



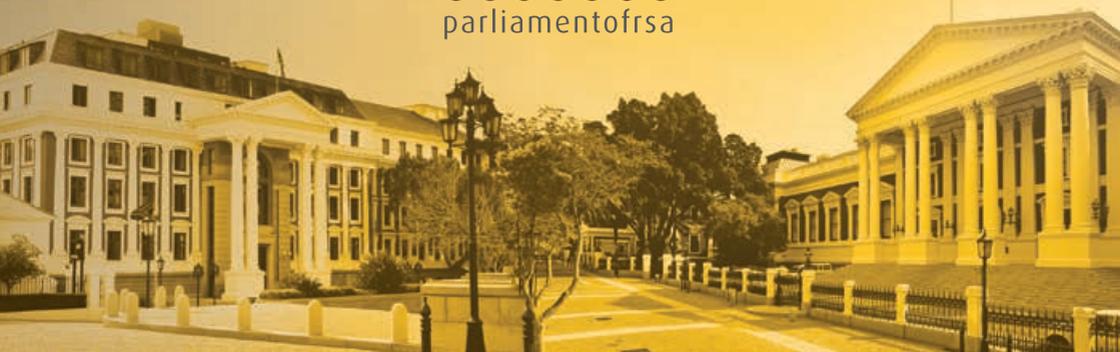
PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

CONSTITUTIONAL MANDATE, FUNCTIONS AND INSIGHTS ON INSTITUTIONS SUPPORTING DEMOCRACY

INDUCTION MANUAL FOR MEMBERS OF PARLIAMENT
OFFICE ON INSTITUTIONS SUPPORTING DEMOCRACY



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FOREWORD BY THE SPEAKER OF THE NATIONAL ASSEMBLY

The end of the Fifth Parliament marks a remarkable 25 years of South Africa's evolving constitutional democracy. The citizens, within this period, have increasingly participated in the processes of Parliament and further witnessed a dynamic interplay between Parliament, Institutions Supporting Democracy (ISDs), the Executive and the Judiciary, as well as other sectors or formations of civil society and the media. This has resulted in the progressive realisation of aspirations of South Africans, through a number of initiatives that sought to strengthen South Africa's constitutional democracy.

Parliament is constitutionally mandated to provide oversight over the Executive. The constitution and respective founding legislation of the ISDs also enjoin them to conduct oversight over the Executive, thus complementing Parliament and the Provincial Legislatures. This Induction Manual, which is the first of its kind, serves as a valuable resource for Members in the Sixth Parliament as it draws on the experiences of the 25 years of democracy to reflect on how best the Sixth Parliament can progressively build on the work done, to give practical effect to the constitutional imperatives of Parliament and ISDs.

In the past, the participation of the ISDs in the Induction Programmes of Parliament was varied and upon invitation. The compilation of the Induction Manual by the Office on Institutions Supporting Democracy (OISD) enables a more coherent and systematic approach to the induction process and programme of Members with respect to the role of Parliament and ISDs. The Sixth Parliament will, for the first time, provide a critical space for the ISDs to clarify their roles and responsibilities and, most importantly, facilitate mutual engagement. The Constitution, the Oversight and Accountability Model of Parliament, the Sector Oversight Model, and the founding legislation of each ISD, including other applicable legislative and policy instruments, provide context for the envisaged dynamic interaction between Parliament, ISDs and the Executive.

This Induction Manual further emphasises the centrality of the OISD, as the mechanism of the National Assembly. The OISD acts as a conduit between the NA and ISDs, as a resource for the NA in executing its constitutional obligations of oversight and support in respect of ISDs.

Baleka Mbete, MP

FOREWORD BY THE DEPUTY SPEAKER OF THE NATIONAL ASSEMBLY

The fifth term afforded me an honour and privilege to serve as the Chairperson of the Capacity Development Reference Group of the Speakers' Forum, and part of the work we did was to oversee the development of a Sector Strategy on Capacity Development. One of the strategic initiatives involved the development of Induction Modules for Members.

In addition to the above, the Executive Authority of Parliament in general and the Speaker of the National Assembly in particular, entrusted me with the responsibility to lead interactions between Parliament and ISDs concerning the execution of the constitutional mandates of the respective institutions, the key responsibility being to ensure that Parliament honours all its constitutional obligations relating to ISDs.

In addition to the work done with respect to the processing of the Asmal recommendations, the development of the Induction Manual heralds a new era. It does not only afford the Fifth Parliament an opportunity to offer a priceless heritage but it further provides for the Sixth Parliament to appreciate the uniqueness of South Africa's constitutional dispensation.

The Manual accentuates the centrality of ISDs as independent institutions supporting democracy, accountable to Parliament, and that Parliament (like all organs of state) is constitutionally obliged to support ISDs in the execution of their mandate. This Parliament does in part through the OISD, whose mandate is to enhance the capacity of the NA to perform its functions of oversight, accountability and support relevant to ISDs, and to co-ordinate all interaction between the NA and ISDs.

Lechesa Tsenoli, MP

ABBREVIATIONS AND ACRONYMS

| | |
|-----------------|---|
| AG: | Auditor-General |
| AGSA: | Auditor-General of South Africa |
| APPs: | Annual Performance Plans |
| BRRR: | Budget Review Recommendation Reports |
| BS: | Broadcasting Service |
| CAPS: | Curriculum Assessment Policy Statements |
| CEO | Chief Executive Officer |
| CFO: | Chief Financial Officer |
| CGE: | Commission for Gender Equality |
| CoC: | Committee of Chairpersons |
| CoGTA : | Co-operative Governance and Traditional Affairs |
| CPP: | Calling Party Pays |
| CRL Commission: | Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities |
| CSAP: | Civil Society Advocacy Project |
| CTR: | Call Termination Regulations |
| CVPs: | Constitutional Values and Principles |
| DA: | Democratic Alliance |
| DAG: | Deputy Auditor-General |
| DOR: | Division of Revenue |
| DPME: | Department of Planning, Monitoring and Evaluation |
| DRB: | Division of Revenue Bill |
| DS: | Deputy Speaker |
| ECA: | Electronic Communications Act |
| EFF: | Economic Freedom Fighters |
| Exco: | Executive Committee |
| FFC: | Financial and Fiscal Commission |
| FISD: | Forum of Institutions Supporting Democracy |
| GANHRI: | Global Alliance of National Human Rights Institutions |
| HoD: | Head of Department |
| ICASA: | Independent Communications Authority of South Africa |
| ICT: | Information Communication Technology |
| IEC: | Independent Electoral Commission |

| | |
|----------------|--|
| IECNS licence: | Individual electronic communications network service licence |
| IGFR: | Intergovernmental Fiscal Relations Act |
| ISD: | Institutions Supporting Democracy |
| LGMSA: | Local Government: Municipal Systems Act |
| Manco: | Management Committee |
| MEC: | Member of the Executive Committee |
| Members: | Parliamentarians |
| MFMA: | Municipal Finance Management Act |
| Money Act: | Money Bills Amendment Procedure and Related Matters Act |
| MoUs: | Memoranda of Understanding |
| MTBPS: | Submission on the Medium-Term Budget Policy Statement |
| MTSF: | Medium-Term Strategic Framework |
| NA: | National Assembly |
| NACF: | National Anti-Corruption Forum. |
| NACH: | National Anti-Corruption Hotline |
| NAWGSA: | National Writers' Guild of South Africa |
| NCC: | National Consultative Conference |
| NCOP: | National Council of Provinces |
| NDP: | National Development Plan |
| NGO: | Non-Governmental Organisation |
| NHRI: | National Human Rights Institution |
| NLB: | National Language Board |
| NLUs : | National Lexicography Units |
| NRF: | National Revenue Fund, a |
| NSPCA: | National Society for the Prevention of Cruelty to Animals |
| NYDA: | National Youth Development Agency |
| OHCHR: | United Nations High Commissioner for Human Rights |
| OISD: | Office on Institutions Supporting Democracy |
| OLGA: | Organised Local Government Act |
| OPP: | Office of the Public Protector |
| PAA: | Public Audit Act |
| PanSALB: | Pan South African Language Board |

| | |
|---------|---|
| PARI: | Public Affairs Research Institute |
| PC: | Portfolio Committee |
| PEPUDA: | Promotion of Equality and Prevention of Unfair Discrimination Act |
| PFMA: | Public Finance Management Act |
| POS: | Presiding Officers |
| PPA: | Public Protector Act |
| PRF: | Provincial Revenue Fund |
| PSC: | Public Service Commission |
| RDP: | Reconstruction and Development Programme |
| RLAH: | Roam Like At Home |
| SABC: | South African Broadcasting Corporation |
| SADC: | Southern African Development Community |
| SAHRC: | South African Human Rights Commission |
| SAPO: | South African Post Office |
| SCM: | Supply Chain Management |
| SCoAG: | Standing Committee on the Auditor-General |
| SCoPA: | Standing Committee on Public Accounts |
| SOM: | Sector Oversight Model |
| UCI: | Unit on Constitutional Institutions |
| Wits: | University of the Witwatersrand |
| WOAN: | Wireless Open Access Network |
| YDP: | Youth Development Plan |

CONTENTS

| | |
|--|-----|
| Foreword by the Speaker of the National Assembly | 4 |
| Foreword by the Deputy Speaker of the National Assembly | 5 |
| Abbreviations and Acronyms | 6 |
| 1. Introduction and Background | 10 |
| 2. Purpose and Objectives of the Induction Manual | 10 |
| 3. Process for the Development of the Induction Manual | 11 |
| 4. Strategic Overview: Parliament and ISDs | 11 |
| 5. The Mandate and Functions of the OISD..... | 11 |
| 6. The Role of Institutions Supporting Democracy in Strengthening Constitutional Democracy | 18 |
| 6.1 The Auditor-General of South Africa | 18 |
| 6.2 The Commission for Gender Equality | 22 |
| 6.3 The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities | 39 |
| 6.4 The Financial and Fiscal Commission | 49 |
| 6.5 The Independent Communications Authority of South Africa | 59 |
| 6.6 The Independent Electoral Commission | 73 |
| 6.7 The National Youth Development Agency | 86 |
| 6.8 The Pan South African Language Board | 88 |
| 6.9 The Public Protector South Africa | 107 |
| 6.10 The Public Service Commission | 118 |
| 6.11 The South African Human Rights Commission | 126 |
| Conclusion | 134 |

1. INTRODUCTION AND BACKGROUND

The Speaker and the Deputy Speaker of the NA directed the OISD to work with the ISDs to document the respective constitutional mandates of all ISDs, their experiences during the 25 years of democracy, and to propose how best Parliament and ISDs should work together in the sixth term to strengthen South Africa's democracy. The Induction Manual serves as a valuable resource to ensure that ISDs participate meaningfully in the induction programme of the Sixth Parliament. In the past, some ISDs participated in the induction programme of Parliament upon invitation. However, there not been a systematic, coherent, comprehensive and efficient approach for ISDs to be afforded adequate space to establish rapport with new Members of Parliament for advancement of the constitutional mandate of both Parliament and ISDs.

The development of the Induction Manual provides the OISD with an opportunity to reflect on progress concerning the role it plays: to act as a conduit between the NA and the ISDs, who are accountable and report to the NA. The Manual further documents insights emanating from the execution of the mandate and functions of the OISD – the mandate of the OISD is to enhance the capacity of the NA to perform its functions of oversight, accountability and support relevant to ISDs, and to co-ordinate all interaction between the NA and ISDs. The rationale for the Manual is to ensure that the Sixth Parliament gets to appreciate the role of ISDs at the outset, to set the tone for a robust and dynamic interaction between Parliament and ISDs and thus give practical effect to the constitutional mandate of Parliament and the respective ISDs.

2. PURPOSE AND OBJECTIVES OF THE INDUCTION MANUAL

The purpose and the objectives of this Manual are to give a clear understanding of the constitutional obligations of Parliament with respect to ISDs, and to ensure substantive awareness about the dynamic interplay between ISDs and Parliament by:

- Clarifying the constitutional mandate and functions of both Parliament and ISDs, including the oversight and accountability functions of the NA with respect to the ISDs; and

- Explaining the role of Parliament through the OISD in co-ordinating the appointment of commissioners and office bearers to the relevant ISDs and reports tabled in Parliament by the ISDs for possible debates in the NA.

3. PROCESS FOR THE DEVELOPMENT OF THE INDUCTION MANUAL

The OISD developed the terms of reference for the Manual and solicited inputs from the ISDs with respect only to their reflections about the 25 years of democracy and critical matters for the sixth term. The OISD drafted the sections on the constitutional mandate of both Parliament and the ISDs. The draft was subsequently finalised and approved by the Speaker and Deputy Speaker of the NA following a series of discussions with the Heads of ISDs and the Secretariat of the Forum of Institutions Supporting Democracy (FISD).

4. STRATEGIC OVERVIEW: PARLIAMENT AND ISDS

According to section 181 (3) & (5) the relationship between ISDs and Parliament is such that the ISDs are accountable to the National Assembly, and must report on their activities and the performance of their functions to the Assembly at least once a year. They perform a complementary oversight function to that of Parliament, amongst others through the investigations they conduct and the reports they submit to Parliament, and Parliament must assist and protect the ISDs, through legislative and other measures, to ensure their independence, impartiality, dignity and effectiveness. The relationship between Parliament and ISDs aims at ensuring that their interaction yields the envisaged results – realisation of the constitutional mandate of both Parliament and ISDs.

5. THE MANDATE AND FUNCTIONS OF THE OISD

On 21 November 2008, the NA adopted a Resolution on the establishment of the OISD - The Deputy Chief Whip of the Majority Party moved that the House:

- appreciates the extensive work done by the Ad Hoc Committee on Review of Chapter 9 and Associated Institutions in the execution of its mandate;

- recognises that a number of the recommendations contained in the Report will have far-reaching implications for Chapter 9 and Associated Institutions;
- notes that the Ad Hoc Committee, among others, recommends the establishment of a properly resourced Unit to co-ordinate all interactions between the National Assembly and state institutions strengthening democracy;
- adopts the recommendation in the Report pertaining to the establishment of the Unit on Constitutional Institutions and other Statutory Bodies;
- urges speedy establishment of the Unit on Constitutional Institutions and other Statutory Bodies and recommends that its location, structure and mandate be determined by the Speaker, having given due consideration to the National Assembly's constitutional obligations with regard to Chapter 9 institutions, associated bodies and other statutory bodies; (emphasis added)
- urges further that consideration be given to the implementation of the recommendation in the Report pertaining to budgets of the bodies reviewed being contained in a separate programme in Parliament's budget vote, as envisaged by the Ad Hoc Committee; and
- resolves that the rest of the Report be held in abeyance with a view to allowing the Fourth Parliament to consider it in a manner it deems appropriate.

As per the Resolution above, the Speaker consulted with the relevant stakeholders to determine the location, structure and mandate of the OISD. The OISD was subsequently established in August 2010 to act as a conduit between the National Assembly (NA) and the state institutions supporting democracy, who are accountable and report to the NA. The mandate of the Office is to enhance the capacity of the NA to perform its functions of oversight, accountability and support relevant to Institutions Supporting Democracy (ISDs), and to co-ordinate all interaction between the NA and ISDs. The main functions of the OISD include to, amongst others:¹

1 Report on the Review of Chapter 9 and Associated Institutions (July 2007: 30-31)

- Receive and, through the Speaker, direct correspondence from the ISDs to the appropriate structure in the NA. This would include recommendations for the most appropriate portfolio committee or group of portfolio committees to which reports should be referred, and drafting terms of reference for such committees in respect of such reports, including timeframes for reporting to the Presiding Officers (POs);
- Co-ordinate the oversight and accountability functions of the NA with respect to the ISDs to ensure that the NA complies with its constitutional duties in a consistent, efficient and fair manner;
- Co-ordinate, through the Office of the Speaker, the timely and effective recommendation by the NA for the appointment of commissioners and office bearers to the relevant ISDs;
- Highlight issues emanating from reports tabled in Parliament by the ISDs for possible debate in the NA;
- Ensure that the NA discharges its constitutional obligations in respect of the ISDs in a systematic, coherent, comprehensive and efficient manner;
- Ensure the timely communication of recommendations contained in reports adopted by the NA to the relevant Ministers where appropriate;
- Monitor and track the progress of recommendations communicated to Ministers and other appropriate organs of state; and
- Act as a clearing-house and repository of information and documentation received from the ISDs.

THE OVERSIGHT MODEL OF PARLIAMENT AND SECTOR OVERSIGHT MODEL

The Constitution, Oversight and Accountability Model of Parliament, the Sector Oversight Model (SOM) and other applicable legislative and policy mandates provide context for the interaction between Parliament and the ISDs. The Oversight and Accountability Model of Parliament and the Sector Oversight Model seek to set norms and standards, values, principles - a framework for the practice and conduct of oversight to give effect to the constitutional role of Parliament. The oversight functions of Parliament over ISDs, as stated in Parliament's oversight model, include to, amongst others:

- detect and prevent abuse, arbitrary behaviour or illegal and unconstitutional conduct with a view to protecting the rights and liberties of citizens. This includes enhancing the integrity of public governance in order to safeguard ISDs against corruption, nepotism, abuse of power and other forms of inappropriate behaviour;
- hold the ISDs to account in respect of how the taxpayers' money is used to improve efficiency, economy and effectiveness;
- ensure that policies announced by government and authorised by Parliament are actually delivered. This function includes monitoring and evaluating the achievement of predetermined goals, objectives and targets set by ISDs and the broader Executive; and
- improve the transparency, responsiveness and answerability of ISDs and enhance public trust and confidence in organs of state. This is itself a condition of effective policy delivery and narrows the gap between ISDs and the citizens – deepens democracy.

As illustrated in Figure 1 below, oversight and accountability of Parliament over the ISDs involves the informal or formal interaction with a view to ensuring observance of constitutional statutes (i.e. effective and efficient implementation of the constitutional mandate of ISDs) to realise the envisaged outcomes of the state. The Models foster an oversight paradigm underpinned by an understanding that the oversight role of Parliament over ISDs is exercised in pursuit of good government as opposed to an adversarial approach to oversight. As constitutionally obligated, Parliament bears responsibility for overall performance of ISDs. Key elements in terms of both Models include the following:

- **Priorities and inputs** – As a policy-making constitutional body, Parliament determines policy priorities of ISDs, through scrutiny of plans to ensure their alignment to the relevant local, regional and global policy agenda. As part of its oversight role, Parliament ensures that plans of ISDs reflect the policy priorities of government and that resources allocated are effectively and efficiently utilised;
- **Activities and outputs** – As part of executing its constitutional mandate in regard to policymaking, public participation, and exercising oversight and accountability over ISDs, Parliament employs a range of mecha-

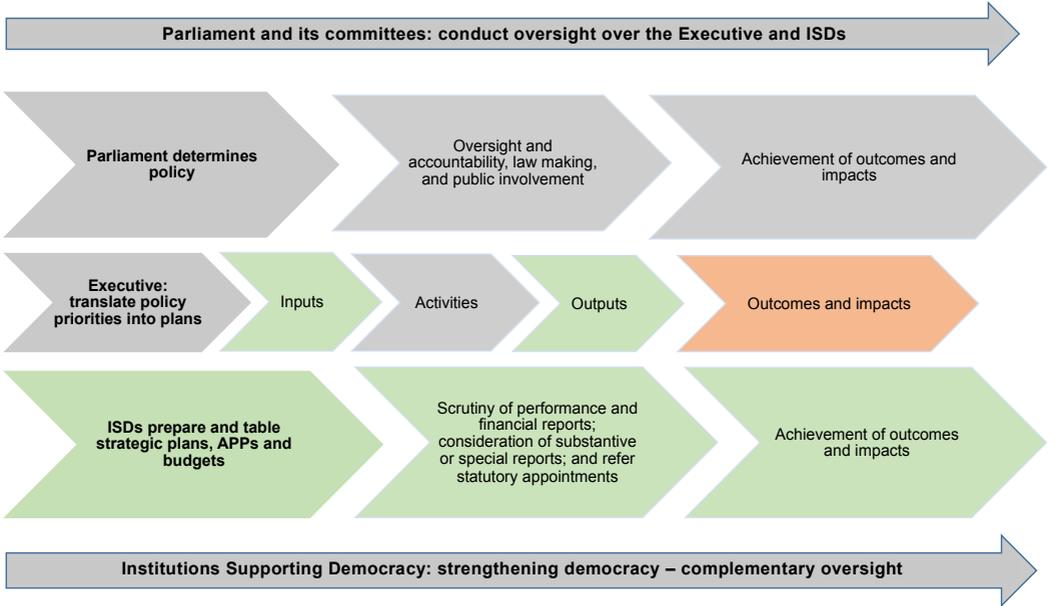
nisms. In relation to oversight and accountability, Parliament convenes house plenaries and various forms of Committee sittings, amongst others, to scrutinise the work (outputs) of ISDs. Performance and special reports of ISDs are considered within the context of parliamentary business processes; and

- Outcomes and impacts – Parliament, within the context of representative and constitutional democracy, examines the extent to which long-term policy priorities – outcomes and impacts – are achieved. This may be done through hearings, focused intervention studies and evaluations or reviews to examine the impact of transversal (particularly development-oriented) programmes.

It remains significant to note that unlike other organs of state, Figure 1 further depicts that ISDs are independent state institutions with the sole purpose of strengthening constitutional democracy. These institutions, amongst others: safeguard the credibility and authority of the state; entrench democracy and its associated values; ensure the inculcation and reinforcement of respect for the rule of law; and strengthen openness and responsiveness of the state to meet the needs of citizens and ensure respect for their rights. Parliament is constitutionally obligated to assist ISDs in executing their mandates.

Figure 1:

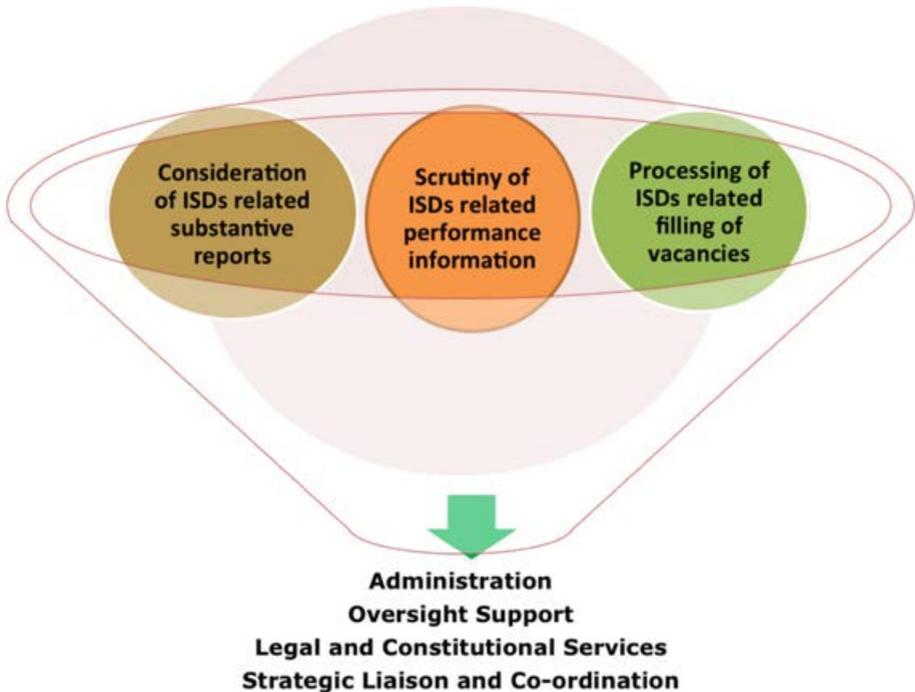
Elements of the oversight and accountability model of Parliament and the Sector



Source: adapted from Parliament and the Sector Oversight Model

As depicted in Figure 2 below, the strategic thrust of the OISD remains centered on ensuring that Parliament gives effect to its constitutional obligation with respect to ISDs. This entails the consideration of ISDs related substantive or special reports; scrutiny of performance information and effective processing of statutory appointments.

Figure 2: ISDs related matters considered by Parliament



6. THE ROLE OF INSTITUTIONS SUPPORTING DEMOCRACY IN STRENGTHENING CONSTITUTIONAL DEMOCRACY

This section of the Manual, with respect to all ISDs, provides for an outline of their respective constitutional mandates, reflections on the 25 years of democracy and the critical matters for the sixth term.

6.1 The Auditor-General of South Africa

6.1.1 Mandate and Functions of the Auditor-General

Section 181(1) (e) in Chapter 9 of the Constitution of the Republic of South Africa, 1996, establishes the institution of the Auditor-General of South Africa (AGSA), and recognises its importance and guarantees its independence. The Constitution declares that the AGSA must be impartial, exercise its powers, and perform its functions without fear, favour or prejudice. The functions of the AGSA are described in section 188 of the Constitution and further regulated in the Public Audit Act (PAA), 2004 (Act No. 25 of 2004).

The AGSA, as the supreme auditing institution in South Africa, is the external auditor of all national and provincial state departments, municipalities and municipal entities. The main function of the AGSA is to audit and report on the accounts, financial statements and financial management of all national and provincial government departments and administrations, all municipalities and municipal entities and any other institution required by law to be audited by the AGSA. In addition, the AGSA may audit and report on the accounts, financial statements and financial management of listed public entities, and any other institution funded from the National Revenue Fund, a Provincial Revenue Fund or by a municipality.

6.1.2 Reporting Obligations of the Auditor-General

The AGSA is accountable to the NA, to which they report annually on their activities and the performance of their functions by tabling their main accountability instruments, the strategic plan and budget and the annual report, annual financial statements and the audit report on those financial statements in Parliament. The accountability relationship is regulated in terms of section 181(5) of the Constitution, read with section 10 of the Public Audit Act. The

Standing Committee on the Auditor-General (SCoAG) oversees the AGSA's performance on behalf of the NA.

In regard to special investigations or audits, there is no statutory requirement to submit these reports to the National Assembly; however, in the public interest the AG is legislatively empowered to submit such a report to any relevant legislature and any other organ of state with a direct interest in the matter. Parliament becomes the relevant legislature if the matter concerns national importance, otherwise it will be submitted to the provincial legislature if it relates to a province.

6.1.3 Statutory appointments in relation to the Auditor-General

In terms of section 6 of the Public Audit Act, when the Auditor-General is to be appointed, the Speaker must initiate the process in the National Assembly for the recommendation of a person to the President for appointment. When making an appointment, the President must determine the term for which the appointment is made, provided that the Auditor-General must be appointed for a fixed, non-renewable term of between five and ten years, in terms of section 189 of the Constitution.

The Auditor-General, after consulting the oversight mechanism, must appoint the Deputy Auditor-General in accordance with section 31(1) of the Act. The appointee must demonstrate appropriate qualifications and experience. The Deputy Auditor-General holds office for an agreed term not exceeding five years, which may be renewed for one additional term; and on terms and conditions determined by the Auditor-General [section 31(2)].

6.1.4 The 25-Year Review of the Auditor-General: 1994 – 2019

The AGSA was established as the Office of the Auditor-General in 1992 by the Audit Arrangements Act, and the AG by the Auditor-General Act 1995. The 25 years of the AGSA was a gradual journey to independence and resulted in 2004 with the AGSA uniting the Auditor-General and Office of the Auditor-General as a single legal entity as established by the Public Audit Act, which also created the SCoAG.

Initially the AGSA interacted only with the Standing Committee on Public Accounts (SCoPA) but gradually shared audit information with portfolio committees to enable their oversight of the executive as the concept of independence evolved to allow unique objective insights in an attempt to improve accountability in South Africa. This has finally resulted in the PAA amendment which enables the AGSA to ensure the full loop of accountability through the issuing of a certificate of debt.

6.1.5 Role of the AGSA in the governance system in SA

Through its mandate, the AGSA plays an important role in reporting on the stewardship of public money by diagnosing and highlighting issues of fruitless and wasteful expenditure in the public sector, among others.

Each year the AG produces audit reports on government departments, public entities, municipalities and other public institutions. In addition to these entity-specific reports, the institution analyses the trends in the audit outcomes and presents them in general reports that cover both the Public Finance Management Act, 1999 (Act No. 1 of 1999) (PFMA) and the Municipal Finance Management Act, 2003 (Act No. 56 of 2003) (MFMA) cycles. The Public Audit Act provides the AG with the discretion to conduct discretionary audits such as performance audits and other special audits.

The AGSA's audit reports must be made public and must be tabled in the legislatures that have a direct interest in the particular audit, namely Parliament, provincial legislatures or municipal councils, and may be provided to any other legislature or organ of state if the AGSA considers it in the public interest to do so. These bodies then use the reports in accordance with their own rules and procedures for oversight.

Additionally, the organisation may render support to legislatures or any of their committees outside the scope of the AGSA's normal audit and reporting functions.

6.1.6 **Repositioning the Relationship between Parliament and the AGSA:**

Implications and Critical Matters for the Sixth Parliament - AGSA's approach to engagement with Parliament

Over the last 10 years, the AGSA enhanced its strategic focus and added an extensive stakeholder engagement programme (visibility for impact) to its original focus on the quality of its audit deliverables. The aim of the visibility programme is to increase the relevance of its audits. The AGSA recognises that its parliamentary stakeholders are critical in its quest to empower key decision-makers in government and to enable oversight, enhance good governance and promote public accountability. The impact of these engagements can be summarised as follows:

- Use of the AGSA General Reports by the elected representatives of the people when they engage with their constituencies;
- Use of insight provided by the AGSA during the budget review process, where ministers use their good understanding of the audit outcomes of their departments and the challenges these face in terms of key areas of business operations to tailor the budget votes; and
- Use of information, analyses and insight provided by the AGSA to the various portfolio committees enabling them to discharge their oversight responsibilities.

The following are the interface methods with Parliament:

a) National Assembly (NA)

Over the years, the AGSA has institutionalised its interaction with the NA through structured regular interactions with oversight committees. We share audit insight with committees during key oversight intervals such as consideration of the annual performance plans (APPs), Budget Votes and the Budget Review Recommendation Reports (BRRR), with a view to enabling oversight. Our interactions are also channelled through the Committee of Chairpersons (CoC), through this platform; the AG customises messages fitting to this critical structure that drive the key oversight processes of Parliament. After each audit cycle, we brief the Joint Committee of Chairpersons on the audit outcomes; in turn, the CoC commits to support the drive towards clean administration.

b) National Council of Provinces

The AGSA provides critical insight to the NCOP on the MFMA audit outcomes. The Co-operative Governance and Traditional Affairs (CoGTA), Appropriations and Finance Select Committees process the audit insight during their oversight visits to municipalities. We further provide capacity building to the NCOP on the AGSA's mandate, audit process and other related issues where required. Because of the NCOP's extended mandate to provincial and local government, the AGSA also participates in the key oversight initiatives of the NCOP such as the local government week, provincial week and Taking Parliament to the People. Our impact has been observed mainly in instances where the NCOP makes recommendations to Parliament based on the AGSA audit findings.

c) Portfolio Committees

Portfolio committees play a meaningful role in dispatching the AGSA messages; they provide a wider platform for the AGSA to share its audit insight. Given their unique role of holding the departments accountable, portfolio committees always require additional insight from the AGSA. The AGSA enables portfolio committees' oversight by, amongst others:

- Annually briefing portfolio committees on the preliminary findings on the departmental APPs; these briefings empower committees to have meaningful hearings with departments before the tabling of the APPs;
- Providing briefings to portfolio committees before they undertake oversight visits to departments and entities; through these briefings committees are able to focus on key departmental areas that require oversight attention;
- Providing regular one-on-one briefings to the committee chairpersons; these sessions empower chairpersons with insight in their capacity as leaders in committees; and
- The AGSA annually briefs portfolio committees on the latest PFMA audits outcomes during the BRRR process.

Over the years, the majority of portfolio committees were able to follow up on audit findings identified by the AGSA during the in-year monitoring process. The impact of portfolio committees' oversight effort has been encouraging because of the insight provided by the AGSA.

d) The Budget Review Recommendations Report Processes

In 2009, Parliament enacted the Money Bills Amendment Procedure and Related Matters Act, referred to as a "Money Act". This Act provides Parliament with oversight power to amend all money Bills, including the budgets of departments. In executing the provisions of the Act, oversight committees annually set aside time to engage departments on their annual performance. As part of the BRRR process, the AGSA provides a briefing for each department; as part of the briefings the AGSA is required to, amongst others:

- Inform portfolio committees about the root causes of both desirable and undesirable audit outcomes;
- Request commitment from the portfolio committees to act on identified issues;
- Recommend specific oversight action to deal with issues raised; and
- Clearly define the role of the AGSA and that of oversight committees to ensure clarity on who is responsible for required action.

Since the enactment of the Money Bills Act, the AGSA has played a significant role in enhancing and enabling oversight. This has been achieved through providing tailored messages to the oversight committees during the BRRR process. Notably, the AGSA has enabled oversight through informing portfolio committees about the root causes of undesirable audit outcomes; requesting commitment from the portfolio committees to act on identified issues; and recommending specific oversight action to deal with issues raised.

e) Standing Committee on Public Accounts

SCoPA has a responsibility to oversee the expenditure of public funds. The committee utilises various mechanisms to discharge its oversight responsibilities. Amongst others, the committee conducts oversight in the following ways:

- Hold public hearings with departments and public entities;
- Undertake oversight visits to various departments to satisfy itself on the progress made on various high-funded projects;
- Request progress reports from departments on specific matters of interest; and
- Request specific briefings by public institutions on expenditure of public funds to enhance public trust on the financial affairs of government.

The AGSA plays a critical role to enhance SCoPA's oversight practices. SCoPA plays a catalyst role in dispatching the AGSA reports and plays a complementary role of advocating for adherence to astute financial management by the executive. The AGSA plays the following role in enabling SCoPA's oversight:

- Provide briefings before SCoPA oversight hearings;
- Act as expert adviser and witness to SCoPA during public hearings to manage the risk of departments disputing the audit outcomes;
- Elevating the importance of consequence management by facilitating briefings on governance areas where departments have failed to adhere to good financial management; and
- Isolating key issues that warrant oversight action in line with SCoPA's mandate of protecting the use of public funds.

f) Standing Committee on the Auditor-General

The National Assembly established SCoAG as an oversight mechanism in accordance with section 55(2)(b)(ii) of the Constitution and section 10(3) of the PAA. The role of SCoAG is to: provide oversight; ensure the AG's independence and impartiality; including appointing external auditors to audit the AGSA. There are at least two interactions with the AG and Deputy Auditor-General (DAG) per year: integrated annual report usually held between September and October; and strategic plan and budget held between October and November.

In addition, the committee interacts with the AG and the DAG on any other matters as outlined in the PAA. For example, the committee has interacted

extensively with the AGSA regarding the drafting of the PAA amendment Bill. The committee also interacts with the AGSA's audit committee to approve the audit committee's recommendation to appoint an external auditor annually. The audit committee provides assurance to SCoAG in their audit committee report in the integrated annual report.

6.2 The Commission for Gender Equality

6.2.1 Mandate and Functions of the Commission for Gender Equality

The Commission for Gender Equality (CGE) was established by section 181(1) (d) of the Constitution. Furthermore, the mandate of the CGE is enshrined in section 187 of the Constitution and provides additional powers be prescribed by the national legislation. The founding legislation is the CGE Act No: 39 of 1996. Constitutionally, the CGE is empowered to promote respect for gender equality and the protection, development and attainment of gender equality. The Commission was established to achieve the following functions:

- monitor and evaluate policies and practices of all organs of state at any level; statutory bodies or functionaries; public bodies and authorities; private businesses, enterprises and institutions, to promote gender equality and make recommendations that the Commission deems necessary;
- develop, conduct or manage information and education programmes to foster public understanding on matters relating to the promotion of gender equality and the role and activities of the Commission;
- review laws and policies which affect gender equality and the status of women, and make recommendations or suggest new laws to Parliament;
- monitor compliance with international conventions on gender equality that South Africa entered into, and submit reports to Parliament;
- conduct research;
- consider such recommendations, suggestions and requests concerning the promotion of gender equality as it may receive from any source;

- investigate any gender-related issues of its own accord or upon receipt of a complaint to resolve any dispute or rectify any act or omission by mediation, conciliation or negotiation provided that the Commission may at any stage refer any matter to the South African Human Rights Commission (SAHRC), Public Protector or any other appropriate authority in accordance the provisions of the Constitution and the law; and
- work in close liaison with any organisation that actively promotes gender equality.

The commission may investigate any gender-related issues, including discrimination based on sex or gender, discrimination based on pregnancy, discrimination based on marital status, discrimination based on family responsibilities or being a single parent, sexual harassment of any kind and sex or gender-based violence.

6.2.2 Reporting Obligations of the Commission for Gender Equality

As indicated above, in terms of section 181(5) of the Constitution, the CGE is compelled to submit its annual report to the NA. This is further substantiated by section 15(2) of the CGE Act that stipulates the Commission shall report to the President at least once every year on its activities and the achievement of its objectives, and the President shall cause such report to be tabled promptly in Parliament. This is the performance report. In terms of section 187(2) of the Constitution, the CGE is empowered, as regulated by national legislation, to report on investigated gender matters.

Reports by the Commission are regulated by section 15 of the CGE Act. According to section 15(1) of the Act, the Commission may, subject to the provisions of subsection (3), in the manner it deems fit, make known to any person any finding, point of view or recommendation in respect of a matter investigated by it. These are discretionary powers. Section 15(2) of the CGE Act is discretionary in the reporting obligations by stipulating, "provided that the Commission may at any time submit any other report to the President and Parliament." The reference to "any other report" may be interpreted to include investigative reports produced by the CGE. The Commission is therefore not compelled in terms of the Constitution to submit any investigative or substantive report to Parliament. It can investigate any gender-related matter and choose not to

report or submit its findings to Parliament.

6.2.3 Statutory appointments in relation to the Commission for Gender Equality

Section 193(1) of the Constitution provides that members of the CGE must be women or men who are South African citizens; are fit and proper persons to hold the particular office; and comply with any other requirements prescribed by national legislation. Furthermore, the Constitution provides there is a need for the Commission to reflect broadly the race and gender composition of South Africa to be considered when members are appointed.

In terms of section 193(4)-(5), members of the CGE are appointed by the President, on the recommendation of the National Assembly (NA) supported by a majority of the members in the NA. In terms of section 3(4) of the CGE Act, members of the Commission may be appointed as full-time or part-time members and hold office for a fixed term, as the President may determine, not exceeding five years. The term of office of the full-time members may not expire simultaneously. Section 3(4) (b) stipulates that for a quorum “no fewer than two and no more than seven members must be appointed on a full-time basis.” Furthermore, section 3(7) provides that “any person, whose term of office as a member of the Commission has expired, may be reappointed for one additional term”. Statutorily, the President appoints a Chairperson of the Commission and the members of the Commission from among themselves elect a Deputy Chairperson of the Commission.

6.2.4 The 25-Year Review of the Commission for Gender Equality: 1994 – 2019

The CGE’s powers and functions are further amplified in terms of the CGE Act 39 of 1996 (as amended). The Act provides the CGE with an array of powers, from monitoring policies and practices of public entities, investigating complaints through holding public hearings, as well as search and seizure of key information. The CGE is also empowered to conduct research, embark on public education activities and monitor state compliance with key national and international gender equality instruments. Whilst the legislated functions of the CGE are extensive, they can be grouped into four broad categories as outlined below, with brief summaries of key milestones and achievements by the CGE:-

MONITORING AND EVALUATION FUNCTION:

this broadly incorporates the evaluation of policies and practices of both public and private bodies, monitoring government compliance with international instruments/charters acceded to and to which South Africa is a signatory; investigating and proposing legislative reviews and law reform as needed, and conducting research and advising Parliament on matters of gender equality.

Recent Milestones / Achievements

Employment Equity in the Workplace. The findings of this work led the CGE to initiate one national and nine provincial Public/Gender Transformation Hearings into Employment Equity. The Public Hearings involved both Public and Private sector entities appearing before the CGE to account on progress made in implementing legislated and other necessary measures to advance women in the workplace

- ***Gender Barometer:*** In 2009 the CGE developed an online/web-based Gender Equality Assessment Tool (the CGE Gender Barometer), which is used annually to assess a selected number of National and Provincial government departments, as well as local municipalities, in terms of their progress with regard to gender mainstreaming. (It assesses internal policies, procedures/processes, programmes and strategies put in place by state institutions to promote, protect and advance gender equality.) Since 2009, over 15 National Ministries and over 27 departments and 6 mining companies have been assessed, showing varying degrees of commitment and progress with regard to gender mainstreaming and transformation by these public sector entities.
- ***'Gender Mainstreaming in the Water Services Sector: Evaluating Progress by Municipalities and Provincial Water Boards – A National Report' (2011):*** The CGE conducted a nationwide study into the gender equality in the Water Sector in 2011, and women's access to water rights and services. The study sought to assess the extent to which public entities delivering water services (especially Provincial Water Boards and municipalities) gender mainstreamed the provision of water and sanitation services to households. The study revealed the widespread failure of local authorities to promote gender equality and address women's particular needs in relation to water and sanitation services.

- *‘Widowhood Rites and Rights’ (2007)*: A study was conducted into the plight of widows, and especially the widespread harmful cultural/traditional and religious practices of dispossessing widows in the wake of the deaths of their spouses. The findings of the study revealed the widespread abuse, mistreatment and violations of the rights of widows to enjoy the protection and security of the law against dispossession of their matrimonial property by their in-laws and other close family members. The study also revealed that some of the violations are perpetrated by state institutions and private sector/commercial entities, and brought to light the need for legislation to ensure the protection of basic constitutional rights of widows.
- *Ukuthwala Consultations in KZN*: The CGE also conducted a series of consultative workshops with local communities and traditional leaders in KwaZulu-Natal, including an enquiry in 2009, into the widespread practice of kidnapping and abuse of young girls under the guise of the traditional practice of ‘Ukuthwala’. These engagements sought to establish the extent of the practice, views of community members and traditional leaders on this practice and the responses of government to combat the practice. Through these engagements with communities and traditional authorities the CGE was able to identify the ‘hot spot’ areas where the practice is rife, and its harmful effects (i.e. sexual violations, physical abuse, denial of the right to privacy, dignity and freedom of the affected, etc.). The study not only convened a stakeholders’ dialogue around the issue, but also called upon the government to put in place effective measures to protect women and girls against this practice. The Commission continues to monitor and intervene in practices of Ukuthwala as they arise.
- *Implementation of the Victims Charter (2009-2013)*: A series of studies undertaken by the CGE into the implementation of the Victims Charter by six national government departments/entities, namely: the Departments of Justice and of Health, the South African Police Service, the National Prosecuting Authority, Social Development & Correctional Services. The studies revealed the valuable work as well as the shortcomings of these entities in promoting the rights of victims of crime as outlined in the Victims Charter, especially victims of sexual crimes and domestic violence.

- ***365 Day Programme of Action on GBV:*** The CGE has also conducted annual assessments/monitoring of progress by state and civil society organisations in the implementation of the National Action Plan (NAP) in respect of the 365 Day Programme of Action to End Gender-Based Violence. In terms of the 2006/7 Kopanong Declaration, public sector entities and civil society organisations made clear commitments towards implementing the five-year National Action Plan to end gender-based violence in South Africa. The study revealed that while some ministries, particularly the Department of Justice, had made commendable efforts and progress in implementing the Plan, the programme itself fell victim to numerous constraints such as poor co-ordination, lack of adequate funding, poor planning and lack of clear leadership commitment by many state and civil society institutions allocated the task of implementing the programme.
- ***National Gender Machinery (NGM):*** Recently the CGE conducted a number of assessments into the effectiveness of certain institutions within the country's National Gender Machinery such as the recently established National Council on Gender Based Violence (NCGBV) to assess its institutional effectiveness in promoting co-ordinated and multisectoral national strategies to combat gender-based violence. The study revealed the institutional weakness of the Council during its first year of operation, including lack of adequate resources and an unclear programme of action to combat gender-based violence. A report was published, containing clear recommendations on appropriate policy interventions by relevant policy makers. Recently, in 2018, there have been public calls for the revival of the National Council on Gender Based Violence (NCGBV). Therefore, the CGE drafted a concept paper that was shared with the Women's Ministry and the Department of Justice, motivating for the revival of the National Council on Gender Based Violence. This concept paper was also shared widely with participants at the presidential Summit on GBV that was held in 2018.
- ***Assessing Effectiveness of Gender Focal Points in South Africa:*** In 2013 the CGE conducted a study into the effectiveness of Gender Focal Persons (GFPs) at national and provincial levels. GFPs are part of the country's NGM, and are specifically mandated to lead gender mainstreaming policies and programmes within state departments across

all spheres of government. The study sought to assess the capacity and effectiveness of Gender Focal Persons in driving government gender mainstreaming processes in line with the provisions of the National Policy Framework for Women's Empowerment and Gender Equality (2000). The study revealed a wide range of constraints that have rendered GFPs ineffective in discharging their responsibilities. These included poor understanding and ineffective implementation of policy and legislation on gender equality, limited resources as well as unclear roles and responsibilities of GFPs.

- ***Assessing the Effectiveness of the National Gender Machinery:*** In 2013, the CGE conducted an assessment of the effectiveness of National Gender Machinery institutions and found that, while these institutions were critical in their role as 'watchdog' bodies monitoring and evaluating the work of state and private sector entities to ensure the prioritisation of gender equality across various policy sectors, they are plagued by fragmented approaches, lack of a collective strategic vision in their pursuit of gender transformation, and lack of effective co-ordination of programmes and related activities to combat gender inequality.
- ***A Gendered Analysis of the National Development Plan Vision 2030:*** In 2013 the CGE conducted a gendered analysis of the National Development Planning Document (Vision 2030), seeking to identify ways of infusing and prioritising gender equality in the NDP's analysis and proposed sectoral strategies for the country's development.
- ***Compliance with International Instruments:*** The CGE has produced monitoring reports in relation to state implementation of its commitments in terms of the Convention on the Elimination of Discrimination against Women (CEDAW), the Beijing Platform for Action (BPA) and the Millennium Development Goals (MDGs). These reports have been tabled in Parliament and lodged with relevant international structures such as UN-Women and the CEDAW Committee. The CGE further assisted the former Department of Women, Children and People with Disabilities in its preparation for reporting on the country's progress to the CEDAW Committee by arranging and hosting a mock session. Representatives from the CEDAW Committee were in attendance and gave guidance to the then Ministry in terms of compiling and presenting the forthcoming Country report. Between 2015 and 2017, the CGE conducted a large

scale study, jointly with the United Nations Economic Commission for Africa (UNECA), on the country's compliance with international and regional instruments related to gender equality and gender mainstreaming (A report was compiled and shared widely with stakeholders in the country).

- **Court Monitoring:** The CGE has produced reports on an annual basis regarding the effectiveness of Family and Equality Courts. These reports are valuable in providing insights into the experiences of women and other complainants handled/served by the Family and Equality Courts.
- **Research and Lobbying on Land Reform:** In 2010 the CGE conducted a longitudinal research study, covering the period from 2000 to 2010, on the impact of South Africa's land reform process on women beneficiaries. Among other things, the study found that the number of women beneficiaries was very small (13% female beneficiaries compared to 87% males). Many women universally, including in South Africa, tend to have a tenuous and precarious relationship to land (traditionally either through the father, the male sibling, the uncle, or the husband where the woman is married). To address this in South Africa, the CGE initiated a campaign in 2012, under the banner 'One Woman, One Hectare', which entails lobbying and advocacy work aimed at persuading the state and private sector institutions to extend land ownership, access and control rights to women directly, as part of women's economic empowerment.

INVESTIGATIVE AND COMPLAINTS HANDLING FUNCTION:

this entails investigation of any gender-related issues in response to complaints received from the public or of the CGE's own accord, and litigation where necessary.

Recent Milestones / Achievements

The CGE's Legal Department has introduced a robust approach to complaints handling and litigation. Moreover, all provincial offices are accredited with their respective Law Societies as Legal Clinics ²

2

Bar the Free State office. Application is currently under way.

In the recent Constitutional Court case of *Modjadji Florah Mayelane v Mphephu Maria Ngwenyama and Another*, which centered on the issue of validity of a man's marriages if his first wife is not aware that these have taken place, or has not accepted these, the CGE was amicus curiae and assisted the court in assessing the case from a gender perspective.

- The CGE joined as amicus curiae in the landmark case of *Bhe and Others v Magistrate, Khayelitsha, and Others (Commission for Gender Equality as Amicus Curiae); Shibi v Sithole and Others; South African Human Rights Commission and Another v President of the Republic of South Africa and Another* 2005 (1) SA 580 (CC) wherein the Constitutional Court confirmed the orders of the High Courts declaring the rule of primogeniture in customary law of succession as inconsistent with the Constitution and, therefore, invalid³
- The CGE also participated in another heralded constitutional case, *Shilubana and Others v Nwamitwa (National Movement of Rural Women and Commission for Gender Equality as Amicus Curiae) 2007 (5) SA 620 (CC)*; traditional authorities are allowed to develop customary law in accordance with norms and values of the Constitution⁴.
- Through its complaints handling mechanism the CGE's Legal Officers have also assisted the South African Police Service (SAPS) in rescuing young girls from forced marriages such as in the case which occurred in Mpumalanga, as can be seen by the article hereunder.
- The CGE is currently litigating (be it as amicus curiae or on behalf of the complainant) in the following pertinent matters : -
 - In the Western Cape the CGE has been entered as amicus curiae in an Equality Court Matter currently before the Bellville Equality Court - *Coulson v Neethling*.

3 www.derebus.org.za

4 www.derebus.org.za

- In Kwa Zulu-Natal it is litigating within the Durban Equality Court in respect of the Complainant, Ms. Blanket.⁵
- In Mpumalanga, the CGE is representing the Complainant in *Ericca and 1 other v Desmond Tutu Centre for Leadership* (Equality Court)
- Furthermore, the CGE is tasked with specific duties and responsibilities in terms of the Promotion of Equality and Prevention of Unfair Discrimination Act No. 4 of 2000 (PEPUDA). In accordance with section 20 titled 'Institution of proceedings in terms of or under Act', both the CGE and the SAHRC are cited within PEPUDA to bring matters before the Equality Court for adjudication of their own accord and/or on behalf of complainants (as legal representatives).
- The CGE is afforded further significant responsibilities and functions in terms of Chapter 5 of the Act. However, to date, the majority of the provisions of this Chapter are yet to be proclaimed and brought into effect. On a side note this should be considered by the Portfolio Committee as a significant injustice and barrier to the attainment of equality in South Africa.

PUBLIC EDUCATION AND INFORMATION FUNCTION:

This component includes interventions to raise awareness of gender equality matters, as well as to publicise the activities and services provided by the CGE. Recent Milestones / Achievements

- The CGE has engaged in dialogues and information sharing sessions with communities, traditional leaders, faith-based organisations and non-governmental organisations on a range of gender-related issues such as witchcraft, virginity testing, Ukuthwala, underage/forced marriages, human trafficking, sex work, masculinity, gender-based violence (including rape and sexual harassment) and the rights of LGBTI people. The CGE has engaged stakeholders regarding other discriminatory practices relating to maternity benefits for self-employed women.

⁵ CGE File Reference: 344/05/2014/KZN

- The CGE recently (April 2014) held a gender summit that saw stakeholders from government, Institutions Supporting Democracy (ISDs), Civil Society Organisations (CSOs), and Community Based Organisations (CBOs) across the country reflect on the gains and challenges to attaining gender equality after twenty years of democracy in South Africa, with a set of resolutions and a Programme of Action to address the challenges going forward.
- The Commission has also developed a number of promotional materials in the form of pamphlets and posters, which have been translated into South Africa's 11 official languages. The CGE's advocacy activities, which span a plethora of gender issues, serve the dual purpose of promoting gender awareness and communicating to the public the activities and services provided by the CGE. The Commission has also entered into a partnership agreement and signed a Memorandum of Understanding (MoU) with the Forum for Community Radio Stations, thus creating a platform for regular community discussions on the work of the Commission around gender equality.
- The CGE also engages in regular advocacy activities in line with relevant provisions of the Equality Act. In terms of Section 25(1) (a) and Section 25(1) (c) (vi) of this Act, the CGE must assist the state 'to develop an awareness of fundamental rights in order to promote a climate of understanding, mutual respect and equality', and 'conduct information campaigns to popularise' the Act respectively. These are important functions in addressing the social norms and attitudes that underpin gender inequalities. However, much of the work of the CGE in this area is mainly focusing on popularising the Equality Act.
- Chapter Five of the Equality Act sets out several duties of the state to promote equality, in which constitutional institutions, such as the CGE, are expected to assist by, among others, taking measures to "develop and implement programmes....to promote equality"⁶, developing action plans, codes of practice and guidelines to promote equality, and providing advice and training on equality⁷.

6 Section 25 (1)(b) of the Equality Act.

7 Section 25(1)(iv) of the Equality Act. This is not in effect as yet - the section is yet to be proclaimed, including section 25 (1)

- The CGE has initiated numerous media interventions, with commissioners and staff members participating in radio debates and deliberations on topical gender equality issues, to raise awareness and educate the public on these, and contribute towards changing mindsets and attitudes in relation to gender inequality and discrimination. The CGE regularly issues press releases to all print and electronic media houses, and is frequently approached for comment, and the provision of opinion pieces.

LIAISON AND CO-OPERATION WITH A RANGE OF LIKE-MINDED INSTITUTIONS/ORGANISATIONS:

This function includes liaison and co-operation with a range of like-minded organisations/institutions to promote the objectives of the CGE and respond to instances of gender inequality and discrimination.

Recent Milestones / Achievements

- Recently the CGE has entered into a Memorandum of Understanding with the Women's Legal Centre (WLC) to ensure and harness synergies between the two institutions in respect of legal reforms and litigation.
- The CGE has also engaged in collaborative work with the Legal Resources Centre on particular equality cases. Currently the two institutions are part of an appeal in the Western Cape High Court Case No. A227/14, wherein the CGE is applying to be amicus curiae with the assistance of the LRC⁸. The case involves an appeal wherein the accused has utilised the customary practice of Ukuthwala as a defence in response to his conviction of human trafficking and rape of a 14-year-old girl.
- Referral arrangements with community-based organisations and non-governmental organisations, such as advice centres and rural paralegal offices, to ensure the referral of cases relating to gender inequality or discrimination to the CGE for investigation.
- Provincial collaboration with sister Chapter 9 entities, through provincial fora, to promote collaboration and support for outreach interventions, as detailed hereunder.

8

To minimise costs of Counsel

6.2.5 **Repositioning the Relationship between Parliament and the Commission for Gender Equality: Implications and Critical Matters for the Sixth Parliament**

Regarding the repositioning of the relationship between the CGE and Parliament, the following issues are of critical importance:

- The Commission for Gender Equality is often compared unfavourably with other Chapter 9 institutions, particularly the Public Protector, and usually judged to be ‘toothless’ by stakeholders in the gender sector. This is in light of the recent Constitutional Court review of the powers of the Public Protector, declaring that the findings of the Public Protector are binding on state/government and other non-state institutions. The Sixth Parliament should consider reviewing the powers of the CGE as contained in the CGE Act of 1996, with particular emphasis on ensuring that the findings of the CGE’s investigations are legally binding on state and other non-state actors that are subject to the CGE’s investigations.
- The Commission’s current annual budget allocation is conveyed through the Department of Women in the Presidency. While this is a mere administrative arrangement and has no legal implications on the statutory and constitutional independence of the CGE, it does create tensions between the two institutions, especially regarding the mandates of the two. In addition, the fact that the CGE budget is transmitted through the Ministry of Women in the Presidency implies that the Ministry has to account to Parliament on behalf of the CGE, thus posing negative implications for the CGE’s financial, constitutional and legal autonomy. This also undermines the capacity of the CGE to account directly to Parliament on this matter. The CGE has therefore already made submissions to Parliament motivating for the de-linking of its budget allocation from the Department of Women in the Presidency. The Sixth Parliament is therefore urged to prioritise this issue and ensure that the de-linking process is effected by the Treasury once the necessary policy and legislative frameworks have been put in place to make this possible.
- The CGE has for several years now sought to focus the attention of previous parliaments on the lack of resources for advancing gender equality and women empowerment. The CGE, compared to other Chapter 9 in-

stitutions, is one of the most underfunded Chapter 9 bodies, while facing an enormous public mandate to ensure gender transformation and gender equality. The CGE therefore urges the Sixth Parliament to concern itself with the issue of limited funding for the organisation to carry out its mandate in line with the Constitution and the CGE Act.

The CGE is obligated, in terms of the CGE Act, to report to Parliament regularly on its activities, including research, legal and public education & outreach programmes. In fulfilling this obligation, the CGE regularly submit reports (including annual report) containing progress achieved, findings of investigations (including research and legal investigations) and recommendations to Parliament. In addition, the CGE is regularly required to present these reports with findings and recommendations directly to the different parliamentary portfolio committees. The CGE therefore urges Parliament to enhance the usage of the reports, including the findings and recommendations contained in them, for holding state institutions accountable.

6.3 The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities

6.3.1 Mandate and Functions of the CRL Commission

The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL Commission) was established by section 181(1)(c) of the Constitution. The mandate of the CRL Commission is enshrined in section 185 of the Constitution. The purpose of the Commission is to promote respect for and strengthen the rights of the cultural, religious and linguistic communities and to assist in the realisation of the rights contained in the Bill of Rights. The Commission is also tasked to assist in developing peace, friendship, humanity, tolerance and national unity among these communities, and to promote the right of these communities to develop their historically diminished heritage.

The enabling legislation, the CRL Commission Act No: 19 of 2002, provides the additional powers necessary to achieve its primary objects, including the power to monitor, investigate, research, educate, lobby, advise and report on issues concerning the rights of cultural, religious and linguistic communities. Section 185(3) provides that the Commission may report any matter that falls within its powers and functions to the SAHRC for investigation. Statutorily, the functions of the Commission are to:

- conduct programmes to promote respect for, and further the protection of the rights of cultural, religious and linguistic communities;
- conduct information and education programmes to promote public understanding of the objects, role and activities of the Commission;
- develop strategies for the full and active participation of these communities in nation-building in South Africa, and promote youth awareness on the diversity of these communities and their rights;
- educate, lobby, advise and report on any issue concerning the rights of these communities, including to monitor, investigate and research any issue concerning the rights of these communities and make recommendations to the appropriate organ of state regarding legislation that impacts or may impact them;
- establish and maintain a database of cultural, religious and linguistic

community organisations and institutions and experts on these communities; and

- resolve disputes where the cultural, religious and linguistic rights of a community are affected, and make suggestions on laws that affect the rights of these communities.

6.3.2 Reporting Obligations of the CRL Commission

Section 181(5) of the Constitution provides for the accountability of the Commission to the NA at least once a year. Additionally, section 8(a) of the CRL Act provides that the Commission must report annually to the NA on its activities and the performance of its functions. Furthermore, section 185(2) of the Constitution vests in the Commission the power, as regulated by national legislation, necessary to achieve its primary objects, the power to monitor, investigate, research, educate, lobby, advise and report on issues concerning the rights of cultural, religious and linguistic communities. In addition, section 185(3) provides that the Commission may report any matter, which falls within its powers and functions, to the SAHRC for investigation. Section 6(3) of the CRL Act reiterates the Constitutional provision in an identical manner.

Section 8 of the CRL Act addresses reports by the Commission. The Commission has a discretion whether to report on investigations conducted by it in terms of its constitutional mandate. The Constitution merely provides that it has the power to report, and does not create a constitutional obligation for the Commission to submit its report on issues concerning the rights of cultural, religious and linguistic communities to Parliament in particular.

Regarding the enabling legislation, there is also no obligation created for the Commission to submit 'investigative reports' to the NA. The Act only compels the Commission to submit its annual report to the NA. However, the CRL Rights Commission may report any matter that falls within its functions and powers to the SAHRC for investigation by virtue of envisaged collaboration in section 185(3) of the Constitution and section 6(3) of the CRL Commission Act, as mentioned above.

6.3.3 Statutory appointments in relation to the CRL Commission

Section 186 (1) of the Constitution provides that the number of members of the Commission and their appointment and terms must be prescribed by national legislation. Its composition must be broadly representative of the main cultural, religious and linguistic communities in South Africa and broadly reflect the gender composition of South Africa. Section 11 of the CRL Act deals with the procedure of appointment of members initiated by the Minister of Co-operative Governance and Traditional Affairs. In terms of section 9(1) (a)-(b), the Commission consists of a Chairperson, and no fewer than 11, and no more than 17 other members appointed by the President. The President has a discretion when making appointments in terms of section 9(2) to determine the number of members to be appointed to the Commission but may, when appointing members for a new term of the Commission, increase the number. The President may alter the number referred to above, from time to time, but may reduce the number only when appointing members for a new term of the Commission.

Section 13(1) provides that the term of office of the members of the Commission is five years. Furthermore, the Chairperson and the other members of the Commission are appointed for one term of the Commission, but may be reappointed at the end of that term for one further term only. Section 13(3) provides “if the number of members contemplated in section 9(1) (b) is increased during a term, the additional member or members are appointed for the remaining part of the current term”. Section 14(2) stipulates that “members of the Commission are appointed in a part-time capacity, but the Chairperson, Deputy Chairperson and no more than three other members may be appointed in a full-time capacity”.

6.3.4 The 25-Year Review of the CRL Commission: 1994 – 2019

Overview of the Commission’s work

The Commission started to operate with the first set of commissioners appointed in 2004 to 2008. The 2nd Commission commenced operation in 2009 until 2013, while the third was inaugurated in 2014 and is currently serving the last year of its term. In both circumstances, only the Chairperson and the Deputy Chairperson were appointed full-time, while others were part-time. Although the first Commission had to deal with teething challenges such as the establishment

of the Office (CRL Rights Commission), appointment of staff members, finding resources to kick-start the work, etc., the second set of Commissioners started a few projects through requests from the resolutions taken from the 2008 National Consultative Conference. The third Commission conducted what may be called an environmental diagnostic analysis. This was to position the Commission as the point of entry for cultural, religious and linguistic matters in South Africa. There were a number of documents that were consulted to make sure that the Commission remains true to its mandate, and such documents include, but are not limited to, the following:

- Review of Chapter 9 Institutions and other Constitutional Bodies (famously known as the Kadar Asmal Report);
- Public Affairs Research Institute (PARI) Report;
- Maserumule Investigation Report; and
- Auditor-General Reports.

Challenges identified by various reports pertaining to the work of the Commission

The challenges identified in the various reports include the following, amongst others:

- CRL Rights Commission was invisible and not known to the communities;
- CRL Rights Commissioners were not effectively providing oversight to the work of the Commission;
- Lack of funding; and
- Lack of internal controls and repetitive audit findings over years and many other issues raised. The issue of the mandate and its interpretation.

All the issues raised helped the Commission to get to know whether it is on the right track. In order to be attractive and as part of its turnaround strategy, the Commission had to change its logo. The new look gave the Commission a

new birth and key stakeholders and communities are able to easily identify the Commission. A new strategic direction was designed and during the process, a new vision and mission emerged. The new vision states that the Commission wants to see a South Africa which promotes mutual respect among diverse cultural, religious and linguistic communities, and the mission is to foster the rights of communities to freely practise their culture, religion and language. The following are highlights of some major projects that the Commission worked on -

Commercialisation of religion and abuse of people's belief system

The investigative study on the commercialisation of religion and abuse of people's belief system followed a series of headlines on television and radio, and in newspapers. Through this project, the CRL Rights Commission was widely covered in the media both nationally and internationally. It is through this project that the visibility of the Commission was enhanced. The investigative study highlighted the need to protect religious freedom without attempting to regulate it from the side of the State. However, as specific current practices in the religious sector infringe on constitutional rights of congregants and violate existing legislation, the Commission recommended religious communities to regulate themselves more diligently to be in line with the Constitution and the law. Communities should exercise their religious freedom with due regard to their legal, ethical and community responsibilities. The Constitution leaves scope for all kinds of beliefs and opinions; even views which some may regard as extreme, are allowed and should not be regulated. However, when views lead to the abuse of human rights or to the violation of the law, there is cause for concern.

Religion and cults dialogues

As part of the process in terms of investigating the abuse of people's belief system, the CRL Rights Commission was also interested in understanding profoundly whether or not cults were a type of religion. After observing questionable practices of some religious institutions in the Eastern Cape, Gauteng and others, questions were being raised by different communities and particularly the media. Therefore, to deepen this understanding, the Commission organised a dialogue on Religion and Cults. Indeed, this was a revelation when Professor Alex Asakitipi (Department of Sociology - Monash South Africa) explained that

cults usually are started by “an individual due to some encounter” (loss of identity, supernatural experience, the death of a loved one, etc.). According to the Professor, “the interpretation of that encounter is influenced both by internal factors (material reward, access to power, revenge of some sort, etc.) and external factors (hunger, radical cultural, religious, and social changes, state of anomie).”

Some cults start because of political, religious, cultural and other factors, and are sometimes sustained by external interests such as economy or politics. The characteristics and the signs of cult groups were discussed, and the details are covered in this report. The information gathered during presentations and discussions in these dialogues aided the Commission in understanding the complexities involved in cults and also in creating a platform for the Commission to engage the religious institutions with a deeper understanding of the environment in which they operate, while at the same time being involved in the mandate of promoting and protecting the religious rights of communities to foster peace, tolerance, humanity, unity, and social cohesion.

Ukuthwala project

Through this report, the Commission managed to differentiate the original Ukuthwala practice from the abduction of young girls. The Commission also played a critical role as a friend of the court in the Jezile matter, which saw the imprisonment of the perpetrator. The Commission managed to produce a research work on this project with recommendations informed by life experiences of the victims after we visited the deep rural areas, including Lusikisiki in the Eastern Cape, Mpumalanga, KwaZulu-Natal, Limpopo and other provinces. After this report was produced, the Commission went back through our Public Education department to disseminate information covered in the report, particularly sharing the recommendations covered with the relevant communities.

Reuse of graves by local governments: a solution or violation of cultural and religious rights of communities

Research was commissioned on the reuse of graves by local governments. This was after the Commission received a number of complaints from the public, particularly from the eThekweni Metro Municipality area. When people visited the graves of their deceased family members, they were shocked to

find that, either someone they did not know was buried in the same grave, or someone else's tombstone was erected on the grave. They also found the grave of their family member half dug up, and on asking what was going on, were told that someone else was going to be buried in that specific tomb. Culturally and religiously, this act of reusing graves haunts people's belief and cultural system, as many believe that a burial place is not only sacred, but also a place with which one should not tamper. Through this project, the Commission recommended, amongst other things, national legislation that deals with the issue of the reuse of graves to be promulgated by Parliament. In cases where there is a plan to reuse a grave, local governments should ask all affected family members to decide which members should be buried together in one grave. This matter was also raised with the eThekweni former municipal mayor and was raised with the then President of the Republic, Mr J G Zuma, as a way of soliciting interventions from government due to the seriousness of the matter in some local communities. Traditional healers also applauded the Commission on the manner in which the matter was managed.

Ukuhlolwa

This project saw the Commission intervening on the issue of the bursary awarded to the maidens (Uthukela municipality). The project secured the forged links with the Zulu kingdom to an extent that the Commission often participates in reed dance ceremonies on an annual basis. The event is usually attended by approximately 60 000 maidens, which creates an opportunity for the Commission to even be more visible as we participate in the education programme meant to raise the consciousness of the maidens about their right to practise their culture. The project conducted at Uthukela municipality also raised a critical point that bursaries should not be of a discriminatory nature, although young men and women are encouraged to practise abstinence.

Report on some challenges that lead to deaths and injuries at initiation schools in South Africa

The CRL Rights Commission also dealt with the issue of initiation. The project focused on the challenges and causes of deaths at initiation schools in the country. It was revealed through this project that a high number of deaths take place at illegal initiation schools. The Commission engaged all stakeholders involved in initiation schools and has established that some initiates go to

these schools without the consent of their parents. It was also noted that some surgeons and caregivers are not well qualified to manage this age-old rite of passage. In addition, it was also discovered that some of the initiation schools are breeding grounds for gangsters. In order to curb some of the challenges raised, the CRL Rights Commission recommended that municipalities should have by-laws specifically dealing with issues related to initiation as part of government interventions to deal with challenges that are experienced at the schools, including contributing to the drafting of the Customary Initiation Bill that was initiated by the Department of Traditional Affairs.

Campaigns against the killing of people living with albinism

The Commission also focused on campaigns throughout the whole country on “the challenges faced by people living with albinism.” According to the United Nations data, 80 people in Tanzania have been killed since 2000 and there are several other cases in Malawi. Although we have sporadic incidences in South Africa, the Commission had to be proactive regarding sensitising our communities around this issue. The rationale behind these killings was said to be related to muti purposes. Thus, the Commission engaged traditional health practitioners to pronounce their position on these matters for the Commission to know what to protect and what should not be protected within the religious sector. People living with albinism are part of our communities, and therefore, we should protect their right to exist. The Commission’s campaigns were more intent on calling the courts to enforce the law and detain people who are found guilty.

The multilingualism project

The CRL Rights Commission organised and facilitated the dialogue on the importance of multilingualism in promoting and deepening social cohesion and nation-building in democratic South Africa. Some of the objectives, amongst others, included the creation of the conditions for the promotion and equal use of all official languages as well as finding ways to ease channels of communication by insisting that marginalised languages are also used in public contexts for high-level functions so that their profiles increase and they are heard. Language is a vitally important and sensitive issue. Language rights need to be understood within the framework of the distinction between the right to language and the right of language. While the focus to date has been mainly on the right to

language within schools and in particular on the realisation of this right through the Department of Education's Language in Education Policy provisions, the right of language needs similar attention. The Commission looks forward to ongoing working relationships with communities as we struggle for these rights to be realised within our constitutional dispensation.

Guidelines report on the African ritual of animal slaughter

The debate on animal slaughter became a talking point when it was highlighted in the media early in January 2007, after Mr Toni Yengeni was shown on TV holding a spear at his Gugulethu home. According to the report, he was going to slaughter a cow for cleansing after his release from prison. Groups such as the National Society for the Prevention of Cruelty to Animals (NSPCA) and the Animal Anti-Cruelty League voiced their objections on the grounds that the practice would constitute cruelty to animals, and should therefore not be encouraged. The National Society for the Prevention of Cruelty to Animals approached the CRL Rights Commission as certain pieces of legislation and municipal by-laws outlaw the ill-treatment of animals, as well as the practice of animal slaughter taking place anywhere other than in the abattoirs.

The practitioners of African religion believe that the ritual of animal slaughter is the core of their religion and having their practices questioned is an infringement of their right to practise their religion freely as enshrined in the Constitution. Accordingly, the practitioners perceived this as one of the classic violations of their rights by people who do not understand their religion and ritual. Some members of the South African society practise the tradition of animal slaughter for religious, traditional or cultural ceremonies. Most traditionalists argue that animal welfare organisations do not understand their practice and as a result, they oppose this practice based on municipal by-laws, yet such regulations did not consider their cultural practices when they were being drafted and promulgated.

Sacred sites - protection and promotion of the rights of ownership, access and use

The sacred and spiritual sites find resonance within the challenges of creating a more inclusive society based on equality, and more broadly within an environment that is changing politically, socially, economically and culturally.

It is in these discussions that issues regarding the management practices of the sacred sites and how they can best be protected legally and practically become empirical. It is notable, however, that the new laws and policies, while attempting to transform the old legal environment with regard to heritage and conservation management, may themselves fall into the trap of perpetuating it. The preservation of heritage has continued to marginalise communities from conservation and heritage management by denying them access and practice of their cultures in these areas. As a result of these investigations, the Commission recommended that there should be commencement of a process of engagement by relevant stakeholders in identifying the spaces of cultural and spiritual significance.

The increase of received cases

The CRL Rights Commission continued to experience a noticeable increase in complaints throughout the years. Violation of the rights of learners at schools and abuse of religious beliefs and systems emerged as the dominating cases received by the CRL Rights Commission. Religious intolerance continued to pose a challenge at schools with learners who come from diverse religious backgrounds. The inconsistency of some schools' religious policies in relation to the religious rights, as enshrined in the Constitution of South Africa with specific reference to Chapter 2, was a challenge in regard to which the CRL Rights Commission had to raise awareness and engage the relevant stakeholders to continuously conscientise the affected communities on the religious rights of learners.

Through these experiences, the CRL Rights Commission has learnt that there is a need to engage the Department of Basic Education to assist schools' governing bodies to craft policies that are religious-, cultural- and linguistic-sensitive to the communities they serve. On the other hand, challenges facing the religious sector regarding abuse of people's belief systems require the Commission's continuous engagement with the sector to promote and protect the religious rights of these communities at all times. Some high-profile cases received by the Commission included the Medupi case, where communities claimed that the power station was built on graves of their relatives and we eventually managed to solve the challenge with Eskom and the affected communities. The Ventersdorp case involved old graves to be relocated to the new burial space assigned by the municipality. The Commission continued to raise awareness of its work focusing on rural areas. This was done through dialogue, workshops, campaigns and conflict resolution seminars.

Media impact analysis

Throughout the years, the Commission received highly publicised mentions in terms of its programmes in broadcast, print, online and social media and this had a yearly cumulative circulation figure of 1 365 234 062, which comes down to an average of 113 769 505 per month. The Commission has a Twitter account and Facebook profile to enhance interaction between the organisation and stakeholders. Our website is looking better, although improvements are still needed. Signage on some streets indicating directions to the location of the Commission's offices, was also a milestone. If the media is a good judge, the CRL Rights Commission managed to deliver its mandate to the intended stakeholders and in the process responded positively to the various concerns raised in different reports (documents), as was reflected in the beginning of this report, and therefore indirectly rendered all of the challenges raised inapplicable in 2018.

National consultative conferences

The Commission is tasked by Act 19 of 2002 with the convening of a regular National Consultative Conference amongst others to: receive a progress report from the Commission on its activities, accomplishments, challenges and to create an opportunity for communities to formulate requests and recommendations for the Commission; and advise the Commission on its work. So far, the Commission has managed to organise only three consultative conferences since its establishment, and this is contrary to what the Act requires us to do. The Act requires us to have the National Consultative Conference during every term of the new commission. Non-compliance prevails as a result of the Commission's insufficient financial resources.

6.4 The Financial and Fiscal Commission

6.4.1 Mandate and Functions of the Financial and Fiscal Commission

The Financial and Fiscal Commission (FFC) was established by section 220 of the Constitution. An enabling piece of legislation, the Financial and Fiscal Commission Act No. 99 of 1997, empowers the Commission to perform its functions. The primary responsibility of the Commission is to make recommendations to Parliament, provincial legislatures and organised local government on the division of the revenue that has been collected at the national level among the national, provincial and local spheres of government. In terms of section

3(1) of the FFC Act, the Commission acts as a consultative body for, and makes recommendations and gives advice to, organs of state in the national, provincial and local spheres of government on financial and fiscal matters.

Statutorily, it may perform these functions on its own initiative or on request of an organ of state. Another responsibility of the Commission is to advise Government on the imposition of provincial taxes; the shifting of powers and functions between the three spheres of government; and provincial and municipal applications for loans. The final and more general responsibility of the Commission is to advise all organs of state (including Parliament, provincial legislatures and organised local government) on financial and fiscal matters, and to promote the development of an efficient, sustainable and fair system of intergovernmental fiscal relations. The FFC makes recommendations and gives advice on financial and fiscal matters as prescribed by legislation, at the request of an organ of state, and on its own initiative. The main functions of the FFC, as derived from the various Acts,⁹ are to:

- make suggestions for the fair division of nationally collected revenue (income) among the three spheres of government;
- make suggestions regarding any other allocations norms and standards and applicable criteria for various intergovernmental fiscal arrangements;
- produce various reports yearly and distribute them to legislatures; and
- undertake relevant research to be able to provide advice on financial and fiscal matters.

The Vision of the FFC is to provide influential advice for an equitable, efficient and sustainable IGFR. Its Mission is to provide proactive, expert and independent

⁹ These include the Intergovernmental Fiscal Relations Act No. 97 of 1997 as amended, the Money Bills Amendment Procedure and Related Matters Act No. 9 of 2009, the Municipal Systems Act No. 32 of 2000, as amended, the Provincial Tax Regulation Process Act No. 53 of 2001 as amended, the Municipal Finance Management Act No. 56 of 2003 as amended, the Intergovernmental Relations Framework Act No. 13 of 2005 as amended, the Municipal Fiscal Powers and Functions Act No. 12 of 2007, and the Money Bills Amendment Procedures and Related Matters Act No. 9 of 2009.

advice on promoting a sustainable and equitable IGFR system, through evidence-based policy analysis to ensure the realisation of the constitutional values.

6.4.2 Reporting Obligations of the Financial and Fiscal Commission

Section 222 of the Constitution provides that the Commission must report regularly both to Parliament and the provincial legislatures on matters relating to equitable shares and allocations of revenue, as stipulated in section 214 of the Constitution. In addition, section 3(6) of the FFC Act provides that the Commission must submit for tabling copies of all its recommendations made in terms of a provision of the Constitution to both Houses of Parliament and to provincial legislatures. Section 26 of the FFC Act regulates the submission of annual reports by the FFC, by stating “the Commission must annually submit to both Houses of Parliament, to each provincial legislature and to the national organisation representing organised local government recognised in terms of the Organised Local Government Act No 52 of 1997, a report on the activities of the Commission during a financial year.”

The Constitution, in section 222, makes it obligatory for the Commission to report regularly both to Parliament and to the provincial legislatures on matters relating to equitable shares and allocations of revenue as stipulated in section 214 of the Constitution. The regular reports by the FFC to Parliament relate to recommendations made in terms of section 220 of the Constitution and section 3 of the FFC Act. The frequency with which these substantive reports are submitted to Parliament is dependent on the number of reports produced and the time at which they are produced. Simply put, the FFC is expected to submit for tabling all reports produced. Relating to performance reporting the FFC is in terms of section 26 of the FFC Act required to submit its annual report to both Houses of Parliament, to each provincial legislature and to national organisations representing organised local government.

6.4.3 Statutory appointments in relation to the Financial and Fiscal Commission

Section 221 of the Constitution provides that the Commission consists of the following women and men appointed by the President: a chairperson and deputy chairperson; three persons selected, after consulting the Premiers, from a list compiled in accordance with a process prescribed by national legislation;

two persons selected, after consulting organised local government, from a list compiled in accordance with a process prescribed by national legislation; and two other persons.

The members of the Commission must be appointed for a term not exceeding five years and a member may be reappointed when that member's term expires as provided in section 8 of the Financial and Fiscal Commission Act No. 99 of 1997, as amended by Act No. 4 of 2015. Section 8(4) stipulates, "a person may not hold office as a member of the Commission for a period of more than 10 consecutive years."

Section 5(2) of the Act provides that the Minister must notify each Premier accordingly within 14 days of receiving the Commission's written notification of the vacancy, whereby the respective Premiers will each nominate one person for appointment to the Commission. The Minister will subsequently compile a list of nominees and the Premiers must endeavour to reach consensus on a shortlist of nominees, comprising one more name than the number of vacancies that must be filled. Once consensus has been reached, the shortlist is contemplated in section 5(1) (b), where the President appoints members of the Commission. In terms of section 5(3) of the FFC Act, as amended, the President must make an appointment to fill the vacancy on the Commission within a period of six months from the date when the vacancy occurs. In terms of section 8(2) of the FFC Act, as amended, the Chairperson of the Commission is full-time and other members of the Commission are part-time.

Background information

The discussions on decentralisation and regionalism first started in the negotiations towards the interim Constitution of 1993. Thereafter the interim Constitution made provision for the FFC. The mandate of the FFC included a research orientation coupled with a role to advise the Legislatures. National Government considered the FFC's recommendations when determining a Province's equitable share, empowering Provincial Governments to impose taxes or service charges or when providing a guarantee for provincial loans, and design of a borrowing framework for Provincial Governments. The mandate of the FFC included providing advice to Local Government on the equitable share allocation; legislation concerning taxation power; and guaranteeing municipal loans.

The initial composition of the FFC was eighteen (18) members. Each of the nine (9) Provinces designated a member in addition to the members that were appointed by the President. The FFC made its first submission in 1995. Thereafter its formal establishment was set out in the Constitution, 1996. The FFC's primary reports in terms of the Constitution, 1996 are:

- Annual Submission on the Division of Revenue (DOR). The Minister of Finance submits these ten months prior to the tabling of the DOR Bill. It contains recommendations for the Division of Revenue for the following fiscal year and medium-term expenditure framework;
- Submission on the Medium-Term Budget Policy Statement (MTBPS). This contains a response to the MTBPS and adjustments to the DOR;
- Submission on the DOR Bill. This is submitted to Parliament. It outlines the response to the DOR Bill; and
- Submission on the Fiscal Framework and Revenue Proposals including an Appropriations Bill.

Regulatory framework

The FFC makes recommendations to Organs of State on financial and fiscal matters in accordance with the Constitution. It may perform its functions on its own initiative or on request of an Organ of State. The FFC is responsible for determining and overseeing the strategic direction and operational policy of the Commission and may do all that is necessary or expedient to perform its functions effectively. The FFC operates within the undermentioned regulatory prescripts in terms of the Constitution, 1996 (as amended, where applicable):

- Financial and Fiscal Commission Act, 1997 (Act No 99 of 1997);
- Borrowing Powers of Provincial Governments Act, 1996 (Act No 48 of 1996);
- Intergovernmental Fiscal Relations Act, 1997 (Act No 97 of 1997) (IGFR Act);
- Local Government: Municipal Finance Management Act, 2003 (Act No 56 of 2003);

- Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000);
- Money Bills Amendment Procedure and Related Matters Act, 2009 (Act No 9 of 2009);
- Municipal Fiscal Powers and Functions Act, 2007 (Act No 12 of 2007); and
- Provincial Tax Regulation Process Act, 2001 (Act No 53 of 2001).

In terms of the Constitution, 1996 the FFC makes recommendations to Parliament, provincial legislatures and any other authorities as determined by national legislation. The FFC is independent, subject only to the Constitution and the law, and must be impartial. The Commission consists of the following women and men appointed by the President, as head of the national executive: A Chairperson and Deputy Chairperson; three persons selected, after consulting the Premiers, from a list compiled in accordance with a process prescribed by national legislation; two persons selected, after consulting organised Local Government, from a list compiled in accordance with a process prescribed by national legislation; and two other persons. The Commission must report regularly both to Parliament and to the provincial legislatures.

The FFC Act, 1997 is the enabling legislation that gives effect to the constitutional requirements. The FFC must perform its functions as envisaged in the Constitution or as required by national legislation, and may perform those functions on its own initiative, or on request of an organ of state. An organ of state in one sphere of Government which seeks to assign a power or function to an organ of state in another sphere of Government in terms of a law must first, before assigning the power or function, notify the FFC of the fiscal and financial implications of such assignment and request the recommendation of the FFC on: the future division of revenue raised nationally between the spheres of Government as required by the Constitution; in the case of an assignment to a provincial or local organ of state, the fiscal power, fiscal capacity and efficiency of the relevant province or municipality; and any transfer of employees, assets and liabilities.

The FFC must, not later than 180 days from the date of its receipt of the notification and request or such other period agreed with the relevant organ of state, make such recommendation on the intended assignment as may be appropriate. An

assignment contemplated in the preceding paragraph has no legal force unless the organ of state making such assignment has requested and considered the recommendation of the FFC. The organ of state assigning any power or function to another organ of state must in an accompanying memorandum explain to the FFC, the organ of state to which a power or function is being assigned, the National Treasury and any other functionary responsible for authorising such assignment, the extent to which it has considered the recommendation by the FFC.

Prior to requesting the recommendation of the FFC, the organ of state seeking to assign the power or function must, in the case of a national organ of state, obtain the written approval of the National Treasury; or, in the case of a provincial organ of state, obtain the written approval of the provincial treasury. The Commission must submit for tabling copies of all its recommendations made in terms of a provision of the Constitution to both Houses of Parliament and to the provincial legislatures.

Borrowing Powers of Provincial Governments Act, 1996 - The Constitution, 1996 provides that a province shall not be competent to raise loans for current expenditure but shall be competent to raise loans for capital expenditure, provided it does so within the framework of reasonable norms and conditions prescribed by an Act of Parliament. The Constitution, 1996 further provides that loans for current expenditure may be raised by means of bridging finance during a fiscal year, subject to the condition that they shall be redeemed within twelve months and subject to such further, reasonable conditions as may be prescribed by an Act of Parliament.

The Borrowing Powers of Provincial Governments Act, 1996 established a Loan Co-ordinating Committee (Committee) which consists of the Minister of Finance as Chairperson, and the responsible member of each province, or his or her duly authorised representative. The Committee co-ordinates the borrowing requirements of provincial governments, after considering estimates of the aggregate demand for capital market funds during a financial year. The Committee further takes into account the total debt of each provincial government and the bodies controlled by it, and their contingent liabilities, risks, and ability to service their debt, and reports to the FFC in a manner which will allow the FFC to effectively fulfil its functions as contemplated in the Constitution, 1996.

In terms of Section 4 of the Intergovernmental Fiscal Relations Act, 1997, which pertains to Meetings of the Budget Council, the Chairperson of the FFC or a delegation of the FFC designated by the Chairperson, may attend meetings of the Budget Council. In terms of section 7, the Chairperson of the FFC or a delegation of the FFC designated by the Chairperson may attend meetings of the Budget Forum.

Each year when the Annual Budget is introduced, the Minister of Finance must introduce in the NA a Division of Revenue Bill for the financial year to which that Budget relates. The Division of Revenue Bill must specify the share of each sphere of government of the revenue raised nationally for the relevant financial year; each province's share of the provincial share of that revenue; and any other allocations to the provinces, local government or municipalities from the national government's share of that revenue, and any conditions on which those allocations are or must be made.

After receiving any recommendations of the Commission in terms of, but before the Division of Revenue Bill is introduced in the NA, the Minister must consult the Provincial Governments, either in the Budget Council or in another way; organised local government, either in the Budget Forum or in another way; and the FFC.

The Local Government: Municipal Finance Management Act, 2003 (Act No 56 of 2003) (as amended) is enacted to secure sound and sustainable management of the financial affairs of municipalities and other institutions in the local sphere of Government; and to establish treasury norms and standards for the local sphere of Government. In terms of this Act, draft national legislation, which directly or indirectly amends the Act or providing for the enactment of subordinate legislation that may conflict with the Act, may be introduced in Parliament only after the Minister of Finance and the FFC have been consulted and responded to in writing.

Local Government: Municipal Systems Act, 2000 - A Cabinet member or Deputy Minister seeking to initiate the assignment of a function or power by way of an Act of Parliament to municipalities in general, or any category of municipalities, must within a reasonable time before the draft Act providing for the assignment is introduced in Parliament: request the FFC to assess the financial and fiscal

implications of the legislation, after informing the FFC of the possible impact of such assignment on the future division of revenue between the spheres of government in terms of the Constitution, the fiscal power, fiscal capacity and efficiency of municipalities or any category of municipalities, the transfer, if any, of employees, assets and liabilities; and consult the Minister responsible for Local Government, the Minister of Finance and organised local government representing local government nationally with regard to the assessment by the FFC as stated above.

An MEC seeking to initiate the assignment of a function or power by way of a provincial Act to municipalities, or any category of municipalities, in the province must, within a reasonable time before the draft provincial Act providing for the assignment is introduced in the relevant provincial legislature: request the FFC to assess the financial and fiscal implications of the legislation, after informing the FFC of the possible impact of such assignment on the future division of revenue between the spheres of government in terms of section 214 of the Constitution, the fiscal power, fiscal capacity and efficiency of municipalities or any category of municipalities, the transfer, if any, of employees, assets and liabilities; and consult the MEC for local Government, the MEC responsible for finance, and organised local government representing local government in the province, with regard to the assessment by the FFC as stated above. When draft legislation referred to above is introduced in Parliament or a provincial legislature, the legislation must be accompanied by the assessment from the FFC.

Organised local government must, before embarking on any negotiations with parties in the bargaining council established for municipalities, consult the FFC. Money Bills Amendment Procedure and Related Matters Act, 2009 - After the adoption of the fiscal framework the Division of Revenue Bill must be referred to the committee on appropriations of the NA for consideration and report. The committee on appropriations must consult with the FFC and allow the Minister of Finance the opportunity to respond to any amendments proposed at least three days prior to the submission of the report to the relevant House.

Municipal Fiscal Powers and Functions Act, 2007 - The Minister may of his or her own accord or on application by a municipality, group of municipalities or organised local government, authorise a municipal tax. Prior to authorising a municipal tax, the Minister of Finance must consult the Minister responsible for

local government, affected municipalities and organised local government and the FFC. The FFC must within three months from the date of the consultation submit its views on the proposed municipal tax in writing to the Minister of Finance. The Minister of Finance further authorises a municipal tax by prescribing Regulations. The FFC must be consulted prior to any Regulations that are made under the Act.

Provincial Tax Regulation Process Act, 2001 - If a province intends to impose a new provincial tax, the MEC for Finance in the province must submit particulars of the proposed provincial tax to the Minister of Finance. The Minister of Finance must submit a copy to the FFC for comment. The Minister of Finance is obliged to consider the comments of the FFC.

6.4.4 The 25-Year Review of the Financial and Fiscal Commission: 1994 – 2019

The FFC is of the view that reasonable reasons are required from Government if the Commission's recommendations are not taken into consideration. Parliament would also need to interrogate the composition of the Commission, whether its mandate should be extended further or limited.

The value and relevance of the Commission in the changing times should be considered by Parliament. The FFC is of the view that funding should emanate directly from Parliament rather than from National Treasury, as in the current situation. The appointment process for members of the Commission should be reconsidered. The President should appoint Commissioners on the recommendation of the National Assembly. Further, the number of Commissioners should be reduced in order to create a less cumbersome structure. As there is now a full time Chairperson, it is not necessary to have a Deputy Chairperson as this can contribute to releasing the fiscal pressure of the State.

6.4.5 Repositioning the Relationship between Parliament and the Financial and Fiscal Commission: Implications and Critical Matters for the Sixth Parliament

The FFC's advice and recommendations in terms of the legislative prescripts must be considered. The power of the FFC lies in the procedural requirement

that its recommendations must be considered, as such a process is a compulsory part of the applicable legislative prescripts.

The IGFR system plays an important role in facilitating the efficient delivery of services to all citizens. The equitable and efficient Division of Revenue is aimed at ensuring that each sphere of government can deliver on its constitutional mandate. Stakeholder relationships are vital within the Intergovernmental Fiscal Relations system. There is continuous engagement with stakeholders including Parliament through the legislative prescripts

6.5 The Independent Communications Authority of South Africa

6.5.1 Mandate and Functions of the Independent Communications Authority of South Africa

Section 192 of the Constitution provides for the establishment of an independent authority to regulate broadcasting in the public interest, and to ensure fairness and a diversity of views broadly representing the South African society. Consequently, an enabling statute, the Independent Communications Authority of South Africa Act, was enacted in 2000. In terms of the Electronic Communications Act, 2005, the Independent Communications Authority of South Africa's (ICASA) mandate also extends to the postal services and the electronic communications sectors. The main functions of the Council are to:

- regulate the telecommunications, broadcasting and postal industries in the public interest and ensure affordable services for all South Africans;
- protect consumers from unfair business practices and poor quality services, hear and decide on disputes and complaints brought against licensees and controls;
- license broadcasters, signal distributors, provide telecommunication services and postal services;
- grant, renew, amend, transfer and revoke licences, including to make regulations and impose licence conditions;
- plan, assign, control, enforce and manage the frequency spectrum, including to ensure international and regional co-operation and the effective distribution of numbers;

- monitor the electronic communications sector to ensure compliance with the law;
- make suggestions on policy matters and changes to the law to promote development in the postal and communications sectors;
- conduct research on all matters affecting the postal and communications sectors, and inspect equipment used for communications; and
- carry out inquiries on any matter within its authority.

The Postal Services Act of 1998 requires ICASA to license and monitor the South African Post Office on customer care standards and universal service obligations, including the roll-out of street address delivery and providing retail postal services in underserved areas.

6.5.2 Reporting Obligations of the Independent Communications Authority of South Africa

The legislation creates a requirement on ICASA to submit its annual report to Parliament, as per section 16 (3) of the Act. There is no provision in the Act that establishes an obligation on the Authority to submit any other reports, except its annual report.

6.5.3 Statutory appointments in relation to the Independent Communications Authority of South Africa

The ICASA Act (Act No. 13 of 2000) provides that the Council consists of a chairperson and eight other councillors appointed by the Minister upon approval by the National Assembly. The Chairperson holds office for a period of five years, and may at the end of his or her term of office be reappointed (section 7(1)). The other councillors each hold office for a period of four years, and may at the end of his or her term of office be reappointed for one additional term (section 7(5)).

6.5.4 The 25-Year Review of the Independent Communications Authority of South Africa: 1994 – 2019

Overview of the Postal Sector

The Postal Regulator was established in 2000, housed in the then Department of Communications as a custodian of postal services regulation. The Postal

Regulator was subsequently merged with ICASA in 2008. ICASA is mandated in terms of the Postal Services Act to regulate both the reserved and unreserved postal services. ICASA is empowered to:

- Monitor compliance of licensees with terms and conditions of their licences;
- Promote the interest of postal services users in respect of cost and quality;
- Promote and encourage expansion of the postal infrastructure; and
- Promote the universal access to postal services to facilitate equal access for all citizens regardless of their physical location and cater for the needs of persons with disabilities.

The South African Post Office (SAPO) is the licensed operator for reserved postal services and was first issued with an operating licence in 2001 by the Postal Regulator. Under the converged environment, ICASA issued SAPO with a realigned licence¹⁰ with terms and conditions as per the Postal Services Act.

The licence terms and conditions included the roll-out of physical infrastructure (retail point offices), postal delivery addresses, customer care standards and delivery service standards, and Code of the postal industry that the Authority continuously monitors. ICASA sets targets in terms of delivery standards and infrastructure roll-out with SAPO annually in order to ensure universal access. SAPO continues to meet the set targets in terms of delivery standard of J+5 at 85% as per international requirement annually. In 2018, ICASA set and agreed with SAPO for a delivery service standard of 92% maintaining 6 days a week delivery. This service delivery standard has been reported to have improved to 87.1% for the 2017/18 financial year from 73.6% in the prior year.¹¹ ICASA ensures that SAPO continues to deliver reliable and quality service to customers through this standard.

Due to the target set and agreed by ICASA and SAPO on retail point of presence, SAPO has an extensive geographical reach of 2 209 points of presence across

10 Government Gazette No. 31599, Vol. 521 of 13 November 2008

11 SAPO Annual report 2018. <https://www.postoffice.co.za/About/annualreport/>

the country. Of the total number, 1 512 are conventional Post Office branches and 697 are Post Office Agencies. In terms of delivery point roll-out (addresses), SAPO has rolled out an estimated 1 million additional addresses annually. Moreover, SAPO has reported a shift towards an increased street delivery point roll-out.

On an annual basis ICASA analyses SAPO's Regulatory Financial Statements in terms of the Accounting Separation Regulations¹². The regulations were approved in terms of section 8 and section 30 of the Postal Services Act. The aim of the analysis is to determine the performance of each of SAPO's individual segments of the business, as well as to prescribe a structured accounting and regulatory reporting framework for SAPO's reserved postal services to achieve uniformity and consistent reporting of elements required to determine fees and charges for reserved postal services before the said fees and charges are implemented.

SAPO is a state-owned enterprise that, like many others, has a developmental mandate and is expected to contribute to the vision of the NDP. At the same time, it is still expected to remain financially viable. The postal industry has, for several years, experienced major transformation to adjust to structural changes in its core mail business, which has seen a decline in revenue and volumes. SAPO remains a monopoly entity in the reserved mail business, which constitutes the biggest component of its business. The global trend has seen a steady decline in mail volumes as other forms of communication pervade the market. To reduce its dependency on mail and exploit new revenue streams, SAPO needs to focus on further diversifying its products and services.

Unreserved postal services started being regulated in 2005 by the then Postal Regulator. However, in 2009 ICASA reviewed the regulations for unreserved postal services and the 2005 regulations were repealed.¹³ Under these regulations, ICASA continues to prescribe a registration process for unreserved postal services operators, which includes the renewal and change of details, payment of a licensing fee and licence duration.

ICASA has embarked on a process to review the regulation of the unreserved postal services. On 28 September 2018, a Discussion Document was published in

12 Government Gazette No.34130 published on 16 March 2011.

13 Government Gazette No. 32859, Vol. 535 of 8 January 2010

the Government Gazette for public comments. It is anticipated that the findings of the review process will be released before the end of March 2019.

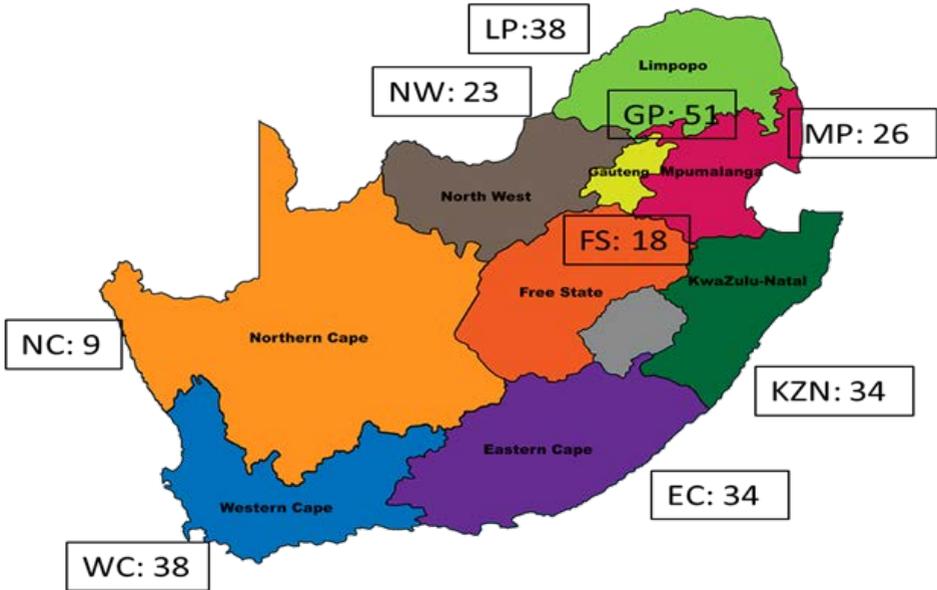
Overview of the broadcasting sector

ICASA's overall mandate, including the regulation of broadcasting services, is derived primarily from section 192 of the Constitution. Section 192 of the Constitution provides for the establishment of an independent authority to regulate broadcasting in the public interest, to ensure fairness and a diversity of views broadly representing South African society. ICASA's operational mandate in this regard is derived from chapter 9 of the ECA and the Broadcasting Act.

The Broadcasting Act calls for a new Broadcasting Policy that will, among other things, contribute to democracy, the development of society, gender equality, nation-building, the provision of education and the strengthening of the spiritual and moral fibre of society. Whilst the number of television licensees is relatively small, ICASA has licensed a significant number of sound broadcasting licensees within the commercial and community categories. There are 331 licensed Community and Commercial Broadcasting Service (BS) Licensees, broken down as follows:

- 271 Community Sound Broadcasting Licensees;
- 5 Community Television Licensees;
- 9 Subscription Television Licensees;
- 4 Free to Air Television Licensees (e.tv, SABC1, SABC2 and SABC3) (Individual);
- 27 Commercial Sound Broadcasting Licensees; and
- 15 Public Sound Broadcasting Licensees

The map below illustrates the distribution of Community Sound Broadcasting Service licensees in the Republic:



A moratorium was imposed on the awarding of community broadcasting licences in late 2015, pending a review of the regulatory framework governing these licensees.

Television licences are issued either for public (e.g. South African Broadcasting Corporation), commercial (free-to-air or subscription), or community television. The key players in the commercial television-broadcasting sector are MultiChoice in the subscription segment and eTV in the free-to-air segment. Channel providers do not require licensing unless they also broadcast their own channels. Channels must, however, be approved by ICASA.

Sentech SA SOC Ltd is the primary signal distributor for the broadcasting sector. Broadcasters may distribute their own signals provided they also hold an individual electronic communications network service licence (IECNS licence). Some of the key issues, which the Authority is currently working on, are –

South African local content

ICASA has set quotas on the minimum required South African content for broadcasting, being 65% for community and public broadcasting, 45% for commercial broadcasting and 15% for subscription broadcasting. The quotas further promote languages that were previously marginalised and the minimum amount of South African music to be broadcast. Local content provisions arise out of a need to protect national cultural heritage, attitudes, norms, ways of behaviour and values from undue influence that cultural products from other countries may have on a nation's public life. ICASA monitors compliance with the Local Content Regulations.

Sports broadcasting services

ICASA is reviewing the Sports Broadcasting Services Regulations, 2010¹⁴. The objective of the regulations is to identify national sporting events that should be broadcast, to afford all citizens access to sporting events of national importance on radio and television. National sporting events should be available to all television viewers, particularly those who cannot afford the cost of subscription television. It is imperative to protect sports rights in the public interest and to ensure that the general public has access to such events.

Must Carry Regulations

Must Carry Regulations¹⁵ are driven by a policy goal to ensure that public services are available to all citizens, targeting those citizens that use subscription services as their preferred means of access to television. Members of the public who do not have access to the public broadcasting programmes can get access to such through subscription broadcasting. Understandably, public broadcasting services enjoy a privilege to be carried because of their mandate to promote local content, including language, music, children broadcasting and other socially driven content. ICASA is currently conducting a Regulatory Impact Assessment on the Must Carry Regulations and intends to commence a process to review the regulations in the 2019/20 financial year.

Community Sound Broadcasting Services

Community sound broadcasting services were initially licensed in 1994.

14 Government gazette 33079, Government Notice R275 of 07 April 2010

15 Government gazette no 31500 Government Notice 1271 of 10 October 2008.

The Triple Inquiry¹⁶ and the White Paper¹⁷ set out policy goals around community broadcasting, in the main the developmental role that community broadcasting services should play in relation to the two other tiers of broadcasting, namely commercial and public. The Triple Inquiry contemplated community broadcasting services as playing a complementary role to the other tiers towards the attainment of public interest of providing maximum diversity and choice of quality entertaining, educational and informative services.

Over the years the community sound broadcasting industry has been plagued with challenges. For example, there are corporate governance issues regarding the roles of community radio station boards and their management teams. Some stations are also not compliant with the current regulations in terms of their broadcasting content. For these reasons and others, ICASA is reviewing the Community Sound Broadcasting Regulations and will soon publish updated regulations.

Overview of the telecommunication sector

The South African telecommunications policy¹⁸ and the Telecommunications Act, 1996 (103 of 1996) paved the way into a move to address Telkom's monopoly and the opening up of the telecommunications market to competition. The ECA sought to create a regulatory framework and licensing regime better suited to the convergence of broadcasting and telecommunication services. ICASA currently has in its records a total of 1726 Class¹⁹ (ECS and ECNS) licensees and 490 Individual²⁰ (ECS and ECNS) licensees registered.

South Africa's telecommunications sector boasts one of the continent's most advanced networks in terms of technology deployed and services provided. There have been several technology and other innovative developments in the

16 Independent Broadcasting Authority's Triple Inquiry Report, 1995, p.18

17 Department of Communications' White Paper On Broadcasting Policy, 1998, pp.37 - 41

18 The White Paper on Telecommunications Policy, GN 291 of 1996 dated 13 March 1996.

19 A Class licence means a licence granted by ICASA to a person in terms of section 5(4) of the ECA and is limited to a district or local municipality in scope.

20 An Individual licence means a licence granted by ICASA to a person in terms of section 5(2) of the ECA and its scope is provincial or national.

sector over the last few years. These developments pose challenges to the way the sector is regulated. Conversely, the way the sector is regulated will also directly impact the ability of the sector to innovate and grow. These recent developments include the following:

- the possible licensing of high-demand IMT spectrum, which may likely happen in the 2019-2020 financial year;
- progress with the transition to digital broadcasting and associated consequences for broadcasters, mobile operators and the public;
- increased focus on market consolidations as industry players seek to build economies of scale and scope, including arrangements for the sharing of facilities and networks; and
- the launch of 5G services by some of the leading industry players.

The past few years have seen increased competition in the deployment of telecommunication/ICT infrastructure, especially in the fibre market. The players and significant contributors to this competition include internet service providers and other companies offering bundles of various services with or without infrastructure. Similarly, the regulator has also witnessed unprecedented filing of disputes by licensees against each other pertaining to leasing of facilities and or sharing of infrastructure (including the sharing of fibre ducts, access to poles, roaming arrangements, etc.).

From a policy perspective, notably, the then Minister of Telecommunications and Postal Services published the National Integrated ICT White Paper (“the ICT White Paper”) in terms of Government Gazette No. 40325 Notice 1212 of 16 October 2016. The ICT White Paper was promulgated in terms of section 85 of the Constitution, read with section 3 of the ECA.

The ICT White Paper contains far-reaching proposals that will change the current landscape as well as the future trajectory of the ICT sector. In this regard, the ICT White Paper is a combination of both specific policy directions directed at the Authority for execution in respect of identified matters requiring regulatory intervention, as well as expressions of national government policy in respect of evolution of the sector going forward.

In terms of section 3(4) of the ECA, the Authority is duty bound to consider policies made and policy directions issued by the Minister in exercising its powers and performing its duties. Pursuant to the ICT White Paper, the Portfolio Committee on Telecommunications and Postal Services published the Electronic Communications Amendment Bill [B31-2018], for comments. The Authority submitted its comments on the Bill. Briefly, the following issues, amongst others, as contained in the Bill have an impact on ICASA's execution of its mandate:

- proposals on institutional arrangements impact the continued existence and independence of the regulator;
- proposals on respective roles of the regulator and Minister of Telecommunications and Postal Services have implications on the Authority's future role with respect to spectrum management;
- proposals legislating the licence terms and conditions for Wireless Open Access Network (WOAN) and other licensees, have implications on the Authority's role on matters of regulatory discretion and could undermine fair competition and the stimulation of investment in the ICT sector; and
- proposal requiring ICASA to prescribe regulations which provide for procedures and processes to resolve disputes between ECN licensees and landowners would be impossible to enforce as the Authority has no jurisdiction over non-licensees.

Some of the key issues, which the Authority is currently working on, are –

SADC Home and Away Roaming Project

ICASA currently participates in a SADC Home and Away Roaming Project that is directed by the need to reduce roaming costs in the SADC region. The project commenced in July 2007 by the direction of the ministers to look into the roaming tariffs within the region. The SADC ICT Ministers decided to intervene at SADC level after recognising the jurisdictional challenges faced by National Regulatory Authorities ("NRAs") in regulating international roaming services. As a result, a three-phase project was introduced: Phase I- Tariff transparency; Phase II- Roam Like At Home ("RLAH"); and Phase III- Development of a harmonised roaming cost model. The SADC roaming project has so far managed to deliver the following deliverables:

- Two regulatory impact assessment reports;
- Roaming tariff transparency guidelines, which came into effect on 1 June 2013; and
- The implementation of wholesale cost and retail roaming tariff glide path by some member states.

Phase III of the project (harmonised roaming cost model) commenced in October 2017 and the collection of relevant cost data from licensees is under way.

Call termination

In South Africa, the cost of call termination is currently borne entirely by the network and passed on to a customer that originates the call (i.e., the calling party) and the called party is not billed for incoming calls. This regime is called the Calling Party Pays (CPP). CPP, if termination rates are artificially high, leads to a situation whereby the terminating operator (i.e. operator used by the receiving party) can charge excessive prices to other operators (i.e. operator used by the calling party) and their customers for connecting calls to its network, with its own customers (i.e. receiving party) generally unaffected by the level of those charges. The regulation of termination rates therefore addresses the risk of excessive pricing by ensuring that the off-net prices paid by calling parties reflect the actual costs of terminating the call. The regulation of call termination since 2010 has led to an increase in voice traffic between networks, continued access and investment in the telecoms sector and, most importantly, a more dynamic retail-pricing environment.

ICASA undertook a review of the Call Termination Regulations in terms of Chapter 10 of the ECA. A cost modelling process was initiated on 1 October 2017 and resulted in the amendment to the Call Termination Regulations published²¹ on 28 September 2018 and effective from 1 October 2018. The new glide paths were set as follows:

21 Government Gazette No.41943 published on 28 September 2018.

Fixed call termination rates:

| Period | Regulated Rate | Allowed Asymmetry |
|------------------------------------|----------------|-------------------|
| 1 October 2018 – 30 September 2019 | R0.09 | R0.10 |
| 1 October 2019 – 30 September 2020 | R0.07 | R0.08 |
| 1 October 2020 – 30 September 2021 | R0.06 | R0.06 |

Mobile call termination rates:

| | Regulated Rate | Allowed Asymmetry |
|------------------------------------|----------------|-------------------|
| 1 October 2018 – 30 September 2019 | R0.12 | R0.18 |
| 1 October 2019 – 30 September 2020 | R0.10 | R0.16 |
| 1 October 2020 – 30 September 2021 | R0.09 | R0.13 |

Priority markets study

In 2018 ICASA published a list of markets to be prioritised for market reviews and potential regulation, subject to section 67(4) of the ECA.²² The objective of the project was to create regulatory predictability and certainty in the market as stakeholders will know upfront which markets may be subject to regulations in the future. The exercise also enables ICASA to allocate its resources efficiently and effectively, as market reviews will focus on markets with potentially material impacts on competition. ICASA identified the following markets to be prioritised for regulation (in order of priority):

- Mobile services: High priority (material due to impact on consumers and in line with Government policy to reduce the cost of data); and includes the retail market for mobile services and the wholesale supply of mobile network services, including relevant facilities;
- Wholesale fixed access: Medium to low priority due to increase in competition and alternatives to the incumbents' fixed access networks; and includes wholesale supply of asymmetric broadband origination, fixed access services and relevant facilities; and
- Upstream infrastructure markets: Low priority due to effective competition as majority of the operators are self-providing an alternative to the incumbents; and incorporates national transmission services, metropolitan connectivity, and relevant facilities.

²² Notice Gazetted on 17 August 2018 and the Findings Document published on ICASA's website on the same day.

In August 2018 ICASA commenced with the Mobile Data Market Review process in terms of section 67(4) of the ECA. As mentioned above, this is a high priority to ICASA to deal with the cost of data in the country. The market review will be completed in the 2019/20 financial year.

End-user and Subscriber Regulations

ICASA published an amendment to the End-user and Subscriber Service Charter Regulations,²³ which introduced the following matters of particular relevance to consumers:

- Usage notifications – all licensees are required to send usage depletion notifications to consumers when their usage is at 50%, 80% and 100% depletion levels. This will enable consumers to monitor their usage and control spend on communication services;
- Roll-over of data – all licensees are required to provide an option to consumers to roll over unused data. This is to ensure that consumers do not lose unused data as is the current practice;
- Transfer of data – all licensees are required to provide an option to consumers to transfer data to other users on the same network; and
- Out-of-bundle billing – all licensees are no longer allowed to charge consumers out-of-bundle rates for data when their data has run out without the consumers' specific prior consent. This will ensure that consumers are not defaulted to out-of-bundle data charges that are significantly higher than in-bundle charges.

The implementation of the regulations in May 2018 was delayed due to litigation challenges. However, ICASA reached a settlement with operators in terms of which it was agreed that the implementation date will be 28 February 2019.

23 Government Gazette No.41613 published on 7 May 2018.

6.5.5 **Repositioning the Relationship between Parliament and the Independent Communications Authority of South Africa: Implications and Critical Matters for the Sixth Parliament**

In terms of section 15(1) of the ICASA Act, the Authority is financed from funds received from National Treasury. Section 15(1) (a) of the ICASA Act provides that the Authority may receive money in any other manner as agreed by the Minister of Communications and Minister of Finance and approved by Cabinet. Section 15(3) further provides that all revenue collected by the Authority – such as administrative, annual licence and spectrum fees and penalties – must be paid to National Treasury within 30 days of receipt.

It is noted that the Ad hoc Committee on the review of Chapter 9 and associated institutions prepared a report, the 2007 Kadar Asmal Report on the review of Chapter 9 and associated institutions. The Kadar Asmal Report noted that the Institutions Supporting Democracy (ISDs) follow different and inconsistent funding processes. The budgets of all the ISDs are located within the budget appropriations of various national government departments, which act as conduits for the transfer of the budget funds.

The Ad hoc Committee concluded that the location of the ISDs' budgets within the budget allocations of specific government departments negatively impacted on the perceived independence of the ISDs and created a false impression that the institutions are accountable to the government departments for the use of their finances. Therefore, the Committee recommended that the budget process of the ISDs should be revised and that the budgets should form part of Parliament's Budget Vote, as this would afford the ISDs a greater degree of standardisation and protect the independence of the institutions.

It is the Authority's view that its funding model is not optimal for an institution like it, and as such, recommends that it should be self-funded from the revenue (fees) it collects from the sector it regulates. The annual budget for ICASA will, however, be approved by Parliament. All revenue collected by ICASA in excess of the approved budget will be transferred to the fiscus. This will enable ICASA to be more efficient, to achieve its objectives, and to fulfil its mandate.

The Authority trusts that the Office on Institutions Supporting Democracy will consider our inputs on the Induction Manual. The Authority remains available to provide any further information or representation, if necessary.

6.6 The Independent Electoral Commission

6.6.1 Mandate and Functions of the Independent Electoral Commission

Section 181(1) (f) of the Constitution establishes an independent Electoral Commission (IEC) to manage elections within South Africa to ensure that they are free and fair. An enabling statute, the Electoral Commission Act, was passed in 1996. The main functions of the IEC are to:

- manage elections for national, provincial and local legislative bodies and any referendum, including to ensure that any election is free and fair, and declare the results within seven days;
- promote conditions conducive to free and fair elections, and knowledge of democratic electoral processes;
- compile and maintain voters' rolls and a register of parties, and establish and maintain liaison and co-operation with parties;
- undertake and promote research into electoral matters, including to develop electoral expertise and technology at all levels of government;
- continuously review electoral laws and make recommendations in connection therewith;
- promote voter education including co-operation with and between persons, institutions, governments and administrations for the achievement of its objectives; and
- adjudicate administrative disputes which may arise from the organisation, administration or conducting of elections.

The Electoral Court may review decisions on an electoral matter taken by the Commission. In addition, the Electoral Court may, amongst other things, hear and determine any matter that relates to the interpretation of any law referred to it by the Commission.

6.6.2 Reporting Obligations of the Independent Electoral Commission

Section 14 (1) of the Electoral Commission Act places a requirement on the IEC to submit its annual report to the NA. Additionally, section 14 (2) of the

Act triggers an obligation on the IEC to account directly to the President, if the President makes such request in writing. Furthermore, subsection 4 leaves it at the discretion of the Commission to publish its report on the pending elections.

There is no provision in the Act that obligates the IEC to submit reports other than the annual reports to Parliament. Subsection 3 and 4 merely state that the 'election reports' should be published, and does not stipulate that it must be submitted to Parliament.

6.6.3 Statutory appointments in relation to the Independent Electoral Commission

In terms of section 6 (1) of the Electoral Commission Act, the Commission consists of five members, one of whom must be a judge. A panel consisting of the President of the Constitutional Court, as chairperson; a representative of the South African Human Rights Commission; a representative of the Commission on Gender Equality; and the Public Protector must submit a list of no fewer than eight recommended candidates to the committee of the National Assembly (sections 6(3) and 6(4)). The NA must nominate members from this list for appointment by the President of the RSA.

Section 14 (1) of the Electoral Commission Act can be couched as a requirement on the IEC to submit its annual report to the NA. Section 14 (2) of the Act triggers an obligation on the IEC to account directly to the President, if the President makes such request in writing. Furthermore, subsection 4 leaves it at the discretion of the Commission to publish its report on the pending elections. There is no provision in the Act that obligates the IEC to submit reports other than the annual reports to Parliament. Subsections 3 and 4 merely state that the 'election reports' should be published, and does not stipulate that it must be submitted to Parliament. Furthermore, the President must designate a chairperson and vice chairperson from among the members of the Commission (section 8(1)). The term of office of a member of the Commission is seven years (section 7(1)). A Commissioner may be reappointed, but only for one additional term of office (section 7(3) (c)).

6.6.4 The 25-Year Review of the Independent Electoral Commission: 1994 – 2019

Having delivered the first democratic elections in 1994, the Independent Electoral Commission and its successor, the Electoral Commission of South Africa, is extremely proud of the role it continues to play in fostering electoral democracy in South Africa in support of the Constitution.

Universal adult suffrage, a national common voters' roll, regular elections and a multi-party system of democratic government to ensure accountability, responsiveness and openness are among the core values of the Constitution and it is the mandate of the Electoral Commission to protect and advance these values and the political rights granted to all citizens.

Formed in 1997, following the adoption of the Constitution a year earlier, the Electoral Commission has over the past 22 years engaged in wide-ranging citizen education and participation initiatives to raise awareness of civic and democracy rights, as well as the responsibilities and obligations of citizens.

These initiatives, along with those of other stakeholders including government, civil society, the media and others have seen the entrenchment and continued flourishing of electoral democracy in South Africa.

This is evidenced by the successful delivery of five national and provincial elections (1994, 1999, 2004, 2009, 2014) and four municipal elections (2000, 2006, 2011, 2016) all of which were declared free and fair and the results accepted by all participants, voters and the international community. In addition, the Electoral Commission has also conducted over 1 000 by-elections over the past 18 years with an average of more than 100 by-elections a year.

The delivery of these free, fair, peaceful and credible elections continues to lay the foundation for the ongoing quest to fulfil the promises of our Constitution, as articulated in its preamble.

Over the past 25 year period, multiparty democracy has continued to mature and grow with an ever-increasing number of registered voters, registered and contesting political parties and candidates, as well as the expansion of access to electoral democracy as evidenced by the expansion of the voting station

network and other electronic avenues of access for voters and candidates. The following section highlights specific gains in the achievement of key constitutional values and rights over this period.

ACHIEVEMENTS OF THE ELECTORAL COMMISSION 1994 - 2019

Fostering Constitutional Values

A national common voters' roll

The first national common voters' roll was established in 1998/99 ahead of the 1999 national and provincial elections. The voters' roll was compiled over two weekends during which eligible voters (citizens aged 16 years and older in possession of a barcoded ID document) were urged to visit registration stations. A total of 18.1 million voters registered in this initial registration drive at 14 650 registration stations across the country.

Since then, the national common voters' roll, has been in continuous development with monthly updates from the National Population Register to remove deceased voters and ongoing voter registration at local IEC offices and through outreach, fieldwork and other registration initiatives.

Registration weekends have been particularly successful ahead of each general election and have seen the voters' roll grow from 18.1 million in 1999 to 26.7 million as at March 2019.

| National and Provincial Elections | Registered voters | Municipal Elections | Registered voters |
|-----------------------------------|-------------------|---------------------|-------------------|
| 1999 | 18.17 million | 2000 | 18.47 million |
| 2004 | 20.67 million | 2006 | 21.05 million |
| 2009 | 23.18 million | 2012 | 23.65 million |
| 2014 | 25.38 million | 2016 | 26.33 million |

Table1: Growth in number of registered voters 1999 - 2016

In 2013, ahead of the 2014 National and Provincial Elections, registration on the voters' roll was extended to citizens living abroad for the first time. An international segment of the voters roll was accordingly created. This saw 6 789 voters added to the international segment of the voters' roll.

Over the past 22 years, the voters' roll has not dropped below 75% of the total eligible voting population – which is high by international standards for countries with voluntary voter registration systems.

Regular elections

As intimated above national, provincial and municipal elections have been held regularly and within the constitutional framework and prescribed timelines since the first historic democratic elections of 1994. All these elections have been declared free and fair and the outcome accepted by all stakeholders.

- National and provincial elections have been held in 1999, 2004, 2009 and 2014
- Municipal (local government) elections have been held in 2000, 2006, 2011 and 2016
- More than 1 000 by-elections have been held since the first municipal elections in 2000, with an average of more than 100 by-elections per year. These elections have all taken place within the legal timeframes (except in a few cases where the Electoral Court has postponed by-elections at the request of the Electoral Commission or participants to allow for more adequate preparation).

The President of the Republic and the Provincial Premiers, after consultation with the Commission, have scheduled the next national and provincial elections for 8 May 2019.

A multiparty system of democratic government

The Constitution advocates a multiparty system of government, and over the past 25 years the number of registered political parties has grown significantly. Currently there are more than 575 registered political parties in South Africa.

| National Elections | Number of parties contesting national elections |
|--------------------|---|
| 1994 | 19 |
| 1999 | 16 |
| 2004 | 21 |
| 2009 | 26 |
| 2014 | 29 |

Table 2: Growth in number of political parties contesting national elections

A total of 48 political parties contesting elections of the National Assembly. The table below presents the growth in the number of contesting candidates in the municipal elections. Evidently, with each general election of municipal councils there is a growth in the number of candidates. This means more citizens are availing themselves to take part in the political life of the country.

| Election | Party PR | Party Ward | Independent | Total | % change for total |
|----------|----------|------------|-------------|--------|--------------------|
| 2000 | 16 156 | 13 236 | 689 | 30 081 | n/a |
| 2006 | 21 498 | 23 028 | 663 | 45 189 | +50% |
| 2011 | 23 303 | 29 700 | 754 | 53 757 | +19% |
| 2016 | 26 717 | 36 082 | 855 | 63 654 | +18% |

Table 3: Growth in number of candidates participating in municipal elections 2000 - 2016

Equalising opportunities, promoting inclusion and accessibility

Gender representivity in legislatures

The past 25 years has seen significant improvements in the representation of women as candidates and as elected representatives in all spheres of government. These gains have been achieved voluntarily through political party efforts to address equity.

| National and Provincial Elections | Percentage of women candidates |
|-----------------------------------|--------------------------------|
| 1999 | 26.76% |
| 2004 | 30.65% |
| 2009 | 38.37% |
| 2014 | 40.20% |

Table 4: Growth in percentage of women candidates in national and provincial elections

The table below presents the percentage of women who have been elected as Members of Parliament. South Africa ranks amongst the highest in respect of elected women in representative bodies.

| National and Provincial Elections | Percentage of women elected as MPs |
|-----------------------------------|------------------------------------|
| 1999 | 29.8% |
| 2004 | 32.8% |
| 2009 | 43% |
| 2014 | 40.75% |

Table 5: Growth in percentage of women elected to National Assembly (Source: <https://www.eisa.org.za/wep/souwomenrepresent.htm>)

The table below presents the number of women elected as members of municipal councils. The latest municipal elections in 2016 returns almost an identical percentage of the representation of women to the National Assembly.

| Year | % Women Ward | % Women PR | % Women Overall |
|------|--------------|------------|-----------------|
| 1995 | 11% | 28% | 19% |
| 2000 | 17% | 38% | 29% |
| 2006 | 37% | 42% | 40% |
| 2011 | 33% | 43% | 38% |
| 2016 | 33% | 48% | 41% |

Table 6: Percentage of women elected as municipal councilors

Enhancing access to voting opportunities for all South Africans

Enhancing access to voter registration, and voting itself, is vital for the realization of rights for all South Africans. In this regard, the continued enhancement of access to registration and voting for all citizens – including citizens with disabilities – is a key objective and goal of the Electoral Commission.

- *Expanding voting station network*

Increasing the number and expanding the distribution of voting stations reduces the distance voters have to travel to reach a voting station and the time taken to register or vote. Over the past 25 years the Electoral Commission has continuously increased the number of voting stations available to voters by more than 54 percent.

| Elections | Number of Voting Districts/ Stations |
|-----------|---|
| 1999 | 14 650 |
| 2000 | 14 988 |
| 2004 | 16 966 |
| 2006 | 18 873 |
| 2009 | 19 726 |
| 2011 | 20 859 |
| 2014 | 22 263 |
| 2016 | 22 612 |
| 2019 | 22 924 |

Table 7: Increase in number of voting districts/stations 1999 - 2019

- *Access to disabled voters*

As far as possible, the Electoral Commission makes provision to assist voters with disabilities to exercise their voting rights. This includes providing reduced height voting booths at voting stations for voters in wheelchairs and providing special assistance to disabled, pregnant and elderly voters. In conjunction with the South African National Council for the Blind, the Electoral Commission introduced the Universal Ballot Template (UBT) to all voting stations which allows visually impaired voters to vote unassisted.

- *Special votes*

Voters with disabilities, special needs and voters who may be immobile are able to apply to cast special ballots by home visit ahead of the elections. In the most recent 2016 Municipal Elections, a record number of more than 314 000 voters were approved to cast their ballots by home visit. Applications for special votes were also enhanced by making applications electronic (via internet and SMS) in 2016, thereby further enhancing access to this facility.

- *National and provincial results centres*

For each general election since 1999, the Electoral Commission has established a national result centre and nine provincial results centres aimed at enhancing transparency and access to the results process for all key stakeholders, including political parties, observers, the media and others. These centres have provided continuous and live updates on the results to all stakeholders, helping to increase trust in the process and build its credibility. This results centre model has been emulated by a number of countries around the world.

- *Social and digital media*

Developments in technology have allowed the Electoral Commission to continuously enhance access to information by voters, candidates, the media and other stakeholders by using digital platforms. These include publishing live results on the Electoral Commission's website and the introduction in 2014 of a mobile App allowing anyone to receive live updates of results on their mobile phones. As with special votes, the internet and other mobile platforms have also allowed for easier, more efficient and cost-effective interaction with all voters and stakeholders. In 2016 the Electoral Commission introduced the world's first online candidate nomination, which allows political parties to capture candidates online with instant verification in respect of their qualifications.

- *Language accessibility*

The Electoral Commission publishes all educational and advertising material for elections in all official languages, as well as Nama, along with audio and braille versions for voters with visual disabilities. The Contact Centre established for each election also offers services in all official languages.

Promoting active citizenry

Voter participation

Voting in elections is one of the primary forms of citizen participation to help shape the development process and to hold government to account. While South Africa has seen a decline in overall voter participation in national and provincial elections between 1994 and 2014, the total number of South Africans participating in national and provincial elections continues to grow and turnout in South Africa is among the highest in the world for countries with voluntary electoral participation regimes.

| Election | Registered voters | Voter turnout |
|----------|-------------------|---------------|
| 1999 | 18.17 million | 89.3% |
| 2004 | 20.67 million | 76.73% |
| 2009 | 23.18 million | 77.3% |
| 2014 | 25.38 million | 73.48% |

Table 8: Voter turnout for national and provincial elections 1999 - 2014

Even more encouragingly, South Africa has seen a steady growth in the number of voters and in overall voter turnout in municipal elections over the years

| Election | Registered voters | Votes cast | Voter turnout |
|----------|-------------------|---------------|---------------|
| 2000 | 18.47 million | 8.86 million | 48.07% |
| 2006 | 21.05 million | 10.16 million | 48.40% |
| 2011 | 23.65 million | 13.66 million | 57.6% |
| 2016 | 26.3 million | 15.3 million | 57.97% |

Table 9: Growth in number and turnout of voters in municipal elections 2000 - 2016

6.6.5 Repositioning: Critical Matters for the Sixth Parliament

Repositioning the relationship

The Electoral Commission welcomes the various initiatives undertaken by the Fifth Parliament in fostering relationships with all Institutions Supporting Democracy. Such initiatives include the establishment of the Office on Institutions Supporting Democracy, the hosting of numerous engagements between the Presiding Officers and Heads of institutions.

The Electoral Commission urges the Sixth Parliament to continue with these initiatives to enhance relations between Parliament and the various institutions

as well as with the Forum for Institutions Supporting Democracy (FISD), including strengthening the OISD and providing additional opportunities for interaction and engagement.

The importance of adequately funding the mandates of institutions supporting democracy

The Electoral Commission is highly cognisant of the current financial constraints of the national fiscus and the many competing needs of our country and its people. With this in mind, Parliament has a critical role to play in seeking to balance the available resources with the many priorities of the public sector and in ensuring the continued growth and development of constitutional democracy.

Two aspects relating to budgets are of particular concern to the Electoral Commission:

Delinking of the budget process for ISDs from departments

The Fifth Parliament, working on the recommendations of the Kader Asmal report, initiated a project under the FISD to explore the implications of delinking the budgets of ISDs from government departments. As a participant in this process, the Electoral Commission raised a number of issues which it believes require specific clarification and careful consideration. These include understanding how the allocation for ISDs will be championed within the budget setting process of the executive, clarifying the regulatory framework, ensuring the necessary capacity of Parliament to fulfil this new role, change management processes and its associated costs including new investment in Enterprise Resource Planning (ERP) systems and the applicability or otherwise of the Public Finance Management Act which has hitherto been the prescript of application. Pertinently, the Commission wishes for Parliament to consider whether the country could afford to replicate the technical budget analysis capacity within the legislature as well as in National Treasury.

It is hoped the Sixth Parliament will address these issues as a matter of urgency to ensure continuity and a smooth transition, should a decision be made to proceed with delinking.

Expanded mandate

Following the passing of the Political Parties Funding Bill in 2018 by the Fifth Parliament, the President assented to the Act on 22 January 2019. The Political Party Funding Act, which is a novel regulatory framework, seeks to regulate and ensure transparency in the funding of political parties. The key architectural components of the new Act include the following:

- The creation of the Representative Political Parties Fund, which will be resourced through the national fiscus. Disbursement from this fund will be to political parties with representation in the National Assembly and provincial legislatures
- The creation of the Multi-Party Democracy Fund, which will be funded by corporate bodies and individuals. Similarly, this fund will make disbursements to parties with representation in legislative bodies
- The revision of the disbursement formula to represented parties from the present 90 per cent proportionality and 10 per cent equity to two thirds proportionality and one third equity
 - The creation of the position of Chief Executive Officer to administer the funds as well as the party funding regime under the leadership of the Chief Electoral Officer and the Commission
 - The regulation of direct private funding to political parties. Pertinently, the requirement for dual disclosures by political parties and donating persons of any direct donation to a political party of R 100 000.00 per financial year
 - The prohibition of donations of R 15 million a year to political parties;
 - The prohibition of certain donations, such as donations from the proceeds of crime, donations from state bodies and enterprises as well as donations from foreign governments; and
 - The provision of certain administrative fines and criminal offences in instances on non-compliance. Furthermore, the Electoral Court jurisdiction is expanded to include matters arising from this Act within its jurisdictional purview.

This statute will see the Electoral Commission assuming an expanded mandate to oversee implementation, thus further advancing and expanding the horizon of electoral democracy in the Republic. The Electoral Commission believes that this new mandate must be adequately and specifically funded to ensure that its existing electoral mandate is not compromised or undermined.

6.7 The National Youth Development Agency

6.7.1 Mandate and Functions of the National Youth Development Agency

The National Youth Development Agency Act of 2008, establishes the National Youth Development Agency (NYDA). The NYDA absorbed the National Youth Commission and the Umsobomvu Youth Fund, whose functions are now included under the NYDA. It is established by section 2 of the NYDA Act. The Agency derives its mandate from the NYDA Act, the National Youth Policy (2009-2014) and the draft Integrated Youth Development Strategy.

The mandate of the NYDA is to advance youth development through guidance and to support initiatives across sectors of society and spheres of government, to embark on initiatives that seek to advance the economic development of young people, to develop and co-ordinate the implementation of the Integrated Youth Development Plan and Strategy for the country. The key objectives of the NYDA as captured in the NYDA Act are to:

- develop an Integrated Youth Development Plan and Strategy for South Africa;
- develop guidelines for the implementation of an integrated national youth development policy and make recommendations to the President;
- initiate, design, co-ordinate, evaluate and monitor all programmes aimed at integrating the youth into the economy and society in general;
- guide efforts and facilitate economic participation and empowerment, and achievement of education and training;
- partner and assist organs of state, the private sector and non-governmental organisations and community based organisations on initiatives directed at attainment of employment and skills development;

- initiate programmes directed at poverty alleviation, urban and rural development and the combating of crime, substance abuse and social decay amongst youth;
- establish annual national priority programmes in respect of youth development; and
- promote a uniform approach by all organs of state, the private sector and non-governmental organisations.

The main functions of the NYDA as set out by the NYDA are to:

- lobby and advocate for integration and mainstreaming of youth development in all spheres of government, private sector and civil society;
- initiate, implement, facilitate and coordinate youth development programmes;
- monitor and evaluate youth development intervention across the board; and
- mobilise youth for active participation in civil society engagements.

6.7.2 Reporting Obligations of the National Youth Development Agency

Section 6 of the NYDA Act deals with reporting by the Agency. According to section 6 the NYDA Act, the Agency is only required to report once in every three years about the status of youth to the President. This provision must be read simultaneously with subsection 3 of the NYDA Act, which makes it mandatory for the President to table this report in Parliament within a reasonable time.

Furthermore, section 6(2) of the NYDA Act provides that the Agency must annually submit to the President a report on - the progress on the implementation of this Act; the financial status of the Agency; and any other matter relating to youth development.

The Act does not create any reporting obligations to Parliament. However, section 6(1) read with subsection (3) provides that the President is required to table the NYDA reports referred to Parliament within a reasonable time.

The report referred to relates to substantive reports on the progress of the implementation of the Act, the financial status of the Agency and any other matter relating to youth developments, produced by the Agency. The NYDA Act neither makes provision for the submission of its annual performance report to Parliament nor does it require the President to submit it to Parliament as is the case with the substantive reports. The NYDA Act makes its reporting directly to the President for any investigation it has carried out on any matters relating to youth development. This includes substantive or investigative reports.

6.7.3 Statutory appointments in relation to the National Youth Development Agency

In terms of section 9(1) of the NYDA Act, the Board consists of seven members, two of whom are executive directors; and the Chief Executive Officer, who is an ex-officio member of the Board without voting rights. Section 9(2) provides that the President, on the recommendation of Parliament, must appoint members. Members hold office for a period of three (3) years as stipulated in subsection (6). The Act is silent on whether or not members are eligible for reappointment.

Section 9(3) provides that members must be appointed in a manner ensuring participation by youth in the nomination process, transparency and openness, and that a shortlist of candidates for appointment is published. The Act further stipulates that the members must reflect the demographics and geographical spread of the Republic. In terms of section 9(5), the President may designate one of the members as the chairperson and another member as a deputy chairperson. The President must further publish the appointment of a member in the Government Gazette. In accordance with section 9(9), a member appointed to fill a vacancy holds office for the unexpired portion of the term of the member he or she replaces.

6.8 The Pan South African Language Board

6.8.1 Mandate and Functions of the Pan South African Language Board

Section 6(5) of the Constitution provides for a Pan South African Language Board (PanSALB) to be established by national legislation for the purpose of promoting and creating conditions for the development and use of all official languages, the Khoi, Nama, and San languages and sign language. The Board must also promote

and ensure respect for all other languages commonly used by communities in South Africa. An enabling Act, the Pan South African Language Board Act No 59 of 1995, spells out the main functions of PanSALB. These are to:

- make recommendations on any laws, practice and policy dealing with language matters at any level of government, including the adoption of measures aimed at the promotion of multilingualism;
- advise on the co-ordination of language planning and active awareness of multilingualism in South Africa;
- actively promote the development of previously marginalised languages;
- initiate studies and research aimed at promoting and creating conditions for the development and use of all the official languages in South Africa, the Khoi and San and South African Sign Language;
- initiate studies and research aimed at the promotion of the use of South Africa's language resources, monitor the observance of the constitutional provisions regarding the use of language; and
- conduct research and prepare publications on the use of language, including advising government to provide individuals or groups who are adversely affected by severe violations of language rights with financial and other support.

The Board may on its own initiative, or on receipt of a written complaint, investigate alleged violation of any language right, language policy or language practice. They may call upon any person, body or state organ to appear before it to give evidence and produce any relevant records or documents.

6.8.2 Reporting Obligations of the Pan South African Language Board

Section 12(1) (b) provides that without detracting from section 10(b) accounting and auditing of the financial year and subsection (3) of this section, the Board shall submit a report on a "quarterly basis" to Parliament or a provincial legislature, as the case may be. Section 10(b) (4) stipulates that the board shall submit its audited financial statements and the auditor's report to the Minister who shall table it in the NA. Section 12(2) stipulates that the Board's reports

shall be taken into account by Parliament, legislatures and executive bodies at all levels of government, and by all organs of state, other institutions, persons and bodies of persons.

According to section 12(3) of the PanSALB Act “the Board shall annually not later than the first day of June submit to: Parliament a comprehensive report on all its activities during the preceding year, up to 31 March; and a provincial legislature a comprehensive report on all its activities in respect of provincial language matters regarding that province.

Section 12(1) (b) (ii) makes it compulsory for PanSALB to submit a report on a quarterly basis to Parliament or a provincial legislature, as the case may be. Reports referred to above can be understood to be reports that the Board is required in terms of section 12(1)(a) to publish in the Gazette on a quarterly basis or such other periods as the Board deems fit, and in case of provincial language matters, also in the Provincial Gazette. The publication of these reports is mandatory and it should be done either on a quarterly basis or such other shorter period as the Board “deems fit”. The reports mentioned above are substantive reports, which do not form part of annual reports prescribed by section 12(3), which are annual performance reports. Section 10(b)(4) provides that the board shall submit its audited financial statements and the auditor’s report to the Minister who shall table it in the NA.

6.8.3 Statutory appointments in relation to the Pan South African Language Board

In terms of section 5(1)(a) of the PanSALB Act 59 of 1995 (as amended), the Minister (Minister of Arts and Culture) must appoint no fewer than 11 and no more than 15 persons as members of the Board. Section 5(2) provides for the criteria for the members of the Board, which include; the members of the Board must be fit and proper persons for the offices they are meant to hold, be South African citizens, be broadly representative of the diversity of the users of the official languages and must be supportive of the principle of multilingualism. The Board members must have language skills that may include interpreting, translation, terminology and lexicography or have financial and legal expertise with special knowledge of language legislation.

A member of the Board is appointed for a term of five years and is eligible for reappointment for one further term only [section 5(5)]. Section 6 of the Act provides for the appointment of chairpersons and deputy chairpersons; at the first meeting of the Board, the members of the Board are required to, with the Chief Justice presiding, elect one of their number to be chairperson of the Board and another one to be deputy chairperson of the Board. Thereafter an election must be held annually. A chairperson and deputy chairperson shall be eligible for re-election for one further term not exceeding one year. The chief executive officer must conduct the election of a new chairperson or deputy chairperson.

6.8.4 The 25-Year Review of the Pan South African Language Board: 1994 – 2019

The 25 Year Review is presented below and is divided into different eras as per the period of the different Boards of PanSALB and new administrations, where applicable.

1996 to 2001

The first PanSALB Board was established in 1996 and inaugurated in the Senate, Parliament, in Cape Town on 24 April 1996 after Chief Justice MM Corbett formally inducted members. The Board had fifteen (15) members who comprised mainly of language experts with expertise as provided for in the PanSALB Act. The broad skills, expertise and experience ensured that the Board addresses almost all areas needed in the promotion of multilingualism as well as governance issues.

Soon after being established, the Board appointed the first CEO of PanSALB who also had skills, expertise, and experience in language matters and was trained to sharpen and strengthen her skills as an accounting officer in line with the requirements of the post. The CEO then appointed other employees as per the organogram approved by the Board and in line with the purpose and objectives of each post as articulated by the Board in line with its strategy. The Board also developed the first language policy for PanSALB and a high-level organogram for the institution mainly informed by the PanSALB Act, with the purpose and objectives for each post clearly defined.

This Board set the scene for South Africa around the issue of languages, by putting in place different infrastructure which included the following among others:

- The Normative Framework for the Establishment of Provincial Language Committees and National Language Bodies;
- Norms and Rules for Provincial Language Committees (2000) and Norms and Rules for National Language Bodies (2000); and
- Articles of Association for National Lexicography Units (NLUs) between 2001 and 2002.

In developing the above documents, the Board also established the first nine Provincial Language Committees in 1999 followed by the Khoe and San National Language Body in 2000, after consulting with stakeholders from the Khoi and San communities including Traditional Leaders which resulted in PanSALB adopting the decision that the languages are not Khoi, Nama and San, as reflected in the Constitution, but are Khoe and San languages. The rest of the twelve (12) NLBs were established between 2001 and 2002. Eleven NLUs were the last structures to be established by the Board between 2001 and 2002.

The first employees were recruited to give support to the CEOs in carrying out duties and responsibilities, as delegated by the Board. During its tenure, the Board commissioned research into multilingualism through a survey commonly known as the Markdata Survey. The report was used extensively by researchers, scholars and students as part of reference material, and continues to be used, though to a lesser degree, and the same applies to a number of Occasional Papers generated from research conducted with funding by PanSALB during that era. Funding of research and development of Spelling and Orthography Rules of Northern Ndebele is also one of the highlights. The aim of the research was to illustrate that Northern Ndebele is a language in its own right, which is different from what was termed Southern Ndebele by the old dispensation and captured in the 1996 Constitution as isiNdebele.

As part of the highlights, the Board also investigated whether Khelovedu is a language or a dialect and from that study it emerged that Sepedi is one of the dialects of Sesotho sa Leboa. Based on this finding, PanSALB published a Board Notice indicating the names of different languages not only in English but as used by other official languages of South Africa. The issue of Sepedi and Sesotho sa Leboa saw a number of objections being submitted to PanSALB over the next few years culminating with Parliament conducting public hearings about this after PanSALB made a submission calling for the reversal of the Board's decision.

PanSALB is yet to receive a report on these Public Hearings by Parliament. In the meantime, in 2010 the Board took a decision that the language will be called Sepedi as this is the name used in the Constitution. However, this was challenged by those arguing that the name of the language is Sesotho sa Leboa to a point where the existence of the Sesotho sa Leboa NLB was on the verge of collapse. The Board then decided that it will use the two names together as Sepedi/Sesotho sa Leboa until such time that Parliament gives direction on the matter.

2002 to 2007

The second Board was established in 2002 and members were inducted as required. Two members from the first Board were appointed to serve on this Board for continuity. With the above infrastructure set by the first Board in place, the second Board decided to extend the contract of the CEO for another five years to ensure continuity from where the previous Board left off. It is important to mention that members who served on this Board represented the eleven official languages, Koe and San languages and South African Sign Language in that each member was a speaker/user of the respective languages. Members also had various expertise not only in respect of languages but in respect of governance and other areas as stipulated in the PanSALB Act.

The Board continued to expand and strengthen the infrastructure established by the first Board by supporting language research and by promoting multilingualism through the implementation of different initiatives and projects. During this era, the Board made new appointments, especially at a higher level as per the decision of the previous Board – Managers were appointed for the Lexicography Unit and the Development of Languages Unit. Some Managers serving to support the Unit Heads were also appointed and these included managers for Translation and Interpreting and Literature. Vacant posts were also filled. Critical posts that were identified and recommended by the Auditor-General South Africa were also created and filled especially within Finance and Supply Chain Management (SCM). Later, around 2004/2005, the post of Deputy CEO was also created and filled.

In 2003, the Board restructured and fully operationalized PanSALB to harness linguistic diversity in its quest to promote multilingualism. The roles and functions of the different structures were clearly defined and areas of collaboration

highlighted. The importance of cross representation across structures was also articulated and implemented. The establishment and maintenance of partnerships was identified as one of the key areas led by the CEO's Office. All these initiatives were driven to ensure that languages are given the recognition they deserve and that multilingualism is implemented and furthered in South Africa. The Harnessing Linguistic Diversity Workshop of 2003, under the theme Implementation of the National Language Policy Framework, was the springboard for the launch of the strategy. It is important to mention that PanSALB participated in the development of this policy document by the Department of Arts and Culture and formally adopted it as part of its working documents.

The Board, with its strategy restructured and revamped itself, restructured the structures and the PanSALB office to ensure that all three are properly aligned to the PanSALB Act. PLCs' Focus Areas such as Status Language Planning, Translation and Interpreting, Language in Education and Linguistic Human Rights and Mediation, NLBs' comprising of different Technical Committees which include Language Standardization, Terminology Development and Lexicography, Literature and Media, Translation and Interpreting and Language in Education were all to be hands on, i.e. made functional (by implementing projects) and fully operational. Vacancies both within structures and the office were filled as the need arose. The functions of NLUs were re-emphasised and they too were strengthened by ensuring that the Board of Directors responsible for each NLU that did not have an Editor-in-Chief appoints one, with PanSALB playing an oversight role during the process. This was followed with the training of Editors-in-Chief in various areas applicable to CEOs, as they are the CEOs of the NLUs. A service provider appointed to particularly train the nine NLUs for former marginalised languages also trained them in the compilation of dictionaries.

In its strategy, the Board had also identified the need to establish nine Provincial Offices – an office in each Province – with a view of taking PanSALB to the people and strengthening administrative support to PLCs, which was later extended to include NLBs and to a certain extent NLUs as well. Each Provincial Office was allocated basic human resource – a Provincial Manager, an office administrator and a cleaner. By then the need for each NLB to have a Language Practitioner, had been identified. Such Language Practitioners would also alleviate the burden placed on NLUs who were providing administrative support to NLBs in addition to their daily operations. With funding from National Treasury, thirteen (13)

Language Practitioners were recruited to service NLBs and their responsibilities were extended to include PLCs. However, only ten NLBs were allocated Language Practitioners because by the time of recruitment, another need to strengthen the PLCs', NLBs' and NLU's Units at Head Office was identified and due to budgetary constraints, three of the thirteen Language Practitioners were allocated to these three Units. PanSALB negotiated with three NLUs to provide the services of a scribe during NLB meetings until such time that PanSALB is able to source funding to fill the vacancies.

The type of technical and administrative support to be provided by both the Provincial Offices and Head Office was clearly defined, including the type of reports expected from each in support of PanSALB structures, the CEO and the Board was clearly articulated. Later, a workshop to determine the role of Provincial Managers was conducted to ascertain that their roles do not overlap with those of Managers at Head Office. Different training sessions for the Board, which was mainly based on the King III report, members of structures and PanSALB employees continued to strengthen and build on the skills and expertise needed by the institution in its quest for the promotion of multilingualism.

Key in the deliverables are the revision of framework documents for PLCs and NLBs and the decision that from then onwards all PanSALB policy documents are to be reviewed every five years and that the term of office of PanSALB structures should be aligned with that of the Board, which is five years. All these happened between 2004 and 2005. Policy documents were also developed in respect of Human Resources, Finance and Supply Chain Management.

The oversight role played by the Board and administrative support provided by the office assisted a great deal in assisting the operationalisation and strengthening of PanSALB structures, and also in assisting PanSALB to deliver on its mandate. Following this, PanSALB successfully continued supporting projects that were initiated by the first Board whilst implementing a number of new projects and initiatives in line with the mandate as stated in the Constitution and in the PanSALB Act.

Highlights of projects and initiatives include the following, among others: The Revision of Spelling and Orthography Rules of the nine former marginalised languages, capacitating the Khoe and San and SASL NLBs. Through the SASL NLB the Board:

- funded a pilot project on the development of SASL materials by the University of the Free State (the project was funded to illustrate the possibility of documenting SASL thus promoting its use);
- funded the training of SASL Interpreters and SASL Instructors from the nine Provinces as a pilot project, with the University of the Witwatersrand (Wits) and Free State University as partners and conducted workshops (for the Board and PanSALB employees as well as the parents/siblings of Deaf persons to raise awareness around deafness and SASL as a language of the Deaf);
- through partnerships with the University of Namibia and MacMillan (Namibia), funded the translation of the English-Khoekhoegowab and Khoekhoegowab-English Glossarium into Afrikaans-Khoekhoegowab and Khoekhoegowab-Afrikaans Glossarium to benefit the Khoe and San speakers in South Africa;
- with funding from FNB recorded N/uu (one of the Khoe languages) on CD, held a consultative meeting with various Khoe and San stakeholders with a view of getting a better understanding of Khoe and San languages and issues related to language development, appointed a researcher and scholar to evaluate Nxenxe, a San language spoken by the Drakensberg San which was almost dead if not already dead at the time (the interviewed speakers had scanty remains of the language),
- went on a fact-finding mission in the Northern Cape to establish the status of the project introduced by the Northern Cape Department of Education to teach Nama as an extra-curricular subject;
- celebrated key language calendar events with the highlight for each year being the International Mother Tongue Day (21 February) and the PanSALB Multilingualism Awards;
- provided seed funding to newspapers – Unokhethwako (a newspaper established to promote the development and use of Siswati and isiNdebele and Seipone/Tshivhoni/Xivoni, a newspapers established to promote Sepedi/Sesotho sa Leboa, Tshivenda and Xitsonga – Siswati, Tshivenda, Xitsonga and isiNdebele were identified as the most marginalised languages among the former marginalised languages);
- commissioned the linguistic human rights research project, known as

the South African Language Rights Monitor Project conducted by the Unit for Language Management of the University of the Free State; and

- established a number of partnerships and collaborations on projects with highlights being those abroad like the African Academy of Languages (Acalan) – a pan-African organisation founded in 2001 by Mali’s then president Alpha Oumar Konare under the auspices of the African Union for the harmonisation of Africa’s many spoken languages with a special focus on cross-border languages and the PanSALB-Canadian partnership, the establishment of collaboration between the Setswana NLB and the speakers of Setswana in Namibia, partnership between the Siswati NLB and the then Swaziland Language Board, continued partnership with the South African Bureau of Standards (SABS) on the StanSA TC 37 and ISO/TC 39 in the field of terminology, lexicography and language standardisation with the Chairperson of StanSA TC 37 being one of PanSALB Senior Managers.

PanSALB, as part of these committees, was represented at the Brigham Young University in Provo, USA in August 2007, funded language research projects/studies and held biannual conferences to allow structures and PanSALB as a whole to share information among themselves, with academics and stakeholders as well as the public on achievements, challenges and to map the way forward.

It is critical to mention that the Board took a decision that PanSALB will not implement any project or research initiative without obtaining advice from structures. By the end of 2007, PanSALB had consolidated its efforts and aimed to go higher on the scale of promoting multilingualism. Sustaining this impact was somehow dampened when cracks started to show towards the end of 2006, culminating in an investigation being commissioned by the Board and later the resignation of the CEO who was replaced with an Acting CEO. This was towards the end of term of the second Board. During his tenure, the Acting CEO stabilised the office and got PanSALB back on track. Achievements are included in the highlights above. He resigned a few months after the new CEO was appointed and fully inducted. The Board served more than its full five year term as there was a delay in appointing a new Board. During that time the Board appointed a CEO.

2008 to 2012

The third Board was appointed in 2008 with one member coming from the second Board for continuity and was inducted by the Department of Arts and Culture and the CEO. The Board in its strategy identified that PanSALB needed to strengthen its role in the promotion of multilingualism by becoming more visible and to minimise the high staff turnover. PanSALB had to be more visible in all spheres of government, in the public domain and in the media. Part of the strategy was also to complete and to continue with projects initiated by the previous Board, whilst identifying new ones. The strategy pointed PanSALB in the direction of growth and expansion which meant that the organogram which was to assist the Board to deliver on this strategy had to be developed and this was approved by the Board. However, National Treasury did not provide new funding as requested by the Board and the strategy could not be implemented in its current form.

What emerged from this strategy was that PanSALB was not well resourced financially to deliver on its mandate and this was compounded by the discovery that when the previous Board established Provincial Offices, no additional funding was sourced to cover costs like rent, administration and the day to day running of these offices. This meant that PanSALB had to carry these costs from its already overstretched budget, because no additional funding was obtained from National Treasury. Funding provided by National Treasury came with a condition that Finance and Supply Chain had to be strengthened and the Chief Financial Officer appointed. PanSALB had to prioritise these appointments to ensure that funding is released. A CFO was thus appointed.

Though there were plans to strengthen the core business, these had to be abandoned because of budgetary constraints. Job evaluations were conducted and the CEO was moved from Chief Director to Director-General level, the CFO moved from Director level to Chief Director level and the CEO from Unit Managers at Head Office were moved from Deputy Director level to Director level and Provincial Managers from Assistant Director level to Deputy Director level. The same happened within Finance, SCM, Communication and Marketing and Human Resources. Language Practitioners were moved to Senior Language Practitioner level. Other levels were also adjusted in line with the results of the Job Evaluation. This put an even higher strain on PanSALB's financial resources. Though no additional funding was provided, PanSALB absorbed all contract

employees as permanent in line with labour relations legislation. This put an even bigger strain on PanSALB's financial resources.

Critical posts, that were vacant by the end of term of the previous Board and during the incoming period of the new Board and the CEO, were filled, for example that of the Deputy CEO, the Senior Legal Advisor, the Legal Officer, Translation and Interpreting, Human Resources Manager, Marketing and Communications Manager, SASL Language Practitioner and SASL Language Practitioner cum SASL Interpreter and the CFO was also appointed. Support staff was appointed under Support Services in total exclusion of the different Units within the core business.

Within two years after the appointment of the Board and the new CEO, cracks also started showing which finally ended with the Board suspending the CEO and appointing the Deputy CEO as the Acting CEO. Later, the Senior Legal Advisor legally challenged the appointment of the Deputy CEO as the Acting CEO based on some allegations. As the allegations gained momentum, PanSALB had to appear before the Portfolio Committee of Arts and Culture several times to account on these and other matters related to operations and accountability of the ACEO and governance issues by the Board. In early 2012 the then Minister of Arts and Culture, Honourable Paul Mashatile, instituted an investigation into PanSALB and during that time the Acting CEO resigned from the post and the Board appointed one of the Senior Managers as Acting CEO. Based on the report of the investigation, which proved that the Board was not delivering on the PanSALB mandate, the Board was disbanded.

Highlights

During this era, PanSALB achieved the following, inter alia:

- In May 2008, PanSALB conducted a National Workshop on the Standardisation of Terminology during which the Revised Spelling and Orthography Rules and SASL Teaching and Learning materials developed by the University of the Free State were launched, the Workshop in Subtitling which was a pilot project funded by PanSALB and conducted in partnership with the SABC and the Northwest University (The project was a spinoff from a research project on subtitling previously funded by PanSALB and conducted by the University of Potchefstroom (now North West University));

- PanSALB continued with the establishment of partnerships and sealed some of these with duly signed Memoranda of Understanding (MoUs), spearheading the Mmabatho High Court litigation against the North West Department of Roads and Transport;
- PanSALB held workshops for Provincial Departments and Municipalities on Language Policy Development, as part of monitoring of the development of language policies and implementation plans;
- It continued to support Writers Guilds and facilitated the formation of the National Writers Guild of South Africa (NAWGSA);
- It continued with the South African Language Rights Monitor project and the publication of bulletins on PanSALB Linguistic Human Rights cases;
- The verification and authentication of terminology and the PanSALB Multilingualism Awards also continued to thrive, with the latter being improved to the point of seeing more funding allocated to the project to the detriment of other key projects; and
- PanSALB structures were reconstituted between 2007 and 2010 and all inducted. The Executive Committee (Exco) was established, the Management Committee was strengthened and defined and different charters were developed by Exco – Charters for the Board, Exco and that for the Management Committee (Manco). A few guidelines and monitoring tools were also developed, but before these could be circulated for comments and finalised for approval, the Board was disbanded.

By that time the CFO's contract had ended, and a new CFO was appointed. However, he only stayed for about a month or two because he got a better offer and hence resigned from PanSALB. Around 2011, the Acting CEO placed the Senior Legal Advisor on suspension and he (the Senior Legal Advisor) took PanSALB to court to oppose his suspension.

From 2009 to the time when the Board was disbanded, PanSALB was going through a serious financial crisis with structures, PLCs and NLBs grounded because funds would be allocated on paper and when implementation time came no funds would be available. Funds were diverted to projects like the PanSALB Multilingualism Awards and other critical projects approved by the

CEO's Office and along with this there were ongoing litigations against PanSALB by the suspended CEO, the Senior Legal Advisor and one of the Editors-in-Chief. PanSALB took a serious knock as things spiralled downwards. Critical vacant posts in the Languages Division were not filled and existing employees in the Division had to carry extra workloads which had a negative impact on projects – research projects in particular were dealt a heavy blow as PanSALB could not fund these. And without research, PanSALB is as good as dead.

With the above state of affairs and complaints from employees coming from different angles, the then Minister of Arts and Culture decided to institute an investigation which revealed that PanSALB was not delivering on its mandate and this led to the disbandment of the Board before its term of office ended.

2012 to 2014

In June 2012, after the third Board was disbanded, the Minister of Arts and Culture placed PanSALB under administration and appointed a Caretaker CEO who acted as both the CEO and the Board.

The Deputy CFO left the organisation about a month or two after the appointment of the Caretaker CEO. The Caretaker CEO appointed a CFO and the contracts of all employees who were in acting positions were terminated after a month's notice was served. He brought in a number of new recruits even before developing a turnaround strategy. From August 2012, he started developing a turnaround strategy in consultation with Managers and Chairpersons of PanSALB structures and later communicated this to all PanSALB structures through meetings arranged in the different provinces. As part of the turnaround strategy, a number of new employees were appointed to newly created positions or vacant posts within Supply Chain and the Languages Division in most cases without following due process. Job grading was done which, among other things, downgraded some of the employees whilst upgrading others and affected employees were migrated accordingly.

The bloated organogram, especially at management level, and continuing litigations by the dismissed CEO and the suspended Senior Legal Advisor put an even greater strain on PanSALB financial resources and once more advisory structures were grounded and the PanSALB mandate took a knock. Though PanSALB had been allocated additional funding by National Treasury at the time,

its woes never ended. In the process of the implementation of the new strategy, offices were also restructured and documents that were properly archived by PanSALB were moved. In the process PanSALB lost track of critical documents that carry the memory of the institution. Employees in the Languages Division, especially Senior Managers, were made redundant and somehow disregarded. Also in the process, the Caretaker CEO reinstated the suspended Senior Legal Advisor.

Seeing the deteriorating state of affairs at PanSALB, some of the employees who were part of PanSALB before the Caretaker CEO era and some of the employees recruited by the Caretaker CEO reported the issues to the Portfolio Committee on Arts and Culture. The Committee visited PanSALB on a fact-finding mission and discovered that PanSALB was in disarray. After this, the situation worsened; everything had grounded to a halt. With this state of affairs, some employees resorted to seeking legal intervention by challenging the appointment of the Caretaker CEO in court and getting court restraining orders to stop further recruitments. Unfortunately, this saw cases of PanSALB employees litigating against the organisation and the organisation litigating against employees.

2014 to 2019

In 2013, a new Board was established and the Caretaker CEO left PanSALB. The Board appointed the Senior Legal Advisor as the Acting CEO. One of the first key decisions in turning around PanSALB, the Board embarked on developing a turnaround strategy and as part of that strategy decided to disregard all employees who were recruited by the caretaker CEO and these were forty three (43) in number. The disregarding of the 43 employees worsened the legal woes of PanSALB as the group started litigating against the organisation and this meant more resources going towards defending the cases.

The Board later recruited the CEO. After about six months the Minister of Arts and Culture, the Honourable Nathi Mthethwa, dissolved the Board and once more PanSALB operated without a Board – a state that continued from then to date. The CEO was once more serving as the CEO and the Board. After its dissolution, the Board litigated against the Minister and the case is ongoing. The former Acting CEO and other parties started to legally challenge the appointment of the CEO and the cases are ongoing. There were signs of improvement in the operations of PanSALB and the situation remained somewhat steady until once

more cracks started rearing their ugly heads and tensions arose between the CEO and employees, triggered mainly by his announcement of the pending merger between PanSALB and the Commission for the Protection of Cultural, Religious and Linguistic Rights of Communities in South Africa (the CRL Commission) as per recommendations of the Kader Asmal report and other issues besieging the organisation. Among the issues was mismanagement of PanSALB as was raised in whistle-blowing document/s to the Minister of Arts and Culture.

Based on the allegations, the Minister decided to institute an investigation which proved the allegations to be true. This resulted in the CEO being placed on suspension and an Acting CEO appointed. The CFO was later placed on suspension based on the findings of the investigation. The CEO is challenging his suspension in court and the disciplinary hearing process of the CFO is continuing.

Highlights of achievements

The PanSALB structures are once more funded, though not adequately, and are implementing projects and reporting accordingly, except for the NLUs. There are serious issues in this area and PanSALB is battling to find a solution. It is trying different strategies to assist the struggling Units. The main challenge is funding coupled with the need for training of the Units' employees. Some Boards of Directors also need training in governance so that they fully understand their oversight role. The worst challenge is that the term of office of the structures ended in 2015/2016 and some of the members have lost interest. The delay in appointing the Board has a negative effect on the reconstitution of structures and all members are currently serving on interim structures.

During this era the following have been achieved:

- Nominations were received in response to the Call for Nominations for people to serve on PanSALB structures for PLCs, NLBs and NLUs though these were not sufficient. Shortlisting was done, though issues were later identified. The framework governing PLCs and NLBs were revised, but again, there are issues. These issues are as a result of disregarding institutional memory. The monitoring of the implementation of the Use of Official Languages Act (Act No. 12 of 2012) is continuing with findings in 2017 pointing to a very slow movement in this regard;

- PanSALB is also monitoring the development of policies and implementation plans by Provincial Departments and Municipalities;
- The celebration of language calendar events is also on track, and PanSALB has developed a programme to celebrate 2019 as the Year of Indigenous languages, as declared by the United Nations;
- A desktop research was undertaken to establish research conducted in respect of indigenous languages in the past years and currently. PanSALB has just appointed a service provider to conduct a pilot study on the implementation of the Incremental Introduction of African languages in Schools Policy by the Department of Basic Education – a first research study by PanSALB after a long period of drought in this area;
- The different focus areas within PLCs and Technical Committees within NLBs have been revived, but office managers have not been appointed to service the structures in terms of technical support. The strategy is lacking in this regard;
- The PanSALB Multilingualism Awards are also continuing, though they have not implemented in the last financial year. NLBs have just completed the 2nd edition of the revision of Spelling and Orthography Rules for the nine indigenous languages; the SASL NLB is finalising the SASL Charter and these will be launched in February 2019; and
- A conference on Khoe and San languages was held in Bloemfontein in 2017 to consult with the stakeholders on the strategic direction PanSALB needs to take for the promotion of the development and use of these languages. One of the outcomes of the conference is the current project by the Khoe and San NLB of developing the Nama Spelling and Orthography Rules by adapting these from Khoekhoegowab which was developed in Namibia. The project is made possible by a partnership established with the Namibia Department of Education and the Northern Cape Department of Education. Another spin-off from the conference is the re-introduction of the teaching of Nama in Northern Cape Schools. Discussion are underway around the project with stakeholders and speakers of these languages calling for their languages to be taught as fully fledged languages in the school curriculum in all provinces with full resources made available. The current administration is in the process of advertising some of the critical posts in the Languages Division in order

to strengthen it, and thus ensuring that there is the required expert support, skills and experience in the main areas of the core business to assist PanSALB in delivering on its mandate.

The nine NLUs for indigenous languages have launched the Foundation Phase Picture Dictionary and some have started working on the Intermediate Phase Dictionary. These dictionaries are aligned to CAPS. NLUs have found a new publisher who provides support in the form of marketing their products in collaboration with Editors-in-Chief. The Buro van die WAT has also come on board and is currently developing the Foundation Phase Pictorial Dictionary. Despite challenges, all NLUs are also busy with other dictionary projects that will be completed over the next few years.

Challenges

The first Board registered its concern regarding the independence of PanSALB and the watering down of its functions in the new Constitution. This issue has not been addressed in that the PanSALB Act has not been revised since 1999. The office is aware of discussions that took place with various stakeholders in Parliament, which include the OISD, the Portfolio Committee on Arts and Culture, the Department of Arts and Culture and PanSALB as well as Bowmans, the legal firm contracted by PanSALB. The OISD has all the inputs and comments on the revision that is required.

From the report it is clear that over the years, especially after 2007, PanSALB strayed from the legislative prescripts as far as delivering on its mandate is concerned. A number of areas have not been covered over the years. One reason for this is disregard of institutional memory by the Executive and believing in implementing change for the sake of it, thus changing everything included what worked before.

Under PanSALB, all Units had to compile monolingual dictionaries. The compilation of these dictionaries involves a long process and all NLUs have complied with this and are busy with the revision process. However, the compilation of comprehensive monolingual dictionaries is an even longer and time consuming process as PanSALB has observed with the Buro van die WAT that started this process more than ten years ago and is not even close to

completing the project. Though all NLUs had to publish monolingual dictionaries, they also had to compile bilingual dictionaries to move with the demands in language and lately have moved to the development of dictionaries for different education phases starting with the Foundation Phase and are now busy with the Intermediate Phase in line with the introduction of CAPS by the Department of Basic Education.

All NLUs are funded by PanSALB and report quarterly to PanSALB. There is, however, one main challenge for PanSALB regarding NLUs, and that is that it mainly reports on the value-for-money. Technical support to NLUs has proven to be a challenge since 2007, mainly due to changes related to their administration by PanSALB and in the absence of the Board, no proper oversight is taking place. The second Board was the last to conduct oversight and to follow-up on issues. The reconstitution of PanSALB structures, which is a Board function, is also in the balance and the same applies to the revision framework documents for all three structures. The above challenges, among other things, are key and need to be addressed urgently as they form the basis for the successful implementation of all other initiatives. A new strategy for the next five years (2020/2021 to 2025/2026) is to be developed such that it revives PanSALB to be able to deliver on the mandate as per the legislative prescripts.

6.8.5 **Repositioning: Critical Matters for the Sixth Parliament**

The following are proposals by PanSALB

- A Portfolio Committee for ISDs should be established and be responsible for conducting oversight on all ISDs;
- PanSALB should submit (via the Executive Authority) a strategic plan, an annual performance plan, quarterly reports as well as its annual report to OISD for tabling to Parliament/Portfolio Committee of ISDs. However, PanSALB may submit these documents in accordance with the PFMA, which take precedence over the PanSALB Act and UOLA obligations;
- The OISD office can support the ISDs by:
 - Ensuring that Parliament adheres to the prescripts mentioned above through, amongst other things, conducting research and monitoring and evaluating the performance of the ISDs;

- Providing advice and influencing the strategic agenda and/or plan of the ISDs;
- Ensuring the delinking of the budget of the ISDs from Departments and monitoring thereof – this process is underway; and
- Ensuring regular flow of information and updates on internal parliamentary processes.

The most critical issue for PanSALB is the revision of the PanSALB Act to address inconsistencies and challenges faced by the institution. Most important among these is the dual reporting to the Department of Arts and Culture and Parliament, where the former regards PanSALB as one of its entities. Areas that need revision in the PanSALB Act have been discussed at length with all parties – the Portfolio Committee on Arts and Culture, the OISD, the Department of Arts and Culture and PanSALB. The OISD has documentation in this regard.

The OISD should play a key role in the induction of the Board and the Portfolio Committee to ensure that these two oversight bodies understand their oversight roles and do not interfere in the day-to-day running of the institution and operational matters as applicable to the Chief Executive Officer and that the Portfolio Committee should hold the Board accountable, the Board in turn should hold the CEO accountable and the CEO should hold employees accountable.

6.9 The Public Protector South Africa

6.9.1 Mandate and Functions of Public Protector South Africa

The Public Protector's mandate is derived from section 181 and 182 of the Constitution, and includes to support and strengthen constitutional democracy by: investigating any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice; reporting on that conduct; and taking appropriate remedial action.

The Public Protector must be accessible to all persons and communities. The Public Protector has the following key statutory mandate areas:

- Maladministration Investigations and Dispute Resolution - Investigate and redress maladministration or improper or prejudicial conduct, including abuse of power and abuse of state resources in all state affairs; resolving administrative disputes or rectifying any act or omission in administrative conduct through mediation, conciliation or negotiation; advising on appropriate remedies or employing any other expedient means and reporting as envisaged under the Public Protector Act 23 of 1994;
- Executive Ethics Enforcement - Enforce the Executive Members Ethics code as empowered by the Executive Members' Ethics Act 82 of 1998;
- Corruption Investigations - Investigate allegations of corruption as empowered by Section 6 (4) of the Public Protector Act, read with the Prevention and Combating of Corrupt Activities Act 12 of 2004;
- Protected Disclosures - Receive protected disclosures from whistle blowers under the Protected Disclosures Act 26 of 2000; and
- Review of NHBRC Decisions - Review the decisions of the National Home Builders Registration Council as empowered by the Housing Protection Measures Act 95 of 1998.

In addition, the following laws either recognise the inherent investigative powers of the Public Protector or assign some administrative role to the office:

- Electoral Commission Act 51 of 1996;
- National Archives and Record Service Act 43 of 1996;
- National Energy Act 40 of 2004;
- Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000;
- Public Finance Management Act 1 of 1999;
- Lotteries Act 57 of 1997;
- Special Investigating Units and Special Tribunals Act 74 of 1996; and
- National Environmental Management Act 108 of 1999.

The interpretation of this mandate means that the Public Protector has an oversight function over approximately a 1000 organs of state, including National and Provincial Government Departments, all metropolitan, district and local municipalities as well as public institutions, statutory bodies and institutions performing a public function.

The Public Protector may conduct investigations by taking initiative or on receipt of a complaint. However, the Public Protector may not investigate court decisions and sentences. Moreover, unless the Public Protector permits it in special circumstances, any complaint must be reported within two years after the incident or matter occurred to be investigated.

6.9.2 Reporting Obligations of the Public Protector South Africa

Section 8 (2) (a) of the Public Protector Act obliges the Public Protector to report, in writing, on the activities of her/his office to the NA at least once a year. The same report tabled in the National Assembly must also be tabled in the NCOP.

In terms of section 8 (2) (b) of the Public Protector Act, the Public Protector must submit a report on the findings of a particular investigation if any of the conditions listed in section 8 (2) (b) (i) – (v) are satisfied. Therefore, if the Public Protector does not, for example, deem it necessary to submit a report on the findings of a particular investigation to the NA, section 8 (2) allows her not to submit the report, unless the report requires the urgent attention of, or intervention by, the NA, requested by the Speaker of the NA, or by the Chairperson of the NCOP to do so.

Over and above the mandatory performance report, the Public Protector is obliged to report the findings of an investigation if:

- the report requires the urgent attention of, or intervention by, the NA;
- the report is requested by the Speaker of the NA; or
- the Chairperson of the NCOP requests the report.

The seminal judgment of *Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly*

and Others [2016] (ZACC 11) pronounced on the legal status of the Public Protector's remedial action. In short, the remedial action taken by the Public Protector can be binding. If it is binding, the remedial action taken by the Public Protector cannot then be ignored. The only recourse available is review by a competent court.

6.9.3 Statutory appointments in relation to the Public Protector South Africa

In terms of the Constitution, the President is required to appoint the Public Protector on the recommendation of the NA. The Public Protector is appointed for a non-renewable period of seven years. The President, on the recommendation of the NA, is required to 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 (section 2A(1) of the Public Protector Act, No. 23 of 1994). The Deputy Public Protector may at the end of his or her term of office be reappointed for one additional term (section 2A (2) of the Public Protector Act, No. 23 of 1994).

6.9.4 The 25-Year Review of Public Protector South Africa: 1994 – 2019

Adv. Selby Baqwa was the first Public Protector of the Republic of South Africa after 1994, and was appointed by president Nelson Mandela following his approval by a 75,9% majority at a joint sitting of the National Assembly and the Senate and he served his seven year term from 1995-2002.

President Thabo Mbeki appointed advocate Lawrence Mushwana, to succeed Selby Baqwa in October 2002 after he was endorsed by the National Assembly with 278 votes to 32, and became the Public Protector on 1 November 2002. He completed his seven-year term as Public Protector on 16 October 2009.

Some changes were made in 2003 in which the Public Protector Act was amended to provide for the position of Deputy Public Protector with the intention to support the Public Protector and further capacitate and strengthen the Office of the Public Protector. These had resulted in the appointment of Advocate Mamiki Shai as deputy to Advocate Lawrence Mushwana on 19 November 2005 by President Thabo Mbeki and she served until her term expired on 30 November 2012.

On 19th October 2009, President Jacob Zuma appointed former Law Reform Commissioner and human rights lawyer, Advocate Thulisile Madonsela to succeed Lawrence Mushwana as South Africa's new Public Protector.

President Jacob Zuma appointed Adv. Kevin Sifiso Malunga as South Africa's second Deputy Public Protector in December 2012 as deputy to the Public Protector, Adv. Thuli Madonsela. Advocate Busisiwe Mkhwebane took over the reins as Public Protector as of 15 October 2016.

At its inception in 1995, the services of the Public Protector proved to be much in demand by the public. When the then Public Protector Selby Baqwa, took office there was an immediate response with the number of complaints doubling compared to the time when it was the Office of the Ombudsman. In April 1996 the rate of incoming complaints rose to an average of 200 per week.

The Public Protector was instrumental in significant developments in public administration including the implementation of chapter M of the Public Service Regulations, which served as an administrative guide to ethical and efficient conduct in the Public Service and the relationship between public servants, the legislature, the Executive and the public.

A further significant development was the promulgation of the Executive Members' Ethics Act in 1998, governing the conduct of members of Cabinet, Deputy Ministers, Members of Provincial Executive Councils and Premiers. In terms of the Act, the Public Protector was mandated to investigate any breaches of the Code of Ethics and report thereon to either the President or the Premier.

After 10 years of democracy the Public Protector was well established with a case load of 22 350 complaints received annually, and investigations relating to the Constitutional duty of the State to render health care, standards of service of public servants, high level conflicts of interest, corruption and principles of administrative justice. Systemic investigations included delays in the administration of crime in all appeals, compensation for injuries on duty, maintenance of minor children and the protection of whistle-blowers.

Much of the strategic direction of the second Public Protector, Advocate Lawrence Mushwana, focussed on objectives to improve the organisational efficiency of the Public Protector through prompt and quality investigations and to hold the State accountable by ensuring proper remedial action. A number of high profile investigations included an investigation into the alleged failure by

the National Assembly to follow Constitutional procedures during the vote on the Constitutional Twelfth Amendment Bill and alleged unethical and improper conduct by the then deputy President P Mlambo-Ngucka relating to an overseas visit. By the end of Advocate Mushwana's term, complaints received averaged around 13 000 per annum.

The appointment of Adv Madonsela as Public Protector coincided with the commemoration of the 15th anniversary of the Public Protector as a Constitutional Institution and the inauguration of its annual flagship outreach programme, the (Public Protector) Annual Good Governance Week. The Public Protector committed to a three-pronged service promise:

- a) Accessible and trusted by all persons and communities;
- b) Provide prompt remedial action; and
- c) Promote good governance in conduct of all state affairs.

The Public Protector continued to give priority to bread-and-butter matters, bringing relief to many destitute persons whose lives had come to a standstill due to service failure relating to identity documents, social grants, government employee pensions, Unemployment Insurance Fund, and workers' compensation. The Public Protector also saw an increase in the number of complaints involving executive ethics and integrity violations in the exercise of state power and control over state resources.

The "Secure in Comfort" report, released in March 2014, found that former president J Zuma had breached the Executive Ethics Code by failing to act on queries and complaints about misspending at Nkandla. Further, the then president had enriched himself and his family at the taxpayers' expense. He was ordered to personally repay a portion of the public funds.

The matter ended in a landmark decision in the Constitutional Court where the powers of the Public Protector to take binding remedial action were clarified in the case of the *Economic Freedom Fighters v The Speaker of the National Assembly and Others and Democratic Alliance v the Speaker of the National Assembly and Others* (CCT 143/15 and CCT 171/15)

"The Public Protector's remedial action has all the attributes of a judgment.

It is binding and has the force of law and its legal consequences must be complied with or acted upon. Compliance therewith is not optional and it has binding effect until properly set aside by a Court of law”

Adv Madonsela’s tenure ended with the release of the so-called State of Capture Report on an investigation into alleged improper and unethical conduct by the President and other state functionaries relating to alleged improper relationships and involvement of the Gupta family in the removal and appointment of Ministers and Directors of State- Owned Enterprises resulting in improper and possibly corrupt award of state contracts and benefits to the Gupta family’s businesses. The remedial action directed by the Public Protector led to the appointment of the Zondo *Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State*.

Adv Mkhwebane’s tenure as Public Protector commenced as there was a significant spike in the number of reports taken on judicial review in the wake of the EFF –judgement by the Constitutional Court. She investigated allegations of misappropriation of public funds, improper conduct and maladministration by the provincial government and several other organs of state in connection with the Nelson Mandela funeral and memorial. She found evidence of widespread irregular, fruitless and wasteful expenditure in the procurement of goods and services. The impact of her remedial action has filtered across the entire provincial administration and has been endorsed by the Eastern Cape High Court early in 2019 in subsequent judicial review proceedings.

In the 2018/19 financial year alone Adv Mkhwebane published 48 formal reports in terms of section 182(1)(b) of the Constitution covering all aspects of state affairs on national, provincial and local Government level, while directing appropriate and effective remedial measures to address and cure incidents of impropriety and prejudice. In this regard the Public Protector has embraced the Courts’ clarification of her powers to vigorously pursue the implementation of her remedial action, particularly confirmation by the Supreme Court of Appeal that the institution of Judicial review proceedings does not automatically suspend the implementation of the Public Protector’s remedial action, and that only a court order will suffice to stay the remedial action pending the outcome of the Review proceedings.

During her tenure thus far Adv Mkhwebane also finalised a number of systemic investigations aimed at addressing the root cause of complaints in respect of

certain areas of service delivery by State institutions, including systemic failure by the South African Police Service to timeously process disability claims to the SALA Pension Fund, advisory reports on systemic issues affecting service delivery in the public health sector, issues affecting the delivery of RDP houses in all spheres of Government, improper conduct and legislative non-compliance by the KwaZulu-Natal Provincial Department of Health in respect of KwaZulu-Natal Government Mortuaries, as well as the illegal conversion of goods carrying Toyota Quantum panel vans into passenger carrying mini bus taxis to transport members of the public.

The Public Protector personally intervened in Masiphumele, an informal settlement outside Cape Town in the Western Cape, to address the inhumane living conditions the community were subjected to, as well as restoring law and order and peace at the infamous Glebelands Hostel in Umlazi, Durban in KwaZulu-Natal.

The Public Protector also published Regulations under the Public Protector Act, 1994 (*Rules Relating to Investigations by the Public Protector and Matters Incidental Thereto, 2018*). The Rules deal with a number of issues ranging from the procedures for lodging, consideration and finalisation of complaints, access by the Public Protector to documentation, records, and material as well as the content and service of subpoenas. In terms of the Rules, complainants can expect to be advised of decisions relating to their matter within specified time frames, and preliminary investigations are not open ended but must for instance be completed within 30 days, where after the complainant will be engaged further if more time is required. More importantly, the Rules aim to inform and advise State institutions what is expected of them in terms of cooperation with the Public Protector, as well as compliance with requests for information and evidence. Provision is also made for the prioritisation of matters investigated in terms of the Executive Members' Ethics Act, as well as strengthening the Public Protector's hand in the enforcement of remedial action in line with the principles established by the Constitutional Court and Supreme Court of Appeal through contempt of the Public Protector proceedings to be instituted in the High Court.

Her focus, however, is on broadening access to services offered by the Public Protector, especially to rural and impoverished communities through Vision 2023, the essence of which is to take the services of the Public Protector to the grassroots. Eight strategic pillars provide the foundation for Vision 2023, namely -

- *Access* - Bringing services closer to the doorsteps of communities;
- *Vernacular* - Communicating to communities in their own languages;
- *Footprint* - Exploring the use of courts, municipal premises and traditional offices to supplement the existing Public Protector offices;
- *Agreements* - Signing Memoranda of Understanding with stakeholders, such as the South African Local Government Association (SALGA) for mutually beneficial partnerships;
- *Safe haven* - Being a stronghold for the poor and the marginalised;
- *Rights* - Empowering the public to enforce their rights by peacefully holding their leaders to account;
- *Complaints resolution* - Encouraging organs of state to establish their own effective complaints resolution units;
- *Self-protection* - Empowering people to become their own liberators, who see themselves as public protectors in their own right.

On an international level, Adv Mkhwebane is playing a leading role as the new President of the African Ombudsman and Mediators Association (AOMA) and the Chairperson of the African Ombudsman Research Centre (AORC), to advance the ideals of good governance and human rights in Africa by supporting and protecting the independence and development of ombudsman institutions on the continent. AOMA is an international association of ombudsman offices, practitioners and scholars dedicated to advancing the development of the Ombudsman institution for the furtherance of good governance, the rule of law, and human rights in Africa. The African Ombudsman Research Centre (AORC) is the resource and archive centre of AOMA and operates as the Secretariat of AOMA.

6.9.5 **Repositioning the Relationship between Parliament and ISDs: Implications and Critical Matters for the Sixth Parliament**

The Public Protector would want to rely on Parliament for the continued support to her Office, particularly in relation to the issues mentioned below:

The Constitutional Court judgement in the EFF matter referred to above, highlighted the role that Parliament must play to oversee the implementation of the Public Protector's remedial action in terms of section 182(1) (c), read with sections 43(2) and 55(2), of the Constitution. The newly promulgated Public Protector Rules Relating to Investigations by the Public Protector and Matters Incidental Thereto, 2018 provide for tighter timelines for organs of State and Public Institutions to co-operate with Public Protector investigations, failing which the Public Protector will escalate matters to the executive authority of the state institution or member of the Provincial Executive Council concerned and, if the matter remains unresolved, to Parliament or the relevant Provincial Legislature to seek an intervention on the matter.

The biggest challenge faced by the institution in the 2018/19 financial year is the lack of adequate funding to effectively implement the mandate of the institution. To remedy the financial difficulties, the institution has been engaging different government stakeholders such as National Treasury, the Department of Justice and Correctional Services, and others to request additional funding.

While the Public Protector services are free of charge, they are not costless. Requests for additional funding had been pushed back and the institution still lacks adequate funding to carry out its core mandate. This impacts operational costs, such as travel expenses for investigations and outreach programmes. The situation is currently aggravated by a significant rise in the last few months in legal costs, as an increasingly litigious response by organs of state and public institutions against the Public Protector resulting in judicial review applications of the remedial action ordered by the Public Protector.

More importantly, where an organ of state or public institution resorts to litigation and legal proceedings without due consideration, to avoid having to comply with the findings or implement the remedial action of the Public Protector, it diminishes the protection afforded by the Constitution to correct or rectify a prejudice or an injustice suffered by an individual or communities as a result of the wrongful actions of an organ of state.

It is therefore the Public Protector's considered view that while Public Institutions are at liberty to accept or reject the Public Protector's findings, they should do so after due consideration and in compliance with their

Constitutional obligation envisaged in section 182 of the Constitution. In this regard she would expect -

- To be informed within a reasonable time after the submission of a report, whether or not the findings and recommendations are accepted, and
- In respect of all reports - that the relevant Public Institution would have to account to Parliament for its responses to the **Public Protector's reports issued in terms of sections 181 of the Constitution and section 8 (2) of the Public Protector Act, 1994.**

The Public Protector has started to engage the Department of Justice in 2018 on the amendment of the Public Protector Act. One of the main objectives of the proposed amendment is to allow the Public Protector to charge and recover the fees and expenses incurred from a State institution against which a complaint has been lodged and the Public Protector has made adverse finding against such organ of state.

The proposals further include amendments to establish a process for the National Assembly (and other organs of state) to set up appropriate mechanisms to deal with reports submitted to it in terms of section 8(2)(b) (iii) of the Act read with sections 181(3), 42(3) and 55(2) of the Constitution. (In line with the judgment of the Constitutional Court in the matter of *Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others* [2016] ZACC 11).

The amendments further seek to consolidate the position of the Public Protector as highlighted by the Courts, by clarifying and establishing an appropriate civil procedure to deal with conduct that constitutes contempt of the Public Protector as envisaged in section 9 (a) and (b) of the Act.

On the collective front, as member of the Forum for Institutions Supporting Democracy (ISDs) with other Chapter 9 Institutions, the Public Protector is looking forward to a productive engagement with Parliament on crucial issues related to the delinking of the budgets of Institutions Supporting Democracy, as well as definitive direction on the prospect of amalgamation of selected ISDs.

6.10 The Public Service Commission

6.10.1 Mandate and Functions of the Public Service Commission

The Public Service Commission (PSC) was established in terms of section 196 of the Constitution. An enabling statute, the Public Service Commission Act, was passed in 1997. The PSC has the power to investigate, monitor and evaluate the organisation and administration of the public service. This mandate also involves the evaluation of achievements, or the lack of achievement, of government programmes.

The PSC also has a duty to promote measures that will ensure effective and efficient performance within the public service and to promote values and principles of public administration throughout the public service. The main functions of the commission are to:

- promote the constitutionally prescribed values and principles governing public administration in the public service, set out in section 195 of the Constitution;
- investigate, monitor, evaluate and commission inquiries on the organisation and administration, and the personnel practices of the public service;
- propose measures to ensure effective and efficient performance within the public service;
- give directions aimed at ensuring that personnel procedures relating to recruitment, transfers, promotions and dismissals comply with the constitutionally prescribed values and principles; and
- report in respect of its activities and the performance of its functions, including any finding it may make and directions and advice it may give, and to provide an evaluation of the extent to which the constitutionally prescribed values and principles are complied with.

The investigations and inquiries conducted by the PSC may include the maladministration and corruption, service delivery standards, dishonesty or improper dealings with regard to public money; and the behaviour, competency, diligence and attitude of employees within the public administration.

6.10.2 Reporting Obligations of the Public Service Commission

In terms of the Constitution, the Commission must report at least once a year to the National Assembly on its activities and performance of its functions or provincial legislature in matters of a province. This reporting relates to both substantive reports and performance information reports. Furthermore, in respect of section 196 (4) (f) (i) of the Constitution, the Commission has to investigate and evaluate public administration practices and report to the relevant executive authority and legislature. Hence, if the matter is of national importance, the Commission has to report to the National Assembly. An objective analysis of the Constitution does not leave the Commission with the discretion on whether to report on its investigations or not.

6.10.3 Statutory appointments in relation to the Public Service Commission

In terms of the Constitution, the Commission has 14 commissioners appointed by the President, as follows: five Commissioners approved by the National Assembly; and one Commissioner for each of the nine provinces, nominated by the Premier of the province (section 196(7)). A commissioner is appointed for a term of five years, which is renewable for one additional term only.

6.10.4 The 25-Year Review of Public Service Commission: 1994 – 2019

The National Development Plan (NDP) emphasises the professionalisation of the Public Service, and one of the values that the Public Service Commission (PSC) should promote requires public administration to be development-oriented. The PSC, therefore, examined the characteristics of developmental states and the Public Service that should underpin it. A key feature of a developmental state is strong institutions, such as the Public Service, civil society organisations and private business, with the capability to design and implement development programmes successfully. Public Services of developmental states are characterised by appointment and promotion on merit and long-term careers. The PSC examined the transformation journey of the Public Service from 1994 to the present and asked whether a change in the direction of the development of the Public Service should be made at this point, entitled Building a Capable, Career-Oriented and Professional Public Service to Underpin a Capable and Developmental State in South Africa (2015).

Since 2001, the PSC produced more than 170 reports on the evaluation of the Constitutional Values and Principles (CVPs) in the Public Service. In 2015, the PSC embarked on an explorative and revitalisation journey of its work around the CVPs. The focus of this venture is both on the a) promotion of the CVPs, and b) evaluation on whether departments adhere to the principles as contained in Section 195 of the Constitution. It is important for the PSC to ensure that there is a shared and common understanding of the CVPs in the Public Service, what they hope to achieve and how they will be evaluated.

The PSC has a specific mandate under section 196(4)(e) of the Constitution which requires the PSC 'to provide an evaluation of the extent to which the values are complied with'. To evaluate institutional issues – such as structure, bureaucratic form, processes, culture, knowledge systems, capabilities – poses quite a number of challenges for the central public service departments that must determine policy for the reform and development of the Public Service. Yet, it can be argued that the strength of institutions is a major determinant of developmental outcomes. The PSC in 2017 designed an indicator-based Institutional Evaluation Tool that is based on the nine principles in section 195 of the Constitution. These principles include, amongst other things, the maintenance of a high standard of professional ethics, efficiency effectiveness and economy in the use of resources, responsiveness to needs, accountability and good human resource management practices. These principles form a very useful frame for evaluating institutional strength.

The objectives of introducing such an Institutional Evaluation Tool are to: a) evaluate whether the intention of the public administration principles is achieved on an outcome level, b) ensure contextual application of the principles, c) determine how institutional processes can be changed to make sure that the Public Service is value driven rather than (only) by law and regulations, and d) identify systemic public administration issues, which are currently hampering the development of the Public Service, rather than a list of deficiencies, and make recommendations to change key features of the institution of the Public Service. The PSC has piloted the Institutional Evaluation Tool in fifteen departments. To support this programme, the PSC needs easy access to data and high level analytical capabilities. To this end, the PSC has put in place a Data Warehouse which is under construction.

The PSC has also embarked on an intensive drive to promote the CVPs in public administration and to the general public. The objectives of promoting the CVPs are to: a) promote the internalisation of values and principles in the daily activities of public servants with the intention of changing behaviours and attitudes, b) build a cohort of public servants that embrace the founding values and the public administration related values and principles, c) promote good governance in the Public Service and d) promote the values and principles in order to establish common and shared understanding and the PSC's expectations prior to conducting evaluations.

The PSC has, through its Constitutional mandate of promoting CVPs and good governance in the Public Service, been conducting service delivery inspections at various service delivery points. Service delivery inspections are regarded as a fact-finding exercise to observe and get first-hand information on service delivery. Since 1994, various service delivery inspections in respect of compliance with the Batho Pele principles were undertaken in the Health sector, Home Affairs (Border posts), South African Police Services, Education, Correctional Services and Justice with the aim of assessing the quality of services provided to the public and to determine if departments are meeting the required service standards and the needs of the people using the service. The PSC has also conducted evaluations of the Governance Alert methodologies in departments as well as the verification of qualifications procedures to ensure efficiencies, the implementation of the Batho Pele principles as well as the impact of these principles on service delivery with the aim of improving service delivery and the implementation of the Promotion of Access to Information Act and Promotion of the Administrative Justice Act to ensure responsiveness to citizens.

A toolkit for Citizens Forums to assist departments, the executive, Parliament and provincial legislatures in conducting public participation processes was developed and implemented. The PSC conducted 7 citizen satisfaction surveys and 3 citizens' forums. These products, especially the inspections and citizens' forums, were an opportunity to quickly identify service delivery lapses and come up with immediate solutions through engagement with the relevant departments, assess the public participation mechanisms in selected departments and subsequently develop the public participation guidelines in order to institutionalise the involvement of citizens in policy and decision making processes of departments. The PSC also conducted public hearings on 30 day payment of invoices.

As a knowledge generating organisation, the PSC continuously aims to improve its business model, to inform decision-making that leads to improved performance and service delivery in the Public Service. It is within this context that the PSC embarked on a journey to capture the lessons learnt during the implementation of PSC support interventions or initiatives over the last 14 years, and proposed a diagnostic analysis methodology for future interventions and/or initiatives. This proposed diagnostic analysis methodology included a review of the interim lessons learnt from Government Support programmes, namely Operation Phakisa and Setsokotsane. To ensure that the work undertaken by the Commission adds value to the improvement of departmental performance and service delivery, and in the context of contributing to building a 'developmental state' as articulated within the NDP (Chapter 13), the PSC has re-engineered its business model.

In the area of personnel practices, the PSC has continued to monitor and evaluate, amongst other things, leadership and management practices across the Public Service. To this end, the PSC has conducted several studies relating to, amongst other things, turn-over rate of Heads of Department, the management of discipline, recruitment and selection, service terminations, irregular appointments, employment equity and so forth. Some of the reports were more focussed on broad policy issues, while others were more focused on implementation issues. The findings emanating from all these reports highlighted instances of effective performance and compliance with prescripts, and further alluded to various human resource management challenges. The PSC has also, over the years, facilitated and chaired evaluation panels appointed to evaluate the performance of HoDs at the national and provincial levels of government. Since April 2013, the role of the PSC has been limited to oversight since the function was transferred to the Department of Planning, Monitoring and Evaluation (DPME), following a Cabinet decision.

In addition, the PSC convened various roundtable discussions to engage with departments in respect of the challenges experienced by departments in the implementation of various strategic policies and programmes, such as the Policy on Incapacity Leave and Ill-health Retirement, the management of the Occupation Specific Dispensation and the implementation of a Performance Management and Development System.

The PSC's mandate includes improving labour relations and monitoring and evaluating personnel practices in the Public Service. To this end, the PSC has continued to play a critical role in the management of employee grievances and in addressing critical issues, which have an impact on labour relations in the Public Service, through advocacy and information sharing sessions. In order to streamline the management of grievances referred to the PSC, the PSC gazetted the PSC Rules on Referral and Investigation of Grievances of Employees in the Public Service in October 2016.

The PSC conducts public administration investigations of its own accord, on receipt of complaints lodged by public servants and the public through various access mechanisms, and following requests by the Executive, Parliament and the Provincial Legislatures. The demands on the PSC to conduct investigations have increased over the years. These investigations relate to human resource management practices, supply chain management practices and poor service delivery. Through investigations, the PSC reports on compliance with national norms and standards, provide advice on best practice and recommends corrective actions that must be undertaken by departments. Such reports do not only provide valuable information to Parliament and the Provincial Legislatures in performing their oversight responsibilities, but also serve as a conduit through which best practice is promoted in the Public Service.

As part of its investigative research into public administration practices, the PSC has reported on financial misconduct in the Public Service on an annual basis since 2001. These reports have heightened awareness of the negative impact of financial misconduct in respect of service delivery and it is the hope that departments will address the issues, and in so doing, promote greater accountability and transparency in terms of financial management.

The fight against crime and corruption is one of the five priorities of Government. This priority has been a concern of the PSC since 1997 when, through its efforts, the Code of Conduct for the Public Service was promulgated. The PSC also promotes the Code of Conduct and professional ethics in the Public Service through workshops and other mechanisms, such as the annual hosting of International Anti-Corruption Day.

The National Anti-Corruption Hotline (NACH) for the Public Service is a government initiative to ensure that all cases of corruption are reported centrally and re-directed to relevant departments/provincial administrations. The NACH has been managed by the PSC since September 2004.

In order to promote professional ethics in the public service, the PSC conducts workshops on the Code of Conduct for the Public Service. The PSC also provides secretariat support to the National Anti-Corruption Forum (NACF). The NACF is a body made up of representatives from government, business and civil society, whose purpose is to:

- contribute towards the establishment of a national consensus through the co-ordination of sectoral strategies against corruption;
- advise Government on national initiatives on the implementation of strategies to combat corruption;
- share information and best practices on sectoral anti-corruption work; and
- advise sectors on the improvement of sectoral anti-corruption strategies.

In 1999 the PSC realised the importance of managing the potential conflicts of interest of public servants and subsequently developed the Financial Disclosure Framework. The financial disclosure framework of senior managers in the Public Service is managed by the PSC. The purpose is to promote transparency and to avoid potential conflicts of interest. The requirement for senior managers in the Public Service to disclose their financial interests regarding, among other things, shares, directorships, property, and remunerated work outside the Public Service, is a significant step in laying the foundation for a credible way to manage conflict of interest. Financial Disclosures increase internal accountability, as they put in place checks and balances to prevent public abuse.

During the initial years, the focus of the PSC's work on the Framework was on monitoring compliance with the requirement to submit financial disclosure forms. Since 2006, the PSC expanded its focus to include the scrutiny of the disclosures to identify potential and actual conflicts of interest in departments

and to advise Executive Authorities accordingly (initially a sample of 30% of forms were scrutinized and with effect from 2013, 100% of forms are scrutinized).

6.10.5 Repositioning: Critical Matters for the Sixth Parliament

The major challenges and concerns highlighted in the review of Chapter 9 Institutions and Associated Statutory Bodies by an Ad hoc Committee of the National Assembly in 2006/7, the Kader Asmal Committee, should be considered by the Sixth Parliament, namely:

- the relocation of Budget allocations of ISDs from national departments to the Budget Vote of Parliament which is consistent with the notion of giving effect to the financial independence of ISDs, as a marker for constitutional independence; and
- the establishment of a single human rights body.

The PSC is accountable to the National Assembly but must report on an annual basis to provincial legislatures on its activities in provinces. The PSC has frequent interactions with Parliament. However, interaction with provincial legislatures is not at the level which the PSC would like it to be. This may largely be because the provincial legislatures do not have specific committees on public service and administration that the PSC can engage with. Reports of the PSC are tabled with the Speakers of the legislatures, but very seldom are the PSC's offer to make presentations accepted. Mechanisms should be put in place to facilitate improved reporting to provincial legislatures.

At the level of Parliament and provincial legislatures there is no clear instrument to enforce the PSC's recommendations. The PSC is of the view that confining its powers to that of making of recommendations, persuasion and lobbying may not be a problem, if Parliament and the provincial legislatures adopted a structured mechanism where departments and executive authorities are called upon to account.

In determining the programmes of Parliamentary Committees each term, serious consideration should be given to the financial positions of ISDs when it determines the frequency of appearance and the type of delegates to be in attendance, for example where the head of an ISD is expected to attend, instead of the content expert.

6.11 The South African Human Rights Commission

6.11.1 Mandate and Functions of the South African Human Rights Commission

Section 181(1) (b) of the Constitution establishes a SAHRC. An enabling statute, the South African Human Rights Commission Act, was passed in 1994. The mandate of the SAHRC is to promote respect for human rights and a culture of human rights, promote the protection, development and attainment of human rights; and monitor and assess the observance of human rights in the Republic. The additional functions of the SAHRC are to:

- develop and conduct information programmes;
- advance common policies and practices and to promote cooperation in relation to the handling of complaints in cases of overlapping jurisdiction;
- consider suggestions and requests concerning fundamental rights as it may receive from any source;
- carry out studies concerning fundamental rights;
- annually request relevant organs of state to provide it with information on the measures that they have taken towards the realisation of the rights in the Bill of Rights, concerning housing, health care, food, water, social security, education and the environment;
- take steps to secure appropriate redress where human rights have been violated;
- bring proceedings in a competent court or tribunal in its own name, or on behalf of a person or a group or class of persons; and
- promote the achievement of equality, in terms of the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000 (PEPUDA).

The SAHRC may conduct any investigation on receipt of a complaint or on its own accord, into any alleged violation of, or a threat to, a fundamental right. Chapter 2 of the Constitution contains the Bill of Rights, which enshrines the rights of all people in our country. A few examples of human rights are the right to equality; the right to human dignity; the right to freedom of expression; the right to privacy; and the right to health care, food, water and social security.

6.11.2 Reporting Obligations of the South African Human Rights Commission

Subsection (1) places an obligation on the Commission to account to the NA, at least once a year, on its activities and performance of its functions. Subsection (2) also creates an obligation, in that the Commission is compelled to submit investigative reports of a “serious nature” to the NA. The proviso or qualification within subsection (2) relates to investigations that are not of a ‘serious nature’. Concerning such investigative reports, the Commission has the discretion whether or not to submit them to the NA. It may do so at any time, if it deems it necessary.

The question of the nature of findings of the investigation, that is whether they are of a serious nature or not, is subjective and the Commission makes the determination. When the Commission determines that the findings of its investigation are of a serious nature, it must then submit its report to the NA.

6.11.3 Statutory appointments in relation to the South African Human Rights Commission

In terms of the Human Rights Commission Act, the members of the Commission may be appointed as fulltime or part-time members and hold office for such fixed term as the President may determine at the time of such appointment, but not exceeding seven years. Not less than five members must be appointed on a full-time basis [section 3(1)]. The President may, in consultation with the Commission, appoint a part-time member as a full-time member for the unexpired portion of the part-time member’s term of office [section 3(2)]. Any person, whose term of office as a member of the Commission has expired, may be reappointed for one additional term [section 3(3)]. In terms of the Interim Constitution, 1993 a Chairperson and a Deputy Chairperson of the Commission shall, as often as it becomes necessary, be elected by the members of the Commission from among their number.

6.11.4 The 25-Year Review of the South African Human Rights Commission: 1994 – 2019

Introduction

The SAHRC welcomes the opportunity provided by the OISD to reflect, pertaining to the Commission’s relationship with the legislature over the past two decades

and its experiences or challenges in this regard. As South Africa prepares for the 2019 general election and the resultant 6th Parliament, the SAHRC recognises the importance of sharing knowledge with Members of Parliament about the role of Chapter Nine institutions. The Commission is therefore appreciative of the OISD's efforts in taking proactive steps to source information from Chapter Nine institutions, with a view to develop materials for consideration during Parliament's induction of its new Members.

Legal framework of the SAHRC's engagement with Parliament

The SAHRC, as a National Human Rights Institution (NHRI), was established in terms of Chapter 9 of the Constitution as an independent institution supporting constitutional democracy. While the SAHRC is an independent and impartial body, its mandate is aligned to that of Parliament through the promotion of good governance, upholding the rule of law, and ensuring the realisation of rights and freedoms in South Africa.

In line with section 181(5) of the Constitution, the SAHRC is accountable to the NA. The South African Human Rights Commission Act, 40 of 2013 (SAHRC Act) further obliges the SAHRC to: report to the National Assembly at least once every year on its activities, the performance of its functions and the achievement of its objectives; and submit to the National Assembly reports on the findings in respect of functions and investigations of a serious nature which were performed or conducted by it.

At the international level, the SAHRC is further guided by the Paris Principles (1993), which stipulates that NHRIs should have the mandate to engage their respective Parliament on matters relating to the promotion and protection of human rights in the country. The provisions in the Paris Principles have been further expanded on in 2012, when the United Nations High Commissioner for Human Rights (OHCHR) and the Global Alliance of NHRIs (GANHRI), held a consultative engagement assessing the role of NHRIs and its relationship with Parliament. The outcome of this engagement culminated in the adoption of the Belgrade Principles. It should be noted that the SAHRC was instrumental in the crafting of the Belgrade Principles which stipulate, inter alia, that:

- NHRIs develop a strong working relationship with the relevant specialised Parliamentary committees;
- NHRIs and Parliaments should meet regularly and maintain a constant dialogue, in order to strengthen the interchange of information and identify areas of possible collaboration in the protection and promotion of human rights;
- Parliaments should ensure participation of NHRIs and seek their expert advice in relation to human rights during meetings and proceedings of various parliamentary committees;
- NHRIs may provide information and advice to Parliaments to assist in the exercise of their oversight and scrutiny functions;
- NHRIs should work with Parliaments to develop effective human rights impact assessment processes of proposed laws and policies; and
- Parliaments and NHRIs should jointly develop a strategy to follow up systematically on the recommendations made by regional and international human rights mechanisms.

SAHRC's institutional relationship with Parliament

Since its inception, the SAHRC has recognised the critical role in fostering a relationship with national Parliament. During the first few years of the SAHRC's existence, the institution appointed one Parliamentary Liaison Officer who provided feedback and ad-hoc information on committee deliberations on draft legislation. As South Africa's participatory democracy developed, the SAHRC established a formalised structure within its Secretariat tasked with engaging Parliament. This structure is currently located within the SAHRC's Research Unit, as the Parliamentary Sub-Unit. At a broad level, the Parliamentary Sub-Unit is responsible for maintaining stakeholder relationships with Parliament, monitoring legislative developments and drafting initial submissions on legislative papers and Bills, coordinating comments from other SAHRC stakeholders, and submitting comments in line with Parliamentary process. In addition, hereto, the Parliamentary Sub-Unit oversees the process for tabling SAHRC reports with Parliament. Through this Sub-Unit, the SAHRC gives effect to several of its domestic and international mandates and operationalises the commitments under the Belgrade Principles.

CSAP Code of Good Practice

During 2007/2008, the SAHRC, the Commission on Gender Equality and the Public Protector received funding from the European Union to collaborate under its Civil Society Advocacy Project (CSAP). Noting the collective need to enhance its institutional relationships with Parliament, the three Chapter 9 bodies were instrumental in the establishment of the 'CSAP- Code of Good Practice: Guiding Chapter 9 Institutions in their Interactions with the South African Parliament'.

The 'Code' presents guidelines for the advocacy work that Chapter 9 Institutions should undertake in its engagements with Parliament, and is intended to give practical guidance to Commissioners and staff in their interactions with role players in the parliamentary process. In addition, the Code sets out a number of principles for appropriate interaction between Chapter 9 Institutions and Parliament and contains operational guidelines to assist in the implementation of the Principles. While the Code has not been fully operationalised throughout the Chapter 9 Institutions, it may be beneficial for the OISD to consider updating the Code and recommend it to Chapter 9 institutions as the basis for a uniform approach in engaging Parliament.

6.11.5 Repositioning: Critical Matters for the Sixth Parliament

Challenges faced by the SAHRC vis-à-vis Parliament

Notwithstanding the active efforts by the SAHRC to enhance its relationship with Parliament, particularly as espoused under the Belgrade Principles, the SAHRC has encountered several challenges in engaging the legislature. While these have been communicated over the years via parliamentary engagements, there has been limited efforts to address the Commission's concerns. These concerns include, inter alia:

Reports: During the past decade, the SAHRC has issued a minimum of fourteen (14) Investigative Hearing Reports, as well as multiple research reports outlining recommendations to key stakeholders, including various government departments. Notwithstanding submission to Parliament, the SAHRC has had limited engagement with parliamentary portfolio committees and has rarely been called to present on its investigative findings. In addition, the reporting obligation to submit 60 hard copies of reports as well as a master copy and electronic version is unduly onerous, particularly given the financial costs associated with the printing of high volume reports.

It should be noted that apart from contact-based engagements on findings by the SAHRC, report findings are not systematically included in Parliament's interaction with public bodies, tracked or monitored for the purposes of securing accountability. The systematic follow up by Parliament should be concluded with a report back to the SAHRC on outcomes and recommendations, if any.

Awareness: The SAHRC has observed a general lack of understanding among parliamentarians regarding the mandate of the SAHRC, its independent status and its role as an NHRI in the international and regional arena. During engagements with parliamentarians, the SAHRC has often been criticised for its relationship with the United Nations Human Rights Council and treaty bodies. Members have often alleged that the SAHRC's submission of reports to these mechanisms are 'unpatriotic', despite the Commission's independence. Parliament must therefore create/allocate dedicated spaces for bodies such as the SAHRC to provide educational material to members, officials and visitors for the purposes of sensitisation and awareness raising as part of its commitment to promoting respect for human rights and the Constitution.

The SAHRC has further noted that the concerns around the lack of awareness permeate provincial parliaments as well. Induction and interaction processes should be integrated at the commencement of each new mechanism or formation in Parliament. In addition, key parliamentary staff, such as researchers and support staff, should be inducted as well.

Accessibility: While the SAHRC reports to the Portfolio Committee on Justice and Correctional Services, it has encountered several difficulties in accessing the Committee as well as several other portfolio committees. Notwithstanding a designated parliamentary unit, there has been an inconsistent approach by Committee support staff when engaging the SAHRC regarding requests for information or reports. As a result, these requests are often misdirected, creating unnecessary delays in response.

Recognition: During the process of public hearings on draft legislation, the SAHRC is grouped with NGOs and provided limited time in which to present its oral submission. It should be noted that the SAHRC, by its very constitutional establishment, differs vastly to NGOs and such distinction ought to be recognised

during the public participation processes. By way of example, when the SAHRC engages international mechanisms such as the UN treaty bodies, a separate slot is allocated to the Commission in recognition of its independence.

Politicking: The SAHRC is cognisant of Parliament's highly politicised environment and that media are often present for public hearings and deliberations. There have been several instances where both the majority and opposition parties pose strategic questions to the SAHRC with a view to garner political point scoring or to push the Commission to make a statement on a particular issue. In addition, the Commission has also noted instances where its comments in Parliament are often misinterpreted by the media, or used by political parties to attack the independence and integrity of the SAHRC. Conduct of this nature pose a reputational risk to the Commission. Dependant on the subject matter to be discussed, it may be worthwhile for portfolio committees to consider interactive in-camera sessions or briefings with Chapter Nine organisations.

Under-representation: Over the last four years, the SAHRC has noticed a gradual decline in parliamentarians' level of attendance at meetings, particularly when the Commission appears before the Portfolio Committee on Justice and Correctional Services. In several instances, there have been delays in the commencement of a meeting due to insufficient quorum. Furthermore, there have been occasions where Committee members are not sufficiently prepared for the meeting, despite the SAHRC submitting information in advance.

Time allocation: The SAHRC has noted a reduction in the time allocated to the Commission when it is called before Parliament in respect of annual reporting / strategic plan reporting, etc. Due to inadequate time, the SAHRC is often requested to omit parts of its presentation, and engage in a limited question and answer session. On several occasions, the SAHRC was requested to respond to outstanding questions in writing, though there was no further engagement from the Committee's side, following the submission of the Commission's written responses. It should be noted that the SAHRC has regularly requested an extension of meeting time in order to encourage robust, meaningful interaction, or alternatively, the scheduling of quarterly briefings with relevant portfolio committees. However, to date, this has not materialised.

Planning: The SAHRC notes that the calendar of key scheduled committee meetings and parliamentary events (including provincial parliaments) are not directly shared with the Commission, but rather through external stakeholder mailing lists, such as the Parliamentary Monitoring Group (PMG). Existing information changes frequently, negating opportunities to engage proactively with Parliament. It is therefore recommended that the parliamentary programmes and committee schedules be circulated or made available annually and quarterly, to facilitate interaction, planning and collaboration.

Visibility: Allocations should be made to the SAHRC (and other Chapter Nine bodies) to participate at key events, which may benefit the work of Parliament, such as national probes and high level dialogues on policy of critical human rights related focus areas.

Relationship with the OISD: The SAHRC was integral in advocating for the establishment of a Chapter Nine unit situated in the Speaker's Office at Parliament. It was envisaged that the unit would facilitate institutional relations and would act as a conduit between the Parliament and the Chapter Nine bodies. However, since the establishment of the OISD, the SAHRC has encountered several challenges. These include the following:

- There is no dedicated, structured system of communication between the OISD and Chapter Nine Institutions;
- The OISD does not have its own website or portal with detailed information including contact numbers, organisational structure, etc;
- The OISD provides limited feedback on the progress regarding the Chapter Nine reports and its possible consideration by parliamentary committees;
- Notwithstanding the fact the Asmal Report was released over a decade ago, it was only in 2017 that the OISD took active measures to engage Chapter Nine institutions on the recommendations contained in the report;
- The OISD ought to share its strategic objectives and annual or activity reports with key stakeholders, including Chapter Nine bodies;
- Noting the reduction in budget of several Chapter Nine institutions over

the last few years, the OISD should be advocating at the parliamentary level to ensure that Chapter Nine institutions are a priority in the budget votes and associated meetings;

- There is a dire need for capacity-building and understanding of Chapter Nine institutions among parliamentarians. Similarly, there is a need for officials from Chapter Nine institutions to be sensitised to the inner workings of Parliament, its rules and protocols; and
- The OISD could create an enabling environment, which would therefore be beneficial to both Parliament and Chapter Nine institutions and through regular engagement with the various Chapter Nine bodies, the OISD could position itself as a critical, indispensable unit within Parliament.

The SAHRC is cognisant of the constraints within Parliament and that as the legislative arm of South Africa; it has a tremendous task in passing laws that are premised on adequate public participation and meaningful engagement with stakeholders. It is therefore of critical importance that new parliamentarians are fully informed of the immense role Chapter Nine bodies, like the SAHRC, can play in providing insight on human rights matters and issuing recommendations which can aid Parliament in exercising its oversight duties.

7. Conclusion

The Manual documents the valuable individual and collective experiences of Parliament and ISDs, some of which covers the 25 years of South Africa's democracy. The resource remains significant beyond the induction programme of the sixth Parliament as it provides an authoritative reference point on how best Parliament and ISDs can execute their respective constitutional mandates with a view to strengthening democracy in general and oversight over the Executive in particular.



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