

Tuesday, 14 May 2024]

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PARLIAMENT
OF THE
REPUBLIC OF SOUTH AFRICA

**ANNOUNCEMENTS,
TABLINGS AND
COMMITTEE REPORTS**

TUESDAY, 14 MAY 2024

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ANNOUNCEMENTS

National Assembly and National Council of Provinces

The Acting Speaker and the Chairperson

1. Bills passed by Houses – to be submitted to President for assent

(1) Bill passed by National Council of Provinces on 14 May 2024:

(a) **Railway Safety Bill** [B7B–2021] (National Assembly – sec 76).

National Assembly

The Acting Speaker

1. Bills passed by Council and returned to Assembly for concurrence

(1) Bill amended by Council and returned for concurrence on 14 May 2024:

(a) **Basic Education Laws Amendment Bill** [B2D–2022] (National Assembly – sec 76).

The Bill has been referred to the **Portfolio Committee on Basic Education** of the National Assembly.

COMMITTEE REPORTS

National Assembly

1. Report of the Portfolio Committee on Home Affairs on nominees to serve on the Electoral Reform Consultation Panel, dated 14 May 2024.

The Portfolio Committee on Home Affairs (the Committee), having considered the letter from the Minister of Home Affairs (the Minister) to the Acting Speaker of the National Assembly regarding the list of nominees to serve on the Electoral Reform Consultation Panel (the Panel) dated 2 May 2024, reports as follows:

1. Introduction.

Parliament passed the Electoral Amendment Bill, [B1D-2022] on 23 February 2023, and the President assented to it, the Electoral Amendment Act, 2023 (Act No. 1 of 2023) (the *Electoral Amendment Act*) on 13 April 2023. The *Electoral Amendment Act* seeks to provide for independent candidates to contest the election of the National and Provincial legislatures.

Section 23 of the *Electoral Amendment Act* requires the Minister to establish the Panel within four (4) months after the commencement of the *Electoral Amendment Act*. The *Electoral Amendment Act* commenced on 19 June 2023.

The functions of the Panel are to independently investigate, consult on, report on and make recommendations in respect of potential reforms of the electoral system for the election of the National Assembly and the election of the provincial legislatures, in respect of the elections to be held after the 2024 elections.

The Panel must:

- prior to the 2024 elections, engage in research and consider the issues falling within its functions;
- after the 2024 elections, undertake a public participation process regarding the issues falling within its functions; and
- from the date of its establishment, submit a report to the Minister every three months on its progress.

The *Electoral Amendment Act* states that the Panel must, within 12 months of the date of the 2024 elections, submit a report to the Minister of Home Affairs on the possible options for electoral reform for the election of the National Assembly and the election of the provincial legislatures.

The report of the Panel must, for each proposed electoral system or electoral reform identified by it, include the following:

- (a) reasons, potential advantages, and disadvantages;
- (b) legal and constitutional implications; and
- (c) financial implications.

The report must also reflect the views of members of the Panel as to the possible options and recommendations for the electoral reform.

In order to establish and constitute the Panel, the Minister must call on the public and any interested parties to nominate fit and qualified proper South African citizens who:

- have the necessary skills, expertise, experience, knowledge, or academic qualifications in the administration and running of elections or constitutional law or electoral systems;
- are not members of Parliament or any provincial legislature; and
- have not, in the past 12 months, been office-bearers or employees of any political party.

The Minister must then, in consultation with the Independent Electoral Commission (IEC), and after approval by the National Assembly, appoint nine (9) members to the Panel from such nominated persons who satisfy the criteria. The Minister must also appoint one of the members of the Panel as the Chairperson of the Panel.

2. Parliamentary process.

On 6 May 2024, the Committee received a copy of the letter addressed to the Acting Speaker of the National Assembly from the Minister, dated 2 May 2024, together with an

explanatory memorandum containing the list of names of the nine (9) recommended nominees to serve on the Panel, for consideration and reporting by the Committee.

In the letter, the Minister indicated that on 19 May 2023, after consultation with the IEC, a notice was published calling for members of the public and any interested party to nominate fit and qualified South African citizens to serve on the Panel. The Department of Home Affairs (the Department) realised that the notice was issued before the commencement of the *Electoral Amendment Act* on 19 June 2023. After the proclamation of the *Electoral Amendment Act*, the Department and the IEC published a second notice to extend the notice period that was published on 19 May 2023 until 11 August 2023. This second notice was published on 21 July 2023.

On 30 November 2023, the Minister briefed the joint meeting of the Portfolio Committee on Home Affairs and the Select Committee on Security and Justice regarding the steps that the Minister and IEC had undertaken in order to obtain nominations for the Panel. The Minister also provided a list of names of preferred candidates to serve on the Panel. After deliberations, the Committees resolved that the list did not have enough demographic representation and requested that the Minister to publish a new notice calling for further nominations.

On 12 December 2023, after consultation with the IEC, the Department published a fresh notice calling for members of the public or any interested party to nominate fit and qualified South Africans to serve as members of the Panel. The closing date for the submission of names was 19 January 2024.

The Minister consulted with the IEC on 24 March 2024 and an agreement was reached on the names of recommended nominees to serve on the Panel. In the letter to the Acting Speaker of the National Assembly dated 2 May 2024, the Minister recommends the following names for approval by the National Assembly to serve on the Panel:

- a. Ms Faith Pansy Dikeledi Tlakula.
- b. Ms Mmatsie Mooki.
- c. Ms Tomsie Pricilla Dlamini.
- d. Adv. Richard Khaliphile Sizani.
- e. Dr Michael Oliver Sutcliffe.

- f. Mr Phatudi Simon Mamabolo.
- g. Mr Michael Andre Hendrikse.
- h. Mr Norman du Plessis.
- i. Dr Albertus Schoeman.

The Department received a total of 32 names that were nominated in response to all their notices calling for nominations. Out of the 32, only nine (9) were recommended to the National Assembly for approval by the Minister.

3. Recommendation.

After deliberations, the Committee agreed with the Minister and recommends to the National Assembly for the approval to appoint the nominees mentioned in the report above to serve on the Electoral Reform Consultation Panel.

Report to considered.

2. OVERSIGHT REPORT OF THE PORTFOLIO COMMITTEE ON HOME AFFAIRS TO VISA FACILITATION SERVICES AND THE ELECTORAL COMMISSION ON 25 AND 26 APRIL 2024 DATED, 14 MAY 2024.

The Portfolio Committee on Home Affairs conducted an oversight visit to the Visa Facilitation Services (VFS) and the Independent Electoral Commission (IEC), reports as follows:

I. Introduction

In 2023, Parliament passed the Electoral Amendment Bill and in 2024 it finalised the related Electoral Matters Amendment Bill. These will include the participation of independent candidates in the National and Provincial Elections (NPE) in 2024. There would be three (3) ballot papers; namely, 1) the Compensatory Ballot, which is national to national, and it would only be political parties; 2) the Regional ballot paper, which is the region to national and this will have political parties and independent candidates and 3) the provincial ballot paper, that is the election of the provincial legislatures.

The purpose of the oversight was to assess the readiness of the IEC for the National and Provincial Elections in 2024 given that independent candidates and other related provisions are being included in the upcoming elections for the first time. This will also mean new ballot papers and regulations after amendments to Electoral legislation. Members of the Committee were assured through interactions with all the offices and presentations that the IEC is implementing all the provisions in their plans, budgets, and new legislative regulations.

Whilst in Gauteng, the Committee used the opportunity to address one of the major legacy issues that have not been addressed due to working on Electoral Legislation, namely an oversight visit to VFS in Pretoria. VFS is an entity that the Department of Home Affairs (DHA) has contracted to receive applications for visas and permits from foreign nationals. The applications are submitted to VFS and in turn, these applications are forwarded to the DHA to assess and finalize. The DHA has a huge backlog to process these applications and is in the process of appointing a new service provider. The Committee engaged the service provider at their offices and the DHA migration management at their head office to ensure that any issues related to the current contract renewal are addressed and were quite reassured that the related services are being adequately addressed.

II. Delegation

Members

Mr. MS Chabane, Chairperson ANC

Ms TI Legwase, ANC

Ms M Modise, ANC

Ms MA Molekwa, ANC

Mr KB Pillay, ANC

Ms A Ramolobeng (alternate), ANC

Ms TA Khanyile DA

Mr AC Roos, DA

Staff

Mr. A Salmon: Content Advisor

Mr. T. Arendse: Committee Assistant

Mr. ME Molepo: Principal Communication Officer

III. DHA Hallmark Head Office

The Chairperson of the Committee greeted and appreciated the presence of all the attendees and introduced the programme. He then gave an outline and introduced members of the delegation. Apologies were noted for some members of Parliament that were delayed and the DHA apologized for the Minister, Director General (DG) and Chief Financial Officer (CFO). Mr. Modiri Mathews. Acting Deputy DG: Immigration was leading the delegation from Home Affairs accompanied by Acting Chief Director: Permits Mr. Nischal Jayanaran and Liaisons, Mr. Riaz Moosa and Mr. Muzi Njoko.

Mr Mathews indicated that part of the Immigration business plan was to transform and update the service delivery model to meet increasing permit demands. Until the proclamation of the 2014 regulations on Immigration, agents were handing bulk applications without the applicant present. This along with the same counters being used for Civic and Immigration affairs was causing security and

logistics concerns in the Immigration Branch. It was thus decided to adopt the model used in countries attracting many migrants, namely outsourcing visa services.

There are now 18 countries that offer outsourced visa services for South Africa abroad. Executive suites within some of these offices allow for VIP “one-stop-shop” services for executives.

In the process of applying to readvertise the tender for the visa services, the DHA was advised by the National Treasury to initiate a Public Private Partnership (PPP) since there are no charges to the DHA. A transaction advisor was appointed to assess this, but the CTM consortium that was appointed, couldn't proceed as promised, so DHA cancelled the contract (which is being legally contested by CTM).

The current renewed VFS contract ends in December 2024. After which the next service provider will be appointed for 3 years before the PPP will be ready. The DHA is in a tender process to appoint a service provider.

Chief Director of Asylum Seeker and Civics was seconded as an analyst to work on the backlog project to break down trends, processes, and timing to start dealing with the backlog from 2018. Significant progress is expected to be made in the next 3 months to deal with applications from 2021, especially student Visas. In addition, queries by MPs are still being prioritised.

Questions

1. Members queried the lack of presence of the DG, CEO and CFO not prioritising the meeting and whether the newly acting DDG was competent to address all the issues.
2. What training and capacity measures are being implemented to address shortages?
3. Clarity was sought on the status of the CTM consortium. What are the challenges with PPP and what was the extent of the feasibility study that was done?
4. How will the increase in deportation expenditure be addressed?
5. How can DHA prevent incomplete applications and if people are applying online, what are VFS needed for? Why not spend the money on a website and keep the revenue?
6. Is the central adjudication hub to address corruption and local offices functioning given the lack of legally qualified staff and if not, how is it being addressed?
7. Where is the development of the system upgrade to get real-time tracking? Will this allow clients to track their own applications online?
8. Can Home Affairs officers at VFS fast-track 90-day applications?
9. Is there a prioritisation of spousal visas for couples with local marriage certificates?

10. Why are the VFS and Home Affairs' systems not synchronised on application status? i.e. why are permits finalised at DHA not updated on the VFS website? How long before they are updated?
11. What is the backlog number and dates of the oldest applications?
12. How is the security of international applications ensured? Some documents appear to not have arrived when they are recorded as sent.
13. The delay caused by appeals at a high level is giving people open-ended visas.
14. How is it planned to clear a 3-year backlog in three months when progress has been so slow in the past?
15. Why are there still no responses to outstanding member's queries?
16. What is happening with ZEP and Lesotho Extension Permits?

Answers

Mr Mathews indicated that he is the longest appointed immigration employee and could comfortably deal with all the issues raised. He again apologised for the absence of the DG and Minister, who would join the delegation at the IEC.

Whilst the DHA was only at 39% of its ideal capacity, the Lindela deportation facility was partly converted to a learning campus, and a new cohort of staff at 32 missions were recently trained and deployed.

Additional funding received from the criminal asset recovery programme was used to procure a 65-seat bus improving on the deportation process and cost.

The current extension for all exemption permits is a single certificate for all countries rather than the former stickers, signed by the DG not impacted by the service provider's functions.

On incomplete applications, it was ruled in a High Court case that third-party service providers like VFS can't refuse applications that the DHA is mandated to do.

The e-visa programme is being piloted for tourists in 35 countries. The process to get them on the Movement Control System is still being finalised. But usually processed within 48 hours and those that fail can reapply with the missing documents. This could eventually replace VFS, but the ICT process is still being tested.

Japan, Germany and France can do e-visa online application, it is now also being rolled out for intercompany transfers and it is being adjudicated by recently appointed law graduates. There is also a pilot in London to do fingerprints digitally to cut on slow diplomatic bag process.

On the 90-day visa extension, regular travellers without issues should be decided immediately. Visit and study permits should also be immediate. These are the backlogs that were cleared by sharing databases with universities.

Printing is done but dispatch can take time which adds to the backlog of 189 000 (after 40 000 duplicates were removed). Of these, 30 000 are awaiting dispatch and shouldn't be there after analysis and should also have a track and trace system like civics.

The bulk of backlog applications are Spousal and Permanent Residence permits. There should be better analysis before adjudicating begins to prioritise compliant applications. Online monitoring will come as the e-visa expands.

The Vulindlela report implementation took out some visa requirements and introduced remote workers and trusted employer fast-tracking; all of which will all cut down on application times going forward.

The Members' queries project has listed all officials dealing with applications and all their actions are automatically recorded along with the time taken per application, officials' names and bottlenecks in staff productivity are monitored to improve accountability. In the Permits section, targets for the 1st quarter only PR applications are behind (at 60%).

The PPP process research was due to be done by CTM but was cancelled due to their internal issues. They are contesting this and thus the PPP will take longer and so an open call for tender proposals is being completed in the interim.

The Call centre was down for a few months whilst training was being done on CRS (case resolution system) for them to address court orders and particular members' queries for which they have to account to the DG twice weekly.

IV. VFS Hub at DHA Head Office

There are 2 hubs in Pretoria, one at the DHA head office receives all applications in and out of the Department and the one in Brooklyn coordinates receiving and returning applications to clients in

Pretoria and across the country. The Hub also handles passport applications for South Africans in the United Kingdom.

There are 14 staff here, 4 dealing with passports. The process is simple but meticulous. There are daily dispatches from DHA of outcomes. From which office and to whom is quality checked along with that all documents are present and recorded at each step. The Hub was started 6 years ago to ensure that no documents are lost in dispatch. Permits or rejection letters are placed in tamper evident envelopes for security and sent to Brooklyn. Staff do not know the contents below a certain rank. Hard copy applications are sent from Brooklyn to the Hallmark hub along with the electronically scanned digital versions and biometrics and then sent to the relevant DHA offices.

The trial for RSA passport electronic applications from London, Manchester and Edenborough come directly to the DHA where they are printed in a far quicker process. This includes photos which are submitted to BVR in Home Affairs where security confirms no tampering and returns the documents when done.

This office also handles special projects like the Zimbabwean and Lesotho Exemption permits. They receive an average of 600 applications a day and dispatch around 800 with peaks of 1000 up to 2500. They have the capacity to process up to 1300 applications per day.

Questions & Answers

1. Where are hard copies stored?

They are stored in Brooklyn and disposed of by an outside shredding company with DHA as witnesses. Some documents are returned to the DHA registry.

2. How many applications were received today (by 12 pm)?

There is a physical and digital reconciliation which showed 121 applications thus far received.

3. How long before completed applications arrive at the 12 branches around the country?

The Service Level Agreement is for 3 days. If received before noon, applications are sent the same day to Brooklyn and then available at offices on the 3rd day.

4. When is the system updated as complete? On dispatch or arrival? Queries to members show that applications completed at Home Affairs are not yet shown as complete at DHA.

There are 7 stages logged in the application process which can be checked online or SMS'd at a cost. DHA internal processes are not dealt with in meetings held with DHA.

5. How is it possible that a document could have been picked up by the wrong person?

Unless official power of attorney with ID or Biometric, this is not possible and VFS are not aware of such a case.

6. Do you receive inquiries?

Yes, there is a VFS call centre and designated single point of contact within the DHA.

7. How are UK passport applications dealt with?

It takes 3 to 5 days to receive and 3 to 5 days to send. Total processing time including DHA is 3 weeks.

8. Are there system downtimes?

There are redundant connections, Wi-Fi and LAN. No downtime unless the whole country is effected affected. If this office can't run...Brooklyn can take over.

9. What happens with incomplete applications?

VFS have to receive all applications because they are not authorised to adjudicate in terms of the law, but they make sure the applicant signs that they are aware the application is incomplete and mark the application as incomplete.

10. What causes backlogs?

None so far but could occur if haphazard high demand but VFS have the capacity for overtime if necessary.

11. Why are there backlogs?

The DDG for Immigration indicated that analysis shows delays between printing and dispatching which could be improved on.

V. VFS Brooklyn hub/service centre

After introductions, the Committee was taken on a walkabout of the facility where the process for applicants was explained. New and renewal applicants go online to make appointments and pay online or at the office, where security vets and then front desk checks their documents. Walk-in status checks are also possible, but most applicants check online. There is a premium lounge where all 3 processes are done at one desk for an additional fee of R550 to the application of R1100. There is a quality control checklist for each type of application, a submission interview and then a recording of biometrics. Visitors' application has fewer requirements and time than for instance Permanent Residence (PR).

There are also walk-ins allowed to use a terminal to make an application with assistance if necessary. Applications can take longer if the police clearance certificates with external provider take longer and if they have marks on their records. VFS has been in operation for 9 years with no backlogs.

A ticket system provided service provider shows when clients will be served via recorded voice announcements and on screens. Collections don't need appointments and applicants can check online and go directly to a separate collection desk.

The call centre allows for the checking of application status and services several foreign country visa and DHA applications. There is a manager disseminating calls to 38 operators automatically and a quality controller monitoring training needs. There is a call waiting system which means that all calls should be answered, as well as an automated voice reply. There are dedicated operators for the Special Permit applications.

A scanning office converts hard copies with signatures to digital copies with 3 stages of quality control as they come in and out. Original applications and receipts are kept and needed by the applicant for collection. Applicants co-sign acknowledgement where required documents are not included.

There are 21 country missions serviced by VFS in Pretoria for South Africans applying for foreign visas.

VFS Presentation

The Chairperson introduced the delegation after the walkabout and indicated that we all desire improved service for our clients. The work of VFS is very much appreciated as it has been operating for over the last 8 years. He indicated that although there was a deliberation in the Committee on the contract and its extension, weaknesses are raised as a way of improving services. There was some disappointment by members of an employee who couldn't explain his job as a document scanner after a member tried to sense the service delivery from a hands-on perspective. Mr. Viswanathan: Head of VFS for Sub-Saharan Africa made a presentation indicating the following:

VFS established 14 visa and permit facilitation centres (VFCs) across 9 provinces in South Africa, they also established premium visa and permit facilitation at 4 centres for corporate customers of the Department of Home Affairs in partnership with Gauteng Growth and Development Agency (GGDA). VFS implemented robust and pro-active stakeholder engagement, with Press and Media; Immigration practitioners; and Community and Government agencies. VFS efficiently manage more

than 100,000 visa and permit renewal applications annually. VFS have been in RSA since 2013 and serves RSA foreign missions in 18 countries abroad with 45 centres. They have 283 staff of which only 11 are foreign. There are now premium offices in Joburg and now Cape Town and Durban offering ease for corporate clients. Reasons for delays beyond 3 days relate to police clearance.

Table 1: VFS services for South African Missions

Sr. No	Country	VAC Location	Application Centre
1	India	Delhi/Mumbai/Kolkata/Gurgaon/Pune/Bangalore/Ahmedabad/Goa	9
2	Nigeria	Lagos/Abuja/Port Harcourt	3
3	China	Beijing/Shanghai/Chengdu/Guangzhou/Wuhan/Xi'an/Shenyang, Hangzhou/ Jinan/ CHONGQING/ KUNMING	11
4	Angola	Luanda	1
5	DRC	Kinshasa/Lubumbashi	2
6	Kenya	Nairobi	1
7	Ghana	Accra	1
8	Uganda	Kampala	1
9	United Kingdom	London/Edinburgh and Manchester	3
10	Zimbabwe	Harare, Bulawayo	2
11	Botswana	Gaborone	1
12	Iran	Tehran	1
13	UAE	Dubai	1
14	Mongolia	Ulaanbaatar	1
15	Senegal	Dakar	1
16	Pakistan	Karachi, Lahore, Islamabad	3
17	Philippines	Manila	1
18	New Zealand	Wellington and Auckland	2

VFS also handle the Migrant Registration Project – Zimbabwe Special Permits (ZSP) & Lesotho Special Permits (LSP). VFS's role here is limited to providing administrative functions of receiving applications and collecting biometric data from applicants across the country and sending them through to the Department of Home Affairs for adjudication. This includes:

- Online application process
- Appointment booking through call center
- Biometric solution and enrolment
- Dedicated Website
- Online track and trace
- Automated Police clearance – Integration with the South African police database
- Validation of nationality on the national population register (NPR) for Lesotho nations
- Extensive media and stakeholder engagement

- Established 10 visa and permit facilitation centres (VFCs) across 9 provinces of South Africa (4 new temporary VFCs & 6 existing)
- Fully compliant mobile biometric enrolment services for remote locations
- Outreach programs/Mobile Camps at the SA- Lesotho borders
- Reached out to the interiors of South Africa and conducted 30 outreach programs covering farms/mines in 9 provinces.

The ZSP and LSP project with VFS enabled the Department of Home Affairs (DHA) to meet its deadline to complete the program.

The applications received across all the 11 Visa Facilitation Centres will be forwarded to the Pretoria Scanning Hub on the next day of submission for documents.

VFS are World leader in biometric enrolment services. Outstanding track record of delivering secure, cost-effective and reliable biometric enrolment capabilities doing End-to-end biometric enrolment services for 34 governments across 118 countries. VFS processed over 119+ million biometric enrolments in 1500+ Enrolment stations globally.

Table 2: VFS global presence

Global Presence



Questions

1. Are offices in other provinces similar to this?
2. Why is there a centralised hub rather than directly sending completed applications to applicants from the regional office?
3. What is the local involvement of the international ownership of the company?
4. What can be done to increase gender equity in the management of VFS?
5. How are VFS helping address the Immigration application backlog?
6. How does online track and trace work since there are cases where the completed status from DHA isn't reflected on the VFS website?
7. What verification services are available to clients?
8. What can DHA learn from VFS? For instance, what about replacing the Diplomatic Bag services?
9. Have the Lubisi report recommendations affected the work of VFS?
10. Are there backlogs influenced by the VFS processes?

Answers by VFS

1. All offices are the same large or small according to a branding manual.
2. There are two hubs because Brooklyn digitises physical files and reconciliates sending and receiving, and the one at DHA ensures that everything is sent and received.
3. Moseko administrators is the local implementation partner for VFS.
4. There are incentives working at a global level to increase women and VFS is catching up in South Africa.
5. Track and trace are mapped at each stage but not mapped directly to DHA processes until physical documents are received. If they were given access to this data, it could be included. There are discussions on doing this with live capture but there are security considerations.
6. Loadshedding, despite generators can slow the internet and thus submission of information within the target 3 days.

Answers by DHA

1. There is a reconsideration of a digital application process run by the DHA being trialled in the United Kingdom.

2. The tender is open to all parties and the PPP is being managed within the national treasury to appoint an advisor.
3. The Lubisi report president signed off full investigations including lifestyle audits.

VI. IEC HEAD OFFICE VISIT

The Chairperson of the Committee, Hon. Chabane, introduced the delegation of members and the purpose of the oversight, namely, to have a final view of election preparations on new legal provisions by the Committee. The issues of the electoral court would not be considered fully since they are still ongoing. The meeting at this busy time by all the Commissioners is much appreciated given the busy schedule of the Commission on the Electoral Timetable.

Introduction by the Chairperson of the IEC

Mr Moepya, welcomed the oversight and work of the Committee and indicated that never before this late in the electoral timetable; only 33 days prior to the elections; has there been such a high case load of those wishing to contest the election. It is uncertain and not ideal how the courts should be dealing with these matters, so long after the proclamation of the election. Unlike in the local government elections where bi-elections cease; these continue as recently as the last week, so there could also be objections related to this. There are also potential complaints related to the Electoral Code of Conduct. It is hoped the interaction will clarify the integrity of the Elections, which has been brought into question of late. There are many more contestants; around 15000 whereas there are only 887 seats. So, there will be many discontent applicants.

Presentation by the Chief Electoral Officer

Mr. Mamobolo, indicated the pronouncement of the Elections after consultations between the President, Provincial Premiers and the IEC on 22 February, was followed by consultation with Political Liaison Committees soon after. After two voter registration weekends, the total registered voters were 27 782 477, the majority were in Gauteng, followed by KwaZulu Natal and together make up 44% of the country. Online voter registration was opened in December 2023 for voters abroad and in January 2024 in Missions, amounting to around 58 000 voters on the international segment.

All political parties were allowed to inspect the Voters Roll before it was certified and there were around 20 objections which the IEC investigated and made determinations on resolving the issues. The certified roll has 55% female and 45% male contestants. There are 22 292 voting districts and stations. The voting age population is estimated by STATSSA to be around 39 million, giving around 70% of eligible voters being registered. Only 48% of 20-29 are registered but this is up from only 20% in previous years due to online voter registration. The registration of 18 to 19 years olds, although also low at 27%, has increased by over 200% from 2021. Research indicates that the limitations of this group were due to access to data, so mobile service providers were approached to zero-rate data for the IEC website, but only Vodacom complied and relatively late in the process, so this must be looked at going forward.

Interestingly, London became the biggest registration office locally or abroad with around 19000 out of 54 000 registrations. These missions are not optimal as voting stations, so IEC is working with DIRCO to make adequate arrangements.

There has been a historical decline in voter participation over the years, but a marginal increase is expected in 2024 given the particular political dynamics at present, including new parties and independents. There have been 31 mobile voting stations introduced for sparsely populated areas along with 954 temporary voting stations. These arrangements are being finalised. IEC survey data indicates what provisions such as electricity are needed in each station. Many don't have landlines. Leases have been finalised for private properties.

Most provisions are at provincial warehouses which will commence delivery to local offices on the 15 May. The printing of Ballots is still outstanding. Voter management devices (VMDs) are being maintained and uploaded with the voters' roll, the registered staff, and a ballot tracking app. Presiding officers were at 98% and 94% of deputies were contracted and uploaded. They are being trained and will receive refresher training.

There are a total of 70 parties registered out of 115 applicants after disqualifications. There are 52 on the National PR Ballot along with 11 Independents. This will mean a dual-column ballot paper. This was done due to the printing machine paper limitations as well as it being confusing to have an additional ballot paper to the three already needed. The Constitutional Court confirmed that the 200/200 split of National and regional seats is in order.

Of the 14 903 candidates including 44 in the 18-19 years old, the majority are in the 40 to 49 years old range (4355 candidates).

As the number of candidates increased over the years the amount of parties that have succeeded in getting seats has remained around the same (14-16). Because there are more parties registered for Gauteng and Limpopo, these will take longer to count. This has been a point of contention in the past. There are 31 parties contesting for the first time. There are 3 parties that are contesting the invalidity of their applications at the Constitutional Court, which will be heard on the 9th of May. It has helped to have higher signature requirements to limit the number of applicant parties and thus reducing complexity. The difficulty is that it is impossible to verify signatures.

The results process ensures that there is no question of the validity of the outcomes, including double scanning of outcomes and independent auditors checking of captured versus result slip outcomes. Audited results are also encrypted before being sent to two separate data sites so there are three separate copies in total. Results are also sent via an app to the registered media houses. There will be 3 results slips for the three ballots. Given that the vote counting load has increased by around 50%, the results are planned for either 1st or 2nd June. These will then be transferred to the National and Provincial legislatures and the Chief Justice to arrange for the first sitting of the house. A number of measures have been put in place to ensure cyber security including:

- Relocation of the IEC website – completed in October 2023.
- SSA security audit completed awaiting final report.
- Two external penetration tests on the vulnerability of the network with fixes applied.
- An independent security audit is currently underway & parties can do so too if they wish.
- Mobile applications component completed.
- Vulnerability testing is also currently underway.
- Results System Audit commenced on 9 April 2024.

Table 3: Elections Results Process



IEC has been working with the Ministry of Electricity on ensuring that there won't be any planned outages and maintenance although they can't ensure that there won't be any loadshedding. Not all voting stations will have generators, which will be procured along with more rechargeable lights.

IEC is also preparing for many potential legal contentions after results are released, primarily by ensuring there is proper training to not be open to critique of wrongdoing. The IEC has already approached senior counsel well ahead of time to deal with the cases. The JCPS cluster will soon meet to receive briefings on IEC preparations on security matters.

Commissioner Love then took over, adding that infrastructure preparation such as data connection issues during load shedding and temporary staff taking other opportunities at the last minute.

The next presentation dealt with the Voter Management Devices (VMD). At stage 5 of the elections, the voters roll is showing around 27 million registered voters. The voters' roll is compiled according to the relevant legislation and registration happens at registration offices, online and at IEC offices. The provisional roll is submitted to relevant role-players and IEC deals with objections and investigates and addresses them before the final roll is tabled.

Election data is shared with local and international role players and on the IEC website, which is a treasure of information, including a voting station finder, which is an IEC innovation and includes Google Street View as well as a ward counsel finder. There are free SMS, landline and now also mobile call information available as well as email and all major social media sites.

Results are also made available once verified across multiple platforms including an application for the media and other approved applicants down to the Voting District level. They are then able to generate their own visualisations of the data.

The VMD presentation indicated we can be proud of them since it was conceived of and customised in South Africa and is of military grade durability with versatile apps. They have touch screens with protective casing, a carry case, 2 microphones, an audio jack and a USB C charging cable. The smart tablet comes with an easy troubleshooting guide. There is centralised management of the VMD apps, usage and location that can be tracked if stolen or not functioning. The Committee Members were each given a VMD and a demonstration of how they function. There are the following apps: voting station monitor to track attendance, ballot checker, voter's roll, calculator and download manager.

The presiding officer must scan the Voting Station location QR to declare it open. Staff capture their attendance with their IDs. There are also backup staff in case some staff don't arrive. The device scans the number of ballots and their location at any given time. The voter's roll app checks if the voter is registered to vote in that voting station and what ballots they must receive. There is a continuous connection to allow needed data to be downloaded ahead of time despite a slow internet connection. The VMD scans the ID and Ballots' barcodes. There is a protocol that asks for a voter's address if it is not recorded.

It was demonstrated how the prevention of duplication worked on the VMD even though the devices were not connected to actual data yet and IEC could arrange to have some members witness this actual operation on the special voting day. Apps and VMDs can crash but there are 38 000 VMDs although there are only around 23 282 Voting Stations, and there are area managers in each ward across the country to deliver the buffer VMDs if troubleshooting and technical call support does not succeed. Budget constraints mean that 100% of backup devices could not be procured but there is access to multiple devices in a ward. If the voter is registered at another voting district, they will be redirected to the correct VD.

A few glitches were viewed on the devices and so it was indicated that these would be addressed, and a video of the fixes done would be submitted to the Committee. The VMDs dedicated to training had apparently had some of these issues. Members indicated that the running of the by-elections leaves them confident of the functioning of the National Election.

Questions.

1. Could voters at the wrong Voting District be redirected on the VMDs to the correct one?

2. The ratio of independents is 1 to 7 versus parties, which is not many. To what extent is this because of signature requirements?
3. In the results process, can a photo be taken on the VMDs of the ballots at the dispatch in addition to scanning barcodes as extra security?
4. Can the colours of results be coordinated with party colours on the results maps?
5. Could geofencing be used to prevent the VMDs from being used outside their designated area?
6. Can there be more education on what to do for those voting outside their district in terms of Section 24a of the *Electoral Act*, given that the by-elections had shown that many weren't registered where they came to vote.
7. Why are voting stations streams counted separately?
8. Why are *Electoral Act* section 107 transgressions of defacing electoral posters not forwarded to the Police?
9. What will be done for people who were moved as a group to another voting district such as for RDP housing?
10. How will the IEC address those who could not register for special votes?
11. What are the provisions for voting stations in terms of sanitation?
12. What was the nature of the 20 objections at the electoral courts?
13. Can the 24-hour verification of party lists after results, be used to amend errors picked up by parties?
14. The work done by the IEC is commendable given the short space of time since the Electoral Amendments.
15. In which areas have the 11 independent candidates registered to contest the election?
16. If there are violations of the electoral code of conduct, why can't the electoral court be the final step rather than all the stress caused by delays of appeals going to the Constitutional Court?
17. For each of the provinces' compensatory seats, is it based purely on the percentage that each candidate gets?
18. How will the VMDs be used for home visits and are there sufficient devices?
19. How many people have applied for voting outside of their voting area?
20. When will the new voting stations abroad as per the recent court ruling be opened?

Answers by the Minister of Home Affairs and IEC

The Minister indicated that no technology is problem free, so even if each voting station had two VMDs, there would be a need for human intervention if issues arise. There may be a need to look at section 19 of the *Electoral Act* to prevent abuse.

In terms of whether it would be picked up if a voter tries to vote twice; it was indicated that it was instantaneous on the VMDs (similar to how ATMs work) as well as being crossed off on a physical voter's roll and indelible ink marking fingers.

Amendments to the party lists are allowed at the discretion of the secretaries of the respective national and provincial legislatures after results are published by the IEC according to the current certified lists.

The electoral staff work together with the municipal staff and from a provincial level on disaster management. Eskom has brought forward maintenance to avert load shedding as much as possible during the election period starting at the special votes. Temporary water and toilets have been procured for those areas that need them. Steel frame tents are used in temporary voting stations as much as possible for stability.

Voters without addresses recorded must be captured by the VMDs and if it's in the province they are entitled to all 3 ballots. There have never been any records of bogus voting stations.

Reports of defacing of electoral posters are difficult to investigate because there are seldom specified persons accused with evidence for the electoral courts to investigate and then refer to the police. But it is a criminal case that carries the penalty of a fine if a charge is laid and it is convicted by the electoral court.

The colour schemes of results maps can be looked at to be aligned with party colours where possible. The photographing of results slips came as a suggestion too late from the Political Liaison Committees to be included in the current software but can be considered in future elections.

Currently, voters at the wrong voting station are only directed to a voting station number rather than a name but it can be investigated if this is feasible to code into the VMDs.

The cutoff date for notification by voters in terms of Section 24a of the *Electoral Act* that will be away from their designated voting station is the 17th of May. If they are outside the province only the national ballot is allowed, to prevent undue influence by the so-called bussing of voters.

Special Voters receive all 3 ballots and applications for these closed on 3 May. There is an app that tracks the special votes covered per area per day to allow planning on both days.

In some small voting stations, it may be challenging to allow for even the 2 regulated party agents per voting station, but the presiding officer can allow for up to 8 party observers on a rotational basis to make provision for the 52 parties that are contesting.

Compensatory seats per province are calculated by quota which can only be calculated after the election. The means by which seat calculations are done will be communicated to members.

Voter education includes ongoing media relations on all the activities and the timelines with all media houses as well as visuals of the three ballots on television prior to news broadcasts. Actual adverts on the three ballots will go out 14 days prior to the election and will be run on TV, along with where to vote and documents required. There is also specific communication on special voting and voting outside one's registered voting district.

All the social media platforms and 150 community radio talk shows have also been covered with relevant information as well as communicating information on ATMs and advertising on *please call me* messages, print media and 30 billboards. Physical interactions will be reported in the annual report to have exceeded targets with around 2500 voter educators, with two per ward having three engagements per day. Lastly, many schools and most tertiary institutions were engaged alongside universities' own initiatives.

Recommendations

1. The DHA should address the delays observed between completing the printing of permits and dispatching them as soon as possible.
2. The introduction of a track and trace system like that used in civics must be accelerated for immigration documents.
3. The PPP on Visa facilitation should be concluded well ahead of the expiry of the current extended tender contract.
4. Colour schemes of political parties should be aligned on results maps and images where possible.
5. In future elections, the VMDs could be used to take photos of results slips for added security.

6. There needs to be a several day engagement with the future Portfolio Committee, in addition to PLCs on the effectiveness of the Electoral amendments and regulations, such as the ratio of independents that registered and won seats.
7. Investigate the inclusion on VMDs of the correct voting station names for voters who arrive at the wrong voting station.
8. The means by which compensatory seat calculations will be done should be communicated to members prior to the 2024 election.
9. The Committee will follow up on the zero rating of data for the IEC website by all mobile service providers in future elections to assist with both registration and voter education.
10. The timing for objections or appeals to candidate registration must be factored into the electoral timetable and court proceedings to prevent last-minute logistical arrangements by the IEC.

Report to be considered.

3. LEGACY REPORT OF THE PORTFOLIO COMMITTEE ON HOME AFFAIRS ON ACTIVITIES DURING THE 6TH PARLIAMENT, DATED 14 MAY 2024.

(MAY 2019 – APRIL 2024)

Part A 1. Executive Summary

A1.1 Key Issues

The Portfolio Committee in line with its Mandate, outlines the context of the 2019-2024 period of the 6th Parliament; highlights key achievements recorded during the period under review; outlines challenges encountered during the period under review and concludes by indicating outstanding issues and the recommendations for consideration by the 7th Parliament under the PC on Home Affairs.

Context of the 2019-2024 Parliament:

The commencement of the 6th Parliament in 2019 signalled the last financial year of the 2014 – 2019 Medium-Term Strategic Framework (MSTF) and the beginning of the 2019-2024 MTSF. Informed by the areas identified in the 2019 State of the Nation Address (SONA) and the 2019/20 Annual Performance Plan of the Department, The Committee developed its focus areas for the remainder of the 2019/20, and developed an annual programme every year thereafter.

In 2020, after the introduction of the new MTSF, 2019 – 2024 and the tabling of five-year strategic plans of the Department and entities, the Committee identified further areas of focus to inform its oversight work and programmes. The Committee programme was also informed by issues for follow-up as resolved in the Committee minutes, budget vote reports, quarterly performance reports and budgetary Review and Recommendation Reports (BRRRs).

The Committee also paid attention to the recommendations raised by the Committee on Home Affairs of the 5th Parliament in its Legacy Report for consideration and implementation in the 6th Parliament.

In 2020, with the advent of the COVID-19 pandemic and the declaration of the National State of Disaster and the subsequent national lockdown as part of government response to the pandemic, meant that Parliament and other state institutions have to refocus their programmes and develop a new modus operandi under the lockdown. The PC on Home Affairs also had to conduct its oversight work through virtual platforms. This was intended to ensure that oversight and accountability is undertaken even under very difficult conditions.

Key Achievements:

Among the key highlights of the Committee from 2019 to 2024 include the reviving, processing and the finalisation of the Border Management Authority Bill. This Bill had been before Parliament for many years and it was under this Committee of the 6th Parliament that the Bill was processed, finalised and accented into law by the President. The BMA as a Schedule 3 entity started operating on the 1st of April 2023 and was formally launched by the President in October 2023.

The Committee oversaw the appointment of the BMA Commissioner and Deputy Commissioner, the movement of staff from other department to the BMA in line with the Act.

The Committee also had to oversee the processing of the Electoral Amendment Act that followed the Constitutional Court Order that declared some of the provisions of the Electoral Act to be unconstitutional to the extent that they did not provide the participation of independent candidates in the national or provincial elections.

The amendment of the Electoral Act led to the consequential amendment of other Acts of Parliament that were amended as part of the Electoral Matters Amendment Bill. These Acts include the Electoral Act, 1998, the Electoral Commission Act, 1996, the Electronic Communications Act, 2005 and the Financial Management of Parliament and Provincial Legislatures Act, 2009 so as to make

consequential amendments resulting from the introduction of independent candidates to contest elections of the National Assembly and provincial legislatures.

The Committee also undertook oversight visits to various entities and areas outlined below that included visits to the Home Affairs offices in Pretoria focusing on Visa applications and the backlog, a visit to Menlyn offices which are part of DHA roll-out of modernised offices, visit to the (IEC) and Government Printing Works (GPW), and the Desmond Tutu Refugee Reception Centre) and worked closer with the Office of the Auditor General and National Treasury. Towards the end of the term in 2023, the Border Management Authority was established as a new entity falling under the oversight scope of the Committee.

The Committee also undertook joint-oversight visits to Beitbridge border line, as well as the joint-visit to various provinces for addressing concerns around undocumented and illegal mining. In addition, the Committee undertook oversight visits to Gauteng and KwaZulu-Natal provinces following the July 2021 Unrest to assess the damage caused and the response and support of the DHA to the people following the unrest.

Committee's focus areas during the 6th Parliament

The Committee's oversight programme over five years was informed by Parliament's 2019 – 2024 strategic priorities. Parliament has set the following as its strategic outcomes:

- Deepened democracy;
- Accountable government;
- Strengthened oversight and accountability;
- Enhanced public involvement;
- Deepened engagement in international fora;
- Strengthened co-operative government; and
- Strengthened legislative capacity.

The PC on Home Affairs, informed by the constitutional Mandate of Parliament, focused its work in the 6th Parliament within the context of the National Development Plan and the regional, continental and global development agendas (SADC Masterplan, AU Agenda 2063 and Sustainable Development Goals) specifically focused on the following:

- Oversight and accountability;
- Public involvement;
- Law-making;
- International engagement; and
- Cooperative governance.

Key areas for future work

- The Committee will need to follow up on the implementation of the State Capture Report recommendations to address some outstanding issues including amending the Electoral Act..
- There will be significant ongoing work related to the implementation of the Global Compact on Migration, African Union (AU) vision 2063 and the country's revised Policy White Paper on Citizenship, Immigration and Refugee Protection.
- The Committee will need to oversee the completion of the advanced printing facilities at the GPW in Pretoria to prepare for the phasing out of the green ID book and full roll out of the smart ID card as well as the introduction of E-passports, printing SADC Security documents and potential African Passports (introduced by the AU).
- There are outstanding draft pieces of legislation at an advanced stage which will have to be processed by the Committee including: the DHA Bill, the Marriages Omnibus Bill, the State Printers Bill and the Immigration Bill.
- The Committee will need to monitor the implementation of the outstanding recommendations of its prior Budget Review and Recommendations Reports (BRRR), not all of which are in this Legacy overview report.
- Monitor the implementation and finalisation of the Automatic Biometric Identification System (ABIS) as well as outstanding disciplinary issues in this regard.
- Monitor the refugee appeal backlog..
- The next Parliament would need to follow up on the implementation of the Vulindlela task team recommendations on removing obstacles to policy implementation and ensure they are implemented. The Vulindlela team made recommendations about improving the processing of applications including a reduction in the number of documents that applicants have to submit.

Key challenges emerging

- A significant portion of the term of the Committee was conducted under the restrictions put in place during the COVID 19 pandemic which necessitated the adjustment to the targets set by the DHA, GPW and IEC as well as the related budget and achievements against even these reduced targets. The Committee mode of work also changed from more in-person meetings and oversight trips to primarily online meetings. In some ways this improved on efficiency of expenditure against the backdrop of decreased budget allocations and a constrained fiscus as the cost and time for flying to Cape Town for the Committee and the Entities it oversees, were reduced significantly and allowed for more focus on constituency work and easier access to Committee Meetings by interested members of the public.
- The broader international perspective needed by the Committee in its work around electoral legislative and systems reform will need to be further considered in the 7th Parliament..
- The GPW experienced significant management and labour issues as well as a significant IT failure and data loss which led to delays in the tabling of its annual reports, and audits.
- The Committee only had a dedicated researcher for half the time of its term, and this has been addressed.

A2 Introduction:

A2.1 Background

Parliamentary committees are mandated to:

- Monitor the financial and non-financial performance of government departments and their entities to ensure that national objectives are met.
- Process and pass legislation.
- Facilitate public participation in Parliament relating to issues of oversight and legislation.

In addition to the regular engagement with the DHA on their plans, challenges, quarterly performance and budgets, the Committee conducted a similar process for the GPW and IEC in order to monitor in-year performance and identify challenges early on. Towards the end of the 5 -year term in 2022, a similar oversight was added for the newly established Border Management Authority.

Although it is a national competency; the DHA has nine provincial offices, each with a Provincial Manager accounting to the Head Office in Pretoria. Unlike in the previous Parliament, given the busy legislative schedule and COVID relate restrictions; the Committee was only able to invite 7 of the 9 Provincial Managers to brief the Committee on the state of their provinces in 2019 and 2023. In addition, due to extensive consultation on the Electoral Amendment Bill and joint oversight trips on civil unrest and illegal mining, the

Committee did not manage to conduct oversight of all 9 provinces during the course of its 5 -year term (Northern and Eastern Cape were omitted), although all provinces were visited to conduct public hearings on the Electoral Amendment Bill.

A major focus of the National Development Plan (NDP) is to confront the triple challenge of poverty, inequality and unemployment by achieving higher growth rates. The DHA has a critical contribution to make to the achievement of the NDP 2030 objectives as outlined below:

- The inclusion of all citizens in democracy and development is enabled by providing them with a status and an identity that gives them access to rights and services. This must be done in an efficient, effective, professional and secure manner.
- An additional priority for the DHA is to facilitate the acquisition of the critical skills needed for economic growth as determined by the Department of Higher Education and Training (DHET) to build our own skills base.
- The DHA and the BMA, must continue to drive integrated and coordinated border management to ensure our borders are effectively protected, secured and well-managed.
- The DHA is central to harnessing the fourth (4th) industrial revolution and building a capable state. The modernisation programme of the DHA can reduce fraud and the cost of doing business by enabling e-government and thus attract more investment.
- The DHA plays a key role in enabling regional development and integration by working with the Southern African Development Community (SADC) countries and the African Union through the Department of International Relations and Cooperation (DIRCO) to establish efficient, secure and managed migration.

A2.2 Matters Raised in the Legacy Report of the 5th Parliament

The Following recommendations from the 5th Parliament legacy report of the Portfolio Committee on Home Affairs need to be further considered by the PC on Home Affairs of the 7th Parliament:

- The Committee reaffirms the need to address continued significant constraints on the cost of employment budget of the DHA which is a threat to the efficiency and security of essential DHA services to citizens as well as visitors in South Africa.
- Consider the important international implications of the work of the PCHA in consideration of applications for study tours.
- Monitor Implementation of the relevant High Level Panel Recommendations.
- Monitor outstanding Budget Review Report Recommendations.
- Monitor long term outstanding litigation and related contingent liabilities.
- Proactively monitor the procurement and renewal processes of contracts under the DHA and investigations of related irregularities particularly in relation to Visa Facilitation Services (VFS) the Automated Biometric Identification System (ABIS) by EOH.

A2.3 Guide to the Report

The purpose of this report is to provide an account of the Portfolio Committee on Home Affairs (PCHA) work during the 6th Democratic Parliament pertaining to the oversight and legislative programme of the Department of Home Affairs (DHA) and its entities (IEC, BMA and GPW). The report provides an overview of the activities the committee undertook during the 6th Parliament, outstanding issues from the 5th Parliament and the outcome of key activities, as well as any challenges that emerged during the period under review that should be considered for follow up during the 7th Parliament. The report is this divided into:

Part A: Introduction- The report commences with an Introduction, the context of the 6th Parliament and key achievements. This introductory chapter will provide the background to the report and a reflection of matters raised in the **Legacy Report of the 5th Parliament**.

Part B: Political Developments and Outcomes- The key achievements of the 6th Parliament will be highlighted under the sub-headings of the Constitutional mandates of Parliament, located within the context of the National Development Plan and the regional, continental and global development agendas (SADC Masterplan, AU Agenda 2063 and Sustainable Development Goals):

- Oversight and accountability;
- Public involvement;
- Law-making;
- International engagement; and
- Cooperative governance.

Part C: Administrative Outputs and Outcomes: A dedicated chapter will consolidate all legacy issues and present recommendations where appropriate. This chapter will contain legacy issues for both the political and administrative domains. Information will be provided on outstanding issues that that should be considered by the 7th Parliament. This includes Bills before the NA and NCOP and implementation of the recommendations of the state capture Commission.

PART B: POLITICAL DEVELOPMENTS AND OUTCOMES

B1. Oversight and Engagement

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

Activity	2019	2020	2021	2022	2023	2024	Total
Meetings held*	14	28	26	43	33	11	155
Legislation processed	2	2	1	2	3	2	6 ^x
Oversight trips undertaken	1	3	2	4	1	1	11
Study tours undertaken	None	None	None	None	None	None	0
Statutory appointments made	None	none	none	1	1	None	2
Petitions considered	None	None	None	None	4	None	4

* Numbers in brackets in progress but not finalised

^x Some Legislation processed over several years or private bills deemed undesirable

The following oversight trips were undertaken with issues still to follow up highlighted:

B1.1 Pretoria, Gauteng Head offices 27 to 29 Aug 2019

Objective: The Committee conducted an oversight visit to the DHA, the IEC and the GPW on 27 – 29 August 2019 including the Desmond Tutu Refugee Reception Office. The purpose of the oversight visit was to familiarise the Committee on the work of the DHA, the IEC and the GPW because all members of the Committee were new to the Committee in the 6th Parliament.

Outstanding Recommendations:

- i. Resolve the matter of the system downtime by SITA with the Minister of Communications to address front office service delivery by the DHA and provide alternative solutions and related budget implications if not resolved by the end of the 2019/20 financial year.
- ii. Effect administrative and legislative changes to facilitate laying criminal charges against foreign nationals who submit fraudulent documentation in the application for Permanent Residence and report back in this regard by the end of the 2019/20 financial year.
- iii. Revive the need for a DHA Bill that will require working and providing services to clients on Saturdays in negotiation with National Treasury for funding and trade unions for staff interests prior to the end of the 2019/20 financial year. Consideration, in this regard should be given to the lost productive time for learners, businesses and employees as well as the essential nature of the services.

B1.2 GPW Gauteng, Pretoria 17 June 2020

Objective: The oversight visit to GPW head office was conducted due to the submission to the Committee on 13 April 2020 by Mr Ngwambi, who raised serious allegations against the Acting Chief Executive Officer (CEO) of GPW, Ms A. Fosi, and the Minister of Home Affairs, Dr PA Motsoaledi, MP. He asked urgent investigation of the appointment and conduct of the GPW CEO by the Minister of Home Affairs.

Outstanding Recommendations:

- i. The Committee has resolved that the PSC report will be adopted/ or not once the related HAWKS investigation is completed as agreed during the Committee meeting on 2 June 2020. The Committee noted that the PSA disputed the PSC Report, however, unless it has been challenged through a duly authorised body, the PSC Report remains and its legal standing is confirmed.
- ii. The Committee notes that a police investigation is underway regarding the missing Curriculum Vitae's (CV's) of advertised posts which were supposed to have been filled. However, the Minister of Home Affairs should hold the Acting CEO accountable for the missing CV's. The Committee expect a report from the Acting CEO on the actions taken against those responsible for safeguarding the CV's.
- iii. The Committee noted that GPW has an excess of R2 billion earmarked for the construction of the new Headquarters. GPW has not been able to proceed with the construction of the new HQ because the Department of Public Works (DPW) was not able to complete the tender process. The Committee has supported the decision by the Minister of Home Affairs to issue the construction tender on their own, but should also appoint relevant professionals to project manage the construction.

Objective: The Portfolio Committees on Home Affairs and Public Works & Infrastructure as well as the Standing Committee on Public on Public Accounts (SCOPA) conducted an oversight visit to Beitbridge Border Post and the 40km fence constructed by the Department of Public Works and Infrastructure (DPWI) along the borderline on either side of the Beitbridge Border Post.

Since then, several reports, including the National Treasury and the Special Investigations Unit reports (SIU) flagged irregularities in procurement processes and poor quality of work done, and in the appointment of the contractor, and the Principle Agent.

Outstanding Recommendations:

- i. A process of vetting of all Supply Chain Management personnel is initiated;
- ii. All reasonable steps are taken before monies owed to the state can be written off as irrecoverable;
- iii. Consequence management against all implicated officials is carried out with adequate sanctions;

B1.4 Gauteng Pretoria DHA head Office Legal Services 27 May 2020

Objective: A few members of the Committee conducted an oversight to the Legal Services section at the DHA headquarters in Pretoria. The delegation visited the department following a court order by the Western Cape High Court compelling the committee to visit and assess the functionality of the legal services unit of the department.

Outstanding Recommendations:

- i. DHA to work with the Department of Justice and Correctional Services to streamline the legal function and avoid inefficiencies that lead to cost orders against the department.
- ii. Utilise Alternative Dispute Resolution mechanisms to resolve some of the legal matters as this will reduce the amount of money the department spends on litigation.
- iii. Investigate the plausibility of modernising the traditional approach of litigation in the public service where the State Attorney is charged with the responsibility of representing state departments in courts of law through the briefing of Counsel.

B1.5 Paint City and Wingfield Temporary Shelters in the Western Cape, 30 October 2020

Objective: The oversight visit came as a result of the meeting that was held with the DHA, the City of Cape Town (CoCT), the South African Human Rights Commission (SAHRC) and the UNHCR on 20 October 2020. Based on the report from the above stakeholders that access to both sites was controlled by foreign nationals and the total number of those at the site had dramatically increased since they were removed from the Central Methodist Church and outside the Cape Town Central Police Station.

Outstanding Recommendations

- i. The DHA and the CoCT should implement the decision of the Committee to integrate foreign nationals back into communities and proceed with the Countdown to Closure plan once it was safe to do so.
- ii. The DHA should repatriate to the country of origin those who refuse integration.

B1.6 Beitbridge, Limpopo and Lebombo, Mpumalanga 11 to 15 January 2021

Objective: To assess the impact of the congestion by migrants entering South Africa. A concern was raised that some migrants attempt to enter the country without the required documentation, such as passports and negative COVID-19 certificates. There were also reports that about 4 to 5 truck drivers died due to exhaustion while waiting to cross into Zimbabwe.

Outstanding Recommendations:

- i. The One-Stop Border Post (OSBP) should be implemented by the DHA as soon as possible at the Beitbridge and Lebombo Ports of Entry and the OSBP implementation plan with timeframes should be forwarded to the Committee as soon as possible.
- ii. The DHA should coordinate joint planning with neighbouring countries that border South Africa to ensure smooth operation at the POEs during the festive and peak seasons.
- iii. It is evident that no amount of border security deterrence will prevent illegal immigrants crossing into South Africa. The most crucial border security and management instrument is to promote political stability, good governance, and economic growth in the SADC region. Therefore, South Africa, through available multilateral forums and international relations instruments should endeavour to assist the region in improving their socio-economic conditions. This will require political will and determination from the country's executive.

B1.7 KwaZulu-Natal and Gauteng Provinces 1 to 6 August 2021

Objective: The purpose of the oversight visit was to assess the damage caused during the unrest in the two provinces and how quickly the Department of Home Affairs would be able to restore its services.

Outstanding Recommendations:

- i. Ensure that the Department of Home Affairs secure a big enough office space and staff contingent for the Mamelodi office.
- ii. The staff at Impendle Thusong Office should be trained as soon as possible to operate new safes and have burglar bars installed. The viability of strong rooms in some offices to be considered.
- iii. The relevant planning and risk committees needed to be established or made more efficient in preventing and addressing such security challenges including rapid deployment of more Mobile units.

B1.8 Government Printing Works, Pretoria Gauteng, 26 May 2021

Objective: The Public Servants Association (PSA) and the National Education, Health and Allied Workers' Union (NEHAWU) wrote a letter to the Committee and other government entities including the President, that an investigation should be instituted against the Executive Management of GPW for maladministration and elements of corruption. It was also alleged that the Executive Management

of GPW paid themselves exorbitant amounts of money as Covid-19 allowances disguising it as leave credits. The Committee also conducted oversight of the production facilities of the GPW.

Outstanding Recommendations:

- i. The Management and organised labour should dedicate more energy towards resolving some of the internal challenges that exist.
- ii. The committee urged the GPW to amplify their engagements with the Department of Public Works and Infrastructure to expedite the overhaul of the entire IT system to meet operational requirements.
- iii. Regarding human resources in the IT environment, the committee urged GPW to develop a strategy to augment skills and capacity, to ensure sustainability in the long run.
- iv. Consequence management must be implemented against anyone found to have committed acts of malfeasance.

B1.9 Joint Oversight Visit on Illegal Mining to Five South African Provinces, September to October 2022

Objective: The Portfolio Committees on Mineral Resources and Energy, Home Affairs and Police (hereafter, “the Committees”) undertook a joint oversight visit from 10 to 11 September 2022 to the Limpopo Province. The two-day joint oversight visit stemmed from an earlier joint oversight visit by the Portfolio Committees on Mineral Resources and Energy, and Police to establish facts regarding the gang-rape and robbery incident that had taken place on 28 July 2022 in West Village, Krugersdorp. The incident took place at a mine that holds a mining right, issued by the Department of Mineral Resources and Energy (DMRE). It was alleged that the perpetrators are illegal miners, mostly foreign nationals. This mine incident highlighted a bigger challenge that is illegal mining. For this reason, the visit by the Committees was broadly on illegal mining.

Subsequent to the Gauteng/Krugersdorp oversight, the Committees resolved that a much broader fact-finding oversight on illegal mining be conducted jointly by the Committees on Mineral Resources and Energy, Home Affairs and Police. The Committees resolved to visit five provinces where illegal mining is taking place.

Province	Area/Venue	Dates
Mpumalanga	<ul style="list-style-type: none"> • Barberton, Witbank 	7 and 8 October
Gauteng	<ul style="list-style-type: none"> • Roodepoort, Florida, Soweto • JHB CBD, Kimberly reef Outcrop, Alberton, Roodekop, Spring Gold 1 Gedex, Benoni Snake road 	18 September 09 October
Free State	<ul style="list-style-type: none"> • Welkom 	17 September
Limpopo	<ul style="list-style-type: none"> • Burgersfort and Steelpoort • Polokwane(Bergnek) 	10-11 September
North West	<ul style="list-style-type: none"> • Klerksdorp, Orkney, Steelfontein, Haartebeespoort, Rustenburg 	15-16 October

Outstanding DHA Recommendations:

- i. The success of the multidisciplinary approach in tackling illegal mining in Free State should be replicated in other provinces experiencing the same challenge. SAPS started a multi-disciplinary approach to deal with illicit mining by establishing joint Tactical Teams, a joint Operational Centre was established, and Harmony Gold Mine covered accommodation costs for SAPS members. During this operation, the main Syndicate Leader and two of his accomplices were convicted of murder and sentenced to life imprisonment on 21 October 2021.

It was found that the Syndicate Leader had two South African Identity Documents and he was not a South African citizen. It was reported that, during the court process, SAPS had to protect the judge, and the prosecutor and there was a threat to explode the court. The witnesses were put in a safe house in Mpumalanga and later removed to Cape Town. The safe house in Mpumalanga was attacked and fortunately, the witness was already in Cape Town.

Operation Knock-Out started on 1 July 2019 and ended on 31 August 2022. The operational and tactical concepts employed by this operation included the following:

- Closing the unused shafts such as ARM 7 that was used to facilitate food to the illegal miners who are working underground.
- Sweeping surface areas, shafts and underground areas of runners, illegal miners and undocumented foreign nationals.
- Securing plant areas and transportation of Gold Bearing Materials (GBM).
- Dedicated investigation teams and disruptive investigations.
- Security of the High Court, protection of prosecutors and judges.
- During Operation Knock Out, 4 985 arrests were made and 2 026 of those arrested were people from Lesotho, followed by South African citizens, Zimbabwe, Mozambique, Malawi, Senegal, Congo, Nigeria, Ghana, Pakistan and Bangladesh.

- ii. The Immigration Act 13 of 2002, particularly section 34(1)(b) and (d) must be reviewed to urgently address that undocumented foreign nationals must appear in court in person within 48 hours for the magistrates to confirm their deportation. The DHA has approached the Portfolio Committee on Home Affairs to address this single Amendment and Parliament legal section has advised that the DHA must initiate the amendment themselves. Since section 34 of the Immigration Act was not amended, some Magistrates refuse to confirm deportations and undocumented migrants are released.

B1.10 Permitting Section and Menlyn Mall, Pretoria, 30 March 2023

Objective: To follow up on the report of the Lubisi Ministerial committee recommendations on the review of all permits and ongoing backlogs/delays in permit provision.

Outstanding Recommendations:

- i. The Visa Adjudication System needs to be upgraded to allow for filtering incomplete applications.
- ii. The revised Public Private Partnership tender agreement with a Visa Services Provider needs to dictate that incomplete applications should not be allowed by the system and to require pre-approval by applicants to verify their finances with banks.
- iii. The DHA have more adjudicators and inspectors but more are needed to be in line with national objectives around economic development and tourism.

- iv. DHA to provide quarterly reports on addressing permitting backlogs.
- v. An oversight visit to VFS services to be considered along with the court order preventing refusal of incomplete applications.
- vi. New permits may add additional work and will need overview of non-APP permits.
- vii. Follow up on why central adjudication hub is not being implemented to address the issues of fraud in permit applications in missions.
- viii. Continue to consider improving on bottlenecks through the likes of delegation in the visa and permit application process.
- ix. Monitor individual performance targets and consider adjudication committees or performance dashboards to fast track multiple level approval.
- x.

B1. 11 ELECTION PREPARATIONS AND VISA FACILITATION SERVICES.

The Portfolio Committee on Home Affairs conducted an oversight visit to the Visa Facilitation Services (VFS) and the Independent Electoral Commission (IEC), reports as follows:

1. Introduction

In 2023, Parliament passed the Electoral Amendment Bill and in 2024 it finalised the related Electoral Matters Amendment Bill. These will include the participation of independent candidates in the National and Provincial Elections (NPE) in 2024. There would be three (3) ballot papers; namely, 1) the Compensatory Ballot, which is national to national, and it would only be political parties; 2) the Regional ballot paper, which is the region to national and this will have political parties and independent candidates and 3) the provincial ballot paper, that is the election of the provincial legislatures.

The purpose of the oversight was to assess the readiness of the IEC for the National and Provincial Elections in 2024 given that independent candidates and other related provisions are being included in the upcoming elections for the first time. This will also mean new ballot papers and regulations after amendments to Electoral legislation. Members of the Committee were assured through interactions with all the offices and presentations that the IEC is implementing all the provisions in their plans, budgets, and new legislative regulations.

Whilst in Gauteng, the Committee used the opportunity to address one of the major legacy issues that have not been addressed due to working on Electoral Legislation, namely an oversight visit to VFS in Pretoria. VFS is an entity that the Department of Home Affairs (DHA) has contracted to receive applications for visas and permits from foreign nationals. The applications are submitted to VFS and in turn, these applications are forwarded to the DHA to assess and finalize. The DHA has a huge backlog to process these applications and is in the process of appointing a new service provider. The Committee engaged the service provider at their offices and the DHA

migration management at their head office to ensure that any issues related to the current contract renewal are addressed and were qu40 reassured that the related services are being adequately addressed.

II. Delegation

Members

Mr. MS Chabane, Chairperson ANC

Ms TI Legwase, ANC

Ms M Modise, ANC

Ms MA Molekwa, ANC

Mr KB Pillay, ANC

Ms A Ramolobeng (alternate), ANC

Ms TA Khanyile DA

Mr AC Roos, DA

Staff

Mr. A Salmon: Content Advisor

Mr. T. Arendse: Committee Assistant

Mr. ME Molepo: Principal Communication Officer

III. DHA Hallmark Head Office

The Chairperson of the Committee greeted and appreciated the presence of all the attendees and introduced the programme. He then gave an outline and introduced members of the delegation. Apologies were noted for some members of Parliament that were delayed and the DHA apologized for the Minister, Director General (DG) and Chief Financial Officer (CFO). Mr. Modiri Mathews. Acting Deputy DG: Immigration was leading the delegation from Home Affairs accompanied by Acting Chief Director: Permits Mr. Nischal Jayanaran and Liaisons, Mr. Riaz Moosa and Mr. Muzi Njoko.

Mr Mathews indicated that part of the Immigration business plan was to transform and update the service delivery model to meet increasing permit demands. Until the proclamation of the 2014 regulations on Immigration, agents were handing bulk applications without the applicant present. This along with the same counters being used for Civic and Immigration affairs was causing security and logistics concerns in the Immigration Branch. It was thus decided to adopt the model used in countries attracting many migrants, namely outsourcing visa services.

There are now 18 countries that offer outsourced visa services for South Africa abroad. Executive suites within some of these offices allow for VIP “one-stop-shop” services for executives.

In the process of applying to readvertise the tender for the visa services, the DHA was advised by the National Treasury to initiate a Public Private Partnership (PPP) since there are no charges to the DHA. A transaction advisor was appointed to assess this, but the CTM consortium that was appointed, couldn't proceed as promised, so DHA cancelled the contract (which is being legally contested by CTM).

The current renewed VFS contract ends in December 2024. After which the next service provider will be appointed for 3 years before the PPP will be ready. The DHA is in a tender process to appoint a service provider.

Chief Director of Asylum Seeker and Civics was seconded as an analyst to work on the backlog project to break down trends, processes, and timing to start dealing with the backlog from 2018. Significant progress is expected to be made in the next 3 months to deal with applications from 2021, especially student Visas. In addition, queries by MPs are still being prioritised.

Questions

1. Members queried the lack of presence of the DG, CEO and CFO not prioritising the meeting and whether the newly acting DDG was competent to address all the issues.
2. What training and capacity measures are being implemented to address shortages?
3. Clarity was sought on the status of the CTM consortium. What are the challenges with PPP and what was the extent of the feasibility study that was done?

4. How will the increase in deportation expenditure be addressed?
5. How can DHA prevent incomplete applications and if people are applying online, what are VFS needed for? Why not spend the money on a website and keep the revenue?
6. Is the central adjudication hub to address corruption and local offices functioning given the lack of legally qualified staff and if not, how is it being addressed?
7. Where is the development of the system upgrade to get real-time tracking? Will this allow clients to track their own applications online?
8. Can Home Affairs officers at VFS fast-track 90-day applications?
9. Is there a prioritisation of spousal visas for couples with local marriage certificates?
10. Why are the VFS and Home Affairs' systems not synchronised on application status? i.e. why are permits finalised at DHA not updated on the VFS website? How long before they are updated?
11. What is the backlog number and dates of the oldest applications?
12. How is the security of international applications ensured? Some documents appear to not have arrived when they are recorded as sent.
13. The delay caused by appeals at a high level is giving people open-ended visas.
14. How is it planned to clear a 3-year backlog in three months when progress has been so slow in the past?
15. Why are there still no responses to outstanding member's queries?
16. What is happening with ZEP and Lesotho Extension Permits?

Answers

Mr Mathews indicated that he is the longest appointed immigration employee and could comfortably deal with all the issues raised. He again apologised for the absence of the DG and Minister, who would join the delegation at the IEC.

Whilst the DHA was only at 39% of its ideal capacity, the Lindela deportation facility was partly converted to a learning campus, and a new cohort of staff at 32 missions were recently trained and deployed.

Additional funding received from the criminal asset recovery programme was used to procure a 65-seat bus improving on the deportati~~on~~ process and cost.

The current extension for all exemption permits is a single certificate for all countries rather than the former stickers, signed by the DG not impacted by the service provider's functions.

On incomplete applications, it was ruled in a High Court case that third-party service providers like VFS can't refuse applications that the DHA is mandated to do.

The e-visa programme is being piloted for tourists in 35 countries. The process to get them on the Movement Control System is still being finalised. But usually processed within 48 hours and those that fail can reapply with the missing documents. This could eventually replace VFS, but the ICT process is still being tested.

Japan, Germany and France can do e-visa online application, it is now also being rolled out for intercompany transfers and it is being adjudicated by recently appointed law graduates. There is also a pilot in London to do fingerprints digitally to cut on slow diplomatic bag process.

On the 90-day visa extension, regular travellers without issues should be decided immediately. Visit and study permits should also be immediate. These are the backlogs that were cleared by sharing databases with universities.

Printing is done but dispatch can take time which adds to the backlog of 189 000 (after 40 000 duplicates were removed). Of these, 30 000 are awaiting dispatch and shouldn't be there after analysis and should also have a track and trace system like civics.

The bulk of backlog applications are Spousal and Permanent Residence permits. There should be better analysis before adjudicating begins to prioritise compliant applications. Online monitoring will come as the e-visa expands.

The Vulindlela report implementation took out some visa requirements and introduced remote workers and trusted employer fast-tracking; all of which will all cut down on application times going forward.

The Members' queries project has listed all officials dealing with applications and all their actions are automatically recorded along with the time taken per application, officials' names and bottlenecks in staff productivity are monitored to improve accountability. In the Permits section, targets for the 1st quarter only PR applications are behind (at 60%).

The PPP process research was due to be done by CTM but was cancelled due to their internal issues. They are contesting this and thus the PPP will take longer and so an open call for tender proposals is being completed in the interim.

The Call centre was down for a few months whilst training was being done on CRS (case resolution system) for them to address court orders and particular members' queries for which they have to account to the DG twice weekly.

There are 2 hubs in Pretoria, one at the DHA head office receives all applications in and out of the Department and the one in Brooklyn coordinates receiving and returning applications to clients in Pretoria and across the country. The Hub also handles passport applications for South Africans in the United Kingdom.

There are 14 staff here, 4 dealing with passports. The process is simple but meticulous. There are daily dispatches from DHA of outcomes. From which office and to whom is quality checked along with that all documents are present and recorded at each step. The Hub was started 6 years ago to ensure that no documents are lost in dispatch. Permits or rejection letters are placed in tamper evident envelopes for security and sent to Brooklyn. Staff do not know the contents below a certain rank. Hard copy applications are sent from Brooklyn to the Hallmark hub along with the electronically scanned digital versions and biometrics and then sent to the relevant DHA offices.

The trial for RSA passport electronic applications from London, Manchester and Edenborough come directly to the DHA where they are printed in a far quicker process. This includes photos which are submitted to BVR in Home Affairs where security confirms no tampering and returns the documents when done.

This office also handles special projects like the Zimbabwean and Lesotho Exemption permits. They receive an average of 600 applications a day and dispatch around 800 with peaks of 1000 up to 2500. They have the capacity to process up to 1300 applications per day.

Questions & Answers

1. Where are hard copies stored?

They are stored in Brooklyn and disposed of by an outside shredding company with DHA as witnesses. Some documents are returned to the DHA registry.

2. How many applications were received today (by 12 pm)?

There is a physical and digital reconciliation which showed 121 applications thus far received.

3. How long before completed applications arrive at the 12 branches around the country?

The Service Level Agreement is for 3 days. If received before noon, applications are sent the same day to Brooklyn and then available at offices on the 3rd day.

4. When is the system updated as complete? On dispatch or arrival? Queries to members show that applications completed at Home Affairs are not yet shown as complete at DHA.

There are 7 stages logged in the application process which can be checked online or SMS'd at a cost. DHA internal processes are not dealt with in meetings held with DHA.

5. How is it possible that a document could have been picked up by the wrong person?

Unless official power of attorney with ID or Biometric, this is not possible and VFS are not aware of such a case.

6. Do you receive inquiries?

Yes, there is a VFS call centre and designated single point of contact within the DHA.

7. How are UK passport applications dealt with?

It takes 3 to 5 days to receive and 3 to 5 days to send. Total processing time including DHA is 3 weeks.

8. Are there system downtimes?

There are redundant connections, Wi-Fi and LAN. No downtime unless the whole country is effected affected. If this office can't run...Brooklyn can take over.

9. What happens with incomplete applications?

VFS have to receive all applications because they are not authorised to adjudicate in terms of the law, but they make sure the applicant signs that they are aware the application is incomplete and mark the application as incomplete.

10. What causes backlogs?

None so far but could occur if haphazard high demand but VFS have the capacity for overtime if necessary.

11. Why are there backlogs?

The DDG for Immigration indicated that analysis shows delays between printing and dispatching which could be improved on.

V. VFS Brooklyn hub/service centre

After introductions, the Committee was taken on a walkabout of the facility where the process for applicants was explained. New and renewal applicants go online to make appointments and pay online or at the office, where security vets and then front desk checks their documents. Walk-in status checks are also possible, but most applicants check online. There is a premium lounge where all 3 processes are done at one desk for an additional fee of R550 to the application of R1100. There is a quality control checklist for each type of

application, a submission interview and then a recording of biometrics. Visitors' application has fewer requirements and time than ~~46~~ instance Permanent Residence (PR).

There are also walk-ins allowed to use a terminal to make an application with assistance if necessary. Applications can take longer if the police clearance certificates with external provider take longer and if they have marks on their records. VFS has been in operation for 9 years with no backlogs.

A ticket system provided service provider shows when clients will be served via recorded voice announcements and on screens. Collections don't need appointments and applicants can check online and go directly to a separate collection desk.

The call centre allows for the checking of application status and services several foreign country visa and DHA applications. There is a manager disseminating calls to 38 operators automatically and a quality controller monitoring training needs. There is a call waiting system which means that all calls should be answered, as well as an automated voice reply. There are dedicated operators for the Special Permit applications.

A scanning office converts hard copies with signatures to digital copies with 3 stages of quality control as they come in and out. Original applications and receipts are kept and needed by the applicant for collection. Applicants co-sign acknowledgement where required documents are not included.

There are 21 country missions serviced by VFS in Pretoria for South Africans applying for foreign visas.

VFS Presentation

The Chairperson introduced the delegation after the walkabout and indicated that we all desire improved service for our clients. The work of VFS is very much appreciated as it has been operating for over the last 8 years. He indicated that although there was a deliberation in the Committee on the contract and its extension, weaknesses are raised as a way of improving services. There was some disappointment by members of an employee who couldn't explain his job as a document scanner after a member tried to sense the service delivery from a hands-on perspective. Mr. Viswanathan: Head of VFS for Sub-Saharan Africa made a presentation indicating the following:

VFS established 14 visa and permit facilitation centres (VFCs) across 9 provinces in South Africa, they also established premium visa and permit facilitation at 4 centres for corporate customers of the Department of Home Affairs in partnership with Gauteng Growth and Development Agency (GGDA). VFS implemented robust and pro-active stakeholder engagement, with Press and Media; Immigration practitioners; and Community and Government agencies. VFS efficiently manage more than 100,000 visa and permit renewal applications annually. VFS have been in RSA since 2013 and serves RSA foreign missions in 18 countries abroad with 45 centres. They have 283 staff of which only 11 are foreign. There are now premium offices in Joburg and now Cape Town and Durban offering ease for corporate clients. Reasons for delays beyond 3 days relate to police clearance.

Sr. No	Country	VAC Location	Application Centre
1	India	Delhi/Mumbai/Kolkata/Gurgaon/Pune/Bangalore/Ahmedabad/Goa	9
2	Nigeria	Lagos/Abuja/Port Harcourt	3
3	China	Beijing/Shanghai/Chengdu/Guangzhou/Wuhan/Xi'an/Shenyang, Hangzhou/ Jinan/ CHONGQING/ KUNMING	11
4	Angola	Luanda	1
5	DRC	Kinshasa/Lubumbashi	2
6	Kenya	Nairobi	1
7	Ghana	Accra	1
8	Uganda	Kampala	1
9	United Kingdom	London/Edinburgh and Manchester	3
10	Zimbabwe	Harare, Bulawayo	2
11	Botswana	Gaborone	1
12	Iran	Tehran	1
13	UAE	Dubai	1
14	Mongolia	Ulaanbaatar	1
15	Senegal	Dakar	1
16	Pakistan	Karachi, Lahore, Islamabad	3
17	Philippines	Manila	1
18	New Zealand	Wellington and Auckland	2

VFS also handle the Migrant Registration Project – Zimbabwe Special Permits (ZSP) & Lesotho Special Permits (LSP). VFS's role here is limited to providing administrative functions of receiving applications and collecting biometric data from applicants across the country and sending them through to the Department of Home Affairs for adjudication. This includes:

- Online application process
- Appointment booking through call center
- Biometric solution and enrolment
- Dedicated Website
- Online track and trace
- Automated Police clearance – Integration with the South African police database
- Validation of nationality on the national population register (NPR) for Lesotho nations
- Extensive media and stakeholder engagement

- Established 10 visa and permit facilitation centres (VFCs) across 9 provinces of South Africa (4 new temporary VFCs & 6 existing)
- Fully compliant mobile biometric enrolment services for remote locations
- Outreach programs/Mobile Camps at the SA- Lesotho borders
- Reached out to the interiors of South Africa and conducted 30 outreach programs covering farms/mines in 9 provinces.

The ZSP and LSP project with VFS enabled the Department of Home Affairs (DHA) to meet its deadline to complete the program.

The applications received across all the 11 Visa Facilitation Centres will be forwarded to the Pretoria Scanning Hub on the next day of submission for documents.

VFS are World leader in biometric enrolment services. Outstanding track record of delivering secure, cost-effective and reliable biometric enrolment capabilities doing End-to-end biometric enrolment services for 34 governments across 118 countries. VFS processed over 119+ million biometric enrolments in 1500+ Enrolment stations globally.

Table 2: VFS global presence

Global Presence



Questions

1. Are offices in other provinces similar to this?
2. Why is there a centralised hub rather than directly sending completed applications to applicants from the regional office?
3. What is the local involvement of the international ownership of the company?
4. What can be done to increase gender equity in the management of VFS?
5. How are VFS helping address the Immigration application backlog?
6. How does online track and trace work since there are cases where the completed status from DHA isn't reflected on the VFS website?
7. What verification services are available to clients?
8. What can DHA learn from VFS? For instance, what about replacing the Diplomatic Bag services?
9. Have the Lubisi report recommendations affected the work of VFS?
10. Are there backlogs influenced by the VFS processes?

Answers by VFS

1. All offices are the same large or small according to a branding manual.
2. There are two hubs because Brooklyn digitises physical files and reconciliates sending and receiving, and the one at DHA ensures that everything is sent and received.
3. Moseko administrators is the local implementation partner for VFS.
4. There are incentives working at a global level to increase women and VFS is catching up in South Africa.
5. Track and trace are mapped at each stage but not mapped directly to DHA processes until physical documents are received. If they were given access to this data, it could be included. There are discussions on doing this with live capture but there are security considerations.
6. Loadshedding, despite generators can slow the internet and thus submission of information within the target 3 days.

Answers by DHA

1. There is a reconsideration of a digital application process run by the DHA being trialled in the United Kingdom.
2. The tender is open to all parties and the PPP is being managed within the national treasury to appoint an advisor.
3. The Lubisi report president signed off full investigations including lifestyle audits.

VI. IEC HEAD OFFICE VISIT

The Chairperson of the Committee, Hon. Chabane, introduced the delegation of members and the purpose of the oversight, namely, to have a final view of election preparations on new legal provisions by the Committee. The issues of the electoral court would not be considered fully since they are still ongoing. The meeting at this busy time by all the Commissioners is much appreciated given the busy schedule of the Commission on the Electoral Timetable.

Introduction by the Chairperson of the IEC

Mr Moepya, welcomed the oversight and work of the Committee and indicated that never before this late in the electoral timetable; only 33 days prior to the elections; has there been such a high case load of those wishing to contest the election. It is uncertain and not ideal how the courts should be dealing with these matters, so long after the proclamation of the election. Unlike in the local government elections where bi-elections cease; these continue as recently as the last week, so there could also be objections related to this. There are also potential complaints related to the Electoral Code of Conduct. It is hoped the interaction will clarify the integrity of the Elections, which has been brought into question of late. There are many more contestants; around 15000 whereas there are only 887 seats. So, there will be many discontent applicants.

Presentation by the Chief Electoral Officer

Mr. Mamobolo, indicated the pronouncement of the Elections after consultations between the President, Provincial Premiers and the IEC on 22 February, was followed by consultation with Political Liaison Committees soon after. After two voter registration weekends, the total registered voters were 27 782 477, the majority were in Gauteng, followed by KwaZulu Natal and together make up 44% of the country. Online voter registration was opened in December 2023 for voters abroad and in January 2024 in Missions, amounting to around 58 000 voters on the international segment.

All political parties were allowed to inspect the Voters Roll before it was certified and there were around 20 objections which the IEC investigated and made determinations on resolving the issues. The certified roll has 55% female and 45% male contestants. There are 22 292 voting districts and stations. The voting age population is estimated by STATSSA to be around 39 million, giving around 70% of eligible voters being registered. Only 48% of 20-29 are registered but this is up from only 20% in previous years due to online voter registration. The registration of 18 to 19 years olds, although also low at 27%, has increased by over 200% from 2021. Research indicates that the limitations of this group were due to access to data, so mobile service providers were approached to zero-rate data for the IEC website, but only Vodacom complied and relatively late in the process, so this must be looked at going forward.

Interestingly, London became the biggest registration office locally or abroad with around 19000 out of 54 000 registrations. These missions are not optimal as voting stations, so IEC is working with DIRCO to make adequate arrangements.

There has been a historical decline in voter participation over the years, but a marginal increase is expected in 2024 given the particular political dynamics at present, including new parties and independents. There have been 31 mobile voting stations introduced for sparsely populated areas along with 954 temporary voting stations. These arrangements are being finalised. IEC survey data indicates what provisions such as electricity are needed in each station. Many don't have landlines. Leases have been finalised for private properties.

Most provisions are at provincial warehouses which will commence delivery to local offices on the 15 May. The printing of Ballots is still outstanding. Voter management devices (VMDs) are being maintained and uploaded with the voters' roll, the registered staff, and a ballot tracking app. Presiding officers were at 98% and 94% of deputies were contracted and uploaded. They are being trained and will receive refresher training.

There are a total of 70 parties registered out of 115 applicants after disqualifications. There are 52 on the National PR Ballot along with 11 Independents. This will mean a dual-column ballot paper. This was done due to the printing machine paper limitations as well as it being confusing to have an additional ballot paper to the three already needed. The Constitutional Court confirmed that the 200/200 split of National and regional seats is in order.

Of the 14 903 candidates including 44 in the 18-19 years old, the majority are in the 40 to 49 years old range (4355 candidates).

As the number of candidates increased over the years the amount of parties that have succeeded in getting seats has remained around the same (14-16). Because there are more parties registered for Gauteng and Limpopo, these will take longer to count. This has been a point of contention in the past. There are 31 parties contesting for the first time. There are 3 parties that are contesting the invalidity of their applications at the Constitutional Court, which will be heard on the 9th of May. It has helped to have higher signature requirements to limit the number of applicant parties and thus reducing complexity. The difficulty is that it is impossible to verify signatures.

The results process ensures that there is no question of the validity of the outcomes, including double scanning of outcomes and independent auditors checking of captured versus result slip outcomes. Audited results are also encrypted before being sent to two separate data sites so there are three separate copies in total. Results are also sent via an app to the registered media houses. There will be 3 results slips for the three ballots. Given that the vote counting load has increased by around 50%, the results are planned for either

1st or 2nd June. These will then be transferred to the National and Provincial legislatures and the Chief Justice to arrange for the first sitting of the house. A number of measures have been put in place to ensure cyber security including:

- Relocation of the IEC website – completed in October 2023.
- SSA security audit completed awaiting final report.
- Two external penetration tests on the vulnerability of the network with fixes applied.
- An independent security audit is currently underway & parties can do so too if they wish.
- Mobile applications component completed.
- Vulnerability testing is also currently underway.
- Results System Audit commenced on 9 April 2024.

Table 3: Elections Results Process



IEC has been working with the Ministry of Electricity on ensuring that there won't be any planned outages and maintenance although they can't ensure that there won't be any loadshedding. Not all voting stations will have generators, which will be procured along with more rechargeable lights.

IEC is also preparing for many potential legal contentions after results are released, primarily by ensuring there is proper training to not be open to critique of wrongdoing. The IEC has already approached senior counsel well ahead of time to deal with the cases. The JCPS cluster will soon meet to receive briefings on IEC preparations on security matters.

Commissioner Love then took over, adding that infrastructure preparation such as data connection issues during load shedding and temporary staff taking other opportunities at the last minute.

The next presentation dealt with the Voter Management Devices (VMD). At stage 5 of the elections, the voters roll is showing around 27 million registered voters. The voters' roll is compiled according to the relevant legislation and registration happens at registration offices, online and at IEC offices. The provisional roll is submitted to relevant role-players and IEC deals with objections and investigates and addresses them before the final roll is tabled.

Election data is shared with local and international role players and on the IEC website, which is a treasure of information, including a voting station finder, which is an IEC innovation and includes Google Street View as well as a ward counsel finder. There are free SMS, landline and now also mobile call information available as well as email and all major social media sites.

Results are also made available once verified across multiple platforms including an application for the media and other approved applicants down to the Voting District level. They are then able to generate their own visualisations of the data.

The VMD presentation indicated we can be proud of them since it was conceived of and customised in South Africa and is of military grade durability with versatile apps. They have touch screens with protective casing, a carry case, 2 microphones, an audio jack and a USB C charging cable. The smart tablet comes with an easy troubleshooting guide. There is centralised management of the VMD apps, usage and location that can be tracked if stolen or not functioning. The Committee Members were each given a VMD and a demonstration of how they function. There are the following apps: voting station monitor to track attendance, ballot checker, voter's roll, calculator and download manager.

The presiding officer must scan the Voting Station location QR to declare it open. Staff capture their attendance with their IDs. There are also backup staff in case some staff don't arrive. The device scans the number of ballots and their location at any given time. The voter's roll app checks if the voter is registered to vote in that voting station and what ballots they must receive. There is a continuous connection to allow needed data to be downloaded ahead of time despite a slow internet connection. The VMD scans the ID and Ballots' barcodes. There is a protocol that asks for a voter's address if it is not recorded.

It was demonstrated how the prevention of duplication worked on the VMD even though the devices were not connected to actual data yet and IEC could arrange to have some members witness this actual operation on the special voting day. Apps and VMDs can crash

but there are 38 000 VMDs although there are only around 23 282 Voting Stations, and there are area managers in each ward across the country to deliver the buffer VMDs if troubleshooting and technical call support does not succeed. Budget constraints mean that 100% of backup devices could not be procured but there is access to multiple devices in a ward. If the voter is registered at another voting district, they will be redirected to the correct VD.

A few glitches were viewed on the devices and so it was indicated that these would be addressed, and a video of the fixes done would be submitted to the Committee. The VMDs dedicated to training had apparently had some of these issues. Members indicated that the running of the by-elections leaves them confident of the functioning of the National Election.

Questions.

1. Could voters at the wrong Voting District be redirected on the VMDs to the correct one?
2. The ratio of independents is 1 to 7 versus parties, which is not many. To what extent is this because of signature requirements?
3. In the results process, can a photo be taken on the VMDs of the ballots at the dispatch in addition to scanning barcodes as extra security?
4. Can the colours of results be coordinated with party colours on the results maps?
5. Could geofencing be used to prevent the VMDs from being used outside their designated area?
6. Can there be more education on what to do for those voting outside their district in terms of Section 24a of the Electoral Act, given that the by-elections had shown that many weren't registered where they came to vote.
7. Why are voting stations streams counted separately?
8. Why are Electoral Act section 107 transgressions of defacing electoral posters not forwarded to the Police?
9. What will be done for people who were moved as a group to another voting district such as for RDP housing?
10. How will the IEC address those who could not register for special votes?
11. What are the provisions for voting stations in terms of sanitation?
12. What was the nature of the 20 objections at the electoral courts?
13. Can the 24-hour verification of party lists after results, be used to amend errors picked up by parties?
14. The work done by the IEC is commendable given the short space of time since the Electoral Amendments.
15. In which areas have the 11 independent candidates registered to contest the election?

16. If there are violations of the electoral code of conduct, why can't the electoral court be the final step rather than all the stress caused by delays of appeals going to the Constitutional Court?
17. For each of the provinces' compensatory seats, is it based purely on the percentage that each candidate gets?
18. How will the VMDs be used for home visits and are there sufficient devices?
19. How many people have applied for voting outside of their voting area?
20. When will the new voting stations abroad as per the recent court ruling be opened?

Answers by the Minister of Home Affairs and IEC

The Minister indicated that no technology is problem free, so even if each voting station had two VMDs, there would be a need for human intervention if issues arise. There may be a need to look at section 19 of the Electoral Act to prevent abuse.

In terms of whether it would be picked up if a voter tries to vote twice; it was indicated that it was instantaneous on the VMDs (similar to how ATMs work) as well as being crossed off on a physical voter's roll and indelible ink marking fingers.

Amendments to the party lists are allowed at the discretion of the secretaries of the respective national and provincial legislatures after results are published by the IEC according to the current certified lists.

The electoral staff work together with the municipal staff and from a provincial level on disaster management. Eskom has brought forward maintenance to avert load shedding as much as possible during the election period starting at the special votes. Temporary water and toilets have been procured for those areas that need them. Steel frame tents are used in temporary voting stations as much as possible for stability.

Voters without addresses recorded must be captured by the VMDs and if it's in the province they are entitled to all 3 ballots. There have never been any records of bogus voting stations.

Reports of defacing of electoral posters are difficult to investigate because there are seldom specified persons accused with evidence for the electoral courts to investigate and then refer to the police. But it is a criminal case that carries the penalty of a fine if a charge is laid and it is convicted by the electoral court.

The colour schemes of results maps can be looked at to be aligned with party colours where possible. The photographing of results slips came as a suggestion too late from the Political Liaison Committees to be included in the current software but can be considered in future elections.

Currently, voters at the wrong voting station are only directed to a voting station number rather than a name but it can be investigated⁵⁶ this is feasible to code into the VMDs.

The cutoff date for notification by voters in terms of Section 24a of the Electoral Act that will be away from their designated voting station is the 17th of May. If they are outside the province only the national ballot is allowed, to prevent undue influence by the so-called bussing of voters. Special Voters receive all 3 ballots and applications for these closed on 3 May. There is an app that tracks the special votes covered per area per day to allow planning on both days.

In some small voting stations, it may be challenging to allow for even the 2 regulated party agents per voting station, but the presiding officer can allow for up to 8 party observers on a rotational basis to make provision for the 52 parties that are contesting.

Compensatory seats per province are calculated by quota which can only be calculated after the election. The means by which seat calculations are done will be communicated to members.

Voter education includes ongoing media relations on all the activities and the timelines with all media houses as well as visuals of the three ballots on television prior to news broadcasts. Actual adverts on the three ballots will go out 14 days prior to the election and will be run on TV, along with where to vote and documents required. There is also specific communication on special voting and voting outside one's registered voting district.

All the social media platforms and 150 community radio talk shows have also been covered with relevant information as well as communicating information on ATMs and advertising on please call me messages, print media and 30 billboards. Physical interactions will be reported in the annual report to have exceeded targets with around 2500 voter educators, with two per ward having three engagements per day. Lastly, many schools and most tertiary institutions were engaged alongside universities' own initiatives.

Recommendations

1. The DHA should address the delays observed between completing the printing of permits and dispatching them as soon as possible.
2. The introduction of a track and trace system like that used in civics must be accelerated for immigration documents.
3. The PPP on Visa facilitation should be concluded well ahead of the expiry of the current extended tender contract.
4. Colour schemes of political parties should be aligned on results maps and images where possible.
5. In future elections, the VMDs could be used to take photos of results slips for added security.

6. There needs to be a several day engagement with the future Portfolio Committee, in addition to PLCs on the effectiveness of the Electoral amendments and regulations, such as the ratio of independents that registered and won seats.
7. Investigate the inclusion on VMDs of the correct voting station names for voters who arrive at the wrong voting station.
8. The means by which compensatory seat calculations will be done should be communicated to members prior to the 2024 election.
9. The Committee will follow up on the zero rating of data for the IEC website by all mobile service providers in future elections to assist with both registration and voter education.
10. The timing for objections or appeals to candidate registration must be factored into the electoral timetable and court proceedings to prevent last-minute logistical arrangements by the IEC.

a) Challenges emerging

The following challenges emerged during the oversight visits:

- Provincial DHA managers do not always take note of issues raised in Parliament oversight reports.
- Busy legislative schedule and long recess periods hamper oversight in some years.
- Issues of current interest take precedent in oversight trips as opposed to visits planned in annual business plans.
- Insufficient time in 1 meeting a week to address all outstanding issues raised in reports.
- Oversight was not conducted to the Northern and Eastern Cape in the 5 year term as was the practice adopted from the 5th Parliament.

b) Issues for follow-up

The 7th Parliament should consider following up on the following concerns that arose:

- Need for more systematic report back by provinces on issues identified during oversight by the Committee.
- Ongoing engagement with DHA & SITA on down times.
- Follow up on the implementation of the Lubisi Permit Review recommendations and the subsequent delegation of functions back to lower-level staff by the DG to address the backlog created by the investigation and COVID 19.
- National Assembly to Consider making provision for more than one committee meeting per committee in a week.

B2.1 Stakeholders

Apart from the DHA, GPW, BMA and IEC, the PCHA has regular interactions with the Office of the Auditor General and the State Law Advisor. In addition, through its meetings, electoral reform workshop and joint/ oversight it has had interactions with several stakeholders including:

Government

- National Treasury
- Department of Public Works
- The State Information Technology Agency
- Department of Telecommunications
- Department of Minerals and Energy
- Department of Police
- The Select Committee on Security and Justice
- Portfolio Committee on Minerals and Energy
- Portfolio Committee on Police
- South African Local Government Association
- Mayors of Johannesburg and Ekurhuleni
- City of Cape Town
- Cape Town Metropolitan Police
- Municipal Demarcation Board
- Western Cape Provincial Joints

- South African Human Rights Commission
- Commission on Gender Equality
- Ministerial Advisory Committee on Electoral Reform

Non-Government

- Consortium for Refugees and Migrants in South Africa
- Lawyers for Human Rights
- Scalabrini Centre for Human Mobility in Africa
- United Nations High Commissioner for Refugees
- Women & Children at Concern
- Africa Unite
- Congolese Civil Society of South Africa
- Electoral Institute for Sustainable Democracy in Africa
- My Vote Counts
- Visa facilitation Services

B2.2 Public Hearings on Electoral Matters

The Most significant public engagement in the work of the Committee was in relation the Electoral Amendment Act 1 of 2023. On 11 June 2020, in the matter of the New Nation Movement NPC & others v. President of the Republic of South Africa & others [2020] ZACC 11, the Constitutional Court declared the Electoral Act, 1998 (Act No. 73 of 1998) (“the Act”), to be unconstitutional to the extent that it requires that adult citizens may be elected to the National Assembly and provincial legislatures only through their membership of political parties.

This declaration of unconstitutionality was held to be prospective from 11 June 2020, but its operation was suspended for 24 months to allow Parliament to remedy the defect in the Act giving rise to the unconstitutionality. As per the Constitutional Court order, the defect was meant to be corrected by 10 June 2022. Upon receiving notification of the ruling from the office of the Speaker, the Committee engaged the DHA and IEC in July and August 2020 whilst in the process of finalising another Electoral Laws Amendment Bill. In December 2020 Hon. Lekota introduced the private members Electoral Laws Second Amendment proposing more extensive electoral

reforms but including independent candidates. Mr Lekota presented to the Committee in February 2021 on the bill, but the Committee decided it would allow the DHA to conduct its own process on a Bill first.

The Committee then conducted a Joint Electoral Reform Workshop with the Select Committee on Security and Justice in March 2021 including a briefing by the Inter-Ministerial Committee on the Electoral System established by the DHA to consider the implementation of the ConCourt ruling as well as by Mr. Lekota on his Private members Bill. Based on the Recommendation of the Members in the Workshop and in collaboration with the DHA and IEC, the Committee staff drafted a detailed deadline document for all possible permutations of the amendments needed in April 2021. After repeated follow up correspondence, the Committee was finally again briefed by the IMC in December 2021 indicating an Amendment Bill was imminent.

On 10 January 2022, the Minister of Home Affairs introduced into Parliament the **Electoral Amendment Bill [B1 – 2022]** (“the Bill”), which was referred to the Portfolio Committee on Home Affairs for processing.

On 21 January 2022, the Bill was published for public comment. The closing date for such comments was 21 February 2022. On 8 February 2022, the Minister of Home Affairs was invited to brief the Committee on the contents of the Bill. The Committee received 107 written submissions. On 22 February it was decided to not proceed with Mr. Lekota’s Private members Bill in favour of the DHA Bill. On 1 and 2 March 2022, the Committee held virtual public hearings via Zoom. A total of 13 oral submissions were received from the following individuals and organisations:

- Africa School of Governance.
- One South Africa Movement.
- Mr Zolani Zonyani.
- Citizens Parliament.
- Outa.
- COSATU.
- Abatsha Force of Change.
- Independent Candidate Association.
- Inclusive Society Institute.
- 70s Group.
- New Nation Movement.
- Indigenous First Nation of South Africa.
- Council for the Advancement of South African Constitution

The Committee also conducted provincial public hearings in all nine (9) provinces from 7 – 23 March 2022. A total of 3 483 people⁶⁰ attended the public hearings and 610 made oral submissions. Of the 610 people who made the oral submissions, 389 supported the Bill and 222 rejected the Bill in its current format.

Due to the extensive public participation process that the Committee undertook as well as the complexity of the Bill, the Committee foresaw that it was not going to meet the Constitutional Court deadline of 10 June 2022 to finalise the processing of the Bill. Parliament thus, prior to the expiry of the deadline, approached the Constitutional Court to request an extension period of six (6) months to finalise the Bill. The Constitutional Court granted an extension until 10 December 2022 to complete the processing of the Bill.

In processing the Bill, the Committee invited the Department of Home Affairs (DHA), the Electoral Commission (IEC) and the Parliamentary Legal Service to comment on the report on public participation. The public participation report formed the basis of the committee deliberation, including comments from the DHA, IEC and the Parliamentary Legal Services. The Committee deliberated on the Bill on several occasions and also held meetings during the constituency period in June, July and October 2022.

Following its deliberations, the Committee proposed amendments to other sections of the Electoral Act, 1998, which were not part of the Bill, and also proposed other material changes to various definitions and clauses in the Bill. The Committee thus requested permission from the Assembly to extend the scope of the Bill in this regard. The request was made in terms of National Assembly Rule 286(4)(b) and (4)(c) on 30 August 2022. The Assembly granted permission to the Committee on 1 September 2022. On 2 September 2022, the Committee advertised these proposed amendments and called for public submissions by 16 September 2022 (2 weeks). The re-advertisement was to ensure that members of the public would have a chance to comment only on those proposed material amendments to the Bill.

Following this call for comments, a total of 258 submissions were received comprising 254 email submissions and 3 hand delivered submissions. Of the emails, 231 were short emails via the advocacy group Dear SA (excluding 23 duplicates). Of these there were 13 substantive submissions comprising over 100 pages of inputs. One submission from “Civil Society” had a total of 1218 signatures and from “Defend our Democracy” which was supported by 56 Organisations.

The Committee decided that it would only consider written submissions and there would not be any oral submissions in this second call for comment. The Committee considered all submissions received and deliberated on these on 20 and 27 September 2022 and 4 October 2022. As a result, there were five significant changes informed by these additional submissions and deliberations incorporated into the revised Bill [1B -2022].

The proposed amendments passed by the NCOP and returned to the National Assembly was referred to the Committee on 29 November 2022. On 30 November 2022, the Department of Home Affairs and the Independent Electoral Commission briefed the Committee on the NCOP's proposed amendments.

The Constitutional and Legal Services Office at Parliament ("CLSO") advised the Committee that before the Committee deliberates and decide to accept the proposed amendments from the NCOP, the Committee would first be required to re-advertise those amendments for public comment, due to the amendments resulting in a change of a material nature and certain amendments being completely new.

Given the nature of the NCOP's proposed amendments, the Committee resolved to advertise the NCOPs proposed amendments for public comment. The Committee also resolved that given the extensive nationwide consultation already conducted on the Bill; as well as the work still required by the Independent Electoral Commission to implement amendments before the next National Elections in 2024, it would not conduct public hearings again after calling for further comments on the Bill.

Due to the call for public comment on the NCOP's proposed amendments and the time given for such public comment to be submitted, it became clear that Parliament would not be able to pass the Bill before the Constitutional Court deadline of 10 December 2022, and therefore the Committee resolved to urgently apply for a further extension of the deadline to the Constitutional Court.

The Committee requested the CLSO to approach the Constitutional Court for an extension until 28 February 2023 to allow for public comment on the Bill as well as to consider and deliberate upon such comment. The Constitutional Court granted Parliament an extension until 28 February 2023 to finalise the Bill.

The Committee then re-advertised the proposed amendments from the NCOP on Parliament's website on 5 December 2022 and in the newspapers on 12 January 2023. The closing date for the submissions to be submitted was 27 January 2023. The Committee received 81 submissions. Of the 81 submissions received, 12 were substantive and 69 were short submissions through DearSA.

Below are individuals and organisations that made substantive submissions:

- Council for the Advancement of South African Constitution ("CASAC"),
- Inclusive Society Institute ("ISI").
- African Christian Democratic Party ("ACDP"),
- Organisation undoing tax abuse ("OUTA"),
- Independent Candidates Association ("ICA"),
- Defend our Democracy ("DOD"),
- ANC Peter Mokaba Region,

- Dr Michael Atkins,
- Mr Daniel Prinsloo,
- Vernon Hall & Roelof Pretorius,
- Valli Moosa, and
- Mzukisi Gaba,

On 1 February 2023, the Content Advisor presented a summary of the submissions and thereafter the Committee deliberated on the submissions. On 2 February 2023, the Department of Home Affairs, the Independent Electoral Commission and the CLSO responded to the submissions. Further deliberations took place on 7 February 2023.

The Committee considered and adopted the C-List on 8 February 2023. The Committee made further changes on the NCOP proposed amendments by lowering the 20 percent signature requirement to 15 percent for both independent candidates and new political parties in clauses three and six. The Electoral Reform Consultation Panel in Clause 23 would be appointed by the Minister of Home Affairs but also in consultation with Parliament and the IEC. The reporting of the findings of the Panel will also include Parliament. The Committee adopted the Bill and the report on 10 February 2023.

The Democratic Alliance (DA) objected to the Bill primarily due to concerns that independent candidates are excluded from election on the proportional representative list and that a minimum of agents able to observe the election process is not set.

Subsequent to the President's commencement of the related Electoral Amendment Act 1 of 2023 on 19 June 2023, the DHA, IEC, the Committee and Parliament's legal services commenced with the process of the needed consequential amendment bill that would include consequential amendments to several pieces of legislation including the Political Party Funding Act, the Electoral Commission Act and the Communications Act. This process was also deferred to the DHA which took over 5 months to get the Bill to Parliament despite assuring the Committee it could draft the legislation within 6 weeks.

The Portfolio Committee on Home Affairs and the Select Committee on Security and Justice agreed to a joint briefing by the Minister of Home Affairs on the contents of the **Electoral Matters Amendment Bill (42 of 2023)**. The joint briefing took place on 12 December 2023. The Committees also jointly advertised for public comment. The call for public comments commenced on 14 December 2023 on the Parliament website and social media. This was followed by advertisements in the print media and radio from 11 January 2024. The closing date for public comments was on 26 January 2024. The Committees received 13 submissions and 10 of these submissions were substantive and the other three (3) were short support of the Bill.

On 6 January 2024, the Committees conducted a virtual public hearing and the Content Advisor briefed the Committees on the summary of the submissions, followed by public hearings. The following organisations and individuals submitted written and oral inputs to the Committees:

- Inclusive Society Institute,
- My Vote Counts,
- Dr Albertus Schoeman,
- People’s Legal Centre and #UniteBehind,
- Council for the Advancement of the South African Constitution (CASAC),
- Mr Michael Atkins,
- Congress of South African Trade Union (Cosatu),
- Zackie2024 NPC,
- African National Congress (ANC),
- Prof. Dirk Kotze from Unisa

The Committees invited the Portfolio Committee on Communications and Digital Technologies; the Joint Standing Committee on Financial Management of Parliament, the Standing Committee on Finance, and the Select Committee on Finance to attend the public hearings.

The Department of Communications and Digital Technologies, Parliament, the DHA, the IEC and Parliament Legal Services attended the public hearings and responded to the submissions and the public hearings on 9 February 2024. After receiving the inputs from all these stakeholders, the inputs from the submissions and the public hearings were considered. On 14 February 2024, the Portfolio Committee on Home Affairs agreed that the Electoral Matters Amendment Bill [B 42 – 2023] was desirable. This was followed by the deliberations on the Bill.

On 19 and 20 February 2024, the Committee deliberated on the Bill and requested the State Law Advisers to start with the drafting of the A-version of the Bill [B 42A - 2023]. On 22 February 2024, the State Law Advisers briefed the Committee on the A version of the Bill and approved it. This was followed by clause-by-clause deliberations to ensure that all changes had been incorporated on 1 March 2024.

After the clause-by-clause deliberations on 1 March 2024, the Committee considered and adopted both A list and B versions of the Bill as a true reflection of the committee’s deliberations. The following Political Parties expressed their views: The African National Congress (ANC) and Economic Freedom Fighters (EFF) supported the Bill. Democratic Alliance (DA), African Christian Democratic Party (ACDP), Freedom Front Plus (FF+) and Inkatha Freedom Party (IFP) objected to the Bill primarily due to concerns about the

impact on smaller parties of changing the funding formula and pending regulations related to disclosure threshold and upper donation limits.

B2.3 International Engagement, Statutory Appointments, Petitions and Interventions

B2.3.1 Study tours undertaken

Applications for a joint study tour by the Committee and the Select Committee on Security and Justice to inquire into electronic voting and alternative voting systems in Brazil and the USA were not approved on 4 different occasions by the House Chair over a period of more than a year. This has hampered the garnering of an international perspective on electoral reform, alternate electoral systems and the possibility of electronic voting by the Committees.

B.2.3.2 Statutory appointments

The following appointment processes were referred to the committee and the resultant statutory appointments were made:

Date	Type of appointment	Period of appointment	Status of Report
2022	Commissioner	2022 to 27	adopted
2023	Commissioner	2023 to 28	adopted

Challenges emerging

The following challenges emerged for study tours and statutory appointments:

- Applications for a joint study tour by the Committee and the Select Committee on Security and Justice to inquire into electronic voting and alternative voting systems in Brazil and the USA were not approved on 4 different occasions by the House Chair over a period of more than a year.
- The short list for the 2022 and 2023 Electoral commissioners from the Chief Justice were late, thus leaving too long a vacancy period in the Commission.

Issues for follow-up

The 7th Parliament should consider following up on the following concerns that arose:

- a) Prioritise the Committee's Application to learn about Electronic Voting and Alternative Electoral Systems in Brazil (and/or the United States of America) prior to the electoral system reforms required by the section 23 of the Electoral Amendment Act 2023, the State Capture Report Recommendations and High Level Panel Assessment of Key Legislation.
- b) Committee Members should be considered to form part of Parliamentary Electoral Observer Missions in Africa in particular as well as further afield.

- c) The process for the new appointment of electoral Commissioners needs to commence at least 3 months prior to the expiry of the current Commissioners' contracts and well ahead of 2027 and 2028.

B2.3.3. Establishment of the Electoral Reform Consultation Panel.

The Portfolio Committee on Home Affairs (the Committee), having considered the letter from the Minister of Home Affairs (the Minister) to the Acting Speaker of the National Assembly regarding the list of nominees to serve on the Electoral Reform Consultation Panel (the Panel) dated 2 May 2024, reports as follows:

1. Introduction.

Parliament passed the Electoral Amendment Bill, [B1D-2022] on 23 February 2023, and the President assented to it, the Electoral Amendment Act, 2023 (Act No. 1 of 2023) (the Electoral Amendment Act) on 13 April 2023. The Electoral Amendment Act seeks to provide for independent candidates to contest the election of the National and Provincial legislatures.

Section 23 of the Electoral Amendment Act requires the Minister to establish the Panel within four (4) months after the commencement of the Electoral Amendment Act. The Electoral Amendment Act commenced on 19 June 2023.

The functions of the Panel are to independently investigate, consult on, report on and make recommendations in respect of potential reforms of the electoral system for the election of the National Assembly and the election of the provincial legislatures, in respect of the elections to be held after the 2024 elections.

The Panel must:

- prior to the 2024 elections, engage in research and consider the issues falling within its functions;
- after the 2024 elections, undertake a public participation process regarding the issues falling within its functions; and
- from the date of its establishment, submit a report to the Minister every three months on its progress.

The Electoral Amendment Act states that the Panel must, within 12 months of the date of the 2024 elections, submit a report to the Minister of Home Affairs on the possible options for electoral reform for the election of the National Assembly and the election of the provincial legislatures.

The report of the Panel must, for each proposed electoral system or electoral reform identified by it, include the following:

- (a) reasons, potential advantages, and disadvantages;
- (b) legal and constitutional implications; and
- (c) financial implications.

The report must also reflect the views of members of the Panel as to the possible options and recommendations for the electoral reform.

In order to establish and constitute the Panel, the Minister must call on the public and any interested parties to nominate fit and qualified proper South African citizens who:

- have the necessary skills, expertise, experience, knowledge, or academic qualifications in the administration and running of elections or constitutional law or electoral systems;
- are not members of Parliament or any provincial legislature; and
- have not, in the past 12 months, been office-bearers or employees of any political party.

The Minister must then, in consultation with the Independent Electoral Commission (IEC), and after approval by the National Assembly, appoint nine (9) members to the Panel from such nominated persons who satisfy the criteria. The Minister must also appoint one of the members of the Panel as the Chairperson of the Panel.

2. Parliamentary process.

On 6 May 2024, the Committee received a copy of the letter addressed to the Acting Speaker of the National Assembly from the Minister, dated 2 May 2024, together with an explanatory memorandum containing the list of names of the nine (9) recommended nominees to serve on the Panel, for consideration and reporting by the Committee.

In the letter, the Minister indicated that on 19 May 2023, after consultation with the IEC, a notice was published calling for members of the public and any interested party to nominate fit and qualified South African citizens to serve on the Panel. The Department of Home Affairs (the Department) realised that the notice was issued before the commencement of the Electoral Amendment Act on 19 June 2023. After the proclamation of the Electoral Amendment Act, the Department and the IEC published a second notice to extend the notice period that was published on 19 May 2023 until 11 August 2023. This second notice was published on 21 July 2023.

On 30 November 2023, the Minister briefed the joint meeting of the Portfolio Committee on Home Affairs and the Select Committee on Security and Justice regarding the steps that the Minister and IEC had undertaken in order to obtain nominations for the Panel. The Minister also provided a list of names of preferred candidates to serve on the Panel. After deliberations, the Committees resolved that the list did not have enough demographic representation and requested that the Minister to publish a new notice calling for further nominations.

On 12 December 2023, after consultation with the IEC, the Department published a fresh notice calling for members of the public or any interested party to nominate fit and qualified South Africans to serve as members of the Panel. The closing date for the submission of names was 19 January 2024.

The Minister consulted with the IEC on 24 March 2024 and an agreement was reached on the names of recommended nominees to serve on the Panel. In the letter to the Acting Speaker of the National Assembly dated 2 May 2024, the Minister recommends the following names for approval by the National Assembly to serve on the Panel:

- a. Ms Faith Pansy Dikeledi Tlakula.
- b. Ms Mmatsie Mooki.
- c. Ms Tomsie Pricilla Dlamini.
- d. Adv. Richard Khaliphile Sizani.
- e. Dr Michael Oliver Sutcliffe.
- f. Mr Phatudi Simon Mamabolo.
- g. Mr Michael Andre Hendrikse.
- h. Mr Norman du Plessis.
- i. Dr Albertus Schoeman.

The Department received a total of 32 names that were nominated in response to all their notices calling for nominations. Out of the 32, only nine (9) were recommended to the National Assembly for approval by the Minister.

3. Recommendation.

After deliberations, the Committee agreed with the Minister and recommends to the National Assembly for the approval to appoint the nominees mentioned in the report above to serve on the Electoral Reform Consultation Panel.

B2.3.4 State Capture Recommendations

The following interventions were referred to and processed by the Committee: Recommendations of the State Capture Commission:

No	Recommendation	Status Update	Timeline
5.10.2	It is recommended that Parliament should consider whether introducing a constituency-based (but still proportionally representative) electoral system would enhance the capacity of Members of	Parliament is currently processing the Electoral Laws Amendment Bill (B1-2022). The Bill is has just been completed by the PCHA and is headed to the National Assembly and residency for adoption by the 28 February extended deadline of the Constitutional Court. Included in the revisions on the bill (B1D) is so-called sunset clause calling for the establishment of an Electoral Reform Consultation Panel, which is mandated precisely to consider the	Act to be passed by Presidency. The Panel was yet to be Constituted four months after the passing of the act and reporting 1 year after the 2024 National Elections

	<p>Parliament to hold the executive accountable. If Parliament considers that introducing a constituency-based system has this advantage, it is recommended that it should consider whether, when weighed against any possible disadvantages, this advantage justifies amending the existing electoral system.</p>	<p>constituency and other models to improve accountability of Members of Parliament.</p> <p>In addition the inclusion of independent candidates improves access of voters to candidates directly accountable to them rather than to Political Party Structures.</p> <p>Parliament will now embark on an exercise with the Department of Home Affairs and Electoral Commission to consider the consequential amendments to other legislation implicated in the changes to the Electoral Act. Including its impact on applicable policy provisions, financial implications and the attendant changes. Consideration is being given to whether this will best be done through a Committee of Executive general laws amendment bill. The former being more expedient.</p>	<p>Thereafter the requisite changes must be effected prior to the 2029 National Elections.</p> <p>Electoral Matters Amendment Bill 2023 consequential to the changes in the electoral act to be passed by Parliament in March 2024.</p>
5.15.1	<p>It is recommended that Parliament should consider whether it would be desirable to enact legislation which protects Members of Parliament from losing their party membership (and therefore their seats in Parliament) merely for exercising their oversight duties reasonably and in good faith.</p>	<p>The Commission found that in several instances Parliament had not been effective in holding the Executive to account.</p> <p>This also relates to the recommendation for electoral reform. The constitutional oath of office for all Members of Parliament should serve as the primary guideline for their functions.</p> <p>The recommendation will be referred to the abovementioned Electoral Reform Consultation Panel for consideration in its Electoral System Review.</p>	<p>Electoral Panel yet to be Constituted four months after the passing of the act and to report 1 year after the 2024 National Elections in May 2025. Thereafter the requisite changes must be effected prior to the 2029 National Elections.</p>
5.15.34	<p>Amend the Political Party Funding Act to criminalise donations to political parties in the expectation of access to</p>	<p>Amendments must be made alongside other consequential amendments that will be required following the approval of the Electoral Amendment Bill currently before Parliament.</p>	<p>Electoral Matters Amendment Bill 2023 consequential to the changes in the electoral act</p>

	procurement tenders or contracts.		to be passed by Parliament in March 2024.
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2.3.5. Petitions

- A petition from South African citizens living abroad, calling on the Assembly to investigate the long waiting period for them to renew their passports. The petition was referred to the DHA after a briefing on the matter on 27 June 2023.
- A petition from the residents of Stellenbosch Municipality, calling on the Assembly to investigate the quality of service delivered by the Home Affairs Office in Stellenbosch. The petition was referred to the DHA after a briefing on the matter on 27 June 2023.
- A petition from residents of Aberdeen, Willowmore, Jansenville, Klipplaat and Steytlerville, in the Dr Beyers Naude Local Municipality, calling on the Assembly to investigate the services that the Graaff-Reinet office of the Department of Home Affairs provides to them. The petition was referred to the DHA after a briefing on the matter on 27 June 2023.
- A petition received from foreign nationals via the Office of the Speaker raising concerns of violence and administrative challenges faced by foreign nationals. The petition was referred to the DHA.

The Committee met with all the petitioners and referred them to the relevant officials and reported to the National Assembly on its recommendations.

a) Challenges emerging

The following challenges emerged during the processing of the referral:

- Despite ongoing follow up from Parliament, significant delays in tabling the Electoral Amendment Bill (1 of 2022) by the DHA did not leave much time for the two Committees at Parliament to process the consequential amendment bill (Electoral Matter Bill 2023) nor for the Presidency to adopt the Bill. With the short time remaining before the National and Provincial Elections, there was not much room to debate and time for the IEC to bring into effect the consequential amendments.
- There should be an improvement in the diplomatic bags and high-volume missions, the diplomatic bags should be shipped twice a month and in low-volume missions once a month. In June 2022 the Department launched a pilot passport application service in three (3) VFS locations in the United Kingdom and as of May 2023, 10042 passports were issued to South Africans living in the UK through VFS and the turnaround time is between 60-90 days compared to the diplomatic bag applications which range from 180- 270 days due to the improved process.

b) Issues for follow-up

The 7th Parliament should consider following up on the following concerns that arose:

- Monitor the establishment and progress of the Electoral Reform Consultation Panel and its report in May 2025.
- Ensure that the Recommendations of the Panel are put in Place well in advance of the 2029 National Elections.
- Ensure that regulations to the Electoral Matters Amendment Bill are implemented.

- Committee should receive a report of the progress working group established by the DHA and the Department of International Relations and Cooperations (DIRCO) to try to reduce the waiting period at embassies and missions abroad.
- Committee Members should follow up on the contract for visa application services. Subject to this, the Committee should follow up on the commitment by DHA to extend the visa application service to other countries with a population of more than 20 000 South Africans.

B3. LAWMAKING & LITIGATION

The following pieces of legislation were referred to the committee and processed during the 6th Parliament:

Year	Legislation	Tagging	Objectives	Completed
2016/17	Border Management Authority Bill 9 of 2016 Lapsed in 5 th Parliament and Revived and adopted in 6th	75	Establishment, organisation, regulation, functions and control of the Border Management Authority; to provide for the appointment, terms of office, conditions of service and functions of the Commissioner and Deputy Commissioners; to provide for the appointment and terms and conditions of employment of officials; to provide for the duties, functions and powers of officers; to provide for the establishment of an Inter-Ministerial Consultative Committee, Border Technical Committee and advisory committees; to provide for delegations; to provide for the review or appeal of decisions of officers; to provide for certain offences and penalties; to provide for annual reporting; to provide for the Minister to make regulations with regard to certain matters.	Completed March 2020
2020	Electoral Laws Amendment Bill (B22-2020)	76	To amend the: <ul style="list-style-type: none"> • Electoral Commission Act, 1996, so as to insert certain definitions; to streamline the provisions for the registration of political parties; to provide for the registration of parties in respect of particular provinces, district and metropolitan municipalities and to repeal provisions relating to registration of parties in respect of particular local municipalities; to repeal obsolete provisions; • Electoral Act, 1998, so as to insert certain definitions; to delete the provisions regarding public access to the voters' roll; to update references to repealed legislation; to amend provisions allowing voters to vote in a voting district where they are not registered; to amend provisions relating to the submission of lists of candidates; to amend provisions relating to special votes in elections for the National Assembly; to amend provisions relating to the procedure concerning provisional results and voting materials; to provide for the limited applicability of the Code; to amend Schedule 3; and 	Completed March 2021

Year	Legislation	Tagging	Objectives	Completed
			<ul style="list-style-type: none"> • Local Government: Municipal Electoral Act, 2000, so as to insert and delete certain definitions; to amend the requirements for parties contesting elections by way of party lists and for a ward candidate to contest elections; to authorise the Commission to prescribe a different voting procedure for those voters whose names appear on the voters' roll, without addresses; to amend provisions relating to the effect of certain irregularities, and to provide for matters connected therewith. 	
2020	Electoral Laws 2 nd Amendment Bill [B34-2020]	75	<ul style="list-style-type: none"> • inclusion of independent candidates in elections, • creation of a hybrid system providing proportional representation plus 52 multi-member constituencies, • retention of the single transferable vote mechanism to ensure proportional representation, • substituting 'closed list' with 'open list' representation allowing voters the right to vote for a candidate on a political party's list rather than the party, • requiring each candidate to publish how s/he would advance the Bill of Rights if elected, • achievement of a smaller government due to the dire fiscal reality and an exploration of e-voting mechanisms. 	Lapsed December 2022 deemed undesirable by the Committee given the Executive Bill being drafted.
2022	Electoral Amendment Bill (B1-2022)	75	<ul style="list-style-type: none"> • insert certain definitions consequential to the expansion of the Act to include independent candidates as contesters to elections in the National Assembly and provincial legislatures; • provide that registered parties must submit a declaration confirming that all their candidates are registered to vote in the region or province where an election will take place; • provide for the nomination of independent candidates to contest elections in the National Assembly or provincial legislatures; • provide for the requirements and qualifications, which must be met by persons who wish to be registered as independent candidates; • provide the procedure to follow for a non-compliant nomination of an independent candidate; • provide for the inspection of copies of lists of independent candidates and accompanying documents; • provide for objections to independent candidates; • provide for the inclusion of a list of independent candidates entitled to contest elections; 	Adopted Feb 2023, Accented 16 April 23, Commenced 19 June 23.

Year	Legislation	Tagging	Objectives	Completed
			<ul style="list-style-type: none"> • provide that independent candidates are bound by the Electoral Code of Conduct; • provide for the return of a deposit to independent candidates in certain circumstances. 	
2022	Registration of Muslim Marriages Bill (B30 of 2022)	76	<ul style="list-style-type: none"> • Briefings on the Private Members Bill from Hon Hendricks and the DHA came to the agreement that the issues of concern to the Muslim Communities would be addressed in the Forthcoming Marriages Omnibus Bill. 	Bill deferred.
2023	Marriages Bill 43 of 2023		The objects of the Marriages Bill are to rationalise the marriage laws pertaining to various types of marriages; to provide for the requirements for monogamous marriages; to provide for the requirements for polygamous marriages; to provide for designation of marriage officers; to provide for solemnisation of marriages; and to provide for matters incidental thereto.	Introduced in 2024 Advertising to commence but will probably have to be revived by the 7 th Parliament Committee.
2023	Electoral Matters Amendment Bill 42 of 2023	76	<ol style="list-style-type: none"> I. to provide for the regulation of the private and public funding of independent candidates and independent representatives and matters incidental thereto. II. to amend the title, long title and preamble. III. to preclude the Electoral Commission from accepting donations to the Multi-Party and Independents Democracy Fund which it has reason to believe are the proceeds of crime. IV. to provide for the right of political parties, independent candidates and independent representatives to refuse donations. V. to provide for independent representatives and independent candidates to account for income. VI. to provide for the offence of making a donation to a political party, a member of a political party, an independent candidate or an independent representative in the expectation that the party, member, candidate or representative will influence the award of benefits or relaxation of conditions. VII. to amend the Electoral Act, 1998; the Electoral Commission Act, 1996; the Electronic Communications Act, 2005 and the Financial 	Passed by Both Houses by April 2024.

Year	Legislation	Tagging	Objectives	Completed
			Management of Parliament and Provincial Legislatures Act, 2009; so as to make consequential amendments resulting from the introduction of independent candidates to contest elections of the National Assembly and provincial legislatures.	
2023	Draft Electoral Commission Bill		<ul style="list-style-type: none"> • Private Members Bill To allow for Provincial and National Referendums in line with the Constitution section 127(2)(f). • Concourt ruling to amend the Act by June 2024. 	Concourt deadline of June 2024.
2017 to 2023	Immigration Amendment		<p>The purpose of the Immigration Amendment Bill, 2023 (the “Bill”) is to give effect to the Constitutional Court’s (the “ConCourt”) judgment, delivered on 29 June 2017, in the matter of <i>Lawyers for Human Rights v Minister of Home Affairs and others (CCT 38/16) [2017] ZACC 22; 2017 (10) BCLR 1242 (CC); 2017 (5) SA 480 (CC)</i>.</p> <p>The ConCourt ordered that section 34(1)(b) and (d) of the Immigration Act, 2002 (Act No. 13 of 2002) (the “Act”) was inconsistent with sections 12(1) and 35(2)(d) of the Constitution.</p> <p>The Bill aims to amend this by substituting in subsection (1) for paragraphs (d) and provides that foreigners may not be held in detention for longer than 30 calendar days without [a warrant of a Court] appearing in person before a court, which court may, on good and reasonable grounds, after having heard and considered any representations by the immigration officer and the foreigner concerned, extend such detention for an adequate period not exceeding 90 calendar days.</p>	Minister indicated in letter to Speaker on 15/03/24 of intention to introduce the Bill

a) Challenges emerging

The following challenges emerged during the processing of legislation:

- The Border Management Authority Bill 9 of 2016 reached an impasse in the NCOP due to concerns primarily from National Treasury. After extensive consultation the bill was revived and adopted in the 6th Parliament. There were also significant challenges before eventually establishing the Authority in April 2023 due to negotiations around transfer of funds and staff from other departments. There are still outstanding issues related to the transfer of the required budgets and personal from SAPS and SANDF.
- There were significant delays by the DHA in tabling the Electoral Amendment Bill contributing to delays in meeting the related Constitutional Court ruling.
- There were also significant delays from the DHA on the consequential Electoral Matters Amendment Bill (42 of 2023) only finalised in March 2023 after a partial joint processing of the Bill with the NCOP select Committee given that the Elections were announced to be on 29 May 2024 and nominations closing by February 2024.

- The Marriages Bill indicate was tabled in Parliament by December 2023, and introduced to the Committee in March 2024. The legal opinion received is that the Bill can be advertised for comment and then be revived by the 7th Parliament given that there is not enough time to complete the Bill/
- The ConCourt ruling on the amendments to the Immigration Act was made in 2017 and despite continued engagement with the DHA, the Bill was only introduced in March 2024 with less than 2 months until the 6th Parliament was due to depart.

b) Issues for follow-up

The 7th Parliament should consider following up on the following concerns that arose:

- The Ongoing limited capacity for Drafting legislation within Government and particularly in the DHA and Parliament, is having a negative impact the ability to pass legislation timeously, particularly given the increase in ConCourt rulings requiring Parliament to Amend Laws within given periods of time. This also results in increased litigation against Government where laws are found to be lacking or not implemented.
- The Draft Immigration Amendment Bill, 2024 will need to be revived.
- Comprehensive Citizenship, Immigration and Refugees Bills are promised by the DHA in 2025/26.
- The State Security Printers Bill has been promised and delayed by the Government Printing Works since the 5th Parliament.
- The consequential amendments from the Electoral Amendment Bill will require electoral reform by 2029.
- The Marriages Bill process, was advertised for comment by the 6th Parliament Committee and will need to be revived.
- The role out of the BMA to all naval ports will need to be monitored by 2029.
-

C. ADMINISTRATIVE OUTPUTS AND OUTCOMES

C.1 Key Projects and Initiatives.

C1.1 DHA

A major focus of the NDP is to confront the interlinked challenges of **poverty, inequality and unemployment** by achieving higher growth rates. The DHA has a critical contribution to make to the achievement of the NDP 2030 objectives. The DHA Annual Performance Plan for 2022 to 2025 cover national, ministerial and departmental priorities, including:

- a. DHA contribution to the National Development Plan
- b. Apex Priorities and MTSF related commitments
- c. National Annual Strategic Plan (NASP) commitments for 2022/23
- d. DHA contribution to the Economic Reconstruction and Recovery Plan (ERRP)
- e. Contribution to the National Strategic Plan (NSP) on Gender-based Violence and Femicide

- f. Contribution to the District Development Model (DDM)
- g. Redevelopment of six land ports of entry as one-stop border posts
- h. DHA repositioning programme (6 pillars of policy and legislation; service delivery, operational and organisational models; modernisation programme; a capable and developmental department; revenue generation; and service delivery channels and purpose-build infrastructure)
- i. 2023 SONA commitments

SONA COMMITMENT	DHA APP TARGET
More than 340 million paper-based civic records to be digitised by the first cohort of 10 000 unemployed young people appointed by the Department of Home Affairs	<p>Target for 2023/24:</p> <ul style="list-style-type: none"> • 36 million records digitised (birth records) • 18 000 Microfilm indexed <p>Target for 2024/25:</p> <ul style="list-style-type: none"> • 152 million records digitised <p>Target for 2025/26:</p> <ul style="list-style-type: none"> • 152 million records digitised
Establish a more flexible points-based system to attract skilled immigration, implementing a trusted employer scheme to make the visa process easier for large investors and streamlining application requirements	<p>Target for 2023/24:</p> <ul style="list-style-type: none"> • White Paper on the Management of Citizenship, International Migration and Refugee Protection submitted to Cabinet for approval <p>Target for 2024/25:</p> <ul style="list-style-type: none"> • Citizenship, Immigration and Refugees Bill submitted to Cabinet for approval <p>Target for 2025/26:</p> <ul style="list-style-type: none"> • Citizenship, Immigration and Refugees Bill tabled in Parliament
Introducing remote worker visa and special dispensation high-growth start-ups	<p>Target for 2023/24:</p> <ul style="list-style-type: none"> • White Paper on the Management of Citizenship, International Migration and Refugee Protection submitted to Cabinet for approval <p>The Immigration Regulations will be amended to incorporate this priority under one of the existing visa categories. Consultations with DTIC are underway on this matter. The Regulations will be presented to the Minister of Home by end of May 2023.</p>

DHA Key Developments and Critical Success Factors for 2023/24 include:

- i. The DHA will continue to support the Border Management Authority (BMA) as a public entity through systems, legislation, policies and standard operating procedures that form part of the broader approach to managing migration within the RSA.

- ii. The Digitization Programme to modernise civic services as announced by the President in the 2022 SONA has commenced and the 2023/24 financial year will digitise around 36 million birth records.
- iii. The Automated Biometric Identification System (ABIS) went live in November 2022. The DHA is in the process of implementing phase 2 which will include additional functionalities such as Iris, infant footprint and palm-print backend recognition capability.
- iv. The Biometric Movement Control system (BMCS) rollout to 72 ports of entry will be completed in the 2023/24 financial year.
- v. The DHA has developed an implementation plan to deal with the Vulindlela Permit/Visa Task Team policy and process recommendations.
- vi. A multi-disciplinary task team has been appointed to deal with the Lubisi Report recommendations to deal with logistical and bureaucratic hurdles to policy implementation.
- vii. The implementation of the DHA Repositioning Programme is underway and around 30 projects form part of the Programme Management Office.
- viii. To deal with long queues:
 - a. The DHA Menlyn office in the Menlyn Shopping Mall in Pretoria was opened in March 2023 with more malls to follow.
 - b. The Branch Appointment Booking System (BABS) has been rolled out to all 200 modernised offices.
 - c. DHA is in the process of procuring an additional 100 mobile offices to cover the 778 visiting points to augment the DHA access model and strategy.
- ix. The procurement process for the Passenger Name Record (PNR) has started. The bid specification process is underway. The PNR system data elements include passenger data from airline reservation systems like payment details, travel itinerary and baggage information. The PNR is a key component of a risk-based approach to immigration.
- x. DHA will continue with the implementation of the DHA Plan to promote gender-based violence and femicide (GBV&F) as well as gender, youth and persons with disability issues.
- xi. Central to the DHA improving its organisational performance and quality of service delivery, is the issue of capacity. The funding received from National Treasury as part of the Capacitation Business Case has already shown a positive impact on target-setting for 2023/24. The DHA will strive to improve its HR capacity from 46% to at least 55% over the medium term in conjunction with National Treasury.
- xii. The DHA will continue in its endeavours to find durable solutions for long lasting systemic challenges such as system downtime through working closely with SITA and other service providers.

C1.2 The Electoral Commission

For the 2023/24 financial year, the IEC has 14 performance targets across four programmes with a budget of R2.24 billion. The IEC budget had been cut by R240.24 million for the 2023/24 financial year, and R251 million for the 2024/25 financial. The implications of these budget cuts for the 2023/24 financial year were that a second registration weekend was not funded, the Democracy Education Fieldworkers (DEFs) were not funded, and the expansion staff appointment periods had been reduced.

Further budget cuts would be almost impossible to absorb in a registration year. The 2024 elections would be “uncharted territory.”⁷⁷ The operational and financial impacts of the legislative changes were not yet known, but might be significant. There were no previous baselines that could be used as a comparative figure. In addition, the judgment by the Constitutional Court requiring electoral law reform placed pressure on the funding of the IEC. It was likely to have a significant impact on:

- i. Re-writing of ICT Business Applications
 - a. Candidate Nomination System
 - b. Logistics Information System
 - c. Results System
- ii. Re-training of Staff
- iii. Possible Re-Delimitation of Voting Districts
- iv. Possible Re-Configuration of Local Offices

The following have been considered in formulating the Annual Plan of the IEC:

- a) The NDP 2030 and the integrated development planning in the public sector.
- b) The Revised Framework for Strategic Plans and Annual Performance Plan.
- c) An environmental analysis was performed noting innovations in the digital age and impact on electoral democracy.
- d) Increased litigation on electoral processes.
- e) Economic and fiscal climate in the Republic of South Africa.
- f) Uncertainty emanating from the Constitutional Court decision on the inclusion of independent candidates in national and provincial elections.
- g) A consultative process held in the 2018/2019 period.

C1.3 Government Printing Works Situational Analysis and Priorities

The Annual Performance Plan (APP) outlines all outcomes, outcome indicators and performance targets that have been set by the Government Printing Works (GPW) for the financial year 2023/24. These outcomes and targets are in alignment with the Strategic Plan 2020-2025.

The APP was further developed based on the revised Framework for Strategic Plans and Annual Performance Plans with the guidance of the Department of Planning, Monitoring and Evaluation (DPME) for implementation by national and provincial spheres of government.

- Progress on the 2019 to 2024 Strategic Framework Targets demonstrates that GPW performed well based on the targets it had set for the reporting period

- GPW has successfully maintained and achieved the quality measure of producing security printed documents at 100% compliance⁷⁸ against client quality and quantity specifications. As at the mid-term reporting period a total number of 432 905 identity documents/cards and 1 432 738 passports were produced.
- In contributing to the “economic transformation and job creation” strategic outcome, GPW has been implementing the youth and women through its Artisan and Graduate skills programme. Of the 100 planned for achievement over the MTSF period, a total of 54 have already been taken through this programme.
- GPW received a disclaimer audit opinion for the 2019/20 and 2020/21 financial years, as a result of the challenges that emanated from system crash that led to loss of critical finance data. GPW has been implementing a migration plan to stabilise and sustain all operations particularly in ICT and Finance.

GPW’s focus on business continuity, risk management and resolution of audit findings remain a priority in order to strengthen internal controls and ensure clean governance, given challenges experienced in the past financial year. GPW Priorities for the 2020-2025 MTSF Cycle are:

- i. Reposition the GPW’s business processes to ensure stability, sustainability and viability of the organization as a critical national security facility.
- ii. Improve customer experience through timeous quality and quantity management.
- iii. Ensure return on investment and sound financial management and sustainability.
- iv. Implement long term vision (Vision 2030), of being a State security printer of choice in the SADC region.
- v. Recruit, retain and develop GPW’s workforce to meet market and client demands.
- vi. Upgrade facilities to ensure effective management of all operations.

C1.3 Border Management Authority

- Section 97 Proclamation for function shift signed by the President,
- Ministers, Directors-General and Chief Financial Officers of the 4 Departments signed the joint submission in December 2022.
- Determination for the transfer of resources approved by the MPSA, and budget shifts concluded by National Treasury,
- The Agreement of the transfer and integration of staff into the BMA signed by Government and organised labour.
- Staff migration plan endorsed by NMOG Streams and implemented, and,
- BMA signed a Shared Services Agreement with Department of Home Affairs assistance on corporate services support.

C2. Consolidated Legacy Issues

The Following are issues to be followed up in the 7th Parliament:

DHA

- i. The monitoring of the ongoing modernisation and integration of Home Affairs identification and migration systems and digitisation of old paper records is complicated but essential for the security and governance of the country.
- ii. Need for more systematic report back by provinces on issues identified during oversight by the Committee.
- iii. Ongoing engagement with DHA & SITA on network down times including for mobile offices.
- iv. Decentralisation of SITA services...
- v. Follow up on the implementation of the Lubisi Permit Review recommendations and the subsequent delegation of functions back to lower-level staff by the DG to address the backlog created by the investigation and COVID 19.
- vi. The renewal of a visa processing service or system is critical for the economic development of South Africa and must ensure that only complete applications are submitted with more online functionality and the prosecution of use of fraudulent documentation.
- vii. The ongoing limited capacity for drafting legislation within government and particularly in the DHA and Parliament, is having a negative impact the ability to pass legislation timeously, particularly given the increase in Constitutional Court rulings requiring Parliament to amend laws within given periods of time. This also results in increased litigation against government where laws are found to be lacking or not being implemented.
- viii. The Immigration Amendment Bill 2024 will need to be revived to address a legal gap on deportations raised by the Courts in 2017.
- ix. Continue to expand the roll out of services through Mobile offices and Bank Branches to address issues such as late registration of birth that are not responded to.
- x. A comprehensive Citizenship, Immigration and Refugees White paper is due be finalised in 2024 and related Bill in 2025/26. It is critical that this policy strikes the right balance between security, economic development and compliance with international human rights commitments as well as regional integration initiatives of the Southern African Development Community and the African Union.
- xi. The Marriages Bill process will need to be revived.
- xii. Committee should receive a report of the progress working group established by the DHA and the Department of International Relations and Cooperations (DIRCO) to try to reduce the waiting period at embassies and missions abroad.
- xiii. Committee Members should follow up on the contract for visa application services. Subject to this, the Committee should follow up on the commitment by DHA to extend the visa application service to other countries with a population of more than 20 000 South Africans.
- xiv. Address concerns about security and deportations from Lindela after two escapes occurred at the facility.

IEC

- xv. New appointment of electoral commissioners will need to be done well ahead of their 2027 and 2028 term expiration.

- xvi. Monitor the establishment and progress of the Electoral Reform Consultation Panel. The consequential amendments from the Electoral Amendment Bill will require electoral system reform well before the 2029 National Elections.

GPW

- xvii. The State Security Printers Bill has been promised and delayed by the Government Printing Works since the 5th Parliament.
- xviii. The ongoing audit challenges and Ministerial Review Panel on the GPW loss of key financial data in 2021 and 2022 will have ongoing impacts on its annual reports for the medium term.

BMA

- xix. Significant underfunding and outstanding transfers of line Department budgets related to border enforcement will be an ongoing engagement with national Treasury.
- xx. The full capacitation and role out of the BMA to all naval ports will need to be monitored by 2029.
- xxi. Monitor the effectiveness of the BMA in terms of cost and capacity as compared to the former functioning of departments serving these functions.

Parliament

- xxii. Consider making provision for more than one Committee meeting in a week.
- xxiii. Consider the need for the Committee to have international awareness of Electoral Systems and Modalities as well as migration management when considering applications for study tours and for Committee Members to form part of Parliamentary/Inter-Parliamentary Election Observer Missions.
- xxiv. Monitor outstanding Budget Review Report Recommendations.

C.3 Conclusion

The Department of Home Affairs requires finalisation of their DHA security bill, Citizenship, Immigration and Marriages laws and the GPW on their State Security Printing and the IEC on Electoral System Reform to further improve their service delivery. Continued focus is needed to monitor the modernisation projects of the DHA as they have faced governance and technical challenges. Government Printing Works continues to face challenges in its network stability, governance and related auditing which will impact the country's ability to print secure Documents. The Border Management Authority will need continued transfer of Budget and Skills both from the ceding departments as well as National Treasury to better secure the porous borders.

National Council of Provinces

1. Report of the Select Committee on Land Reform, Environment, Mineral Resources and Energy on the Ratification of the Revised African Regional Co-operative Agreement for Research, Development and Training Related to Nuclear Science and Technology (AFRA) Agreement as well as the Explanatory Memorandum attached thereto, dated 14 May 2024

The Select Committee on Land Reform, Environment, Mineral Resources and Energy, having considered the request for approval by Parliament for the Ratification of the Revised African Regional Co-operative Agreement for Research, Development and Training Related to Nuclear Science and Technology (AFRA) Agreement as well as the Explanatory Memorandum attached thereto, referred to it on 17 August 2023, recommends that the Council, in terms of section 231(2) of the Constitution, 1996, approves the said Agreement.

Report to be considered.

2. Report of the Select Committee on Land Reform, Environment, Mineral Resources and Energy on the *Electricity Regulation Amendment Bill [B23B - 2023]* (National Assembly – Section 76), dated 14 May 2024.

The Department of Mineral Resources and Energy (DMRE) briefed the committee on 26 March 2024 on the *Electricity Regulation Amendment Bill [B23B - 2023]*. The Bill was referred to the committee on 14 March 2024 as a section 76 bill. The Committee called for written comments on the Bill from 18 March 2024 until 29 April 2024, while public hearings were held by provincial legislatures. At the end of the public engagement process of both the committee and provincial legislatures, the negotiating mandate meetings were held by the committee together with provincial legislatures on the 30th of April 2024.

The Select Committee on Land Reform, Mineral Resources and Energy, received seven provincial final mandates from the Eastern Cape, Gauteng, KwaZulu Natal, Limpopo, Mpumalanga, North West and the Northern Cape in support of the Bill, with the Western Cape submitting a final mandate not supporting the Bill and the Free State not having submitted any final mandate.

The Select Committee on Land Reform, Mineral Resources and Energy having deliberated on and considered the subject of the *Electricity Regulation Amendment Bill [B23B - 2023]* (National Assembly – sec 76), referred to it and classified by the JTM as a section 76 Bill, reports that it agrees to the Bill [B23B – 2023] without amendments.

Report to be considered.

3. Report of the Select Committee on Land Reform, Environment, Mineral Resources and Energy on the *Plant Health (Phytosanitary) Bill [B14B-2021]* (National Assembly – Section 76), dated 14 May 2024.

The Department of Agriculture, Land Reform and Rural Development (DALRRD) briefed the committee on 22 March 2024 on the *Plant Health (Phytosanitary) Bill [B14B-2021]* S76. The Bill was referred to the committee on 20 February 2024 as a section 76 bill. The Committee called for written comments on the Bill from 18 March 2024 until 22 April 2024, while public hearings were held by provincial legislatures. At the end of the public engagement process of both the committee and provincial legislatures, the negotiating mandate meetings were held by the committee together with provincial legislatures on the 7th of May 2024.

The Select Committee on Land Reform, Mineral Resources and Energy, received five provincial mandates from Gauteng, Limpopo, Mpumalanga and the Northern Cape and North West in support of the Bill and four provinces namely, Eastern Cape, Free State, KZN and Western Cape have not submitted mandates.

The Select Committee on Land Reform, Mineral Resources and Energy, having deliberated on and considered the subject of the *Plant Health (Phytosanitary) Bill [B14B-2021]* (National Assembly – sec 76), referred to it and classified by the JTM as a section 76 Bill, therefore reports that it agrees to the Bill [B14B – 2021] without amendments.

Report to be considered

4. Report of the Ad Hoc Committee on General Intelligence Laws Amendment Bill on the General Intelligence Laws Amendment Bill [B40B – 2023] (Sec 75), dated 14 May 2024.

1. Introduction

- 1.1. The purpose of the General Intelligence Laws Amendment Bill [B40B – 2023] (Sec 75) (“the Bill”) is to amend the National Strategic Intelligence Act, 1994, the Intelligence Services Act, 2002, and the Intelligence Services Oversight Act, 1994, so as to amend and insert certain definitions; to provide for the establishment of the South African Intelligence Service, South African Intelligence Agency, the National Communications Centre and the South African National Academy of Intelligence; to provide for the functions of the Intelligence Service Structures; to provide for additional matters that must be regulated by the Minister; to provide for matters relating to former members of the Intelligence Services; to effect consequential amendments to other laws and to provide for matters connected therewith.
- 1.2. The Bill was passed by the National Assembly, transmitted to the National Council of Provinces for concurrence and referred to the Ad Hoc Committee on General Intelligence Laws Amendment Bill (“the Committee”) on 26 March 2024.

2. Ad Hoc Committee process followed in respect of the Bill

- 2.1. On 2 April 2024, the Committee requested inputs from provinces through the offices of the Speakers of all nine provincial legislatures. Only the Free State province submitted inputs, while other provinces did not make any submissions.
- 2.2. On 12 April 2024, an advert was placed in National Media calling for written submissions on the Bill, with a deadline of 12 May 2024 for the receipt of submissions.
- 2.3. The Committee conducted public hearings on the Bill in four provinces, namely, North West, Northern Cape, Free State and Eastern Cape, between 13 - 28 April 2024.

- 2.4. The Committee heard oral submissions on the Bill on 23 April 2024. Presentations were received from various organisations and individuals, namely: Congress for South African Trade Unions (COSATU), Intel Watch, Freedom of Religion South Africa (FOR SA), Mr Bavesh Padayachy (Stellenbosch Law Faculty student), Prof. Jane Duncan (Lecturer: University of Glasgow) and Mr Kgosi Motasi.
- 2.5. The Minister in the Presidency and State Security Agency, on 13 May 2024 briefed the Committee on the Department's response to written and oral submissions received, and submissions made during provincial public hearings on the Bill.
- 2.6. On 14 May 2024, the Committee continued with deliberations on the Bill. Having been advised on the process that would have to be followed to effect amendments related to matters that would extend the subject of the Bill, the Committee reached consensus on referring the below-listed matters to the Seventh Parliament for processing.
- a) Amending the Secret Services Act 56 of 1978 to provide for the establishment of the Evaluation Committee within 12 months.
 - b) Appointment of the Deputy Chairperson of the Joint Standing Committee on Intelligence (JSCI).
 - c) Bi-annual meetings between the JSCI and the President on intelligence-related matters.
 - d) The alignment of the JSCI's annual reporting with parliamentary reporting requirements.
 - e) Appointment of the Deputy Inspector-General of Intelligence (DIGI).
 - f) Empowering the JSCI to designate the IGI to provide a specific oversight function.

3. Outcome of Ad Hoc Committee' Consideration of the Bill

The Ad Hoc Committee on the General Intelligence Laws Amendment Bill, having deliberated on and considered the subject of the **General Intelligence Laws Amendment Bill [B40B – 2023]** (“**the Bill**”), referred to it and classified by the JTM as a section 75 Bill, reports that it has agreed to the Bill [B40B – 2023].

Report to be considered.

5. REPORT OF THE AD HOC COMMITTEE ON THE GENERAL INTELLIGENCE LAWS AMENDMENT BILL ON THE PUBLIC PARTICIPATION PROCESS, DATED 13 APRIL 2024

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1. INTRODUCTION

The General Intelligence Laws Amendment Bill [B40—2023] was introduced in the National Assembly on 17 November 2023. The Ad Hoc Committee established to process the Bill in the National Assembly (NA) did so between 2 November 2023, the date on which the NA Ad Hoc Committee was established, and 19 March 2024, when the Committee adopted its report on the Bill. The NA Ad Hoc Committee report on the Bill was tabled in Parliament and reported in ATC No. 37 of 2024.

The General Intelligence Laws Amendment Bill [B40B–2023] (S75) (“the Bill”) was referred to the National Council of Provinces (NCOP) on 26 March 2024. The NCOP, on 27 March 2024, established a multiparty Ad Hoc Committee on the General Intelligence Laws Amendment Bill (“the Committee”) to process the Bill. The following members were appointed to the Committee:

African National Congress

Hon. KM Mmoiemang (**Chairperson**)

Hon S Shaikh

Hon. TSC Dodovu

Hon. ZV Ncitha

Hon. LC Bebee

Economic Freedom Fighters

Hon. M Dlamini

Freedom Front Plus

Hon. F Du Toit

Democratic Alliance

Hon. C Labuschagne

Hon. FJ Badenhorst

This report offers an introduction to the background and objects of the Bill and thereafter provides a comprehensive overview of the public participation process, including provincial public hearings, written submissions, and oral submissions. It covers key insights and recommendations derived from all inputs received on the Bill.

2. OVERVIEW OF THE PUBLIC PARTICIPATION PROCESS

Section 72(1)(a) of the Constitution of the Republic of South Africa, 1996 (“the Constitution”) mandates the National Council of Provinces (NCOP) to facilitate public participation in its legislative processes. The two aforementioned sections vest a positive Constitutional obligation on Parliament. The said obligation has since become settled in law and its interpretation has been the subject of court adjudication over time, notably in one of the key Constitutional Court decisions on the issue of public participation, in *Minister of Health and Another v New Clicks South Africa (Pty) Ltd and Others*¹, Sachs J wrote, that “the forms of facilitating an appropriate degree of participation in the law-making process are indeed capable of infinite variation. What matters is that a reasonable opportunity is offered to members of the public and all interested parties to know about the issue and have an adequate say in the law making”.

In *Land Access Movement of South Africa and Others v Chairperson of the National Council of Provinces and Others*² (*LAMOSA*) the Constitutional Court stated that “the standard to be applied in determining whether Parliament has met its obligation of facilitating public participation is that of reasonableness”. The Court further noted that “reasonableness is dependent on a number of peculiar circumstances and facts”. The Court further held that “some deference should be paid to what Parliament considered appropriate in the circumstances, as the power to determine how participation in the legislative process will be facilitated rests on Parliament”. To this end, reasonable opportunity ought to be offered to members of the public and all interested parties.

In respect of the authority to determine the plan of how public participation will be facilitated, in *Mogale and Others v Speaker of the National Assembly and Others*³, the Constitutional Court held that Parliament has the discretion to determine the manner in which to fulfil the obligation. In its endeavour to discharge the obligation of facilitating public participation, Parliament codified what it deemed reasonable in a Public Participation Model. The Model has been considered by the Courts and found largely compliant with the Constitution in meeting the threshold for facilitating reasonable public participation. Key features of Parliament’s Model for public participation include:

- pre-hearing workshops must be held in order to establish relationships with stakeholders;

¹ (CCT 59/2004) [2005] ZACC 14; 2006 (2) SA 311 (CC); 2006 (1) BCLR 1 (CC) (30 September 2005)

² (CCT40/15) [2016] ZACC 22; 2016 (5) SA 635 (CC); 2016 (10) BCLR 1277 (CC) (28 July 2016)

³ (CCT 73/22) [2023] ZACC 14; 2023 (9) BCLR 1099 (CC); 2023 (6) SA 58 (CC) (30 May 2023)

- develop effective communication and awareness programmes;
- ensure that communities are mobilised;
- ensure that consultation meetings are convened;
- ensure that summaries of the Bill are translated into at least three languages spoken in a particular province; and
- transport must be provided to the public hearing venues.

Recognising the Constitutional imperative regarding public participation in the legislative processes, the Committee sought to gather public input on the contents of the Bill through various methods, including provincial public hearings, oral submissions and written submissions. An advertisement calling for written submissions on the Bill was published in national and community newspapers in 11 official languages. Interested and affected stakeholders were invited to prepare and submit input on the Bill during the period 12 April 2024 to 12 May 2024. Written submissions on the Bill could be submitted via post, WhatsApp (083 709 8397), an online submission form or via e-mail to GILAB2023@parliament.gov.za.

As a point of departure, the Committee invited the Minister in the Presidency, supported by the State Security Agency (SSA), to brief it on the background and objects of the Bill. The briefing took place virtually on 4 April 2024, in a meeting open to the public. The Committee held public hearings in four provinces where the NA Ad Hoc Committee did not conduct provincial public hearings. Provincial public hearings took place between 13 -28 April 2024 in the North West, Northern Cape, Free State, and Eastern Cape provinces. Provincial public hearings were conducted parallel to the Committee hearing oral submissions on the Bill on 23 April 2024.

3. BACKGROUND AND OBJECTIVES OF THE GENERAL INTELLIGENCE LAWS AMENDMENT BILL

3.1. Objects of the Bill

In 2009, the Civilian Intelligence Services were restructured through Presidential Proclamation 59 of 17 September 2009. Following this Proclamation, the National Intelligence Agency (NIA) and the South African Secret Service (SASS) were amalgamated into a new and centralised service, namely the SSA. The amalgamation was formalised through government notices (912,

913, 914, and 915) issued by the Department of Public Service and Administration. However, the establishment of the SSA through the Proclamation was irregular due to the Constitutional requirement that the President can only establish Intelligence Services through legislation. The establishment of the SSA through a Proclamation was a deviation from section 209(1) of the Constitution on the establishment of new Intelligence Services. It should be noted that the legislative amendments to rectify this anomaly took effect in subsequent years. Nonetheless, challenges brought about by the amalgamation remained, resulting in President Cyril Ramaphosa establishing the High-Level Review Panel (HLRP) on the SSA in July 2018.

The Bill seeks to implement the recommendations of the HLRP. The HLRP made the following recommendations *inter alia*:

- The creation of the SSA through a Presidential Proclamation was irregular and recommended that the SSA be separated into a foreign service and a domestic service with maximum independence of each other with the minimum of shared services between them, if at all;
- Serious attention should be given to more precise and more focused definitions of the mandate/s of any resulting service and other sections of the broader intelligence community;
- The current legislative provisions should be reviewed concerning the Minister's powers as they relate to the administration of service;
- Develop a clear definition for manifestly illegal orders as applicable to the intelligence environment and recommend procedures and processes for handling these;
- Make relevant amendments to legislation to deal explicitly with manifestly illegal orders and the processes for dealing with them, including providing for the criminalisation of the issuing of, or carrying out a manifestly unlawful order and;
- The current legislative provisions regarding the role of the Minister of State Security vis-a-vis the service itself give too much scope for the Minister to interfere in the administration and operations of the service. Thus, those provisions concerning the Minister's powers as they relate to the administration of the service should be reviewed.

The Bill also seeks to address the legal vacuum identified in the 2021 Constitutional Court Case of *AmaBhungane Centre for Investigative Journalism NPC and Another v Minister of Justice*

*and Correctional Services and Others*⁴. In this case, the Court found that the SSA's practice of bulk interception was unlawful and unconstitutional because it was not undertaken in terms of any empowering law authorising the practice.

The main objective of the Bill is to amend the National Strategic Intelligence Act, No. 39 of 1994, the Intelligence Services Act, No. 65 of 2002, the Intelligence Services Oversight Act, No. 40 of 1994, and other relevant legislation. Through these amendments, the Bill aims to achieve the following:

- Undo the establishment of the SSA, in line with the recommendations of the HLRP;
- Establish the South African Intelligence Agency, which will have a domestic focus and be Responsible for counter-intelligence and intelligence gathering functions;
- Establish a South African Intelligence Service responsible for foreign intelligence gathering;
- Clarify the mandate of the two Intelligence Services that are to be established;
- Re-establish the South African National Academy of Intelligence (SANAI), which is responsible for intelligence training;
- Provide a legislative mandate for Bulk Interception, in compliance with the Constitutional Court judgement. The judgement declared bulk surveillance unlawful and noted that section 2 of the National Strategic Intelligence Act, No. 39 of 1994, is ambiguous and should thus be interpreted in a manner that best promotes the right to privacy;
- Provide for a regulatory framework for compliance monitoring, coordination and alignment of intelligence activities;
- Provide for the regulation of cybersecurity and the protection of information and intelligence;
- Enable the Minister to prescribe issues of accountability and control of Intelligence Services in line with Section 209 of the Constitution and;
- To provide for matters related to former members of the Intelligence Services.

3.2. Further matters related to oversight and operational efficiency

⁴ Minister of Police v AmaBhungane Centre for Investigative Journalism NPC and Others [2021] ZACC

During the latter stages of the Bill being considered in the NA, the NA Ad Hoc Committee, in terms of NA Rule 286(4)(b) and 286(4)(c), sought permission from the National Assembly to amend aspects of legislation which were not covered in the Bill as well as to extend the subject of the Bill. The application was motivated by the need to enhance oversight over the Executive and the operational efficiency of the Intelligence Services. The necessary approval was, however, not granted due to the need for further consultation. The NCOP process on the Bill presented an opportunity to undertake consultation in respect of the below-listed items, which for the purpose of this report will be known as “further matters related to oversight and operational efficiency”.

- Amending the Secret Services Act 56 of 1978 to provide for the establishment of the Evaluation Committee within 12 months after the Act is passed. The Evaluation Committee would be critical for intelligence oversight, providing essential checks and balances to ensure the effectiveness and legality of intelligence operations. Given its fundamental role in upholding accountability and transparency, the establishment of this Committee should be prioritised.
- The appointment of the Deputy Chairperson of the Joint Standing Committee on Intelligence (JSCI). This is necessary to ensure the effective functioning of the Committee, particularly given that the current law mandates only the Chairperson to lead and make decisions. Thus, in instances where the Chairperson is unavailable, the Committee's work halts without a designated substitute.
- Bi-annual meetings between the JSCI and the President on intelligence-related matters. These meetings are crucial due to national security matters requiring discussions exclusively with the President.
- The alignment of the JSCI's annual reporting with parliamentary reporting requirements. This is purely an administrative issue for proper alignment.
- The appointment of the Deputy Inspector-General of Intelligence (DIGI). This is not just a procedural step but also a necessity to ensure the effective functioning of the Office of the Inspector-General of Intelligence (OIGI). In instances where the Inspector-General of

Intelligence (IGI) is unavailable, the work halts without a designated substitute, potentially impeding critical oversight functions. Having a DIGI would ensure continuity and efficiency, maintaining the integrity and effectiveness of oversight even in the absence of the IGI.

- Empowering the JSCI to designate the IGI to provide a specific oversight function. The JSCI seeks to strengthen its capabilities by designating the IGI to conduct in-depth reviews of select matters that the Committee deems essential for fulfilling its oversight function. Parliament recognises the importance of well-informed oversight in the intelligence sector and, therefore, seeks to enable the JSCI to entrust the IGI to conduct oversight through investigations into matters that require further scrutiny. The latter would ensure that Parliament, through the JSCI, enhances its commitment to robust oversight and accountability. The IGI has the necessary resources and legislative authority to conduct reviews that yield valuable insights.

Submissions were invited on matters related to oversight and operational efficiency by way of a press release⁵ outlining the underlying motivation. In opening remarks at the provincial public hearings as well as the oral submissions, the Chairperson also specifically requested stakeholders to provide any inputs they might have on further matters related to oversight and operational efficiency.

4. PUBLIC HEARINGS HELD BETWEEN 13 APRIL 2024 AND 28 APRIL 2024

4.1. Introduction

The Committee conducted public hearings in four provinces, namely, North West, Northern Cape, Free State, and Eastern Cape, between 13 - 28 April 2024. Public hearings were held in one location in each Province, and the hosting municipality determined the location for each public hearing. Parliament provided transport and refreshments for mobilised participants. For safety and logistical reasons, Parliament would only collect participants within a 100km

⁵ <https://www.parliament.gov.za/press-releases/media-statement-ad-hoc-committee-general-intelligence-laws-amendment-bill-ncop-invites-public-submissions-further-matters-related-bill>

geographical radius. Table 1 below provides the details for the public hearings in the different provinces.

Date	Province	Municipality	Venue
Saturday, 13 April 2024	North West	Kotane Local Municipality, Bojanala Platinum District	Holy Family Combined School (Mogwase)
Friday, 19 April 2024	Northern Cape	Sol Plaatjie Local Municipality, Frances Baard District	Recreation Hall (Galeshewe, Kimberley)
Thursday, 25 April 2024	Free State	Mangaung Metropolitan Municipality	Samson Sefuthi Hall (Botshabelo, Bloemfontein)
Sunday, 28 April 2024	Eastern Cape	Buffalo City Metropolitan Municipality	Buffalo City Town Hall (East London)

Table 1: Committee programme for provincial public hearings

The successful execution of public hearings relied on planning and proactive measures. At the heart of this planning was the establishment of a team comprising Committee support service personnel along with key support units from Parliament, including Health and Safety, Protection Services, Public Education, Public Relations, Media Relations, Broadcasting, Household Services, and Language Services. The combined services of these units ensured that the public hearings in the identified provinces were conducted in adherence with Parliament's model for public participation.

The Public Education unit was responsible for conducting pre-hearing educational workshops to educate and establish relationships with stakeholders. These workshops mobilised communities to participate in the hearings and educated communities on the Bill's objects. Summaries of the Bill were translated into at least three languages spoken in a particular province and made available at the workshops.

The Health and Safety unit embarked on on-site visits to each hearing venue to assess the viability, suitability, and compliance status of the identified. This provided regular feedback to support personnel, identifying any additional requirements necessary for each venue to ensure the success of the hearings. Based on the insights gathered during these visits, hearings

proceeded without significant disruptions. On the day of the public hearings, Protection Services were responsible for access and egress control. Whilst Language Services provided translation services for the hearings, including sign language, as such participants were encouraged to make input in a language of their choice. The Committee section personnel assisted with catering, transportation and were the secretariat at all the hearings.

In terms of media coverage, mainstream radio stations and television channels conducted several interviews with the Chairperson and Community radio stations were utilised to air promotions about the hearings. Furthermore, public hearings were streamed live on Parliamentary social media platforms: Facebook, YouTube, and X - formerly Twitter. Additionally, media statements and interviews with local radio stations were conducted to further inform those who were not in attendance of the salient matters arising from the hearings.

4.2. Statistical Analysis of the Public Hearings

Table 2 below reflects consolidated figures from all public hearings conducted, aiming to provide a comprehensive overview of the total number of participants and their respective submissions.

Date	Province	Total Number of Participants	Total number of Submissions	Submissions in Support of the Bill	Submissions Opposing the Bill	Not in support or opposing
Saturday, 13 April 2024	North West	145	30	22	1	7
Friday, 19 April 2024	Northern Cape	204	24	22	1	1
Thursday, 25 April 2024	Free State	145	14	11	0	3
Sunday, 28 April 2024	Eastern Cape	160	21	20	1	0
Totals		654	89	75	3	11

Table 2: Participation Statistics for Provincial Public Hearings

The statistical analysis conducted on the public hearings held across various provinces provides insights into the level of public engagement and the spectrum of opinions expressed regarding the proposed legislation. A total of six hundred and fifty-four (654) individuals participated in the hearings across all provinces, indicating interest and active participation in the public consultation process. Seventy-five (75) individuals expressed explicit support for the Bill, whereas only three (3) individuals were noted as opposing it. Eleven (11) individuals did not state whether they supported the Bill or not. Section 4.3. below provides further details and analysis on the motivation provided by the various participants in support of their position on the Bill.

4.3. Proceedings at the Provincial Public Hearings

The public hearings began with the Chairperson of the Committee, Hon. Mmoiemang, introducing himself, drawing the participants' attention to the start of the public hearing and requesting all to stand for the singing of the National Anthem. The Chairperson thereafter briefly outlined the purpose of the Public Hearing as being to hear inputs on the Bill. Members of the Committee and Support Staff were requested to introduce themselves. Municipal Councillors were also given an opportunity to welcome delegations in the various provinces.

The Chairperson then proceeded to provide an overview of the importance of intelligence laws and the objects of the Bill. The Chairperson also informed stakeholders that input was being sought on further matters related to oversight and operational efficiency. Three minutes were allocated for each speaker to deliver their submission. In addition, the Chairperson reminded the public that written submissions would be received by the Committee until 12 May 2024.

4.3.1. Submission Supporting the Bill

Participants expressing support for the Bill indicated that they had done so because there was a need for coordinated intelligence services and operations. The current shortcomings were said to have been evident in the July 2021 unrest and the use of National Key Points by unauthorised persons. The specific question was posed of whether the reoccurrence of such unrest could be prevented, considering the expected appeal to the Electoral Court decision regarding the suitability of a particular electoral candidate. Assessing whether the intelligence community was adequately prepared for this announcement was imperative.

Many participants welcomed the re-establishment of the South African National Academy of Intelligence (SANAI). This was seen as a way for the South African intelligence community to keep abreast of international best practices and to create employment for the youth.

Participants raised concerns about the influx of undocumented foreigners, the movement of illicit goods and human trafficking. Participants widely agreed that the current border management system was ineffective, thereby compromising both national security and community cohesion. The inefficiency of law enforcement agencies and crime prevention strategies against this backdrop were identified as critical issues. Furthermore, participants expressed deep concern about the high crime rate, particularly in relation to human trafficking and the sale and use of drugs and firearms. There was consensus on the urgent need to strengthen law enforcement agencies and improve collaboration between Intelligence Services and law enforcement to effectively combat crime. Specific mention was made of cash-in-transit robberies and unlawful demands for protection fees, as well as the role that intelligence services should have in preventing such incidents.

There was support for taking measures to enhance the oversight role of the JSCI as it was identified that accountability and implementation of current legislation were facing challenges. This issue could be tackled by appointing a Deputy Chairperson for the JSCI and by strengthening relations with the President through bi-annual meetings between the JSCI and the President.

A recommendation was made for the composition of the JSCI to include members of the public to bring diverse perspectives and ensure greater transparency and accountability in the oversight process. The motivation was given that including members of the public or active citizens can help to ensure that the interests and concerns of communities are represented in the oversight process. This was said to help address any potential biases or conflicts that may exist within the Committee and promote democratic principles of accountability and transparency in intelligence operations.

The appointment of a Deputy IGI, improving synergy in reporting requirements, and strengthening compliance by the Executive with the recommendations of the IGI were welcomed. It was also considered necessary to establish an Evaluation Committee (as provided

for in the Secret Services Act). Finally, the establishment of the South African National Intelligence Academy was deemed crucial, with a call for the service to carefully consider all applicants during the intake process. However, a recommendation was made to reconsider the age limitations to allow more people over the age of 35 to apply.

A suggestion was made that intelligence agencies should have a toll-free number available for the public to share information when necessary, facilitating better collaboration and information-sharing between agencies and the community. A further recommendation was that “gag orders” that prevent intelligence officials from speaking out against unlawful activities within the intelligence services and the country at large should be lifted. A further proposal was made for individuals found guilty of misconduct or unlawful activities to be held accountable through prosecution.

A proposal was submitted outlining an alternative structure for intelligence services, which would consist of Military Intelligence, Police Intelligence, National Intelligence, and Counter-Intelligence. The same participant recommended that the President should act as the Chairperson of the Presidential Advisory Committee on Intelligence, thereby granting the President the authority to assess the performance of all intelligence agencies.

A proposal was made to amend the Bill to include a definition of National Security Intelligence as follows:

“National Security Intelligence means the quantified ability to detect, prevent and act on opportunity or potential opportunity of threat, conceived threat or potential threat that may hamper peace and security of the nation, and have the means to curb such occurrences before they manifest”.

4.3.2. Submissions Opposing the Bill

Inputs opposing the Bill centre around the government's inability to implement existing laws related to safety, security, and intelligence. This inability was linked directly to the influx of undocumented foreigners, who were, in turn, seen as the reason why limited government

resources (such as funding for businesses, access to health care, and schooling) do not reach South African communities.

The one participant who opposed the Bill did so for reasons that do not relate to any provisions of the Bill. The participant pointed out that the disability community in South Africa often faced exclusion, struggled to secure employment, and lacked adequate representation in decision-making processes. Despite promises of 5% representation in Parliament, the participant stated that tangible benefits have not been seen yet. In addition, the participant mentioned that the neglect of the disabled community is particularly pronounced in the Eastern Cape. In response to this input, the Chairperson of the Committee, Hon. Mmoiemang, mentioned that one of the Committee members, who couldn't attend the public hearing, represented people with disabilities. Nonetheless, the participant pointed out that gender mainstream policies and instruments have been developed by the government even in the absence of such Committee members.

While not necessarily opposing the Bill, participants have expressed their concerns regarding the need for safeguards to prevent the encroachment of civil and individual private rights. This was especially important given the broad scope of the Bill. One particular concern was the compulsory vetting provisions, how they would be implemented, and what potential ramifications they may have. The Bill needed to balance its provisions with those of the Promotion of Access to Information Act No. 2 of 2000.

4.3.3. Related Concerns Raised During Inputs

A few participants questioned what role if any, private security companies should have in the intelligence community. Participants felt that improved regulation of the sector would improve community safety and ensure that working conditions at private security companies were fair. Related to this was the responsibility communities had assumed with respect of community safety. Specific mention was made of Community Policing Forums, Neighbourhood Watches, and Community Patrols and pleas went out for assistance, training, and support. It was also raised that the provisions of the Bill should be allowed to protect whistle-blowers.

The importance of the Department of Labour, the Department of Home Affairs, and the Border Management Agency in executing their respective mandates was highlighted. In this way,

participants argued that undocumented foreigners would not benefit from the services of these departments or the limited opportunities available. Consistent monitoring of beneficiaries was said to be one way to ensure that government services (such as healthcare and education) and opportunities reach the intended beneficiaries.

4.3.4. Analysis of Submissions made at the Provincial Public Hearings

The concerns raised during the hearings shed light on the profound impact of national security and human security issues at a societal level, underscoring the critical role of intelligence services in addressing these challenges. The porous borders and influx of illegal immigrants not only posed significant threats to national security but also undermined community cohesion and exacerbated social tensions. This highlighted the interconnected nature of security concerns, where failures in border management systems had far-reaching implications for societal stability and well-being.

Moreover, the issues surrounding law enforcement and crime prevention revealed systemic shortcomings that impeded efforts to ensure public safety and security. The high crime rate, particularly related to drug abuse, reflected underlying socio-economic challenges and gaps in law enforcement capacity. Strengthening intelligence services and providing them with the legal framework necessary to effectively carry out their mandates was crucial in addressing these challenges. Effective intelligence gathering and analysis were deemed essential for identifying security threats, disrupting criminal networks, and preventing illicit activities that undermine societal security.

Furthermore, input from the hearing showed that managing the presence of foreign nationals, particularly those engaged in criminal activities, required a comprehensive approach that addressed both security and humanitarian concerns. Effective immigration controls, informed by intelligence insights, were critical for managing migration flows, preventing illegal activities, and promoting social cohesion. Intelligence services played a vital role in supporting immigration enforcement efforts by providing timely and accurate information on migration trends, identifying security risks, and supporting targeted interventions to address vulnerabilities in the immigration system.

The inability of the government to implement existing safety and security laws, as was the assessment by some of the participants, can, however, not be seen as a justifiable reason for why the reforms introduced through the Bill should not be supported. Legislative certainty and empowering legislation were necessary to address the challenges raised by stakeholders. The issues raised during the hearing underscored the complex interplay between national security, human security, and societal well-being. Strengthening intelligence services and providing them with the legal framework necessary to carry out their mandates effectively would assist in addressing security challenges and promoting societal resilience. By addressing these challenges comprehensively and collaboratively, societies can build a safer, healthier, and more inclusive future for all.

The public's views on further matters related to oversight and operational efficiency emphasised the essential role of oversight bodies in monitoring the activities of intelligence services, ensuring compliance with legal mandates, and assessing the effectiveness of intelligence operations. Participants believed that strengthening accountability and oversight of intelligence services would contribute to the legitimacy and credibility of intelligence activities.

With respect to the recommendations made during the public hearing, the establishment of a toll-free number was an operational issue that the Service may consider. The inputs raised by participants in relation to the role of intelligence services in the protection of whistle-blowers were warranted. Threats and, sadly, the death of whistle-blowers are well documented, and the protection of whistle-blowers requires a coordinated response. Considering the suggested alternative structures for intelligence services would require a regulatory impact assessment, a process that cannot be undertaken at present. The remaining suggested recommendations, e.g. the proposed definition of "National Security Intelligence", will be responded to by the Minister and the State Security Agency.

5. NATIONAL HEARINGS (ORAL SUBMISSIONS) HELD ON 23 APRIL 2024

In response to the invitation to written submissions, the Committee received several requests to make oral submissions to elaborate on issues raised in the written submissions. Informed by these requests and its desire to engage with critical stakeholders within the sector, the Committee held a virtual national hearing on 23 April 2024 to receive oral submissions. Oral submissions

were received from the Congress of South African Trade Unions (COSATU), Intel Watch, Freedom of Religion South African, Mr Bavesh Padayachy (Stellenbosch Law Faculty student), Prof Jane Duncan (Lecturer: University of Glasgow and a member of the HLRP) and Mr Kgosi Motasi.

This report encompasses the oral submissions made on the day and provides a detailed account of the proceedings and insights shared during the session.

5.1. OVERVIEW OF THE PROCEEDINGS

The Chairperson, Hon. Mmoiemang, opened and welcomed all present. He explained that the purpose of the meeting was to receive oral submissions on the Bill. The Chairperson clarified that the Bill had been revised by the NA Committee and that the Committee from the NCOP was seeking inputs on the revised Bill. Each stakeholder was granted an opportunity to make a submission, and the Members of the Committee engaged with stakeholders only to ask questions for clarity.

5.1.1. The Congress of South African Trade Unions (COSATU)

COSATU initially expressed significant concerns with the previous iteration of the Bill, highlighting numerous provisions that were deemed potentially unconstitutional and unworkable, such as the broad definition of threat to national security. However, the Federation was pleased that many of their previous concerns had been addressed in the revised version of the Bill. Specifically, the Federation was pleased that the definitions had been substantially improved presenting a fair, coherent, and constitutionally sound Bill. COSATU fully supported these revised definitions and proposed that typographical errors in the Bill be cleaned out and the Committee consider the insertion of 'and/or' in Clause 2(b)(IX) between Premiers and Chief Justice.

COSATU appreciated that concerns regarding the IGI's ability to appoint staff and manage its budget had been addressed; while the Federation welcomed the positive improvements, it still believed that it was necessary to strengthen the Bill further. Specifically, COSATU asserted that the IGI findings should be binding. This was crucial to ensure that the findings were not ignored and that Intelligence Services could be held accountable for any remedial action determined.

This measure would enhance accountability and transparency within the intelligence community as Services would be held to a higher standard of oversight.

COSATU was initially concerned about the broad powers granted to the SSA for bulk interception. However, the Federation supported the revised wording, which provided checks and balances and required judicial approval for bulk interception. The Federation stressed that regulations should be drafted within 12 months of the Bill being enacted, providing guidelines for bulk interceptions and monitoring by the Executive. The Federation further submitted that these regulations should be released for public comment and submitted to Parliament for further scrutiny.

COSATU was concerned about extending vetting to individuals outside the employ or remit of the state, particularly civil society and religious institutions. The Federation was pleased that these concerns had been addressed, and such clauses had been removed from the Bill. The Federation submitted that while civil organisations should be subject to registration and codes of conduct, this responsibility was best suited for line function departments such as the Departments of Social Development or Employment and Labour.

5.1.2. Intel Watch

The Bill failed to address the recommendations of several critical reports published with respect to the intelligence sector. These reports include the 2018 Presidential High-Level Review Panel (HLRP), the Judicial Commission of Inquiry into Allegations of State Capture, the 2008 Ministerial Review Commission on Intelligence (the Matthews Commission), the 2006 Report of the Task Team on the Review of Intelligence-Related Legislation, and the Expert Panel Report into the July 2021 civil unrest.

IntelWatch submitted that the Bill still contained problematic and overly broad definitions which were essential to its interpretation. Specifically, the definitions of ‘opportunity’, ‘national security intelligence’, ‘intelligence gathering’, and ‘threat to national security’ were said to lack clarity and precision. Moreover, the Bill failed to define national security, making the term’s use even more problematic and illustrating a policy shift away from public safety and international obligations reminiscent of the manner the United States of America and the United Kingdom viewed the role of intelligence.

IntelWatch argued that the Bill did not sufficiently ensure the independence and powers of the IGI, JSCI, and the Auditor-General of South Africa (AGSA). To address this issue, IntelWatch made three proposals: first, the JSCI should be able to request the IGI to conduct specific investigations, and the IGI's recommendations must be binding and should not require the concurrence of the Services.

Secondly, provisions for whistle-blower protections or an anonymous hotline be made available to ensure that people who engage with the IGI are protected. Thirdly, the Bill should have provisions that empower the AGSA to have full access to the Service's finances. Long term this required that the Secret Service Account Act 58 of 1978 and the Security Services Special Accounts Act 81 of 1969 be repealed to allow for accountability and transparency. In the interim, IntelWatch supported the establishment of the Evaluation Committee. However, this Committee ought to be a subcommittee of the JSCI with diverse representation from opposition parties. The Evaluation Committee should conduct periodic assessments of the Services to maintain the best practices within the covert environment and share this information with the JSCI. The JSCI should not just rubber-stamp the Intelligence Services budget but ought to have deep insights into the finances to ensure that all budgets are utilised according to planned activities and aligned with government priorities.

Regarding further matters related to oversight and operational efficiency, Intel Watch supported the alignment of the JSCI's reporting period with that of Parliament and the biannual meetings between the President and the JSCI to discuss national security matters. IntelWatch supported the creation of a Deputy IGI position to further strengthen oversight and allow for the continuation of work.

IntelWatch advanced that there were several stages in a bulk interception, namely collection, analysis, and storage, which cannot be left to regulations. Regulations were drafted by the Minister in secret and could be amended in secret with limited accountability. IntelWatch believed those processes should be included in the Bill as the process of bulk interception is common knowledge and does not expose state secrets. A definition of bulk interception was needed in the Bill and should not be detailed in the regulations. The lack of a clear definition of bulk interception raised concerns about the scope and boundaries of surveillance activities. It was imperative that such definitions be explicitly outlined within the final legislative text rather

than being left to regulations, which can be amended without proper scrutiny. Additionally, to ensure effective oversight and coordination, any provisions related to bulk interception should be situated within the foreign service framework. Furthermore, Bill needed to explicitly state the role of the Chief Justice in appointing the Judge who will consider the applications for bulk interception. It is important that this appointment was not solely the prerogative of the President.

A separate vetting department that was of equal standing with Intelligence Services was needed and would also assist with the vetting backlog. There was also a need for a proper appeals process that goes through the vetting department, so no one person should be able to decide on a security clearance. IntelWatch was concerned that the SABC was still considered a Critical National Infrastructure, which meant that journalists could be asked to be vetted. IntelWatch called for the Bill to make it explicit that security competence will not interfere with the journalistic integrity of the SABC.

Intelwatch stated that there ought to be penalties for transgressions within the intelligence framework encompassing a range of actions targeting various aspects of misconduct. These include penalties for failure to provide access to classified information, enforceable by entities such as the JSCI, AG, Evaluation Committee, and internal or external investigators. Additionally, penalties should be imposed for the weaponisation of vetting processes, any form of interference with investigations (whether through revoking clearance or withholding information), and any interference with the proceedings of internal or external inquiries conducted by bodies like the IGI, JSCI, or the Hawks. Surveillance operations targeting civil society should also carry penalties, serving to deter any misuse of intelligence resources for activities detrimental to democratic principles and civil liberties. IntelWatch recommended that the relocation of the SSA or resulting intelligence service to the Presidency be reviewed to protect intelligence services from possible abuse.

5.1.3. Freedom of Religion South Africa

Freedom of Religion South Africa (FOR SA) had made oral and written submissions on the first iteration of the Bill during the NA Committee process. The previous Bill contained ambiguous and broad provisions that raised concerns about the potential for religious institutions and leaders to be perceived as threats to national security, resulting in mandatory competency tests. The consequences for failing to obtain a security certificate were also unclear, which added to the

concerns. These provisions prompted serious religious concerns, including the regulation and suppression of the religious sector. For SA was pleased that many of the concerning definitions had been removed and the organisation acknowledged the hard work done by the NA Committee.

However, there were still concerns about some definitions in the Bill. Specifically, the definitions of ‘national security intelligence’, ‘opportunity’, and ‘threat to national security’ raised significant concerns and lacked clarity. The definition of ‘national security intelligence’ still mentioned opportunity, which was vague and unclear, making it difficult to understand and apply. Interestingly, references to this concept had been removed from other definitions, emphasising its ambiguity.

Although the definition of ‘opportunity’ no longer explicitly mentioned potential opportunity, it remained broadly defined, leading to potential legal uncertainties and misuse. Additionally, the concept of ‘threat’ remained undefined, contributing to legal ambiguity and potential loopholes.

The current formulation of the definition of ‘threat to national security’ was notably shorter, yet it still lacked precision and specificity. By incorporating undefined, vague, and broad concepts, the legislation creates legal uncertainty, which could be exploited and abused.

5.1.4. Mr Bavesh Padayachy

Bavesh Padayachy indicated that the revisions made by the NA Committee provided a richer Bill. However, there were still vague definitions that needed to be considered. He expressed that although the definition of ‘national security’ had been refined, it still needed further revision and restriction by using sections 1 or 2 of the Constitution, as these provide a more fundamental view of the Constitutional values.

The definition of ‘intelligence gathering’ raised significant privacy concerns. The ambiguity surrounding the scope of surveillance activities raised questions about the impact on constitutional rights and democratic institutions.

Mr Padayachy discussed the discretionary powers conferred upon the Director-General and the Minister by the Bill. He explained that the purpose of these powers was to reduce bureaucracy

that previously hindered the SSA from fulfilling its responsibilities efficiently. This would enable the new intelligence services to perform their duties faster. However, granting such powers also created the potential for abuse. In order to hold the Minister accountable for their use, the Bill ought to require the Minister to provide quarterly reports to Parliament or refer certain decisions to Parliament for review after they have been made.

“2D Surveillance arising from bulk interception (1) If whilst conducting bulk interception, it becomes necessary to engage in surveillance of a citizen of the Republic of South Africa, whether within or outside of the Republic, the Centre must comply with the procedure envisaged in the Regulation of Interception of Communications and Provision of Communication-related Information Act No 70 of 2002, (RICA) to obtain the requisite approval.” The Bill should clearly mention the particular sections of RICA to which it refers, as the Constitutional Court had stated that RICA does not provide sufficient protection for the right to privacy, access to courts, freedom of expression and the media, and legal privilege.

5.1.5. Prof. Jane Duncan

Prof Duncan submitted that the Bill ought to have been preceded by a National Security Strategy, which would have served as a comprehensive roadmap outlining national security objectives, priorities, and measures necessary to protect the country's sovereignty, stability, and prosperity. In the absence of a clear and coherent strategy, Parliament risked legislating within a policy vacuum and creating laws that may not align with the country's security goals.

In addition, an architectural review of the legislation needed to be conducted urgently, as it had been neglected for an extended period. This review should encompass an assessment of the appropriateness of the Agency and the Service's location in the Presidency and their reporting structure to the Minister in the Presidency rather than a dedicated Minister of Intelligence. Professor Duncan noted that these two critical omissions may not be addressed in the current legislative process but should be included in the Committee's report for the attention of the forthcoming JSCI in the 7th Parliament.

Prof Duncan submitted that some definitions remained broad and could overlap with the mandates of other government and state entities. The definitions of ‘intelligence gathering’, ‘national security intelligence’, and ‘opportunity’ ought to be redrafted to ensure that intelligence

can only be used in exceptional circumstances when the country is under legitimate threat and that it should not be normalised to use intelligence in everyday government functions as this threatened democracy.

Professor Duncan explained that there seemed to be confusion with regard to the binding recommendations of the IGI. The NA Committee should have differentiated between the assurance/certification function and the ombud/complaints receiving and adjudication function of the IGI. She posited that while a case could have been made for employing a deadlock-breaking mechanism, initially involving the Minister and ultimately conferring the final decision-making to the JSCI with respect to the assurance/certification function. Such a mechanism could not have been applied to the ombud/complaints-receiving function.

To this end, Prof Duncan emphasised that recommendations stemming from the ombud/complaints function should be binding even without consensus with the Service. This approach draws parallels with the Dutch oversight mechanism, where an independent body, the Review Committee on the Intelligence and Security Services (CTIVD), addressed complaints and reports of misconduct filed by individuals or advocacy groups. The CTIVD had the authority to issue binding decisions on complaints, compelling the relevant Minister to implement the decisions regarding the complaints. According to her analysis, concerns regarding the potential litigation of these binding recommendations were unwarranted.

Furthermore, she underscored the necessity of appointing a Deputy IGI to complement the IGI's oversight functions, as many of the issues highlighted in the HLRP occurred during a period without an IGI.

The current Bill narrows vetting to people who access classified information and critical national infrastructure, which is appropriate. However, the definition of critical national infrastructure could potentially encompass the public broadcaster, the SABC. The proposal is that the Bill should exclude SABC journalists from security competence tests on grounds of media freedom.

Prof Duncan mentioned that the Constitutional Court's 2021 judgment on RICA provided insights into the criteria for a legal framework that authorises bulk interception. The framework needed to outline the functions of the National Communication Centre and clearly specify the circumstances, duration, and manner in which the gathering, collection, evaluation, and analysis

of domestic and foreign intelligence would take place. The current level of detail in the Bill was insufficient, and crucial information was being kept in the regulations instead of the primary law. This posed a threat as too much power was given to the Minister to establish the bulk interception rules and regulations which may be developed secretly.

The European Court of Human Rights established significant benchmarks for regulating bulk interception for strategic intelligence purposes, building upon earlier principles known as the Weber principles. While these principles were originally designed for regulating strategic surveillance, they have been adapted to address the challenges posed by modern technological advancements, particularly in the realm of bulk interception. In 2021, the Court updated these principles to better suit large-scale bulk interception programs, emphasising the need for comprehensive safeguards throughout the process. These safeguards, referred to as end-to-end safeguards, were expected to cover all stages of bulk interception and should clearly define key aspects such as the grounds for authorisation, the circumstances under which interception may occur, the procedures for granting authorisation, the handling and use of intercepted material, and the precautions necessary when sharing such material with other parties.

According to the Bill, one of the functions of the Agency will be to ‘... impede and neutralise members suspected of contravention of this Act and related regulations and hand them to the relevant law enforcement agencies. The proposal is that section 2(b)(v) should be replaced with the following ‘refer cases involving members suspected of contravention of this Act and related regulations to the relevant law enforcement agencies’.

Prof Duncan highlighted that the Bill was silent on reforms needed to govern the Secret Services account and the Security Services Special account and that to remedy this, the Evaluation Committee envisaged by the Secret Services Act needed to be established. This Committee would oversee all Secret Service operations, assess the methods used to achieve objectives, and evaluate whether they are in the national interest or not. To this end, national interest should be defined in the legislation establishing the Committee such that the definition is in line with that given in the Constitution and the White Paper.

In the medium term, the Security Services Special Account Act No. 81 of 1969 and the Secret Services Act, No. 56 of 1978 should be repealed. The JSCI should have full access to classified information, including the projects and plans of the SSA for the year. JSCI should have the final say on which projects are funded.

Section 12 of the Intelligence Services Act empowers the Minister, subject to the Act, to do or cause to be done all things which are necessary for the efficient superintendence, control, and functioning of the Agency. This is replaced in the Bill with section 24, which states that: ‘...The Minister may subject to this Act, do or cause to be done all things which are necessary for the efficient superintendence, control, and functioning of the [Agency] Intelligence Services, Centre or Academy.’ The latter provision should be amended to ensure that the Minister is confined to executive oversight.

5.1.6. Mr Kgosi Motasi

The submission was not entirely based on the Bill; however, Mr Motasi mentioned that the lack of national security was evidenced by the amount of contraband, exported stolen goods, and undocumented foreign nationals present in society. Mr Motasi advanced that poverty, inequality, and various social ills posed significant threats to national security as they exacerbated societal tensions, fuelled unrest, and undermined stability. Economic disparities often bred discontentment and disenfranchisement among marginalised communities, leading to social unrest, crime, and even extremism. Moreover, inadequate access to basic resources such as education, healthcare, and employment opportunities perpetuated cycles of poverty and inequality and created fertile ground for radicalisation. Addressing these socio-economic challenges through legislation was paramount for safeguarding national security. By implementing policies that promote equitable economic growth, social inclusion, and access to essential services, lawmakers could mitigate the root causes of instability and enhance societal resilience. Legislative measures aimed at addressing poverty, inequality, and social ills were essential for building a more stable, cohesive, and secure society.

5.2. ANALYSIS OF ORAL SUBMISSIONS

The discourse surrounding the revised Bill reflected a comprehensive examination of the challenges facing intelligence services in South Africa, alongside proposals for legislative remedies. A central concern raised by stakeholders pertained to the efficacy of oversight mechanisms within the intelligence community. The apprehension stemmed from historical lapses in implementing oversight actions, underscoring the critical need for the IGI's recommendations to carry binding authority. Failure to enforce these recommendations not only

undermined accountability but also hampered the capacity to rectify operational deficiencies and uphold constitutional principles.

Whistle-blower protection emerged as another pivotal issue, accentuating the importance of safeguarding individuals who reported malfeasance or wrongdoing within intelligence structures. The absence of explicit provisions for whistle-blower protection in the Bill posed a significant obstacle to accountability and transparency. Establishing mechanisms such as an anonymous hotline, as proposed by stakeholders, was imperative to cultivate a culture of accountability and mitigate the risks associated with internal misconduct.

Concerns surrounding bulk interception regulations underscored broader concerns regarding the balance between security imperatives and democratic principles. While stakeholders advocated for clear guidelines enshrined in primary legislation to ensure transparency and accountability, the reliance on ministerial regulations raised valid apprehensions about the potential for unchecked Executive discretion. This underscored the necessity of detailing essential aspects of bulk interception within primary law, thus strengthening constitutional safeguards and preserving democratic principles.

Financial accountability and transparency within covert structures constituted a persistent challenge exacerbated by outdated legislative frameworks. The proposed empowerment of the AGSA and the establishment of an Evaluation Committee represented crucial steps towards enhancing oversight and accountability. By repealing antiquated legislation and instituting robust oversight mechanisms, the Bill would address longstanding deficiencies in financial governance within intelligence services. Furthermore, efforts to streamline processes, such as aligning reporting periods with Parliament and facilitating regular meetings between the President and oversight bodies, signalled a concerted commitment to bolstering accountability and transparency.

Inputs from stakeholders highlighted the multifaceted challenges confronting intelligence services in South Africa and the imperative for legislative redress.

6. WRITTEN SUBMISSIONS RECEIVED

6.1. E-mail and Online Form Submissions Received

Sixteen (excluding those stakeholders who delivered oral submissions to the Committee) written submissions were received via the online submission form and GILAB2023@parliament.gov.za combined. Of these sixteen submissions, five (5) submissions were opposed to the Bill, nine (9) supported the Bill, and two did not expressly state if they supported the Bill or not. Submissions opposing the Bill were motivated by a concern about the right to privacy. Support for the Bill was based on the need to strengthen the current legal framework and the need to implement the recommendation of the High-Level Review Panel.

Mr A Chiba suggested that the Bill can be further adjusted to comply with our constitutional principles and that it is possible to advance our national security priorities while respecting civil liberties. The following proposals were made by Mr Chiba:

- Provision for National Security Media Advisory: This will enable journalists to notify a judge when they are in possession of an intelligence report or document; the judge can rule on whether the document can be used by a journalist or, in fact, does compromise national security. If not, the judge can grant an intelligence service NSMA Notice to prevent the publication of intelligence reports, whether partially or even redacted.
- Give the Intelligence Coordinator powers similar to the IGI to subpoena intelligence relating to national security.
- Give the Intelligence Coordinator emergency powers in the event of a national security crisis. The Intelligence Coordinator will have powers under a National Security Crisis (declared by the president), similar to those of the Minister of Cooperative Governance, to impose a curfew and centralise all intelligence agencies to respond to the crisis.
- Give the IGI remedial powers and powers to charge intelligence officers or any person with perjury, defeating the end of justice and obstructing an investigation.
- Reinstate security competency assessment on NGOs, religious institutions, and private security companies but establish an Independent Review Tribunal to review denied security clearances - this could mitigate the abuse of security competency assessment. Organisations and individuals can petition to the Intelligence Tribunal if they believe there is a case of prejudicial/biased decisions and unfair administrative justice.

The submission by The Green Connection was that the organisation aligned itself with the submission from Intel Watch (see section 5.1.2. above). One private individual proposed for the

Bill to be amended to allow for employees/members of Intelligence Services to have labour rights such as enshrined in Section 23 of the Constitution, including participation in a bargaining council for members.

Similarly, a submission purporting to represent the State Security Staff Council (a labour representative structure of members within the SSA) proposed an amendment of section 21(2) of the Intelligence Services Act 65 of 2002. Section 21 (2) reads that “The Minister must in the prescribed manner, make provision for internal rules to deal with complaints, grievances and consultation on conditions of service and human resources within the agency” to be amended as follows:

“In a prescribed manner, and as envisaged in the constitution, the Staff Council is hereby established as a structure representing members’ interests in relation to conditions of service”.

The concerns set out in the AfriForum submission were broadly as follows:

- Concern regarding the expansion of vetting powers proposed in the GILAB. The broad definition of “person or institution of a national security interest” was said to raise apprehensions about potential infringements on freedom of association and the right to privacy.
- The attempt to legalise the National Communications Centre’s operations was said to lack essential safeguards for privacy and freedom of expression. The proposed oversight mechanisms fall short of the standards set by the Constitutional Court, risking unchecked surveillance powers with insufficient protection against potential abuses.
- The lack of provisions to strengthen the independence of the Inspector-General of Intelligence, coupled with historical challenges in preventing abuses, politicisation and corruption raised significant concerns. AfriForum advocated for comprehensive reforms to establish a robust oversight framework and prevent the recurrence of past shortcomings.
- AfriForum was concerned that the GILAB mandated compulsory security “vetting” for entities outlined in the Bill in section 1(p).1 This contentious provision causes significant apprehension within civil society due to its potential and likely intrusion into the functioning of civil society, which plays a vital role in upholding democratic values, human rights, and societal development.

The submission by the Black Land First submission included various recommendations related to the operations of Intelligence Services. These included:

- Establish clear operational guidelines and responsibilities for each new entity to ensure focused expertise and prevent jurisdictional conflicts.
- Mandate regular and independent audits to ensure these bodies function effectively and adhere to principles of legal and ethical intelligence operations.
- Implement strict legal frameworks that narrowly define and regulate the scope of surveillance and data collection activities.
- Enhance public education and actively facilitate community engagement to foster a more informed and participatory oversight process.
- Refine and specify national security definitions to prevent misuse and ensure intelligence activities are justified and appropriately targeted.

6.2. Submissions from Provincial Legislatures

6.2.1. KwaZulu-Natal Provincial Legislature

The Democratic Alliance in KwaZulu-Natal Provincial Legislature, through its leader, Mr Francois Rodgers, responded to the call for input. The DA noted that it had not been able to scrutinise the Bill; however, it confirmed its support for the amendment Bill. The DA placed on record the following statement: The Bill ought to allow for the appointment of a Deputy Inspector-General.

6.2.2. Eastern Cape Provincial Legislature

The Office of the Speaker stated that the Bill was referred to political parties represented at the Eastern Cape Provincial Legislature with the view to solicit comments on the Bill. However, no comments were made on the Bill.

6.2.3. Free State Provincial Legislature

The Free State Provincial Legislature acknowledged the Bill's commendable goal of reforming intelligence structures, yet it raised significant concerns regarding freedom of association, mass surveillance capabilities, and insufficient oversight and accountability of intelligence services. Several problematic aspects were highlighted by various community members:

- **Freedom of Association:** Ambiguous definitions within the Bill concerning 'person or institution of national security interest' have sparked apprehensions about potential infringements on freedom of association.
- **Privacy and Surveillance:** There are concerns that the Bill's provisions could compromise privacy and freedom of expression. However, these concerns must be weighed against individuals' right to dignity, which recent court rulings have emphasized as paramount.
- **Lack of Oversight:** Members of society have raised concerns about the lack of effective oversight mechanisms for intelligence services, which could allow abuses to go unchecked.

While recognising the need for intelligence reform, it was crucial to address these issues to strike a balance between security and civil liberties. The impact of the Bill on individual rights and democratic principles must be carefully evaluated. Moreover, there is a pressing need to enhance intelligence-driven policing and border safeguarding efforts, ensuring their tangible benefits are felt at the societal level. To bolster accountability and independence, the power of the Inspector-General of Intelligence (IGI) must be strengthened, with consideration given to extending the IGI's term of office to align with that of the Chief Justice, thereby promoting stability in the country's safety and security apparatus.

6.3. ANALYSIS OF WRITTEN SUBMISSIONS

Most inputs submitted via the online platform that opposed the Bill do not provide full motivation for why the Bill was opposed. The reason provided was stated as “Concerned about the right to privacy”. This concern was, however, also expressed during public hearings, oral submissions, and submissions by provincial legislatures. It will be viewed as being concerned with constitutionally protected rights such as the right to privacy and freedom of association. The inputs by Inclusive Society to a large degree related to provisions contained in the previous version of the Bill. Inclusive society, for example, stated that the Bill authorised intelligence agencies to conduct compulsory security vetting for any "person or institution of national

security interest." This broadly defined power was said to potentially encompass private individuals, non-profit entities, religious organisations, and commercial enterprises, subjecting them to invasive scrutiny. The potential for misuse of such extensive vetting authority raised alarms about privacy violations and abuse. This broad provision has been addressed in the current version of the Bill.

The recommendations made by the Black Land First Movement and Afriforum to a large degree echo the inputs made by other stakeholders. Whilst Afriforum does not explicitly state whether they support the Bill or not their concluding statement is as follows:

“However, the current form of the GILAB gives rise to profound concerns that cannot be overlooked. The expansion of vetting powers, inadequacies in oversight mechanisms, and the failure to address longstanding issues within the State Security Agency collectively pose a significant threat to the democratic fabric of South Africa.”

The inputs by the Provincial Legislatures have also supported various aspects of the further matters related to oversight and operational efficiency.

7. CONCLUSION

The overwhelming majority of inputs have been in support of the Bill and even where recommendations have been made for further improvements, such stakeholders did not reject the Bill for such reasons. During the NA process, the Bill underwent thorough scrutiny in briefings, public hearings and stakeholder consultations. As a result, substantive changes were made to the initial Bill submitted to Parliament to address concerns raised during the public participation process. These included tightening broad and ambiguous definitions, removing definitions that would enable the vetting of civic or faith-based organisations, removing provisions that would allow intelligence services to apprehend individuals, and addressing matters related to security vetting of institutions of national security interest to prevent potential abuse. The contentious issue of bulk interception, as raised by the public, was also been resolved, with the legal provisions and accompanying safeguards outlined in the Constitutional Court judgment included in the new Bill. The Bill has introduced a robust two-step authorisation process for bulk interception, which requires authorisation within the intelligence service itself and an independent judicial review. This will ensure that interceptions are conducted within the boundaries of the law based on genuine security concerns. Moreover, crucial amendments have

been made to ensure that both the IGI and the National Intelligence Coordinating Committee (NICOC) were autonomous and empowered to make administrative and functional decisions.

As a result of the above improvements, many of the stakeholders, in their submission to the NCOP Ad Hoc Committee, stated that the Bill before the Committee represented a significant improvement. Concerns, however, remain, the most notable of these being the potential that the Bill will infringe on constitutionally protected rights such as the right to privacy and freedom of expression. A further concern raised by a number of stakeholders was that the Bill was said to have insufficient measures to guard against fund misuse, and in this regard, proposals range from repealing the Security Services Special Account Act No. 81 of 1969 and the Secret Services Act, No. 56 of 1978 to calling for the establishment of the Evaluation Committee (as contemplated in the Secret Services Act). The other proposals related to further matters related to oversight and operational efficiency were well received during the provincial public hearings and oral submission of the Bill, some proposals went further to argue that the recommendations of the IGI should be made binding.

Although acknowledging that the Bill, once enacted, will provide empowering legislation for Bulk Interception, there was considerable concern amongst stakeholders that various provisions related to Bulk Interception will be prescribed through regulations and not the principal act. More systemic proposals have also been made related to the location of the security services, the amendment of intelligence laws in the absence of a National Security Strategy and architectural review and alternative arrangements for intelligence structures. These proposals would require that a Regulatory Impact Assessment be undertaken, a process that cannot presently be undertaken.

During the hearing, members of the public expressed support for the Bill, stating that there was a need for coordinated efforts among Intelligence Services and operations. They pointed out that this need became evident during the July 2021 unrest, through the inability of Intelligence Services to provide adequate support. The concerns raised during the hearing highlighted the profound impact of national security and human security issues at a societal level, underscoring the critical role of intelligence services in addressing these challenges. The porous borders and influx of undocumented foreigners not only posed significant threats to national security but also undermined community cohesion and exacerbate social tensions. This highlighted the

interconnected nature of security concerns and the need for effective Intelligence Service to inform the work of government in an effective to build a capable developmental state.

Report for noting.