

Wednesday, 8 May 2024]

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PARLIAMENT
OF THE
REPUBLIC OF SOUTH AFRICA

**ANNOUNCEMENTS,
 TABLINGS AND
 COMMITTEE REPORTS**

WEDNESDAY, 8 MAY 2024

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ANNOUNCEMENTS

National Assembly

The Acting Speaker

1. Referral to Committees of papers tabled

- (1) The following paper is referred to the **Joint Standing Committee on Financial Management of Parliament** for consideration:
 - (a) Fourth Quarterly Performance Report of Parliament for 2023-24, tabled in terms of section 54(1) of the Financial Management of Parliament and Provincial Legislatures Act, 2009 (Act No. 10 of 2009).
- (2) The following paper is referred to the **Portfolio Committee on Public Service and Administration** for consideration:
 - (a) Report of the Public Service Commission on Qualifications of Senior Managers in the Public Service – April 2024.

National Council of Provinces

The Chairperson

1. Referral to Committees of papers tabled

- (1) The following paper is referred to the **Select Committee on Health and Social Services** for noting:
 - (a) Memorandum of Understanding between the Government of the Republic of South Africa and the Government of the Kingdom of Saudi Arabia on Co-operation in the Field of Social Development, tabled in terms of section 231(3) of the Constitution of the Republic of South Africa, 1996.
- (2) The following paper is referred to the **Select Committee on Land Reform, Environment, Mineral Resources and Energy** for consideration.

- (a) Yearly Report to Parliament on international environmental instruments for 2023-24, tabled in terms of section 26(1) of the National Environmental Management Act, 1998 (Act No. 107 of 1998).
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TABLINGS

National Assembly and National Council of Provinces

1. The Minister of Communications and Digital Technologies

- (a) 2024 First Quarterly Report of the National Conventional Arms Control Committee (NCACC) for January – March 2024, tabled in terms of section 23(1)(c) of the National Conventional Arms Control Act, 2002 (Act No. 41 of 2002).

2. The Minister of Forestry, Fisheries and the Environment

- (a) Yearly Report to Parliament on international environmental instruments for 2023-24, tabled in terms of section 26(1) of the National Environmental Management Act, 1998 (Act No. 107 of 1998).
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COMMITTEE REPORTS

National Council of Provinces

1. Report of the Select Committee on Transport, Public Service and Administration, Public Works and Infrastructure on the Railway Safety Bill [B7B—2021] (National Assembly – Sec 76), dated 8 May 2024

1. Introduction

- 1.1. The Railway Safety Bill [B7B—2021] (“the Bill”) was passed by the National Assembly, transmitted to the NCOP for concurrence and referred to the Select Committee on Transport, Public Service and Administration, Public Works and Infrastructure (“the Select Committee”) on 24 October 2023.
- 1.2. The objects of the Bill are to provide for the regulation of railway safety in the Republic; to provide for the continued existence of the Railway Safety Regulator; to provide for the board and governance structures of the Railway Safety Regulator; to provide for railway safety permits; to provide for railway safety critical grades and safety management systems; to provide for a national railway safety information and monitoring system; to provide for a legal framework to enforce compliance with the Act and to deal with railway occurrences; to provide for an appeal mechanism; to provide for transitional arrangements and the repeal of the National Railway Safety Regulator Act, 2002; and to provide for matters connected therewith.

2. Select Committee process followed in respect of the Bill

- 2.1. On 18 February 2024 an advert was placed in National Media calling for written submissions on the Bill with a deadline of 25 March 2024. The Select Committee heard oral submissions on the Bill on 17 April 2024 and on the same day the Department of Transport addressed the Select Committee on its response to oral and written submissions on the Bill. The Select Committee heard oral submissions from the Concerned Engineers Group, Congress of South African Trade Unions, Gautrain Management Agency, and Bombela Concession Company. Written submissions were received from the Western Cape Government Department of Mobility, Mr R von Gericke (formally Research, Design and Development section in the Railway Sector) and Mr B Kolberg (Groenwater Community Member). On 24 April 2024, the Select Committee considered and deliberated on the provincial Negotiating Mandates on the Bill and agreed to reject the amendments proposed in the Negotiating Mandates.

2.2. Nine provinces submitted Final Mandates on the Bill which were considered on 8 May 2024. The Final Mandates were submitted as follows:

PROVINCE	MANDATE VOTE
Eastern Cape	The Provincial Legislature votes in favour of the Bill and mandates the Eastern Cape Permanent Delegate to the NCOP to vote in favour of this Bill.
Free State	The Free State Legislature votes in favour of the Bill.
Gauteng	The Gauteng Provincial Legislature supports the principle and detail of the bill and therefore votes in favour of the Railway Safety Bill.
KwaZulu – Natal	The KwaZulu – Natal Legislature met on Tuesday the 7 th of May 2024, & agreed to mandate the KwaZulu – Natal delegation to the National Council of Provinces to support the Railway Safety Bill [B7B – 2021].
Limpopo	The Province votes in favour of the Bill.
Mpumalanga	The delegation representing the province of Mpumalanga in the National Council of Provinces is hereby conferred with a mandate to vote in favour of the Bill.
Northern Cape	The Legislature Supports the Railway Safety Bill.
North West	The North West Provincial Legislature vote in favour of the Railway Safety Amendment Bill [B 7 B -2021].
Western Cape	The Western Cape Provincial Parliament confers on the Western Cape’s delegation in the National Council of Provinces the authority to support the Bill.

3. Outcome of Select Committee’s Consideration of the Bill

The Select Committee on Transport, Public Service and Administration, Public Works and Infrastructure having deliberated on and considered the subject of the **Railway Safety Bill [B7B—2021] (National Assembly – Sec 76)**, referred to it and classified by the JTM as a section 76 Bill, reports that it has agreed to the Bill.

Report to be Considered.

2. REPORT OF THE SELECT COMMITTEE ON FINANCE ON THE PUBLIC PROCUREMENT BILL (NATIONAL ASSEMBLY- SECTION 76, B18B-2023), DATED 07 MAY 2024

1. INTRODUCTION AND BACKGROUND

The Minister of Finance introduced the Public Procurement Bill, (B18-2023) (the Bill) in the National Assembly (NA) in June 2023. The Bill was passed by the NA and transmitted to National Council of Provinces (NCOP) for concurrence on 6 December 2023.

The objective of the Bill is to regulate public procurement and to prescribe a framework within which preferential procurement must be implemented.

The Bill intends to address the fragmentation of public procurement legislation, align it to international best practice, where appropriate, and assist in implementing government's socio-economic policy objectives.

2. OVERVIEW OF THE PUBLIC PROCUREMENT BILL

The PPB proposes to, (1) create a single framework regulating procurement, in line with all applicable provisions in sections 195, 216, and 217 of the Constitution of the Republic of South Africa, 1996 (Constitution), (2) establish a Public Procurement Office (PPO) in the National Treasury (NT), with specific functions for provincial treasuries (PTs) and duties of procuring institutions, (3) make provision for procurement integrity and debarment, (4) establish a framework providing for the implementation of a preferential procurement policy, (5) provide for the procurement system, methods and related matters (these include a bid committee system and development of information and communication technology (ICT) based procurement system), and (6) establish dispute resolution mechanisms.

3. PROCESSING OF THE BILL

The Bill was processed in terms of the procedure established in terms of section 76 of the Constitution. The Select Committee on Finance (Committee) invited the provincial Select Committees on Finance to the briefing on the Bill by NT on 06 February 2024 and all the other meetings.

The Committee held public hearings on 23 February 2024 and received a total of 33 submissions. Twelve stakeholders made oral submissions. These are Business Unity South Africa (BUSA), Public Affairs Research Institute (PARI), African Procurement Law Unit (APLU), Joint Strategic Resources (JSR), National Research Foundation (NRF), South African Institute for Chartered Accountants (SAICA), Corruption Watch (CW), Public Service Accountability Monitor (PSAM), the South African Medical Technology Industry Association (SAMEDI), Congress of South African Trade Unions (COSATU) and Southern African Clothing and Textile Workers Union (SACTWU), Will Power (WP), and the Institute for Race Relations (IRR) Legal NPC.

Twenty one written submissions were received from the Solidary Trade Union (STU), Construction Industry Development Board (CIDB), Equal Education and Law Centre (EELC) and Equal Education (EE), Pharmaceutical Task Group (PTG), Consumer Goods Council of South Africa (CGCSA), Pharmaceuticals Made in South Africa (PHARMISA), City of Cape Town (CCT), Amabhungane Centre for Investigative Journalism, Health Justice Initiative (HJI), Budget Justice Coalition (BJC) and Imali Yethu Civil Society Coalition for Open Budgets, Construction Sector Charter Council (CSCC), University of Stellenbosch (US) (Venter, Quinot and Scott), Sakeliga (formerly Afribusiness), Webber Wentzel, Eskom, Perishable Products Export Control Board (PPECB), Civil Engineering Group, MEC Wenger, Mr Michael Freema, and Dear South Africa.

At a meeting of the Committee on 19 March 2024, the NT responded to the submissions of stakeholders, and they, in turn, responded to the NT's responses. The Committee then engaged with both NT and the stakeholders.

In its responses the NT dealt with, among others, concerns regarding constitutionality, independence of the Public Procurement Office (PPO), functions of PPO, provincial treasuries and procuring institutions, transparency and integrity measures, whistleblowing, dispute resolution and the extent of regulation-making powers. The Committee raised concerns about NT in some instances only noting stakeholders' comments and explaining that some of the issues will be addressed through regulations, circulars, guidelines, and instructions and should not form part of the primary legislation. The Committee expressed disappointment with NT's responses and urged NT to provide a comprehensive feedback and engage constructively in the process. The Committee invited stakeholders to submit further comments and directed NT to meet separately with the stakeholders to see if they can reduce the differences between them, given that the Bill is a Section 76 Bill which must include the views of the provinces.

Twelve stakeholders submitted summaries of outstanding issues that still had to be addressed. Those who made submissions were COSATU and SACTWU, JSR, Procurement Reform Working Group (PRWG) NRF, PSAM, CSCC, NRF, Willpowers, IRR Legal NPC, Black Business Council (BBC), Business Unit South Africa (BUSA) and Dr Ncedo Mkhondweni. An additional submission was received by MK Liberation War Veterans. Subsequently, NT met with the stakeholders between 8 and 10 April 2024 and provided feedback on the outcome of the engagements to the Committee on 17 April 2024. The report was discussed at length in subsequent sittings of the Committee.

Permanent delegates of the Committee briefed their respective provinces on the Bill between February and April 2024. On 30 April 2024 and 02 May 2024, the Committee considered the provincial negotiating mandates. The Committee held meetings on 23, 25, 26 and 30 April 2024 and 02 May 2024 to further process the Bill, decide on policy issues and consider the Bill clause-by-clause. On 07 May 2024, the Committee considered and adopted the report. In all, the Committee spent 39 hours **(depends on how many hours today – but this figure allocates 3 hours) on the Bill.**

4. SUMMARY OF KEY ISSUES RAISED DURING THE COMMITTEE’S PUBLIC PARTICIPATION PROCESS AND NATIONAL TREASURY’S RESPONSES

This is a brief overview of the submissions made by stakeholders. Their full submissions can be found at on the website of Parliament (<https://www.parliament.gov.za/>). The following key issues were raised by the stakeholders in oral and written submissions:

- 4.1 Poorly defined terms, omissions, and inconsistencies:** Some stakeholders raised concerns about definitions in the Bill, that must be amended, replaced, deleted, or reviewed. Some suggested insertions of new definitions and rectification of errors and omissions. Also, clauses were said to be poorly drafted, undefined, unclear, and hard to interpret, and may introduce the risk of poor implementation. The stakeholders suggested that the National Council of Provinces (NCOP) should strengthen this Bill to address these substantial drafting concerns before its finalisation.
- 4.2 Inadequate public participation process:** Issues raised included that Chapter 4 has not been tested by a National Economic Development and Labour Council (NEDLAC) review process; inputs made in the NA were largely not considered; and there was a lack of meaningful public participation in the NA process. Stakeholders complained that the timeline for processing the Bill in the NA and NEDLAC was rushed. Proposals were made that the Bill not be processed by the Committee, and be returned to NEDLAC for further discussions and be brought back within six months.
- 4.3** Others suggested that a “supplementary” Bill and the regulations be brought back to NEDLAC in the next 18 months. NT outlined its public participation process undertaken since 2014. NT explained that it (1) conducted a comprehensive consultation process with stakeholders in all spheres of government, Cabinet and government institutions, (2) subjected the Bill to the NEDLAC process for six months in 2022, (3) ensured that the Ministers of Labour and Finance received a NEDLAC report signed off by all social partners, and (4) ensured that the Bill was certified by the Office of the State Law Advisers. Also, the Presidency, through the Department of Planning, Monitoring and Evaluation (DPME), issued a certificate for the Social Economic Impact Assessment Study (SEIAS), which permitted NT to proceed with the Bill; the Bill went through the NA process; and the Bill considered the Zondo Commission of Inquiry recommendations and the 2017 Constitutional Court judgement regarding preferential procurement regulations, amongst other judgements.
- 4.4 Major concerns with the Chapter 4 amendments:** Several stakeholders raised the need for clarification of “pre-qualification”, “set-asides”, “sub-contracting”, “asset management”, “complementary goals”, local production and content, and “transformation”. Suggestions were also made to redefine value for money in “set-asides” but also include social and economic redress for the injustices of the past to ensure that South Africa achieves all the objectives of section 217(1)(2) and (3) of the Constitution. Other issues identified included misalignment of Chapter 4 with the rest

of the Bill; the removal of price as a criterion for evaluating tenders; and that the many amendments made in the NA process have created risks and potential legal challenges; and the role of municipal and provincial procuring institutions has been undermined. On the power to determine a preferential procurement policy, stakeholders argued that certain provisions in Chapter 4 of the Bill appear to supersede the five principles outlined in section 217(1) of the Constitution. A proposal was made that clauses 17, 18 and 19 be amended, to remove all categories that are not black or black-owned.

NT responded that:

- 4.4.1 The inclusion in clause 18(1) related to “prequalification” states that the prescribed thresholds and conditions must include a prescribed minimum of potentially qualifying suppliers to ensure competition. It is proposed that clause 17(5) be amended by omitting paragraph (a) to (c) which provides that a bid set-aside in terms of subsection (1) be evaluated in terms of the prescribed criteria. “Prequalification” for preferential procurement and subcontracting as a condition of contracts are included in a manner that aligns with the aims of sections 217(2) and (3) of the Constitution, especially considering the majority judgment in the *Minister of Finance v Afribusines* (NPC [2022] ZACC 4) at paragraph 116 of the Constitutional Court judgement: “Happily, both the first judgment and this judgment and, indeed, the Minister understand the impugned regulations to do what is envisaged in section 217(2) of the Constitution.”
- 4.4.2 Based on the intentions of section 217 of the Constitution, it is not correct that “set-asides” are unconstitutional, as section 217(2) provides for preference in the allocation of contracts and for the protection and advancement of persons or categories of persons previously disadvantaged by unfair discrimination. The reason that “set-asides” were regarded as not being valid was that the founding legislation, the Preferential Procurement Policy Framework Act (PPPFA), did not provide for “set-asides” per se, but for preferential procurement to only occur within the context of a preference point system. Clause 17 is drafted in a manner that recognises that it may not always be possible to implement the “set-asides” provisions, and clause 17(6) states what should happen in such instances. Furthermore, clause 18(7) is written in a manner that ensures that competition is not flouted when procuring institutions make use of the pre-qualification provisions. NT believes that the necessary checks and balances have been written into the designation provisions. Different categories of “set-asides” have been proposed as stand-alone categories to further elevate different categories of people previously disadvantaged, in line with the comments received.
- 4.4.3 On local production and content, the Constitution in section 217(2)(a) provides for preferences in the allocation of contracts, which preferences may relate to several vulnerable categories, such as the local manufacturing base of the country. It is

believed that the necessary checks and balances are contained in clause 20, the provision for designation of sectors for local production and content.

- 4.4.4 Stakeholders expressed a view that the price used in evaluating tenders could be deemed unconstitutional as section 217(1) of the Constitution makes provision for cost-effectiveness and competition as one of the principles of public procurement. NT said that procurement, and public procurement in particular, by its very nature, should first and foremost be about price. They further highlighted that only if the national legislation can be brought under section 217(3), which requires a legislative framework for the preferential procurement part of the exercise, can there be a departure from the requirements of section 217(1).
- 4.4.5 Regarding alignment, Chapter 4 should be understood in the context of the procurement system envisaged in section 217(1) of Constitution, and is also linked to Chapter 5, which provides a framework for this system to be prescribed by regulations. Procuring institutions must implement their procurement systems and policies considering the nuances of their sector and industries. In the Constitutional Court judgement of the Minister of Finance v Afribusines, Justice Mhlantla stated at paragraph [79] that: “The stand-alone reading of section 217(1), which ignores section 217(2), is not only a disservice to statutory interpretation, but also ignores the founding values of the Constitution”. This reaffirms that national legislation providing a framework to give effect to section 217(2) of the Constitution must consider the founding values of the Constitution and the need to deliberately redress past discriminatory practices and provide for measures to make a meaningful difference to the lives of South Africans who suffered under apartheid.
- 4.4.6 It is proposed that procedural provisions in clause 17(5)(a) to (c) be omitted as well as all references to “complementary goals” in Chapter 4. It is proposed that clause 25(1) be amended to contain a general requirement on bid evaluation as prescribed by regulation as part of the framework for an institution’s procurement system, which is to include cost-effectiveness, functionality and technical requirements, where applicable. Institutions must apply the preferential procurement provided for in Chapter 4 within their procurement systems developed and implemented as determined by regulation under clause 25, read with clause 8, of the Bill. The PPO may issue a model policy, which the procuring institution may customise according to its own institutional requirements.
- 4.4.7 On transformation, as to the proposed removal in clause 17(3), 18(1) and 19(1) of categories that are not black people or owned by black people, NT did not support removal of categories of “women”, “people with disabilities”, “youth”, “small enterprises” and "co-operatives" categories. These categories of persons accord with section 217(2)(a) and (b) of the Constitution in that persons who were previously disadvantaged by unfair discrimination included all women, not just black women, as an example. Furthermore, section 217(2)(a) allows for categories of preference in the allocation of contracts. Therefore, the framework in Chapter 4

may provide for preferences for other vulnerable categories of persons, such as "small enterprises" generally.

4.4.8 NT did not agree with the notion that preferential procurement is discretionary, as alleged. The Bill is clear that preferential procurement policy of a procuring institution must comply with the framework of Chapter 4 which includes matters to be prescribed by regulation. To make compliance with the regulations clearer it is proposed that it be included in clause 16.

4.4.9 As to comment that the five principles in section 217(1) of the Constitution are not adequately reflected in the Bill, various provisions in the Bill deal with these five principles. The principles in section 217(1) must be adhered to together with other provisions of the Constitution, which includes section 217(2) and (3), and sections 195(1)(b) and 216. The Bill, read together with regulations, will direct procuring institutions on how to give effect to these principles in their procurement systems which includes their policies.

4.5 **Transparency on the calculation of “premiums” in the Bill:** Some stakeholders raised concerns that, (1) NT appears to have no plan to ensure transparency and expenditure control over Black Economic Empowerment (BEE) “premiums” paid under the Bill, (2) there is no indication of how technology records “premiums”, “regulations” and “instructions”, and (3) the value of “excessive premiums” and how race will be tested is not clear. A proposal was made that the Methodology for Assessing Procurement Systems (MAPS) process is an intervention needed for the reform of South Africa’s public procurement system. NT referred to clause 33, obliging the Minister (it is not a discretion) to make regulations regarding the disclosure of procurement information and what these regulations must contain, as a minimum and this is sufficient. Subclauses (2) to (4) of clause 64 (which is clause 63 in the D-version of the Bill) sets out a rigorous process for the development of regulations, which enables a transparent process. Unlike in the current system where transparency was implemented through the use of instructions concerning institutions under the scope of the Public Finance Management Act (PFMA), the Bill will, together with the regulations, provides for compulsory measures of transparency in the primary and subordinate legislation. Premiums and transformation issues will be addressed in the regulations.

4.6 **No consideration for cooperative governance:** There was also a concern that there was no provision to consult the Department of Cooperative Governance and Traditional Affairs (CoGTA) or South African Local Government Association (SALGA); power is centralized at the expense of provincial and local government; the Bill does not acknowledge the local government sphere; and there are limited cooperative governance arrangements. NT’s response was that section 217 applies to all organs of state; and the legislative and executive powers of provincial and local government are not usurped. NT explained that the Minister of Finance is currently empowered to make regulations under the PFMA and Municipal Finance Management Act (MFMA) that

are applicable to provincial institutions and municipalities, respectively. Also, NT is empowered by the PFMA to issue instructions applicable to provincial institutions, while provincial treasuries may issue instructions specific to their provinces. NT further indicated that the Bill does not seek to undermine or amend the independence and constitutional authority that is vested in municipal councils. It seeks to regulate procurement activities to ensure uniformity throughout the public sector. The municipality's right to exercise its power or perform its functions is not compromised, as the process will be after consultation with the relevant Minister, and as proposed, that organised local government be consulted. In addition, clause 64(2) compels the Minister to consult with the relevant Minister on a drafting of regulations affecting the portfolio of that Minister, which includes the Minister of CoGTA. NT proposed that the PPO may only issue non-binding circulars applicable to local government, which municipalities may choose to adopt and that the enforcement function for provincial treasuries be omitted.

- 4.7 **Potential non-compliance with the law and the Constitution:** Some stakeholders cautioned that the NA's consideration of about 36 per cent of the public comments received, and the lack of a framework for implementation with principles and checks and balances from a drafting point of view, might be legally challenged. The Bill raises significant issues concerning section 217 of the Constitution; and the lack of clarity about pricing mechanisms in the Bill may not align with the Constitution. NT advised that the concerns mentioned are of such a nature as to let the Bill fail constitutional muster, however, certain proposals have been made for amendments to limit the risks of potential Constitutional challenges.
- 4.8 **Lack of consistency and alignment between the Bill and other legislation.** Some stakeholders identified potential conflicts and inconsistencies with other legislation, such as the National Health Insurance Bill (NHI Bill), Municipal Systems Act (MSA), and MFMA, while some sections in the current version of Chapter 4 were found to overlap with and override the Broad-Based Black Economic Empowerment (BBBEE) Act. NT's response was that the Bill does refer to several Acts that are relevant or appropriate for the implementation thereof, such as the Promotion of Administrative Justice Act (PAJA), Public Service Act (PSA), Construction Industry Development Board Act (CIDB Act), Companies Act, and the Broad-based Black Economic Empowerment Act (BBBEE Act). NT indicated that the Schedule to the Bill contains amendments to and repeals of several Acts and these will be reviewed to limit reliance on the trumping clause (3) (4) in the Bill, and changes to the Schedule are proposed.
- 4.9 **Lack of independence of the PPO:** Some stakeholders raised concerns that the role, structure, and independence of the PPO is not aligned with the recommendations of the Zondo Commission Report, while accountability mechanisms are not clearly defined and sometimes absent in the Bill. Also, extensive law-making powers given to the PPOs and PTs may be unconstitutional and may lead to more fragmentation in public procurement law. Suggestions were made that the PPO should be separate from NT and

accountable to Parliament; and that PTs should be empowered to issue instructions. On the effectiveness of the PPO and NT, there is a need to consider best practices internationally. NT's response was that the PPO's functions pertain to when government procures and not when the private sector procures. Therefore, no need for the PPO to be independent since it performs a function for government. Section 216(2) of the Constitution stipulates that NT must enforce compliance with uniform norms and standards, which includes procurement. Therefore, having the PPO in NT accords with section 216(2). The Bill does not propose chief or central buyer functions for the PPO. It proposes to confer original powers on the PPO which allows for separation from other functions of NT. Therefore, the PPO should be located in NT. The officials of the PPO will be appointed in terms of the Public Service Act (PSA) and the provisions of that Act will apply to these officials.

- 4.10 **Confusing functions and structure of the PPO and PTs:** Some stakeholders raised that the PPO functions are not aligned with those of PTs and the provisions are drafted in broad and vague terms. They found it confusing that the legislation empowers PTs to issue binding instructions for procuring entities within their provinces, but only when they are not inconsistent with instructions from NT (through the PPO). NT contested this. It asserted that the functions of the PPO, PTs and the procuring institutions are clearly articulated in the Bill. It clarified that some functions will be performed by the PTs, which are the same as the PPOs. The difference is that such functions will only be performed within the provincial administration of that PT and in relation to procuring institutions within that province. NT further emphasised that the role of the PPO is comparable to the current role of the NT in terms of the PFMA and MFMA.
- 4.11 **The Bill ignores incentivised whistleblowing:** Some stakeholders complained that repeated calls made by them at NEDLAC and various other civil society organisations for the inclusion of incentivized whistleblowing in the Bill were ignored, and the Bill fails to entrench mechanisms and processes that would assist in the fight against corruption. Some stakeholders expressed apprehension that incentivizing whistleblowing could lead to the creation of an unwelcome market for criminal conduct, with people falsely accusing others of wrongdoing to qualify for the financial support given to whistle-blowers. NT responded that strengthening the protection of whistleblowers is supported through amendments to the Protected Disclosures Act (PDA) administered by the Department of Justice (DoJ) and not through this Bill. In 2023, the Minister of Justice has published a discussion paper on the review of the PDA in this regard.
- 4.12 **Flouting of transparency, accountability, fairness, and integrity measures:** Some stakeholders are concerned that the Bill allows for corruption to continue; denies the public access to some procurement processes which are in the public interest; and the concept of “confidential information” in the Bill is vague and overly broad to constitute a legitimate ground for secrecy. They cautioned that the Bill will violate section 216 of the Constitution insofar as it prescribes measures that impair transparency and

expenditure control. Stakeholders suggested the establishment of a national publicly available register of who has received which tenders and the disclosure of tenders received by political leaders and their immediate relatives.

NT responded that:

- 4.12.1 Transparency is a constitutional requirement and is embedded in provisions of the Bill.
 - 4.12.2 Issues relating to the fight against corruption and anti-corruption measures need collaboration with relevant government institutions and law enforcement agencies.
 - 4.12.3 The Bill, with all its provisions on integrity of the procurement system and anti-corruption measures and transparency, is not the only instrument through which to combat corruption.
 - 4.12.4 Regarding the proposed anti-corruption agency, recommended by the Zondo Commission, NT's view is that such an agency is best placed within the departments in the justice cluster.
 - 4.12.5 The Bill provides for the Codes of Conduct for everyone involved in procurement, and prohibition of undue influence in the procurement processes; the declaration of interests regarding persons involved in procurement as well as automatic exclusion of specified persons from submitting bids and debarment of bidders and suppliers. The Bill also makes directions inconsistent with the Act punishable, as well as offences for persons from submitting bids. It also considers the debarment of bidders and suppliers; and makes directions inconsistent with the Act punishable, as well as offences for persons who knowingly give false or misleading information, or connive or collude to commit corruption or fraudulent, collusive acts.
 - 4.12.6 The Bill contains several transparency provisions such as clauses 2(2)(b) (objects), 15(6) (debarment register), 30(2)(a) and (b) (access to procurement services and open data), 32 (access to procurement processes) and 33 (disclosure of information) and 64 and 65 (process to make regulations and instructions).
 - 4.12.7 To enable adaption over time, the disclosure of information should be determined by regulations.
 - 4.12.8 NT supported the proposal of stakeholders that confidential information be defined with reference to the Promotion of Access to Information Act, 2000.
- 4.13 **Lack of balance between the Act and the Regulations:** Stakeholders raised concerns that there are regulatory alignment problems, and the Minister of Finance has too much power to regulate. Suggestions were made that the power of the Minister to rule by

regulation must be significantly reduced and the concrete rules of procurement should be spelt out in the legislation. NT's response was that providing in the Bill for all the different prescripts required for different types of procuring institutions and different types of procurement is not viable. For sections 216(1) and 217(3) of the Constitution, national legislation includes subordinate legislation according to section 239 of the Constitution. The Bill sets a framework for procurement with specificity to be provided in Ministerial regulations, the Public Procurement Office's instructions, and procurement systems and policies of institutions determined within the framework of the Bill and requirements of the regulations. The primary reason for this approach is to allow for different regulations to be made for different categories of procurement (e.g. infrastructure, capital assets, PPPs, normal goods and services, consultants, etc.) and different categories of institutions (e.g. departments, government business enterprises, municipalities), and to cater for new developments in procurement. These regulations may be amended or repealed when required without the need for amendments to the primary legislation. Concerning several aspects, the Bill obliges the Minister to make regulations, with details on these aspects including, in some instances, the required minimum content. Where the Minister has a discretion to make regulations, the subject thereof is restricted and does not confer broad unconstrained powers. The process to develop regulations is more rigorous than before. It includes consultation with the relevant Ministers and, consultation with organised local government on draft regulations affecting local government. Public consultation is required through publication of draft regulations for comment as well as a statement explaining the need for and the intended operation of the regulations and the expected impact of the regulations. Parliamentary scrutiny for a 30-day period is also required. When the regulations are made, the Minister must publish a consultation report including a general account of the issues raised in public submissions and responses to those issues. Instructions must also be published for public comment.

- 4.14 **Financial implications and resources needed to implement the Bill:** Many stakeholders cautioned that skills and resources are key in the implementation of the Bill. There will be set-up and transitional costs; increased operational costs; and an increased cost on procurement itself, especially to provinces and municipalities. The cost implications of Chapter 4 have not been specified in the Bill, and this exposes the provinces and municipalities to the risk of unfunded mandates and hidden costs. It is unacceptable that NT cannot project or estimate the financial implications of the Bill on all affected parties. NT's response was that the elements of the procurement systems mentioned in clause 25 are existing elements which may have to be made part of the procurement system. NT further said that most of these are not new functions for institutions but are elevated to primary legislation, and that the enforcement function for PTs is also not new. PTs already have an enforcement role in respect of provincial departments in section 18(2)(b) of the PFMA. While NT's view is that shifting functions within the institutions should result in limited costs, it proposes to remove the enforcement role for PTs in respect of municipalities. NT acknowledged that the establishment of the Tribunal will result in additional costs. clause 68 of the Bill

provides for the provisions of the Act to be brought into operation on different dates and also on different dates for different categories of institutions and different categories of procurement. Where applicable, the availability of funds will be considered in determining the effective date of provisions.

4.15 Issues with the dispute resolution mechanisms and the Public Procurement Tribunal:

Concerns were raised that, (1) the Bill fails to introduce truly effective oversight and accountability mechanisms, (2) it is not clear that the Tribunal in section 38 (clause 36 in the D-version of the Bill) will be adequately resourced to effectively fulfil its duties, (3) the Tribunal does not meet the urgent need to address corruption in procurement, (4) no provision is made for transitional arrangements during the proposed 18 to 24 months period to establish the Tribunal, (5) a single procurement Tribunal for all issues may result in bottlenecks and delayed resolution of issues. They feel that panels in the Tribunal in the Bill and the financial costs be included. NT said that clause 29 explicitly speaks about Bid Committees. NT's other responses were: The dispute resolution procedures are aimed at saving costs and improving turnaround times in service delivery, and the remedies are clearly set out. Also that:

4.15.1 Tribunals are provided for in existing legislation – for example, the Financial Services Tribunal (FST) established by the Financial Sector Regulation Act (FSRA), 2017 and the Tribunal established by the Social Assistance Act (SSA), 2004 for appeals against South African Social Security Agency (SASSA) decisions. The Tribunals will reduce the prospects of judicial reviews. This matter is provided for in clause 54(1).

4.15.2 Clause 47(1) provides that the Chairperson of the Tribunal must constitute a panel for each application, and in terms of clause 48, having panels to attend to disputes in provinces could be provided for in Tribunal rules.

4.15.3 NT proposes that clauses 47 and 48 be amended to specifically deal with the regulation of panels and requirements for operation at a provincial level. The costs of Tribunals are to be carried through appropriations from the National Revenue Fund (NRF) by Parliament and will be proposed through the normal budget process once the estimated costs have been determined and there is the required readiness for the Tribunal to commence its work.

4.16 Problematic donor funding clause in the Bill: Some stakeholders submitted that the Bill requires that all procurement using donor funds must comply with the Act but that may cause significant financial implications for municipalities, as international donors may opt not to adhere to red-tape requirements. While requesting an exemption may result in delays, provinces and municipalities may lose their grant or donor funding if there is a protracted review process which may severely impact service delivery. Significant delays may also result in the need for more costly solutions. A suggestion was made to include a “standstill” clause (54) in the regulations since the delay may

result in losing donor funding . NT explained that many government institutions can't spend all their allocations from the fiscus. The "standstill" clause is there because there is a Tribunal to address disputes; there is provision for exemption in case of emergencies; NT has a unit that specifically manages donor funding; and donors must also comply with the requirements of the Bill. The Bill in clause 62 enables exemptions for donor funded procurement and in clause 64(1)(a)(vii) the regulation of donor funding.

5. PROVINCIAL MANDATES

The Committees met by 30 April 2024 and by 07 May 2024, respectively, to consider negotiating and final mandates from the provinces. NT's written responses to issues raised in negotiating mandates were sent to provinces on 30 April 2024.

5.1 Negotiating mandates

The Eastern Cape supported the Bill and made comments; Free State supported the Bill with proposed amendments and made recommendations; Gauteng supported the Bill and made recommendations; KwaZulu-Natal supported the Bill with proposed amendments; Limpopo supported the Bill and made recommendations; Mpumalanga supported the Bill; North West supported the Bill with proposed amendments; Northern Cape supported the Bill with proposed amendments; and Western Cape did not support the Bill. It provided reasons and made recommendations.

5.2 Final mandates

The Eastern Cape; Free State; Gauteng; KwaZulu-Natal; Limpopo; Mpumalanga; Northern Cape and North-West provinces supported the Bill. The Western Cape did not support the Bill.

The committee expresses its appreciation for the quality of the submissions received from the provinces generally.

6. COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS

6.1 The Committee appreciates the active participation of civil society stakeholders in the Bill and the quality of the submissions received. NT could obviously not respond to each and every point made by all the stakeholders. The verbal responses by NT were significantly better and more comprehensive than the written submissions, especially because NT was constantly challenged by Committee members in robust exchanges. The Committee thoroughly went through NT's report on its April meeting with stakeholders and its other responses to the stakeholder's submissions. The same applied to the submissions of the provinces when they forwarded their negotiating mandates.

Overall, the Committee is satisfied with NT's responses to the key issues in the Bill.

- 6.2 **A “first phase” bill:** The Committee believes that there are several issues raised by the stakeholders and the Committee that are not addressed in this Bill. The Committee sees this Bill as a “first phase” Bill. Further matters can be considered in a “second phase” Bill. The Committee recommends that within two years, the Bill be reviewed, including through a NEDLAC process, and any amendments needed, be brought to Parliament.
- 6.3 **Need for Bill:** The Committee considered statistics from NT, DTI, the Committee researcher, and some of the stakeholders on the extent to which Blacks have been empowered. While there has been some progress it is not enough at all. The reasons for this are many, and some of the points made in this regard by stakeholders are correct. The government and Parliament must accept our failures in this regard. The Committee reiterates its rejection of the same people being empowered repeatedly, mainly because of their political connectivity, at the expense of other sections of Black people. Empowerment has to be spread equitably across all strata of Black people and due recognition has to be given to smaller emerging businesses within the framework of this Bill.
- 6.4 **Drafting errors, omissions, and inconsistencies:** The Committee notes that there were drafting errors, omissions and inconsistencies in the Bill, many identified by the stakeholders and others by Committee members. While acknowledging the urgency in which this Bill was processed by the NA, the Committee finds this unacceptable.
- 6.5 **Inadequate public participation process:** The Committee notes the calls by civil society stakeholders to return the Bill to NEDLAC for further consultation, particularly on the significant amendments made in Chapter 4 in the NA process. The Committee also notes, as mentioned above, that NT conducted a comprehensive consultation process with stakeholders in all spheres of government, Cabinet, and government institutions. NT also subjected the Bill to the NEDLAC process for six months in 2022 and to the NA process. In a reply to the stakeholders, the Committee noted:

We have the fullest regard for Nedlac and the negotiations and other processes that take place there. It helps if Bills have been processed through Nedlac because they usually come with a degree of consensus or at least a sense of what the differences are between the parties. While Nedlac plays a very important role, it is Parliament, as you well know, that ultimately decides on Bills, taking into account what was decided during the Nedlac process.

Our processing of this Bill has followed the usual process, except that we have given far more attention to it than to other Bills, and we asked for a further process of consultation between yourselves and NT. As usual, we receive a briefing on the bill; then have public hearings where we engage with your submissions; then comes NT's response to your submissions, after which

you reply to what NT says and then we engage with both yourselves and NT. We had the further process of your engagements with NT between 8 and 10 April, and when the report was brought to Parliament, we had further engagements with yourselves and NT. It is usually after having heard the stakeholders and NT – all sides - that the committee begins to shape its views. Which is exactly what we have been doing since the committee stage began on this Bill. And you are free to attend meetings or catch up on its proceedings through YouTube. Moreover, our views will be expressed in the amendments that are being processed. If all goes well, we will have processed the amendments by Thursday or Friday this week. We hope to send you the Bill with the amendments by Friday evening for you to send your comments by noon on Monday (6 May 2024). We know that some of you will argue it is too brief a period for you to comment. I'm afraid that's the best we can do. Some of you have been engaging with this Bill over several years, including when it was first gazetted for comment and in the Nedlac process and since, including through the SCoF process. As you might know, we are not obliged in terms of Parliament's rules and norms on processing legislation to take further comments from you beyond the engagements we have already had with you, subject to the standard of reasonableness. We will consider your responses to the amendments at our meeting of 7 May. Some of you want to overhaul the entire bill, we understand, but we are not in support of that. So, we would strongly recommend that you send your comments on the amendments in a brief, precise form and if you want to offer any alternative wording, kindly do so. Ultimately, it is for Parliament, not NT, to decide on these amendments and that is exactly what will happen...

...Adv Jenkins was present in all the SCoF meetings – and I refer you to his comments. He does not find the public participation process to be flawed. Normally, civil society stakeholders complain that Parliament does not carry out its oversight and legislative roles effectively. SCoF made changes to the Bill. That is right.

Several of the stakeholders seem to think that Parliament has to agree with what was decided at NEDLAC. If we were to mechanically or automatically agree with the outcomes of NEDLAC negotiations, Parliament would be abdicating its role in terms of the Constitution, relevant legislation and Rules of Parliament. Besides, the Committee cannot ignore the submissions of stakeholders who were not involved in the NEDLAC process, several of whom had different views from those who took part in NEDLAC.

To create more space and time for public participation, the Committee applied for permission to the NCOP Chairperson for an extension beyond the usual eight-week cycle to process Bills. The permission was granted. According to Adv Frank Jenkins of Parliament's Legal Services Unit, to his knowledge, this is the first time a committee has sought such an extension. The Committee, in fact, spent an extra five to six weeks beyond the eight-week cycle, which ended on or about 2 March 2024 on this Bill.

According to the Committee Secretary, Mr Nkululeko Mangweni, the Committee sat for 40 hours, as follows:

Hours spent on the bill

Date	No. of Hours	Agenda
6 Feb 24	3	Briefing by NT
23 Feb 24	3	Public hearing on the bill
1 March 24	3	Responses by NT on submissions
14 March 24	3	Responses by NT on submissions
19 March 24	3	Responses by NT on submissions
17 April 24	3	Report back by NT on engagement with stakeholders
23 April 24	3	Further processing of the bill
25 April 24	3	Further processing of the bill
26 April 24	3	Further processing of the bill
30 April 24	3	Consideration of negotiating mandates
2 May 24	6	Further processing of the bill
7 May 24	4	Consideration of final mandates
Total	40	

Members of the Committee also took part in meetings of the provincial legislatures during the negotiating and final mandates process.

The Chair of the Committee also engaged for many hours with NT officials and Committee members.

Adv Jenkins' overview of the legitimacy of the public participation process and some of the key constitutional issues are attached as Annexure A.

6.6 Public participation in the Provinces: NT participated in hearings between 08 February 2024 and 22 March 2024 on the Bill. Public participation hearings took place in eight provinces as follows: in districts in the Eastern Cape (four towns in OR Tambo/ Alfred Nzo, four in Amathole/ Buffalo City Metro, four in Chris Hani/ Joe Gqabi and four in Sarah Baartman/ Nelson Mandela Metro), three districts in Mpumalanga (Mbombela, eNkangala, and Gert Sibande), three districts in Free State (Parys, Welkom/Virgina and Smithfield/ Bloemfontein), three hearings in the Western Cape (George, Cape Town and Saldanha Bay), one hearing in Limpopo, one hearing in Gauteng and Northern Cape arranged a virtual public hearing for its entire province. NT did not attend public participation hearings of the KwaZulu-Natal and Northwest legislatures. NT responded in writing to the public submissions made in Gauteng, Western Cape and KZN.

6.7 Constitutionality of the Bill: The Committee notes the views of several stakeholders that the Bill is not constitutionally sound. However, the State Law Advisors (in respect of the tabled Bill, NT's legal advisers, and Parliamentary Legal Service unit could not establish any grounds for unconstitutionality. The Committee relies on advice from the

Parliamentary Legal Services unit. Annexure A covers issues related to the constitutionality of the Bill.

- 6.8 **Major concerns with Chapter 4 amendments:** The Committee notes conflicting views from stakeholders on the constitutionality of Chapter 4 in general and on various clauses. The Committee further notes the concerns about “pre-qualification”, “set-asides”, “sub-contracting”, “transformation”, removal of price as a criterion for evaluating tenders, and misalignment of the Bill with section 217 of the Constitution. Many of these concerns have been addressed by the amendments made.
- 6.9 **Exclusion of reference to price or premium in the Bill:** The Committee believes that small emerging businesses are often not able to compete with established businesses on price and are often excluded from procurement. The Committee requested NT to insert price and related criteria in the Bill without undermining the prospects of small emerging businesses being empowered. The Bill takes into account: (1) section 25, which deals with criteria for evaluation, has been amended to include cost-effectiveness, capability, functionality and technical requirement with limiting new entrants and emerging suppliers and (2) refers to section 195(1)(b) of the Constitution, which relate to Efficiency, Economy and Effectiveness (EEE) use of resources (3) the expected percentage of the premium and the evaluation criteria will be published for public comment, and (4) the clauses on debarment and criminal offences in the Bill seeks to address abuse of the procurement system.
- 6.10 **Cooperative governance undermined:** The Committee notes the concerns raised, which include that the Bill does not acknowledge the local government sphere; the specific Sections 125 and 217 of the Constitution, where the spheres were separated, may be unconstitutional; and economic development ignores the local and socio-economic objectives of the provinces and local government. However, the Bill is amended to include the requirement that organised local government be consulted on draft regulations affecting municipalities and municipal entities. The removal of powers of the PPO and PTs in respect of local government is proposed. Amendments to enable procurement in a geographical area – a municipality or a province - are also proposed.
- 6.11 **Too much regulatory powers given to the Minister of Finance:** The Committee notes the comprehensive reply to this matter in section 4.13 above. While the Committee accepts NT’s views, we believe that as the Bill comes into effect, there has to be a review of the extent of the Minister’s power to regulate and this matter be considered in the “second phase” of the Bill process.
- 6.12 **Financial implications of implementing the Bill:** The Committee notes that the expected ICT-based procurement, and establishment of PPOs and Tribunal and its panels would require additional funds, while there will be transitional costs for provinces and municipalities because of the Bill. The Committee also notes many stakeholder’s dissatisfaction about NT's initial assertion that no additional financial resources were required to implement the Bill, and its recent reluctant

acknowledgement that while the quantum is not known, setting up the Tribunal and its panels will have financial implications. The Committee further notes NT's explanation that the existing pools of practitioners in the departments would help implement the Bill and there are no direct impacts on PTs. The Committee is clear that there will be financial implications in the implementation of the Bill, and cannot understand why NT could have thought there would be none. However, NT has altered the memorandum to mention that there will be financial implications to the implementation of the Bill. The Committee recommends that within six months NT estimates the financial cost of the Bill and reports to the Committee on this.

- 6.13 **Concerns about capacity to implement:** The Committee is concerned about the capacity of NT and the relevant institutions in all three spheres of government to effectively implement the Bill. It notes, however, that the Bill provides for different sections of the Bill to be implemented at different times. The Committee recommends that capacity, funding and other resources should also be taken into account when decisions are taken on this phasing in of the Bill. The Committee recommends that within six weeks of the Committee being constituted in the 7th term of Parliament, NT must present an implementation programme on this Bill to the Committee.
- 6.14 **Lack of transparency and access to information:** The Committee notes that some stakeholders are concerned that the Bill does not provide for transparency and might be in violation of the Constitution because of this. NT holds that the Bill adequately covers transparency in different sections and that the public would have adequate access to information through the enabling provisions in the Act for public access to procurement processes and information including through ICT based portals. The Committee recommends that PPO, provincial treasuries and procuring institutions should put as much information in the public domain as possible, subject to market sensitive and other confidential information. The Committee is aware of the market sensitivities entailed and the need to protect the confidential information of companies, but in the "second phase" review of the Bill, consideration needs to be given to the relevant legal and other issues and whether it is viable for stakeholders to attend the bid adjudication process or parts of it or watch a video of the full or parts of the process (whether it be live-streamed or recorded).
- 6.15 **Whistleblowing:** The Committee notes the calls made by stakeholders for the inclusion of incentivized whistleblowing in the Bill. NT believes that strengthening the protection of whistle-blowers is supported through the amendment of the Protected Disclosures Act (PDA) administered by the Department of Justice (DoJ) and cannot be through this Bill, and that the Minister of Justice has published a paper for this purpose and invited interested parties to submit written comments on the discussion paper on proposed reforms for whistle-blower protection regime in South Africa. The Committee is seriously concerned about the lack of protection for whistle-blowers. Some have been killed, others have lost their jobs and remained unemployed, many have suffered huge financial losses, and others have been seriously affected in other ways. In principle, the

Committee supports some form of incentivized whistle-blowing, but as this issue falls under the DoJ and they have published a paper on this recently, we do not have the authority to make a decision on this. However, the Committee recommends that the review of the Protected Disclosures Act be finalised urgently, and consideration be given to incentivized whistle-blowers being included.

- 6.16 **Lack of independence of the PPO:** The Committee notes concerns that the role, structure, and independence of the PPO is not aligned with the Zondo Commission Report recommendations, while accountability mechanisms are not clearly defined in the Bill and that the PPO should be separate from NT and accountable to Parliament. NT replied, as mentioned above, that the role of the PPO is to perform functions regarding government's requirements, which cannot be provided in-house, and does not regulate the procurement by the private sector. In addition, the PPO is not the chief buyer on behalf of the government. There is no justification from creating an entity separate legal entity for this purpose. The Committee agrees that the PPO should remain within NT.
- 6.17 **Problematic donor funding clause in the Bill:** The Committee notes the concerns raised that the Bill requires all procurement using donor funds to comply with the Act and that this may have significant financial implications for municipalities. NT's argument is that all procurement, regardless of the source of funding should be subjected to the Bill. The Bill in clause 62 enables exemptions for donor funded procurement and in clause 64 (1) (a) (vii) enables the regulation of donor funded procurement.
- 6.18 **The Bill is not applicable to Parliament:** The Committee notes that clause 3(2) of the Bill provides for the application of the preferential procurement provisions to Parliament and Provincial Legislatures and not the rest of the Act. The legal doctrine of separation of powers is expressed in the Constitution and requires that Parliament and provincial legislatures must determine and control their own internal arrangements, which includes policies for public procurement. However, such policies must be consistent with the framework in national legislation contemplated in section 217 of the Constitution. The Preferential Procurement Policy Framework Act - which will be repealed when the Bill is promulgated - provides the framework and hence the Bill replaces that framework in chapter 4. The Financial Management of Parliament and Provincial Legislatures Act (FMPPLA), 2009 determines that Parliament must prescribe a policy for public procurement that must be consistent with the PPPFA and BBBEEA. The FMPPLA should consider what is relevant to Parliament in this Bill.
- 6.19 **Concerns of the construction sector:** The Committee is very concerned about the destructive consequences of the "construction mafia", with its demands of 30 per cent of the cost of every project. The Committee notes that clause 27 has preventative measures that procuring institutions must take and the provisions on debarment and

offences (specifically extortion), if duly enforced, will address this partly. But the law enforcement and justice system need to be far more effective in dealing with this.

- 6.20 **Concerns raised by provinces in negotiating mandates:** The Committee appreciates the concerns raised by the provinces. Many of these issues were raised by the stakeholders in the NCOP public hearings and have been addressed. Some of the issues will be addressed through regulations and others in the implementation process. There were also issues raised that do not belong in this Bill. These concerns include the challenges with the CIDB grading system; non-adherence to the 30-day payments rule by most departments and translations of bid documents to all languages. NT’s response to the latter concern was that it would consult with the Pan South African Language Board (PanSALB) and other relevant bodies for this requirement to be considered for inclusion in the regulations. The Committee supports the proposal that bid documents should not only be in English. The Committee believes that consideration needs to be given when this Bill is reviewed to establish a Procurement Regulator as either an independent entity or part of the National Treasury, with assured operational independence. The submissions from the provinces - some more than others – were very comprehensive and helpful, and the Committee expresses its appreciation.
- 6.21 **Proposed amendment of the definition of “Black people” in the BBBEE Act:** The Committee notes the concern from KZN about the categories listed under “Black” in the B-BBEE Act and the recommendation that the PPB should separate the demographic reference to “Black people” from Indian and “Coloured” people. Many African entrepreneurs believe that Indians in KZN benefit disproportionately through B-BBEE – and that this is not fair. The Committee recognises this concern. However, this would mean changing many other BEE and other laws that refer to all people of colour as Black and this review will have to be done through a proper policy process, not in this Bill.
- 6.22 **Protection of Officials:** The Committee notes the concern that there is no protection of procuring officials against the notorious behaviour of business forums who demand a certain percentage and chase companies away from projects. Procuring officials also need protection from other abuse as well. The Committee recognises the need for the protection of officials; however, this cannot be addressed in this Bill. Ultimately it is a criminal matter, cutting across all spheres of government, which must be reported to the police and be dealt with by law enforcement agencies.
- 6.23 The Committee has decided that the Minister must, within 24 months after the Act is published as an Act in the Gazette, review the implementation of the Act and the need for any amendments to the Act. This should be done after consultation with stakeholders, including NEDLAC and within 30 months after the Act is Gazetted, a report on the review should be made public and submitted to Parliament. As part of the review process, the Department must perform an assessment of the cost-effectiveness of procurement and competitiveness, taking into account price, social cohesion, the

need to redress past disadvantages entrenched through legislated and societal mechanisms, together with effective delivery of government objectives.

- 6.24 The committee expresses serious concern that a Government Department, the Department of Trade, Industry and Competition (DTIC), has brought up an issue at the last stage. The Committee believes that these differences should have been settled in the cabinet process. The Committee is not clear why the DTIC's concern was not raised at an earlier stage in the Standing Committee on Finance (SCoF) process. However, the National Assembly might consider take this further. The Committee recommends that NT meets with DTIC by the time the SCoF process begins to address their concern.
- 6.25 The DA is opposed to the Bill because it rejects the premise that race can be used as a proxy for the historically disadvantaged. While it acknowledges that the majority of people who have historically been deprived of opportunity are black, there are many others who have been disadvantaged. Furthermore, the past 30 years of democracy have gone some way to correcting the injustices experienced by many South Africans during the Apartheid years. While much more needs to be done, focus should be on empowering those who have remained unempowered. Race is, therefore, an outdated measure. It is furthermore demeaning to South Africans to still be subjected to the "race classifications" that made Apartheid the evil system that it was. Our present government's policies are contributing to racial polarisation. The DA believes that the best way for government to achieve socio-economic redress is to govern well, uplifting the majority of South Africans who remain trapped in hardship rather than advantaging a select few. Many of the programmes favouring the few have to date been counter-productive, with projects designed to uplift large groups failing because of lack of skills or malfeasance of the project bid-winner. While redress is essential and fast-tracking interventions are necessary, the current model does not achieve this, and the Bill is a continuation of the same stale thinking. This bill undermines social cohesion under the guise of restorative justice, and its impacts will be far reaching. While strategic government procurement is nothing new, the mechanisms entrenched by this bill are the same mechanisms that have failed to have a broad impact over the past 30 years in South Africa, and affirmative action has been internationally proven to be ineffectual. It is disappointing that the Methodology for Assessing Procurement Systems (MAPS) has not been engaged to evaluate the proposed implementation of the bill and been consulted to achieve a more constructive system that has greater impact in terms of addressing the chosen ideological outcomes. In stark contrast, the DA tabled our solution through a Social Impact Bill, formally titled the Preferential Procurement Policy Framework Amendment Act, in June 2023 which proposes a focus on the Sustainable Development Goals to address the root causes of inequality of opportunity, to benefit the majority of poor and vulnerable citizens. While the Bill before us is a marked improvement on the bill that entered this House, we cannot accept the

perpetuation of legislation that entrenches the racially divisive policies of the governing party.

- 6.26 The FF Plus also opposes the Bill and says that the pervasive influence of Broad-Based Black Economic Empowerment (BBBEE) on South Africa's public procurement process has been profoundly negative, exacerbated by the entrenchment of state capture and 30 years of cadre deployment. While the quality of products and services should be the primary concern, BBBEE often prioritises race-based criteria, distorting procurement practices. The Freedom Front Plus has always been vigorously opposed to what it sees as essentially a race-based legislation since democracy's inception in South Africa. Stricter BBBEE regulations won't necessarily uplift black communities, and the proposed Bill, as it stands, fails to combat corruption and wasteful spending, further entrenching the ANC's ideology. Introducing a sunset clause to BBBEE legislation, alongside other race-based laws, is imperative as the current open-ended approach impedes genuine transformation and economic evolution. Overregulation perpetuates discrimination against non-black minorities while failing to drive real progress in impoverished communities.
- 6.27 The ANC fundamentally disagrees with the positions of the DA and FF Plus and strongly believes that without effective empowerment of Black people, especially from the more disadvantaged strata, the race, class and gender polarisation in this country will significantly increase. Moreover, the social stability of the country will be severely undermined, and the prospects of economic growth will also be considerably reduced.
- 6.28 The Committee expresses considerable gratitude and appreciation to NT officials, Mr Willie Mathebula and Adv. Empie Van Schoor and their team, for the many hours they spent on the Bill and enormous work they did.
- 6.29 The Chairperson expresses his appreciation to the Committee members for the work they put into the processing of this Bill. In particular, members of the opposition parties who are opposed to the Bill but participated actively and usefully in the Committee meetings.

Democratic alliance and Freedom Front plus rejected the report

The Select Committee on Finance, having considered and examined the Public Procurement Bill [B18B - 2023] (National Assembly – section 76), referred to it, and classified by the JTM as a section 76 Bill reports the Bill with amendments.

Report to be considered.

ANNEXURE A

Notes on the correspondence regarding the processing of the Public Procurement Bill [B 18B-2023]

Prepared by Constitutional and Legal Services Office of Parliament, F Jenkins, 26 April 2024

1. Public participation

The correspondence indicates that the public participation process was flawed and that Parliament should engage with, and be aware of, the constitutional deficiencies in the Bill before it is passed. The main request made is that, given the time that is still available to consider the Bill, Parliament and Treasury should consider engaging in a workshop on the constitutionality of the Bill before it takes its final decision to pass it.

1.1 The test set out by the Constitutional Court

The Constitutional Court held in *Doctors for Life International v Speaker of the National Assembly* (Doctors for life) that there are at least two aspects of the duty to facilitate public involvement:

- (i) the duty to provide meaningful opportunities for public participation in the law-making process; and
- (ii) the duty to take measures to ensure that people have the ability to take advantage of the opportunities provided.

Parliament has the discretion to decide on appropriate measures in each case, provided these must be reasonable.

1.2 Factors to be taken into account to determine the reasonable measures to give effect to the constitutional obligation to facilitate public involvement.

- (i) Parliament has a discretion and courts will not be quick to second guess what Parliament deemed necessary in the circumstances, provided that the measures must be reasonable. The Court will not prescribe measures.
- (ii) Standing rules/models/framework will provide a guiding measure to what is required.
- (iii) The nature and impact of the legislation under consideration.

- (iv) Time concerns (urgency), efficiency and cost may be considered but “saving of money and time in itself does not justify inadequate opportunities for public involvement.”

1.3 Failures

- (i) In the *Doctors for life* matter, there were neither public hearings held at provincial legislatures, nor at the level of the NCOP.
- (ii) In *Land Access Movement of South Africa and Others (LAMOSA) v Chairperson of the National Council of Provinces and Others* – concerning the Restitution of Lands Rights Amendment Act – inadequate notice periods for the public hearings, inadequate translations of the Bill – lack of attendance of NCOP Members in the hearings.
- (iii) The case of *South African Veterinary Association v Speaker of the National Assembly and Others* concerned an amendment during deliberations that added the requirement that veterinarians also be licensed to compound and dispense medicines. This new amendment was never presented to the public prior to finalisation of the legislative process. There should have been permission sought from the Assembly to expand the scope of the Bill as required by the rules and a call for comments on this amendment.
- (iv) In *Mogale and Others v Speaker of the National Assembly and Others (Mogale)* the Court considered the Public Participation Framework and the Practical Guide for Members of Parliament and Provincial Legislatures and made findings due to the lack of compliance with pre-hearing workshops on the Bill; insufficient notice periods prior to hearings; lack of transport to the hearings; misrepresentation about the scope of the Bill during the hearings; inability to participate in the hearings; insufficient copies of the Bill during hearings and insufficient translation of the Bill for certain communities.

1.4 Response to correspondence relating to public participation

Parliament has a discretion to determine the manner in which to fulfil the obligation to facilitate public involvement; the cardinal issue is whether Parliament’s process was reasonable. There are at least two aspects of the duty to facilitate public involvement. The first is the duty to provide meaningful opportunities for public participation in the law-making process. The second is the duty to take measures to ensure that people have the ability to take advantage of the opportunities provided.

In this instance the only issue with the opportunity to make submissions on the Public Procurement Bill pertains to the period allowed to make the submissions. Be that as it may, many submissions were received as indicated in the correspondence. Given that the Public Procurement Bill was introduced in the National Assembly on 30 June 2023. Prior to that, National Treasury briefed the Standing Committee on Finance on 23 May 2023, and formally

on the tabled Bill 5 September 2023. The call for public comment was published in all official languages in print media and the website of Parliament starting 18 August 2023, with a deadline of 11 September 2023. Extension was granted to those that requested it. The SCoF held public hearings on the Bill on 12 and 13 September 2023. The Bill was adopted by the NA and referred to the NCOP on 6 December 2023. The allegation that National Treasury could only respond directly to just more than a third of the public comments in its written reply to the Standing Committee does not mean that the Standing Committee did not consider the issues that emanated from all the public submissions. The process of public engagement is still ongoing in the Select Committee. Looking forward, it is probable that the Standing Committee will once again have an opportunity to look at the amendments made by the NCOP.

There were neither obstacles to attend the physical meetings by the Standing Committee nor those the virtual meetings of the Select Committee, and to participate during those meetings. Notices of the meetings were given, and people attended. The correspondence does not question anything in this regard.

In respect of the ability to take advantage of the opportunity provided to make comments, there were no issue about language, translations, understanding of the purpose of the Bill and so on. The critical question pertains whether the use of the opportunity to participate in legislative process was capable of influencing the decision to be taken. The record of the process in the Assembly and the Council shows that public comments resulted in many changes to the Bill, and this process is ongoing.

It is not correct to aver that those who took part in public participation were not “capable of influencing Parliament’s decision making” as the stakeholders do not know the views of the Members to the Standing and Select Committees. The interaction between National Treasury and stakeholders plays out in public with the purpose that the Committee is placed in a position to give effect to its mandate to report back to the relevant House. The Select Committee is still considering the Bill. The Committee will begin with a clause-by-clause consideration of the Bill on 30 April and stakeholders will be able to ascertain whether their comments were accommodated in the Bill. What is clear is that the respective committees have been open to being influenced by the public hearings.

2. Content of the amendments

- 2.1 Amendments by the Standing and Select Committee to Chapter 4 that are questioned in the correspondence is a policy matter, as indicated. The amendments were as a result of public input, in my understanding. I cannot find any of these amendments to be unconstitutional and it is my responsibility to inform the Committee if any amendments the Committee effects are unconstitutional. The process followed is in my view compliant with the constitutional requirements for public involvement.

- 2.2 The public involvement process must give the public a meaningful opportunity to influence Parliament, and Parliament must take account of the public's views. Even if the lawmaker does not change its mind, it must approach the public involvement process with a willingness to do so. However, this does not mean that the legislature must accommodate all demands arising in the public participation process, even if they are compelling.

3. Lack of regulations

The argument presented in the correspondence indicates that the absence of regulations at this point in time poses challenges to the understanding of the complete regulatory framework being established by the Public Procurement Bill. Whilst it is understood that the regulations will provide a clearer picture of the entire regulatory framework pertaining to public procurement as envisaged in the Bill, the submission by the stakeholders that it is impossible to properly interrogate the effect and constitutionality of the Bill without sight of how the provisions will play out in practice is fallacious. The absence of the regulations at this point in the process does not affect the constitutionality of the Bill. Regulations must be consistent with the enabling legislation. As was the case in the matter of *Minister of Finance v Afribusiness NPC* – concerning the constitutionality of the 2017 Regulations to the Preferential Procurement Policy Framework Act – the regulations to the Public Procurement Bill must comply with the enabling statute. The absence of regulations does not impugn the constitutionality of the enabling statute in this matter. Usually, Bills are passed in Parliament without the regulations being finalised.

4. Memorandum to the Bill

The comment about the issue of financial implications of the Bill does not impugn the constitutionality of the Bill. The Memorandum to the Bill is not part of the Bill, as regulations will form part of the Act after the promulgation of the Act. The issue of the financial implications has been discussed in an open hearing and it is not intended to mislead the public or Parliament. The Committee has already expressed its concerns about the financial implications of the Bill and will make this clear in its report to Parliament.

3. Report of the Select Committee on Land Reform, Environment, Mineral Resources and Energy on the Preservation and Development of Agricultural Land Bill [B8B – 2021] s76, dated 7 May 2024

The Department of Agriculture, Land Reform and Rural Development briefed the committee on 27 February 2024 on the Preservation and Development of Agricultural Land Bill [B8B – 2021] s76. The Bill was referred to the committee on 5 December 2023 as a section 76 bill. The Committee called for written comments on the Bill on 14 March 24, 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 was held by the committee together with provincial legislatures on the 30th of April 2024.

The Select Committee on Land Reform, Mineral Resources and Energy, having deliberated on and considered the subject of the Preservation and Development of Agricultural Land Bill [B8B – 2021] s76, referred to it and classified by the JTM as a section 76 Bill, reports that it agrees to the Bill [B8B – 2021] without amendments.

Report to be considered

4. Report of the Select Committee on Land Reform, Environment, Mineral Resources and Energy on the National Nuclear Regulator Amendment Bill [B25B - 2023] (National Assembly – Section 75), dated 7 May 2024.

The Bill was referred to the committee on 14 March 2024 where-after the Department of Mineral Resources and Energy briefed the committee on 09 April 2024. On the 21st of March 2024 the Committee placed an advertisement on the Parliamentary Website as well as on all electronic media platforms, calling for public comments. Only two submissions were received by the Committee.

During the deliberations of 2 May 2024, the researcher introduced the public submission report details, introducing the two submissions received. One was from ESKOM, and the other from the Western Cape Ministry of Local Government, Environmental Affairs and Development Planning. The latter could not be considered as COGTA channels exist for other spheres of government to interact with national departments' legislative processes.

ESKOM highlighted several concerns, including comments highlighting grammatical errors. A request was put forward to clarify several terms used in the Bill, and clarity is being sought regarding the process through which contraventions of the legislation will be addressed. Specific reference to clauses included inconsistencies in use of several terms in clauses 1 b, g and q when compared to the IAEA Glossary, and clarification was sought whether the Regulator may enforce a system of administrative fines via directives and criminalising certain aspects of non-compliance with requirements addressed in regulatory documents.

The department responded, stating that references made to the IAEA glossary is not accurate. The glossary is provided to member states but is subject to national law and how legislation changes national circumstances. Differences between glossary terms and legislative terms is a result of this. Glossary terms are aligned with national legislation. It was further stated that it was incorrect to state that the Bill is not aligned with the Constitution or other legislative processes, as the office of the Chief State Law Adviser would not have allowed the tabling of the Bill if it did not pass legal scrutiny.

Considering the response provided by the Department, the committee wished to enquire from the State Law Adviser how many Acts signed into law by the President were later challenged in court and found to be

unconstitutional. The State Law Adviser clarified that none of the Bills vetted by herself had ever been found to be unconstitutional.

The Select Committee on Land Reform, Environment, Mineral Resources and Energy, having deliberated on and considered the subject of the National Nuclear Regulator Amendment Bill [B25B - 2023] National Assembly – sec 75), referred to it and classified by the JTM as a section 75 Bill, agrees to the Bill without amendments.

Report to be considered.

5. Report of the Select Committee on Appropriations on its activities undertaken during the 6th Parliament (June 2019 – May 2024)

Key highlights

1. Reflection on committee programme per year and on whether the objectives of such programmes were achieved.

The mandate of the Select Committee on Appropriations is, among others, consideration of Money Bills, spending issues and recommendations of the Financial and Fiscal Commission on issues related to the division of revenue for the next financial year. Over the period under review the Committee has been able to consider and report on all the Money Bills referred to it, at times under very tight time constraints. In processing the bills, the Committee, however, did not compromise on the need to facilitate public participation in its processes. The Committee had to adapt to the new way of working after the COVID-19 pandemic and the destruction of parliamentary buildings in the January 2022 fire incident, which led to meetings being conducted virtually. The pandemic also resulted in the need for a supplementary budget; while the challenges faced by state-owned entities (SOEs) necessitated legislation to provide them with immediate funding or debt relief to continue as a “*going concern*”. The time frame for processing the Medium-Term Budget Policy Statement (MTBPS) remains a perennial challenge, as the Committee and the provinces are continually under pressure to process the Division of Revenue Amendment Bill within 10 working days (due to the Fourth Term Parliamentary Programme Framework), instead of the six weeks cycle set out to deal with Section 76 legislation. All the Minutes and Reports of the Committee for the period under review have been duly adopted by a quorum.

2. Committee’s focus areas during the 6th Parliament

In addition to the processing of the Money Bills mentioned above, the Committee focused on the spending and performance of conditional grants that affect the lives of communities across nine provinces, including three Agriculture sector grants; the Informal Settlements Upgrading Partnership Grant; and various Education grants, including monitoring the shift of the Early Childhood Development (ECD) function from the Department of Social Development to the Department of Basic Education. The Committee further received briefings by the Auditor-General of South Africa (AGSA) on the audit outcomes of local

government as well as the impact of medico-legal claims on provincial health departments; and held a workshop with all nine provinces and various stakeholders on the equitable share formulas for provinces and local government.

3. Key areas for future work

The Committee should continue with the –

- **Implementation of the Money Bills Act;**
- **Oversight over conditional grant spending and performance by provinces, municipalities, and national departments;**
- **Follow-up on oversight and implementation of recommendations made, including those contained in the tracking tool;**
- **Capacity building initiatives for both members and support staff;**
- **Post-budget comments by the PBO, FFC and Salga in October and February each year;**
- **Strengthening oversight as well as promotion of intergovernmental relations;**
- **Identify projects for site visits with a view to enhance oversight; and**
- **Identify and engage policy issues with budgetary implications, such as medico-legal claims, SOE debt relief, construction mafias, and budget cuts on critical programmes.**

(Also see point 5 below for further recommendations.)

4. Key challenges emerging

- **The tight timeframes, silently, provided within the Money Bills Act put the Committee as well as the provinces under pressure especially when processing the Division of Revenue Amendment Bills presented during the Medium-Term Budget Policy Statement. The amendment of this Act in 2018 has not improved the situation, instead it makes matters worse as it creates an open-ended process. This is further compounded by the Fourth Term Parliamentary Programme Framework.**
- **The inability of some provinces to timeously submit their provincial mandates during the processing of the Division of Revenue Amendment Bill because of tight timeframes.**

- **Another challenge related to the programming of the NCOP, in as far as it impacts on the Committee's oversight work. Examples are the scheduling of strategic planning sessions for committees during the processing of the February budgets and Taking Parliament to the People Programme during the processing of the legislation contained in the Medium-Term Budget Policy Statement.**

5. Recommendations and cross-cutting policy issues for follow-up:

- **Whilst acknowledging the programming challenges of some provincial Portfolio Committees on Finance, the Committee feels that it is fundamentally important to strengthen public participation processes by provincial legislatures, as they are more closely connected to the people on the ground. The collaborative approach with the NCOP needs to improve to ensure effective oversight and a greater degree of co-operation across the three spheres of government.**
- **The Rules Committee should ensure that the NCOP and provincial legislatures are fully consulted during the development of the rules and directives to guide the implementation of the Money Bills Act to address the perennial issue of tight timeframes.**
- **Parliament should always ensure that the executive members of government affected by budget adjustments in their votes are afforded an opportunity to respond to the adjustments as required by the Money Bills Act.**
- **Government should consider presenting the MTBPS at least two weeks earlier to enable Parliament in both Houses as well as provinces sufficient time to process the legislation.**
- **The NCOP should consider the consolidated draft MTBPS programme of the four Finance and Appropriations Committees before scheduling its programmes, as this consolidated programme is normally available months ahead of the tabling of the MTBPS.**
- **The four Appropriations and Finance Committees of both Houses should consider convening joint meetings, together with the Public Enterprise committees, to call all the SOEs who have received bailouts to account for all the funds they have received and to monitor whether the conditions to those bailouts were met.**
- **The Appropriations Committees of both Houses should consider meeting jointly, together with the committees on Cooperative Governance, on a quarterly basis, to monitor the performance of local government.**
- **Regarding the increase in debt service costs, the four Finance and Appropriations Committees should consider quarterly joint meetings to monitor the fiscal position of the country.**

- As part the induction of the Members of the Finance and Appropriations Committees of the 7th Parliament, it is recommended that a two-day workshop be held to capacitate Members on all matters relating to effective fiscal oversight. This workshop should include National Treasury, the AGSA, SALGA, the DPME, the FFC, the Reserve Bank and the PBO.
- A workshop on both the local and provincial government equitable share formulas should be organised with all nine provinces invited if necessary.
- The Committee should ensure that conditional grant expenditure across provincial and local government is continuously improved with a view to realising value for money, and that conditional grant funds are always used for the intended purpose.
- The Committee should continue to insist that disaster relief funds are made available for all provinces and municipalities where disasters have been declared, including those affected by fires.
- The Committee should continue to ensure that the National Treasury together with the Department of Social Development accelerate the process of converting the Social Relief of Distress Grant into a Basic Income Grant to provide some relief to unemployed South Africans.
- The Committee should continue to insist that future budget cuts to government programmes are guided by evidence and proper impact assessments to avoid undesirable alteration of departmental annual performance plans.
- The Committee should continue to ensure that the national Department of Health together with National Treasury continue to address the issue of *medico* legal claims, which take considerable amounts of provincial health budgets away from service delivery programmes.
- The Committee should continue to monitor the implementation of the Eskom Debt Relief programme and its conditions, including addressing the municipal legacy debt to Eskom and water boards.
- The Committee should continue to urge government to address the issue of construction mafias, which undermines infrastructure delivery in certain provinces and municipalities.
- The Committee should continue to address the small percentage of the nationally raised revenue being allocated to local government based on the incorrect assumption that the local sphere of government is able to collect its own revenues.
- The Committee should continue to advocate for the implementation of the Moloto Corridor Project to address the road carnage in the area.
- The Committee should continue to advocate for the fact that the restructuring of a direct grant into an indirect grant should be used as a last resort.

- **The culture of non-payment for services and illegal connections, which hamper revenue collection in local government, should continuously be addressed.**
- **The Committee should continue to advocate for adequate implementation of recommendations emanating from the Budget Forum, the FFC as well as the legislature.**
- **Both national and provincial government should continue to support capacity building initiatives at local government, as capacity and attracting highly qualified, experienced professionals to rural and small municipalities remain a challenge.**

1. Introduction

1.1 Department/s and Entities falling within the committee’s portfolio

Not applicable.

1.2 Functions of Committee:

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.

The Select Committee on Appropriations was established in terms of Section 4(3) of the Money Bills Amendment Procedure and Related Matters Act, No. 9 of 2009. According to Section 4(4) of this Act, “a committee on appropriations [in the National Council of Provinces] has the power and functions conferred to it by the Constitution, legislation, the standing rules or a resolution of a House, including the considering and reporting on -

- (a) spending issues;
- (b) amendments to the Division of Revenue Bill, the Appropriation Bill, Supplementary Appropriation Bills and the Adjustments Appropriations Bill;

- (c) recommendations of the Financial and Fiscal Commission, including those referred to in the Intergovernmental Fiscal Relations Act, 1997 (No. 97 of 1997);
- (d) reports on actual expenditure published by the National Treasury; and
- (e) any other related matter set out in this Act (No. 9 of 2009)".

1.3 Method of work of the committee (if committee adopted a particular method of work e.g. SCOPA.)

The Committee's focus is on national budget processing as well as in-year monitoring of direct and indirect conditional grants for both local and provincial government using Section 71 of the Municipal Finance Management Act as well as Section 32 of the Public Finance Management Act.

1.4 Purpose of the report

The purpose of this report is to provide an account of the Select Committee on Appropriations' work during the 6th Parliament and to inform the members of the 7th Parliament of key outstanding issues to ensure continuous attention.

This report provides an overview of the activities the Committee undertook during the 6th Parliament, the outcome of key activities, as well as any challenges that emerged during the period under review and issues that should be considered for follow up during the 7th Parliament. It summarises the key issues for follow-up and concludes with recommendations to strengthen operational and procedural processes to enhance the Committee's oversight and legislative roles in future.

2. Key statistics

The table below provides an overview of the number of meetings held, legislation 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 6th Parliament:

Activity	2019/20	2020/21	2021/22	2022/23	2023/24	Total
Meetings held	26	37	24	32	30	149

Activity	2019/20	2020/21	2021/22	2022/23	2023/24	Total
Legislation processed	4	6	6	7	9	32
Oversight conducted	-	-	1	-	-	1
Study tours undertaken	-	-	-	-	-	-
International agreements processed	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	-
Statutory appointments made	-	1	-	-	-	1
Interventions considered	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	-
Petitions considered	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	-

3. Key stakeholders:

- Financial and Fiscal Commission (FFC);
- Auditor-General of South Africa (AGSA);
- Parliamentary Budget Office (PBO);
- South African Local Government Association (SALGA);
- National Treasury; and
- Department of Cooperative Governance.

4. Public hearings

The Committee advertised for public comment on all pieces of legislation processed, as well as the annual Medium Term Budget Policy Statements, and public hearings were held as required by the applicable legislative frameworks.

5. Legislation

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

Year	Name of Legislation	Tagging	Objectives	Completed
2019	<i>Appropriation Bill</i> [B6B – 2019]	Section 77	The Appropriations Bill makes it possible for government departments to provide services that seek to achieve government priorities. Departmental activities require the passing of the Appropriations Bill, before 31 July annually, to spend their 2019/20 allocations and thus work towards achieving government priorities.	24 July 2019
	<i>Special Appropriation Bill</i> [B10 – 2019 (Reprint)]	Section 77	To appropriate an additional amount of money for the requirements of the Department of Public Enterprises to assist Eskom Holdings SOC Limited with its financial obligations and to provide for matters connected therewith.	23 October 2019
	<i>Division of Revenue Amendment Bill</i> [B15 - 2019]	Section 76	To amend the Division of Revenue Act, 2019, to provide for the equitable division of revenue raised nationally among the national, provincial, and local government spheres for the 2019/20 financial year.	26 November 2019
	<i>Adjustments Appropriation Bill</i> [B16 - 2019]	Section 77	To amend the appropriation of funds from the National Revenue Fund for the requirements of the State for the 2019/20 financial year.	5 December 2019
2020	<i>Division of Revenue Bill</i> [B3 – 2020]	Section 76	To provide for the equitable division of revenue raised nationally among the national, provincial, and local government spheres for the 2020/21 financial year.	27 May 2020
	<i>Appropriation Bill</i> [B4 - 2020]	Section 77	To appropriate money from the National Revenue Fund for the requirements of the State for the 2020/21 financial year.	15 June 2020
	<i>Division of Revenue Amendment Bill</i> [B9 – 2020]	Section 76	To amend the Division of Revenue Act, 2020, to provide for the equitable division of revenue raised nationally	21 July 2020

Year	Name of Legislation	Tagging	Objectives	Completed
			among the national, provincial, and local government spheres for the 2020/21 financial year.	
	<i>Adjustments Appropriation Bill</i> [B10B – 2020]	Section 77	To amend the appropriation of funds from the National Revenue Fund for the requirements of the State for the 2020/21 financial year.	30 July 2020
	<i>Division of Revenue Second Amendment Bill</i> [B24 – 2020]	Section 76	To amend the Division of Revenue Act, 2020, to provide for the equitable division of revenue raised nationally among the national, provincial, and local government spheres for the 2020/21 financial year.	25 November 2020
	<i>Second Adjustments Appropriation Bill</i> [B25 – 2020]	Section 77	To amend the appropriation of funds from the National Revenue Fund for the requirements of the State for the 2020/21 financial year.	8 December 2020
2021	<i>Division of Revenue Bill</i> [B3 – 2021]	Section 76	To provide for the equitable division of revenue raised nationally among the national, provincial, and local government spheres for the 2021/22 financial year.	26 May 2021
	<i>Appropriation Bill</i> [B4B -2021]	Section 77	To appropriate money from the National Revenue Fund for the requirements of the State for the 2021/22 financial year.	9 June 2021
	<i>Special Appropriation Bill</i> [B5 – 2021]	Section 77	To appropriate an additional amount of money to votes of Health and Social Development and to effect an adjustment to an appropriation of money to the vote of Public Enterprises.	9 June 2021
	<i>Second Special Appropriation Bill</i> [B17 – 2021]	Section 77	To appropriate an additional amount of money for the requirements of the State.	17 November 2021
	<i>Division of Revenue Amendment Bill</i> [B19 – 2021]	Section 76	To amend the Division of Revenue Act, 2021, to provide for the equitable division of revenue raised nationally	3 December 2021

Year	Name of Legislation	Tagging	Objectives	Completed
			among the national, provincial, and local government spheres for the 2021/22 financial year.	
	<i>Adjustments Appropriation Bill</i> [B20 – 2021]	Section 77	To amend the appropriation of funds from the National Revenue Fund for the requirements of the State for the 2021/22 financial year.	14 December 2021
2022	<i>Division of Revenue Bill</i> [B6 – 2022]	Section 76	To provide for the equitable division of revenue raised nationally among the national, provincial, and local government spheres for the 2022/23 financial year.	11 May 2022
	<i>Appropriation Bill</i> [B7 - 2022]	Section 77	To appropriate money from the National Revenue Fund for the requirements of the State for the 2022/23 financial year.	22 June 2022
	<i>Second Adjustments Appropriation (2021/22 Financial Year) Bill</i> [B8 – 2022]	Section 77	To effect adjustments to the appropriation of money from the National Revenue Fund for expenditure approved in the 2021/22 financial year.	22 June 2022
	<i>Division of Revenue Amendment Bill</i> [B22 – 2022]	Section 76	To amend the Division of Revenue Act, 2022, to provide for the equitable division of revenue raised nationally among the national, provincial, and local government spheres for the 2022/23 financial year.	22 November 2022
	<i>Adjustments Appropriation Bill</i> [B23 – 2022]	Section 77	To amend the appropriation of funds from the National Revenue Fund for the requirements of the State for the 2022/23 financial year.	2 December 2022
	<i>Special Appropriation Bill</i> [B24 – 2022]	Section 77	To appropriate an additional amount of money for the requirements of the votes of Public Enterprises and Transport for the 2022/23 financial year.	2 December 2022

Year	Name of Legislation	Tagging	Objectives	Completed
2023	<i>Second Adjustments Appropriation (2022/23 financial year) Bill [B4 – 2023]</i>	Section 77	To propose additional revenue to enable government to respond to some immediate spending pressures while continuing to stabilise the public finances.	24 March 2023
	<i>Division of Revenue Bill [B2 – 2023]</i>	Section 76	To provide for the equitable division of revenue raised nationally among the national, provincial, and local government spheres for the 2023/24 financial year.	5 May 2023
	<i>Appropriation Bill [B3 – 2023]</i>	Section 77	To appropriate money from the National Revenue Fund for the requirements of the State for the 2023/24 financial year.	14 June 2023
	<i>Eskom Debt Relief Bill [B5 – 2023]</i>	Section 77	To provide for a direct charge against the National Revenue Fund for debt relief for Eskom Holdings SOC Ltd.	7 June 2023
	<i>Division of Revenue Amendment Bill [B33 – 2023]</i>	Section 76	To amend the Division of Revenue Act, 2023, to provide for the equitable division of revenue raised nationally among the national, provincial, and local government spheres for the 2023/24 financial year.	28 November 2023
	<i>Adjustments Appropriation Bill [B34 – 2023]</i>	Section 77	To amend the appropriation of funds from the National Revenue Fund for the requirements of the State for the 2023/24 financial year.	7 December 2023
	<i>Eskom Debt Relief Amendment Bill [B38 – 2023]</i>	Section 77	To amend the Eskom Debt Relief Act, 2023, to provide for the payment of interest by Eskom on amounts advanced as a loan; and to provide for power for the Minister of Finance to reduce the amounts for the requirements for Eskom in the event of non-compliance with conditions.	7 December 2023
2024	<i>Division of Revenue Bill [B4 – 2024]</i>	Section 76	To provide for the equitable division of revenue raised nationally among the national, provincial, and local government spheres for the 2024/25 financial year.	30 April 2024

Year	Name of Legislation	Tagging	Objectives	Completed
	<i>Second Adjustments Appropriation (2023/24 FY) Bill</i> [B6 – 2024]	Section 77	To effect adjustments to the appropriation of money from the National Revenue Fund for the requirements of the State in respect of the 2023/24 financial year.	24 April 2024
	<i>Gold and Foreign Exchange Contingency Reserve Account Defrayal Amendment Bill</i> [B7 - 2024]	Section 77	To amend the Gold and Foreign Exchange Contingency Reserve Account Defrayal Act, 2003, to provide for direct charges against the National Revenue Fund for the requirements of the South African Reserve Bank and reporting thereof;	24 April 2024

a) Challenges emerging

The following challenges emerged during the processing of legislation:

- The timeous implementation of Committee recommendations by departments/entities; and
- The tight timeframes, silently, provided within the Money Bills Act put the Committee as well as the provinces under pressure especially when processing the Division of Revenue Amendment Bills presented during the Medium-Term Budget Policy Statement. The amendment of this Act in 2018 has not improved the situation, instead it makes matters worse as it creates an open-ended process.
- The inability of some provinces to timeously submit their provincial mandates during the processing of the Division of Revenue Amendment Bill because of tight timeframes.
- Another challenge related to the programming of the NCOP, in as far as it impacts on the Committee's oversight work. Examples are the scheduling of strategic planning sessions for committees during the processing of the February budgets and Taking Parliament to the People Programme during the processing of the legislation contained in the Medium-Term Budget Policy Statement.

b) Issues for follow-up

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

- Update and follow up on the Committee’s recommendations captured in the tracking tool.
- Follow up on compliance with the Eskom Debt Relief Amendment Act conditions, to address loadshedding.
- Follow up on all outstanding issues and performance targets, which are set out in the 2023/24 Committee Annual Plan and Committee’s Strategic Plan, including Money Bills.

6. Oversight trips undertaken

Due to the challenges and restrictions related to the COVID-19 pandemic and programming, the Committee did not conduct any physical oversight visits during the 6th Parliament. However, the following virtual oversight was conducted:

Date	Stakeholders engaged with	Objective	Recommendations	Responses to Recommendations	Follow-up Issues	Status of Report
18 -19 August 2021	<ul style="list-style-type: none"> • All nine provincial departments of education • Department of Basic Education • National Treasury • Financial and Fiscal Commission (FFC) • Parliamentary Budget Office (PBO) 	Due to persistent under-expenditure and under-performance of the HIV/AIDS (Life Skills Education) Grant and the Learners with Profound Intellectual Disabilities Grant in the 2020/21 financial year, provinces were invited to report on the performance of these conditional grants; provide a breakdown of expenditure per quarter as well as performance information; highlight	1. The Department of Basic Education and all provincial departments of education, through MinMEC, should urgently strive to find a solution to address procurement and supply chain management deficiencies, especially for assistive devices, PPE items and other important goods which are crucial to			Adopted 17 November 2021

Date	Stakeholders engaged with	Objective	Recommendations	Responses to Recommendations	Follow-up Issues	Status of Report
		key challenges experienced and propose interventions to prevent these in the upcoming financial years.	<p>support learning programmes during the COVID-19 pandemic.</p> <p>2. Noting that provinces have not been fully complying with the provisions of the conditional grant frameworks, the Department of Basic Education (DBE) and provincial departments, together with provincial treasuries and National Treasury, need to urgently identify the root causes of the non-compliance and address these; instead of resorting to withholding funds, which does not solve the problem entirely. The DBE and provinces are advised to approach National</p>			

Date	Stakeholders engaged with	Objective	Recommendations	Responses to Recommendations	Follow-up Issues	Status of Report
			<p>Treasury and provincial treasuries for assistance through sector forums and the National Treasury to further clarify the conditions and requirements as prescribed.</p> <p>3. The Department of Basic Education and National Treasury should strive to streamline the reporting process for the LSPID Grant by reducing the number of expected outputs and improve the linkage between the expected outputs and overall grant objectives.</p> <p>4. The Limpopo and Eastern Cape departments of education should improve their</p>			

Date	Stakeholders engaged with	Objective	Recommendations	Responses to Recommendations	Follow-up Issues	Status of Report
			<p>capacity to implement these two grants; conduct a full assessment of the required capacity and the necessary support to be provided; and further improve the procurement of goods and services such as LTSM.</p> <p>5. The North West Department of Education should fast-track its collaborative approach with other stakeholders and other departmental partners to ensure that sexual reproductive services are initiated in schools from the current financial year, as planned.</p> <p>6. The KwaZulu-Natal Department of Education should</p>			

Date	Stakeholders engaged with	Objective	Recommendations	Responses to Recommendations	Follow-up Issues	Status of Report
			<p>fast-track the recruitment of three additional Educational Psychologists, as well as fill the many other funded vacant positions as soon as possible.</p> <p>7. The Mpumalanga Department of Education should address the issues around all funded vacant positions including that of Educational Psychologist, Occupational Therapist and other critical posts, which are necessary for frontline service delivery.</p> <p>8. The Mpumalanga Department of Education should urgently address the issue of placing all</p>			

Date	Stakeholders engaged with	Objective	Recommendations	Responses to Recommendations	Follow-up Issues	Status of Report
			<p>learners who had been profiled by Educational Psychologists from the LSPID team in special schools, by addressing the issue of inadequate spaces; which makes placements difficult.</p> <p>9. The Northern Cape and other provinces with similar challenges with filling funded vacancies for specialist skills, should invoke a scarce skills recruitment process and appointment policy measures to address this challenge.</p> <p>10. The Gauteng Department of Education should fast-track the process to conclude the</p>			

Date	Stakeholders engaged with	Objective	Recommendations	Responses to Recommendations	Follow-up Issues	Status of Report
			<p>psychological assessments to confirm PID diagnosis, that had not been done by the end of the 2020/21 financial year.</p> <p>11. The Department of Communications and Digital Technologies, together with the Department of Basic Education, should intensify the roll-out of infrastructure for connectivity programmes so that all South Africans will have access to virtual activities, including home schooling. Parliament should continue to monitor this important matter, given the fact that the country is still in the middle of the COVID-19 pandemic</p>			

Date	Stakeholders engaged with	Objective	Recommendations	Responses to Recommendations	Follow-up Issues	Status of Report
			and that the Fourth Industrial Revolution is fast approaching.			

a) Challenges emerging

The following challenges emerged during the oversight visit:

- Slow response rate to Committee recommendations by the executive.
- Follow-ups on Committee recommendations; and
- The actual implementation of such recommendations.

b) Issues for follow-up

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

- Update and follow up on the Committee's recommendation captured in the tracking tool.

7. Study tours undertaken

None.

8. International Agreements:

Not applicable.

9. Statutory appointments

The following appointment process was referred to the Committee and the resultant statutory appointment was made:

Date	Type of appointment	Period of appointment	Status of Report
17 September 2019	Director of the Parliamentary Budget Office.	Five years	Adopted by Committee and published in ATC on 3 November 2020.

a) Challenges emerging

The following challenges emerged during the statutory appointments:

- Aligning the programmes of the four Committees responsible for the appointment was difficult. A subcommittee was formed who reported back to joint meetings of all four Committees.

b) Issues for follow-up

None

10. Interventions

Not applicable.

11. Petitions

Not applicable.

12. Obligations conferred on Committee by legislation:

See 1.2 for reference to the Money Bills Act.

13. Summary of outstanding issues the Committee has been grappling with

The following key issues are outstanding from the Committee's activities during the 6th Parliament:

Issue(s) (See Recommendations under the first section)
Poor performing municipalities
Bail-outs to struggling SOEs
Increasing debt service costs.
The provincial and local government equitable share formulas

14. Other matters referred by the Chairperson of the NCOP

The following other matters were referred to the Committee and, where applicable, the resultant reports produced:

Date of referral	Content of referral	Status of Report
11 July 2019	Submission of the Financial and Fiscal Commission on the Division of Revenue Bill for 2020/21, tabled in terms of section 9(1) of the Intergovernmental Fiscal Relations Act, 1997 (Act No 97 of 1997), as amended.	Not applicable
13 August 2020	Submission of the Financial and Fiscal Commission on the Division of Revenue Bill for 2021-2022, tabled in terms of section 9(1) of the Intergovernmental Fiscal Relations Act, 1997 (Act No 97 of 1997), as amended.	Adopted on 2 September 2020

Date of referral	Content of referral	Status of Report
2 June 2021	Submission of the Financial and Fiscal Commission on the Division of Revenue Bill for 2022-2023, tabled in terms of section 9(1) of the Intergovernmental Fiscal Relations Act, 1997 (Act No 97 of 1997), as amended.	Adopted on 17 November 2021
28 July 2022	Submission of the Financial and Fiscal Commission on the Division of Revenue Bill for 2023-2024, tabled in terms of section 9(1) of the Intergovernmental Fiscal Relations Act, 1997 (Act No 97 of 1997), as amended.	Not applicable.
10 October 2023	Submission of the Financial and Fiscal Commission on the Division of Revenue Bill for 2024-25, tabled in terms of section 9(1) of the Intergovernmental Fiscal Relations Act, 1997 (Act No 97 of 1997), as amended.	Not applicable.

a) Issues for follow-up

None.

In conclusion, the Committee would like to express its sincere appreciation to the Committee Support Staff for the professionalism and dedication they have demonstrated in supporting the Committee during the 6th Parliament. The contribution of the team has really enabled the Committee to achieve its legislative mandate for the past five years (2019 - 2024).

6. Report of the Select Committee on Education and Technology, Sports, Arts, and Culture on the South African Institute of Drug-Free Sport Amendment Bill [B41B – 2023], dated 08 May 2024.

The Select Committee on Education and Technology, Sports, Arts, and Culture (the Committee), having received submissions on the South African Institute of Drug-Free Sport Amendment Bill [B41B – 2023] (National Assembly – Sec 75) and having considered the written submissions; reports as follows:

1. Introduction

The draft Bill proposes to amend the South African Institute for Drug-Free Sport Act, 1997, so as to delete, amend and insert certain definitions; to provide for consequential amendments in certain provisions; to clarify that the Institute is a public entity and is the National Anti-Doping Organisation in the Republic; to provide for Results Management; to provide that investigations by the Department must be conducted in a manner that is fair, transparent, just and equitable, that punitive measures may only be imposed by the Department after a finding of non-compliance; and to provide for matters connected therewith.

2. The Select Committees process followed in processing the Bill.

On the 26th of March 2024, the National Assembly passed the SAIDS Amendment Bill, which was subsequently referred to the National Council of Provinces. On the 28th of March 2024, the Select Committee called for written submissions by all interested parties on the Bill until the 19th of April 2024. A written submission was received from the Western Cape Department of Sport, Recreation, Arts and Culture calling for amendments to the wording made in certain areas in the Bill. However, in response to the written submission by the Western Cape Department of Sport, Recreation, Arts, and Culture, the South African Institute for Drug-Free Sport, an entity of the National Department of Sport, Arts, and Culture indicated that the amendments suggested by the Western Province Department will not significantly affect the content within the Bill and may delay the adoption to the Bill, further risking South Africa's compliance with the World Anti-Doping Agency (WADA) guidelines. They therefore requested the members of the Select Committee to reconsider any further amendments to the B-version of the Bill and accept the Bill as is.

3. Outcome of the Select committees' consideration of the SAIDS Amendment Bill

On Wednesday the 8th of May, the Select Committee on Education and Technology, Sports, Arts, and Culture having deliberated on and considered the subject of the South African Institute for Drug-Free Sport Amendment Bill [B41B-2023], referred to it as a section 75 Bill, reports that it has agreed to adopt the proposed Bill without amendments.

4. Consideration of the Committee's Report

The committee considered the report on the process of the finalising the South African Institute for Drug-Free Sport Amendment Bill [B41B-2023] and adopted the report without amendments.

Report to be considered.