

REPORT

Outstanding Annual Reports Joint Standing Committee on Intelligence (JSCI) Periods 2010/11 and 2011/12 and 2012/13

Introduction

The tabling in Parliament of the Annual Reports of the JSCI has been an ongoing concern of both the Committee and the Presiding Officers. As far back as 2010 in a letter dated 22 April 2010, the Hon. Speaker had expressed concern regarding the late Annual Reports of the JSCI. The Committee responded in a letter dated 19 May 2010. Since then numerous letters has been received from the Office of the Speaker and the House Chairperson, Hon. Frolic on the same matter. All correspondences received from the House Chairperson and/or the Hon. Speaker has been responded to either in writing or the Chairperson of the JSCI met with the Hon. Speaker or the House Chairperson to discuss the matter and where explanations were given.

It is significant to note that since the formation of the Committee and the enactment of the Intelligence Services Oversight Act 40 of 1994, the Annual Reports of the Committee has always been late. The fundamental reasons are set out herein below.

The Committee met on **Wednesday 26 February 2014** where a letter received from Hon. Frolic was tabled and discussed. The letter from the House Chairperson is dated 18 February 2014. The Chairperson of the Committee was instructed to address a letter to the House Chairperson with the response of the Committee. The Committee's letter is dated 03 March 2014 and has been delivered.

Status of outstanding Annual Reports

On Tuesday 04 March 2014 the Committee was notified that the Annual Reports for periods 2010/11 and 2011/12 do not compromise national security and these reports will be tabled in Parliament today (Wed 05/03/2014).

The Annual Report for the period 2012/2013 is still under consideration by the relevant Ministers. This matter is being monitored on a day to day basis to ensure

that this report is tabled before Parliament rises. The Chairperson has undertaken to keep the Hon. Frolic informed in this regard.

The non-compliance of JSCI – Annual Reports

The compilation of the Annual Report of the JSCI together with its final presentation for tabling in Parliament is a complex matter. It therefore not possible in this Report to set out in detail all matters that affect the tabling of the Annual Report of the JSCI. We do, nevertheless, with respect, draw your attention to the following:

- Chapter 5 of the Public Finance Management Act 1 of 1999 (PMFA), particularly section 40
- Section 3 of the Intelligence Services Oversight Act 40 of 1994
- Section 3(b) of Act 40 of 1994 read with subsections 7(7)(d), (11)(a), (11)(c) and (11)(d)
- Section 3(a)(iii) of Act 40 of 1994
- The provisions of the Public Audit Act 25 of 2004, particularly, Chapter 3 and section 15(3) and section 22

The aforementioned statutory provisions are *inter alia*, a few of the impediments that affect the finalisation of the Annual Report. In this regard it should be noted that the time period set out in the Oversight Act for the JSCI to report e.g. within two of 31 March, is not in harmony with the PMFA resulting in a statutory incongruity.

Moreover, the material and information which form the subject matter of the Annual Report of the JSCI are classified. The process of the declassification of this information does not lie within the jurisdiction of the Committee and is time consuming.

In order to comply with section 6(3) of Act 40 of 1994, the JSCI has adopted a procedure. This procedure has been followed since the inception of the Committee. The procedure is followed in order to comply with “national security” matters, after which the Report is tabled in Parliament.

The Committee also had the following additional challenges:

- There is a shortage of staff- the office manager resigned almost 2 years ago and has not been replaced. A further staff member left and has not been replace. There is also no content advisor yet.
- The Chairperson of the JSCI has during this period require to chair 2 further Ad Hoc Committees – on the Information Bill and GILAB.

Accordingly, as a consequence of practical and statutory considerations the Annual Reports of the JSCI have traditionally always been delayed and the tabling has always been late. In this case other matters have affected the tabling.

The Committee will now recommend that the necessary amendments be effected to the Oversight Act now that the restructuring of the State Security Agency has been completed.

CV Burgess
Chairperson: JSCI
05 March 2014