not get addressed and it appears that a monitoring system that analyses the resolution of BRRR issues would be one way of improving efficiency in addressing and resolving the issues.

There is also a dire need for consequences for non-performing ministers, as per Parliament's Oversight and Accountability (OVAC) model, for public censure in the House and escalating consequences for continued failure to be accountable.

Equally, chairpersons of committees also need to be accountable for their failure to resolve issues and their failure to hold the Executive accountable.

MPs are still reliant on government departments to report on their own performance

Many BRRR recommendations do not get addressed: a monitoring system would help

There is a dire need for consequences for non-performing ministers

Money Bills Amendment Procedure and Related Matters Act 2009

Section 5: Procedure prior to introduction of the national budget

- 1) The National Assembly, through its committee, must annually assess the performance of each national department, with reference to the following:
 - (a) The medium term estimates of expenditure of each national department, its strategic priorities and measurable objectives, as tabled in the National Assembly with the national budget;
 - (b) Prevailing strategic plans;
 - (c) The expenditure report relating to such department published by the National Treasury in terms of section 32 of the Public Finance Management Act;
 - (d) The financial statements and annual report of such department;
 - (e) The reports of the Committee on Public Accounts relating to a department; and
 - (f) Any other information requested by or presented to a House or Parliament.
- 2) Committees must annually submit **budgetary review and recommendation reports** for tabling in the National Assembly for each department.
- 3) A budgetary review and recommendation report –
 - (a) Must provide an assessment of the department's service delivery performance given available resources;
 - (b) Must provide an assessment on the effectiveness and efficiency of the departments use and forward allocation of available resources; and
 - (c) May include recommendations on the forward use of resources.
- 4) A committee reporting to the National Assembly in terms of this section must submit its budgetary and recommendation report after the adoption of the Appropriation Bill and prior to the adoption of the reports on the Medium Term Budget Policy Statement.
- 5) Any budgetary review and recommendation report must be submitted to the Minister and the member of Cabinet responsible for the vote to which the report applies after its adoption by the National Assembly and prior to the adoption of the reports on the Medium Term Budget Policy Statement.
- 6) Additional budgetary and recommendation reports may be submitted at the discretion of a committee.

5.5. Budget

Parliament has to approve the budget of the country. As part of this process, each portfolio committee must approve the budgets for the departments and votes which it oversees and submit these to the National Assembly. During this process each portfolio committee receives a briefing from the AGSA's office when they receive performance reports from each department or entity that they conduct oversight on.

Table 6 below shows the audit outcomes for the various entities.

Table 7 below shows the extent of unauthorised expenditure, irregular expenditure and fruitless and wasteful expenditure for the financial year under review. These are also known as UIFW expenses.

The National Treasury defines these as follows: Unauthorised expenditure arises when the department spends “excessively or inappropriately”; irregular expenditure is expenditure other than unauthorised expenditure which was incurred in contravention of applicable legislature (such as the Public Finance Management Act); and fruitless and irregular expenditure is expenditure “which was made in vain and would have been avoided had reasonable care been exercised”.⁵⁷

UIFW expenditure:
Unauthorised,
Irregular
or
Fruitless & Wasteful

Table 6: Audit outcomes for departments

National department	2020/21	2019/20	2018/19	2017/18
Communications & Digital Technologies	Financially unqualified	Pre-merger	Pre-merger	Pre-merger
Communications	Post-merger	Financially unqualified	Financially unqualified	Clean audit
Telecommunications & Post Services	Post-merger	Financially unqualified	Financially unqualified	Financially unqualified
COGTA	Qualified	Qualified	Disclaimer	Disclaimer
Forestry, Fisheries & Environment	Qualified	Qualified	Qualified	Adverse
Health	Financially unqualified	Financially unqualified	Financially unqualified	Financially unqualified
Home Affairs	Financially unqualified	Financially unqualified	Financially unqualified	Financially unqualified
Mineral Resources & Energy	Financially unqualified	Pre-merger	Pre-merger	Pre-merger
Energy	Post-merger	Financially unqualified	Qualified	Qualified
Mineral Resources & Energy	Post-merger	Financially unqualified	Clean Audit	Financially unqualified
Public Enterprises	Financially unqualified	Financially unqualified	Clean audit	Clean audit
Transport	Financially unqualified	Financially unqualified	Financially unqualified	Financially unqualified
Water & Sanitation	Qualified	Financially unqualified	Financially unqualified	Qualified
Women, Youth & Persons with Disabilities	Financially unqualified	Financially unqualified	Financially unqualified	Financially unqualified

Table 7: Problematic expenditure

Department	Unauthorised expenditure	Irregular expenditure	Fruitless & wasteful expenditure
Communications & Digital Technology	0	R1.071m	0
COGTA	0	R673.621m	R5.092m
Forestry, Fisheries & Environment	0	R263.430m	R0.656
Health	R49.727m	R131.968	R0.039m
Home Affairs	0	R4.071m	R0.557m
Mineral Resources & Energy	0	R7.458m	R20.695m
Public Enterprises	0	0	0
Transport	0	0	R0.001m
Water & Sanitation	0	R264.622m	R0.014m
Women, Youth & People with Disabilities	R3.199m	R0.324m	R0.022m

This report focuses on Parliament rather than substantive flaws within different ministers within the Executive, but it is of extreme concern that none of the departments overseen by the parliamentary committees we surveyed (10 out of 26 or 38%), have clean audits for the FY2021.

We have highlighted a few instances for a few departments to illustrate what has been highlighted to Parliament and which provides some explanation for the bald figures above.

The AGSA made the following statement⁵⁸ regarding state-owned entities (SOEs):

1. The 15 state-owned enterprises (SOEs) that we audited had a total budget of approximately R100 billion for the year, but the finances of most of them are in a shambles.
2. Audits were only completed for eight of the SOEs because the rest did not submit their financial statements for auditing. Only one SOE, the **Development Bank of Southern Africa, received a clean audit in 2020-21.**
3. The rest received dismal audit outcomes:
 - 3.1. Armaments Corporation of SA (Armscor) – lost its clean audit status and obtained an unqualified audit opinion with findings.
 - 3.2. South African Nuclear Energy Corporation (Necsa) – received a second disclaimed opinion.
 - 3.3. Transnet (audited by the AGSA for the first time in 2020-21) – received a qualified audit because its disclosure of irregular spending was incomplete. Of all the SOEs, Transnet was the single largest contributor to irregular expenditure, at over 90%.
 - 3.4. South African Airways, Denel and South African Express Airways are in grave financial difficulty. Denel has liquidity challenges, while SAA is in business rescue and South African Express Airways is in provisional liquidation.

On the **Department of Health**, the BRRR noted: “The AG expressed concern about the increase in non-compliance with supply chain management prescripts and regulations regarding contract management. This resulted in an increase in irregular expenditure in the portfolio. The AG stated that the root cause of the non-compliance is a lack of consequence management to ensure that action is taken against officials who do not comply with legislation and regulations”⁵⁹.

On the **Department of Forestry, Fisheries and the Environment**, “the AGSA found that SANParks, SAWS [South African Weather Service] and iSimangaliso’s audit outcomes remained unchanged with unqualified audit opinions with findings on compliance with legislation. It is further

This is what the Auditor-General found:

15 SOEs

R100bn budget total

Finances in shambles



The root cause of the non-compliance is a lack of consequence management

noting that DFFE, SANParks, SANBI [South African National Biodiversity Institute], iSimangaliso and MLRF [Marine Living Resources Fund] submitted financial statements that contained material misstatements. As a result, these errors had to be corrected for these affected entities to receive unqualified audit opinions. However, the Department was unable to correct all the identified material misstatements which resulted in a qualified audit opinion”⁶⁰.

These material misstatements on the annual financial statements were due to inadequate reviews by management prior to submission for audit. “The Committee noted with concern that for the period under review (2020/21), the Department had finalised 51 disciplinary cases pertaining to serious audit findings, but only dismissed an individual based on irregular conduct.”

On the **Department of Cooperative Governance and Traditional Affairs**, the AGSA found “The Department could still not produce credible and reliable financial statements. There were also material misstatements in the financial statements, which could not be corrected before the financial statements were published”⁶¹. Overall, the Department spent 96.6% of the allocated budget while achieving only 68% of its targets. “Another issue of concern is the fact that nearly half of the National Disaster Management Centre’s R633.9m was not spent. The Report merely notes that the allocation was not spent according to projections and does not explain why this was the case. This underspending is puzzling in the context of municipalities desperate for disaster relief grants to address COVID-19 disaster requirements. Seven provinces have also been in need of disaster relief funding following the drought disaster declaration of 24 February 2021.”

“In the **DWYPD**, it lost out on a clean audit due to the lack of consequence management and AG South Africa noted the improvement in governance at the DWYPD since the appointment of the Director General who set the right tone at the top”⁶². However, IT controls pertaining to security management, user access management and IT service continuity were not effectively designed and implemented. The

The Department of Forestry, Fisheries and the Environment finalised 51 disciplinary cases pertaining to serious audit findings, but only dismissed an individual based on irregular conduct

DWYPD lost out on a clean audit due to the lack of consequence management

AGSA recommended that the audit recommendations should be implemented as a matter of urgency as most of the issues identified have remained unresolved for a significant period of time.

In the **Department of Mineral Resources and Energy** over the last three years, there have been recurring problems of entities that have failed to report to Parliament, of AGSA reports which show shortcomings in the audit outcomes and, for 2021/22, the department's performance showed it achieved a dismal 61% of its outcomes while spending 95% of its budget⁶³.

In commenting on NECSA, an SOE that falls under this department, the AGSA noted: "The financial position of the group remained very concerning due to the company and group having recorded losses for the past four years. The total liabilities exceeded total assets at the 31 March 2021 year-end. NECSA was technically insolvent and illiquid. This had resulted in multiple material uncertainties that cast significant doubt regarding the entity's ability to continue as a going concern".

There was also concern "that they have not audited the Annual Financial Statements of CEF and NECSA for two consecutive years"⁶⁴.

The following paragraph from the BRRR indicates a recurring problem within the CEF and NECSA. "The Committee observed the failure of the CEF Group to table its Annual Report, as the reason for the failure to submit on time is not delays by the AGSA, as is the case with NECSA and the SADPMR. The CEF Group failed to submit, and therefore acted in breach of the law⁶⁵.

5.5.1. Conclusion

There is no attempt by Parliament to hold public hearings in preparation for the BRRR or AGSA reports. Such public hearings and engagements would provide some insights from civil society bodies whose focus is watchdogging what government does in a particular area.

Some entities under the Department of Mineral Resources and Energy fail to report to Parliament

The Central Energy Fund and Nuclear Energy Corporation were not audited for two consecutive years

In conclusion, Parliament continues to approve budgets year after year despite flagrant financial mismanagement by the Executive, departments and entities. It is apparent that that certain departments have entities which have failed to provide financial statements for more than one year in a row, and yet the relevant portfolio committees have never failed to approve the budgets put forward by those ministers.

In effect, MPs are condoning a complete lack of accountability, and failing dismally in their oversight role. MPs have the power to impose consequences through reducing money flows to those that don't perform, and one area identified by the newly appointed secretary to Parliament is to empower the National Assembly to use the powers it has to amend the budget in terms of the Money Bills Amendment Procedure and Related Matters Act.

5.5.2. Is it time for a new approach?

The South African government budget framework is guided by the Constitution. The budget process is further derived from the Public Finance Management Act⁶⁶ and the Municipal Finance Management Act⁶⁷, which provide clear regulatory frameworks for financial management in government. There are many instances in the South African government where wasteful spending and corruption have undermined the ability of the state to translate budgets into service delivery outcomes. This results in deteriorating infrastructure and a growing backlog of service delivery which has placed a burden on the national budget. South Africa is facing a fiscal catastrophe: the struggling economy, huge public debt, limited tax revenue, economic stagnation, state collapse, unemployment and livelihood crises. In some parts of the country municipalities are confronted by the collapse of public infrastructure such as water reticulation, sewage treatment and safe roads, which imposes hardship on communities and increases the cost of doing business. This is especially detrimental for local communities, small businesses and poor households.

In a constrained fiscal environment, priority should be given to

Parliament approves budgets year after year despite flagrant financial mismanagement by the Executive, departments and entities

The PFMA and MFMA provide clear regulatory frameworks for financial management, but these are continually ignored, undermining service delivery

identifying potential opportunities to improve the efficiency of public spending, be it in the form of reducing costs, or improvements to programme designs and budgeting techniques. Zero-based budgeting (ZBB)⁶⁸ is being recommended by the National Treasury for the first time as an alternative to improve spending efficiency of government funds and prioritisation of programmes. Usually, with incremental budgeting, the previous year's budget is used as a starting point, and allocations to each department are increased or (very rarely) cut. But with ZBB, the budget commences from scratch every year, from a zero base. Instead of automatically including previous line items in a budget, careful consideration is now given to each line item, which with critical deliberation should eliminate unnecessary expenses. Every line item is interrogated to see whether it is worth it, whether it will contribute to a department or entity's goals for the next year, and whether there may be cheaper or more effective alternatives. While incrementalism simplifies the budget process by using the previous year's budget as a starting point, the time saving afforded by such simplification does not compensate for the continuation of wasteful spending that is characteristic of incremental budgeting. The endless stream of corruption reports and governance failures are evidence that we need alternatives, and that programmes and departments should be evaluated for spending priorities.

Government aims to trial this new method and OUTA is monitoring this approach. Using the ZBB lens might be something for Parliament to consider implementing when it scrutinises departmental budgets in the future.

Zero-based budgeting is being recommended as an alternative to the current system of incremental budgeting, to improve efficiency

5.6. How do MPs understand acting in the public interest?

How do MPs ensure that their priorities and those of the departments they monitor take into account key plans adopted by government?

Examples of such plans or policies are:

- The United Nation's Sustainable Development Goals (SDGs)⁶⁹;
- The National Development Plan (NDP)⁷⁰;
- The annual State of the Nation Address (SONA)⁷¹ by the President;
- The New Growth Path Framework (NGP)⁷²; and
- The Revised Medium-Term Strategic Framework (MTSF)⁷³.



How do MPs understand acting in the public interest? Government produced the NDP in 2012 as an overarching guide to development and also uses international benchmarks such as the Sustainable Development Goals to help to steer a developmental path that is in the public interest. Each year, the President provides some indications of what the government intends in the SONA.

Measure government performance against policies & promises

South Africa

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

International

- UN Sustainable Development Goals
- Paris Agreement on Climate Change
- United Nations Convention Against Corruption

OUTA examined the records of the portfolio committees to assess how closely they use such guidelines in their deliberations and decisions.

The BRRR⁷⁴ on the **Department of Communications and Digital Technologies** indicates that the report is aligned to broader government policy framework of the NGP, NDP and the governing party's priorities (job creation, poverty alleviation, combating crime and corruption, rural development, education and health). It reviews the initiatives taken by the department to ensure that the priorities of the plan are realised. It wishes to align with the NDP objective to "eliminate poverty and reduce inequality by 2030" and Chapter 4 of the National Development Plan recognises that information and communications technology (ICT) is a key enabler of inclusive economic growth that is critical to addressing inequality in South Africa.

In the BRRR on the **Department of Cooperative Governance and Traditional Affairs** of 30 November 2021⁷⁵, the department gives only one nod to the NDP under the aim of the Municipal Demarcation Board's Programme 1, which speaks to administration. This programme aims to strengthen the Municipal Demarcation Board's corporate governance environment, as well as manage and enhance financial capability, in line with Chapter 13 of the NDP. The focus of this chapter is to build a capable and developmental state.

The **Department of Forestry, Fisheries and the Environment** is directly responsible for delivering on and coordinating the work and priorities outlined in the 2014-2019 MTSF Outcome 10 (Environmental Assets and Natural Resources that are Valued, Protected and Continually Enhanced) of the 12 Government Outcomes. The Outcome 10 Delivery Agreement addresses the key sub-outcome from the NDP Vision 2030 of ensuring that "Ecosystems are sustained and natural resources are used efficiently"⁷⁶. In the revised 2022/23 APP, specific mention is made of four NDP chapters with key outputs including these: Chapter 5: Transitioning to a low carbon economy; Chapter 9: Improving education, innovation and training; Chapter 10: Promoting Health; and Chapter 13: Building a capable state.



The **Department of Health** refers to SONA and various health-related items, mostly relating to Covid-19. The department's strategic overview is aligned with policy priorities including the NDP and SDGs. The department focuses on SDG3 which is "Good Health and Well-being". This goal seeks to ensure healthy lives and promote well-being for all at all ages. This is referenced in the BRRR and APP, but not reported on in detail and there is no indication of monitoring compliance.



The **Department of Home Affairs** notes the government's dire fiscal constraints are mentioned in both SONA and the budget speeches. On 22 February 2022, the department made a presentation on the impact of SONA on the work of the portfolio committee and the department's programmes. The PC on Home Affairs is staying abreast of the latest developments in this regard, as well as receiving regular briefings by the department on the future agreements of this nature. The BRRR for Home Affairs states that "job creation and reducing unemployment, especially amongst the youth, were placed at the centre of the national agenda"⁷⁷ for both the 2020 and 2021 SONAs.



The overarching purpose of the **Department of Mineral Resources and Energy** is to ensure that diverse resources are available in sustainable quantities and at affordable prices for the growth of the South African economy. In the BRRR, there aren't specific examples given of which projects will speak to the NDP, nor which NDP chapters and subsections are being targeted to achieve the 2030 vision.



The **Department of Public Enterprises** is the shareholder representative for government on the seven SOCs in its portfolio⁷⁸. The department's mandate is to fulfil oversight responsibilities at these SOCs to ensure that they contribute to the realisation of government's strategic objectives, as articulated in the NDP, the MTSF, the NGP and the



Industrial Policy Action Plan (IPAP)⁷⁹. No projects, priorities and recommendations are made speaking to the NDP within the BRRR.

The **Department of Transport** BRRR is based on information accessed through, amongst others, SONA, APPs as well as the NDP. To execute its mandate, the department is guided by government's commitments as set out in, inter alia, the NDP 2030, the NGP, the Presidential Infrastructure Coordinating Commission (PICC), the MTSF, as well as the SONA policy directives. The period under review took place against the backdrop of the second phase of the implementation of the NDP (2019-2024). As part of its contribution to the NDP, the transport sector had to identify interventions aimed at accelerating service delivery, increasing sector job opportunities, rural development and skills development. Key priorities in this regard included investments in public transport, maintenance of roads and rail investments. These had a direct bearing on the government's drive to respond to the challenges of poverty, unemployment and inequality.

The PC on **Water and Sanitation**, which was known as the PC of Water and Human Settlements prior to August 2021, did not submit a BRRR in 2021. This in itself is noteworthy, for surely some preparation could have taken place. In addition, the Annual Performance Plan, presented on 6 May 2022, does not include any mention of the NDP or SDGs.

The **Department of Women, Youth and Persons with Disabilities** maintains that its Country Gender Indicator (CGI) Framework⁸⁰, which is the backbone of the monitoring mechanism of the Framework on Gender-Responsive Planning, Budgeting, Monitoring, Evaluation and Auditing⁸¹, has its foundation in the NDP, SONA, SDG number 5, and other regional and international instruments on women. The NDP Vision 2030 prioritises the significant role of women, youth and people with disabilities in our society. Within the department's 2021 BRRR, the SONA 2020 features strongly. Specific mentioned is made of gender-based violence deliverables to address the embedded culture of violence in the country which requires urgent intervention. During the



year under review, the committee requested the department to report on progress in terms of priorities the President identified in 2020 SONA and how its programmes were responding to these. Similarly, the Commission for Gender Equality (a Chapter 9 institution) and the National Youth Development Agency which fall under this department) were also requested to do the same in their quarterly report briefings to the committee.

In conclusion, encouragingly, Parliament's portfolio committees do seem to be using the NDP and other guideline documents in their oversight work. There is also reference to the SONA and SDGs which shows how committees are not only looking at the public interest but also aligning their work towards the President's priorities.



Encouragingly, portfolio committees do seem to be using the NDP and other guideline documents in their oversight work

State of the Nation Address 2022: Which departments paid attention?

Picture: Flickr/GovernmentZA

5.7. Ministers' performance agreements

As we emerge from the Covid-19 pandemic and more than a decade of state capture, it is imperative that the Executive not only roots out corruption but also puts in place mechanisms to ensure that vested interests cannot again take over sections of government to forge their own agendas over that of the public interest.

The President has signed performance agreements⁸² with the ministers which should aim to improve delivery and tackle corruption, but Parliament has not, in our analysis, used these performance agreements in oversight of the Executive. Of the 10 committees that we have analysed, nine have performance agreements with an indicator relating to corruption. However, the Minister of Public Enterprises has no such indicator despite the SOCs in his portfolio having borne the brunt of state capture. This has not been raised in Parliament by the portfolio committee.

Parliament should scrutinise performance agreements not only with regard to agreements against corruption, but also against public interest documents such as the SDGs and NDP, to assess whether individual ministers have been incentivised against the public interest due to the influence of state capture vested interests of the past. For example, Minister of Energy Gwede Mantashe has an indicator related to ensuring an additional 2 500 MW of new nuclear power by 2024. However, the latest electricity plan, the Integrated Resource Plan 2019, does not foresee the need for new nuclear capacity before 2030 at least. Is this performance agreement appropriate for 2022?

5.8. Reactive oversight: Acting in the public interest

MPs are supposed to be accountable to the public and, according to the Constitution, MPs may receive petitions from the public which they must resolve⁸³. However, as the example in the **box below** (Parliament's failed Karpowership investigation: Pandering to the minister) illustrates, MPs appear to still pander to the Executive over the public interest.

The previous OUTA Parliamentary Oversight Report referred to problems when parliamentary committees failed to hold ministers to account, seemingly due to a reluctance to prioritise the public interest over political party interests. Chairpersons hold significant power in a

The performance agreement for the Minister of Public Enterprises does not include an indicator relating to corruption, although this portfolio bore the brunt of state capture

Some performance agreements incentivise ministers against the public interest

committee and drive and determine the agenda of portfolio committees. Appointing opposition members as chairpersons of committees should swing a balance of power so that ministers cannot collude with chairpersons to water down oversight. The Standing Committee on Public Accounts, traditionally chaired by an opposition party member, is an example.

Parliament's failed Karpowership investigation: pandering to the minister

The case of the Karpowership investigation illustrates the weakness of the parliamentary oversight.

For 2022, the energy crisis in the country was at the top of the national agenda. One issue was the need to address loadshedding and increase generation capacity, while another issue was the fuel price. the Portfolio Committee on Mineral Resources and Energy held four meetings, including one which claimed to be a stakeholder meeting but involved only industry players in the fuel sector. There was no attempt to engage with civil society.

The portfolio committee did not engage the Executive on load shedding despite the Minister of Mineral Resources and Energy being responsible for energy security. The only energy security matter on the committee's agenda was the Karpowerships part of the department's Risk Mitigation Independent Power Producer Procurement Programme (RMIPPPP), relating to corruption rather than energy security.

During June 2021, 15 civil society organisations wrote to the committee asking it to investigate the Karpowership debacle.¹

Parliament initially rejected the idea of an investigation. Then on 3 August 2021, the committee resolved unanimously to hold an investigation into the RMIPPPP and the Karpowerships bid during which the minister and all affected parties would be invited to appear before the committee. On 7 December, the committee decided on the terms of reference for the inquiry, a motion which was accepted by all political parties.

However, on 8 March 2022, the committee decided not to investigate the RMIPPPP.² This was decided after legal advice from Parliament's legal advisors. Nevertheless, opposition party MPs did put forward a motion to continue with the investigation, which was rejected by six votes to two.

(continues on next page)

Parliament's failed Karpowership investigation (continued)

According to the Parliamentary Monitoring Group, there were 10 MPs in the meeting, but it is not recorded who abstained. At no time did the committee engage with the organisations who asked for the inquiry.

In addition, the committee received three letters from other civil society groups including a mining-affected community. The committee resolved to meet with the mining-affected community but not with the other groups.

This is a useful example of a weak attempt by the committee to carry out its oversight responsibilities. The committee followed due process, resolving to hold an inquiry, determining the terms of reference and then, due to external events, receiving legal advice and then terminating the need for an inquiry. However, given that the committee made no attempt to engage those civil society actors who had brought the petition to Parliament but did entertain input from the department and the minister on the issue, there is a question as to what the legal advice was based on. In our view, this showed the committee favoured the Executive it is supposed to hold to account. We would expect an engagement with civil society actors, to gain clarity as to their complaints, then an engagement with the department and minister, with such engagements informing the terms of reference for such an investigation.

This was not efficient or effective oversight, as the process dragged on from April 2021 to March 2022. It was civil society who through various appeal processes and actions prevented the Karpowership project from continuing.

While it is the prerogative of the committee to investigate and then take whatever decision it feels appropriate, including acting on legal advice. One would expect such decisions to be taken after a due diligence process and we believe that failing to engage with the very civil society groups that brought the complaint is failing in due diligence.

1. 22 June 2021. *Request for public hearings and investigation on the Risk Mitigation Independent Power Producers Procurement Programme*. Letter from 15 civil society organisations (including OUTA) to the Speaker of the NA, copied to the NCOP Chair. <https://thegreenconnection.org.za/wp-content/uploads/2021/09/Letter-To-Parliament-Public-Hearings-and-Investigation-on-The-Risk-Mitigation-Karpowership-22-June-2021.pdf>
2. According to the meeting minutes: "This resolution was taken following advice from Parliament's Constitutional and Legal Services Office. The advice referred to a High Court judgement that dismissed with costs an application to set aside the Department of Mineral Resources and Energy's decision to appoint preferred bidders for the RMIPPPP. The decision was not unanimous. All six ANC Members voted in favour of the proposal to rescind the Committee's decision, whilst the two DA Members voted against this proposal. The majority believed that the court judgement covered the inquiry's terms of reference and if the Committee were to institute a new investigation, it would only make the same findings. On the other hand, the DA argued that the judgement did not fully cover the terms of reference outlined by the Committee for the inquiry." <https://pmg.org.za/committee-meeting/34501/>

6. Why doesn't Parliament do what it is supposed to do?

In June 2022, Parliament appointed a new Secretary to Parliament, Xolile George, who presented a situational analysis and his observations on what should be prioritised going forward⁸⁴. Amongst a list of 23 areas that he identified as needing urgent attention in Parliament were the following:

- Enhanced law-making capacity, including legal drafting, research and advice;
- The full value chain of oversight and accountability needs to be strengthened; and
- The resolution-tracking mechanisms in the National Assembly and National Council of Provinces should be improved and utilised optimally.

The situational analysis was well received by the Joint Standing Committee on Financial Management of Parliament⁸⁵. This shows potential for improvement in Parliament's functioning and OUTA will monitor progress in our next Parliamentary Oversight Report. However, it is of deep concern that much of this was identified years ago, and we sit in 2022 with both the State Capture Commission and the new Secretary of Parliament identifying the same underlying problems.

In OUTA's view, there is a need to address some of the structural issues that undermine the ability of MPs to perform their function. We reiterate and add to some of our observations made in previous reports.

6.1. Career paths

Our observation is that ministers in Cabinet who have been associated with corruption and unlawful actions – such as Minister Mosebenzi Zwane and Minister Tina Joemat-Pettersson – were returned to

Critical questions

1. What are MPs supposed to do?
2. What evidence is there that MPs do their jobs?
3. Why doesn't Parliament do what it is supposed to do?
4. Why don't MPs do what they are supposed to do?
5. What should we expect from our MPs and Parliament?

Parliament. In other words, it seems that Parliament is seen to be a dumping ground – or possibly a reward – for disgraced politicians. Not only did such returned ministers stay on as MPs but they also became chairpersons of committees which gives them additional influence in Parliament. OUTA believes that such actions send the signal that unethical behaviour is rewarded. Putting MPs who are already under suspicion for unethical actions in leadership positions strengthens allegations that Parliament deliberately fails to hold the Executive accountable.

Not only do MPs implicated in corruption get rewarded, but those that do speak out risk their political careers. Prior to the State Capture Commission, the Portfolio Committee on Public Enterprises was the only portfolio committee that held a public inquiry into state capture⁸⁶. In the 2019 elections, none of the ANC MPs on this committee were returned to Parliament. As the MPs are dependent on their political parties to get on the list, the implication is that the ANC decided to “punish” its MPs for carrying out their oversight duties.

Other considerations that feature highly on the career path radar are salaries and status. If salary equals status, then ministers are more important than chairpersons of committees. Yet one executes policy and the other leads a team to oversee the minister. Perhaps the salaries should be swapped.

Parliament is seen to be a dumping ground – or possibly a reward – for disgraced politicians

MPs implicated in corruption are rewarded and those who speak out risk their political careers

6.2. Secrecy

In our 2021 Parliamentary Oversight Report, OUTA showed how the switch to virtual meetings for Covid-19 reasons had some benefits in that a lot more people were able to view the proceedings. This then amounted to an increase in transparency of committee meetings to the public.

Of course, online meetings are only available to those with data and bandwidth to watch, and the luxury of having available a three-hour slot to watch.

In 2022, the Dullah Omar Institute for Constitutional Law, Governance and Human Rights and the Parliamentary Monitoring Group conducted an analysis of accessibility to committee meetings and found that scheduling of meetings is often at short notice (16% of meetings were announced at less than one week's notice), and that access to online meetings is not easily accessible as links are generally only available from committee secretaries and often only on the day of the meeting.

The report⁸⁷ found that not all meetings are livestreamed, with only 67% of meetings either livestreamed or available online shortly after the meeting. Given that Parliament has been inaccessible physically (since the January 2022 fire) and that most meetings happen via online platforms, this means that in effect a third of meetings are taking place in secret. The report argues that those meetings “are unnecessarily and we go as far as to argue, unjustifiably, closed to the majority of the public.”

In conclusion, OUTA concurs with the Dullah Omar Institute for Constitutional Law, Governance and Human Rights and the Parliamentary Monitoring Group report that “Parliament can invest in further strategies and use existing resources and mechanisms to give meaning to realise a standard of transparency and public access that are both required by the Constitution and that are well within reach”.⁸⁸

Up to a third of committee meetings are effectively held in secret due to inadequate public access

6.3. Political will and the Code of Ethical Conduct

Within Parliament, members subscribe to an ethical code of conduct⁸⁹. The *Code Of Ethical Conduct And Disclosure Of Members' Interests For Assembly And Permanent Council Members* includes sections on standards of ethical conduct, prohibited business activities, breaches and procedures for investigation. The Joint Committee on Ethics and Members Interests is responsible for ensuring the implementation of this code of conduct and deals with matters relating to the Members' ethical conduct and their disclosure of financial interests.

It is certainly beyond doubt that MPs have transgressed the code and behaved unethically, and OUTA submitted detailed evidence to this effect to the Speaker of Parliament in June 2017⁹⁰. This report, *No Room to Hide: A President caught in the act*, was subsequently submitted to various portfolio committees by the Speaker and, in July 2017, OUTA made a submission at a public hearing on this report to the Portfolio Committee on Public Enterprises. In March 2018, the Portfolio Committee on Communications discussed OUTA's *No Room to Hide* report in connection with Minister Faith Muthambi and, as a result, referred the report to the Joint Committee on Ethics and Members' Interests⁹¹. However, the Joint Committee took no action. In addition, OUTA submitted a complaint the Joint Committee on Minister Mosebenzi Zwane in October 2017 and on Minister Muthambi in October 2018⁹². The committee failed to act in both cases. During 2020, OUTA reached out to the committee six times⁹³ requesting feedback on the status of these cases but received nothing. "For the past three years, we have consistently attempted to interact with Committee staff to get a basic understanding of the status of our complaints. In 2020 alone, we have attempted to appraise the status of our complaints five times," said OUTA in the letter. "To date, we have not yet received any substantive response to our requests for feedback. We are aware that the Committee's proceedings are strictly confidential, but this seems to

"The Code outlines the minimum ethical standards of behaviour that South Africans expect of public representatives, including upholding propriety, integrity and ethical values in their conduct... The purpose of the code is to create public trust and confidence in public representatives and to protect the integrity of Parliament"

The Code of Ethical Conduct for parliamentarians

OUTA complained about the unethical behaviour of two former ministers linked to state capture, but years later the Joint Ethics Committee won't tell us the outcome of those complaints

be a barrier to effective accountability, rather than an enabler of it.”

The meetings of the Joint Committee are not open to the public and, although it has held nine meetings in the period 1 July 2021 to 30 June 2022, there are no records, minutes or outcomes made public of eight of these. Since the 2021 OUTA Parliamentary Oversight Report, four reports were published.⁹⁴

If this committee seems unable to function effectively, it certainly begs the question to what extent it can play its role in ensuring an effective and ethical Parliament. The State Capture Commission report recommended that a permanent commission be established to investigate and expose acts of state capture and corruption⁹⁵. OUTA suggests that given Parliament’s failure to provide oversight and hold the Executive to account, such a commission should focus on the seemingly deeply entrenched nature of unethical behaviour.

Clearly, the time has come for a rethink of the membership and functioning of this committee.

The case study outlined above (see the box on “The unanswered questions” in section 4 above) regarding the five-year delay in putting in place a mechanism to address ministers’ failure to respond to parliamentary questions – a critical oversight mechanism – demonstrates either ineptitude of the grossest nature or apparently deliberate delaying tactics by the ruling party to prevent parliamentary oversight. Parliament’s failure to implement the full Oversight and Accountability (OVAC) model, adopted by Parliament in February 2009⁹⁶, seems another case of such ineptitude.

These omissions, whether deliberate or due to incompetence, effectively limit accountability over the Executive.

“Leadership: Promote and support ethical conduct by leadership and example”

– Code of Ethical Conduct and Disclosure of Members’ Interests

The time has come for a rethink of the membership and functioning of the Joint Committee on Ethics and Members’ Interests

6.4. State capture and the State Capture Commission

In the final reports of the State Capture Commission⁹⁷, the frequency with which MPs have been implicated is shocking and horridly disappointing. In a majority of instances, it has been made abundantly clear that MPs prioritised their party's interests above those of the public whom they ought to serve. Cabinet, and especially the figureheads of state capture, have brought the integrity and trustworthiness of Parliament into question. "By failing to properly carry out its oversight role and to heed the call by the country's then intelligence chiefs, Parliament has, at least to some extent, contributed towards State Capture. Because its failure to do its job meant that acts of state capture and corruption were allowed to spread and deepen. It should have stepped in to ensure the continuation of investigations against the Guptas."⁹⁸ See also **Appendix A** for the Commission's recommendations on Parliament.

Key points of the Commission's recommendations include⁹⁹:

1. Parliament should consider the desirability of establishing an oversight committee over actions or omissions by the President;
2. Parliament should promote the introduction of a constituency based electoral system which is representative of the constituencies that vote for public representatives;
3. Parliament should consider the desirability of enacting legislation which protects MPs from losing their party membership due to exercising their oversight duties;
4. Adequate funds should be provided to allow portfolio committees to enable effective parliamentary oversight;
5. The skills of technical and research assistants to portfolio committees must be enhanced;

In the final reports of the State Capture Commission, the frequency with which MPs have been implicated is shocking and horridly disappointing

6. Late submissions to portfolio committees must not be tolerated, which necessitates more visible and active efforts by committees to make calls for commentary more accessible;
7. Non-attendance at committees by ministers and MPs must not be tolerated and there must be consequences;
8. A track-and-monitor system must be implemented to gauge whether the Executive adheres to corrective actions as proposed in reports;
9. Parliament's OVAC must be activated and prioritised. In the recommendations this is referred to as the Oversight and Advisory Section;
10. Parliament should consider appointing members of opposition parties as chairs of committees; and
11. Parliament should consider the proposals by civil society organisations to improve appointments by Parliament.

In a report reflecting on the State Capture Commission report, the Parliamentary Monitoring Group stated: "Political will is primary for effective oversight – this will allow for effective use of budgets, mechanisms, rules, resources and support. It simply cannot work the other way round. Political will is the crux of the matter. Parliament tells departments to do more with less, prioritise and ensure the efficient use of resources – the same should be expected from it. It is summed up best by the Zondo Commission that 'genuine will to exercise oversight is distinguished from difficulties experienced in making such oversight effective'."

State Capture Commission
recommendation:
Parliament's Oversight and
Advisory Section must be
activated and prioritised

A commission to watch over our failed Parliament

The State Capture Commission recommended that a permanent commission be established to investigate and expose state capture and corruption.

“In addition, since it has been found by this Commission that the failure of Parliament to hold the executive, particularly President Zuma, accountable contributed to the Gupta-Zuma state capture, it will be necessary for the Anti-State Capture and Corruption Commission to keep any eye on how Parliament performs its oversight function....”

“That there should be a structure that can play this role in relation to Parliament arises out of the fact that the Gupta-Zuma State Capture could have been prevented or stopped in its tracks quite early around 2012 and 2013 if Parliament had not been prevented by the ANC majority from performing its oversight function and from properly and effectively holding President Zuma to account.”

**State Capture Commission final report, part VI
volume 4, paragraph 252 & 253**

7. Why don't MPs do what they are supposed to do?

There are a number of tools that MPs can use but appear to lack the political will to do so (possibly due to structural issues noted above).

1. Amending the Budget: MPs could use their BRRRs and the failure of departments to address the shortcomings in the APPs or other meetings. MPs could reduce funds to non-performing entities and provide additional funds to those that deliver.
2. The power to summons: While committee funds may be limited and oversight trips difficult, MPs do have the power to summons any person they feel they should appear before the committee to provide an explanation on any oversight matter.
3. Consult with civil society: NGOs and other stakeholders are keen to share their knowledge but are not invited to do so. Instead of only hearing from the public in narrow public hearings, MPs could organise to visit civil society organisations or to hold in-depth indabas on specific issues. As highlighted in OUTA's 2021 Parliamentary Oversight Report, this used to take place in the early days of Parliament.
4. Preparation: MPs can ask probing questions in committee work but this needs MPs to be prepared with critiques of governments actions. Government often fails to provide documents timeously or to provide responses to requests for additional information. MPs can postpone meetings and demand answers. This has happened in the recent past but more could be achieved if this was a *modus operandi* that was adopted by all committees.
5. Minority reports: Opposition parties need to make use of minority reports as well as questions in the house to gain information that is not forthcoming from the Executive.
6. Action from the Speaker: Where individual MPs might feel intimidated, committee reports which are adopted by the House

Critical questions

1. What are MPs supposed to do?
2. What evidence is there that MPs do their jobs?
3. Why doesn't Parliament do what it is supposed to do?
4. Why don't MPs do what they are supposed to do?
5. What should we expect from our MPs and Parliament?

then have the full weight of Parliament and, after that, it is the Speaker who must then engage with the Executive to obtain a response.



Budget 2022:

Another budget rubber-stamped by MPs, despite ongoing financial mismanagement in many departments, programmes and entities

Image: Flickr/GovernmentZA

8. Conclusion: What should we expect from our MPs and Parliament?

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 MPs 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 should 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.”¹⁰⁰

Drawing from our analysis, it is evident that there are layers of Parliament’s functioning that need attention.

South Africa has limited public funds available and MPs must function to ensure that public spending is in the public interest and that monies are not wasted. However, Parliament continues to approve budgets year after year despite flagrant financial mismanagement by the Executive, departments and entities. It is apparent that that certain

Critical questions

1. What are MPs supposed to do?
2. What evidence is there that MPs do their jobs?
3. Why doesn’t Parliament do what it is supposed to do?
4. Why don’t MPs do what they are supposed to do?
5. What should we expect from our MPs and Parliament?

Parliament continues to approve budgets year after year despite flagrant financial mismanagement

departments have entities which have failed to provide financial statements for more than a year, and yet the relevant portfolio committees have never failed to approve the budgets put forward by those ministers.

Some actions are needed to address the issue of the ruling party having too much power and therefore able to prevent effective oversight of their party ministers. Such actions would lead to a much-needed political will to hold the Cabinet accountable. Other actions need to focus on the need to strengthen the institution of Parliament itself to serve democracy.

This is what we found:

- MPs receive significant time out of Parliament specifically for constituency work – that is, connecting with the public – but there is still insufficient evidence of this work being undertaken;
- Some ministers still dodge attendance at committee meetings;
- Committees still obtain most of their oversight information from the very departments they watch over;
- Public participation remains a tick-box exercise;
- Where committees identify problems in departments and recommend solutions they are often ignored;
- Parliament approves departmental budgets year after year despite flagrant financial mismanagement;
- Committees too often make a noise but then rubber-stamp Executive decisions.

Since our last report, the State Capture Commission has issued its final report. During November 2020, OUTA had submitted an affidavit to the Commission detailing how Parliament had failed to take action to prevent state capture¹⁰¹, and subsequently gave oral testimony on this. The Commission's final report included damning findings against

There is still insufficient evidence of constituency work being undertaken

Committees still obtain most of their oversight information from the very departments they watch over

Committees too often make a noise but then rubber-stamp Executive decisions

Parliament and its failure to oppose state capture. Although the final volume of this report was released on 22 June, Parliament has made no attempt to address the issues raised in the report, instead apparently meekly waiting for the President to tell Parliament what he intends to do, if anything.

Electoral reform aimed at strengthening oversight of the Executive by moving power over MPs from their parties to their constituencies – as ordered by the Constitutional Court two years ago, strongly supported by civil society including OUTA, and recommended by the State Capture Commission¹⁰² – is being resisted by Parliament in favour of a much watered-down version. Sadly, this confirms OUTA's findings, which are also vindicated by the state capture report, that public interest is still subservient to party political interests.

Such actions by MPs undermine the oversight function that Parliament is supposed to perform to hold the Executive to account, and simply result in active support of state capture. We expect more of our parliamentarians.

Thus, for the fourth year in a row, our report finds that Parliament is a failed institution.

In 2019, our report asked why non-performing MPs continue to appear on political party lists for election, while those who challenged state capture were missing from political lists.

In 2020, we noted that the current political system appears to reward unethical behaviour, with former ministers heavily implicated in state capture losing ministerial positions but being promoted by fellow MPs to powerful positions as committee chairs.

In 2021, we said it was difficult to escape the perception that Parliament has been hollowed out and filled with unethical people and, until that is addressed, we cannot expect any real accountability.

Electoral reform, aimed at strengthening oversight of the Executive by moving power over MPs from their parties to their constituencies, is being resisted by Parliament in favour of a much watered-down version

For the fourth year in a row, our report finds that Parliament is a failed institution

In 2022, we have teased out what MPs could do despite the structural inadequacies and also how Parliament as an institution has been hollowed out and is dysfunctional to the point that appointing new MPs will not improve the system.

There are also additional actions that individual MPs can take. In our previous Parliamentary Oversight Reports, OUTA made a number of observations which still remain valid as we have seen no improvement.

These include:

- Open up Parliament to meaningful dialogues between civil society and MPs;
- Institute public hearings prior to the BRRR process to prepare MPs for oversight and to influence the departmental annual plans for the following year;
- Ensure that all committees are open to the public via virtual platforms and, where they need to be closed, motivations must be publicly available;
- Implement a hybrid version of meetings where MPs meet in person and the public can attend in person or virtually;
- Immediately publish research reports prepared by the Parliamentary research section and encourage peer review to strengthen research and enhance transparency;
- Publish parliamentary committee minutes on the parliamentary website to enable greater transparency in Parliament's workings;

Hold public hearings prior to the BRRR process to prepare MPs for oversight

- MPs should reduce budgets of non-performing entities, particularly those with a history of financial mismanagement; and
- Chairpersons should be monitored for their ability to hold the Executive to account. Failure to hold the Executive to account should be censured, and the chairpersons replaced if they are unable to deliver.

From this report, specifically, OUTA would add the following recommendations, some of which have been echoed by the State Capture report. For the State Capture Commission recommendations with regards to Parliament, see **Appendix A**.

- All Ministers should provide an implementation report in January which details how they will respond to Parliament's BRRR recommendations. This echoes the State Capture Commission's call for a track-and-monitor system to gauge whether the Executive adheres to corrective actions as proposed in BRRR reports;
- Committees must insist on timeous reporting by departments and enforce non-performance by refusing to conduct meetings where they cannot adequately prepare. This has happened in the recent past, but more could be achieved if this was a modus operandi that was adopted by all committees;
- Opposition parties need to make use of minority reports to express their dissatisfaction with the ruling party decisions;
- Questions in the house are an oversight mechanism to obtain answers from ministers. A track-and-review mechanism must be enhanced and ministers who fail to respond timeously or in full should be punished as part of holding the Executive to account;
- Parliament should consider appointing members of opposition parties as chairs of portfolio committees;

Chairpersons of committees should be replaced if they are unable to hold the Executive to account

Committees must insist on timeous reporting by departments and enforce non-performance

- Parliament's Oversight and Accountability model (OVAC) must be activated and prioritised. This is also recommended by the State Capture Commission recommendation, which refers to it as the Oversight and Advisory Section. OVAC is imperative to ensure oversight by MPs and their respective PCs; and
- Parliament needs to include scrutiny and review mechanisms for Cabinet performance agreements and a monitoring mechanism to ensure that ministers' responsibilities are directed towards the public interest and are kept up to date.

Successive parliaments mean that new MPs arrive and need to be inducted into their role. OUTA believes that such induction could be strengthened:

- The research and committee section must provide MPs with lists of stakeholders whom they know are active in this portfolio area;
- MPs must be encouraged to use the oversight tools that they have at their disposal and be educated as to the most effective manner to use those tools;
- MPs must be encouraged to seek independent sources of information and not to rely on the very departments they oversee for information; and
- MPs need to ensure that committees that focus on financial management of Parliament and on ethical behaviour of MPs must be given priority in order to ensure that MPs are engaging with their constituencies effectively and efficiently, and that those MPs who are guilty of misconduct and unethical behaviour receive swift and appropriate consequences. At this time, OUTA believes that such actions would help to restore public faith in the institution of Parliament.

Induction of new MPs
should be strengthened

Improved oversight by MPs
would help to restore
public faith in the
institution of Parliament

OUTA sees this report as part of strengthening our parliamentary democracy in order to fulfill the rights enshrined in the Constitution, and we look forward to engaging further with Parliament. Parliament is a necessary cornerstone of our democracy, and it is only through constructive engagement that civil society can urge and demand accountability from our government.

We hope our report helps
to strengthen
parliamentary democracy

A reminder to our parliamentarians: Your oath of office

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

The Constitution, Schedule 2, Section 4

A reminder to our ministers: Your oath of office

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

The Constitution, Schedule 2, Section 3

9. Notes

1. 8 December 2021. Auditor-General South Africa. *Consolidated General Report on National and Provincial Audit Outcomes*. AGSA. Available online here: <https://www.agsa.co.za/Reporting/PFMAReports/PFMA2020-2021.aspx>
2. www.pmg.org.za
3. 8 May 1996, as amended. *The Constitution of the Republic of South Africa*. Chapter 4: Parliament.
4. 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
5. *The Constitution*. Chapter 4: Parliament.
6. 22 June 2022. Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State. *Judicial Commission of Inquiry into State Capture Report: Part VI. Vol 4: All the Recommendations*.
7. For more on OUTA's position on electoral reform, see here: <https://www.outha.co.za/projects/special-projects/electoral-reform>
8. 2007. Parliament. *Oversight and Accountability Model*. Available online here: <https://www.parliament.gov.za/storage/app/media/oversight-reports/ovac-model.pdf>
9. 27 January 2009. Parliament. *Announcements, Tablings and Committee Reports* No 8 of 2009. Page 64 (page 3 of digital copy). Available here: https://www.parliament.gov.za/storage/app/media/Docs/atc_rep/114147_1.pdf
10. March 2009. National Assembly Table Division. *Procedural Developments in the National Assembly*. Page 11. Available here: <https://www.parliament.gov.za/storage/app/media/NA-Procedural-Devs/14.pdf>
11. ATC no 8 of 2009, above, page 70-71 (hard copy) / 9-10 (digital)
12. No date. Parliament of the Republic of South Africa. National Assembly Planning Session. *Parliament's Oversight and Accountability Model: Asserting Parliament's Oversight Role in Enhancing Democracy*. Available here: <https://www.outha.co.za/web/content/229230>
13. 1 March 2022. The Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State: Part 111 (Bosasa).
14. 16 May 2022. Jan Gerber. Parliament's chair of chairs Cedric Frolick referred to ethics committee after Zondo findings. News 24. Available here: <https://www.news24.com/news24/southafrica/news/parliaments-chair-of-chairs-cedric-frolick-referred-to-ethics-committee-after-zondo-findings-20220516>
15. ATC no 8 of 2009, above, page 69 (hard copy) / 8 (digital) and Chapter 5, page 39/100.
16. Money Bills Amendment Procedure and Related Matters Act, 2009. <https://static.pmg.org.za/Act9-2009MoneyBills.pdf>
17. AGSA. *Consolidated General Report on National and Provincial Audit Outcomes: PFMA 2020-21*. <https://www.agsa.co.za/Portals/0/Reports/PFMA/202021/Consolidated%20PFMA%20General%20Report%202020-21%20-%20FINAL%208%20December.pdf?ver=2021-12-08-114517-993>
18. AGSA report, page 13
19. AGSA report, page 35
20. AGSA report, page 57
21. AGSA report, page 179

22. AGSA report, page 239
23. November 2017. High Level Panel on the Assessment of Key Legislation and the Accelerations of Fundamental Change. *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
24. High Level Panel report, page 535.
25. Parliament of the Republic of South Africa. *Rules of the National Assembly*. 9th Edition. https://www.parliament.gov.za/storage/app/media/Rules/NA/2016-09-28_NA_RULES.pdf See also: Minutes of meeting of 18 October 2017 of the Committee on Rules of the National Assembly. <https://pmg.org.za/committee-meeting/25288/>
26. Based on National Assembly programmes.
27. October 2021. OUTA. *Holding onto power: How political parties have taken R13.879 billion from the fiscus since 2009*. Summary and full report available online here: www.outha.co.za/newsroom-1/post/this-is-who-really-funds-political-parties-you-the-taxpayer-1094
28. 27 July 2021. Scholtz, C and McDaid, L. Your MPs are supposedly off doing ‘constituency work’ that costs R339m – but where are the results? In Daily Maverick. Available here: <https://www.dailymaverick.co.za/opinionista/2021-07-27-your-mps-are-supposedly-off-doing-constituency-work-that-costs-r339m-but-where-are-the-results/>
29. 12 April 2022. Statement by Parliament. *Speaker launches Makhanda parliamentary constituency office*. Available here: <https://www.parliament.gov.za/news/speaker-launches-makhanda-parliamentary-constituency-office>
30. May 2022. Inter-Parliamentary Union and United Nations Development Programme. *Global Parliamentary Report 2022: Public Engagement in the work of parliament*. Available online here: <https://www.undp.org/publications/global-parliamentary-report-2022-public-engagement-work-parliament>
31. <https://www.outha.co.za/blog/newsroom-1/post/south-africa-needs-parliament-to-listen-more-to-the-people-1165>
32. 9 December 2021. Abel Mputing. *Cooperation at centre of new South African Parliamentary Institute*. Parliament. Available here: <https://www.parliament.gov.za/news/cooperation-centre-new-south-african-parliamentary-institute>
33. www.pmg.org.za
34. 22 June 2021. *Request for public hearings and investigation on the Risk Mitigation Independent Power Producers Procurement Programme*. Letter from 15 civil society organisations to the Speaker of the National Assembly, copied to the Chairperson of the NCOP. The organisations include OUTA. Letter available here: <https://thegreenconnection.org.za/wp-content/uploads/2021/09/Letter-To-Parliament-Public-Hearings-and-Investigation-on-The-Risk-Mitigation-Karpowership-22-June-2021.pdf>
35. 29 April 2022. PMG. *Electoral Amendment Bill: DHA response to public submissions; with Ministry*. Available here: <https://pmg.org.za/committee-meeting/34765/>
36. 17 November 2021. Budgetary Review and Recommendation Report (BRRR) of the Portfolio Committee on Communications. Available here: <https://static.pmg.org.za/211119pccombrrr.pdf>
37. 30 November 2021. *Budgetary Review and Recommendations Report of the Portfolio Committee on Cooperative Governance and Traditional Affairs*. Available here: <https://static.pmg.org.za/211130pccoopbrrr.pdf>
38. 1 December 2021. *Budgetary Review and Recommendations Report (BRRR) of the Portfolio Committee on Environment, Forestry and Fisheries on the Annual Reports and Financial Statements of the Department of Forestry, Fisheries and Environment and Its Five Entities*. Available here: <https://static.pmg.org.za/211202pcenvironbrrr.pdf>
39. 5 February 2022. Letter from Minister of Home Affairs to Speaker of the National Assembly. *Re: National Assembly's*

adoption of Budgetary Review and Recommendations Report 2021/22 of the Portfolio Committee on Home Affairs.
Available here: <https://www.وتا.co.za/web/content/229453>

40. 23 November 2021. *Portfolio Committee on Home Affairs 2021/22 Budgetary Review and Recommendation Report.*
Available here: <https://static.pmg.org.za/211126pchomebrrr.pdf>
41. 19 November 2021. *Budgetary Review and Recommendation Report of the Portfolio Committee on Mineral Resources and Energy.* Available here: <https://static.pmg.org.za/211122pcminbrrr.pdf>
42. BRRR pages 7 and 5
43. 15 February 2022. *Minutes: DMRE Quarter 1,2 & 3 Performance & Implementation of Audit Improvement Plans; with Minister and Deputy Minister.* Available here: <https://pmg.org.za/committee-meeting/34316/>
44. 13 May 2022. *Minutes: Gas Amendment Bill: public hearings report; DMRE Budget: Committee Report.* Available here: <https://pmg.org.za/committee-meeting/34915/>
45. 22 February 2022. PMG. *Minutes of meeting: Central Energy Fund Group & SA Nuclear Energy Corporation Group 2021/22 Corporate Plans; with Minister.* Available here: <https://pmg.org.za/committee-meeting/34393/>
46. 31 August 2021. PMG. *Minutes of meeting: DMRE Update on all outstanding forensic reports and consequence management matters.* Available here: <https://pmg.org.za/committee-meeting/33497/>
47. OUTA acknowledges and appreciates the opportunity it had to engage the committee in October 2022, and this will be discussed in the 2023 Parliamentary oversight report.
48. 24 November 2021. *Budgetary Review and Recommendation Report of the Portfolio Committee on Public Enterprises.* Available here: <https://static.pmg.org.za/211125pcpubentbrrrreport.pdf>
49. ATC 18 May 2022: *Report of the Portfolio Committee on Public Enterprises on Budget Vote 10: Public Enterprises, and on the SP and APP for 2022/23 of the Department of Public Enterprises.* Available here: <https://pmg.org.za/taled-committee-report/4925/>
50. 18 May 2022. PMG. *Minutes: Public Enterprises Budget: Committee Report.* Available here: <https://pmg.org.za/committee-meeting/34964/>
51. 24 November 2021. *Budgetary Review and Recommendation Report of the Portfolio Committee on Public Enterprises.* Available here: <https://static.pmg.org.za/211125pcpubentbrrrreport.pdf>
52. 16 November 2021. *Budgetary Review and Recommendation Report (BRRR) of the Portfolio Committee on Transport.* Available here: <https://static.pmg.org.za/211118pctransportbrrr.pdf>
53. 29 March 2022. OUTA. *Don't start at war with motorists over driver's licences, OUTA warns.* Available here: <https://www.وتا.co.za/blog/newsroom-1/post/don-t-start-a-war-with-motorists-over-driver-s-licences-وتا-warns-1143>
54. 11 March 2022. OUTA. *A 10-year driver's licence solution makes sense.* Available here: <https://www.وتا.co.za/blog/newsroom-1/post/a-10-year-drivers-licence-solution-makes-sense-1139>
55. 20 November 2020. OUTA. *OUTA's comments on the Second Adjustment Appropriations Bill & MTBPS.* Pages 28-36. Available here: <https://www.وتا.co.za/web/content/187247>
56. 2 September 2020. OUTA. *No room for political patronage in NYDA board.* Available here: <https://وتا.co.za/blog/newsroom-1/post/no-room-for-political-patronage-in-nyda-board-950>
57. 2015. National Treasury. *Accounting Manual for Departments: Unauthorised, irregular and fruitless and wasteful expenditure.* Available online here: <https://oag.treasury.gov.za/Publications/01.%20Annual%20Financial%20Statements/03.%20For%20Prov.%20And%20Nat.%20Departments/For%20Fin%20years%20ending%202014%20to%202019/01%20Archives/Accounting%20Man>

[ual%20for%20Departments/18.%20Unauthorised%20Irregular%20and%20Fruitless%20and%20Wasteful%20Expenditure.pdf](#)

58. December 2021. AGSA. *The Citizen's Report 2020-21*. <https://pfma-2020-2021.agsareports.co.za/wp-content/uploads/2021/12/Citizens-Report-PFMA-2020-21-V7b.pdf>
59. 24 November 2021. The Budgetary Review and Recommendations Report (BRRR) of the Portfolio Committee on Health. Page 13. Available here: <https://static.pmg.org.za/211125pchealthbrrrreport.pdf>
60. 1 December 2021. Budgetary Review and Recommendations Report of the Portfolio Committee on Environment, Forestry and Fisheries. Page 2. Available here: <https://static.pmg.org.za/211202pcenvirobrrr.pdf>
61. 30 November 2021. Budgetary Review and Recommendations Report of the Portfolio Committee on Cooperative Governance and Traditional Affairs. Page 3. Available here: <https://static.pmg.org.za/211130pccoopbrrr.pdf>
62. 23 November 2021. Budgetary Review and Recommendation Report of the Portfolio Committee on Women, Youth and Persons with Disabilities. Page 40. Available here: <https://static.pmg.org.za/211123pcwomenreport.pdf>
63. 19 November 2021. Budgetary Review and Recommendation Report of the Portfolio Committee on Mineral Resources and Energy. Page 7. <https://static.pmg.org.za/211122pcminbrrr.pdf>
64. BRRR of PC MRE. Page 21.
65. BRRR of PC MRE. Page 56.
66. Public Finance Management Act 1 of 1999
67. Municipal Finance Management Act 56 of 2003
68. 25 August 2020. PMG. Minutes: *Zero-Based Budgeting: Parliamentary Budget Office briefing*. Available here: <https://pmg.org.za/committee-meeting/30912/>
69. For more on the SDGs, see here: <https://sdgs.un.org/goals>
70. 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>
71. The annual SONAs are here: <https://www.thepresidency.gov.za/state-of-the-nation-addresses>
72. <https://www.gov.za/about-government/government-programmes/new-growth-path>
73. 2021. Department of Planning, Monitoring and Evaluation. *Revised Medium-Term Strategic Framework 2019-2024*. Available online here: https://www.dpme.gov.za/keyfocusareas/outcomesSite/MTSF_2019_2024/Final%20Revised%20MTSF%202019-2024%202021.pdf
74. 25 August 2020. PMG. Minutes: *Zero-Based Budgeting: Parliamentary Budget Office briefing*. Available here: <https://pmg.org.za/committee-meeting/30912/>
75. BRRR on COGTA. <https://static.pmg.org.za/211130pccoopbrrr.pdf>
76. BRRR on FFE. <https://static.pmg.org.za/211202pcenvirobrrr.pdf>
77. BRRR on Home Affairs. <https://static.pmg.org.za/211126pchomebrrr.pdf>
78. Alexkor, Denel, Eskom, South African Airways, South African Express Airways, the South African Forestry Company and Transnet.
79. 2018. Department of Trade and Industry. *Industrial Policy Action Plan 2018/19-2020/21*. Available online here: https://www.gov.za/sites/default/files/gcis_document/201805/industrial-policy-action-plan.pdf
80. November 2020. Department of Women, Youth and Persons with Disabilities. *Country Gender Indicator Framework*.

Available online here: <https://twendembele.org/reports/country-gender-indicator-framework/>

81. December 2018. Dept of Women, Youth & Persons with Disabilities. Framework on Gender-Responsive Planning, Budgeting, Monitoring, Evaluation & Auditing. <http://www.women.gov.za/images/GRPB-framework-250119A.pdf>
82. The ministers' performance agreements are online here: <https://www.gov.za/ministers-performance-agreement>
83. Parliament. *Role of Parliamentary Committees*. <https://www.parliament.gov.za/role-of-parliamentary-committee>
Parliament. *How to petition Parliament*. <https://www.parliament.gov.za/how-to-petition-parliament>
84. 25 August 2022. Xolile George. Situational analysis: Presentation by Secretary to Parliament. Available online here: https://static.pmg.org.za/220825_Documentation_OSTP_Presentation.pptx
85. 25 August 2022. Joint Standing Committee on Financial Management of Parliament. *Introductory meeting with Secretary to Parliament, including situational analysis of the administration* (minutes of this meeting). Available online here: <https://pmg.org.za/committee-meeting/35390/>
86. This inquiry was initiated on 21 June 2017 and the report was issued on 28 November 2018.
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
87. November 2021. Waterhouse, S et al. *Moving online, opening the (virtual) door: Public access to online committee meetings in national Parliament during lockdown: April 2020 to March 2021*. Dullah Omar Institute for Constitutional Law, Governance and Human Rights and Parliamentary Monitoring Group. Available online here: https://static.pmg.org.za/PUBLIC_ACCESS_TO_ONLINE_COMMITTEE_MEETINGS_FINAL_VERSION_19_May_2022.pdf
88. Ibid, Page 21.
89. Parliament. *Code of Conduct*. Available here: <https://www.parliament.gov.za/code-conduct>
90. June 2017. Organisation Undoing Tax Abuse. *No Room to Hide: A President caught in the act*. Available online here: <https://www.oua.co.za/projects/state-capture/zuma-caught>
91. 27 March 2018. Organisation Undoing Tax Abuse. *OUTA pleased with Parliament's action against Faith Muthambi*. Available online here: <https://oua.co.za/blog/newsroom-1/post/oua-pleased-with-parliament-s-action-against-faith-muthambi-273>
92. For more on these complaints, see here: <https://www.oua.co.za/projects/state-capture/criminal-charges>
93. 6 November 2020. OUTA letter to the co-chairs of the Joint Committee on Ethics and Members' Interests. <https://www.oua.co.za/web/content/229240>
94. See "Committee meetings" and "Tabled reports" in the committee's records here <https://pmg.org.za/committee/77/>
95. 22 June 2022. Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State. *Judicial Commission of Inquiry into State Capture Report: Part VI. Vol 4: All the Recommendations*. Paragraphs 252 & 253.
96. March 2009. *National Assembly Table Division. Procedural Developments in the National Assembly*. Available here: <https://www.parliament.gov.za/storage/app/media/NA-Procedural-Devs/14.pdf>
97. The reports are available on the State Capture Commission website here: <https://www.statecapture.org.za/site/information/reports>
98. *State Capture Commission Report: Part VI. Vol 4: All the Recommendations*. Page 121
99. Ibid, Part VI, Volume 1.
100. *The Constitution*. Schedule 2, section 4.

101. 17 November 2020. OUTA. *The captured Parliament: how MPs let looters get away with it*. Available here: <https://outa.co.za/blog/newsroom-1/post/the-captured-parliament-how-mps-let-looters-get-away-with-it-989>
102. 22 June 2022. Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State. *Judicial Commission of Inquiry into State Capture Report: Part VI. Vol 4: All the Recommendations*. Page 170 paragraph 227.2 and page 191 paragraph 264.

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.

www.outa.co.za



10. Appendix A

The State Capture Commission's recommendations on parliamentary oversight.

Extracted from:

22 June 2022. Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State. Judicial Commission of Inquiry into State Capture Report: Part VI. Vol 4: All the Recommendations.

PART VI

Vol 1: Parliamentary Oversight

Summary of recommendations

227. In what follows the Commission summarises the recommendations it has made above.

227.1. It is recommended that Parliament should consider whether it would be desirable for it to establish a committee whose function is, or includes, oversight over acts or omissions by the President and Presidency, which are not overseen by existing portfolio committees.

227.2. It is recommended that Parliament should consider whether introducing a constituency-based (but still proportionally representative) electoral system would enhance the capacity of Members of Parliament to hold the executive accountable. If Parliament considers that introducing a constituency-based system have this advantage, it is recommended that it should consider whether, when weighed against any possible disadvantages of, this advantage justifies amending the existing electoral system.

227.3. It is recommended that Parliament should consider whether it would be desirable to enact legislation which protects Members of Parliament from losing their party membership (and therefore their seats in Parliament) merely for exercising their oversight duties reasonably and in good faith.

227.4. It is recommended that Parliament should consider amending section 6(1) of the Intelligence Services Oversight Act 40 of 1994, so as to ensure that, before

an election, the outgoing JSCI is required to report to Parliament on as much as possible of the period preceding the election.

- 227.5. It is recommended that Parliament ensures that adequate funds are allocated, particularly to portfolio committees, to enable effective parliamentary oversight.
- 227.6. It is recommended that, subject to budgetary restraints, the scale and skills of the research and technical assistance made available to the portfolio committees be enhanced.
- 227.7. It is recommended that Parliament needs to make it clear that the practice of late submissions to portfolio committees will not be tolerated.
- 227.8. It is recommended that Parliament should consider whether there is a need to legislate on the issue of reports by representatives of the executive to Parliament.
- 227.9. It is recommended that Parliament needs to make clear that non-attendance by ministers and others scheduled to attend portfolio committee meetings will not be tolerated and to ensure that consequences are visited on those who offend without adequate cause. (Parliament should consider whether there is a need to legislate on this issue.
- 227.10. It is recommended that Parliament implement a system to “track and monitor” implementation (or non-implementation) by the executive of corrective action proposed in reports adopted by Parliament.
- 227.11. It is recommended that Parliament establish an Oversight and Advisory Section to provide advice, technical support, co-ordination, and tracking and monitoring

mechanisms on issues arising from oversight and accountability activities of Members of Parliament and the committees to which they belong.

- 227.12. It is recommended that Parliament should consider whether it supports the principle of “amendatory accountability” and, if it does, whether it would be desirable to give detailed substance to this principle in an Act of Parliament, along the lines suggested in the Corder report.
- 227.13. If Parliament should not be minded to enact legislation of the above type, the Commission is of the view that consideration should be given by Parliament to amendments to its own rules, with a view to addressing the problem of ministers who fail to report back to Parliament on what if anything has been done in respect of remedial measures proposed by Parliament or on alternative methods preferred by them to address defective performance highlighted by Parliament.
228. The Commission supports the recommendation that, with the support of a majority of members of a portfolio committee, a portfolio committee could put a minister to terms in respect of remedial action, and could thereafter, through the Speaker intercede with the President, as head of the national executive, in the event of non-compliance. The Leader of Government Business could also play a role in such a process.
229. It is recommended that Parliament should consider whether more representatives of opposition parties should be appointed as chairs of portfolio committees.
230. It is recommended that Parliament consider whether it is desirable to amend its rules to give effect to the proposals by Corruption Watch on appointments by Parliament.

Anti-State Capture and Corruption Commission

252. It is recommended that a permanent Commission be established the main function of which will be to investigate, publicly expose acts of state capture and corruption in the way that this Commission did over the past four years, make findings and recommendations to the President. Such a Commission could be called the Anti-State Capture and Corruption Commission. In addition, since it has been found by this Commission that the failure of Parliament to hold the executive, particularly President Zuma, accountable contributed to the Gupta-Zuma state capture, it will be necessary for the Anti-State Capture and Corruption Commission to keep an eye on how Parliament performs its oversight function and whether, in respect of any particular matters, it is performing or it has performed its oversight function effectively and has held the Executive including the President, accountable. Where the Anti-State Capture and Corruption Commission is of the view that Parliament has failed or is failing to perform its oversight function effectively and has not effectively held the executive effectively to account, it must step in, investigate the matter itself properly and call upon anyone to appear before it, testify and answer questions that may be put to him or her by the Chairperson of the Anti-State Capture and Corruption Commission in public and in the full glare of cameras unless the Chairperson decides in a particular matter that that should not happen in public. It must have power to call anyone within the National Executive and officials of government departments, state owned entities and members of Boards of Directors of state owned entities or anyone in the private sector including private businesses. However, it will be important for the Anti-State Capture and Corruption Commission to ensure that as a norm evidence before it and any questioning of persons who appear before it is done publicly and with the media including Television being allowed in the hearing and that it is only in really exceptional cases that the Chairperson of the Commission may decide that the giving of certain evidence and/or the questioning of any person be done with the public excluded. An example of such

cases is where the hearing of particular evidence publicly could endanger national security or where some other strong grounds exist to justify the hearing of such evidence with the public excluded.

253. That there should be a structure that can play this role in relation to Parliament arises out of the fact that the Gupta-Zuma State Capture could have been prevented or stopped in its track quite early around 2012 and 2013 if Parliament had not been prevented by the ANC majority from performing its oversight function and from properly and effectively holding President Zuma to account. However, whenever the opposition parties tried to do the right thing for the country and the people of South Africa and sought answers from the President about his friendship with the Guptas the ANC majority shielded President Zuma and he was able to continue with his friendship with the Guptas to the detriment of South Africa.
254. With the Anti-State Capture and Corruption Commission, it will be possible for the Commission to call upon the President to appear before it and answer questions relating to certain matters. Anyone involved in acts of state capture and corruption must dread the day he or she may appear before the Commission and be subjected to intense questioning in front of the nation and in the full glare of TV cameras. That is not to say that the Commission will necessarily be hostile to those who appear before it but that it will take its job very seriously, it will act without fear or favour or prejudice and will ask the difficult questions that should be asked in the interest of the public and the country. Part of its job will be to expose acts of state capture and corruption and hopefully help to contribute to the significant lowering of the level of the corruption in the country.

Composition of the Anti-State Capture and Corruption Commission

255. The Anti-State Capture and Corruption Commission must be chaired by a Judge. Preferably, the Judge should be a retired Judge. While a Judge who is still in active

service should preferably not chair the Commission or participate in it in any way, this should not be an immutable position. There is no reason why a Judge who is still in active service but is close to retirement and may be left with one, two or three years and who is not going to be availing himself for promotion cannot be appointed to chair the Commission or to be part of the Commission for part of or the balance of the period of his or her active service. That, of course, may require that an acting Judge be appointed to perform the duties in Court that would have been performed by that Judge if he or she had not been appointed to the Anti-State Capture and Corruption Commission.

256. The Chairperson of the Anti-State Capture and Corruption Commission must have power to appoint evidence leaders and investigations and other personnel that he or she considers the Commission needs and will do a good job. The Anti-State Capture and Corruption Commission must have a Secretary and such support staff as may be necessary in order to enable the Commission to perform its function effectively and competently. The evidence leaders and investigators must be people who will perform their respective functions without fear, favour or prejudice. It must not be people who may think that doing their job fearlessly in the Commission may mean that Government will no longer give them work when they leave the Commission.
257. When the President needs to appoint the Chairperson of the Commission, he should approach the Chief Justice and request him or her to give him the name of a Judge who should be appointed by the President. The Chief Justice may then give the President one or two or three names and leave it to the President to choose one from those. The President should not himself or herself indicate any preference to the Chief Justice.
258. The Commission must prepare reports from time to time and submit them to the President at certain intervals.

President must be elected directly by the people

259. In terms of South Africa's electoral system the voters do not elect the President of the country. They vote for political parties. The political parties that get a sufficient number of voters during national and provincial elections send a certain number of people to Parliament in accordance with a certain formula. A political party represented in Parliament may withdraw any of its members serving in Parliament and replace him or her. There is not much an individual can do about it. With regard to a President, he or she first gets put on the list of a political party and takes an oath as a member of Parliament and, after he or she has become a member of the National Assembly, the National Assembly elects the President. When a member of the National Assembly gets elected by the National Assembly as the President, he or she ceases to be a member of the National Assembly.
260. After this Commission heard the kind of evidence it heard over a period of about four years including the evidence played by President Zuma in helping the Guptas loot taxpayers' money in the way they did together with their associates, we are bound to ask the question: how did this country end up having as President someone who would act the way President Zuma acted? Someone that could remove as good a public servant as Mr Themba Maseko from his position just so that he could put someone else into that position who would co-operate with the Guptas and give them business. A President who would fire Minister of Finance just because his friends wanted someone else in that position who would co-operate with his friends and help them to capture the country; National Treasury. Indeed, a President who became party to a scheme created by the Guptas to remove a number of executives from their positions at Eskom so that the Guptas could put their own associates in those positions so as to facilitate the looting of Eskom.

261. The country got Mr Zuma as President because he was able to ascend to the position of President of the African National Congress and the majority of the voters in the 2009 national and provincial elections voted for the ANC. During the elections of 2009 it would have been clear to all that, if the ANC obtained the majority of voters, Mr Zuma would be the President of the country. It may well be that, despite having more than 700 of charges pending against him, he would have won the majority of voters if it was a Presidential election where the voters voted for the President directly. However, there may have been voters who voted for the ANC but who would never have voted for Mr Zuma as President if they had an opportunity not to vote for Mr Zuma and still vote for the ANC.
262. No single measure that can be recommended and put in place will on its own be adequate to prevent state capture in the future or will be adequate on its own to rid our country of corruption it will take a number of measures that will each contribute in their own way towards that goal. As already suggested before, Mr Zuma may have been helped by the fact that there may have been voters who wanted to vote for the ANC but not necessarily for Mr Zuma but felt that they had no choice but to help him because their votes helped the ANC with the election and effectively give the ANC the prerogative to choose the President of the country. In other words, a voter who wanted to vote for the ANC but did not want Mr Zuma to be the President of the country was forced to choose between either not voting for the party that he or she liked, namely, the ANC and thereby enhance the prospects of Mr Zuma being President of the country or not voting at all for the political party for which she wanted to vote. That was a difficult choice to make. Many voters who may have found themselves in that situation may have ended up voting for the ANC and hoped that the ANC would not make Mr Zuma the President of the country. Of course, the ANC made Mr Zuma the President of the country.

263. The proposal that consideration be given to making necessary constitutional amendments to ensure that the President of the country is elected directly by the people, is aimed at ensuring that anyone who becomes President of the country does so on the basis of their own popularity with the people, not on the basis that, if voters vote for a particular party, that party will make him or her President. Of course, if this recommendation is accepted and necessary constitutional and legislative changes are made and it is implemented, that will not necessarily give the people of this country any guarantee that somebody similar to of Mr Jacob Zuma or even worse than Mr Jacob Zuma will ever be elected President of the country. That possibility will always be there. In the USA Mr Donald Trump won the Presidential election against all odds. That is a good reminder that a system where the voters vote for the President directly is no guarantee that a person of a wrong character will not win the Presidential election and become the President. However, if that were to happen in South Africa after this recommendation has been accepted and implemented, the consolation will be that the people elected their own queer character or a person who has no integrity and, if he or she ever facilitated a capture of the State by private individuals or entities as Mr Zuma did, the people can blame themselves for electing such a person to the highest office in the land. It will not be that the people voted for a party and it is that party that decided who should be the President of the country.

Electoral Reform

264. It is recommended that serious consideration be given to the majority recommendation on electoral reforms as given in the Report of the Electoral Task Team of January 2003. The Task Team included Dr F Van Zyl Slabbert who was the Chairperson.