Wednesday, 11 November 2020]

No 164—2020] SECOND SESSION, SIXTH PARLIAMENT

PARLIAMENT

OF THE

REPUBLIC OF SOUTH AFRICA

ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

WEDNESDAY, 11 NOVEMBER 2020

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National Assembly and National Council of Provinces

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1. Classification of Bills by Joint Tagging Mechanism (JTM)

(1) The JTM in terms of Joint Rule 160(6) classified the following Bill as a section 76 Bill:

(a) **Division of Revenue Second Amendment Bill** [B 24 – 2020] (National Assembly – sec 76).

(2) The JTM in terms of Joint Rule 160(6) classified the following Bill as a Money Bill:

(a) **Second Adjustments Appropriation Bill** [B 25 – 2020] (National Assembly – sec 77).

(3) The JTM in terms of Joint Rule 160(6) classified the following Bill as a Money Bill:

(a) **Taxation Laws Amendment Bill** [B 27 – 2020] (National Assembly – sec 77).

(4) The JTM in terms of Joint Rule 160(6) classified the following Bill as a section 75 Bill:

(a) **Tax Administration Laws Amendment Bill** [B 28 – 2020] (National Assembly – sec 75).

(5) The JTM in terms of Joint Rule 160(6) classified the following Bill as a section 76 Bill:

(a) **Fund-raising Amendment Bill** [B 29 – 2020] (National Assembly – sec 76).

(6) The JTM in terms of Joint Rule 160(6) classified the following Bill as a section 75 Bill:

(a) **Pension Funds Amendment Bill** [B 30 – 2020] (National Assembly – sec 75).

National Assembly

The Speaker

1. Referral to Committees of Bills introduced

(1) The following Bills are referred to the **Standing Committee on Appropriations** for consideration and report in terms of the Money Bills and Related Matters Act, 2009 (Act No 9 of 2009):

(a) **Division of Revenue Second Amendment Bill** [B 24 - 2020] (National Assembly – sec 76).

(b) **Second Adjustments Appropriation Bill** [B 25 - 2020] (National Assembly – sec 77).

2. Referral to Committees of papers tabled

(1) The following papers are referred to the **Portfolio Committee on Public Enterprises** for consideration and report. Report of the Independent Auditors on the Financial Statements and Performance Information is referred to the **Standing Committee on Public Accounts** for consideration:

(a) Integrated Report of Transnet SOC Limited for 2019-20.

(b) Annual Financial Statements of Transnet SOC Limited for 2019-20, including the Report of the Independent Auditors on the Financial Statements and Performance Information for 2019-20.

(2) The following papers are referred to the **Portfolio Committee on Social Development** for consideration and report:

(a) Report and Financial Statements of the Central Drug Authority (CDA) for 2019-20.

(3) The following papers are referred to the **Standing Committee on Public Accounts** for consideration:

(a) Financial Statements of Vote 1 – The Presidency for 2019-20, including the Report of the Auditor-General on the Financial Statements and Performance Information of Vote 1 for 2019-20.

(4) The following papers are referred to the **Portfolio Committee on Women, Youth and Persons with Disabilities** for consideration and report. Report of the Auditor-General on the Financial Statements and Performance Information is referred to the **Standing Committee on Public Accounts** for consideration:

(a) Report and Financial Statements of Vote 13 – Department of Women, Youth and Persons with Disabilities for 2019-20, including the Report of the Auditor-General on the Financial Statements and Performance Information of Vote 13 for 2019-20.

(5) The following papers are referred to the **Joint Standing Committee on the Financial Management of Parliament** for consideration and report:

(a) Report and Financial Statements of Vote 2 – Parliament of the Republic of South Africa for 2019-20, including the Report of the Auditor-General on the Financial Statements and Performance Information of Vote 2 for 2019-20, tabled in terms of section 60 of the Financial Management of Parliament and Provincial Legislatures Act, 2009 (Act No 10 of 2009).

(6) The following papers are referred to the **Standing Committee on Finance** for consideration and report. Report of the Auditor-General on the Financial Statements and Performance Information is referred to the **Standing Committee on Public Accounts** for consideration:

(a) Report and Financial Statements of the Financial and Fiscal Commission (FFC) for 2019-20, including the Report of the Auditor-General on the Financial Statements and Performance Information for 2019-20.

(7) The following papers are referred to the **Portfolio Committee on Agriculture, Land Reform and Rural Development** for consideration and report. Reports of the Auditor-General on the Financial Statements and Performance Information are referred to the **Standing Committee on Public Accounts** for consideration:

(a) Report and Financial Statements of the Office of the Valuer-General (OVG) for 2019-20, including the Report of the Auditor-General on the Financial Statements and Performance Information for 2019-20.

(b) Report and Financial Statements of the South African Veterinary Council for 2019-20, including the Report of the Independent Auditors on the Financial Statements and Performance Information for 2019-20.

(c) Report and Financial Statements of the Onderstepoort Biological Products SOC Ltd for 2019-20, including the Report of the Auditor-General on the Financial Statements for 2019-20.

(d) Report and Financial Statements of the National Agricultural Marketing Council (NAMC) for 2019-20, including the Report of the Auditor-General on the Financial Statements and Performance Information for 2019-20.

(e) Report and Financial Statements of the Agricultural Research Council (ARC) for 2019-20, including the Report of the Auditor-General on the Financial Statements and Performance Information for 2019-20.

(f) Report and Financial Statements of the Ingonyama Trust Board for 2019-20, including the Report of the Auditor-General on the Financial Statements and Performance Information for 2019-20.

(g) Report and Financial Statements of the Perishable Products Export Control Board (PPECB) for 2019-20, including the Report of the Independent Auditors on the Financial Statements and Performance Information for 2019-20.

(8) The following papers are referred to the **Portfolio Committee on Social Development** for consideration and report. Report of the Auditor-General on the Financial Statements and Performance Information is referred to the **Standing Committee on Public Accounts** for consideration:

(a) Report and Financial Statements of Vote 17 – Department of Social Development for 2019-20, including the Report of the Auditor-General on the Financial Statements and Performance Information of Vote 17 for 2019-20.

(9) The following papers are referred to the **Portfolio Committee on Agriculture, Land Reform and Rural Development** for consideration:

(a) Letter from the Minister of Agriculture, Land Reform and Rural Development, dated 29 October 2020, to the Speaker of the National Assembly, explaining the reasons for the delay in the submission of the Annual Report of the Department of Agriculture, Forestry and Fisheries, for the 2019-20 financial year.

(b) Letter from the Minister of Agriculture, Land Reform and Rural Development, dated 29 October 2020, to the Speaker of the National Assembly, explaining the reasons for the delay in the submission of the Annual Report of the Department of Rural Development and Land Reform, for the 2019-20 financial year.

(c) Letter from the Minister of Agriculture, Land Reform and Rural Development, dated 29 October 2020, to the Speaker of the National Assembly, explaining the reasons for the delay in the submission of the Annual Report of the Communal Property Associations, for the 2019-20 financial year.

(10) The following paper is referred to the **Portfolio Committee on Social Development** for consideration:

(a) Letter from the Minister of Social Development, dated 30 October 2020, to the Speaker of the National Assembly, explaining the reasons for the delay in the submission of the Annual Report of SASSA, for the 2019-20 financial year.

(11) The following paper is referred to the **Portfolio Committee on Police** for consideration and report:

(a) Annual Crime Report for 2019-20: Addendum to the South African Police Service (SAPS) Annual Report for 2019-20.

(12) The following papers are referred to the **Portfolio Committee on Higher Education, Science and Technology** for consideration and report. Reports of the Auditor-General on the Financial Statements and Performance Information are referred to the **Standing Committee on Public Accounts** for consideration:

(a) Report and Financial Statements of the Agriculture Sector Education and Training Authority (Agri-Seta) for 2019-20, including the Report of the Auditor-General on the Financial Statements and Performance Information for 2019-20.

(b) Report and Financial Statements of the Banking Sector Education and Training Authority (Bank-Seta) for 2019-20, including the Report of the Auditor-General on the Financial Statements and Performance Information for 2019-20.

(c) Report and Financial Statements of Culture, Arts, Tourism, Hospitality and Sport Sector Education and Training Authority (CATHS-SETA) for 2019-20, including the Report of the Auditor-General on the Financial Statements and Performance Information for 2019-20.

(d) Report and Financial Statements of Construction Education and Training Authority (CETA) for 2019-20, including the Report of the Auditor-General on the Financial Statements and Performance Information for 2019-20.

(e) Report and Financial Statements of the Chemical Industries Education and Training Authority (CHIETA) for 2019-20, including the Report of the Auditor-General on the Financial Statements and Performance Information for 2019-20.

(f) Report and Financial Statements of Education Training and Development Practices Sector Education and Training Authority (ETDP-SETA) for 2019-20, including the Report of the Auditor-General on the Financial Statements and Performance Information for 2019-20.

(g) Report and Financial Statements of the Energy and Water Sector Education and Training Authority (EW-SETA) for 2019-20, including the Report of the Auditor-General on the Financial Statements and Performance Information for 2019-20.

(h) Report and Financial Statements of the Financial and Accounting Services Sector Education and Training Authority (FASSET) for 2019-20, including the Report of the Auditor-General on the Financial Statements and Performance Information for 2019-20.

(i) Report and Financial Statements of the Food and Beverages Manufacturing Industry Sector Education and Training Authority (Foodbev-Seta) for 2019-20, including the Report of the Auditor-General on the Financial Statements and Performance Information for 2019-20.

(j) Report and Financial Statements of the Fibre Processing and Manufacturing Sector Education and Training Authority (FP&M-Seta) for 2019-20, including the Report of the Auditor-General on the Financial Statements and Performance Information for 2019-20.

(k) Report and Financial Statements of the Insurance Sector Education and Training Authority (Inseta) for 2019-20, including the Report of the Auditor-General on the Financial Statements and Performance Information for 2019-20.

(l) Report and Financial Statements of the Manufacturing, Engineering and Related Services Sector Education and Training Authority (MER-Seta) for 2019-20, including the Report of the Auditor-General on the Financial Statements and Performance Information for 2019-20.

(m) Report and Financial Statements of the Media, Information and Communication Technologies Sector Education and Training Authority (MICT-Seta) for 2019-20, including the Report of the Auditor-General on the Financial Statements and Performance Information for 2019-20.

(n) Report and Financial Statements of the Mining Qualifications Authority (MQA) for 2019-20, including the Report of the Auditor-General on the Financial Statements and Performance Information for 2019-20.

(o) Report and Financial Statements of the South African Qualifications Authority (SAQA) for 2019-20, including the Report of the Auditor-General on the Financial Statements and Performance Information for 2019-20.

(p) Report and Financial Statements of the Local Government Sector Education and Training Authority (LG-SETA) for 2019-20, including the Report of the Auditor-General on the Financial Statements and Performance Information for 2019-20.

(q) Report and Financial Statements of the Transport Education and Training Authority (TETA) for 2019-20, including the Report of the Auditor-General on the Financial Statements and Performance Information for 2019-20.

(r) Report and Financial Statements of the Public Service Sector Education and Training Authority (PSETA) for 2019-20, including the Report of the Auditor-General on the Financial Statements and Performance Information for 2019-20.

(s) Report and Financial Statements of the Wholesale and Retail Sector Education and Training Authority (W&R-SETA) for 2019-20, including the Report of the Auditor-General on the Financial Statements and Performance Information for 2019-20.

(t) Report and Financial Statements of the Quality Council for Trades and Occupations (QCTO) for 2019-20, including the Report of the Auditor-General on the Financial Statements and Performance Information for 2019-20.

(u) Report and Financial Statements of the Council on Higher Education (CHE) for 2019-20, including the Report of the Auditor-General on the Financial Statements and Performance Information for 2019-20.

(v) Report and Financial Statements of the Services Sector Education and Training Authority (SERVICES Seta) for 2019-20, including the Report of the Auditor-General on the Financial Statements and Performance Information for 2019-20.

(w) Report and Financial Statements of the Health and Welfare Sector Education and Training Authority (HW-SETA) for 2019-20, including the Report of the Auditor-General on the Financial Statements and Performance Information for 2019-20.

(13) The following papers are referred to the **Portfolio Committee on Mineral Resources** for consideration and report. Reports of the Auditor-General on the Financial Statements and Performance Information are referred to the **Standing Committee on Public Accounts** for consideration:

(a) Report and Financial Statements of Vote 29 – Department of Mineral Resources for 2019-20, including the Report of the Auditor-General on the Financial Statements and Performance Information of Vote 29 for 2019-20.

(b) Report and Financial Statements of Vote 26 – Department of Energy for 2019-20, including the Report of the Auditor-General on the Financial Statements and Performance Information of Vote 26 for 2019-20.

(c) Report and Financial Statements of the South African Diamond and Precious Metals Regulator for 2019-20, including the Report of the Auditor-General on the Financial Statements and Performance Information for 2019-20.

(d) Report and Financial Statements of the State Diamond Trader for 2019-20, including the Report of the Auditor-General on the Financial Statements and Performance Information for 2019-20.

(e) Report of the Mine Health and Safety Inspectorate for 2019-20.

(14) The following papers are referred to the **Portfolio Committee on Social Development** for consideration and report. Report of the Auditor-General on the

Financial Statements and Performance Information is referred to the **Standing Committee on Public Accounts** for consideration:

(a) Report and Financial Statements of the National Development Agency (NDA) for 2019-20, including the Report of the Auditor-General on the Financial Statements and Performance Information for 2019-20.

(15) The following papers are referred to the **Portfolio Committee on Public Enterprises** for consideration and report. Report of the Auditor-General on the Financial Statements and Performance Information is referred to the **Standing Committee on Public Accounts** for consideration:

(a) Report and Financial Statements of Vote 9 – Department of Public Enterprises for 2019-20, including the Report of the Auditor-General on the Financial Statements and Performance Information of Vote 9 for 2019-20.

TABLINGS

National Assembly and National Council of Provinces

1. The Minister of Communications and Digital Technologies

(a) Revised Strategic/Corporate Plan for 2020/21 – 2024/25 and Annual Performance Plan of the Film and Publication Board for 2020/21.

(b) Annual Performance Plan of the National Electronic Media Institute of South Africa (NEMISA) for 2020/21.

2. The Minister of Finance

(a) Report and Financial Statements of the Government Pensions Administration Agency for 2019-20, including the Report of the Auditor-General on the Financial Statements and Performance Information for 2019-20.

(b) Annual Financial Statements of the Public Investment Corporation (SOC) Limited for 2019-20, including the Report of the Auditor-General on the Financial Statements and Performance Information for 2019-20.

(c) Integrated Annual Report of the Public Investment Corporation (SOC) Limited for 2019-20.

(d) Report and Financial Statements of the South African Revenue Service (SARS) for 2019-20, including the Report of the Auditor-General on the Financial Statements and Performance Information for 2019-20.

3. The Minister of Justice and Correctional Services

(a) Proclamation No R. 32, published in Government Gazette No 43885, dated 06 November 2020: Referral of matters to existing Special Investigating Unit and

Special Tribunal: In respect of the affairs of the National Lotteries Commission, previously known as the National Lotteries Board, in terms of the Special Investigating Units and Special Tribunals Act, 1996 (Act No 74 of 1996).

4. The Minister of Police

(a) Report and Financial Statements of the Private Security Industry Regulatory Authority (PSIRA) for 2019-20, including the Report of the Auditor-General on the Financial Statements and Performance Information for 2019-20.

National Council of Provinces

1. The Chairperson

(a) REPORT ON THE WITHDRAWAL OF SECTION 139(1)(b) INTERVENTION AT MASILONYANA LOCAL MUNICIPALITY, FREE STATE PROVINCE.

Referred to the **Select Committee on Cooperative Governance and Traditional Affairs, Water and Sanitation and Human Settlements** for consideration and report.

(b) PROVISION OF THE PROVINCIAL INVESTIGATION REPORT RELATING TO SERIOUS ALLEGATIONS AT CENTRAL KAROO DISTRICT MUNICIPALITY ("THE MUNICIPALITY") (PURSUANT TO SECTION 9 (2) OF THE WESTERN CAPE MONITORING AND SUPPORT OF MUNICIPALITIES ACT, 2014).

Referred to the **Select Committee on Cooperative Governance and Traditional Affairs, Water and Sanitation** and **Human Settlements** for consideration and report.

COMMITTEE REPORTS

National Assembly and National Council of Provinces

1. REPORT OF THE JOINT STANDING COMMITTEE ON INTELLIGENCE ON ACTIVITIES OF THE COMMITTEE AFTER FIVE MONTHS OF ESTABLISHMENT, AS STIPULATED IN THE INTELLIGENCE SERVICES OVERSIGHT ACT, NO. 40 OF 1994, DATED 27 OCTOBER 2020

1. INTRODUCTION

The Joint Standing Committee on Intelligence (JSCI) is established in terms of the Intelligence Services Oversight Act, No. 40 of 1994 (hereafter the Act), to perform the oversight functions set out in the Act. During the 6th Parliament, the Committee was constituted on 30 October 2019 after the process of undergoing vetting for Top Secret Security Clearance which is a statutory requirement. Having been nominated by their respective political parties, the Members of the JSCI are appointed by the President in consultation with the Speaker of the National Assembly and the Chairperson of the National Council of Provinces. In terms of section 2(4) of the Act, the President, in consultation with Speaker of the National Assembly (NA) and the Chairperson of the National Council of Provinces (NCOP), is empowered to appoint a Member, excluding those appointed to the Committee in terms of section 2(3), as the chairperson of the Committee.

2. PURPOSE OF THE REPORT

The Constitution of the Republic of South Africa (1996) recognizes that Parliament has an important role to play in overseeing government departments and its public entities. The Act ensures that the JSCI performs the oversight functions, as set out in section 3, in relation to the intelligence and counter-intelligence functions of the Services, which include the administration, financial management and expenditure of the Services.

The purpose of this report emanates from section 6(1) of the Act which states that:

> The Committee shall, within five months after its first appointment, and thereafter within two months after 31 March in each year, table in Parliament a report on the activities of the Committee during the preceding year, together with the findings made by it and the

recommendations it deems appropriate, and provide a copy thereof to the President and the Minister responsible for each Service.

3. APPOINTMENT OF THE JSCI

It is pertinent to note that the legal processes of finalising the appointment of the Committee were delayed for various reasons. Consequently, the Committee was appointed, in terms of the Act, on 30 October 2019. Subsequently, the first meeting of the Committee took place on 13 November 2019 following the swearing-in of Members. The Members of the Committee must take an oath or affirmation of secrecy before commencing with their functions as prescribed by the Act.

3.1 Composition of the Committee

The Committee consist of Members of Parliament appointed on the basis of proportional representation determined according to the formula set out in the Act. The Chairperson is appointed separately in terms of section 2(4) of the Act. Accordingly, the following seats were allocated to various political parties following the 2019 elections:

- African National Congress (ANC): 8 seats
- Democratic Alliance (DA): 3 seats
- Economic Freedom Fighters (EFF): 1 seat

3.2 Present Members of the Committee

The present membership of the JSCI is composed of the following:

Name	Political party
Mr JJ Maake	NA (ANC): Chairperson
Ms LC Bebee	NCOP (ANC)
Ms MC Dikgale	NA (ANC)
Ms DE Dlakude	NA (ANC)

Ms NL Hermans	NA (ANC)
Mr G Magwanishe	NA (ANC)
Ms JM Mofokeng	NA (ANC)
Mr MK Mmoiemang	NCOP (ANC)
Ms ZV Ncitha	NCOP (ANC)
Dr MM Gondwe	NA (DA)
Ms D Kohler-Barnard	NA (DA)
Ms C Labuschagne	NCOP (DA)
Dr MQ Ndlozi	NA (EFF)

4. ORIENTATION OF MEMBERS OF THE JSCI

The Act provides for the establishment of the JSCI to perform oversight functions related to intelligence and counter-intelligence functions of the Intelligence Services and report thereon to Parliament. After the Committee has been established, following the awarding of Top Secret security clearance certificates, Members must undergo intensive training or orientation in the field of intelligence. Section 5 of the Act clearly stipulates that "(t)he Committee shall conduct its functions in a manner consistent with the protection of national security". Furthermore, "(n)o person shall disclose any intelligence, information or document the publication of which is restricted by law and which is obtained by that person in the performance of his or her functions in terms of this Act". In order to adhere to the Act, intensive induction and training is provided to Members.

For the Sixth Parliament, orientation for the Members took place from 18 to 22 November 2019. It enabled Members to understand the nature of the environment coupled with the complexities of the Fourth Industrial Revolution and its implications to intelligence and national security; how to handle secrecy; and responding to public enquires on sensitive issues and related matters. The orientation prepared the Committee to function optimally, and to ensure the safety and security of information. More importantly, the newly established Committee was briefed on the functions and roles of the services and their entities. Additionally, the Committee received an overview of pertinent issues within the Intelligence Services namely; the State Security Agency, the South African Police: Crime Intelligence, and Defence Intelligence of the South African National Defence Force. The Office of the Inspector-General of Intelligence (OIGI) also inducted Members in order for them to understand the functions of the Inspector-General of Intelligence (IGI) as stipulated in Section 7(7) of the Act.

4.1 Interaction with the Acting Director-General of the State Security Agency

On 19 November 2019, the Committee interacted with the SSA. It was welcomed by the Acting Director-General (DG) of State Security and senior management. The presentation touched on the current status, challenges and recommendations on improving the Agency. The Acting DG clarified the illegality of the establishment of the SSA, which came into existence in 2009 after Proclamation 59 of 2009 by former President Jacob Zuma where several entities were amalgamated. Those included the National Intelligence Agency (NIA) that functioned as domestic intelligence with the mandate of gathering intelligence and counter-intelligence, the South African Secret Services (SASS) which gathered intelligence outside the borders, and other entities such as the National Communications Centre (NCC), which also gathered intelligence outside the borders on targeted people through bulk interception.

The Office of the Interception Centre (OIC), which is an entity of the SSA and functioning under the auspices of the RICA, may only intercept under the authority of a designated Judge on Interception. The proclamation and amalgamation process was illegal as it was not legislation. The proclamation was announced in July 2009 but only approved in October 2010. The legislation that amended the changes was only approved later in the form of the General Intelligence Laws Amendment Act, No. 11 of 2013.

The gap between 2010 and 2013 resulted in serious concerns and illegal functioning of the SSA. For instance, the Chief Financial Officer (CFO) was to report to the Director Corporate Services which was a systemic problem. The new structure created a powerful DG with powers concentrated on a single individual. The amalgamation also enabled some members of the executive to issue illegal instructions to members of the SSA. These instructions amounted to executive overreach.

4.2 Interaction with the High-Level Panel Report Implementation Task Team

Representatives of the team provided a presentation on the High-Level Review Panel (HLRP). In 2016, the Strategic Development Plan (SDP) was established, which tampered with the structures. The JSCI in the Fifth Parliament objected to the establishment of the SDP and the former Minister stopped its implementation. In 2018, the structures reverted back to the one approved in 2010 which resulted in the displacement of people. During the same year, President Cyril Ramaphosa appointed a HLRP to review the SSA and determine whether it has capacity to discharge its constitutional mandate both in human and material resources, and to optimally use the budget allocation.

The panel thoroughly investigated the SSA and related structures, and came up with recommendations. A team of experts was put together to devise ways of implementing the recommendations which were endorsed by the President. The team indicated that implementation will be executed using a two-phased approach. The first focuses on the amendment of pieces of legislation such as Intelligence Services Act (No.38 of 1994), Intelligence Services Oversight Act (No. 40 of 1994) and National Strategic Intelligence Act (No. 39 of 1994). The second phase will be dealing with the review of the White Paper on Intelligence (1994) and fundamental changes. It was expected that migration would be done to implement the new structure and a new National Security Strategy will be drafted, the White Paper on Intelligence reviewed and a Council provided for by the Secret Service Act will be established.

The main objectives of reorganising the SSA include decentralisation of intelligence services, the optimal use of resources, greater focus on professionalism, and enhanced operational effectiveness. The Committee raised concerns that legislation could take long due to processes and would have suggested a possibility of either repealing the proclamation and the General Intelligence Laws Amendment Act of 2013. The Committee was also cautious of over regulating and weakening the SSA. The Acting DG informed the Committee that the Bill would be technical in nature for splitting the current Agency into two separate agencies. The intention is not to invent anything new. He also stated that the actual Bill was expected in 2022.

The Committee raised concerns regarding the issues expressed especially those affecting the function of Intelligence Services as a whole due to the legislative failure. The Committee could not delve deeper into the issues as the interaction was about induction and more matters were to be discussed in Parliament. The Committee was informed of other challenges such as vacancies in both the Domestic and Foreign Branches, corruption, the flouting of HR Policies in relation to the recruitment of some members of the Special Operations Unit, illegal protective services, a parallel vetting structure that issued fake Top Secret clearance certificates, and sniper training for non SSA members. There was also an abuse of the SSA mandate to further political agendas. The Committee recommended that a detailed presentation be made in the presence of the Minister. The challenges facing the Academy were also outlined.

4.3 Interaction with the Domestic Branch

The Deputy Director-General (DDG) Domestic Intelligence briefed the JSCI on the Domestic Branch. This programme is responsible for coordinating national, intra provincial and cross cutting operations aimed at countering threats and potential threats related to domestic instability, organised crime and corruption. She highlighted the various units in the branch.

Some of the challenges highlighted included human resources, acting positions, patriarchy, personnel retention, and inadequate budget allocation. The JSCI recommended that the Acting DG provide programme of action in addressing patriarchy, eradication of acting positions, security clearances issued through the parallel vetting structure and other challenges.

4.4 Interaction with Counter-Intelligence

The Acting DDG: Counter Intelligence made a presentation on Counter-Intelligence. It emerged that the programme had been paralysed by the previous notorious leadership. The Committee heard of illegal appointments and irregular temporary advances given to people who were not producing any results. A concern and suggestion was raised on review of legislation on hostile acts of foreign intervention, e.g. recruiting of agents by Foreign Intelligence Services (FIS). Various challenges facing Counter-Intelligence outlined included undeclared staff of foreign embassies which have been interacting with political principals and high level officials.

4.5 Interaction with the Foreign Branch

The Acting Director of the Foreign Branch, made the presentation. She provided a synopsis of the mandate, functions and posture of the Foreign Branch. Some of the challenges include the instability at management level and personnel shortage. The JSCI raised concerns about vacancies. It was recommended that acting positions be filled.

4.6 Interaction with the National Communications

The Acting General Manager, made a presentation on National Communications (NC). She commenced by outlining the mandate and functions, and the roles of the three entities; Signals Intelligence (SIGINT), ICT Security and the Office of Interception Centre (OIC). She then indicated that some of the challenges include human resources and obsolete equipment. Despite the challenges, several successes were highlighted. The JSCI raised concerns about vacancies. It was recommended that acting positions be filled. It was also recommended that additional resources be allocated to ensure that the equipment is up to date.

4.7 Interaction with the Intelligence Academy

The Acting Head presented on the Intelligence Academy (IA). He commenced by focusing on the legislative mandate, followed by training strategic objectives and annual targets, and the high level structure. He then outlined challenges which included inadequate staff, a lack of clear training philosophy and capacity for effective training delivery. It was recommended that the IA should be resourced. The JSCI also undertook to conduct an oversight visit to the IA Mafikeng Campus.

4.8 Interaction with the National Intelligence Coordinating Committee

The Head of National Intelligence Co-ordinating Committee (NICOC) and his team presented to the JSCI. It was mentioned that the entity has been experiencing negative impact of acting in positions at the senior management level. One of the major challenges mentioned was the lack of sharing of information within the intelligence structures. However, the situation changed with the appointment of the current Acting DG of the SSA. Other challenges included numerous legislative challenges. However, it was hoped that the recommendations of the HLRP will resolve most of the challenges once implemented. To resolve some of the challenges with regard to sharing of information, the JSCI recommended that the National Security Council be revived, which subsequently took place in December 2019.

4.9 Interaction with the Chief Financial Officer of the SSA

The CFO of the SSA, made a presentation to the JSCI with regard to allocation for 2020/2021 to 2022/23. It was indicated that there has been a decrease in budget. It was indicated that restructuring back to NIA and SASS may result in a rise of compensation of employees due to the filling of statutory posts. The Committee recommended that adequate funds be allocated to the SSA.

4.10 Interaction with the Office of the Inspector-General of Intelligence

Accompanied by his Principal Oversight Officers and the Legal Adviser, the IGI made the presentation on the OIGI. He outlined that the office's functional responsibility is to report to the JSCI. In terms of challenges, the lack of regulations was cited as a major challenge. Other challenges included inadequate budget, lack of implementation of recommendations, intelligence failures and threat to the independence of the OIGI. It was recommended that the OIGI provide the JSCI with recommended solutions to the challenges.

4.11 Interaction with the Audit and Risk Committee

The Chairperson of the Audit and Risk Committee led the presentation and indicated that the function of the Committee is to oversee the effectiveness of governance processes, risk management processes, internal control environment and performance management which is an unfunded mandate. The main concern was the continuous and automatic audit qualifications based on to the nature of the business. She proposed an annual standing meetings between Audit and Risk Committee and the JSCI to present audit findings.

4.12 Interaction on the Minimum Information Security Standards (MISS)

The presentation gave all the details on the protection of information. The types of clearance certificates and explanation on the reasons for issuing them was clarified.

4.13 Interaction with the South African Police Service Crime Intelligence Division

The Divisional Commissioner: Crime Intelligence presented to the Committee. He outlined the various clusters. One of the major challenges mentioned was the inadequate budget, which is a huge hindrance in terms of optimal functioning. Other challenges mentioned included the difficulty to combat crime in the county without maintenance of CI capability which includes the recruitment, infiltration, handling and support of informants, police agents, co-workers and contacts.

5. MEETINGS OF THE COMMITTEE IN PARLIAMENT

From its establishment to the declaration of the National State of Disaster due to Covid-19, the Committee held 9 meetings as follows:

No	Date	Agenda
1	Wednesday, 13 November 2019	Closed meeting
2	Wednesday, 27 November 2019	Closed meeting
3	Friday, 29 November 2019	Closed meeting
4	Tuesday, 03 December 2019	Closed meeting
5	Wednesday, 05 February 2020	Closed meeting
6	Wednesday, 12 February 2020	Closed meeting
7	Wednesday, 26 February 2020	Closed meeting
8	Friday, 28 February 2020	Closed meeting
9	Wednesday, 04 March 2020	Closed meeting

6. IMPACT OF COVID-19 ON THE JSCI

Covid-19, which resulted in the lockdown has impacted every level of the society including Parliament. The Presiding Officers suspended the business of the Houses of Parliament. The NA suspended its business from 18 March, while the NCOP from 19 March 2020. Similar to other institutions, Parliament embarked on exploring effective means for conducting virtual Parliament work using available technologies. This resulted in successful virtual Parliamentary committee meetings conducted over MS Teams and Zoom platforms. Since then, virtual and hybrid sittings of the Houses of Parliament have occurred. Due to the nature of its operation, the JSCI was unable to hold meetings because of cyber security concerns concomitant with MS Teams and Zoom. Consequently, the backlog compounded by the fact that the Committee was only constituted in November 2019, continued. Subsequently, several attempts were made for approval to hold meetings in Pretoria to deal with urgent matters and other outstanding matters. Approval was granted for the JSCI to convene in Pretoria for special meetings with Intelligence Services and the OIGI. The outstanding matters formed part of the JSCI programme that would have been concluded in the first five months. Consequently, Covid-19 delayed the finalisation of the report of the Committee five months after its first appointment which would have ended in March/April 2020.

7. SPECIAL MEETINGS WITH INTELLIGENCE SERVICES IN PRETORIA

From 25 August to 04 September 2020, the Committee held special meetings with the OIGI, the SSA, DI, SAPS-CI, Audit and Risk Committee of the SSA and the Staff Council of the SSA. For each of the days indicated below, the Committee held several meetings:

No	Date	Agenda
1	Tuesday, 25 August 2020	Closed meetings
2	Wednesday, 26 August 2020	Closed meetings
3	Friday, 28 August 2020	Closed meetings
4	Tuesday, 01 September 2020	Closed meetings
5	Wednesday, 02 September 2020	Closed meetings
6	Thursday, 03 September 2020	Closed meetings
7	Friday, 04 September 2020	Closed meetings

The main purpose of the special meetings was to receive briefings on developing matters such as the insurgency in the Cabo Delgado Province in Mozambique as widely reported in the media, and other matters of national security. The Committee also received an update on the legislation that will separate the SSA into two entities. It also dealt with outstanding matters that were in the Committee programme for the second term such as Strategic Plans, Annual Performance Plans and Budgets of the services. These matters would have been completed within the first five months after the Committee was appointed. Other matters included the engagement on complaints from members and former members of the SSA, the filling of senior management vacancies, the Audit and Risk Committee, the Staff Council, and updates on the implementation of the HLRP Report.

Report to be considered.

National Assembly

1. Report of the Standing Committee on Finance on the Rates and Monetary Amounts and Amendment of Revenue Laws Bill [B26 - 2020] (National Assembly- section 77), dated 11 November 2020

The Standing Committee on Finance, having considered the Rates and Monetary Amounts and Amendment of Revenue Laws Bill [B26 - 2020] (National Assembly- section 77), referred to it, and classified by the JTM as a Money Bill, reports the Bill with amendments [B26A – 2020] as follows:

1. INTRODUCTION AND BACKGROUND

1.1. The Rates and Monetary Amounts and Amendment of Revenue Laws Bill (Rates and Monetary Amounts) was tabled in Parliament by the Minister of Finance, together with the 2020 Medium-Term Budget Policy Statement. The draft version of this Bill was part of the 2020 Budget announcements on 26 February 2020. Together with other annual tax bills, the Rates and Monetary Amounts Bill gives effect to changes in rates and monetary thresholds to the income tax tables, adjustment of transfer duty rates to support the property market and increases of the excise duties on alcohol and tobacco.

1.2. The Draft Rates Bill was published by National Treasury for the second time on 31 July 2020 in order to solicit public comments on it, with a closing date of 31 August 2020.

National Treasury and SARS hosted workshops with stakeholders to discuss their written comments on it, together with other tax bills, on 9, 10 and 11 September 2020.

1.3. The Rates and Monetary Amounts Bill is a section 77 of the Constitution Bill dealing with national taxes, levies, duties and surcharges.

1.4. The National Treasury and SARS briefed the Committee on the Draft Bill on 19 August 2020. Subsequently, oral presentations by taxpayers and tax advisors on these tax bills were made at hearings held by the Committee on 7 October 2020.

1.5. On 13 October 2020, National Treasury and SARS presented its detailed responses to the Draft Bill to the Committee, addressing all the comments made during the public hearings and Committee deliberations.

2. PUBLIC PARTICIPATION

2.1. Before briefing Parliament on the Draft Tax Bills, including this Bill, NT reported that it received 112 written submissions from the public and responded to these comments. It also hosted workshop which ran for three days on 09, 10 and 11 September.

2.2. After receiving the initial briefing from NT and SARS on 19 August, the Committee called for public comments and received comments from the South Africa Tobacco Transformation Alliance, British American Tobacco South Africa, Black Tobacco Farmers Association, Limpopo Tobacco Processors, and Phillip Morris. On the other Bills, the Committee received comments from Smartfunder, South African Institute of Tax Professionals, PwC, South African Institute of Chartered Accountants, South African Institute of Professional Accountants, Minerals Council, International Zinc Association, ArcelorMittal, Copper Development Association Africa. Metal Recycler's Association of

South Africa, Scaw South Africa, Tax Consult, EdNVest, Solidarity, Bowman's, South African Petroleum Industry Association and, South African Informal Traders Alliance.

2.3. The Committee held public hearings on 07 October 2020 and received oral presentations from the above stakeholders and the National Treasury and SARS made responses on 13 October 2020.

3. OVERVIEW OF THE TAX PROPOSALS IN THE RATES AND MONETARY AMOUNTS BILL

3.1. The Rates and Monetary Amounts Bill contained proposals to: fix the rates of normal tax; amend the Transfer Duty Act, 1949 in order to change transfer duty thresholds; amend the Income Tax Act, 1962 to change and fix the rates of tax and monetary amounts; amend the Customs and Excise Act, 1964, in order to do a number of this including to change rates of duty in Schedule 1 to that Act, insert new tariff items, delete tariff items, delete rebate items and insert rebate items; amend the Carbon Tax Act, 2019, in order to amend the rate of tax; and to provide for matters connected therewith.

3.2. On transfer duty, the proposal is to increase the monetary values for Transfer Duty. This would make properties below R1 million (from R900 000) to incur no transfer duty, providing relief in the property market. The changes progressively affect other property values, providing similar relief.

3.3. On fixing the rates of normal tax, the proposal was to provide relief on personal income tax through an above-inflation increases in the tax brackets and rebates. The fixing of these rates and benefits, including medical tax credits, are contained in Clauses 2 to 7 of the Bill and some are detailed in Schedule 1 of the Bill, affect individuals, companies and trusts.

3.4. On Customs and Excise, the main proposals are to increase excise duties on alcohol and tobacco or inflation. Most of the public comments were on excise duties on tobacco and are discussed on paragraph 4 below.

3.5. On Carbon Tax, the purpose was to increase the amounts imposed on greenhouse gas emissions per ton.

4. KEY ISSUES RAISED DURING THE PUBLIC HEARINGS

4.1. The main key issue on the proposals of this Bill in the public hearings was an issue of an increase of excise duties on tobacco. A proposal was made to increase the excise duty on tobacco from 16.66/20 packet of cigarettes to R17.40/20, with effect from February 2020. As a result of this the excise burden for tobacco is slightly above the targeted 40% of the retail selling price of the most popular brand.

4.2. Most comments were in opposition to the increase in duty above the set 40% excise incidence. Other stakeholders submitted that tobacco and tobacco products should be exempted from any increase citing the challenges of COVID-19 and the need for industry to recover and citing the rampant illicit trade in tobacco. They emphasized the need for government to deal with illicit trade in tobacco. With regards to the increases above the 40% excise incidence opposition, NT responded that the 40% excise incidence was merely a policy guideline and that part of the policy was to increase the excise rates on tobacco by at least inflation or an amount to move towards the targeted incidence, whichever is higher, on an annual basis. The National Treasury further stated that the year-on-year increases on cigarettes prices by manufacturers had in the past been lower than excise rate increases.

4.3. The Committee believes that SARS and law enforcement agencies should step up measures to curb illicit trade in tobacco, which is costing the fiscus billions of Rands every year in lost revenue. On 19 November 2019, the Committee hosted a meeting on illicit tobacco trade and highlighted its views that if nothing is done to curb the illicit trade, the legal tobacco industry will collapse. The COVID-19 lockdowns and rampant illicit trade has emphasised the urgency with which government has to move to curb the illicit trade on tobacco and strengthen its enforcement mechanisms. The Committee will continue to play its oversight role to ensure that enforcement measures are enhanced. The Committee however believes that this does not mean that there should be no increases in the excise rates, as the tax regime for tobacco products is aimed at dealing with the harm caused to health by consumption of tobacco.

4.4. The Committee notes the mixed views on the proposed imposition of excise duty on e-cigarettes/vaping products. The Committee will deal with these proposals when they are presented in the form of a Bill in future.

5. AMENDMENTS AND COMPLIANCE WITH THE MONEY BILLS ACT

5.1. On 11 November 2020, the Minister of Finance, Mr Tito Mboweni, addressed a letter to the Committee to request technical corrections to clause 4 of this Bill, in line with section 14 of the Money Bills Amendment Procedure and Related Matters Act, 2009. The technical amendment corrects the paragraph numbers in line with the 2018 amendment to section 6A of the Income Tax Act, 1962. There is no request to amend the amounts of the medical aid credits.

5.2. The Committee agreed with this technical amendment.

6. CONCLUSION

6.1. The Committee reports the Bill, with amendments.

Report to be considered.

The DA reserves its position.

2. Report of the Standing Committee on Finance on the Tax Laws Amendment Bill [B27 - 2020] (National Assembly- section 77), dated 11 November 2020

The Standing Committee on Finance, having considered the Tax Laws Amendment Bill [B27 - 2020] (National Assembly- section 77), referred to it, and classified by the JTM as a Money Bill, reports the Bill with amendments [B27A – 2020] as follows:

1. INTRODUCTION AND BACKGROUND

1.1. The Tax Laws Amendment Bill (TLAB) was tabled in Parliament by the Minister of Finance, together with the 2020 Medium-Term Budget Policy Statement. The TLAB was published by National Treasury for the first time on 31 July 2020 in order to solicit public comments on it, with a closing date of 31 August 2020. National Treasury and SARS hosted workshops with stakeholders to discuss their written comments on it, together with other tax bills, on 9, 10 and 11 September 2020.

1.2. The TLAB is a section 77 (of the Constitution) Bill dealing with national taxes, levies, duties and surcharges.

1.3. The National Treasury and SARS briefed the Committee on the Draft Bill on 19 August 2020. Subsequently, oral presentations by taxpayers and tax advisors on these tax bills were made at hearings held by the Committee on 7 October 2020.

1.4. On 13 October 2020, National Treasury and SARS presented its detailed responses to the Draft Bill to the Committee, addressing all the comments made during the public hearings and Committee deliberations.

2. PUBLIC PARTICIPATION

2.1. Before briefing Parliament on the Draft Tax Bills, including this Bill, NT reported that it received 112 written submissions from the public and responded to these comments. It also hosted workshop which ran for three days on 09, 10 and 11 September.

2.2. After receiving the initial briefing from NT and SARS on 19 August, the Committee called for public comments and received comments from the South Africa Tobacco Transformation Alliance, British American Tobacco South Africa, Black Tobacco Farmers Association, Limpopo Tobacco Processors, and Phillip Morris. On the other Bills, the Committee received comments from Smartfunder, South African Institute of Tax Professionals, PwC, South African Institute of Chartered Accountants, South African Institute of Professional Accountants, Minerals Council, International Zinc Association, ArcelorMittal, Copper Development Association Africa. Metal Recycler's Association of South Africa, Scaw South Africa, Tax Consult, EdNVest, Solidarity, Bowman's, South African Petroleum Industry Association and, South African Informal Traders Alliance.

2.3. The Committee held public hearings on 07 October 2020 and received oral presentations from the above stakeholders and the National Treasury and SARS made responses on 13 October 2020.

3. OVERVIEW OF THE KEY TAX PROPOSALS IN THE TLAB

3.1. The TLAB contained proposals to: amend the Estate Duty Act, 1955, the Income Tax Act, 1962, (to: amend certain provisions, make new provision and, repeal certain provisions); amend the Customs and Excise Act, 1964, (to make provision for continuations, amend certain provisions and, make new provision so as to provide for an export tax on scrap metal); amend the Value-Added Tax Act, 1991; amend the Securities Transfer Tax Act, 2007; amend the Employment Tax Incentive Act, 2013; amend the Taxation Laws Amendment Act, 2015; amend the Revenue Laws Amendment Act, 2016; amend the Taxation Laws Amendment Act, 2017; amend the Taxation Laws Amendment Act, 2019; amend the Taxation Laws Amendment Act, 2018; amend the Carbon Tax Act, 2019; amend the Taxation Laws Amendment Act, 2019; and to provide for matters connected therewith.

4. KEY ISSUES RAISED DURING THE PUBLIC HEARINGS

4.1. The main key issue on the proposals of this Bill in the public hearings were; the introduction of export taxes on scrap metals; addressing an anomaly in the tax exemption of employer provided bursaries; business tax incentives in relation to the lifting of the ring-fencing of capital expenditure of mines; general business tax relating to the clarification of the rollover relief for unbundling transaction; and other matters relating to employment, individual and savings benefits.

Some key issues on the introduction of export duty on scrap metals

4.2. The introduction of scrap metal export duty affects section 48 and schedule 1 and 5 of the Customs and Excise Act of 1964. It is important to provide to the introduction of the export duty on scrap metals. In 2013, a Trade Policy Directive for the for the

International Trade Administration Commission of South Africa (ITAC) to regulate the exportation of scrap metal through the introduction of the Price Preference System (PPS) was issued by the Minister of Economic Development then. The objective was to improve the availability of better-quality scrap metal at affordable prices for foundries and mills in the domestic market. This was going to assist these foundries and mills on becoming more cost competitive as against imports, enhancing investment, jobs and industrialization.

4.3. NT explained to the Committee that the PPS seems not to have provided sufficient support for the sector to flourish and compete with global counterparts, many of which benefit from an export tax on scrap and lower domestic prices for scrap. ITAC conducted an investigation and based on its findings, recommended that the current PPS be replaced with export duties since it has not effectively provided support to the foundries and mills with availability of affordable, quality scrap. An export tax is considered to be superior to the PPS in terms of its easy administration and is believed to be more effective in reducing the domestic price as it will have the effect of reducing the export price achieved by local scrap dealers.

4.4. Based on this background, the TLAB proposes that changes be made in the Customs and Excise Act and its schedules to insert provisions for the introduction of export duties on scrap metals.

4.5. During the hearings there was support for the introduction of this tax. Some stakeholders were even of the view that the export metals be banned completely. Some stakeholders expressed a view that the PPS had so far been ineffective in achieving its objectives. A view was expressed that the introduction of this tax will assist local manufacturers to supply material locally and this will stimulate and grow the economy. It will also make manufacturers more competitive in the export market. National Treasury also noted in this regard that scrap metal is a key input for downstream manufacturing and supports local beneficiation. National Treasury stated that the PPS has been circumvented in the past leading to illegal and excessive exports of scrap, resulting in a shortage of affordable scrap for local consumers. The National Treasury however cautioned that there remain some risks in the introduction of the export duty. Among these is that as South Africa Is a signatory to many trade agreements which limit the use of export taxes, there was a real threat of retaliation from those who are not part of the relevant trade agreement.

4.6. While the Committee supports the introduction of this export duty, the Committee believes that its introduction should be done carefully and in a balanced manner in order to ensure that it achieves its intended objective. The Committee believes that a cost-benefit analysis should be conducted by NT soon in order to ensure that the introduction of this tax has wider benefits for the broader economy than the costs. For those who advocated a total ban, the Committee believes that this will not be prudent at this stage as that may have some unintended consequences of severing ties with the global market for scrap metals, among others.

4.7. The Committee notes the opposition from some stakeholders to the introduction of this export duty. It also notes the responses of the National Treasury in response to this opposition. The Committee believe that scrap metal is a critical input to manufacturing and therefore to South Africa's industrialization with linkages to infrastructure, construction, mining and a range of other manufacturing industries. The National

Treasury that the three largest consumers of metal products in the country are the construction, mining and transport manufacturing industries with together contribute about R750 billion or 15% of the country's GDP and employing more than 2 million people. The Committee therefore support measures to ensure that local industries access scrap metal in an affordable manner as this will add value to the economy, especially as the government economic reconstruction and recovery plan focuses on industrialization and localization.

Some key issues on addressing the anomaly of employer provided bursaries

4.8. This issue affects sections 10(1)(q), 10(1)(qA) and 23(s) of the Income Tax Act and relates to the provisions that provide some tax exemptions in respect of scholarships or bursaries granted by an employer to an employee or a relative of qualifying employees. These exemptions were first introduced in 1992 and were dependent on that an employees' remuneration is not subject to an element of salary sacrifice. The latter requirement of salary sacrifice was removed in 2006. The rationale for introducing the proposed changes is that the government (National Treasury) has noticed that a number of tax schemes have emerged in respect of employer bursaries granted to the relative of employees. An example given by National Treasury to this is that the tax schemes are developed by an institutions other than the employer and marketed to the employer and seek to reclassify ordinary taxable remuneration received by the employee as a bursary granted to the relatives of employees. The portion of the salary sacrifices is then paid directly by the employer to the respective school and treated as a tax exempt bursary granted to the relatives of the employees.

The proposals in the TLAB seek to address these anomalies and the proposed provisions ensure that where there is an elements of salary sacrifice, such bursaries will not be tax exempt.

4.9. Several comments were received in respect of these provisions. The Committee notes, as stated by National Treasury, that a bursary that is subject to an element of salary sacrifice enables some employees to pay for their children or relative's school fees with their "pre-tax income", whereas those who do not receive this benefit pay for the school fees with their "after tax income". This therefore results in an abuse of the tax system where employees who benefit from this scheme also receive a tax deduction for educational costs.

4.10. The Committee supports investment into education but is strongly against the abuse of the tax system or any form of tax avoidance. The Committee supports measures to close loopholes as proposed in the TLAB in this regards.

Other key issues

4.11. Other key issues that received a lot of input in the public hearings include the application of a three-year rule for those who wish to withdraw their pension funds upon emigration from South Africa.

4.12. Amending the 183-day tax residency rule to 117 days to the foreign remuneration exemptions in light of the 2020 travel ban as a result of COVID-19 lockdowns. This provides relief to South Africans who, but for the travel bans, spent less time than the prescribed 183 days working outside South Africa, in order to qualify for their tax exemption.

4.13. Clarifying the rollover relief for unbundling transactions.

5. **AMENDMENTS AND COMPLIANCE WITH THE MONEY BILLS ACT**

5.1. On 11 November 2020, the Minister of Finance, Mr Tito Mboweni, addressed a letter to the Committee to request technical corrections to clause 14 of this Bill, in line with section 14 of the Money Bills Amendment Procedure and Related Matters Act, 2009. The technical amendments corrects the date of the coming into operation of the Clause 17 provision. The amendment proposed in the 2020 Draft TLAB that was published for public comment on 31 July 2020, contains the date of coming into operation of 31 July 2020. The amendment proposed in the 2020 TLAB tabled by the Minister contains the date of coming into operation of 31 July 2021. This is an oversight as the date of coming into operation of 31 July 2021 comes after the sunset date attached to section 12J of the Income Tax Act, 1962 which is 30 June 2021

5.2. The Committee agrees with this technical amendment.

6. **CONCLUSION**

6.1. The Committee reports the Bill, with amendment.

Report to be considered.

The DA reserves its position.

3. Report of the Standing Committee on Finance on the Tax Administration Laws Amendment Bill [B28 - 2020] (National Assembly- section 75), dated 11 November 2020

The Standing Committee on Finance, having considered the Tax Administration Laws Amendment Bill [B28 - 2020] (National Assembly- section 75), referred to it, reports the Bill as follows:

1. INTRODUCTION AND BACKGROUND

1.1. The Tax Administration Laws Amendment Bill (TALAB) was tabled in Parliament by the Minister of Finance, together with the 2020 Medium-Term Budget Policy Statement. The TALAB was published by National Treasury for the first time on 31 July 2020 in order to solicit public comments on it, with a closing date of 31 August 2020. National Treasury and SARS hosted workshops with stakeholders to discuss their written comments on it, together with other tax bills, on 9, 10 and 11 September 2020.

1.2. The TALAB an ordinary Bill that must be considered in terms of section 75 of the Constitution, dealing with tax administration issues

1.3. The National Treasury and SARS briefed the Committee on the Draft Bill on 19 August 2020. Subsequently, oral presentations by taxpayers and tax advisors on these tax bills were made at hearings held by the Committee on 7 October 2020.

1.4. On 13 October 2020, National Treasury and SARS presented its detailed responses to the Draft Bill to the Committee, addressing all the comments made during the public hearings and Committee deliberations.

2. PUBLIC PARTICIPATION

2.1. Before briefing Parliament on the Draft Tax Bills, including this Bill, NT reported that it received 112 written submissions from the public and responded to these comments. It also hosted workshop which ran for three days on 09, 10 and 11 September.

2.2. After receiving the initial briefing from NT and SARS on 19 August, the Committee called for public comments and received comments from the South Africa Tobacco Transformation Alliance, British American Tobacco South Africa, Black Tobacco Farmers Association, Limpopo Tobacco Processors, and Phillip Morris. On the other Bills, the Committee received comments from Smartfunder, South African Institute of Tax Professionals, PwC, South African Institute of Chartered Accountants, South African Institute of Professional Accountants, Minerals Council, International Zinc Association, ArcelorMittal, Copper Development Association Africa. Metal Recycler's Association of South Africa, Scaw South Africa, Tax Consult, EdNVest, Solidarity, Bowman's, South African Petroleum Industry Association and, South African Informal Traders Alliance.

2.3. The Committee held public hearings on 07 October 2020 and received oral presentations from the above stakeholders and the National Treasury and SARS made responses on 13 October 2020.

3. OVERVIEW OF THE KEY TAX PROPOSALS IN THE TALAB

3.1. The TALAB contained proposals to:

3.1.1. amend the Estate Duty Act, 1955, so as to make textual corrections; amend the Income Tax Act, 1962, so as to delete obsolete wording; to make a decision subject to objection and appeal; to enable a public benefit organisation to provide funds and assets to any department of government of the Republic and effect consequential amendments relating thereto; to align provisions to provide that only approved public benefit organisations can provide certain certificates; to provide that audit certificates must be obtained and retained by certain organisations; to align situations where withholding tax on royalties was due and payable but subsequently becomes irrecoverable with that of withholding tax on interest; to provide that certain entities be excluded from the definition of provisional taxpayer; to align the wording with certain current processes and remove a reference to a deleted provision; to modify the requirement of intent for certain criminal offences; to effect a consequential amendment; and to replace a reverse onus provision with an evidentiary burden;

3.1.2. amend the Customs and Excise Act, 1964, so as to make technical corrections; to extend a provision concerning information sharing and to exclude certain information from the application of the prohibition on disclosure of information; to clarify the movement in bond of containerized goods on the strength of a manifest and without furnishing security to licensed container depots or container terminals appointed or prescribed; to clarify how bills of entry may be adjusted; to broaden provisions relating to the disposal of goods on failure to make due entry on importation to also include failure to make due entry on exportation of goods on which export duty is payable; to provide for the commencement of liability for export duty; to provide for the liability of the master of a ship or pilot of an aircraft or other carrier for duty on goods deemed imported to cease upon delivery of the goods to a licensed remover in bond, for the assumption of such liability by a licensed remover in bond, as well as for the circumstances in which liability of the licensed remover in bond will cease; to clarify the meaning of ‘‘free on board‘‘ in relation to goods exported; to provide for the limitation of the period for applications for refunds of export duty; and to broaden a provision relating to the production of permits or certificates required in respect of imported goods to apply to exported goods as well;

3.1.3. amend the Value-Added Tax Act, 1991, so as to substitute the requirement to submit a return with the obligation to obtain, complete and retain the form prescribed by the Commissioner; to substitute obsolete wording; and to modify the requirement of intent for certain criminal offences;

3.1.4. amend the Skills Development Levies Act, 1999, so as to provide that the Commissioner may refuse to authorise a refund if a return is outstanding;

3.1.5. amend the Unemployment Insurance Contributions Act, 2002, so as to provide that the Commissioner may refuse to authorise a refund if a return is outstanding;

3.1.6. amend the Tax Administration Act, 2011, so as to provide for a textual correction in order to clarify certain terminology; to provide for consequential and technical amendments; to provide for the issue of assessments based on an estimate where a taxpayer provides relevant information that is incomplete or inadequate or does not respond to a request for relevant material; to amend the period within which a reduced assessment can be requested; to align the period within which an extension may be granted with the period for prescription; to provide for a specific effective date with regards to interest calculated on an erroneous overpayment of tax; to provide for interest on royalties payable in terms of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008 and to provide for the interest rate with regards to refunds due under that Act; to provide that a refund does not need to be authorised where a matter is under criminal investigation and to modify the requirement of intent for certain criminal offences, and

3.1.7. provide for matters connected therewith.

4. KEY ISSUES RAISED DURING THE PUBLIC HEARINGS

4.1. The main key issue on the proposals of the draft version of this Bill in the public hearings were on amendments to the Tax Administration Act, 2011 in respect of the raising of assessments based on an estimate and, on the grace period to determine if a payment in excess of an assessment was erroneous. In respect to the Income Tax Act, 1962; Value-Added Tax Act, 1991 and; the Tax Administration 2011, the key issue was on the removal of a requirement to prove intent from certain statutory tax offences.

Removal of a requirement to prove intent from certain statutory tax offences

4.2. This is one of the most controversial proposals in the TALAB proposals. SARS explained to the Committee that the requirement of intent is generally applicable to common law offences and serious statutory offences in South Africa, while the requirement of negligene, whether explicitly state or not, is more typical of lesser statutory offences. SARS stated that the requirement of "willfully and without just cause" was not a general requirement for lesser tax offences before the promulgation of the Tax Administration Act. It stated that this requirement does not appear in any other South African legislation and its proposal and adoption through the Tax Administration Act appears to have been an error.

4.3. The proposal in TALAB is the requirement of willfulness be deleted from the certain provisions of the Income Tax Act, 1962; Value-Added Tax Act, 1991 and; the Tax Administration 2011.

4.4. There was a lot of opposition to this proposal from the stakeholders in the hearings. In the hearings a proposal was made that this proposal be withdrawn completely or a differentiated approach be applied to various offences depending on their severity. SARS accepted that a differentiated approach will be adopted in the Bill. SARS said that "rather than do away with intent entirely, offences will be categorized into those for which intent or negligence is required and those for which intent is required." It said that "the first category will include aspects of non-compliance that strike at key duties that the tax system's broad application depends on, such as failing to register, submit returns, pay over tax that has been collected from a third party and so on". SARS further explained that the second category will include aspects of non-compliance where the nature of the non-compliance is such that the requirement of intent is implied, such as issuing a false document, obstructing or hindering a SARS official, assisting another person to dissipate their assets to impede tax collection and so on." SARS added that the maximum penalty for the offences to be amended will be a fine or two years' imprisonment and will be left to the presiding officer to decide what sentence is appropriate on conviction, considering all the aspects of the case.

4.5. The Committee supports the above revised proposals in the TALAB.

5. **CONCLUSION**

5.1. The Committee reports the Bill without amendments.

Report to be considered.

The DA reserves its position.

4. Report of the Portfolio Committee on Mineral Resources and Energy on the Oversight Visit to Mpumalanga, Limpopo and Gauteng Provinces dated 11 November 2020

The Portfolio Committee on Mineral Resources and Energy (PCMRE), having conducted oversight reports as follows:

1. Introduction

The Portfolio Committee on Mineral Resources and Energy (PCMRE) took a resolution in the meeting held on 19 February 2020 that it should visit Optimum, Koornfontein and Lily Mine in Mpumalanga. The PCMRE also decided to visit Northam Platinum Limited in Limpopo for the following reasons:

- Both Optimum Coal Mine and Lilly Mine are under Business Rescue (BR). Based on the presentations received from the Business Rescue Practitioners (BRPs), the Committee resolved to visit these mines to get the progress on recovery of the three mine workers who were trapped underground at Lily Mine. In addition, the Committee sought to get an update from the Chief Executive Officer (CEO) of Vantage Gold fields and the attorneys representing the families of those workers.

- On 06 September 2019, a letter was received from the Speaker of the National Assembly (NA), Ms T Modise, for the PCMRE to consider a submission from Mr Mguzulu, Branch Secretary of the National Union of Mineworkers (NUM) in Optimum mine where he alleged that Optimum and Koornfontein mines were placed under BRPs since February 2018 because the mines not access banking facilities. Consequently, workers were living in abject poverty and have never received income since 2018.

- Additionally, on 26 November 2019, a letter was received from the Speaker of NA where Mr Kevin Tiro raised concerns regarding Northam Platinum Limited (NPL) Zondereide mine in Thabazimbi. Mr Tiro alleged that while the company has been existence for 30 years, where the mine conducts its operations has not benefitted anything. The Speaker requested to be kept abreast of the developments in this regard.

Thus, from 9 to 11 October 2020, the Committee undertook an oversight visit to the aforementioned mines, including a visit to the hotspot areas in Gauteng Province where illegal mining is reported to be escalating.

2. Composition of Delegation

2.1 Parliamentary Delegation

The delegation was constituted by the Chairperson of the Committee as the Leader of the delegation, Mr S Luzipo (ANC), Mr MG Mahlaule (ANC), Mr M Wolmarans (ANC), Mr JH Bilankulu (ANC), Ms VT Malinga (ANC), Mr K Mileham (DA), Ms C Phillips (DA), Ms N Hlonyane (EFF), Mr NM Nxumalo (IFP)

Accompanying the Committee was the Committee Secretary, Ms A Boss; Committee Researcher, Mr S Maboda; Committee Assistant, Ms A Sombexe; and Mr J Molafo, Communications Officer.

3. Reports on the Oversight to various provinces

This section provides a summary of the oversight visits.

3.1 Visit to Lily Mine – Mpumalanga Province

Three employees (Yvonne Mnisi, Pretty Nkambule and Simon Nyerenda) were tragically trapped in a sinkhole when the container they were in was swallowed by a sinkhole. They have been trapped underground at the Vantage Goldfields Lily mine in Barberton since 05 February 2016. On the 29th of March 2017, the PCMR of the Fifth Parliament visited Lily mine site where the container had sunk. Despite a number of meetings between the Committee, the Department and other stakeholders (including the Business Rescue Practitioner, family representatives), as well as the prospective buyers of the mine, there has been minimal progress in retrieving the miners. When the current (Sixth Parliament) Committee met on 23 June 2020, it resolved that is should conduct an oversight visit to Lily Mine to appraise itself of a number of developments that have been reported, interact with affected parties and also pay a visit to families of the three mineworkers who are still missing.

Indeed, on the 9th of October 2020, the Committee visited the affected families. Firstly, the Committee met with the affected families in their tent that they had erected since the tragedy had occurred four years ago. The Chairperson of the Committee, Mr Luzipo, explained the purpose of the visit to the affected families and community members, who were present. The Chairperson sought permission from the families, to first, allow the Committee to see the area in which the tragedy had occurred as the Parliamentary Members of the Sixth Parliament had not seen the Lily Mine, where and how the tragedy had occurred. The families granted the Committee permission. The Chairperson informed the families that the Committee had made a decision on what needs to be done regarding the Lily Mine tragedy, however, this would be presented to the families after Committee Members had seen the mine.

At the Lily Mine, the CEO of the mine, Mr M McChesney briefed the Committee on the history of the mine and the incident. He explained that Lily Mine started its operations in 2000 and it was an open pit. About 12 million tons of waste had been excavated to mine out the ore body which was continuing down deep. When further drilling was done it was found that the ore body continued to occur vertically, hence a decision was taken to set up an underground mine. What happened tragically on that day, a portion of the crown pillar collapsed. According to him, crown pillars are designed not to collapse but this one unfortunately collapsed. The Mine Rescue Services (MRS) commenced with their operations to retrieve the container after the tragedy, which was believed to be containing the employees. They spent 8 days working around the clock trying to rescue the three individuals. The rescue mission was extremely difficult, as MRS could not get the machinery underground. Eventually, a meeting comprising the DMR, the trade union (organised labour), families, and management took a collective decision that the rescue was not going to be safe to continue. The mine management approached SRK Consulting, the best rock engineers in the world, according to Mr M McChesney The SRK report provided options on how to get the container out. The two options were presented to the Department of Mineral Resources, under the leadership of the former Minister, Mr Mosebenzi Zwane. The two options were as follows:

- Surface Recovery Plan: According to Mr McChesney this plan has negative environmental impacts. It would cost R500 million, and take three years to complete. Additionally, the mine would not have a future; and

- An Underground Recovery Plan. The underground recovery option was approved by the then Minister of the DMR, Mr Zwane. However, to date, nothing has been done. The Plan would cost between R100 million and R200 million. According to Mr McChesney there is no scientific finding on why the pillar had collapsed.

The parliamentary delegation returned to the families wherein the Committee Chairperson informed the families that the PCMRE had compiled a report on the Lily Mine issue and that its recommendations would be submitted and debated in Parliament. In its report, the Committee had made the following recommendations, which the Chairperson highlighted:

- Closing the legislative gap between the Mineral and Petroleum Resources Development Act (MPRDA) and the Companies Act;
- That the state should declare the mine a disaster area in order to unlock resources that will assist to retrieve the bodies of the three workers; and
- That the state should consider expropriating the mine with a reasonable compensation, retrieve the bodies and resume operation in the public's interest.

The family Attorney, Mr W Bloem spoke on behalf of the families. Mr W Bloem alleged that the DMRE had produced a report based on doing oversight (walkabout) in the mine and made a decision not based on science that because of ground instability, it was nearly impossible to retrieve the bodies. The Attorney recommended that the DMRE go back to the drawing board and do its own rescue plan, based on science. Furthermore, the Attorney stated that the families have no confidence in the BRP process. They see the process as a delaying tactic as the owner refused to accept a number of offers. The company has been under business rescue for more than four years.

3.2 Visit to Optimum Mine – Mpumalanga Province

On 4 August 2015, the Board of Directors and Management of Optimum Coal Holdings, the parent company of Optimum Coal Mine, resolved to place the company under Business Rescue. This was as a result of historical operational and financial difficulties and extremely difficult coal market conditions. The mine was subsequently purchased by Tegeta Exploration Resources in 2016. In a number of interactions between the Committee and stakeholders affected by the business rescue process and the possible sale of the mine, the Committee has registered its unhappiness with slow progress in the conclusion of the business rescue process, as well as continued suffering of employees, some of whom are owed wages and overall uncertainty facing the mine. The Committee had visited Optimum Mine to receive update on progress regarding the above issues and also interacted with stakeholders, including employees, BRPs, in order to ascertain if the intervention of the DMRE is yielding the desired results.

3.2.1 Update by the Department of Mineral Resources and Energy

Ms D Malebe, DDG Mineral Regulation stated that since the last presentation in Parliament in June 2020, the Department met with the BRPs to get progress on what has happened. She indicated that not much has happened in terms of compliance from the environmental point of view. Additionally, she stated that no progress had been made in terms of Social Labour Plan (SLP) projects. As of last month, September 2020, employees were still not paid. She indicated that there are two or three pieces of the mine operating but did not know what the proceeds from those activities are utilised for.

3.2.2 Update by the BRPs

3.2.2.1 Koornfontein (KFM)

The Senior BRP, Mr J Damons gave an update for both Koornfontein and Optimum Coal Mine: With regards to Koornofontein, their plan was adopted after close to three years facing off legal battles from Gupta related parties, either to liquidate the mine, to remove the practitioners and various interdict applications.

They have Competition Commission approval and Section 11 transfer of the mining right, which were conditions precedent for the transaction to go through.

He reported that the Mine has been sold to Black Royalty Minerals and they are currently in control of the mine and the mine will soon be restarted. The first leg of the purchase price was received. The first leg portion will be used to pay for outstanding costs, legal expenses and the employees.

He reported that they have managed to pay 420 former employees their packages as set out in the adopted business rescue plan, which amount to approximately R93 million. The remainder of approximately 105 employees will be paid before the end of October 2020. This has been a long and hard fight and has brought such a respite to the former employees who had two bleak Christmas'.

He indicated that they have faced various challenges in the business rescue over a period of over two years which will be set out in the full report that will be sent to the Committee. They are finalizing the second leg of the sales transaction, which involves the transfer of the allocation at Richards Bay where KFM is a shareholder in. The proceeds from this second leg will go to paying other creditor's claims as compromised in the business rescue plan. The restarting of the mine will contribute greatly to job creation in the area and the economy at large.

3.2.2.2 Optimum Coal Mine (OCM)

The Senior business rescue practitioners were happy to report that on the 28 September 2020, 87.9% of the creditors (including ESKOM) and the two unions NUM and UASA, voted in favor of the adoption of the OCM business rescue plan.

This comes after more than two year's battle through court applications brought by Gupta related entities/parties. They have had a total of more than 40 High Court matters to deal with. Although the OCM plan has been adopted there is still a liquidation application from Westdawn, believed to be a Gupta related entity that will be heard at the end of November 2020. This creditor only represents approximately 3% of the voting interests in OCM, so they are very confident with the case they have made out in opposing the liquidation application.

The business rescue practitioners managed to intercept in the middle of 2018, VAT refunds totaling R89 million due to OCM which was to be paid to an agent appointed by the Gupta's. The business rescue practitioners had to bring an urgent High Court Proceedings to attach these funds, which was done successfully and these funds assisted in running OCM for another few months. Mining was halted in November 2018 and OCM was placed under care and maintenance. All staff were retrenched so that they could excess their Pension benefits while the BRPs try to find a solution for OCM.

OCM has been without power for some time. The business rescue practitioners had to make other plans to deal with security and pumping and treatment of water. The power was cut by ESKOM since the mine could only make part payments for electricity charges to ESKOM. The power cuts resulted in massive damage to the mine in the form of cable and other theft because without power the mine could not be secured fully. They could not understand that on the one hand ESKOM is a creditor in OCM of more than R1 billion rand, but the power gets cut for non-payment or part payment of electricity charges to ESKOM.

The business rescue practitioners faced with minimal post commencement funding and no secured purchaser had to make other plans to generate income at OCM to pay critical expenses such as ESKOM, Security, critical staff and the legal team. The business rescue practitioners sometimes went through many months without getting paid and are currently still owed outstanding fees by OCM.

They sold certain assets not critical for the future of the OCM. They started with awarding small mini pit mining projects on property falling outside the life of the mine to generate the necessary funds to pay monthly care and maintenance expenses. They are currently managing very well with the income received from these operations.

The mini pit operations have allowed smaller black operators to access the industry, it has so far appointed 100 of the 500 permanent employees of OCM and 80 individuals from the community. They expect to have 300 individuals appointed by these operations by the end of the year, mostly comprising of former OCM employees. The business rescue practitioners are now implementing the adopted business rescue plan.

Templar who converted their R1.3 billion-rand debt to equity in this process have commissioned a report on the status of the mine and what it would cost to restart the mine. This process will be completed by 18 December 2020. He indicated that they will have an indication early in January 2021 when operations will be restarted and will circulate a report and include the Committee (PCMRE).

They believe that the full implementation of the adopted business rescue plan will in turn, bring relief to former employees and creditors as their claims will be settled as per the adopted plan and that this will lead to further job creation in the area and be a major contributor to the economy.

The BRPs were honest to state that the BRP process has been a complicated one. Since 2012, there had been 4 000 cases of BR processes in the country, and only 20 percent success rate has been recorded.

The Committee was taken to Botha's Hoek to view how the mini-pit operations.

3.2.3 Update by the National Union of Mineworkers (NUM)

The National Union of Mineworkers acknowledged that the new buyer of the mine would have to invest a lot of capital because of the poor state of the mine. As stated above, the Union reaffirmed that a Gupta associate company is working against the BRP process. The court case is scheduled for the 24^{th} of November 2020. The Union indicated that it is working well with the BRPs.

The Union was grateful that Parliament had come to address the issues it had raised. The Union had felt that Government or the DMRE did not support them. The Union argued that Government had given the mine to the Guptas, thus Government should have intervened earlier.

4. Visit to Northam Platinum Mine - Limpopo

On 10 October 2020, the Committee met with petitioners in Thabazimbi, and the DMRE, following a petition to the Speaker of the NA by the community and local entrepreneurs. They complained that the mine shut out economic and employment opportunities for small businesses and local residents.

Prior to meeting the Northam Mine Management, the Committee met the community and local entrepreneurs led by Mr Kevin Tiro. Mr Tiro reiterated that the mine excludes the local community in its business, despite the community being impacted negatively by the mine activities, such as pollution. Mr Tiro stated that in the past three years, the mine has spent about R8 billion in expansion programmes. However, the community was excluded from these projects. Mr Tiro alleged that the community and local entrepreneurs are not involved in the existing business. Furthermore, Mr Tiro stated that local people are not prioritised in recruitment processes. Most of the recruits are from outside the 50 kilometre radius. According to Mr Tiro, over 50 percent of employees in the mine should be from Thabazimbi, currently this is not the case.

In terms of Broad-Based Black Economic Empowerment (B-BBEE), the company complies. However, Mr Tiro argued that those companies are not from the Thabazimbi local community. Furthermore, he stated that stakeholder consultation on the Social Labour Plans (SLP) is non-existent. The community representatives acknowledged that some work in the mines might be specialised, but believe that while the specialised skills exist within the community, they are not utilised by the mine. By way of illustration, a project for the installation of pre-paid meters was given. The tender was awarded to a company from Klerksdorp. Installations were done by the local community, meaning the skills exist within the community. They also argued that in specialised projects, there is still a need for local labour.

Mr Tiro stated that the company, Northam Platinum Mine, would better respond to most of the questions asked by the Committee.

The Committee proceeded to meet with Northam Platinum Mine. Mr Nelson Dlala, Operations Executive of Northam Mine Platinum Mine, welcomed the parliamentary delegation. The General Manager of Northam Mine Platinum, Mr Daniel Johannes Gonsalves, together with

Mr Dali Duma, Mr Lusanda Sam, and Ms Ncedisa Maqoma, delivered a presentation. The presentation highlighted the following key issues:

- The mine officially opened in January 1993. It produces about 180 tonnes of reef per month and 20 000 tonnes of waste per month. Metals produced in the mine include platinum, palladium, rhodium, gold, chrome, nickel sulphate and copper.

- The company has a total staff complement of 9 209. The majority of employees are from North West (16.6 percent, Limpopo (14.1 percent) and the Eastern Cape (13.2 percent) provinces, respectively. The aforementioned total number of employees include contracts. Thus, of the 9 209 employees, 6 300 are permanent. It was reported that only 14 percent of the employees are women in the company.

- The company has about over 4000 suppliers. The suppliers are categorised as follows: Tier 1 (Thabazimbi and Moses Kotane Municipalities), Tier 2: North West Province, Tier 3 (Rest of South Africa). Of the over 4000 supplier companies/suppliers, only 39 are from Thabazimbi and Moses Kotane Municipalities. Regarding the process of selecting suppliers, the company uses a closed tender system. Thus, it invites suppliers on its database, including local suppliers.

- During the current financial year, the company has spent R2.3 billion on compliant suppliers, and R1 billion on non-compliant suppliers. The non-compliant supplier is a supplier that does not meet the transformation requirements.

- Between July 2019 and September 2020, the company has spent R4.9 billion on corporate social investment. This includes the provision of interest free home loans to employees.

After the Northam Platinum Mine had presented, the community and local entrepreneurs were afforded an opportunity to share their views or ask questions to the company. The representatives of the community and local entrepreneurs appreciated the engagements facilitated by Parliament and indicated that is the first time they encounter the General Manager of the company. They felt that the presentation was high level as it did not speak to the real issues affecting the community of Thabazimbi, the exclusion thereof in company plans. They argued that the company is structured in a way that prevents black-owned companies, particularly from Thabazimbi, to participate. Thus, the representatives are calling for the company to be unbundled.

The PCMRE raised a concern about the stakeholder consultation process on the SLPs. The company stated that, in its consultation process, it follows the Municipal Integrated Development Plan (IDP) process. Thus, every year, it aligns itself with the Thabazimbi Local Municipality. The company requests the list of projects from the municipality and contribute accordingly. Some Members in the Committee, including the local community representatives were concerned that the aforementioned process still excludes the community of Thabazimbi, as the company is consulting with the municipality, not the community. The company stated that almost 80 percent on SLPs is allocated to the community.

The DMRE indicated that it had done inspections to ascertain compliance on SLPs by the Northam Platinum Mine. It was found that the company was not compliant. The Director-General, Mr Mokoena, acknowledged that the issue of trust deficit between the DMRE, mining companies and communities was raised during the first consultations of the mining charter. In addition, he stated that in the 2016 – 2020 SLP report, which is the second generation of SLPs.

5. Visit to illegal mining sites – Gauteng Province

The PCMRE has been seized with the issue of illegal mining as part of legacy issues that the Portfolio Committee of the Fifth Parliament flagged as requiring ongoing monitoring. Furthermore, the DMRE has reported to the PCMRE that the nature of the problem is evolving, given the aggressive nature of resistance faced by officials when trying to seal shafts that are used as entry points by illegal miners to access ore bearing material underground.

On its last day of the oversight, 11 October 2020, the Committee visited a number of illegal mining sites in Johannesburg, namely, Council for Geosciences Makausi settlement sealed shaft, Council for Geosciences Balmoral settlement sealed shaft, DRD/Ergo Jerusalem slime dump rehabilitation and Council for Geoscience van Ryn Rehabilitation and upward spiral mining permit.

In aforementioned sites, it was evident that the issue of illegal mining is very similar to that of illegal electricity connections. The Department addresses an issue in a specific site and the following day, the illegal miners are back or have found an alternative spot. According to the DMRE, it closes shafts, and the illegal miners vandalise them. In Balmoral Settlement, illegal miners reopened the sealed shaft more than 20 times. The Department found a way to permanently close the shaft. When the shaft was permanently closed, illegal miners went across the road to do a new shaft for themselves. As the illegal miners mine, they compromise the adjacent roads – as there would be no more support underneath. In one instance, the road had collapsed due to illegal mining.

The Department encourages that when a mining area is rehabilitated, it should be used immediately to avoid illegal mining. The Committee was impressed with the manner in which the DMRE, together with its entities, continues to close off old shafts that are used for illegal mining activities, and the repurposing of the land for recreational facilities like the new race track in Ekurhuleni.

6. Observations

This section provides a synopsis of the key issues observed by the Committee, particularly emanating from the presentations, discussions, and the walkabouts in the mining sites.

- With regard to Lily Mine, BRPs continue to struggle to secure an attractive offer to sell the mines to new owners. It then felt that the current owners appear to put their financial interests far ahead of those families and employees whose members are still trapped underground.

- Regarding the Optimum mine, it was learnt that over and above its failure to pay salaries of workers, the mine, which is also under Business Rescue, also faces operational challenges due to unmaintained equipment and inability to pay for electricity. The Committee once again felt that mine owners also put their financial interests ahead of those workers who have not been paid salaries for years.

- The Committee is pleased with progress on Koornfontein. The mine has been sold to Black Royalty Minerals, they are currently in control of the mine, and the mine will soon be restarted. Former employees will be paid out their packages as set up in the adopted rescue plan.

- The Committee is concerned that on the one hand, owners apply for the mining rights using the Mineral and Petroleum Resources Development Act (MPRDA), but on the other, they invoke the Companies Act in order to delay selling off the mine when faced with financial difficulties.

- The Committee noted with concern, the non-existent relationship between the Northam Platinum Mine and the community of Thabazimbi. The Committee then directed that the DMRE should, as soon as possible, facilitate a meeting between the company, business owners and the community in order to find a lasting solution, and that it should report back on what has been agreed upon.

- Of the 9 209 employees at Northam Platinum Mine, only 14 percent are women.

- The majority of employees at Northam Platinum Mine are outside the Limpopo province.

- The Committee was displeased with the absence of the DMRE Regional Manager in Mpumalanga and the Northam Platinum CEO, especially as no apology had been tendered for the two officials.

- The Committee noted the good work the Department is doing in dealing with the challenge of illegal mining.

- The Committee was concerned about the poor role the Department is playing in ensuring compliance with the SLPs by the mining companies.

7. Recommendations by the Committee

The Portfolio Committees having heard the presentation recommends the following:

- The Department of Mineral Resources and Energy facilitate an engagement between the Community of Thabazimbi and the Northam Mine Executive and provide feedback to the Committee.

- As the mining companies are developing the third generation of Social Labour Plans for submission to the Department, robust oversight by the Department, on the implementation of the Plans is critical.

- During the Third Quarter of the 2020/21 financial year, the Department should brief the Committee on progress made by the BRPs on Optimum Mine business rescue process.

- The DMRE to ensure that former employees of Optimum are given first preference on employment, when the mine is opened and ramped up to full capacity.

- The DMRE to ensure that the next generation Social and Labour plan of Optimum primarily addresses the economic and social needs of former employees, who had been negatively affected by the business rescue process.

- The DMRE continue to provide full legal and administrative support to the process of reopening mines currently under business rescue.

Report to be considered.

5. BUDGETARY REVIEW AND RECOMMENDATION REPORT OF THE PORTFOLIO COMMITTEE ON MINERAL RESOURCES AND ENERGY (Vote 26 & 29) DATED 10 NOVEMBER 2020

The Portfolio Committee on Mineral Resources and Energy, having considered the performance and submission to National Treasury for the Medium Term period of the Department of Mineral Resources (Vote 29) and the Department of Energy (Vote 26), reports as follows:

1. INTRODUCTION

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

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

The Minister of Finance, Mr TT Mboweni, MP, issued a Notice in the *Government Gazette* of 31 March 2020 (No 437), in terms of Section 92 of the Public Finance Management Act (PFMA) which, *inter alia*, exempts Executive Authorities from tabling the annual reports and financial statements of the respective departments and institutions within six-months after the end of the financial year, as set out in the PFMA. These documents are usually tabled by the end of September.
Instead, the Notice stated that the Executive Authorities must table these documents within two months after the normal deadline i.e. by the end of November. These

timeframes have been extended owing to the lockdown imposed to curb the Covid-19 pandemic.

This extension thus has an effect on the work and programme of the Assembly, especially the consideration of the Budget Review and Recommendation Reports (BRRRs) and Medium-Term Budget Policy Statement (MTBPS). The Money Act states that Parliament and its committees must annually assess each department's performance i.e. the BRRRs. The Money Act requires that these assessments must, *inter alia*, make reference to departmental annual reports and financial statements. These assessments are usually conducted in early October.

1.1. Mandate of the Portfolio Committee on Mineral Resources and Energy

In terms of the Constitution of the Republic of South Africa, 1996 (the Constitution), Portfolio Committees have a mandate to legislate, conduct oversight over the Executive and facilitate public participation. The Portfolio Committee on Mineral Resources mandate is governed by Parliament's mission and vision statements, the rules of Parliament and its Constitutional obligations.

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

1.3. Purpose of the BRR Report

Section 77(3) of the Constitution stipulates that an Act of Parliament must provide for a procedure to amend money bills before Parliament. This constitutional provision resulted in the Money Bills Amendment Procedure and Related Matters Act, No. 9 of 2009 (the Act), which sets out the process that allows Parliament to make recommendations to the Minister of Finance to amend the budget of a national department.

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

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

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

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

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

1.4. Method followed by the Committee in writing the BRR Report

On 29 May 2019, the President of South Africa, President Cyril Ramaphosa announced a reconfigured executive, which merged the former Department of Mineral Resources with that of the Department of Energy, resulting in a new Department known as the Department of Mineral Resources and Energy (DMRE), hence even though the two respective Departments are still reporting as separate entities, going forward both Departments will be reporting as a single entity to the Portfolio Committee of Minerals and Energy (PCMRE).

The Committee has scrutinised and interrogated all available documents as outlined in Section 5 of the Act. The Committee has assessed the performance of the Departments in the 2018/19 financial year, as well as performance in the 2019/20 financial year.

The PCMRE held their meetings on the 2019/20 Annual Report of the DMRE on the 4th of November 2020, which was addressed by the Senior Leadership of the DMRE.

The Auditor-General of SA (AGSA) gave input during the budget review and recommendation report process.

The Committee, in undertaking this process, used a number of source documents, including the 2014-2019 Strategic Plan of the DMRE, Annual Performance Plans, Annual Reports, Financial Statements, 2018/19 and the 2018 Estimates of the National Expenditure (ENE). It also reviewed briefings by the Department and its entities during the course of the year, as well as the State of the Nation Address (SONA). The Committee also used the Constitution as a reference point.

2. OVERVIEW OF THE PERFORMANCE OF THE DEPARTMENT OF ENERGY AND THE DEPARTMENT OF MINERAL RESOURCES

2.1. PART 1 – ENERGY

2.1.1. Service Delivery Performance

In the previous financial year (2018/19), the Department had 41 performance targets and it only achieved 13 or 32 per cent of the set targets. During the year under review, the

Department achieved 17 or 52 per cent of the set performance targets. As evident in table one (1) below, although not significant, the Department has improved in its performance.

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

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

Source: Department of Energy Annual Reports

As evident in the table above, the Department consistently performed well on financial expenditure. On the contrary, service delivery performance has consistently been below required standard. It is also important to note that, whilst the performance of the Department is worsening, there is some progress in certain areas, as 27 per cent of the targets during the year under review were partially achieved.

Table 2: Comparison - Programme Performance 2018/19 and 2019/20

Programme	2018/19		2019/20	
	No of Annual Targets in the APP	Achieved Annual Targets	No of Annual Targets in the APP	Achieved Annual Targets
Programme 1: Administration	**9**	**4**	**8**	**4**
Programme 2: Energy Policy & Planning	**12**	**0**	**8**	**2**

Programme 3: Petroleum & Petroleum Products Regulation	**5**	**3**	**3**	**3**
Programme 4: Electrification & Energy Programme & Project Management	**5**	**5**	**5**	**4**
Programme 5: Nuclear Energy	**4**	**1**	**4**	**1**
Programme 6: Clean Energy	**6**	**0**	**5**	**3**
Totals	**41**	**13**	**33**	**17**
Percentages		**32%**		**52%**

Source: **Department of Energy Annual Reports, (2018/19 & 2019/20)**

The ***Administration Programme*** did not achieve four of the eight set targets.

As can be seen in table 2 above, for two consecutive years, the ***Energy Policy and Planning Programme*** performed unsatisfactorily. In the previous financial year, it achieved zero of the twelve set targets. During the year under review, it achieved two of the eight set targets. This is an indictment on the part of the leadership and management of the Department as this programme is key to executing the Department's mandate, energy specific policies, legislation and regulations fall within this programme.

Programme 3 performed well, having achieved all three planned targets.

Programme 4, the largest programme of the Department, performed fairly well having achieved four of its five planned targets. As stated earlier, the programme has failed to achieve its target of connecting 20 000 households through the non-grid electrification programme. Whilst this programme consistently fails to meet its targets, the performance during the year under review is equally concerning. The Department failed to connect a single household through non-grid electrification. On the other hand, the grid electrification programme exceeded its target of connecting 195 households through grid electrification.

The **Nuclear Energy Programme** performed dismally having achieved one of its four planned targets. This is the same performance as was in the previous financial year. The planned targets not achieved are as follows:

- The Draft Decommissioning and Decontamination Policy was not submitted to Cabinet as envisaged. The Department states that the deviation is because of delays in conducting studies for data collection, due to establishment of a new procurement framework.
- The National Nuclear Regulator Amendment Bill was not submitted to Cabinet for approval as planned. This is because of delays due to engagements with the relevant stakeholders on the outstanding issues.
- The Draft Radioactive Waste Management Fund Bill was submitted to cabinet. The Department states that the delay is because delays due to consultation with the State Law Advisor.

The **Clean Energy Programme** achieved three of the five planned targets. Targets not achieved related to the following:

- Completion of the Draft Renewable Energy Technology Roadmaps (RETRM). According to the Department, unavailability of funds was the main reason the project could not continue.
- Completion of the Annual Solar Water Heater (SWH) Installation. Installation was not achieved due to under delivery of geysers to participating municipalities, and the training of installers.

2.1.2 Performances challenges

The Department highlighted the following performance challenges:

- 14 Izimbizo out of 20 were conducted, due to budget constraints;

- Proposals of the "end-state" of the electricity sector were delayed by the production of the overarching electricity policy;
- Off-take agreement on the Grand Inga Project was not negotiated due to delays in the appointment of the project developer by the Democratic Republic of Congo (DRC);
- Appointment of panel of contractors for the non-grid electrification were delayed;
- The Draft National Nuclear Regulator Amendment Bill was not submitted to Cabinet due to engagements with the relevant stakeholders on the outstanding issues taking longer than expected;
- Radioactive Waste Management Fund Bill could not be submitted to Cabinet due to delays in stakeholder consultation;
- Reports on the installation of National Solar Water Heaters (NSWH) were produced, however, installation was not achieved due to under delivery of geysers to participating municipalities, and the training of installers

2.1.3. Financial Performance

As in the past, when considering the financial performance of the Department, one appreciates the consistent good financial performance. For the 2018/19 financial year, the Department had an available budget of R7.2 billion.[1] For the 2019/20 financial year, the Department had an available budget of R7.1 billion.[2] This is almost the same allocation as in the previous financial year.

Table 3 below provides a clear picture of the budget allocated to the DMRE or Vote 26 for the 2019/20 financial year. It further provides the proportion of the total budget of Vote 26 spent on specific line items according to economic classification as at 31 March 2020.

Table 3: Vote 26 – Financial Performance of the Department, 2019/20

[1] Department of Energy Annual Report (2018/19)
[2] National Treasury (2018)

R million	Available Budget	Year End Expenditure	Year End Percentage spent
Programme			
1. Administration	293,583	279,383	95.2%
2. Energy Policy & Planning	47,568	39,945	84.0%
3. Petroleum & Petroleum Products Regulation	88,355	80,710	91.3%
4. Electrification & Energy Programme & Project Management	5,274,825	5,064,328	96%
5. Nuclear Energy	1,050,143	1,039,907	99%
6. Clean Energy	429,083	422,956	98.6%
Total	**7,183,557**	**6,927,230**	**96.4%**
Economic Classification			
Compensation: Employees	375,454	356,438	94.9%
Goods and Services	284,986	258,770	90.8%
Total transfers and subsidies	**6,518,602**	**6,309,774**	**96.8%**
Payments for capital assets	**4,504**	**2,237**	**49.7%**
Payments for Fin. Assets	**11**	**11**	**-**
Total	**7,183,557**	**6,927,230**	**96.4%**

Source: National Treasury (2020)

Of the total allocated budget for the 2019/20 financial year, the Department has spent R6.9 billion, or 96.4 per cent, the majority of which has been used on transfers and subsidies; compensation of employees; and goods and services. During the same period, in the previous financial year (2018/19), the Department had spent 99 per cent of its available budget.[3]

On Transfer Payments - net budget underspending of R208.83 million or 3.2% due to:

[3] National Treasury (2018)

- Integrated National Electrification Programme (INEP) Non-Grid Households: R199.83 million underspending due to procurement process which could not be finalized by year-end.
- International Membership fees: R4.89 million underspending mainly for subscription fees to multilateral international organizations.
- Households: R603 thousand underspending as a result of outstanding payments relating to early retirement applications and pension liability payable to the GEPF
- INEP Municipal grant: R3.51 million underspending due to the withholding of a payment to JS Moroka in Mpumalanga due to underspending by the municipality.

On Payments for capital assets - The net budget underspending of R2.27 million is due to fewer requests than anticipated, mainly due to the merger of DoE and DMR.

On **compensation of employees**, there is an underspending of 5.1 per cent. The Department was allocated R375.4 million; however, it spent R356.4 million. The reason cited for the underspending is the delayed filling of critical vacant posts. According to the Department, the delay was deliberate, as the new two Departments had merged, thus a new organisational structure was scheduled to be implemented in 2020/21 financial year.

On goods and services, – Actual spent was R258.77 million against projected spending of R284.99 million resulting in a net budget underspending of R26.22 million or 9.2% due to:

- ✓ Delayed commencement and finalization of planned projects which included the LPG Audit in the Petroleum and Liquid Fuel Industry project; B-BBEE Monitoring project;
- ✓ Non-grid Monitoring and Evaluation (M&V); the Electrification Master Plan development project;
- ✓ Stress-testing the NECSA Turnaround Strategy
- ✓ SWHP’s installation of procured units.
- ✓ Operating Leases item for office accommodation at Head Office, as payments to DPW were lower than budgeted for pending the resolution of a dispute with DPW.

2.2. PART 2 – MINERAL RESOURCES

2.2.1. Service Delivery Performance

The past four years, the Department of Minerals Resources (DMR) has consistently performed well, achieving over 80 per cent of its planned targets. In the previous financial year, the Department achieved 84 per cent of its planned targets. During the year under review, it achieved 85.8 per cent, an improvement of almost 2 per cent. The Department attributes this performance to an improved control environment with management ensuring that all targets within their area of control are achieved in accordance to the Annual Performance Plan.

Table 4 below shows performance per programme – this is to show which areas the Department had underperformed on.

Table 4: Comparison - Programme Performance 2018/19 and 2019/20

Programme	**2018/19**	**2019/20**
	% Achievement of Annual Targets	**% Achievement Annual Targets**
Programme 1: Corporate Services	**96%**	**96.3%**
Programme 2: Financial Administration	**87%**	**73.3%**
Programme 3: Mine Health & Safety Inspectorate	**81%**	**81%**
Programme 4: Mineral Regulation	**67%**	**76.9%**
Programme 5: Mineral Policy & Promotion	**91%**	**95.8%**

Source: **Department of Mineral Resources Annual Reports, (2018/19 & 2019/20)**

Programme 1: ***Corporate Services***, performed well in the previous and current financial year, having achieved 96 per cent of its planned performance targets, respectively. The programme partially achieved one (1) target – and the target related to a number of policies/guidelines developed and/or reviewed. The Department had set itself five (5) targets in this regards and it achieved none.

Programme 2: ***Financial Administration*** has regressed. In the previous financial year, 87 per cent of the planned targets was achieved. However, in the current financial year, 73.3 per cent was achieved. The programme failed to achieve four of its planned targets and these are as follows:

- % achievement of Service Level Agreement (Target 95% vs Actual achieved 94%)
- Customer Satisfaction Index (1-5) (Target 3 – Actual achieved 0)
- % of Financial reports delivered on schedule (Target 100% vs Actual achieved 98.22%)
- % of fully implemented agreed upon management action plans (Internal Audit) - (Target 100% vs Actual achieved 87%)

In the case of the Financial Administration programme its operational performance has regressed, this can be partly explained by the findings of the internal audit of the department which labelled some of the ICT systems as obsolete and posing a threat to the sustainability of the department's operations. The above issue warrants a serious engagement between the National Treasury and the Department, in order to substantively address the ICT infrastructure inadequacy, thus enabling the Financial Administration branch to fulfil its mandate optimally and ensure long term sustainability to the operations of the department.

Programme 3: ***Mine Health and Safety Inspectorate (MHSI)*** remained the same as in the previous financial year, having achieved 81 per cent of its planned targets. The following four (**4) uncontrollable measures** were partially achieved and negatively contributed to the achievement of 81 per cent:

- % Reduction in occupational fatalities (Target 20% vs Actual achieved 17%)
- % Reduction in occupational injuries (Target 20% vs Actual achieved 2%)
- % Reduction in occupational diseases, including TB (Target 10% vs Actual achieved 4%)
- % adherence to prescribed timeframes for MPRDA applications (Target 100% vs Actual achieved 98%)

There was a noticeable improvement in the mining fatalities statistics during 2019, with 51 fatalities being recorded during the period, reflecting a 37 percent improvement on the fatalities recorded in 2018. Gold (42%) and coal (36) mines accounted for 78 percent of mining fatalities. The Department asserted that Management remains committed to the goal of Zero-harm and continues with stakeholder engagement and collaboration. Furthermore, it stated that the reasons for partial achievement on fatalities is attributed to increase in seismic induced fatality fall of ground at the mines and this area continue to be a focal point of the inspectorate.

The following are some of the key highlights on MHSI:

Tripartite Health and Safety Initiative

- The Department, led by Director General (DG) Adv. Thabo Mokoena, participated at the Anglo-American Tripartite Health and Safety Initiative on 28 to 29 November 2019. The two-day summit gave an opportunity for stakeholders to engage on health and safety matters.

World Aids Day Commemoration

- On the 6th December 2019, the Department, in collaboration with the Mine Health and Safety Council, hosted a World Aids Day commemoration event in the Northern Cape. The event was well attended by over 1000 delegates from mine employees and persons from the nearby mine communities.

Release of the 2019 Mine Health and Safety Statistics

On 24 January 2020, the Minister of the DMRE released mine health and safety statistics during the media a briefing in Pretoria. The number of fatalities in the sector reported in 2019 was the lowest on record with no disaster recorded for the first time since 2016. There was a 37% reduction on fatalities from 81 during to 51 in 2019.

- The ooccupational diseases decreased by 23% from 4483 cases in 2017 to 3458 cases in 2018. The reduction was mainly on silicosis, Pulmonary TB and noise induced hearing loss with 29%, 24% and 22% respectively.

No Violence Against Women and Children in the Mining Sector

- The Department led a launch of the first Men's' Dialogue for the Mining Sector on "No Violence Against Women and Children" on 29 November 2019 in Mpumalanga. The Prevention of Gender Based Violence Steering Committee was also established.

Successful Rescue of Trapped 1800 Mineworkers

- On 1 May 2019, a successful rescue of the 1 800 mineworkers was conducted. The workers were trapped at the Sibanye-Stillwater's Thembelani shaft in Rustenburg following damages at shaft infrastructure on 30 April 2019.

Programme 4: ***Mineral Regulation*** has improved on its performance. In the previous financial year, it achieved 67 per cent of its planned targets, whereas during the year under review, it achieved 76.9 per cent. The following six (6) measures were partially achieved and negatively contributed to the achievement of 76.9 per cent**:**

- Number of Social Labour Plans (SLPs) development projects completed (Target 120 vs Actual achievement of 99 or 82.5%)
- Number of jobs created through mining (Target 1 500 vs Actual achievement of 295 or 19.67%)
- % of complaints closed vs received (Target 100% vs Actual achievement of 26%)
- Number of legal compliance and verification inspections (MLA & SLP) (Target 150 vs Actual achievement of 142 or 94.67%).
- % adherence to timeframe committed to DPME (Target 70% vs Actual achievement of 16%)
- % Implementation of risk management plans (Target 100% vs Actual achievement of 88%)

Programme 5: ***Mineral Policy and Promotion*** improved on its performance. During the previous financial year, the programme achieved 91 percent of its set targets. However, during the year under review, it achieved 95.8 per cent. The following **measure** was partially achieved and negatively contributed to the achievement of 95.8 per cent.

- Number of technical partnerships implemented (Target 7 vs Actual achievement of 5 or 71.43%).

Key highlights in this programme are as follows:

Regulatory Certainty and Investment

- Publishing of the **draft upstream petroleum bill** is opening up investments in the petroleum space.
- The **Total gas find** has been the highlight for investments. The company has further committed to drill more holes in June 2020. This is a huge boost for the economy.
- South Africa improved as a mining destination according to the **2019 Fraser Institute Survey** on mining indicating that the investment drive and regulatory framework provides confidence to the investor community.

International Matters

- Through South Africa’s interventions and negotiations at the KPCS, the Central African Republic is now able to trade its diamonds from certain provinces; Zimbabwean diamonds are now able to enter international markets.

Rehabilitation Programme

- **Sixty-one (61) mine shafts were sealed**, includes those that were outstanding from the previous year.
- **Three (3) asbestos mines were rehabilitated** – (but two (2) of these were completed during the last week of May due to the national COVID-19 lockdown).

2.2. Financial Performance

In 2019/20 financial year, the Department spent 99,3 percent of the allocated budget as compared to 99,44% in 2018/19 financial year, this being below the National Treasury variance threshold set at 2% of appropriation. Thus, with the DMR, there is correlation between financial and service delivery performance. The programmes that surrendered more funds to the National Treasury (NT) is Administration, Mineral Regulation and Mineral Policy and Promotion.

Table 5: Financial Performance of the DMR, 2019/20

Programme	2019/20				2018/19			
	Final appropriation R'000	Actual spending		Variance R'000	Final appropriation R'000	Actual spending		Variance R'000
		Amount R'000	%			Amount R'000	%	
Administration	389 835	384 717	98,7%	5 118	361 649	354 470	98,0%	7 179
Mine Health & Safety	220 082	219 733	99,8%	349	209 053	208 477	99,7%	576
Mineral Regulation	446 038	441 265	98,9%	4 773	389 277	388 775	99,9%	502
Mineral Policy & Promotion	946 265	942 577	99,6%	3 688	930 682	928 401	99,8%	2 281
TOTAL	2 002 220	1 988 292	99,3%	13 928	1 890 661	1 880 123	99,4%	10 538

Economic Classification

As evident in the above table;

- In 2019/20 the department spent 99,3% of the allocated budget as compared 99,44% in 2018/19, this being below the National Treasury variance threshold set at 2% of appropriation.

Programme	2019/20				2018/19			
	Final appropriation R'000	Actual spending		Variance R'000	Final appropriation R'000	Actual spending		Variance R'000
		Amount R'000	%			Amount R'000	%	
Compensation of employees	663 578	650 631	98,0%	12 947	616 728	611 141	99,1%	5 587
Goods & services	286 768	286 742	100,0%	26	267 749	266 858	99,7%	891
Transfers & subsidies	1 048 752	1 048 651	100,0%	101	993 182	992 866	100,0%	316
Payments for capital assets	3 048	2 195	72,0%	853	12 350	8 606	69,7%	3 744
Payments for financial assests	74	73	98,6%	1	652	652	100,0%	-
TOTAL	2 002 220	1 988 292	99,3%	13 928	1 890 661	1 880 123	99,4%	10 538

- The programmes that surrendered more funds to NT is Administration, Mineral Regulation and Mineral Policy and Promotion

Expenditure outcome – Economic classification

- Compensation of employees: 2019/20 recorded a larger variance as compared to 2018/19 because there was a directive for departments affected by NMOG process to halt filling of posts until the process is finalised.
- Transfer payments: the `allocation on transfers to households was overestimated, payment in respect of claims against the department by DMR officials and payments of leave gratuity to officials resigning/retiring from the employ of State
- Payments for capital assets: there is an improvement as compared to 2018/19. Variance is due to delay in installation of security system in Head Office.

2.2.3. Summary of audit outcomes

- Material misstatements
    - Contingent liability and provisions
    - Lease commitments
    - Movable assets
    - Performance information
- The prior year irregular expenditure was condoned by National Treasury (NT)
- Irregular expenditure of R358 000.00 was incurred in 2019/20 – the tax status of the supplier awarded a tender changed to non-compliant before the procurement process was finalised
- Wasteful expenditure of R551 000.00 was recorded under travel claims, once the investigation is finalised the department will implement consequence management.

Table 6: Expenditure Management

EXPENDITURE MANAMENT	As at 31 March 2020	As at 31 March 2019
Creditor-payment period	30 days	6 days
Amount of total accruals	R4,638m	R3,639m
30+ days accruals as a percentage of total accruals	0.%	0%
Amount of 30 days accruals	0	0

Source: DMRE presentation to the PCMRE on 04 November 2020

Table 7: Revenue Management

REVENUE MANAGEMENT	As at 31 March 2020	As at 31 March 2019
Debtor-collection period	430 days	809 days
Amount accrued departmental revenue	R229,094m	R206,632m
Amount debtors impairment provision	R174,099m	R113,373m
Debtors impairment provision as a percentage of departmental revenue	76%	54,9%

- Although the debtor-collection period has reduced substantially, there are challenges in the department's revenue management environment
- Accrued departmental revenue continue to increase due to delay (by prospecting rights applicants) to execute the granted prospecting right
- New developments: Under DMR the officials who were performing revenue management functions were also responsible for reporting and one Director responsible for FA& Reporting. On the new structure of DMRE there is a dedicated team of 4 officials responsible for revenue management; and a dedicated Director for Revenue and Financial Provisions Management.

3. REPORT OF THE AUDITOR-GENERAL OF SOUTH AFRICA (AGSA) ON THE DEPARTMENT OF ENERGY AND THE DEPARTMENT OF MINERAL RESOURCES

The Auditor General of South African appeared before the Committee on 03 November 2020, to brief the committee on the audit outcomes of the Department of Mineral Resources and Energy and its entities for the period 2019/20. The Department is struggling to address issues pertaining to compliance with legislation as well as ensuring proper financial record keeping, internal controls according to the Auditor General were found to be compromised. The Department was also found to have inadequate procurement and contract management processes resulting in irregular expenditure. The Auditor General also concluded that there were material misstatements in the submitted financial statements.

Below is a summary of the Audit Outcomes for the Department and the entities reporting to it.

3.1. Audit outcomes of portfolio over five years (Mineral Resources)

Entities reporting to the Department of Mineral Resources:

- Council for Geo-Science (GCS)
- Mintek
- Mine Health and Safety Council (MHSC)
- State Diamond Trade (SDT)
- SA Diamond and Precious Metals Regulator (SADPMR)

Table 8: Audit outcomes of portfolio over 5 years – Department of Mineral Resources

	2019/20	2018/19	2017/18	2016/17	2015/16
Unqualified with no findings	SADPMR	CGS, DMR	Mintek, MHSC	Mintek, DMR, SDT	Mintek, SADMR
Unqualified with findings	CGS, DMRE, Mintek, MHSC, SDT	Mintek, MHSC, SADPMR, SDT	CGS, DMR, SADPMR, SDT	CGS, MHSC, SADPMR	CGS, DMR, MHSC, SDT

Qualified with findings					
Adverse with findings					
Disclaim with findings					
Outstanding audits					

Source: AGSA presentation to the PCMRE on 03 November 2020

The SADPMR has improved on its audit outcomes and obtained a clean audit. The DMR and CGS regressed due to non-compliance with key legislation. The MHSC, MINTEK and SDT audit outcomes remained constant when compared to the prior year. Material non-compliance with legislation was identified at DMR, CGS, MINTEK, MHSC and SDT.

3.2. Audit outcomes of portfolio over five years (Energy)

Entities reporting to the Department of Energy:

- Central Energy Fund Group (CEF)
- SA Nuclear Energy Corporation Group (CEF)
- National Energy Regulator of SA (NERSA)
- National Nuclear Regulator (NNR)
- National Radioactive Waste Disposal Institute (NRWDI)
- SA National Development Institute (SANEDI)

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

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

Outstanding audits	CEF, NECSA, NERSA, NRWDI, SANEDI				

Source: AGSA presentation to the PCMRE on 03 November 2020

The DOE improved on its audit outcome. The audit outcome was improved due to the department disclosing the irregular expenditure., also material non-compliance with key legislation was identified at DOE. The audit opinion for NNR remained the same as the prior year due to their still being material non-compliance reported.

Outstanding audits for the period under review, include the following entities: CEF group; NECSA group; NERSA; NRWDI and SANEDI

3.3. Financial health and financial management

3.3.1. Revenue management

The balance of accrued departmental revenue and the debtors' impairment provision as a percentage of accrued departmental revenue is high and has increased from the prior year for the DMR. This is an indication that the department is experiencing challenges in the collection of outstanding amounts due to it, which exposes it to cash flow risk. Management should review the department's credit control policy, to ensure prompt payment and improve the quality of its cash flow and revenue management. Management should enhance its remedial actions to improve the revenue management of the department, particularly focusing on the debtor's collection turnaround time. The debtor's collection period has decreased compared to prior year but this was not due to improved collection but increased impairment.

DoE should be more rigorous in terms of the collection efforts regarding accrued departmental revenue to ensure that what gets recognised during the year is collected as soon as possible. Further any opening balances should also be followed up more rigorously to ensure that payments are received timeously.

3.3.2. Expenditure management

The expenditure management of the DMR has regressed as the creditors payment period has increased compared to prior year.

3.4. Fruitless and wasteful expenditure

During the 2018/19 financial year the fruitless and wasteful expenditure was R118m, it decreased during 2019/20 to R90,706m, i.e. R90.254 million represents non- compliance in 2019 20 and R0.452 million is expenditure relating to prior years.

The majority of the disclosed fruitless and wasteful expenditure for the current year was caused by storage costs for geyser units to various suppliers by DOE (R90.118). The remainder of fruitless and wasteful expenditure relates to travel expenses not approved; travel expenditure for flights missed by staff and incurred for late renewal of system licence fees.

3.5. Irregular expenditure

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

Majority of the irregular expenditure for the current year relates to Procurement without proper competitive bidding process at MHSC R34,481million). Procurement relating to non-compliance with legislation on contracts at DOE (R8,550 million) Payments made whereby the proper process was not followed in terms of lease contracts in the prior years at DMR (R3,311 million). The remainder of irregular expenditure relates to procurement for service provider whose tax matters were not in order and procurement without competitive bidding or quotation process.

3.6. Supply Chain Management

According to the AGSA there regression in SCM compliance, i.e. 2019/20: 0 with no findings. The AGSA stated that all SCM findings should be investigated. Findings on supply chain management included:

- Contracts awarded to suppliers whose tax matters had not been declared to be in order **(DMR)**
- Goods, works or services were not procured through a procurement process which is fair, equitable, transparent and competitive **(SDT, NNR and MINTEK)**
- Payment in excess of original quotation **(CGS)**

3.7. Concluding notes by the AGSA

- AGSA commended the SADPMR on obtaining clean audits.

- There is a continuing struggle to prepare and submit quality financial statements and performance reports throughout the portfolio.
- Non-compliance with key legislation remains a challenge especially in SCM, which has led to irregular expenditure and fruitless and wasteful expenditure being incurred.
- Non-compliance relating to material adjustments made to the annual financial statements remains a concern and management should implement the necessary controls and checks in place to ensure that annual financial statements prepared are of a good quality.
- The audit process is not finalized for a number of entities within the portfolio.

6. FINDINGS AND OBSERVATIONS

The Portfolio Committee of Mineral Resources and Energy having assessed the performance of the Department of Mineral Resources and the Department of Energy made the following findings and observations:

6.1. Auditor-General of SA (AGSA)

- The audit process is not finalized for a number of entities within the energy portfolio. These include: CEF Group, NECSA Group, SANEDI, NRWDI and NERSA. Members pointed out that in light of some of the entities who still have outstanding audits, the "overall picture" as presented by the AGSA might change, especially relating to irregular expenditure and fruitless and wasteful expenditure.
- The AGSA pointed out and emphasized that the audits which have not been finalised, does not mean that the applicable entities have not submitted on time. The AGSA acknowledged that there were challenges between the audit teams and the management of these entities.
- According to AGSA, various factors contributed to the delays in finalising the audits of the abovementioned entities. These included: requesting additional information which lead to delays, COVID-19 issues which impacted, delays in board meetings, differences between the audit teams and senior management of the entities.
- AGSA confirmed that NRWDI's audit was signed-off on Friday, 30 October 2020.
- The committee commended the SADPMR on the improved audit outcomes and obtaining a clean audit.

- The committee is concerned that the DMR and CGS regressed due to non- compliance with key legislation.
- The AGSA commended the DOE on the improved audit outcome. According to the AGSA, the audit outcome improved due to the department disclosing the irregular expenditure.
- The committee stated that it was encouraging to notice that the fruitless and wasteful expenditure has decreased from the previous financial year (R118m) to R90,706 for 2019/20. The majority of the disclosed fruitless and wasteful expenditure for the current year was caused by storage costs for geyser units with various suppliers by DOE (R90.118 million).
- The committee were further pleased to see that irregular spending has also decreased to R48,8m in 2019/20 (in 2018/19 it was R192,8m).
- The committee raised concerns regarding the regression and non-compliance relating to supply chain management (SCM) processes.
- With regard to assisting the department and entities with non-compliance of SCM, the AGSA stated that non-compliance cannot be rectified. The AGSA stated that they do discuss with management the new pronouncements coming through, which the department need to be on the lookout for, so that they can comply. Some entities do have a checklist, so prior to procurement process, they go through the checklist to ensure that they comply. The AGSA also share best practices by other departments and entities, who are doing well in this area.
- According to the AGSA all SCM findings should be investigated.

6.2. Department of Mineral Resources and the Department of Energy

- The committee expressed their concern regarding the outstanding audit reports of the CEF Group, NECSA Group, NRWDI and SANEDI. The committee's view was that the AGSA has failed the process, as far as the outstanding audit statements are concerned, as they must always ensure that financial statements are submitted and audited timeously.
- According to the DMRE, a significant part of the financial year was dedicated to managing the merger and putting in place transitional arrangements.

- The department stated that the merger process affected filling of critical vacancies, where a decision was taken not to fill vacancies in anticipation of excess capacity post-merger.
- The new DMRE will be conducting a reorganisation exercise after the merger, aimed at ensuring optimal service delivery.
- The committee commended and applauded the empowerment of women in the department, as well as the establishment of a GBV subcommittee.
- The committee raised concern regarding the performance of the Energy Policy and Planning branch, which only managed to achieve 2 targets, and there was also an underspending of R7,6m.
- The committee congratulated the department on its efforts in electrifying households, where they have exceeded set targets.
- The committee further commended the department on their approval of licences to 50 percent of HDSAs.
- The committee were encouraged with the accelerated rollout progress of the renewable energy programme.
- With regard to the budget cuts and the slow progress of projects, the department stated that financial results are also shared with the National Treasury (NT). So when the NT requests for budget reductions, they are already aware of projects which are moving slowly. The department also report to National Treasury on a monthly basis. On budget cuts relating to service delivery programmes, the department stated that at times there are ‘push-backs”, but they discuss extensively with NT and come up with a collective agreement.
- The budget for the solar water heater (SWH) programme for 2019/20 was R62,8m
- According to the department, the actual number of missing solar water heaters (SWH) has not been ascertained. However, it is actual components or parts which are missing from the units. Currently, a litigation is ongoing, as a full working unit is needed for installation. The manufacturer thus has to give a full unit, as this is what the department has paid for.
- The committee enquired as to the reasoning behind a feasibility study being conducted during the period under review (when the project is already being implemented) and the department stated that this was a carry through from the previous financial years, which was performed because of the delays experienced.

- The committee raised concerns regarding the major underspent in compensation and goods & services of R256m, according to the department R208m of this relates to transfers, and a big part of this relates to the non-grid programme.
- The committee pointed out that the department incurred irregular expenditure of R8.555 million in the New Nuclear Build Programme (NNBP). The department stated that they have accepted the irregular expenditure, but noted that it has to go through its due processes, one of which is the investigation and for it to be condoned by NT, some action need to be taken, and this process might spill over to the next financial year.
- With regard to fruitless and wasteful expenditure, the department informed the committee that an investigation is currently underway.
- The department acknowledged that there were delays relating to the non-grid programme, specifically relating to procurement delays and the lockdown contributed to some of these delays. Because of the hard lockdown, the various bid committees could not meet. However, the department confirmed that the bid has been concluded, contracts are being drawn up and allocations are being attended to by the specific branch. The department confirmed that there should be no further delays in the administrative part of the programme. The branch has been requested to inform the service providers that the implementation should happen speedily.
- On creditor payments, the department stated they do discuss these matters with the Auditor-General of SA and that they do share their calculation methods with them.
- The committee again raised concerns regarding the slow submission (perpetual postponement) of legislation to Parliament. The department stated that since the merger of the two departments, the branch has now moved with speed to finalize and process legislation to be tabled to Parliament and also assured the committee that a number of pieces of legislation will be tabled before the end of the financial year, i.e. Gas A/B, Nuclear Waste Management Bill, these will be before Cabinet in 2 weeks' time. With regard to the ERA and NERA bills, the department foresee delays on the processing of these, especially the ERA Bill, as these relate to current issues relating to the restructuring of Eskom, the need to regulate this space in term of the new structure etc.

- With regard to the R500k incurred by an employee of the department, the department stated that this is currently a legal matter, which is handled by the State Attorney working with the department's legal services Chief Director. So when the matter was investigated, the employee was then seconded from the Gauteng (Braamfontein office) to head office in Pretoria.
- The committee were very displeased with the wasteful expenditure of R 551 000.00 which was recorded under travel claims for an employee, who was seconded from the regional office in Gauteng to the Head Office in Pretoria. This wasteful expenditure has been happening since 2012. Members questioned as to why no disciplinary action has been instituted against the employee. According to the department, once the investigation is finalised the department will implement consequence management.
- On the wasteful and fruitless expenditure by the department on the travelling costs by an employee, the committee pointed out and highlighted that this should not have happened, and emphasized that this is clearly a failure of Human Resource management in the department. The committee reiterated that these are matters of the internal disciplinary processes, which the department failed to institute since 2012.
- The committee further questioned as to why the AGSA only reported on the above-mentioned wasteful and fruitless expenditure during the period under review, as the incident occurred since 2012/13 financial year.
- According to CGS, contingent liabilities calculations, have been performed by them for many years and they have never had a problem in this regard, neither in the method of calculation or accounting standards which have been used. What made this situation peculiar for the year under review is: the service provider who is providing actuarial expertise to the CGS, requires particular information which is consolidated for them to do the calculation. The transition of the transfer of derelict and ownerless mines from CGS to another entity of DMR, meant that they had to depend on 2nd hand and tertiary sources of information in order for them to consolidate their calculation. The quality of information provided was further affected by the national lockdown. With the report being finalised much later, this is where this anomaly has occurred.

7. RECOMMENDATIONS

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

1. Ensure that there should be the required urgency by management in responding to the AGSA's requests relating to addressing risks identified and improving internal controls that will improve the audit outcomes of both the department and its entities.
2. Ensure and emphasize that there should be regular and timely reviews of performance information by senior management to ensure that valid, accurate and complete reporting is done to minimise reporting errors.
3. Provide feedback on the implementation and progress of action plans to ensure improvement in the audit outcomes of the portfolio.
4. Address the non-compliance with key legislation which remains a challenge especially in Supply Chain Management (SCM), which has led to irregular expenditure and fruitless and wasteful expenditure being incurred.
5. Develop intervention to ensure that management implement the necessary controls and checks in place to ensure that annual financial statements prepared are of a good quality.
6. Focus more on gold and coal mines when devising a strategy to achieve the zero harm goal.
7. Identify all activities that are likely to be negatively affected by level one regulations and develop a mitigation plan to address these.
8. Present the findings of the legislative reviews that were performed during the last financial year, as well as the programme of action before the Committee.
9. Present a medium term plan to deal with obsolete ICT system, which was identified by the internal audit, as posing risk to the sustainability of the departments operation.
10. Present on the licensing regime, including the SAMRAD system, so as to evaluate turnaround time and efficiency in relation to revenue collected.
11. Provide a comprehensive report relating to the incident of the employee who incurred fruitless and wasteful expenditure on travelling. The report should detail

how the cost was incurred, how the department intend addressing the issue and who was responsible for this loss. The aim of the information requested is to ensure that the wasteful expenditure does not flow into the next financial year.

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

8. APPRECIATION

The Committee would like to thank the Minister of Mineral Resources and Energy, Mr S.G Mantashe, the Director-General of the department, Adv. T Mokoena, senior staff members and the staff of the Department s, for their cooperation and transparency during this process.

The Chairperson wishes to thank all Members of the Committee for their active participation during the process of engagement and deliberations and their constructive recommendations reflected in this report.

The Committee also wishes to thank its support staff, in particular the Committee Secretaries, Ms A Boss, Mr A Kotze, the Content Advisor, Mr N Kweyama, the Researcher, Mr S Maboda, the Committee Assistant, Ms V Makubalo and the Executive Secretary to the Chairperson, Ms N Baleni, for their professional support and conscientious commitment and dedication to their work.

Report to be considered.