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OF THE

REPUBLIC OF SOUTH AFRICA

**ANNOUNCEMENTS,
TABLINGS AND
COMMITTEE REPORTS**

WEDNESDAY, 3 APRIL 2024

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COMMITTEE REPORTS

National Assembly

1. REPORT OF THE PORTFOLIO COMMITTEE ON JUSTICE AND CORRECTIONAL SERVICES ON THE NOMINATION OF A SUITABLE PERSON FOR APPOINTMENT AS DEPUTY PUBLIC PROTECTOR, DATED 3 APRIL 2024

The Portfolio Committee on Justice and Correctional Services, having considered the request to initiate a process to fill the position of Deputy Public Protector, reports as follow:

1. The Committee received a letter from the Deputy Speaker, dated 5 December 2023, asking it to initiate a process to fill the position of Deputy Public Protector as a vacancy has arisen following the appointment of the incumbent, Adv Kholeka Ghaleka, as Public Protector.
2. In terms of section 2A(1) of the *Public Protector Act 23 of 1994*, the President, on the recommendation of the National Assembly, shall appoint a person as Deputy Public Protector for such period as the President may determine at the time of such appointment but not exceeding seven years.
3. Specifically, regarding the role of the National Assembly, section 2A(3) of the *Public Protector Act, 1994*, provides that:
“The National Assembly shall recommend a person -
 - (a) *nominated by the Committee; and*
 - (b) *approved by the National Assembly by a resolution adopted with a supporting vote of a majority of the members of the National Assembly.”*

4. Process

- 4.1. The Committee advertised the position, inviting members of the public to nominate candidates for appointment. Interested parties were also invited to apply.

- 4.2. The names of all those who were nominated or who applied were published on Parliament's website for comment.

5. Selection criteria

- 5.1. Section 2A(4) of the Public Protector Act, 1994, sets out the applicable criteria for appointment as Deputy Public Protector:

“The Deputy Public Protector shall be a South African citizen who is a fit and proper person to hold such office, and who -

- (a) *is admitted as an advocate or an attorney and has, for a cumulative period of at least 10 years after having been so admitted, practised as an advocate or an attorney; or*
- (b) *is qualified to be admitted as an advocate or an attorney and has, for a cumulative period of at least 10 years after having so qualified, lectured in law at a university; or*
- (c) *has specialised knowledge of or experience, for a cumulative period of at least 10 years, in the administration of justice, public administration or public finance; or*
- (d) *has, for a cumulative period of at least 10 years, been a member of Parliament; or*
- (e) *has acquired any combination of experience mentioned in paragraphs (a) to (d), for a cumulative period of at least 10 years”.*

- 5.2. In addition to these formal legal requirements, the Committee identified several key focus areas to guide it when evaluating candidates' suitability: “experience”, “knowledge”; “skills” and “attributes/character”.

6. Shortlisting

- 6.1. The Committee received 46 nominations or applications, but two (2) candidates withdrew their applications.
- 6.2. On 28 February 2024, the Committee met to discuss the nominations and applications received, and agreed to shortlist the following eight (8) candidates:
- Adv. Tommy Aron Bunguzana
 - Adv. Mari Marriott
 - Mr Azwidini Victor Mavhidula
 - Ms Ponatshego Mogaladi
 - Adv. Siphokazi Moleshe
 - Adv. Lindiwe Mkhize
 - Adv. Shadrack Tebeile
 - Adv. Tseliso Thipanyane
- 6.3. Once shortlisting took place, all candidates were requested to complete a questionnaire, which also provides for disclosure.
- 6.4. The Committee agreed that the shortlisted candidates should undergo suitability screening and their academic qualifications would be verified. The Committee also agreed that Parliament should be asked to facilitate the screening of the candidates. The results were made available to the Committee before it met to interview the candidates.

7. Interviews

- 7.1. Subsequently, Adv. M Marriott notified the Committee that she was withdrawing from the process.
- 7.2. The interviews were conducted at Parliament on 13 March 2024.
- 7.3. On the day, the Committee started with a closed session to prepare for the interviews.

8. **Objection to participation of Hon. B Mkhwebane**

- 8.1. At the start of the interviews, just before the first candidate was to be called in, Hon. G Breytenbach, on behalf of the Democratic Alliance, raised an objection to Hon. B Mkhwebane's participation in the process. The contention being that Hon. Mkhwebane is conflicted in relation to two candidates and that this taints the process by creating a reasonable apprehension of bias. The Democratic Alliance requested Hon. Mkhwebane to recuse herself from the process.
- 8.2. The candidates concerned are (1) Adv. Shadrack Tebeila, an independent legal practitioner and (2) Ms Ponatshego Mogaladi, an Executive Manager in the Office of the Public Protector ('OPP').
- 8.3. Hon. Mkhwebane argued, in contradiction, that there was no conflict, that there was no reasonable apprehension of bias, and that she was entitled to, and intended to, participate fully in the proceedings.
- 8.4. As a result of the impasse, the Committee requested urgent legal advice from Parliament's Constitutional and Legal Services Office (CLSO). Based on the information that was telephonically provided to it, and in respect of Adv. Tebeile, the CLSO gave preliminary advice that a mere perception of bias is not enough to disqualify Hon. Mkhwebane from interviewing him, and if they had previously worked together in a matter, that would not in itself be sufficient for her to recuse herself. Regarding Ms Mogaladi, the preliminary advice was that disciplinary actions are within the nature of an employer-employee relationship and if this is done within the labour law prescripts, at face value, this would not warrant a recusal.
- 8.5. However, as the Committee deliberated on the advice, it quickly realised that its instructions to the CLSO were incomplete and insufficient. Against this background, the Committee asked the CLSO to advise whether, on the facts presented and as supplemented, Hon. Mkhwebane should recuse herself from

interviewing Adv Tebeile and Ms Mogaladi, and whether this relationship would constitute a conflict of interest or reasonable apprehension of bias.

- 8.6. Hon. Mkhwebane responded that it is not the first time that a member of Parliament is known to, or has, relations with a candidate appearing before a committee they are a part of. She indicated that she has complied with Rule 30 of the National Assembly Rules, and Clause 5 of the Code of Ethical Conduct and Disclosure of Members' Interests for Assembly and Permanent Council Members ("the Code"), as she has declared her relationship with both candidates. She further argued that, while she is part of the Committee, she is not a key decision maker as the recommendation will be made by the collective. In addition, she noted that her duty as a public representative is to ensure that a candidate who is qualified to serve and protect the interests of the public is appointed. She added further that she is legally qualified and approaches the interviews with an open and objective mind. As such she firmly believes that the recusal point taken by the Democratic Alliance is unnecessary and flawed.
- 8.7. The majority of the Committee determined to proceed with the interviews, pending receipt of the supplemented legal advice requested from the CLSO, as the candidates were already at Parliament, or on their way to Parliament, for their interviews.

9. Legal advice

- 9.1. The Committee received the supplemented legal advice from the CLSO, dated 18 March 2024 ('the Advice'). The CLSO identified the legal issues that arise as follows:
- Whether the relationship between Hon. Mkhwebane and the two candidates creates a perception of bias and/or conflict of interest; and, if so,

- Whether the circumstances warrant her recusal from the interviews for the two candidates.

9.2. The following facts concerning Hon. Mkhwebane’s relationship to the two candidates are relevant:

9.2.1. Adv. Tebeile is currently representing Hon. Mkhwebane *pro bono* (i.e. without payment) in the African Court on Human and People’s Rights. While the Committee is not privy to the facts surrounding the case, a cursory Google search reveals that it is related to the Section 194 Enquiry.

9.2.2. Ms Mogaladi was employed at the OPP during the Hon. Mkhwebane’s tenure as Public Protector. During that time, Ms Mogaladi was subjected to a disciplinary process, and was found guilty of gross misconduct. Despite the chairperson of the disciplinary hearing having recommended a sanction of suspension and salary docking, Ms Mogaladi was served with a dismissal letter that also invited her to show cause why the dismissal was not appropriate in the circumstances. The letter specifically made mention of the breakdown of the relationship of trust between the employer and the employee.

Following her dismissal from the OPP, Ms Mogaladi approached the Labour Court on an urgent basis, seeking an order setting aside the dismissal letter and re-instating the suspension sanction recommended by the Chairperson of the disciplinary hearing. The order was granted in her favour. In doing so, the Court rejected the Public Protector’s argument that it should accept the contents of her letter in good faith. Judge Tlhotlhemaje states that “[t]he applicants’ concerns that the Public Protector has already decided their fate are not misplaced. The Public Protector specifically stated in her letter that she is ‘hereby imposing a sanction of dismissal with immediate effect, subject to receipt of your representation’. It was submitted on behalf of the Public Protector that the Court must accept the bona fides of the contents of the letter. The Court will however be hard-pressed to do so based purely on a plain reading of that letter”. The former Public Protector’s leave to appeal against Judge Tlhotlhemaje ruling was dismissed, and the judgement still stands.

- 9.2.3. In addition, Ms Mogaladi was a witness in the Section 194 Enquiry which led to Hon. Mkhwebane removal from office of Public Protector. The Section 194 Enquiry made a finding of victimisation, harassment and intimidation on the part of Adv. Mkhwebane as against Ms. Mogaladi. This finding still stands until/or unless set aside by a court of law.
- 9.3. The Advice notes that section 57(1)(b) of the Constitution, 1996, empowers the National Assembly to make its own rules and orders concerning its business. In this regard Rule 30 of the National Assembly Rules (“NA Rules”) and Clause 5 of the Code of Ethical Conduct and Disclosure of Members’ Interests for Assembly and Permanent Council Members (“the Code”) are pertinent:
- 9.3.1. Rule 30 of the NA Rules states that if a member has a personal or private financial or business interest in any matter before a forum of the Assembly of which he or she is a member, he or she must at the commencement of engagement on the matter by the forum immediately declare that interest in accordance with the code of conduct contained in the schedule to the Joint Rules and comply with the other provisions of the Code.
- 9.3.2. Clause 5.1 of the Code states that a member must:
- “5.1.1 *resolve any financial or business conflict of interest in which he or she is involved in his or her capacity as a public representative, in favour of the public interest; and*
- 5.1.2. always declare such interest, and where appropriate, the Member should recuse himself or herself from any forum considering or deciding on the matter.”*
- 9.3.3. Clause 5.2 of the Code states that a member must:
- “...
- 5.2.4 declare any direct personal or private financial or business interest that that Member or any immediate family of that Member or any business partner of that Member or the immediate family of that Member may have in a matter to be considered or decided on before any*

parliamentary committee or other parliamentary forum of which that Member is a Member or in which that Member is participating; or

5.2.5 *withdraw from the proceedings of that committee or forum when that matter is considered or decided on, unless that committee or forum decides that the Member's interest is trivial or not relevant."*

- 9.4. The Advice highlights that Rule 30 of the NA Rules and the Code anticipate an event where a member may have a personal or private financial or business interest in a matter serving before a forum of the Assembly. The provisions apply regardless of the member's professional affiliation, or the oath of office taken by a member. Both the Rules and the Code call on the member to declare such interest and where appropriate, recuse themselves from the process. This requirement (declaration and/or recusal) is aimed at managing any perception of bias concerning the member's judgement.
- 9.5. However, a mere perception of bias is not sufficient for recusal. There is extensive case law which provides that the apprehension of bias must be reasonable and depends on the facts of each case. As the case law suggests, judges are legally trained people who have an obligation to abide by their oath of office. This principle also applies to members of the National Assembly.
- 9.6. The Advice concludes that the relationship between Hon. Mkhwebane and the two candidates, in the first instance, does create a perception of bias and/or conflict of interest and, in the second instance, based on the facts presented, does call for her withdrawal from the interview process in so far as there is a reasonable apprehension of bias.
- 9.7. This conclusion stems from, firstly, a financial and personal benefit to Hon. Mkhwebane from her relationship with Adv. Tebeile and, secondly, the findings of the Section 194 Enquiry, read with Judge Tlhotlhemaje's judgement, which suggest strongly that any reasonable person in Ms Mogaladi's position would apprehend bias on the part of Hon. Mkhwebane given their history.

- 9.8. The Advice notes that, in the circumstances, the Code and the applicable case law place an obligation on the member concerned to recuse themselves. Should Hon. Mkhwebane decide not to recuse herself in the circumstances, any party aggrieved by her decision will have a right to approach a court of law to have their dispute decided accordingly. Although the Rules do not provide for a process to compel the member to recuse themselves, the failure to do so could potentially result in a breach of the Code.
- 9.9. The Advice considers the following options as being available to the Committee, namely that Hon. Mkhwebane may recuse herself from the process in its entirety and be replaced by an alternate member of her party; or Hon. Mkhwebane may recuse herself in respect of the interview portion and deliberation in respect of the two candidates and participate in the balance of the interviews.

10. Deliberations

- 10.1. The Committee met on 2 April 2024 to consider the Advice provided to it, which it accepts, while noting Hon. Mkhwebane's objection(s).
- 10.2. The Committee agrees that the relationship between Hon. Mkhwebane and the two candidates creates a perception of bias and/or conflict of interest. Further, given the circumstances, there is a reasonable apprehension of bias. This stems from, in the first instance, the fact that Hon. Mkhwebane is currently deriving a financial and personal benefit from the relationship with Adv. Tebeila and, in the second instance, regarding Ms Mogaladi, the findings of the Section 194 Enquiry, read with the Tlhotlhemaje judgement, which suggest strongly that any reasonable person would apprehend bias on the part of Hon. Mkhwebane given their history.
- 10.3. Further, the Committee agrees that it is not relevant that Hon. Mkhwebane is not the sole decision maker in the process, as both the NA Rules and the Code address her personal or private (not political) interest in the matter at hand.

- 10.4. Although the NA Rules do not provide for a process to compel a member to recuse themselves, the Committee notes that should a member refuse to recuse themselves, any party who feels aggrieved by such decision will have a right to approach a court of law to have the dispute decided accordingly. In this regard, the Committee notes the gap in the Rules and is of the view that consideration should be given to developing a process to compel a member to withdraw from proceedings in a situation where the facts support the reasonable apprehension of bias.
- 10.5. The Committee does not agree that the options provided in the Advice as to a way forward are appropriate. The Committee believes that Hon. Mkhwebane's participation has irretrievably tainted its process. In the circumstances, the Committee does not believe that it would be fair for it to continue by proceeding to deliberate on the merits of the candidates it has interviewed. This is so regardless of whether Hon. Mkhwebane recuses herself now or not. Further, in the Committee's view, to proceed would attract controversy to the appointment, and risk litigation, both of which are not desirable.

11. Recommendations

- 11.1. The Committee understands that there is very little time before the Sixth Parliament rises ahead of the general election, which takes place on 29 May 2024, but given the circumstances set out in this report, recommends that the House resolve to begin the process to nominate a candidate for appointment as Deputy Public Protector afresh.
- 11.2. The Committee also recommends that consideration be given to developing the Rules to provide for a process to compel a member to withdraw from a matter should the facts support the reasonable apprehension of bias, and any other appropriate measures that may be required to prevent such a situation arising in future.

12. Appreciation

- 12.1. The Committee would like to thank all candidates for making themselves available to be considered for the appointment.

Report to be considered.

2. Report of Portfolio Committee on Public Enterprises on alleged protected disclosure made by the former Director-General of the Department of Public Enterprises dated, 27 March 2024.

1. Background

This report details the process that was followed by the Portfolio Committee on Public Enterprises (PCPE) after having received a referral from the Speaker, based on a request from Chief Whip of the Economic Freedom Fighters, Mr. NF Shivambu. The request was based on a submission by the former Director-General of the Department of Public Enterprises, which Mr Shivambu felt might be a violation of the Constitution and the oath of Office by the Minister of Public Enterprises, Mr. Pravin Gordhan. He was of the opinion that under the circumstances, Parliament must hold an inquiry into the conduct of the Minister. Based on the request, the Committee proceeded to investigate the request and inter alia received a legal opinion on it as well as allowing the former Director-General an opportunity to present his case to the Committee. This was followed by invitations to the Minister and the Department to respond to the issues raised by the former DG, as well as recommendations made by the former DG to the PCPE followed by responses by the Minister to these recommendations. In the process, the Committee was provided with various documents by the two parties as well as a report from the Auditor-General of South Africa. Based on these and the Committee's interrogation of these issues, the Committee considered this Report at its meeting of 27 March 2024 and made a specific recommendation on the referral from the Speaker.

2. Introduction

On 31 October 2022, the Chief Whip of the Economic Freedom Fighters, Mr. NF Shivambu, Member of Parliament, wrote to the Speaker alleging that the protected disclosure of Mr Tlhakudi points to conduct that is in violation of the Constitution and the oath of office by the Minister of Public Enterprises; and that under the circumstances, Parliament must hold an inquiry into the conduct of the Minister. On 20 November 2022, the Speaker of the National Assembly addressed correspondence to the

Committee Chairperson in which the Speaker makes mention that it would be appropriate for her to refer Mr. Tlhakudi's disclosure and to also convey Mr. Shivambu's letter to the Committee, as the structure to which the Minister accounts.

The Committee, having received the protected disclosure (petition) from the former Director-General of Department of Public Enterprises, Mr Kgathatso Tlhakudi, processed the petition in line with the powers vested in it by the National Assembly Rules. Rule 167 of the National Assembly Rules empowers the Committee to: (b) receive petitions, representations or submissions from interested persons or institutions; and (c) permit oral evidence on petitions, representations, submissions and any other matter before the committee.

3. Petition of former Director-General (Mr Tlhakudi)

On 27 October 2022, the former Director General (DG) of Department of Public Enterprises (DPE), Mr. Tlhakudi, made a protected disclosure statement to the President, Mr. Ramaphosa, and the Speaker of Parliament, in which he made allegations against the Minister of Public Enterprises, Mr. Pravin Gordhan. The disclosure was made in terms of the Protected Disclosure Act No. 26 of 2000 (PDA).

3.1 Allegations contained in the petition.

In this disclosure, Mr Tlhakudi made the following allegations against the Minister of Public Enterprises:

- 3.1.1 The sale of South African Airways (SAA) was orchestrated by Mr. Gordhan to benefit a few privileged individuals who were favoured by the Minister in an irregular manner.
- 3.1.2 The Minister brought the former Chief Executive Officer (CEO) of AngloGold Ashanti and Vendanta, Mr. Srinivisan Venkatakrishana, as an "unpaid advisor" who initiated the unpractical and costly route regarding the complete closure of SAA instead of recapitalisation.
- 3.1.3 Mr. Gordhan engaged in procurement processes and disposing of state assets and made a case for the appointment of Rand Merchant Bank (RMB) as transaction advisor, a company, which has disclosed that he owns shares in it. The RMB was

appointed through a deviation from normal procurement processes because of Mr. Gordhan's intervention.

- 3.1.4 Mr. Gordhan engaged Mr. Gidon Novick and Mr. Venkatakrishana to engineer an introduction of Mr. Novick to Harith to introduce Takatso as it was not shortlisted as a strategic equity partner based on the report developed by the DPE.

3.2 Supplementary submission of the former Director-General

On 29 October 2022, Mr Tlhakudi submitted a supplementary document to the Committee on his Protected Disclosure submission made on 27 October 2022. In this supplementary document, he made further allegations against the Minister of Public Enterprises, Mr. Pravin Gordhan.

The allegations included, but were not limited to the following:

- 3.2.1 The choice of Takatso (Harith General Partners and Global Aviation Consortium) was irregular and that no process as required by the Constitution, Public Finance Management Act, Preferential Procurement Framework Act and other prescripts, had been followed.
- 3.2.2 The valuation of SAA at fifty-one rands (R51) and the deal structure was problematic as it seems to devalue SAA, in which government had committed about R30 billion to extinguish guaranteed liabilities and to restructure the airline through business rescue.
- 3.2.3 The deal structure where preference shares would be issued to the State for the assets in SAA (valued by Takatso at R3 billion) with payment over time, was problematic as the payment would be reliant on declaration of dividends. The DG had no experience of any DPE State-Owned Company (SOC) paying dividends to the State.
- 3.2.4 Takatso had pledged to provide R3 billion in working capital to the restructured airline post transaction. The former DG had not seen a due diligence report that would suggest that Takatso had these funds.
- 3.2.5 The Share Sale and Purchase Agreement (SPA) that had been signed by Ms. Jacky Molisane in February 2022 in her capacity as Acting DG, led to a commitment that DPE provide R900 million in an escrow account controlled by Takatso. These funds were not available, and a default situation had been created. The former DG stated that this was in violation of the PFMA.

4. Response of the Minister of Public Enterprises to the allegations

In line with the principle of *audi alteram partem* rule, which states that no person should be judged without a fair hearing in which each party is given the opportunity to respond to the evidence against them; the Committee wrote to the Minister and attached all the supporting documents submitted by the former Director-General. On 27 March 2023, the Minister, submitted a written reply to the Speaker regarding the allegations made against him by the former Director-General, Mr. Tlhakudi.

4.1 Evidence submitted by the Minister of Public Enterprises

The following are some of the salient issues raised by the Minister in response to the petition submitted by Mr Tlhakudi:

- 4.1.1 Mr Tlhakudi's suspension and disciplinary action are entirely unrelated to the SAA matter.
- 4.1.2 The catalyst to the disciplinary action is a complaint received by the Public Service Commission concerning alleged unethical conduct by Mr Tlhakudi in relation to a recruitment process for the position of Director: Security and Facilities. The complaint is that Mr Tlhakudi did not want the successful candidate to be appointed.
- 4.1.3 Mr Gordhan initiated an investigation arising from the complaint from the Public Service Commission and referred the matter to the Presidency.
- 4.1.4 Following the investigation, Mr Tlhakudi was subjected to a disciplinary process to test these allegations, and the Minister of Justice and Correctional Services, Mr Ronald Lamola, was appointed by the by the President to preside over the process.
- 4.1.5 Mr Gordhan stated that the matters raised by Mr Tlhakudi are intended to create an atmosphere that divert from the real issues.
- 4.1.6 Mr Gordhan then outlined the chronological order of events with regards to the complaint received by the Public Service Commission against Mr Tlhakudi.
- 4.1.7 Mr Gordhan also informed the Committee about the outcome of the disciplinary hearing chaired by Advocate Rathaga Ramaweale SC, who ruled as follows:

- (a) “I therefore find that the employer [employee] never made a disclosure during May 2022. Further, even if such a disclosure was made, it is still not in consonance with the provisions of section 1(xi)(e) read with section 9 of the Public Disclosure Act (PDA).
- (b) In the premises, it is my view that the charges preferred against the employee are not as a consequence of the alleged disclosure that the employee had made.
- (c) In the premises, I make the following conclusion: The employee has not made a protected disclosure within the meaning of the PDA.”

Mr Gordhan also obtained independent legal advice which concurred with the finding of Adv. Ramawele SC.

5. Legal opinion and advice on the Petition

The Chairperson of the Committee wrote to the Parliamentary Legal Services to seek legal advice on how the Committee should proceed in relation to the following:

- i) “If there are any acts by the executive authority that require an investigation by the Committee?
- ii) If the Committee is the correct body to deal with such a matter if it has something to do with the Executive Ethics Code?
- iii) If yes, then what process should the Committee follow in processing a complaint of this nature?”

Extracts from the legal advice received by the Committee included the following:

5.1 Regulatory framework

Accountability is one of the founding values of our Constitution. Section 1(d) adopts a multi-party system of democratic government “to ensure accountability, responsiveness and openness.” These are the key pieces of legislation that empowers the Committee to perform its functions:

- 5.1.1 Section 42(3) of the Constitution provides that the National Assembly is elected to represent the people and to ensure government by the people under the

Constitution. It does this in various ways. One of them is “by scrutinising and overseeing executive action.”

5.1.2 Section 55(2) imposes a duty on the National Assembly to provide for mechanisms to hold the national executive to account:

“The National Assembly must provide for mechanisms –

- (a) to ensure that all executive organs of state in the national sphere of government are accountable to it; and
- (b) to maintain oversight of –
 - (i) the exercise of national executive authority, including the implementation of legislation; and
 - (ii) any organ of state.”

5.1.3 Section 56(d) of the Constitution provides that the National Assembly or any of its committees may receive petitions, representations or submissions from any interested persons or institutions.

5.1.4 Section 92(2) of the Constitution provides that members of the Cabinet are accountable collectively and individually to Parliament for the exercise of their powers and the performance of their functions.

5.1.5 National Assembly Rule 167 provides for general powers of committees and provides that for the purposes of performing its functions a committee may, subject to the Constitution, legislation, the other provisions of these rules and resolutions of the Assembly —

- (a) summon any person to appear before it to give evidence on oath or affirmation, or to produce documents.
- (b) receive petitions, representations or submissions from interested persons or institutions.
- (c) permit oral evidence on petitions, representations, submissions and any other matter before the committee.

5.1.6 The Protected Disclosure Act provides for the protection of persons who make disclosures. Section 3(B)(1), amongst others, states that any person or body to whom a protected disclosure has been made, must, as soon as reasonably possible, decide whether to investigate the matter or not; to refer the disclosure

to another person or body, if appropriate, and inform the employee or worker of any action.

5.1.7 The Protected Disclosure Act also prescribes certain procedures, including time frames, to be followed by the person or body to which such a referral has been made.

- Section 3(B)(2-4) of the PDA provides that –

3(B)(2) “The person or body to whom a disclosure is referred as contemplated in subsection (1)(a)(ii) must, subject to subsection (3), as soon as reasonably possible, but in any event within 21 days after such referral –

- (a) decide whether to investigate the matter or not; and
- (b) in writing inform the employee or worker of the decision –
 - (i) to investigate the matter, and where possible, the timeframe within which the investigation will be completed; or
 - (ii) not to investigate the matter and the reasons for such decision.

5.1.8 The person or body, referred to in subsection (1) or (2), who is unable to decide within 21 days whether a matter should be investigated or not, must –

- (a) in writing inform the employee or worker –
- (b) that he, she or it is unable to take the decision within 21 days; and
 - (i) on a regular basis, at intervals of not more than two months at a time, that the decision is still pending; and
- (c) as soon as reasonably possible, but in any event within six months after the protected disclosure has been made or after the referral has been made, as the case may be, in writing inform the employee or worker of the decision–
 - (i) to investigate the matter, and where possible, the timeframe within which the investigation will be completed; or
 - (ii) not to investigate the matter and the reasons for such decision.
- (d) The person or body, referred to in subsection (1) or (2), must, at the conclusion of an investigation, inform the employee or worker of the outcome.

5.2 Question 1: Are there any acts by the Executive Authority that require an investigation by the Committee?

Whether an investigation is warranted or not, is a matter which the Committee will have to determine. However, no one can gainsay the fact that Mr Tlhakudi's submission is very serious, in that, it is made by an Accounting Officer of a national department against the Minister, and it deals with the disposal of a national asset - SAA - in an allegedly irregular manner. This, the Committee cannot ignore. Undoubtedly, there is a constitutional obligation on the Committee to put these allegations to the Minister and it is only then that the Committee can make an informed determination as to whether what form or mechanism the Committee will adopt in enquiring into these allegations.

5.3 Question 2: Is the Committee the correct body to deal with such a matter if it has something to do with the Executive Ethics Code?

As previously advised, the Minister is accountable to Parliament for the exercise of his powers and the performance of his duties. The National Assembly and, by extension, the Committee has both the power and the duty to hold the Minister to account. Parliament and the Executive should, of course, always treat one another with respect. However, Parliament and the Executive are institutions of equal standing. Neither trumps the other. There is no rule that says that Parliament may not enquire into and report on a matter merely because it also happens to be before the Executive. Parliament and the Executive perform different functions and may do so in parallel in relation to the same subject -matter. Therefore, the fact that a matter is pending before the one does not sterilise the other. The Executive Members' Ethics Act, No.82 of 1998, which is the legislation that gives effect to the Executive Ethics Code does not prevent or inhibit Parliament's exercise of oversight over the executive arm of the state.

In fact, as indicated above, the Constitution requires the National Assembly to provide for mechanisms to maintain oversight of the exercise of national executive authority, including the implementation of legislation. The Committee is one such mechanism. The Committee is consequently not in any way restricted if it wishes to undertake an investigation into Mr Tlhakudi's submission or disclosure.

5.4 Question 3: What process should the Committee follow in processing a complaint of this nature?

The tools available to portfolio committees in the performance of their oversight function are not systematically described in any one place. They are scattered through various legal instruments, including the Constitution, the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, No.4 of 2004 (“the PPIPPLA”) and the rules of the National Assembly.

5.5 Advice

In view of the foregoing, the Parliament’s Legal Advice was that Mr Tlhakudi’s submission deals with a matter of national importance and the Committee cannot merely ignore it. Moreover, it is no ordinary submission as it is a disclosure made in terms of the Protected Disclosure Act and, for that reason, it imposes legal obligations on the Committee to deal with it in terms of the prescribed time.

As previously advised, the legislation that gives effect to the Executive Ethics Code neither prevents nor inhibits Parliament’s exercise of oversight over the Executive. Finally, the Committee has the power and the duty, amongst other available tools at its disposal, to schedule a meeting with the Minister and to put the said allegations to him. There exists no impediment to the Committee pursuing an investigation into Mr Tlhakudi’s submission or disclosure, in the performance of its oversight functions.

6. The former Director-General’s presentation to the Committee

The former Director-General (DG) made a presentation to the Committee on 7 June 2023. The purpose of the presentation was to deal with the context within which he made the allegations against the Minister. In his presentation he outlined the merits of his case with the Department which led to the decision of him being dismissed. These were some of the key submissions made by the former Director-General:

6.1 Performance of the Department of Public Enterprises under his leadership

6.1.1 The performance of the Department during his tenure was remarkable with unqualified audit outcomes with 99.0% budget spent.

- 6.1.2 The APP performance ranged from 71-91% with gradual increase over the years.
- 6.1.3 There was a high rate of vacancies in the Department which led to the detriment of his health. In 2022 the vacancy rate was 41.1% (43/73) at Senior Management Service (SMS) and 13.1% (121/139) at non-SMS level. The situation persisted for four years during his tenure. The former Director-General further stated that instead of assisting the situation the Minister placed a moratorium on hiring in quarter one of the financial year 2022.
- 6.1.4 The former DG also shared the extracts of the letter he wrote to the Minister explaining that the vacancy rate was higher than expected and the Portfolio Committee on Public Enterprises has raised concerns about the compensation of employees (COE) budget being lost. The goods and services (G&S) budget were also affected by the vacancy rate.
- 6.1.5 The Department has failed to maintain good audit outcomes for the financial year 2022. In dealing with the APP 2023/24 findings by the Auditor General of South Africa (AGSA), the former DG suggests that 2024 financial year DPE annual performance plan shows a picture of a dysfunctional, rudderless and leaderless department.
- 6.1.6 The 2023 financial year audit outcome should not be any different. He further alleged that a climate of fear has been established in the Department and the result is paralysis in decision-making. Unquestioning and absolute loyalty is demanded and rewarded, unfortunately elevating incapable officials into positions that cause great harm to the capability of the State. Capable officials have been intimidated, marginalised and bullied to leave the Department. In the process the ‘spine’ of the Department has been lost. The scourge has seen:
- a) Unwarranted disciplinary actions against officials.
 - b) Resignations.
 - c) One official had her house ransacked.
 - d) Planting of listening devices and denial of service on private and departmental electronic devices.

6.2 Privatisation of state-owned companies

The former DG explained the issue of standard technique of privatisation. He stated that the conditioning of the South African population is succeeding, and people are not asking the critical questions, i.e.:

- (i) Why are other countries managing their SOEs better?
- (ii) Would appointment of the best amongst us and reduction in political interference not make these SOEs perform better?
- (iii) Why is the rot in SOEs deeper at DPE than at policy departments' SOEs?

6.3 SAA transaction

In relation to the transaction of South African Airways, the former DG explained that the decision was made on the 05 December 2019. The business needed to realise R1.6 billion in savings to make the end of 2020 financial year when funding was expected from National Treasury to enable restructuring. The business was able to realise R900 million in savings by November 2019. According to the former DG the decision seemed unnecessary and ill-conceived. Some of the Board Members who were proponents of the decision resigned on achieving this decision. The SAA Legal Advisor, ENS Africa ended up as the legal advisor to the Business Rescue Practitioners, Les Matuson and Siviwe Dongwana.

The former DG explained the amounts that were paid to service providers. According to him these amounts added up to R207,5 million. However, the SCOPA minutes indicated a further R35.5 million of payments were expected to be made to finalise the business rescue process. This means that the final business rescue costs would tally up to R243 million. The former DG contended that restructuring of SAA cost the state an amount of R34.7 billion. The Minister of Finance in the 2022/23 MTBPS allocated an additional R1 billion to SAA to pay for the outstanding liabilities, which on 1 April 2022 when SAA Airline emerged from business rescue, stood at R3.5 billion. This is a significant outlay by the South African citizen towards the revival of the state-owned airlines.

6.3.1 The appointment of Rand Merchant Bank

Rand Merchant Bank (RMB) was appointed through a deviation after a special request by the Minister to the Director General. The Minister claimed that RMB is the only financial institution with aviation capability, and this was confirmed by DDG Financial Analysis and Investment Services. The DPE has claimed that RMB was contracted as a Transaction Advisor to perform Phase 1 of the search for SAA transaction advisor, but the Service Agreement indicated otherwise. RMB was appointed to perform the whole function. RMB performed the work until January 2022 when they requested to be released from the contract and did not accept payment for services provided.

The RMB outcome included the expression of interests (EOIs) evaluation of the SAA group. The strategic equity partners (SEPs) interested in the whole. Several parties (or represented offering from brokers) expressed interest in SAA, however after interrogation or assessment of the EOIs, it became clear that their interest with DPE/Government's objectives and / or scored poorly against the criteria identified by the DPE. At the end of phase 1 the most promising of the EOIs identified were ASL/Bluesky Consortium and Fairfax Consortium. The RMB states that it is aware that the DPE is having direct discussion with parties not included in its such as Ethiopian Airlines, Kenya Airways and Air-A/Lufthansa Consulting (the advisory of Lufthansa). These were excluded from the scope of its assessment.

6.3.2 Appointment of the SAA Board

An Interim Board was appointed at SAA on 09 December 2020 to take over from the business rescue practitioners, whose term was expected to end in early 2021. In January 2021 the results of the RMB process were presented to the SAA Interim Board with the aim of the Board taking over. The Minister was present in the meeting. The Board was requested to assess the shortlisted bidders and advise the Minister on the preferred Strategic Equity Partner (SEP). The Board requested that the net be casted wider and that additions should be made to the list, a request that the Department acceded to.

In January 2021 the former DG was inundated with calls from the Minister of Public Enterprises and Gidon Novick seeking to request and provide, respectively, interim management services to SAA. The former DG resisted these requests as he would not have been able to justify the arrangement if questions were posed to him as the Accounting Officer.

6.3.3 The appointment of Takatso as preferred strategic equity partner

The DPE's explanation for the appointment of Takatso Consortium (Harith General Partners, Global Aviation and Syrinx) has become a “moving target,” according to the former DG. Some of his explanations in this regard included:

- (i) There were no suitable strategic equity partners from the RMB process.
- (ii) There was a technical committee established in the Department that considered Takatso and four (4) other bidders.

The former DG further stated that Takatso consortium were not on the short list by drafted by RMB. He also presented some of the WhatsApp messages with Mr Novick where he provided feedback that Mr Novick had missed the Board shortlisting process.

6.3.4 The share sale purchase agreement

The Share Sale and Purchase Agreement (SPA) was signed on 14 February 2022 by Acting DG Molisane in Mr Tlhakudi's absence due to him being on medical leave. There was a clause that required the DPE to provide R900 million by March 2022 to mitigate any future risks for Takatso that may arise due to the restructuring. The funds were to be placed into escrow account controlled by Takatso. The DPE did not have the funds, which raised risks of default and violation of the Public Finance Management Act. The former DG requested and had a meeting with the Takatso Team, which the Minister and the DPE negotiation team attended. It was agreed that Takatso will not activate the default, that the clause will be amended, and the liability be limited to R50 million, supported by documentation.

6.3.5 Valuation of SAA assets

According to the former DG, the valuation was done by Broll Consulting (assets=R3 billion) and Letsema Consulting (business operations =R0). The following were the basis of the former DG's misgivings with the valuation:

- a. One of the major groups in South Africa had made an unsolicited proposal to SAA to develop its head office, Airways Park, into a multipurpose facility including a conference facility and valued the opportunity at R4 billion;
- b. SAA has aircraft spares to the value of R3 billion which were factored in the valuation; and
- c. There was R1 billion of cash that was stranded in the regional markets.

The former DG stated that SAA local properties have been valued at +R6 billion against the R1.2 billion valuation by Takatso. The SAA Board Chairperson, Mr Hanekom, conceded on this point and said the assets will be re-evaluated. Further, foreign bank accounts and properties were still to be accounted for. It was also indicated that the London Heathrow slots with Rand depreciation, should be worth more than the R400 million attributed to them. The former DG stated that it was his assessment that the undervaluation of SAA is in the region of R7 billion to R15 billion.

6.3.6 Due diligence

The former DG reported that by May 2022, DPE had not yet performed due diligence on Takatso Consortium. He ordered the negotiation team to extend the scope of the contract with Norton Rose Fullbright, to enable this critical task to be undertaken. There was no evidence that Takatso had the financial and technical capacity to consummate the transaction. The regulatory process to enable the transaction had not much attention paid to them. He felt that the proposed compensation to government for SAA assets (R3 billion) through a preferential share scheme, was unlikely to result in the payment being realised.

6.3.7 State capture on state-owned companies

The former DG stated that the era of State Capture and its by-product of corruption and looting of state , did not end with the conclusion of the Judicial Commission into State Capture and the presentation of its report in June 2022. He felt that the Department remained at the centre of State Capture primarily due to the concentration of power over state-owned companies. He outlined that the process of State Capture is very much active, and proposed the following:

- (i) Change the Minister.
- (ii) Minister appoints an amiable board.
- (iii) The Board appoints a co-operative executive team.
- (iv) SOE business and contracts are repurposed to benefit identified private sector players.

He warned that the privatisation of SAA is a case in point but much worse was happening in the other SOCs under DPE. The former DG further raised concerns that the Fourth Estate has been asleep and did not deal with the allegations of wrongdoing in state-owned enterprises with objectivity. According to the former DG, there remains pockets of excellence and thirst to ensure unprejudiced and dispassionate information to the South African public; and that these media houses and journalists should be commended. However, Parliament should be more concerned with the repurposing of government's good governance oversight and criminal justice authorities. The PCPE should look closely at what is happening in the Department of Public Enterprises.

6.3.8 Recommendations to the Portfolio Committee

Mr Tlhakudi further made recommendations to the Portfolio Committee on Public Enterprises. He recommended that an independent investigation into Takatso transaction be initiated. He further made the following recommendations:

- (i) There is irrefutable evidence of corruption through State Capture. The Special Investigations Unit's (SIU) proclamation on SAA should be extended to cover the Takatso transaction, DPE Minister and the role of Officials.
- (ii) Depending on the findings of the SIU, and if allegations of criminal behaviour are proven, these matters should be handed over to the National Prosecuting Authority (NPA).

- (iii) The Public Protector should be directed to investigate the conduct of the Minister of Public Enterprises.
- (iv) The Competition Commission's handling of the Takatso transaction should be looked and should include the process that informed a positive recommendation of the Tribunal.
- (v) The Takatso transaction should at least be halted to ensure fair compensation to the national fiscus. The Board Chairperson, Mr Hanekom, has conceded to the undervaluation of the property portfolio.
- (vi) The Public Service Commission should be deployed to the DPE to assess the working environment and intervene where necessary.

7. The Minister of Public Enterprises' response to the former Director-General's presentation to the Committee

The Minister made a presentation to the Committee on 12 September 2023. The Minister thanked the Committee for allowing him to place some facts which are also contained in a written submission made on the 27 March 2023 which was accompanied by documentation to the Speaker to substantiate each of the points made. He stated that any assertion of corrupt behaviour on the Minister's part and the Department's part is rejected outrightly. The Minister further stressed that the allegations are more of a political campaign than a genuine set of concerns.

The Minister covered and responded to sixteen (16) of the allegations raised by the former Director General:

- 7.1 The Minister made a distinction between the role of the Minister and the role of the Director General in the Department. The Minister's role is to set the political direction and provide a mandate and clarity on what needs to be done. The Director-General is to execute the mandate and make sure that the administration is aligned with the political mandate.
- 7.2 The Department of Public Enterprises since 2010 was at the heart of State Capture. Many of the transgressions, transactions and appointments that were made in order to execute various activities that the State Capture involved were

undertaken through the Department and the Ministry. Notwithstanding that, after 2018 difficult choices had to be made about the reconstruction process of these many entities and the department's tasks had to overcome the effects of State Capture and corruption that have sieved through these SOEs. Some of these have worked and some of it is still work in progress.

- 7.3 This also applies to SAA which was run to the ground by previous boards and management. The choice by the end of 2019, early 2020 was to allow SAA to be liquidated or to be saved through some form of intervention. An instruction from government through Cabinet was to attempt to restructure the aviation assets of the State and to try to the best of their abilities to save the entity. The pandemic had an impact on aviation in South Africa and globally. As of end of March 2020 flights were limited and eventually stopped, and the SAA was already in business rescue.
- 7.4 The Minister dealt with what Mr. Tlhakudi did wrong. It started with a complaint received from the Public Service Commission. The complaint was communicated to the Minister in a letter on 8 March 2022 in which the Minister was directed by the Public Service Commission to investigate the matter. The Minister asked the department's legal section to obtain services of a forensic firm that went into the matter. According to the Minister, Mr. Tlhakudi interfered in the process of the appointment of the individual by replacing the name suggested by a panel which had interviewed the people for the position with his own preferred name.
- 7.5 The Minister said the so-called protected disclosure and regrettably even Parliament's legal advice in this matter to the Committee, is wrong according to him. The letter from the Public Service Commission put into motion a set of events which, in government, when the Director General is confronted with challenges the matter is referred to the Presidency. After some basic investigation the Presidency nominated another Minister to manage the matter in this instance, Minister Lamola (Minister of Justice and Correctional Services). The Minister determines based on evidence on how to proceed with the matter. In this instance, the suspension finally was undertaken and directed by Minister Lamola. The initiation of the disciplinary action was set into motion and the

report of the disciplinary inquiry was presented to Minister Lamola. The eventual dismissal of Mr. Tlhakudi was undertaken by Minister Lamola because according to the Minister this is the way these matters are dealt with in government. What is interesting to note is that long before this process was brought to Mr Tlhakudi's attention when the Minister eventually met him to inform him that there was a letter from the Public Service Commission, Mr. Tlhakudi said he was aware of the letter because the letter arrived through the Department's registry. The Minister had to approach Mr. Tlhakudi and explained to him that he should take special leave while government decides how to deal with matter. He was informed that he was not the first Director General to be involved in such a set of events and each of them are dealt in the same way by the Presidency.

- 7.6 The second major point is that there were fundamental differences by the DPE with the legal opinion to the PCPE in terms of the Protected Disclosure Act 26 of 2000. The provision of the protected disclosure is to protect an employee from occupational hazards or detriment arising from the disclosure of certain wrongdoing by fellow employee or by the employer. In this instance the so-called disclosure occurred long after the process which led to the disciplinary inquiry, had already been put in motion.
- 7.7 The first allegation is that the disciplinary charges are "trumped-up" charges. This was obviously not true according to the Minister. The Minister has elaborated that the matter has come through the Public Service Commission, and this required the Minister to act in accordance with the requirements of the letter by investigating the matter. The matter was referred to the Presidency, the Presidency then nominated Minister Lamola to manage the rest of the processes. In the letter from the Public Service Commission, in the last paragraph it is stated that "The complaint is referred to the Minister to for investigation as it implicates the Director General. The Minister is kindly requested to provide PSC feedback on the progress made in respect of the investigation within forty (40) days from the date of the letter". In summary any assertions that these were trumped-up charges or designed to victimise or in some way to be unfair to Mr. Tlhakudi is absolute nonsense. The facts speak for themselves, according to

Minister Gordhan. On 2 June 2023, Minister Lamola, after many delays in the disciplinary process, dismissed Mr. Tlhakudi.

- 7.8 The second allegation was that the former DG raised concerns about the transaction with the DPE Minister and the Presidency. At all material the former DG was involved in the various processes, from day zero to a point where he was dismissed given that he was involved at a technical level. There was at no point where he raised concerns about the transaction. There was a point where he had doubts about the preferential share structure but could not pinpoint it and the content of the golden shares; but beyond this, once those issues were explained he never had any material concerns despite what he has to say now.
- 7.9 As far as the SAA transactions was concerned, SAA was in a complete mess, it was financially unsustainable. In 2019 alone a total of about R10.5 billion was set aside by government and provided to SAA before November 2019 in order to assist the entity from a financial point of view. Notwithstanding all of that on 6 December 2019, the Board of SAA and lenders who supported SAA through loans and guarantees which were provided by the National Treasury; finally decided to place SAA under business rescue. Having gone into business rescue the world and South Africa was struck by the Covid-19 pandemic in early March 2020 and this impacted on aviation nationally and globally.
- 7.10 The third allegation is that the decision to put SAA under business rescue was ill conceived. In the 2017/18 financial year SAA faced significant financial challenges that eventually rendered it not to be a going concern prompting auditors to suspend their evaluation until financial viability issues have been resolved. The SAA Directors were continually vigilant during this period to prevent potential reckless trading in a situation which posed significant risk to the credibility of the directors themselves. The financial concerns coupled with the potential reckless trading has resulted in an audit backlog and that backlog is something that is now being attended to.

Since 2011 SAA did not make a profit and could not generate the cash required from its revenue to cover its various obligations. In the 2019/20 financial year its situation was worse, although in early 2019 the then CEO submitted an accelerated long term turnaround strategy. The aim of the strategy was to stabilise SAA and move it out of

its dire situation. Notwithstanding the formulation and submission of the strategy, it did not work. By the first quarter of financial year 2020 the airline had already recorded a net loss of R1.9 billion exceeding the budgeted loss of R1.5 billion for the quarter. The cumulative losses for the financial year stood at a staggering R5.3 billion. Despite the recapitalisation of R5 billion in February 2019, followed by another R5.5 billion in August 2019, the airline by November needed more cash.

This led to Cabinet by November 2019 deciding that the airline should be restructured and, on the hand, should seek a strategic equity partnership to lighten the burden on government fiscus. SAA required R4.1 billion in bridging finance to support its working capital towards the end of 2019 financial year, to which they had difficulty to obtain. In a decision made by Cabinet it was clear that if SAA was to be a viable, agile and sustainable airline and for the restructured airline not to depend on the national fiscus; it must be a model public-private partnership and a catalyst for growth. It must also showcase South African skills, talent and diversity in all sections of the staff to create a foundation for the listing of the SAA.

- 7.11 On 3 December 2019, Government approved that SAA be repositioned and restructured with the introduction of a Strategic Equity Partner (SEP). On 5 December 2019, the Board of SAA decided to place the airline under business rescue and on 6 December 2019 the business rescue practitioners were registered with the CIPC.

The objective of business rescue as set out in section 128(1)(b)(iii) of the Companies Act, 2008, is to develop and implement a rescue plan that restructures the affairs, business, property, debt and other liabilities of a company, in a manner that maximises the likelihood of the company continuing in existence on a solvent basis. The Business Rescue Practitioners published the Business Rescue Plan (“Rescue Plan”) for SAA on 16 June 2020 and it was adopted by the Creditors on 14 July 2020.

The decisions to place SAA under business rescue and not allowing it to get into liquidation situation, were both correct decisions. It was also correct from the point of view of labour that 1 000 jobs were saved directly and many more

indirectly. As SAA was set to continue to grow, more jobs would be created, and more professionals would be trained in every category of staff required by the airline to run the airline. Had the staff not been awarded the voluntary severance packages that government generously provide for, they would have walked away with R28 000 to R30 000 each, - even after 20 years of service according to the liquidation formula. Given these and taking other considerations into account, the business rescue decision by the Board at that time, was far sighted and gave DPE an opportunity to save SAA in its current form.

- 7.12 The fourth allegation is the Department did not follow due process in appointing Takatso. Having gone through the business rescue state, the responsibility of restructuring the airline portfolio of government was the responsibility of DPE. Once the Covid-19 pandemic hit South African and impacted on the airline industry negative, there were expression of interests for SAA or SAA Group. It is important to clarify at the outset that the disposal of shares transaction is not a procurement process as envisaged in section 217 of the Constitution. Section 217 of the Constitution applies when an organ of state contracts for goods and services. The disposal of SAA shares is a merger and acquisition transaction.

It is a transaction conducted by the shareholder. Notwithstanding the distinction between procurement and this type of transaction, the Department undertook a fair, equitable, transparent and competitive process. The overall objective was to obtain the best outcome for the airline and the country and for the staff. When SAA was placed under business rescue, the Department started receiving Expression of Interests (“EOI”) for the acquisition of SAA and/or parts thereof. In order to ensure an accountable, competitive and fair process, the Department appointed Rand Merchant Bank (RMB) as a transaction advisor. The transaction advisor was privy to all the expression of interests, was given all the documentation from the Department. The transaction advisor undertook to evaluate of all the expressions of interest.

Through this entire process in early 2021 a key issue that emerged was whether those who were interested in the SAA had the cash to put to operate the airline. What was clear from government’s point of view, was that there will be no

additional funding from the fiscus to support the airline into the future. Similarly, from those who expressed interest, it was certainly clear that they stipulated a set of needs:

- (i) They want the past to be cleared out.
- (ii) That they will take operational control.
- (iii) They didn't want political interference in the process.

- 7.13 Toward the end of 2020 and beginning of 2021, it became clear that the pandemic had impacted the aviation industry very badly and that there was dearth of potential SEPs in the market. When it came to putting in cash none of the players said they had cash to survive the whole pandemic period. The major impediment for many players was the issue of availability of cash and putting R3 billion as operating capital. Government was not able to impose its initial conditions and had to accede to the requirements of potential SEPs.

At this stage the mandate of the transaction advisor ended and DPE took over the process. A proposal by Harith General Partners, which had been engaged in the RMB process, and Global Aviation which later became the Takatso Consortium ("Takatso") was made to the department. This offer satisfied the Department's requirements including the ability to provide the funding needed to restart operations. Takatso was then appointed as the preferred SEP. Takatso had the requisite combination of financial and operational capabilities required for the successful relaunch of SAA. Their composition would advance the transformation agenda.

- 7.14 The fifth allegation, was that the Board of SAA was requested to assess the shortlisted bidders. The sale of shares is a shareholder reserved matter. The shareholder may delegate to the Board of Directors or any party to run the process on behalf of the shareholder. However, the shareholder can also choose to conduct the process itself. In the process of selling 51% of SAA, the shareholder chose to run the process as it is entitled to do so.
- 7.15 The sixth allegation, escrow account is in violation of the PFMA. The escrow account has not been created. It's a technical provision that would have kick-in

or can still kick-in if there were creditors that needed to be resolved and money was set aside for that process, for example, the payment of unflown tickets whilst the rest of the transaction could still proceed. The purpose of the share sale agreement was to outline the terms of the agreement between the parties. This standard account was established to safeguard government and Takatso against any unforeseen liabilities. The primary objective of the escrow account is to ensure that all funds related to the business rescue period are funded through this mechanism rather than directly from SAA.

This arrangement serves to limit the Government's exposure in the event of any additional liabilities. The R900 million mentioned in relation to the Escrow account is specifically tied to the outstanding unflown tickets resulting from the Business Rescue obligations and the funds were subsequently made available. Government has already made a commitment to provide the necessary funding to fulfil these business rescue obligations. Conditions precedent outlined in the SPA can be extended by mutual consent and the required funds have been provided for.

- 7.16 Allegation seven, SAA was undervalued. Valuations done from the middle of the recovery period of the Covid-19 pandemic and valuations done today will give a different set of results. There are different types of valuations: there is what is called the going concern valuation, which is currently being done, which produce a set of results in the coming few weeks. This will determine the current value of the business. The difference between the past and the present, is that in the past SAA was flat on the ground and the present is that SAA is flying. The valuation will produce a different set of results. The Department has been meticulous in making sure that the going concern valuation is updated, the asset valuation is updated and the assets belonging to the State will be dealt appropriately by the State and the ones for Takatso will be paid for.
- 7.17 Allegation eight, due diligence of Takatso not undertaken. The disposal process of South African Airways was carried out with complete transparency and adherence to the required process. A comprehensive due diligence investigation was conducted by the Department of Public Enterprises (DPE) Legal Advisors.

The report was delivered to the DPE on 31 May 2021, providing a thorough and impartial analysis of both organisations. The due diligence investigation did not reveal any significant 'red flags' or issues that could impede the transaction.

7.18 Allegation nine, the former DG was not involved in the process.

8 April 2021: DG Tlhakudi writes to Harith, saying: “After due consideration, we are pleased to inform you that the DPE have progressed with your expression of interest in SAA Group to the next round being the due diligence phase”

CONTEXT: This letter counters another of Tlhakudi’s key claims, that after the RMB process “Takatso and Harith were nowhere in the process of identifying the SEP”. In his own words in this letter, there had been “due consideration” of Harith’s expression of interest in the SAA Group.

29 July 2021: A meeting is held between Takatso Consortium and DPE, with the DG in attendance and participating.

25 August 2021: Meeting with Takatso and DPE, at which DG was present and participating.

August 2021: DG Tlhakudi writes to the BBBEE Commission confirming that the BBBEE Act was considered in identifying Takatso to acquire the 51% stake in SAA.

September 2021: Meeting held between Takatso, DPE and one of the two independent valuation companies that would carry out the valuation of SAA. The aim of the meeting was to discuss the valuation principles. DG was present and was instrumental in defining the principles/approach to the valuation. He had insisted that this process flow from a DG led process.

19 October 2021 – Meeting to present valuation report. He was present at that meeting.

21 March 2022: A meeting between Takatso and DPE was held to discuss the status of the Transaction. The DG was in attendance in this meeting. It was also the meeting where the DG expressed his concerns on the pace of the Transaction and implored on Takatso to fast track the process so that Takatso can acquire SAA.

29 March 2022: Right at the onset of the Transaction, Takatso had excluded Mango from the SAA structure. However, on this day, Takatso receives a letter

from DG Tlhakudi requesting us to express interest in acquiring Mango, which expression of interest was to be accompanied by a statement of the business case.

These are the dates where Mr. Tlhakudi was involved in the process until his dismissal.

- 7.19 Allegation 10, Vacancy Rate has been 20% over years. These are departmental issues that are of no relevance to him now. Mr. Tlhakudi had a habit of filling vacancies for the sake of filling it, spending money on junior positions and administrative positions when in fact the Department required high level skills. It required capabilities for example to engage on energy issues, logistics issues in relation to Transnet, or defence issues in relation to Denel. The focus on the Minister's side was bringing in more expertise of this sort to enable the Department to build on the effects of state capture and reposition the SOEs. There is vacancy rate at the junior level and the acting DG is working on bringing in short term expertise in order to strengthen the Department.
- 7.20 Allegation 11, there is a climate of fear in the Department. The only people who have some apprehension in the Department are those who are leaking documents to him. After his suspension Mr. Tlhakudi continued to send WhatsApp messages to the people in the Department. The Department is more creative, professional and forward thinking than it has been in a long time.
- 7.21 Allegation 12, paralysis in decision making. There is no paralysis in whatever the Department is required to do, gets done whether from the administrative or policy sense. This is done not only in the Department but across government. The processes that the Department has been involved in includes for example, just energy transition, restructuring of Eskom, the challenges facing the logistics system, partnerships with business which has been outlined by the Presidency.
- 7.22 Allegation 13, toxic administration and political environment. The Department remains accountable to Parliament and the Republic and has over time built a culture of accountability and integrity within the Department often challenging at times, but nothing is compromised as far the Minister is concerned. Mr.

Tlhakudi's assertions are irrelevant and have nothing to do with the future of the Department.

- 7.23 Allegation 14, Departmental Spine and Alleged Bullying. The commentary is directed at the acting Director General which Mr. Tlhakudi chooses to make which is disrespectful, improper, unethical and he should now mind his own business. The Department states that there is zero tolerance for bullying anybody.
- 7.24 Allegation 15, Disciplinary action against official aligned to former DG. As far as the Department is concerned there is no victimisation of anybody but there are people who have crossed the line. And if you have crossed the line in respect of the law, administrative rules, not conducted themselves properly or don't perform the job as they are required to, not meeting the targets that have been set by the acting Director General or Deputies Director Generals, then staff must face the consequences of whatever it is that they have done. Performance is a key issue within the public service more generally as well. The department reiterates its commitment to governance and integrity.
- 7.25 The last allegation is a commentary on unqualified audit reports only during DG's tenure. The Department continues to obtain unqualified audit report as a result of the work of the acting DG and colleagues. Even during the suspension of Mr. Tlhakudi, the Department continued to obtain unqualified audit reports. The Auditor General can confirm this assertion. The systems that are within the Department have held firm and the attention given to the issues directed to the Department has alleviated some of the challenges that were there.

8. Evidence and information obtained

The process of gathering evidence was done through the Office of the Chairperson. The former Director-General has made allegations against the Minister. It was therefore necessary for the Committee to inquire about the allegations directly from the Minister. There have been several written exchanges between the Office of the Chairperson and the Minister regarding information relating to the allegations. The Minister has on

several occasions cited the confidentiality clauses that he entered with other parties as a reason for not providing information.

8.1 List of Documents

For the purposes of this exercise the Minister provided this list of documents:

(i) BBBEE Verification Certificate – Harith General Partners Pty (Ltd) 2021.

- The BBBEE verification certificate states that Harith General Partners (HGP) is a level four contributor.

(ii) Harith General Partners due diligence report.

- HGP due diligence report deals with issues of anti-bribery and corruption. This was done by Norton Rose Fullbright a global law firm. Some of the issues highlighted in the due diligence report are summarised below:
- HGP directors and management are:
 - Tshepo Daun Mahloele
 - Michael John Olivier
 - Jabulani Philip Moleketi
 - Sipho Daniel Makhubela
 - Dawid Johan Nieman Roshan Morar
 - Dolika Enelessi Banda
 - Patrick Sebenzile Mngconkola
 - Arthur Mabothe Moloto
 - Lungile Constance Cele
- Shareholders are:
 - Harith Holdings (Pty) Ltd (70%)
 - Public Investment Corporation Ltd (30%)
- **Considerations, recommendations and red-flags**
 - The following risks are highlighted:
- HGP is partially state owned, with 30% of the shareholding held by the Public Investment Corporation. A number of the board members are either active or inactive PEP's. Note that Mr Mahloele, Mr Moleketi, Mr

Mngconkola, Mr Morar and Mr Molete are all former senior executives of the PIC. Although state ownership is not in itself a risk, we note that establishment of the company, its operations and certain politically exposed persons (PEP's) serving on its board and management have been the subject of scrutiny.

- There has been substantial adverse media relating to HGP and certain of its board members since around 2017, with the focus being on the company's position as the fund manager of the Pan African Infrastructure Development Fund and alleged misconduct between the company and the PIC (from within which it was established). The subject of the allegations was included in the terms of reference of the PIC Commission of Inquiry, in which HGP presented evidence against the allegations. The PIC Commission Report raised various concerns, particularly relating to loans, fees, structuring and establishment of HGP and recommended that the PIC conduct further investigations. HGP has denied the allegations, and generally welcomed a finding of "no corruption" – releasing press statements thereafter on the concerns of the PIC Commission.

(iii) Global Aviation Operations due diligence report.

- Global Aviation Operations (GAO) due diligence report deals with issues of anti-bribery and corruption. This was done by Norton Rose Fullbright a global law firm. Some of the issues highlighted in the due diligence report are summarised below:
 - GAO directors and management are:
 - Kobote Johanna Molefe
 - Popo Simon Molefe
 - Jonathan Gideon Rosenzweig
 - Quentin Tomaselli, CEO
 - GOA shareholders:
 - Kobote Johanna Molefe
 - Popo Simon Molefe

Jonathan Gideon Rosenzweig

Quentin Tomaselli, CEO

- **Considerations, recommendations and red-flags**
 - Risks for the client to be mindful of include that:
 - the board members and shareholders include Popo Simon Molefe, a politically exposed person as well as Ms Johanna Jobote Molefe, who may be his wife/other family member.
 - GAO has basic ABC compliance initiatives in place, but does not have a comprehensive ABC policy, does not appear to provide training to employees and does not regularly assess its exposure to bribery and corruption. In addition, it does not conduct independent integrity checks on third parties.
 - Adverse media on the company and its directors are limited. We note however that there may have (in around 2013) been links to a company/airline called PAK Airline with alleged ties to the controversial former South African ambassador to Iran, Yusuf Saloojee. These links no longer appear to be in place.
 - It is not clear whether the shareholding information provided refers to direct (level 1) shareholding or whether there are holding companies between GAO and the ultimate beneficial owners. This needed to be clarified.

(iv) Service Level Agreement (Mandate Letter), Rand Merchant Bank.

- The service level agreement involves the following:
 - Key assumptions relating to the mandate.
 - Transaction structure.
 - Mandated tasks.
 - Fees.
 - Duration.

(v) Terms of Mandate, Rand Merchant Bank.

- Terms of mandate include the following:
 - Variation, suspension or cancellation of mandate
 - Fees
 - Recoverable costs and other expenses
 - Indemnity

- Limitation of liability
- Confirmation and undertakings
- Confidentiality
- Material Interests
- Disputes
- Governing law and jurisdiction

(vi) An affidavit, BBBEE Exempted Micro Enterprises-General, Takatso

- An affidavit was submitted by Takatso director, Ms Lizeka Valerie Matshekga in which she states that the consortium is a level 100% Black owned and is level one BBBEE contributor.

(vii) SAA Valuation Report, 14 December 2021.

- The valuation report done by Letsema on 14 December 2021 considers three divisions SAA SOC Limited (Ltd), Air chefs SOC Ltd and SAA Technical SOC Limited.
- Sources of information in the valuation report include are:

8.2 SAA SOC Limited

- The corporate plan for SAA for the period 2021/2022 to 2025/2026
- Discussions with management during the month of September and October 2021
- Group Results Summary March 21

8.3 Air Chefs (SOC) Ltd

- The Corporate Plan for Air Chefs for the period April 2021 – March 2027
- Discussions with management during the month of September and October 2021
- Air chefs SOC Limited Final Budget document (management accounts)

8.4 SAA Technical

- The SAAT Restructured Business Plan 2020/21 – 2024/25

- Discussions with management during the month of September and October 2021
- Letsema for SAAT document (management accounts)
- SAAT Financial Performance report (July 2021)

8.5 General

- Historical financial data from Management accounts and financial statements (pre-2021)
- Relevant information gained via a number of internet searches including salient information from the financial press and various data bases.

The valuation summary according to Letsema is as follows:

- South African Airways (SAA) SOC Ltd. Attributable equity value RNIL, (negative R859 million).
- Air Chefs SOC Limited. Attributable equity value RNIL, (negative R63.4 million).
- SAA Technical SOC Limited. Attributable equity value RNIL, (negative R164.7 million).
- SAA Group Valuation. Attributable equity value RNIL, (negative R1,087.1 million).

8.6 Evaluation of the submission of the Minister of Public Enterprises

The Minister in his submission to the Committee has outlined that a new valuation of SAA is underway. The values of SAA may change subject to the new valuation being completed. This implies that the valuation of the entity was did not consider other accounting factors.

The outstanding documents which were requested from the Minister were the following:

- (i) Shortlist of selected entities from which a final determination was made.
- (ii) Service level agreement and evaluation report performed by the Rand Merchant Bank.
- (iii) Share sale and purchase agreement.

On the 28 February 2024, the Minister submitted the outstanding documents to the Committee. These documents are critical in determining if there was no impropriety in the SAA transaction. The Minister requested that the documents be shared in-camera. The Minister also requested the Committee Members to sign Non-Disclosure Agreements. However, the Committee accepted the request for in-camera meeting, however, it did not subject itself to Non-Disclosure Agreements. The Minister was reminded of the constitutional injunction that Members of Cabinet are accountable collectively and individually to Parliament for the exercise of their powers and performance of their functions. Members of the Committee take an oath when sworn-in as Members of Parliament, and the Constitutional Court has recognised that this oath supersedes the even their party allegiance.

The Committee decided that a copy of the documents be shared with the legal advisor who presented a briefing note to the Committee about the whether Takatso was part of the initial shortlist. The Committee Members never had a chance to go through the documentation that was provided by the Minister due to his request that the document must not be shared due to the nature of confidentiality of the SAA-Takatso transaction. Another reason that was given was that the transaction was still live and some contents to it such as the share sale and purchase agreement, remained confidential.

According to the documentation that has been furnished to the Committee, it is apparent that when RMB assessed and evaluated the Expressions of Interest (“EOIs”) of potential SEPs, Takatso Consortium i.e. Harith General Partners (“Harith”) and Global Aviation Operations (“Global”) were not on the shortlist. Reference to Harith in the RMB report was in relation to its interest in Mango and it did not express an interest in the SAA Group. At the end of Phase (EOI Evaluation), the most promising of the EOIs were identified to be from ASL/BlueSky Consortium and the Fairfax Consortium. However, the inability of both consortiums to provide proof of funding was found to be a handicap.

This meant that there were no suitable SEPs that could be identified as none of the potential SEPs had an offer that could be accepted by the DPE, as these entities were not showing evidence of immediate funding to restart operations.

At this stage, RMB requested to be released from the contract and the DPE took over the process. The DPE set up an Evaluation Committee of officials led by the former DG which evaluated four potential SEPs: namely ASL/Blue Sky, Air-A/Lufhansa Consulting, Global and Harith. The DPE's Evaluation Committee made use of the following criteria: strategic fit, funding capacity, operating capacity, national interest, executability and certainty. The DPE's Evaluation Committee was led by the former DG because in a memorandum dated 7 April 2021, addressed to the former DG by Ms Jacky Molisane, - who was the DDG for Financial Assessment and Investment Service ("FAIS"), and whose purpose was to request the former DG to note the progress in concluding the strategic equity partner process and to sign letters to the SEPs advising on the stage of the process, - it is evident that the former DG signed on the said memorandum on 8 April 2021.

On 13 March 2024 the former Director-General wrote a letter to the Speaker of Parliament refuting claims that he authored a memorandum which was purported to have been signed on 8 April 2021. He maintained that the memorandum is fraudulent. He stated that there was an evaluation committee tasked with the evaluation of the Takatso Consortium offer against the four bidders (ASL/Blue Sky, Air A/Lufhansa, Global and Harith). No minutes of this proceedings were furnished to the Committee by the Department of Public Enterprises. The former Director-General states that the Minister chose Takatso Consortium on his own and set up a negotiating team in the Ministry to negotiate the terms of the deal with his preferred SEP. The team was led by the Minister's advisor, which is irregular in terms of the Ministerial Handbook.

The Minister announced on 13 March 2024 that the sale of 51% stake in South African Airways (SAA) to the Takatso Consortium has been cancelled. The Minister did not mention the terms of the cancellation or whether any payment was due to Takatso.

9. Submission by the Auditor-General of South Africa (AGSA)

The Auditor-General of South Africa (AGSA) on October 2022 highlighted the emerging risks related to the SAA transaction. The DPE embarked on a process to sell 51% of its shares to strategic equity partner. While the transaction was not yet finalised, the AGSA reviewed the process followed and the agreement signed with the SEP to

determine the impact on the DPE financial statements and to identify risks facing government.

9.1.1 Overall observations

- i. The purchase and sale agreement requires more than R3bn to be paid by DPE to complete implementation of the BR plan. Funds to cover this liability have not been appropriated in the budget.
- ii. The Department did not follow a formal process for the invitation, evaluation and adjudication of proposals from interested parties to identify the success/ preferred strategic equity partner.
 - a. No public invite for bids or expressions of interests.
 - b. No evidence that proposals were fairly evaluated based on a pre-determined criterion.
- iii. The Valuation Report that was used to determine the transaction value, was not timeously provided.

9.1.2 Impact

The sale is part of the Department's strategic goal to resuscitate the SAA. Should the sale transaction not be properly processed, it may result into further losses to the State or delays in making the entity fully operational. It is important to ensure that the transaction is advantageous to the state.

9.1.3 Cause

- There are no clear legislative provisions for the disposal of SOEs, SOE non- core assets or SEP transactions –to ensure that the process and terms are beneficial to the State.
- The DPE does not have a policy that regulates the disposal of shares in SOEs.

9.1.4 Recommendations made by AGSA.

There is an urgent need to develop a clear regulatory framework for SEP transactions as government has plans to engage in more of these transactions.

10. Findings

The Committee made the following findings:

- 10.1 The Committee commended the former Director-General for entrusting the Committee with the responsibility to investigate the allegations of irregularity in the South African Airways transaction.
- 10.2 The Committee acknowledged the timeframe stipulated in the Protected Disclosure Act in terms of the processing of a protected disclosure. However, the Committee sought to exercise caution, diligence and patience with the affected parties to ensure a fair and credible process.
- 10.3 The Committee afforded all affected parties an opportunity to state their side of the story and to submit all material evidence to support and counter the allegations brought before the Committee.
- 10.4 The Committee noted with concern that, despite writing numerous requests to the Minister of Public Enterprises to submit the relevant documents to counter the allegations made by the former Director-General, the Minister has only submitted some crucial documents as requested. These were very late into the investigation and came with the condition for Non-Disclosure Agreements and for the meeting to be held in-camera. This led to the Committee having difficulty to go through the documents and to form their own opinions and analyses of the transaction.
- 10.5 The Committee raised concern that the documents that the Minister failed to submit, were critical for the Committee to be able to test the veracity of the allegations. Hence, the failure of the Minister to submit that evidence on time has not assisted the process. It also did not provide the Committee with any tangible evidence to persuade the Committee not to believe some of the allegations made by the former Director-General.
- 10.6 The lack of transparency on the South African Airways transaction and the lack of documentary evidence further cast aspersions and doubt on whether SAA transaction was indeed above board.

- 10.7 The Committee has acknowledged that the lack of a clear regulatory framework for SEP transactions from the Department of Public Enterprises, has put government at risk with respect to the SAA transaction. The Minister was mandated by AGSA to develop a framework which still needs to be submitted to the Committee.
- 10.8 The Committee could not determine the exact valuation of the SAA-Takatso transaction. The new valuation details were not submitted to the Committee. It is imperative that these valuation details are shared with the Committee.
- 10.9 The Committee acknowledges, that through media, the sale of 51% stake in South African Airways to Takatso Consortium has been cancelled. However, it would have put the Committee at ease had the Minister informed the Committee of the cancellation and terms and conditions to cancel the sale.
- 10.10 One of the allegations by the former DG was that RMB was handpicked by the Minister as the sole provider of transaction advisory services in the aviation space. This was done even though the market was never tested by the Department regarding this assertion by the Minister. The Department has not provided the Committee with a justification as to why the market was not tested in this regard. Furthermore, the Committee was advised that the reason for appointing RMB in the first place, was that there was no capacity within the DPE to do what was required given the magnitude of the transaction in question.
- 10.11 Curiously, when RMB requested to be released from the contract as the Transaction Adviser, the DPE saw fit to replace RMB with an internal Departmental Technical Team. The question begs: when did the DPE possess this scarce skill that had necessitated the DPE to appoint RMB via a deviation? Hitherto, the Committee has not been provided with a plausible response in this regard.
- 10.12 Furthermore, there is no denying that when RMB assessed and evaluated the Expressions of Interest of potential SEPs; Takatso Consortium i.e. Harith and Global Aviation were not on the shortlist. Reference to Harith in the RMB Report was in relation to its interest in Mango and it did not express an interest in the SAA Group. The former DG contends that even in the shortlisting process that ensued after RMB had requested to be released from the contract, Takatso was not on the shortlist, but was later included. The Minister has not provided a credible response to the said allegation.

- 10.13 The other allegation which the former DG levelled was regarding the manner in which this transaction was conducted which led to the undervaluation of SAA. From what was in the media, it appears that government “buckled” under pressure and walked away from the transaction because the exposure of this under-evaluation and the concomitant media exposure. The figures which the DPE had agreed to regarding the sale of SAA are worlds apart from the current valuations and this leaves much to be desired.
- 10.14 The absence of a framework on the disposal of shares for the SEP transactions is a cause for concern as the government has plans to engage in more of these transactions. The DPE has confirmed that such a plan has been developed but, to date, the framework has not been provided to the Committee.
- 10.15 As we now know, the former DG has emphatically disputed the authenticity of his signature on the memorandum signed on the 8 April 2021, and this presents a very serious dispute of facts which can only be resolved by an entity which has forensic capability.
- 10.16 The Committee cannot say that the SAA – Takatso transaction was above board and will, in this regard, be recommending that law enforcement agencies must do their work in unravelling the truth about this transaction, particularly the alleged forgery of the former DG’s signature in the SEP appointment process.

11. Committee Recommendations

The Committee recommends that the Minister of Police:

- 11.1 should consider referring this matter to the Special Investigating Unit, for further investigation.

12. Conclusion

Having considered the petition of the former Director-General, Mr Kgathatso Tlhakudi, the Committee wishes to thank the Minister of Public Enterprises for his co-operation, and Mr Tlhakudi for entrusting Parliament with the responsibility to investigate this matter.

Report to be considered.

3. Report of the Portfolio Committee on Public Service & Administration on its activities undertaken during the 6th Parliament

(July 2019 – March 2024)

Key highlights

1. Committee's focus areas during the 6th Parliament

The Portfolio Committee on Public Service and Administration focused on overseeing the implementation of the priority outcomes which are as follows,

The 2019-2024 Medium-Term Strategic Framework (MTSF) is a 5-year implementation plan for the NDP. The MTSF 2019-2024 also sets out the package of interventions and programmes that will advance the seven priorities adopted by government. The Minister for the Public Service Services was allocated indicators and related targets under Priority 1: A capable, ethical and developmental state. The Department developed a roadmap to track and monitor the implementation of MTSF Interventions and Targets including other strategic policy priorities that the DPSA needs to implement during this MTSF period.

The Department developed and tabled its strategic plan in June 2020 and both the Strategic Plan and APP's are informed by and aligned to the Priority 1 (one) "Building a Capable, Ethical and Developmental State" of the 2019 – 2024 Medium Term Strategic Framework (MTSF) and the DPSA's policy related priorities. The following are the priorities for the Committee:

- Amendments to the Public Service Act to support administrative appointments
- Amendments to the Public Administration Management Act
- Job competency framework
- 100% of departments implementing lifestyle audit framework
- Professional code of ethics institutionalised
- Implementation of the Financial Disclosure Framework
- Integrated Financial Management roll out in the public service
- Implementation of the Disciplinary Management System

- Effective implementation of the Thusong Service Centres
- Effective implementation and adherence of the Batho Pele Framework

National School of Government

In terms of the NSG, the committee oversee the implementation of the following:

- A functional integrated institution supporting the delivery of Education, Training and Development (ETD) interventions
- Competent public servants who are empowered to do their jobs
- Sustainable partnership and collaboration to support ETD interventions
- Self-sustainable Training Trading Account for the School

Centre for Public Service Innovation

The CPSI is entrusted with a government-wide responsibility to facilitate the entrenchment of the culture and practice of innovation to improve service delivery, through;

- Needs-driven research & development, anticipatory innovation
- Develop and maintain partnership
- Incubate, demonstrate and support replicate
- Unearth and reward

Public Service Commission (An Independent Body)

The PSC is vested with custodial oversight responsibilities for the Public Service; the Committee oversee the PSC in terms of the following:

- Finalisation of the Public Service Commission Bill and tabled it to Parliament
- An improved service delivery culture
- Sound leadership practice in the public service
- A well-coordinated and functioning M&E System
- A strong well-functioning Commission

2. Key areas for future work

The following are the observations and recommendations for consideration by the successor committee (Include possible recommendations to resolve operational and/or procedural concerns encountered during the 6th Parliament) which are as follows:

Department of Public Service and Administration

2.1 The sixth Committee had consistently engaged the Department of Public Service and Administration to ensure full implementation of the Public Administration Management Act of 2014, which aims to ensure, among other things, the integration and coordination between public service and local government. The Act seeks to provide a legal framework across the three spheres of government by bringing some degree of uniformity. The Department has to play a meaningful role in the implementation of the PAM Act by developing regulations to operationalise it. In 2023, the Department brought to Parliament amendments to the Act, which aim to strengthen existing loopholes such prohibiting public servants from doing business with state and introduction of cooling off period whenever an official has awarded lucrative contracts to private companies and promptly resign to join such companies.

Therefore, it is recommended that successor committee must ensure oversight on the amended Public Administration Management Act of 2014 including the finalisation of the regulations for the entire legislation as this was long overdue. Building a culture of professionalisation begins with ensuring all governance legislation are adhered to by the public servants. Successor Committee should hold all government departments accountable as the mandate of the Committee is transversal by its nature.

2.2 The Committee further embarked on the legislative process of amending the Public Service Act of 1994, which aimed to transfer human resource powers from the Executive Authority to the Accounting Officers. The amended legislation further included the inclusion of the National Development Plan vision 2030 recommendation to create a position of Head of Administration in the Presidency and Offices of the Premier with clear powers and responsibilities. The Executive Authority powers as per the amendment Act is to provide strategic direction and approve strategic plan, which include the core objectives to be aligned to the legislative mandate and to hold the HoD accountable for the administration of the department. The administrative powers, such as recruitment, appointment, performance

management and dismissals have been removed from the EA and promptly assigned to the HoD.

The successor committee has to ensure implementation of the new provision across the public service in order to professionalise the public sector and align with the principles of Chapter 13 of the National Development Plan.

2.3 The Committee welcomed all efforts introduced by the President to combat corruption in the public sector. The Department developed Guidelines for the lifestyle audits in the public service. Since development of the lifestyle audit in March 2021, there was a sluggish implementation of the lifestyle audits in the public service. Decentralisation of the lifestyle audits to departments contributed to the sluggish implementation as other departments did not prioritise the audits and there were no budgets allocated to undertake such.

It is recommended that a successor committee continue pursuing Department of Public Service and Administration as charged with responsibility to develop norms and standards to monitor and evaluate the implementation of the Guidelines of the lifestyle audits as this has been regarded as a suitable mechanism to curb the scourge of corruption in the public sector.

2.4 The Committee has been grappling with ensuring that the Department play a meaningful role in assisting other departments to reduce disciplinary cases backlog. According to the Disciplinary Code and Procedure, most departments are unable to conclude the disciplinary cases within a timeline of 90 days and some suspensions take longer than the regulated period without holding disciplinary hearings.

The successor Committee has to continue playing an oversight role including holding heads of departments accountable on this aspect as government spends millions on suspended officials sitting at home doing nothing while drawing a salary. The successor committee has to ensure that the Department review the Disciplinary Code and Procedure and centralise disciplinary hearings through appointing short term labour experts for cases which fall outside of 90 days with the aim of speeding up the finalisation of long-standing cases.

2.5 The Committee further notes the departments involvement in leading digital transformation in the public service and the World Bank’s report towards assisting the country to rollout the Fourth Industrial Revolution. Service delivery and public service efficiency depend on this technological intervention in the “new normal”. Digitization of government services include development e-recruitment system to be incorporated in the Integrated Financial Management System.

The successor Committee should continue to oversee the implementation of digital transformation in the public service as a way of improving government services to be more efficient and effective. By digitizing government services and information, e-government can streamline administrative processes, reduce paperwork, and save time and money. The Department must be guided by the National e-Government Strategy and Roadmap in the implementation digital transformation to improve quality of life.

2.6 Government had undertaken steps to reduce compensation costs which account for 31.4 per cent of consolidated expenditure in 2022/23 down from 34.5 per cent in 2019/20. Government wage bill grew significantly mostly as a result of above-inflation wage increases. Between the 2020 and the 2021 Budget, Government reduced the medium-term compensation of employees’ baseline by more than R300 billion to stabilise the public fiscus.

The successor Committee has to continue conducting oversight on the outcomes between Government and organised labour on the wage negotiations by ensuring that there is a balance between remuneration increases, the fiscal strength, and the need for additional staff in services. The successor Committee should further continue to oversee the DPSA working with the National Treasury in reviewing remuneration policies aimed towards having a single remuneration framework to be in line with the principles of fair, equitable and sustainable remuneration.

National School of Government

2.7 Funding Model

The National School of Government must continue engaging with the National Treasury on its Funding and Sustainability Model. The School should also develop its funding model to self-sustain than to rely on the National Treasury. The School’s proposal should be

scrutinised by the National Treasury and Cabinet to seek government departments, including local government, to set aside a particular percentage of their training budget to fund the National School of Government training courses. The Committee notes that a discussion document has been developed and submitted to the Forum of South African Directors-General (FOSAD) Cluster and Cabinet before the end of the financial year 2022/23. The discussion document is part of the Repositioning of the National School of Government.

2.8 *National Framework Towards Professionalising the Public Sector*

The NSG played pivotal role in the development of the Draft National Implementation Framework towards the Professionalisation of the public service. The Committee notes progress made whereby the School facilitated the public consultations on and peer review of the Framework in order to finalise recommendation to Cabinet for the adoption of a final framework. The Committee commends the School for developing such a magnificent framework to ensure administration in government is competent and well-oiled machinery to deliver on the aspiration of the citizens.

The successor committee has to ensure that the Professionalisation Strategy is followed through and yielding impact and desired results; and ensure that all legislation governing the conduct of public servants are aligned with the principles of the framework.

2.9 *Compulsory training course for public servants*

The National School of Government plays a pivotal role in realising a capable state by rebuilding the public service through promoting lifelong learning, improving skills, and providing the necessary orientation to entrants in the public sector. Compulsory training programmes become a backbone of professionalising the public service for new and old public servants.

The successor committee has to consistently oversee the implementation of all 21 compulsory training programmes, especially for all job categories.

2.10 *Skills audit and training needs*

In 2023, the President of the Republic mandated the School to conduct skills audit and training needs for government departments. President said that “the National School of Government will work with other organs of state, like the Human Sciences Research Council, to conduct these audits.”

The successor committee should ensure that the School table the report before the committee and recommend interventions to address skills deficits among existing public servants in middle and senior management positions.

Centre for Public Service Innovation

2.11 The Centre undertakes innovation projects to improve service delivery programmes across government departments that are needs-driven through research and development.

The successor committee has to ensure all innovative projects discovered by the CPSI should be handed over to the national and provincial executive to benefit all national and provincial departments per sector, e.g. the Central Chronic Medication Dispensary and Distribution.

2.12 The successor Committee has to continue to ensure that the Centre plays a meaningful role in assisting the Department of Public Service and Administration in developing innovative solutions to digitise most of the administrative business processes in order to do away with paperless applications.

2.13 The successor Committee must ensure that the Centre is well-resourced and capacitated in order to play a meaningful role in assisting government departments discover new innovative solutions to enhance service delivery.

2.14 Successor Committee has to ensure that the CPSI appoints the Executive Director since the post has been vacant for a few years. Furthermore, it must address critical shortage of internal capacity particularly in the wake of a system developer's resignation in October 2023.

Public Service Commission

2.15 Public Service Commission Bill

The Public Service Commission has a constitutional mandate to oversee the public service. The Commission was governed by the Public Service Commission Act of 1997, which does not empower the Commission to appoint its own Secretary to the Commission. The Director-General of the Commission is presently appointed by the Executive Authority, which in turn would be overseen by the public service it has oversight on. This practice compromises the independence and impartiality of the institution.

Towards the end of the Sixth Parliament, the PSC undertook the process to repeal the PSC Act to provide the Commission with more powers to hold the executive authority more accountable. The Bill is currently with Parliament and the Sixth Parliament was seized with it to process. Unfortunately, the Bill was not processed due to Parliamentary timeframes. The successor Committee has to ensure processing of the Bill as a priority, which includes extended powers such as strengthening the role of the PSC to ensure that qualified people are appointed to senior management positions in the public administration and moving towards creating a single, harmonised public service.

2.16 Timeous appointment and stability of the Commissioners

It has become a trend that the Legislatures both National and Provincial delay commissioners' recruitment and appointment. The PSC inform Legislatures timeously; however, the delay gets encountered at that level. The Mpumalanga Legislature and the Office of the Premier delayed the appointment of the provincial Commissioner since 2019 to 2024. meaning the office of the Public Service Commission in the province suffers due to such inconsistencies. The National Legislature intervened by writing letters to the Office of the Premier and Speaker of the Legislature without success. The experience at the national and provincial level of recent appointments was that there is a gap of several months between appointments, which adversely affects the effective functioning of the PSC.

The successor Committee needs to build collaboration with all nine provincial legislatures to ensure that the work of the Commission does not suffer due to committee's default. Vacancy rate at the Commissioner level creates instability in the office and the work of overseeing the province performance in terms of the mandate of the Commission get compromised.

2.17 Mechanisms used to for the renewability of the contract of the commissioners

According to section 196(10) of the Constitution, each Commissioner is appointed for a term of five years, which is renewable for one additional term. Over the past years, legislatures used to treat renewal as a new appointment altogether. Renewal of term of a commissioner must be based on the commissioner remaining fit and proper person as required by section 196 (10) of the constitution and having maintained a satisfactory performance.

The renewal must be based on set criteria approved by the National Assembly or the provincial legislature, as the case may be to be used as performance measurement tool to assess commissioners. The successor Committee together with provincial legislatures has to urgently collaborate to develop set criteria to be used as measure for the renewability of the contract of commissioner before it lapses.

2.18 *Commission Reports debated in National and Provincial Parliament*

The PSC, together with the Committee, has to devise a strategy to ensure that specific recommendations emanating from the Commission's reports are tabled in the National Assembly for debating and processing. Tabling of the reports in the National Assembly will assist in the implementation of the recommendations and ensuring accountability. Parliament Committees would also be afforded an opportunity to acquaint themselves with Commission's recommendations, so that it is not the sole responsibility of the Portfolio Committee on Public Service and Administration to interrogate, monitor and follow up on these recommendations.

The successor committee has to ensure that critical PSC reports are debated and discussed in the National Assembly as a way of presenting the findings and recommendations of the PSC's work. Debated reports will assist in entrenching a culture of accountability by the Executive Authority.

3. Key challenges emerging

3.1 General

- (i) Amongst the key challenges emerging for the Committee was issues relating to the late submission of documentation by entities reporting to it. This impacted on the quality of the engagement and deliberations that the Committee was able to have.
- (ii) Changes to Parliamentary programme impacts directly on Committee programme resulting in postponement of meetings and objectives for a term not being met.

1. Introduction

It has become established practice for the Parliament committees at the end of term of Parliament to prepare “Legacy Report” reflecting on the work they have undertaken during the five-year period and highlighting achievements and areas of work that are outstanding, which a successor committee may wish to pursue.

1.1 Purpose of the Legacy Report

The main purpose of the Legacy Report of the Portfolio Committee on Public Service and Administration is to provide an account of the key achievements and challenges in the implementation of the Committee five-year Strategic Plan 2020 -2025. In developing the Strategic Plan, the Committee considered government priorities, departments as well as entities reporting under strategic plans and aspirations of the 06th Parliament with regards to the oversight focus areas.

Secondly, the report will document any significant committee initiatives that remain incomplete at the end of the 6th Democratic Parliament. These will serve as the basis for consideration of such matters and will inform decisions on how the successor committee will address them in the 7th Parliament. The report will in no way be prescriptive to the successor committee of 7th Parliament but is intended to provide continuity so that gains and progress made by the Committee of 6th Parliament are leveraged for the advancement of the 7th Parliament.

2. Background

In July 2019, the sixth democratic Parliament constituted its committees and assigned Members of Parliament of the National Assembly to various committees. On 02 July 2019, the Committee has through National Assembly Rule 158 mandate committees to appoint among its members to be the Chairperson of the Committee. The Chairperson of the Committee was duly elected which means the business of the Committee as mandated commenced. The Committee mandate was to oversee the Department of Public Service and Administration and its entities, as well as Public Service Commission. The mandate also covered the Department of Planning, Monitoring and Evaluation, and its entity (Brand SA), as well as Statistics South Africa.

The Committee considered the Legacy Report of the fifth democratic Parliament prior commencing with its work. A strategic plan and annual performance plan were developed

for the Committee to guide the oversight mandate over the journey of the sixth Parliament. As the Committee was gearing up for implementing its mandate, in 2019 the world experienced Coronavirus Pandemic which has hit all countries.

In March 2020, His Excellency President Ramaphosa announced the placing of the country under hard lockdown due to the COVID-19 pandemic as a way of protecting life of the citizens. Parliament committee oversight was also hindered by the hard lockdown and Parliament resorted to a new hybrid working model to hold Members of the Executive accountable for their actions. COVID-19 pandemic impacted on the allocation of budgets to fund the overburdened healthcare services and fight poverty as many people lost employment during the pandemic.

3. Department/s and Entities falling within the committee's portfolio

The 6th Parliament has given the Portfolio Committee the responsibility to oversee the Department of Public Service and Administration and the Department of Planning, Monitoring and Evaluation together with entities falling within abovementioned departments. Towards the end of 6th Parliament, the National Assembly decided to split the Committee by separating the Planning, Monitoring and Evaluation sector to be a fully-fledged committee from August 2023. Therefore, the Legacy Report will not cover aspects of the Department of Planning Monitoring and Evaluation. The following departments and entities including the institution created through Chapter 10 of the Constitution are as follows:

Name of the Entity	Role of the Entity
Department of Public Service and Administration	The Department's mandate is to implement and coordinate interventions aimed at achieving an efficient, effective and development-oriented public service, which is an essential element of a capable and developmental state as envisioned in the National Development Plan.
Public Service Commission	The Commission derives its mandate from Section 195 and 196 of the Constitution, which sets out the values and principles

	<p>governing public administration. The PSC is vested with custodial oversight responsibilities in the public service, and it monitors, evaluates and investigates public administration practices, with a view to making recommendations to Parliament and the Executive regarding these practices</p>
<p>National School of Government</p>	<p>The National School Government (NSG) derives its mandate from the Public Service Act. The School is mandated to provide training or effect the provision of training. The NSG aims to enhance capacity of all public servants at all levels to perform effectively and efficiently, develop and use assessment mechanisms to build confidence in the recruitment processes of the public service. Subsequently, the School develops training programmes specific to the needs of the public service with a view to addressing the skills shortages and improving service.</p>
<p>Centre for Public Service Innovation</p>	<p>The responsibility for the public sector innovation is vested in the Minister of Public Service and Administration, in terms of section 3(1)(i) of the Public Service Act (1994). The Centre for Public Service Innovation (CPSI) unlocks, entrenches, and nurtures the culture of innovation within the public sector for improved performance and productivity. Therefore, the CPSI guides the process of unearthing and exploiting innovative, efficient, and effective solutions needed to ensure successful delivery on</p>

	government priorities by reducing time and cost to deliver on a service.
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4. Function of the 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.

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

The Committee has an overarching mandate over the implementation of the public service and administration policies and legislations in the public service. The Committee has over the past years conducted an oversight over the entire departments on focus areas relating to administration of the department governed by the policies and legislation developed by the Department of Public Service and Administration. All government departments were invited to the committee in case a certain report identify oversight areas which needed the department to account and clarify. The Committee developed a tracking tool mechanism to track the implementation of its recommendations. The tracking tool comprises of recommendations made during the budget reports, oversight visit reports, workshop, and Budgetary Review Recommendations Reports (BRRR).

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

a. 2019: During this period the Portfolio Committee dealt with the Following:

- | | |
|----------|--|
| 2-Jul-19 | Election of Chairperson |
| 3-Jul-19 | DPME, Stats SA, Brand South Africa, GCIS and MDDA 2019/20 Annual Performance Plans |

- 8-Jul-19 Stats SA, DPME and DPSA budget: Committee Reports
- 21-Aug-19 Legacy Report and Sectoral Overview, Department and PSC Quarterly Performance Reports
- 28-Aug-19 Statistics South Africa and DPME Quarter 1 performance; with Minister
- 4-Sep-19 StatsSA and AGSA on their mandates and recent developments
- 11-Sep-19 Reconfiguration of government; Performance Management and Development System; PSC Commissioner vacancy, with Minister
- 18-Sep-19 Frontline Monitoring and Citizen Based Monitoring Tools; Performance Agreements of Heads of Department
- 8-Oct-19 Brand South Africa, GCIS, MDDA, Stats SA 2018/19 Annual Reports, with AGSA and DPME input
- 9-Oct-19 Audit outcomes: DPSA, PSC, CPSI, NSG: AGSA briefing; BRRR recommendations; with Minister and Deputy Minister
- 15-Oct-19 Budgetary Review Recommendations Reports; Third Term Committee Programme
- 16-Oct-19 Stats SA, DPME and DPSA Budgetary Review and Recommendations Report
- 17-Oct-19 PSC Commissioner vacancy: criteria and process for shortlisting of candidates
- 22-Oct-19 PSC Commissioner vacancy: shortlisting for interviews
- 23-Oct-19 Revitalisation of Distressed Mining Communities: DPME progress report; with Deputy Minister
- 31-Oct-19 Interviews for filling PSC Commissioner vacancy Day 1
- 1-Nov-19 Interviews for filling PSC Commissioner vacancy Day 2
- 6-Nov-19 Contract Appointments; Thusong Service Centres; Revised Ministerial Handbook, with Minister
- 6-Nov-19 Interviews for filling PSC Commissioner vacancy Day 3
- 13-Nov-19 Brand SA; 30-day payment of invoices; Performance Management Development System
- 14-Nov-19 Public Service Commissioner vacancy: nomination of recommended candidates
- 19-Nov-19 Public Service Commissioner recommendation
- 20-Nov-19 Office of Standards and Compliance; Public servants prohibited from doing business with state; Financial Disclosure Framework: progress reports; with Deputy Minister.

b. 2020: During this period the Portfolio Committee dealt with the following:

- 5-Feb-20 Orientation workshop on mandate and functions of Public Service Commission

- 19-Feb-20 DPME, Brand SA and Stats SA 2019/20 Quarter 2 and 3 performance; with Deputy Minister
- 26-Feb-20 DPSA, NSG and CPSI on Quarter 2 and 3 2019/20 performance
- 4-Mar-20 Director-General Turnover; Integrated Planning Framework Bill; Guide on Governance Practice for Executive Authorities and HODs; with Minister Mthembu
- 11-Mar-20 Disciplinary cases in the public service; Stats SA on legislative reform; DPME, DPSA and Stats SA Term 2 and 3 performance; with Deputy Minister
- 6-May-20 PSC and National School of Government 2020/21 Annual Performance Plan, with Deputy Minister
- 8-May-20 Statistics SA, Brand SA, DPME 2020/21 Annual Performance Plans; with Ministry
- 13-May-20 DPSA and CPSI 2020/21 Annual Performance Plans; with Deputy Minister
- 21-May-20 Public Service and Administration Budget: Committee Report
- 27-May-20 DPSA, DPME, PSC, NSG and Stats SA Budget: Committee Reports
- 11-Jun-20 DPSA on youth appointments in learnership, internship, artisan programmes; NSG on public service internships; with Ministry
- 19-Jun-20 DPME, Brand SA and Stats SA 2019/20 Quarter 4 Performance; with Deputy Minister
- 26-Jun-20 DPSA, NSG, PSC and CPSI 2019/20 Quarter 4 Report; with Deputy Minister
- 8-Jul-20 DPSA, NSG, PSC and CPSI Revised 2019/2024 Strategic Plan and APP for 2020/2021; with Minister
- 10-Jul-20 DPME, Brand SA and StatsSA Adjustment Budget and Revised Annual Performance Plan
- 15-Jul-20 DPSA, DPME, PSC, NSG and Stats SA Budget: Committee Reports
- 16-Jul-20 Adjustment Budget: Committee Reports
- 19-Aug-20 DPME: Implementation Policy on Performance Management for HoDs and DGs in public service and Monitoring reports for Phase 1 and 2 on COVID 19 studies; with Deputy Minister
- 26-Aug-20 DPSA E-government plan; disciplinary cases; suspensions, PSC Anti-Corruption Hotline; with Minister
- 2-Sep-20 Prohibition of public servants doing business with state; PSC Commissioner vacancy advert (subcommittee programme); with Deputy Minister
- 13-Oct-20 Stats SA, DPME and DPSA Budgetary Review and Recommendations Report

- 20-Oct-20 (Sub-Committee): Public Service Commissioner vacancy: shortlisting of candidates for interviews
- 28-Oct-20 National Spatial Development Framework; Integrated Planning Development Framework Bill; Budget Prioritisation Framework; with DPME Deputy Minister
- 2-Nov-20 (Sub-Committee) Public Service Commissioner vacancy: interviews day 1
- 3-Nov-20 (Subcommittee) Public Service Commissioner vacancy: interviews day 2
- 4-Nov-20 Local Government Management Improvement Model; District Development Model; Presidential Hotline in lockdown; with Deputy Minister
- 17-Nov-20 DPME, Brand SA and Stats SA Audit outcomes; DPME, Brand SA and Stats SA 2019/20 Annual Reports; with Deputy Minister
- 18-Nov-20 DPSA, NSG, CPSI and PSC Audit outcomes and 2019/20 Annual Reports; with Deputy Minister
- 24-Nov-20 (Subcommittee) Public Service Commissioner vacancy: Recommendation
- 25-Nov-20 DPSA, DPME, PSC and Stats SA BRRRs; PSC Vacancy: Recommendation and Committee Report

c. 2021: During this period the Portfolio Committee dealt with the following:

- 3-Feb-21 DPSA, CPSI, NSG and PSC Quarterly Reports; with Deputy Minister
- 10-Feb-21 DPME, StatsSA and Brand SA Quarter 1 and 2 2020/21 performance; with Deputy Minister
- 17-Feb-21 Public servants doing business with the state and Government Employees Housing Scheme; with Deputy Minister
- 24-Feb-21 Committee Reports on DPSA, DPME, PSC, Stats SA, Brand SA quarterly performance
- 3-Mar-21 Amendments to legislation; Impact of COVID on budget and provision of education, training; NSG briefing; with Minister
- 10-Mar-21 Performance Agreements of Accounting Officers for 2020/21; Filling Heads of Department posts; Brand SA update on challenges and suspended CEO; with Deputy Minister
- 17-Mar-21 Impact of budget shortfall on Stats SA; Committee Annual Report; with Deputy Minister
- 28-Apr-21 Public Service A/B and Public Administration Management A/B: briefing with Ministry

4-May-21	PSC and NSG 2021/22 Annual Performance Plans, with Ministry
5-May-21	DPSA, DPME, CPSI, StatsSA and Brand SA 2021/22 Annual Performance Plans and 2020-25 Strategic Plans; with Minister and Deputy Ministers
12-May-21	Budget Vote Reports considered
13-May-21	Budget Vote Reports adopted
26-May-21	Filling of HoD positions and compliance with Performance Management Development System Policy: NC, MP and NW Premier briefings
2-Jun-21	Ease of Doing Business Bill: DPME on SEIAS; PSC on public service financial misconduct in 2019/20; with Deputy Minister
23-Jun-21	Ease of Doing Business Bill [B6-2021]: public hearings
7-Jul-21	Ease of Doing Business Bill [B6-2021]: deliberations
18-Aug-21	Ease of Doing Business Bill: Committee Report; NW Provincial Departments on financial misconduct and progress with disciplinary cases; Establishment of Ethics & Disciplinary Unit; with Deputy Minister
25-Aug-21	Implementation of s100 intervention: DPME on lesson learnt and COGTA on new reforms; with Deputy Ministers
1-Sep-21	Integrated Medium-Term Strategic Framework Monitoring and Reporting System; with Deputy Ministers
10-Nov-21	PSC Board Vacancy; DPSA Portfolio Audit Outcomes; DPSA, PSC, NSG and CPSI 2020/21 Annual Report; with Minister and Deputy Minister
11-Nov-21	DPSA Portfolio Audit Outcomes; DPME, Brands SA and StatsSA 2020/21 Annual Report; with Deputy Minister
23-Nov-21	DPSA, NSG, DPME, PSC, Stats SA BRRR
24-Nov-21	Census 2022; HOD Performance Agreements; DPSA portfolio BRRRs
1-Dec-21	Recruitment and selection norms applicable in the Public Service; Training programmes aimed at developing public servants; African Charter on Statistics; with Minister and Deputy Minister

d. 2022: During this period the Committee dealt with the following:

25-Jan-22	(Subcommittee) Public Service Commission Vacancies: shortlisting of candidates
26-Jan-22	(Subcommittee) Renewability of Public Service Commissioner contract
1-Feb-22	(Subcommittee) Renewability of Public Service Commissioner contract

17-Feb-22	(Subcommittee) Public Service Commissioner Interviews Day 1
18-Feb-22	(Subcommittee) Public Service Commissioner Interviews Day 2
1-Mar-22	(Subcommittee): PSC Vacancies: deliberations and recommendation
2-Mar-22	PSC Vacancies: recommendation; DPME, StatsSA and Brand SA Quarter 1, 2 and 3 2021/22 performance; with Deputy Minister
9-Mar-22	DPSA, PSC, CPSI and NSG Quarter 1, 2 and 3 Performance; with Deputy Minister
16-Mar-22	Civil Servants Pension Redress Movement Petition; State of readiness to conduct lifestyle audits in the public service; PSC financial misconduct report; with Deputy Minister
23-Mar-22	Committee Reports on Department and entities quarterly performance
3-May-22	DPSA, PSC, NSG, CPSI 2022/23 Annual Performance Plan; with Minister
3-May-22	DPME, Brand SA and Stats SA 2022/23 Annual Performance Plan; with Minister
6-May-22	DPSA, PSC, NSG, DPME and Stats SA Budgets: Committee Reports
18-May-22	CENSUS 2022; NDP monitoring report; with Deputy Minister
25-May-22	GEMS on addressing findings in Adv Ngcukaitobi report; DPSA on success and challenges implementing Government Employees Housing Scheme; with Deputy Minister
1-Jun-22	Modernisation of the Presidential Hotline; Status report on HoD/DG 2021/22 performance evaluation and signing of performance agreements for 2022/23; Brand SA programmes initiated to market and attract investors to SA; with Deputy Minister
8-Jun-22	Public Administration Laws General A/Bill: input by DA MP Schreiber and Presidency; DPSA and PSC briefing on Public Service A/Bill, Public Administration Management Bill and Public Service Commission Bill; with Deputy Minister
24-Aug-22	DPSA briefing on discipline management: effective management and challenges with regards to senior management; with Deputy Minister
31-Aug-22	Public Administration Laws General Amendment Bill: public hearings; Bill deemed undesirable
14-Sep-22	National Macro Organisation of Government Report; Turnaround time for payment of pension fund for retired public servants; with Deputy Minister
21-Sep-22	30-day payment of valid invoices to service providers; Public Administration Laws General Amendment Bill
11-Oct-22	Public Service Portfolio Audit Outcomes; DPME, Brand SA and Stats SA Annual Reports 2021/22; with Deputy Minister

- 12-Oct-22 Public Service Portfolio Audit Outcomes; DPSA, CPSI, NSG and PSC Annual Reports 2021/22; with Minister and Deputy Minister
- 18-Oct-22 Consideration of BRRRs: DPSA, NSG, DPME, PSC and StatsSA
- 19-Oct-22 Adoption of BRRRs: DPSA, NSG, DPME, PSC and StatsSA
- 2-Nov-22 Recruitment and professionalisation in the public service: PSC, DPSA and NSG input; Integrated Public Service Month; with Minister
- 9-Nov-22 Piloted District Development Model in three district municipalities; Policy Framework on the Integrated Planning to improve institutionalisation and harmonisation in the planning system; with Deputy Minister
- 16-Nov-22 Report on employee development in the public service; Framework for Monitoring of Compliance with Public Administration Legislative Framework; with Deputy Minister
- 23-Nov-22 Payment of invoices within 30 days: DWS, DPWI and LP, FS and NC Premiers' Offices; with Ministers
- 29-Nov-22 Public Service Commission Vacancy: Committee Programme
- e. 2023: During this period the Portfolio Committee dealt with the following:**
- 14-Feb-23 PSC Vacancy: Shortlisting of candidates for interviews
- 22-Feb-23 DPSA, CPSI, PSC, DPME, Brand SA and Stats SA Q1, 2 and 3 2022/23 Performance; with Deputy Ministers
- 1-Mar-23 Lifestyle Audits; Financial Disclosures; Public Service Complaints; with Deputy Minister
- 8-Mar-23 PSC Vacancy: Interviews
- 15-Mar-23 Postponed: Operation Phakisa: monitoring report, deliverables, and impact on job creation
- 20-Apr-23 (Subcommittee) PSC Vacancy: Recommendation
- 2-May-23 DPSA, PSC, NSG and CPSI 2023/24 Annual Performance Plans; PSC Vacancy Report; with Ministry
- 3-May-23 DPME, Brand SA and Statistics SA 2023/24 Annual Performance Plans; with Minister and Deputy Ministers
- 5-May-23 Statistics SA, DPSA, PSC, NSG and DPME Budgets: Committee Reports
- 17-May-23 Framework Towards Professionalisation of the Public Sector: NSG, PSC and DPSA briefing

- 24-May-23 Election of Committee Chairperson; DPME Briefing on Operation Phakisa and Medium Term Strategic Framework (MTSF) Monitoring Report 2019- 2024
- 31-May-23 Financial Disclosure Framework and Lifestyle Audits Framework: engagement with DPSA, PSC and Northern Cape Government; with Minister
- 7-Jun-23 Public Service A/B and Public Administration Management A/B: DPSA briefing; Committee Oversight visit Reports; with Deputy Minister
- 6-Sep-23 Thusong Service Centre Programme; Virtual Thusong Service Centre for the Northern Cape; with Deputy Minister
- 13-Sep-23 Public Administration Management A/B and Public Service A/B: summary of public submissions received; with Deputy Minister
- 20-Sep-23 Innovative solutions for e-government services; Interventions to improve the system downtime and impact on service delivery in the public sector; with Minister and Deputy Minister
- 11-Oct-23 DPSA Portfolio Audit Outcomes; DPSA, CPSI, NSG & PSC 2022/23 Annual Reports, with the Ministry
- 17-Oct-23 Public Administration Management Amendment Bill: public hearings
- 18-Oct-23 Public Service Amendment Bill and Public Administration Management Amendment Bill: public hearings; and BRRRs for the DPSA, NSG and PSC
- 25-Oct-23 Public Service A/B and Public Administration Management A/B: Department response to public submissions; with Deputy Minister
- 31-Oct-23 Public Service A/B and Public Administration Management A/B: Office of the Chief State Law Advisor (OCSLA) on constitutionality of bills and NSG Input; with Deputy Minister
- 1-Nov-23 Public Service A/B: Public Hearings Report, Motion of Desirability and Deliberations
- 8-Nov-23 Public Administration Management A/B: Public Hearings Report, motion of desirability and deliberations
- 15-Nov-23 Public Administration Management A/B; Public Service A/B: proposed amendments approval
- 22-Nov-23 DPSA briefing on achievements made in implementing the targets and deliverables contained in the MTSF; PSC Members Handbook

6.6. 2024: During this period the Portfolio Committee dealt with the following:

14-Feb-24	PSC Bill: PSC briefing; PAM A/B Bill and Public Service A/B: finalisation; Committee Annual and Legacy Report; with Deputy Minister
20-Feb-24	NSG, CPSI and PSC 5-year performance achievements and failures, with Minister and Deputy Minister
28-Feb-24	DPSA, NSG, CPSI and PSC Q1-3 2023/24 Performance, with Deputy Minister
6-Mar-24	PSC Report on the Job Performance of Senior Management Service; Implementation Strategy and Monitoring Framework of the National Framework towards Professionalising the Public Sector; with Ministry
13-Mar-24	Digital Government Policy Framework; Public Service Recruitment Monitoring and Oversight Tool
20-Mar-24	DPSA Monitoring Tool
27-Mar-24	Committee Annual Report; Committee Legacy Report

7. Key Statistics

The table below provides an overview of the number of meetings held, legislation and international agreements processed, and the number of oversight trips and study tours undertaken by the Committee, as well as any statutory appointments the Committee made, during the 2019-2024 term:

Activity	1 st year	2 nd year	3 rd year	4 th year	5 th year	Total
	2019	2020	2021	2022	2023	
Meetings held	16	26	26	31	33	132
Legislation processed	0	0	0	3	3	3
Oversight trips undertaken	0	0	0	1	1	2
Study tours undertaken	0	0	0	0	0	0
International agreements processed	0	0	0	0	0	0
Statutory appointments Processed	0	0	0	1	1	2
Intervention Considered	0	0	0	0	0	0
Petitions Considered	0	0	1	0	0	1

8. MEMBERS OF THE COMMITTEE

- a. The Committee comprised of 11 Honourable Members of Parliament, listed here below:

NAME	OCCUPATION	POLITICAL PARTIES
1. Hon T Mgweba	Committee Chairperson	ANC
2. Hon MS Kibi	Member	ANC
3. Hon MM Ntuli	Member	ANC
4. Hon GN Nkgweng	Member	ANC
5. Hon VP Malomane	Member	ANC
6. Hon ST Maneli	Member	ANC
7. Hon J Nothnagel (Dr)	Member	ANC
8. Hon LA Schreiber (Dr)	Member	DA
9. Hon T Halse	Member	DA
10. Hon RN Komane	Member	EFF
11. Hon Inkosi RN Cebekhulu	Member	IFP

In 6th Parliament, the Committee had two Chairpersons by the name of Mr Tyoty James, MP, who was succeeded by the current Chairperson Ms Teliswa Mgweba, MP. There was a stability in the Committee in this term of Parliament, however few members were also redeployed to other committees such as Ms RMM Lesoma, MP; Dr M Gondwe, MP, Ms MO Clarke, MP, Ms CCS Motsepe, MP, Mr Z Mbhele, MP, Mr J McGluwa, MP and Ms MO Mokause, MP. Mr CHM Sibisi, MP and Ms BJ Maluleke, MP, passed away.

9. Stakeholders

The Committee engaged with several stakeholders in the 6th Parliament. These varied between individual experts, think tanks and organised labour on numerous issues impacting on the work of the sector.

10. Briefing and/or public hearings

The Committee held numerous public hearings when processing the following Bills: Ease of Doing Business Bill, Public Administration Laws General Amendment Bill, Public Administration Management Amendment Bill, Public Service Amendment Bill, and Public Service Commission Bill. Most of public participation engagements were held within the Parliament precinct due to the nature of the bills as they were more administrative, oversight, and management based. They do not affect provinces and the public, except the public servants.

11. Legislation

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

Year	Name of Legislation	Tagging	Objectives	Completed/Not Completed
2019	None	None	None	None
2020	None	None	None	None
2021	(1) Ease of Doing Business Bill [06 – 2021]	Section 75	1) This Bill seeks to provide for the assessment of regulatory measures developed by the Executive, members and committees of Parliament and self-regulatory bodies. This assessment will consider the	Adopted and ATCed

Year	Name of Legislation	Tagging	Objectives	Completed/Not Completed
			<p>socio-economic impact of regulatory measures, including the detection and reduction of red tape and the cost of red tape for businesses.</p> <p>2) The Bill furthermore seeks to provide for the establishment of an administrative unit to assist the Executive, members of Parliament, committees of the Houses and self-regulatory bodies in this process and sets out its functions and powers.</p> <p>3) The Bill also seeks to provide assistance to businesses in overcoming red tape and other challenges. The Bill sets out the procedural aspects of regulatory impact assessments, including mapping of legislation, conducting regulatory impact assessments, preparing regulatory impact statements and the evaluation of existing</p>	

Year	Name of Legislation	Tagging	Objectives	Completed/Not Completed
			<p>regulatory measures by the Executive and self-regulatory bodies.</p> <p>4) The Bill lastly provides for exemptions of these processes.</p>	
	(2) Public Administration Laws General Amendment Bill [B 16 - 2021]	Section 76	<p>1) The Public Service Act, 1994, so as to insert and delete definitions; to provide for the duty to report to the Commission when an executive authority or head of department acts on a direction of the Commission; to provide that special service benefits to heads of departments are not permissible on dismissal of a head of department; to provide for clarity in respect of directions and recommendations made by the Commission; to provide for the limitation of political rights under certain circumstances; to remove the Commission from the ambit of the Public Service</p>	Adopted and ATCed

Year	Name of Legislation	Tagging	Objectives	Completed/Not Completed
			<p>Act, 1994 (Proclamation No. 103 of 1994).</p> <p>2) The Public Service Commission Act, 1997, so as to insert and amend definitions; to elucidate the power of the Commission to give directions related to recruitment, transfers, promotions, and dismissals; to grant the Commission the power to take remedial action; to provide for the Office of the Commission, its human resources, administration and management; to provide for delegations by the executive authority.</p> <p>3) The Public Administration Management Act, 2014, so as to require the Minister to obtain the concurrence of the executive authority of the Public Service Commission in respect of a directive to be applicable to the Office of the Public Service Commission</p>	

Year	Name of Legislation	Tagging	Objectives	Completed/Not Completed
2022	None	None	None	None
2023	(1) Public Administration Management Amendment Bill [B10 -2023]	Section 76	<p>1) The main objects of the Bill are to improve service delivery through the alignment of human resource, governance, and related arrangements in the three spheres of government.</p> <p>2) To further provide for the transfer and secondment of employees, to provide clarification regarding the prohibition against employees conducting business with an organ of state.</p> <p>3) To provide for the constitution of the National School of Government as a national department, to remove unjustifiable disparities across State institutions and to provide for the co-ordination of mandating processes for</p>	Finalized in 2024

Year	Name of Legislation	Tagging	Objectives	Completed/Not Completed
			collective bargaining in the public administration.	
	(2) Public Service Amendment Bill [B13-2023]	Section 76	<ol style="list-style-type: none"> 1) To amend the Public Administration Management Act, 2014, so as to further provide for the transfer and secondment of employees. 2) To provide clarification regarding the prohibition against employees conducting business with organs of state. 3) To provide for the National School of Government to be constituted as a national department. 4) To provide for the removal of employment disparities across the public administration. 5) To provide for the co-ordination of the mandating process for collective bargaining in the public administration. 6) To amend the Schedule so as to effect certain 	Finalized in 2024

Year	Name of Legislation	Tagging	Objectives	Completed/Not Completed
			consequential amendments; and to provide for matters connected therewith.	
	(3) Public Service Commission Bill [30 – 2023]	Section 76	<p>1) To repeal the Public Service Commission Act, 1997, and to promulgate a new Public Service Commission Act that will regulate the Public Service Commission in accordance with the provisions of section 196 of the Constitution.</p> <p>2) To regulate the process for the appointment of commissioners of the Commission.</p> <p>3) To provide for the establishment of the Secretariat of the Commission. The Office of the Public Service Commission, which supports the Commission, is defined as a department in schedule 1 to the Public Service Act, 1994. The Bill seeks to establish the administrative support of the Commission as a</p>	The Bill was presented to the Committee, unfortunately it was not finalized in the sixth Parliament.

Year	Name of Legislation	Tagging	Objectives	Completed/Not Completed
			<p>Secretariat led by a Chief Executive Officer that reports directly to the Commission.</p> <p>4) To provide for the Commission to fulfil its constitutional mandate in respect of local government and public entities.</p> <p>5) To provide for matters incidental thereto.</p>	

a) Challenges emerging

The following challenges emerged during the processing of legislation:

- There were no challenges experienced during the processing of the legislation, except certain political parties reserving their rights to the Bills.

b) Issues for follow-up

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

- Oversight on the Professionalisation Framework of the Public Service to ensure that it yields desired results and impact.
- Further ensure oversight on the implementation of the amended legislation and finalising the outstanding Bill.
- Mulling on the idea of a centralised discipline management strategy.
- Implementation of outstanding issues or incomplete programmes of the National Development Plan 2030.

12. Oversight trips undertaken.

The following oversight trips were undertaken:

Date	Area Visited	Objective	Recommendations	Responses to Recommendations	Follow-up Issues	Status of Report
19 – 22 April 2022	Gauteng Province	1) To assess the level of compliance of Batho Pele principles as guided by section 195 of the Constitution. 2) Verify whether centres were capable and responsive to the needs of the citizens. 3) Evaluate whether services provided were of quality to the citizens. 4) Assess the effectiveness and efficiency	Reports available.	Gauteng Province has not been invited to brief the Committee on the responses.		Adopted and ATCed

Date	Area Visited	Objective	Recommendations	Responses to Recommendations	Follow-up Issues	Status of Report
		of the regional offices in mainstreaming and facilitating youth development issues locally.				
28 – 31 March 2023	Northern Cape & Free State Province	<p>1) To determine the state of the Thusong Service Centres in better responding to the needs of communities.</p> <p>2) To monitor compliance with Batho Pele principles as guided by section 195 of the Constitution.</p> <p>3) To assess working conditions of the frontline service officials.</p>	Reports available.	Northern Cape Office of the Premier was invited to further provide more detail clarification on the lifestyle audits which has adopted different approach as compared to norms and standards developed by the DPSA.		Adopted and ATCed

Date	Area Visited	Objective	Recommendations	Responses to Recommendations	Follow-up Issues	Status of Report
		4) To monitor and assess the implementation of Lifestyle Audit on the Provincial Level				

a) Challenges emerging

The following challenges emerged during the oversight visit:

- None

b) Issues for follow-up

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

- The Office of the Premier - Northern Cape suggesting reforms on lifestyle audits.
- Manne Dipico Tertiary Hospital status in terms of human resources and Batho Pele Principles.
- Issues with regards to the ineffectiveness of the Thusong Service Centres across the country.

13. Study tours undertaken

The following study tours were undertaken:

Date	Places Visited	Objective	Lessons Learned	Status of Report
None	None	None	None	None

a) Issues for follow-up

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

It should be noted that the last time the Portfolio Committee on Public Service and Administration undertook a Study Tour was in 2012. Its over 12 years without study tour for the committee. In every term of Parliament, the Committee has submitted applications to the high echelons of the institution, and all were not successful, even when there was no legislation before the Committee. Parliament must come up with fair approach of ensuring all committees undertake study tours at the first two years of their establishment. Study tours undertaken towards end of term of Parliament are meaningless and do not add any value to the work of committees. This issue must be discussed at Committee Chairpersons' Forum so that committees are treated equally. The Committee has a transversal mandate to oversee the entire public service governance, therefore Parliament has to ensure that the committee is well capacitated through study tours.

14. Statutory appointments

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

Date	Type of appointment	Period of appointment	Status of Report
November 2020	Public Service Commission: National Commissioners (1 Commissioner)	Five Years	Adopted and ATCed
March 2022	Public Service Commission: National Commissioners (3 Commissioners)	Five Years	Adopted and ATCed
May 2023	Public Service Commission: National Commissioners (1 Commissioner)	Five Years	Adopted and ATCed

a) Challenges emerging

The following challenges emerged during the statutory appointments:

- Renewal of contract of the PSC Commissioner due to the expiry of the contract which was no longer renewable as per the legal opinion.
- Technical and internal Parliamentary processes and Covid 19

b) Issues for follow-up

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

- The Public Service Commission Bill should clarify the renewal process of Commissioners' term and a system of measuring individual performance.

15. Other matters referred by the Speaker/Chairperson (including recommendations of the High-Level Panel and State Capture)

The following other matters were referred to the committee and the resultant report was produced:

Date of referral	Expected report date	Content of referral	Status of Report
14 April 2021	No Report required	(Civil Servants Pension Redress Movement) Government Employees who were discriminated against under apartheid to qualify for pension redress benefits	<ul style="list-style-type: none"> The Committee dealt with the matter and advised the Organisation to address this matter through Courts.
31 January 2023	Quarterly	Parliament's Implementation Plan to give effect to the Recommendations in the Report of the Judicial Commission of Inquiry into allegations of State Capture, Corruption and Fraud in the Public Sector, including Organs of State	<ul style="list-style-type: none"> The Report recommends the ATC be redirected to the relevant Committee of Standing Committee on Finance and Presidency not PC on Public Service & Administration. The Report is available and was processed through the Unit Manager to the Office of the Speaker.

a) Issues for follow-up

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

The successor Committee has to follow up on the issues raised with regard to State Capture Commission Report, more particularly the President Implementation Report. The Department of Public Service and Administration has created an enabling environment by amending key legislation to be aligned with the State Capture Commission of Inquiry, among which was to build professional public sector.

16. Committee Strategic Plan

The Committee had a draft strategic plan for the period under review (refer to attachment).

17. Conclusion

In conclusion, the Portfolio Committee would like to express appreciation for the work of the departments accounting to it. Furthermore, it thanks the leadership in the form of Ministers and Deputy Ministers of the Department of Public Service and Administration and its entities for implementing the mandate of their respective departments. The Committee thanked the Chairperson and Deputy Chairperson of the Public Service Commission, including all commissioners for providing the committee with reports to hold members of the executive authority accountable on their performance.

Lastly the Chairperson of the Committee appreciated the work of Members of the Committee and Support Staff for ensuring that the work of Parliament was rendered effectively and efficiently till the end of sixth Parliament. Furthermore, the Portfolio Committee wishes the successor Committee the best in taking the work of the Portfolio Committee on Public Service and Administration forward.