**2. BUDGETARY REVIEW AND RECOMMENDATION REPORT OF THE PORTFOLIO COMMITTEE ON MINERAL RESOURCES DATED 19 OCTOBER 2016**

The Portfolio Committee on Mineral Resources, having considered the performance and submission to National Treasury for the medium term period of the Department of Mineral Resources reports as follows:

1. **Introduction**
	1. **Mandate of Committee**

In terms of the Constitution of the Republic of South Africa, 1996 (the Constitution), Portfolio Committees have a mandate to legislate, conduct oversight over the Executive and facilitate public participation. The Portfolio Committee on Mineral Resources mandate is governed by Parliament’s mission and vision statements, the rules of Parliament and its Constitutional obligations. The mission of the Portfolio Committee is to contribute to the realisation of a developmental state and ensure effective Service Delivery through discharging its responsibility as a Portfolio Committee of Parliament. Its vision includes enhancing and developing the capacity of Committee Members in the exercise of effective oversight over the Executive Authority. One of the Committee’s core objectives is to oversee, scrutinise and influence the action of the Executive and its agencies. This implies holding the Executive and related entities accountable through oversight of objectives of its programmes, scrutinising its budget and expenditure (annually), and recommending through Parliament actions it should take in order to attain its strategic goals and contribute to service delivery.

The Presidency’s Mining Phakisa process began its work in October 2015 and consultations with stakeholders are in progress on the resulting action plans. The mining industry remains in a very difficult position. On the one hand, there is an imperative for transformation away from the discriminatory past. On the other hand, the very survival of large parts of the industry is threatened by the fall in commodity prices, weaker export markets, unreliable and expensive electrical energy and deep mines where the ‘zero harm’ principle is costly and elusive. The labour market is also unsettled by job insecurity arising from the reactions to the threats of mine closures from the mining companies. The future life of the industry will be bleak unless all the parties can face up to the economic, social and environmental realities and negotiate a sustainable way forward. Government needs to support the industry through this demanding adjustment process.

* 1. **The Mandate of the Department, and its five entities**

**The Department**

The aim of the Department of Mineral Resources (DMR) is to “Promote and regulate the minerals and mining sector for transformation, growth, development” and to “Ensure that all South Africans derive sustainable benefits from the country’s mineral wealth.

The mining industry employed 481 723 people in 2015, but the industry is facing challenging times from the depressed world economic environment and high operating costs. Severe job losses are a significant threat. The minerals sector is a key contributor to the South African economy because of the half million men and women it employs directly and because of the minerals used in value chains from energy to manufacturing. It is also responsible for more than half of South Africa’s earnings from exports and is critical to the ability of the economy to earn foreign exchange and reduce the trade deficit. The good stewardship of the DMR over the minerals sector is of exceptional importance.

The strategic outcome-oriented goals of the Department up to 2019 were revised in 2014 as follows:

**STRATEGIC GOAL I**  **Increased investment in the minerals, mining and petroleum sectors.**

 Promote and facilitate an increase in minerals, mining and petroleum activity including value addition to mineral resources extracted in the Republic of South Africa.

**STRATEGIC GOAL 2** **Transformed minerals sector.**

 Implement transformation policies to redress past imbalances through broader participation in the mineral sector.

 Provide a framework to manage health and safety risks, enforce compliance and promote best practice in the mineral sector.

**STRATEGIC GOAL 3**  **Equitable and sustainable benefit from mineral resources.**

 Promote sustainable resource management; contribute to skills development and the creation of sustainable jobs.

 Contribute to the reduction of adverse impacts of mining on the environment.

**STRATEGIC GOAL 4**  **Efficient, effective and development-oriented department.**

 Optimise internal processes.

 Attract, develop and retain appropriate skills and ensure optimal utilisation of resources

 Implement risk management strategies and promoting corporate governance.

In framing the revised set of goals in 2014, the DMR took account of the National Development Plan (NDP) and the priorities outlined in the Medium Term Strategic Framework (MTSF). The 2015/16 Annual Report outlines how the DMR’s four strategic outcome-oriented goals have contributed to the national outcome priorities.

**The Council for Geoscience**

The Council for Geoscience (CGS) is one of South Africa’s eight main science councils. Reporting to the Minister for Mineral Resources, the CGS lends support to the mandate of the Department of Mineral Resources (DMR) through the development and maintenance of the national geosciences knowledge infrastructure both on land and beneath the oceans surrounding South African territory.

**Mintek**

The Council for Mineral Technology Research (MINTEK), also a science council, is mandated to provide research, development and technology that foster the development of businesses in the mineral and mineral products industries.

**Mine Health and Safety Council**

The Mine Health and Safety Council (MHSC) provides a research and advisory function to the Minister in terms of mine health and safety, as well as promoting a culture of health and safety in the mining industry.

**State Diamond Trader**

The State Diamond Trader (SDT) promotes equitable access to, and beneficiation of, diamond resources, addresses distortions in the diamond industry and corrects historical market failures to develop and grow South Africa’s diamond cutting and polishing industry.

**South African Diamond and Precious Metals Regulator**

The South African Diamond and Precious Metals Regulator (SADPMR) regulates the diamond, platinum and gold sectors.

* 1. **Purpose of the BRR Report**

Section 77(3) of the Constitution stipulates that an Act of Parliament must provide for a procedure to amend money bills before Parliament. This constitutional provision gave birth to the Money Bills Amendment Procedure and Related Matters Act, No. 9 of 2009 (the Act), which sets out the process that allows Parliament to make recommendations to the Minister of Finance to amend the budget of a national department.

*Section 5 of the Act, states that the National Assembly, through its Committees, must annually assess the performance of each national department with reference to the following:*

* The medium term estimates of expenditure of each national department, its strategic priorities and measurable objectives, as tabled in the National Assembly with the national budget;
* Prevailing strategic plans;
* The expenditure report relating to such department published by the National Treasury in terms of section 32 reports of the Public Finance Management Act, No 1 of 1999 (PFMA), as amended in 2009;
* The financial statements and annual report of such department;
* The report of the Committee on Public Accounts relating to the department; and
* Any other information requested by or presented to a House or Parliament.

Committees must submit the Budgetary Review and Recommendation Report (BRRR) annually to the National Assembly. The BRRR assesses the effectiveness and efficiency of a department’s use and forward allocation of available resources and may include recommendation on the use of resources in the medium term.

Committees must submit the BRRR after the adoption of the budget and before the adoption of the reports on the Medium Term Budget Policy Statement (MTBPS) by the respective Houses in November of each year.

The Act therefore makes it obligatory for Parliament to assess the Department’s budgetary needs and shortfalls vis-à-vis the Department’s operational efficiency and performance. This is done taking into consideration the fact that the Department has oversight responsibilities over five entities.

* 1. **Method followed by the Committee in writing the BRR Report**

The Committee has scrutinised and interrogated all available documents as outlined in Section 5 of the Act. The Committee has assessed the performance of the Department in the 2015/16 financial year, as well as performance in the first quarter and second quarter of the 2015/16 financial year where information was available.

The Portfolio Committee on Mineral Resources held a meeting on the 2015/2016 Annual Report of the Department of Mineral Resources and its entities on 11 and 12 October 2016, which was addressed by the Senior leadership of the DMR.

The office of the Auditor General gave input during the budget review and recommendation report process. Moreover, the Committee undertook visits to the Free State Provinces, to look at issues pertaining to the role played by the Department of Mineral Resources in regulating the mining industry in areas such as community consultation, the environment, illegal mining and mine health and safety.

The Committee, in undertaking this process, used a number of source documents, including the 2014-2019 Strategic Plan of the DMR, Annual Performance Plans, Annual Reports, Financial Statements, 2015/16 and the 2015 Estimates of the National Expenditure (ENE) It also reviewed briefings by the Department and its entities during the course of the year, as well as the State of the Nation Addresses. The Committee also used the Constitution as a reference point.

* 1. **Outline of the contents of the Report**.
* An overview and analysis of the Department’s strategic priorities and measurable objectives;
* An assessment of the overall financial performance for 2015/16 and first half of 2015/16;
* An assessment of the overall service delivery performance for 2015/16 and first half of 2016/17;
* Consideration of the Auditor-General’s findings in relation to the Department;
* Consideration of oversight reports and other engagements held with the Department;
* Committee observations on overall performance of the Department; and
* Recommendations.
1. **Overview of the key relevant policy focus areas**

**Key priorities identified for the 2015/16 Financial Year**

The DMR’s priorities for 2015/16 were set out in the 2014/19 Strategic Plan and Annual Performance Plan (APP) 2015/16.

At the highest level, the priority is to align the activities of the Department with the vision of the National Development Plan (NDP)[[1]](#footnote-1) through the implementation of the New Growth Path (NGP), the Industrial Policy Action Plan (IPAP) and the National Infrastructure Plan.

The aim, in the light of the NDP, is “to create a globally competitive mining industry that reflects a non-racial South Africa and draws on the human and financial resources of, and offers real benefit to, all South Africans by stimulating local economic development”.

In the period to 2019, the department’s planned policy initiatives are to:

* Review the Minerals and Petroleum Resources Development Act (MPRDA), including its regulations.
* Review and amend the Precious Metals Act.
* Review and amend the Diamond Act.
* Review the Mine Health and Safety Act, including its regulations.\*
* Develop the Geoscience Amendment Act Regulations.
* Ensure compliance with the Broad-based Socio-economic Empowerment Charter, 2005, as amended.
* Conduct the regulatory impact assessment of identified legislation.\*
* Review the Broad-based Socio-economic Empowerment Charter\* and update the scorecard with a detailed explanatory memorandum.
* Review the Mineral Technology Act (Act No. 30 of 1989).

Only the three items marked with an asterisk (“ \* ”) above were listed in the Annual Performance Plan for 2015/16.[[2]](#footnote-2) This implies that the intended revisions to the Precious Metals Act, the Diamond Act and the regulations to the Geoscience Amendment Act were not intended to be addressed until later in the term of the Fifth Parliament.

The previous Minister of Mineral Resources stated in 2015 that “appropriate processes will be followed to address concerns raised about some aspects of the Mineral Resources Development Amendment Bill. This process will also enable the department to explore the option of separating the oil and gas part of the Bill from the part dealing with traditional minerals.”

An additional policy priority was added in 2015/16 to the list presented in the strategic plan 2014-2019. This is the development of the legislative framework for the State Owned Mining Company (SOMCO).

Other policy priorities explicitly noted by the then Minister and Deputy Minister were the need to ensure that South Africans benefit from the country’s natural wealth, the need to inspire investment in mining, the opportunity to develop shale gas, plans to increase mineral value addition, improving conditions in distressed mining towns, protecting the environment and dealing with health and safety and training issues.

**3. OVERALL PERFORMANCE AND ACHIEVEMENTS for 2015/16**

The achievements of the DMR for the 2015/16 financial year, include:

* The repeated achievement of an **unqualified audit opinion** from the Auditor General of South Africa (AGSA).
* The annual report indicates that the Department **met 82 per cent of its performance targets**, i.e. 85 out of 104 set targets. This marks a significant achievement, continuing a trend of commendable management performance.
* Streamlined licensing processes in respect of mining and the environment, known as the **One Environmental System**, were brought into effect on 8 December 2014, jointly with the departments of Environmental Affairs, and Water Affairs and Sanitation. .
* 94 officials have now completed the **Environmental Mineral Resource Inspector (EMRI) training** in 2015/16, which was needed to ensure proper implementation of National Environmental Management Act, No. 107 of 1998 (NEMA). The DMR has different and increased environmental responsibilities in terms of the Mineral and Petroleum Resources Development Amendment Act, No. 49 of 2008, which has come into effect in stages since 2013.
* A **Shale Gas Communication Strategy** has been implemented to create awareness about this potential resource and the measures that will be in place to deal with environmental risks.
* A **shale gas development plan** was finalised in a workshop between the Council for Geoscience (CGS) and the Petroleum Agency of South Africa (PASA)
* The African Exploration Mining and Finance Corporation (Pty) Ltd (AEMFC) **Draft Bill** 2015 was published for comment. This follows a Cabinet decision in 2012 to provide for the state-owned mining company (SOMCO) to be an entity of the DMR.

Note on Overall performance of the DMR

There is a continued (if not complete) improvement in the presentation of the detailed performance measures in the 2015/16 DMR Annual Report. The number of complex indicators has been reduced and content has been adjusted, in most cases, to track measures that are within the control of the DMR. While it is now easier to compare performance across years, the appropriateness and scope of the indicators themselves is a matter for interrogation. There is no indicator for the performance of the SA Mineral Resource Administration Database (SAMRAD), for instance, and the monitoring of environment inspection performance is far inferior to the comprehensive details provided on mine health and safety.

It is hard to judge overall performance of the Department objectively.

National Treasury advises that Annual Reports should be evaluated strictly against undertakings made to Parliament in Annual Performance Plans and Strategic Plans.

But almost stellar achievement against management performance measures has to be balanced against the many challenges that confront the Department in its regulation of the mining sector.

The mining industry remains in deep crisis.

It is not clear that this is only a reflection of the unfavourable economic climate.

The question is whether high performance against the targets – with indicators approved by the Auditor General as meeting Treasury guidelines – means that the DMR is doing all that possibly could be done in its role as the custodian of the nation’s mineral wealth.

One important reservation arises from a close reading of the Annual Report for 2015/16:

Many initiatives to address problems in the sector seem to be perpetually delayed.

The need for important, additional amendments to the mining law were acknowledged in 2010– even before the first (2008) amendment to the MPRDA had been promulgated – yet no mining legislation has been successfully passed since 2008.

* The MPRDA remains with Parliament and there is still no time frame for the processing of the Bill, despite a call by the President in SONA 2016 for Parliament to conclude the MPRDA Bill “expeditiously”.
* The process to review the Mining Charter, which ended its reporting phase in 2014, has not been completed. This has major implications for investor confidence and for community concerns.
* There is no clear report on the status of the revised draft bill to amend the mine health and safety legislation. This was reported in in the 2014/15 Annual Report as being under consultation within the National Economic Development and Labour Council (NEDLAC).
* Problems with the legislation that governs the State Diamond Trader (and, to an extent) the Regulator, have been acknowledged for many years – even at the highest levels. Yet there is no legislative proposal for change.

Mining Phakisa was promoted in 2015 as a deal-making intervention to save the mining sector. A huge amount of time and effort was devoted to the laboratory process and to stake-holder consultations, but Mining Phakisa has not been launched, almost a year later.

* Illegal mining is a serious and growing problem. In 2009, the PCMR of the fourth Parliament recommended changes to the mining law to tighten controls on illegal mining. This was supplemented in 2014 when a judge called on Parliament to pass a law against illegal mining. The DMR has told the PCMR that is agrees that an amendment to the MPRDA is called for, but no wording has yet been proposed.
1. **PROGRAMME PERFORMANCE**

The DMR APP specified 104 measures by which to assess the performance of the Department in the 2015/16 period. 82 per cent of the measures were achieved i.e. 85 out of 104 set targets. This is a fall from the extremely high score of 90 per cent achieved the previous year, but remains an improvement compared to the 77 per cent of targets that were met in 2013/14, and 79 per cent in 2012/13.

Comparability with past results is limited by the fact that the DMR reduced the number of targets by over 50 in 2014/15 – from 160 targets or more in the past reporting periods – and the content of some indicators have been altered.

The 82 per cent level of achievement for performance targets is commendable. The DMR consistently achieves its targets at rates far above the reports of most government departments.

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Table 3.1: Summary of 2015/16 Performance Measures** |  |  |
|  | Programme | Total count of measures per programme | **Achieved** | **Not achieved**  |  | *Achievement comparison with 2014/15*  |
| 1 | Administration | 38 (100%) | 28 (74%) | 10 (26%) |  | 91% |
| 2 | Promotion of Mine Safety and Health | 20 (100%) | 16 (80%) | 4 (20%) |  | 86% |
| 3 | Mineral Regulation | 21 (100%) | 19 (90%) | 2 (10%) |  | 90% |
| 4 | Mineral Policy and Promotion | 25 (100%) | 22 (88%) | 3 (12%) |  | 90% |
|  | **Total all Programmes 2015/16** | **104 (100%)** | **85 (82%)** | **19 (18%)** |  | **90%** |

Source: Research Unit analysis of pages 30 to 50 of the DMR Annual Report 2015/16 and Nicol (2015b)

**3.1. Programme 1: Administration (Corporate Services and Financial Administration)**

The purpose of this programme is to enable the Department to deliver on its mandate by providing strategic support management services administrative support to the Ministry and the DMR.

The DMR achieved 74 per cent of the performance measures set for Programme 1 (28 measures achieved out or 38). This is a deterioration from 91 per cent in 2014/15, when 39 measures were achieved out of 43.

Six measures (out of 25) were not achieved by the **Corporate Services Branch.**

As in 2014/15 – when this was the only measure not achieved – the DMR did not maintain the **vacancy rate** below ten percent. The ten percent target was set for government as a whole by the Department of Public Service and Administration (DPSA). It was 9 per cent for all National Departments in 2015. This compares with the 14 per cent vacancy rate in the DMR – which is at the same level as reported for 2014/15, despite specific concerns voiced by the PCMR in several meetings in 2015 and 2016. Financial constraints is reason given for under-performance.

The remaining five missed targets are new:

* One of the ten planned gender equality strategic plans was not implemented, due to financial constraints.
* Final written warnings were issued to staff who did not make required financial disclosures or who failed to sign performance agreements within the prescribed time frames. Two targets were missed here.
* Management action plans (External Audit) and Risk management plans were not implemented by the end of the financial year, as planned. Both will be implemented, but the two targets were missed.

A “**Women in Mining Strategy**” was a performance target set in the DMR Strategic Plan for 2011/14. In May 2015, the PCMR recommended that “The DMR should include the “Women in Mining Strategy” in the APP until it has actually been completed. This suggestion was not attended to. The completion (or status) of the Women in Mining (WIM) Strategy is not reported on in the 2015/16 Annual Report. The DMR only comments that “In order to increase awareness for WIM on sexual harassment and violence at mines, the MHSC developed a comic book, DVD and a poster that can be used by the mines during industry induction workshops”.

In September 2015, the DMR told the PCMR that “Targets, indicators and timeframes for the WIM strategy still have to be agreed with stakeholders.” The Committee resolved that: “More work needs to done on the document. Stakeholders should be given opportunity to participate. Whilst waiting for Mining Phakisa, and the planned review of Mining Charter, the Department should come back to the Portfolio Committee and present the WIM strategy document again with indicators and time frames and give an opportunity for members to contribute.”

Four performance measures out of 13 were not achieved by the **Financial Administration** branch (one more than in the previous year):

The branch scored below the target level required in a Customer Satisfaction Index (The level of 3.2 out of 5 shows a deterioration from 3.4 in 2014/15 and the target of 4 was missed again).

* All suppliers were not paid during the stipulated 30 days. 145 invoices out of 1,688 were not paid on time because of “the budget reload” in the first quarter. In 2014/15, only one supplier was not paid in time.
* There was 86 per cent compliance with the service level agreement related to ICT services, compared with the 95 per cent target.
* The measure for reducing the value of assets that were disposed of before their end of lifespan was not met again in 2015/16. The amounts of money involved are negligible, however.

**3.2. Programme 2: Mine Health and Safety Promotion**

* The purpose of the Promotion of Mine Safety and Health programme is “to ensure the safe mining of minerals under healthy mining conditions”
* The DMR achieved 80 per cent of the performance measures set for Programme 2 (16 out of 20). This is high rate of performance, but it marks a deterioration compared with 2014/15 where 86 per cent (19/22) targets were met.
* The most striking area of non-achievement relates to **failure of the inspectorate to meet its target** of 8,000 inspections. The high vacancy rate is mentioned as the cause – but there was a high vacancy rate in 2014/15, when 8,555 inspections were recorded.
* The reduction in the number of inspections – to 7 539, also coincided with higher rates of fatalities and occupational injuries in 2015/16.
* Welcome improvements in the safety record in the mining industry in the four years up to 2014/15 were not fully maintained in 2015/16. The two performance targets, for fatalities and occupational injuries due to mine accidents, were not achieved. The performance target of a 20 per cent reduction in occupational injuries occurrences has not been met in any of the past five financial years – i.e. since 2011/2.
* In addition, the target illustrating a reduction in occupational diseases was not achieved. The DMR states that the statistic was affected negatively by an increase in the number of annual medical reports submitted by the mines. The measure is calculated on a simple comparison of the number of diseases counted from all submitted reports each year.

Statistics on Section 54 and Section 55 instructions not in Annual Report

Unlike in previous years, the DMR Annual Report did not reveal in the 2014/15 or 2015/16 Annual Reports how many Section 54 and Section 55 instructions were issued as a result of the health and safety inspections that were conducted.

For example, 1 074 instructions were issued in terms of Section 54 of the Mine Health and Safety Act, No. 29 of 1996 (MHSA) in 2013/14 and 2 390 in terms of Section 55. These actions are taken in terms of enforcement guidelines to protect the health and safety of mineworkers against unsafe conditions, practices or acts. Section 54 allows the DMR to close shafts or entire mines in the event of a safety breach to allow remedial action to take place. Section 55 provides for instructions to be issued, but without closing the mine.

It is useful to know the total number, as well as the percentage analysis of whether a total or partial closure of a mine was ordered. The number of administrative fines imposed during the year in terms of the MHSA – another useful index of law enforcement - is also no longer indicated. (There were 9 reported in the DMR 2013/14 Annual Report).

Section 54 and Section 55 instructions are part of an ongoing and highly controversial debate in the industry and in the media. The DMR is accused of stopping mine operations for minor infractions that can be corrected without closing the mine.

Closing a mine for safety reasons can have significant economic effects. According to Statistics South Africa, the domestic economy contracted by 0.6 per cent year-on-year in the first quarter of 2016 and the primary sector (agriculture and mining) was by far the biggest drag on overall GDP in this period. “Value added in the primary sector declined by 15.5 per cent quarter-on-quarter. This was mainly due to a marked decline in mining output because of so-called Section 54 safety stoppages by the Department of Mineral Resources.”

Critics suggest that the resort to Section 54 instructions is due to a lack of experience in the inspectorate. Inspectors close mines just to be on the safe side. The DMR points to the ongoing problems with the safety record of the mining sector, and the need to make the zero harm slogan adopted by the industry a reality.

The Committee has not seen evidence that can resolve this issue, but suspending the release of Section 54 and Section 55 information in the Annual Report is not a useful response.

**3.3. Programme 3: Mineral Regulation**

The purpose of the Mineral Regulation Programme is to “regulate the minerals and mining sector to achieve transformation and sustainable development”.

The DMR achieved 90 per cent (19 out of 21) of the performance measures set for Programme 3, maintaining the same creditable record as in 2014/15.

One indicator was not achieved and one was partially achieved.

* The target for indirect jobs created through SLP is 7,000 per year. 6,528 such jobs were created in 2015/6, an improvement on the 5,338 jobs created in 2014/15. Mines have to carry through with their job-creation commitments - which are legal commitments made to the DMR – but it seems that they are allowed considerable flexibility on the timing of delivery. A five year term is set for the achievement of the commitment made in each SLP.
* 98 per cent of management action plans (internal audit) were implemented, just below the 100 per cent target.

Two areas of the Annual Report reflect ongoing public concern with aspects of the responsibilities of the branch:

1. Over-achievement is reported by Mineral Regulation in the number of environmental verification inspections. 1 889 inspections were conducted in 2015/16 (a similar number has been reported for the last three years) compared with a target of 1 700. Site inspections depend on complaints from members of the public. More officials have been trained as Environmental management Inspectors (EMRI), 94 in 2015/16 alone.
2. The number of engagements with communities and the mining industry was reported at 341 for the year - above the 263 reported in the previous year, and well above planned target of 150 in 2015/16. There was "an increase of interventions to stabilise the mining industry on the consultations/engagement with communities." 260 engagements were recorded in 2013/14.

The extent of state liability for the **environmental consequences of mining** remains an area of extreme concern. The Mineral Regulation branch has ensured that every single mine closure certificate was issued in line with the regulatory framework and that statutory notices were issued in every case where financial provision (to cover environmental damage) was inadequate. The Annual Report does not, however, give the ***numbers*** of closure certificates and financial provision notices issued. These would be useful statistics to monitor as indicators of the health of the mining sector and trends.

Similarly with regards to **licences**, the target is for 70 per cent to be processed within the prescribed time frames. In 2015/16, as in 2014/15, the percentage target achievement is given (just above the target), but the ***numbers*** of licenses are not indicated in either year. This useful indicator for the mining sector was given in previous years – for example, 687 out of 921 licence applications (75 per cent) were processed in line with the prescribed timeframes in 2013/14 and 571 out of 800 rights to minerals (71 per cent) were registered within the prescribed timeframes.

**3.4. Programme 4: Mineral Policy and Promotion**

The purpose of the Mineral Policy and Promotion programme is to “formulate mineral related policies and promote the mining and minerals industry of South Africa to make it attractive to investors.”

The DMR achieved 88 per cent of the performance measures set for Programme 4 (22 out of 25) in 2015/16. This high rate was also achieved in 2014/15 when 19 out of 21 measures (90 per cent) were successfully achieved.

Three performance measures were not achieved:

* The “**Revised Mining Strategy** for sustainable growth and meaningful transformation” was scheduled for completion in 2014/15. This was not done, and no explanation was given in last year’s Annual Report. The Strategy was also not completed in 2015/16 and has now been deferred to 2016/17. The DMR states that the revision of the strategy was dependent upon the outcome of Mining Phakisa. The laboratory phase of Mining Phakisa was completed in the third quarter, but stakeholders are “still deliberating”.
* The planned report on **strategic minerals** was not completed. This is dependent on the approval of the MPRDA Bill (B15B-2013) by Parliament. The regulations on strategic minerals will be framed under Section 26 of the proposed law.
* The **Coal Policy**, due for completing in 205/16 has been deferred to 2016/17 and stakeholder consultation has still to be completed.

Mineral Policy and Promotion is the largest programme of the 2016 MTEF allocation. It absorbs over half of the budget of the DMR and includes transfers to Mintek and the Council for Geoscience. The Programme encompasses the DMR’s strategies to address the huge problems caused by ownerless and derelict mines and mine dumps. The estimated cost to government of rehabilitation is a staggering R47.1 billion.

**4. REPORT OF THE AUDITOR-GENERAL**

The Auditor General of South Africa appeared before the Committee on 11 October 2016. The DMR financial statements received an unqualified audit opinion in both 2015/16 and in 2014/15. This indicates that the Department has successfully dealt with the concerns and criticisms raised in the qualified audit opinion three years ago, in the 2012/13 financial year.

The Auditor General indicated that while there had been material misstatements of contingent liabilities, lease commitments, leave entitlement and accruals in the submitted financial statements, these were subsequently corrected by management. As a result the financial statements received an unqualified audit opinion.

The AG also found that the accounting officer did not exercise oversight of financial reporting and compliance and related internal controls. In addition, DMR management did not prepare regular, accurate and complete financial reports for submission to the auditors.

The AG reported on the audit outcomes over three years and indicated that the portfolio sustained the same number of clean audits (2) as the previous year. The audit opinions of three auditees in the portfolio remained unchanged because of their failure to implement the designed controls that would ensure compliance with legislation, and to prepare financial statements that are free of material misstatements. On the compliance with key legislation, the AG indicated that the portfolio can improve on key controls that impact the audit outcomes. The controls relating to the review of financial statements and compliance with legislation need to be improved so that the entity can improve its audit outcomes. However, the number of compliance findings raised were reduced when compare to the past two years.

Where the AG reviewed the usefulness and reliability of the reported performance information, it did not find any material problems.

**5. SUMMARY AND ANALYSIS OF ANNUAL FINANCIAL STATEMENTS**

**The following can be observed from the financial statements:**

The DMR customarily spends all of its budget each year. This full spending of budgets, across all programmes has been described by the Financial and Fiscal commission (FFC) as an indicator of fiscal discipline. In its analysis of the spending profile of the DMR, the FFC has previously found that “the Department has an efficient cash flow system in place and spending disbursements to public entities are well planned to smooth out cash outflows during the year.”

The **Department’s entities and agencies** have all obtained unqualified audits since 2011/12. These are the Council for Minerals Technology (Mintek), the Council for Geoscience, the Mine Health and Safety Council, the South African Diamond and Precious Metals Regulator and the State Diamond Trader. The entities were judged by the FFC in 2014 to be spending efficiently and effectively and meeting goals and objectives. The FFC found in its 2014 report that the Department plays an effective monitoring role over the entities and agencies.

**Table 5: Comparison appropriations for the DMR entities 2015/16[[3]](#footnote-3)**

|  |  |  |
| --- | --- | --- |
| **Name of Entity** | **Amount Transferred 2015/16** *R’000* | **Audit Outcome****2015/16**  |
| Mintek | R 414 742 |  Clean  |
| SA Diamond & Precious Metals Regulator (SADPMR) | R 50 527 |  Clean  |
| Mine Health and Safety Council (MHSC) | R 0 |  Unqualified  |
| Council for Geoscience (GCS) | R 342 914 |  Unqualified  |
| The State Diamond Trader (SDT) | R 0 |  Unqualified  |

In 2015/16, only the **SDT** tabled an annual report that reflected an unplanned deficit/loss.

The SDT 2015 budget was for R8-m profit, but a loss of R3.1-m was reported for 2015/16. (A loss of R1.2-m was reported for 2014/15 when a R8-m profit had been budgeted for.) The SDT was able to meet these losses from its accumulated surplus. The unplanned loss was due to the difficult trading conditions. The loss is small compared also to the R460-m of recorded diamond sales.

While the **MHSC** reported a deficit, this was planned, as indicated in the budget information tabled in 2015. The MHSC, for the first time in many years, reported a decline in its considerable accumulated surplus, which fell to R199-m from R207-m.The MHSC is, correctly, applying its surplus funds to the purposes for which they are intended. Research expenditure, which has declined and languished in recent years, double to R30-m

Note on the State Diamond Trader: A broken business model.

The State Diamond Trader generates its own revenue from selling diamonds and does not receive transfers from the DMR. Trading conditions have been particularly difficult for the last two financial years. The SDT purchased R450 millions of diamonds (still below the 2013/14 figure) and sustained a small loss of R3-milllion, compared with modest profits of in the previous years.

The information presented in the SDT annual report highlights the urgency of long-promised measures by the DMR to review and adjust the business model of the SDT. The SDT began operation in 2007 with a mandate to support local beneficiation. It is permitted to purchase up to 10% of South African diamond production for this purpose. But the SDT was able to purchase only 1 per cent of production by volume (carats) and 3 per cent by value, of the rough diamonds it inspected under the terms of the Diamond Act. Only a tenth of SDT sales (already lowered by the economic climate) are made to Historically Disadvantaged South African buyers, just three of whom account for almost all of the sales to HDSA clients. It is plan that the legislation is not meeting its purpose of increasing the role of HDSA’s in diamond beneficiation to a meaningful level.

**6. SUMMARY OF PREVIOUS KEY COMMITTEE RECOMMENDATIONS**

* 1. **2014/15 BRRR recommendations and responses**

The Committee made the following recommendations to the Department in the 2015 Budgetary Review and Recommendation Report:

| **2015 BRRR Recommendations** | **Response by the Department** |
| --- | --- |
| 1. The Department should, immediately after the conclusion of the Mining Phakisa process report to the Committee
 | [Mining Phakisa has not yet been launched by the Presidency] |
| 1. The Department should develop a comprehensive report on the outcomes of the mining charter including the names of the companies that did not comply with commitments or meet the targets. Such a report should also provide clarity on the interim measures.
 | The requested information was not supplied. |
| 1. Department should as a matter of urgency clarify the status of the mining charter, and clearly spell out interim targets that mining companies are expected to meet in 2015/16.
 | [A reporting template was issued for 2015/16 but the DMR has not reported on progress on the review of the Mining Charter.] |
| 1. DMR should report on applications for and the granting of the rights to minerals and provide the outstanding information on SAMRAD requested in March 2015.
 | The requested information was not supplied in writing, despite repeated requests and undertakings. |
| 1. DMR should report as fully on environmental and community issues related to mining as it does on health and safety
 | The DMR has asked for further guidance from the Committee on this issue. |
| 1. The DMR to engage the Committee on the process it will undertake in order to implement the findings of the Farlam commission that relates to the department.
 | Completed. The Minister reported to the PCMR on 07 September 2016. |
| 1. The department and the entities to prioritize the filling of critical and strategic positions. This should include an effective and cost saving interview process
 | Vacancy rates remained unchanged in 2015/16 – but new appointments in the inspectorate were made in 2016/17. |
| 1. Explore ways of introducing more user friendly processes for SLPs that are accessible to the public. Transparency and uniformity in the conceptualisation and evaluation of Social and Labour plans is essential.
 | The DMR will amend the MPRDA regulations to make it compulsory for Social and Labour Plans to be publicly available to communities and to interested and affected parties. |
| 1. Introduce a better coordinating mechanism in ensuring that there is better co-ordination between activities of the respective Provincial and Local Governments and the DMR
 | [No specific response, but PCMR oversight visits have tested this issue and found varied levels of progress.] |
| 1. The Department and the entities to develop effective internal control measures in particular in financial and human resources. This should include issues of supply chain management
 | Reported back upon in the presentations on the Annual Reports, with progress indicated. |
| 1. The DMR to continue working closely with the office of the AG and Treasury in order to strengthen accountability, and internal control measures.
 | Good progress reported |
| 1. The DMR should carefully scrutinize its participation in multilateral forums, and be able to make a business case for its participation, taking into account cost and benefits of such an arrangement
 | No specific response |
| 1. The DMR and its entities need to align its bursary and other human resource development policies with, demographic and gender target priorities of the respective organisation.
 | Detailed reports given showing progress and outlining challenges |
| 1. The Women in Mining Strategy needs to be finalized and implemented urgently.
 | This is still under consultation with stakeholders |
| 1. The DMR has to interrogate the management structure of its entities, and ensure that the business categorisation is consistent with the mandate of the organisation, as to enable the entities to deliver on their mandates effectively.
 | No specific response |
| 1. The MHSC needs to present an account to Parliament of how it intends to apply its R200-m surplus
 | No account presented, but the surplus is being reduced and applied to zero harm goals |
| 1. Treasury should consider above inflationary increase in base funding for the Council for Geoscience, such an increase will allow the Council to cover its operational costs
 | [This has not been achieved despite representations made to Treasury] |
| 1. The DMR should frame proposals for an alternative business plan for the SDT that allows its objectives to be reached. This may involve amendments to the law.
 | No response from DMR – but the annual reports of the Regulator and the SDT indicate that such proposals are available, and may be taken forward after the finalisation of the MPRDA second amendment. |
| 1. There is a need for better legislation and intergovernmental co-operation to deal properly with the closure of mines. The DMR should research sustainable mine closure, that considers both the environment and community issues.
 | [No response – but since December 2015, the DMR has applied new regulations that compel mines to make adequate financial provisions to cover environmental rehabilitation. |

 **7. 2016/17 Budget Vote Recommendations**

The Committee made the following recommendations for the 2015/16 financial year, after considering the Annual Performance Plan and the Budget of the Department of Mineral Resources:

* The Minister of Mineral Resources should appoint a representative of the national treasury to the Board of the CGS immediately, as is required by the Geoscience Act.
* The national treasury should account to the Committee for its failure to respond to the financial needs of the CGS to carry out the functions given to it by Parliament, despite five years of approaches from the DMR on this issue.
* The funding and co-ordination of state-funded research and innovation for the mining sector, including mineral extraction R&D, should be adopted as a government priority going forward. This is required to support the efforts of DMR to encourage new investors in the SA mining sector and to provide a basis for the mining sector to develop sustainably into the future and to generate benefits from the country’s rich mineral endowment.
* DMR should address all concerns around adequate environmental compliance.
* DMR should fast track all necessary and appropriate legislation and regulations (e.g. MPRDA, Mine Health and Safety, State Diamond Trader, etc.) that will assist in achieving certainty in the mining industry.
* DMR and entities should improve on their turnaround time as prescribed by the applicable legislation.
* DMR needs to address the issue of tax avoidance. It should work in collaboration with the Department of Finance, Trade and Industry and other relevant Departments to deal with aggressive tax avoidance.
* MHSC should come and present the expenditure and how it intends to spend (its considerable accumulated surplus).
* Compensation Indaba that will be convened in 2016 should consider and finalize all issues relating to Ex mine workers, especially the integration of compensation systems.

**8. COMMITTEES OBSERVATIONS**

The Portfolio Committee of Mineral Resources having assessed the performance of the Department of Minerals Resources and its five entities made the following findings and observations:

1. The **Council for Geoscience** is a capable, world-renowned institution whose activities in facilitating mineral exploration place it at the beginning of the value chain for mining. Maintaining the capability of the CGS is essential if the DMR is to perform its functions as the custodian of the nation’s mineral wealth. The lack of prudent investment in the work of the CGS will jeopardise the growth of the mining industry in SA far into the future, undermining its role as the spin-wheel for the entire economy. Exploration is continually needed to identify new mineral resources as mined resources are depleted. Government needs to maintain control and leadership in geo-scientific knowledge to ensure that it understands what mineral wealth it has in its custodianship. This is essential if rights to minerals are to be granted in line with national imperatives.
2. The DMR has had new and wider regulatory duties with regards to **mining and the environment** since 8 December 2014, when the One Environmental System for Mining took effect. The development of an annual report for the new Environmental Mineral Resource Inspectorate (EMRI) is now required. This could be modelled on the annual report of the Mine Health and Safety Inspectorate. The annual report should also reflect on the application by the DMR of the new (2015) regulations to ensure that mines make adequate financial provision for environmental rehabilitation and closure. The report should cover complaints made by the public on mining environmental issues and challenges regarding the application of the environmental laws for mining.
3. SAMRAD is a critical tool to monitor exactly who is granted **rights to the mineral wealth of South Africa**. Its efficient performance is also required for the justifiable expansion and sustainable development of the mining sector. DMR should report on applications for and the granting of the rights to minerals. This information is presently provided for petroleum by PASA, but not for minerals by DMR. The information is needed for transparency and to evaluate transformation.
4. The **Women in Mining Strategy** was set as a performance target in the DMR Strategic Plan for 2011/14. The strategy should be included in the APP until it has actually been fully completed and implemented as planned.
5. Lifelong learning is to be fully encouraged across the DMR and its entities. All staff members should have access to appropriate study leave and be encouraged to enhance their skills and knowledge throughout their careers. **Bursaries**, however, should not be awarded to salaried executive management or to senior management service employees, who are paid enough to finance their studies themselves. Bursaries should be targeted at the poorest of the poor and at officials who have not had educational opportunities in the past. DMR should investigate how entities are identifying beneficiaries of bursary programmes.
6. Meeting the set **performance targets** is to be encouraged, but this does not automatically mean that the DMR and entities are addressing all of the performance issues that are needed for effective service delivery and policy development.
7. The DMR needs to contribute its own vigilance to Treasury to ensure that the theft of South Africa’s mineral wealth through the mechanism of **transfer pricing** by mining conglomerates is monitored and stopped.
8. The DMR and particularly the entities should be more involved in **publicity** about their work and the positive contributions they make to the economy, to the well-being of communities and to realising the objectives of the National Development Plan (NDP).
9. The Committee welcomes the undertaking that MPRDA regulations will be changed to allow **public access to SLPs**.
10. When illegal mining kingpins are arrested particularly those who have been convicted and sentenced, this should be better publicised particularly information on who has gone to jail.
11. The need to develop mechanism to deal with safeguarding of mineral information, with regard to foreign nationals who occupy senior position within the department and its entities.
12. Committee appreciate the need to finalize MPRDA and acknowledge the progress made so far, but emphasizes the need for speedy resolution to the bill, because of the critical nature of this piece of legislation in creating certainty in the industry.
	* 1. **RECOMMENDATIONS**

The Committee recommends that the Department of Mineral Resources

| **2016 BRRR Recommendations** | **Time Frame** |
| --- | --- |
| Should re-motivate with National Treasury for **the budget allocation to the Council for Geoscience to be increased** so that the Council can fulfil the mandates given to it by legislation.  | **30 December 2016** |
| Report on the achievements of the task team on **illegal mining**. Illegal mining is not just about gold, it also involves chrome, coal and sand, all of which can have severe environmental consequences and which deserve more attention from DMR inspectors. | **30 March 2017** |
| Give a continuous update on the disaster at **Lily mine** and present to the Committee a short, medium and long term plan in resolving the issue. | **30 June 2017** |
| Present the **governance framework and guidelines of its entities** with special reference to the relationship between the board and executive management. | **30 September 2017** |
| Provide a roadmap and timetable to illustrate the plan for achieving the **legislative goals** contained in the Strategic Plan of the Department by 2019. | **30 June 2017** |
| Treasury should come up with a **funding framework**, that encourages the Department and its entities to perform optimally, in their financial stewardship, continued trimming of the budget for a well-managed state organ, **punishes** rather than **reward** prudent financial management | **Ongoing** |
| 1. Should include the following issues in its **2017/18 Annual Performance Plan**, with the necessary budgetary provisions after consultation with National Treasury:
	1. **The development of an annual report for the new Environmental Mineral Resource Inspectorate (EMRI).**
	2. **Appropriate performance measures that reflect on the role of the SA Mineral Resource Administrative Database (SAMRAD).**
	3. **The finalization and implementation of the Women in Mining Strategy.**

Policy development on two critical issues is a matter for co-ordination across government* **Mine closure**

There is a need for better legislation and intergovernmental co-operation to deal properly with the closure of mines. The DMR should research sustainable mine closure, that considers both the environment and community issues. Closed gold mines encourage illegal miners. The gaps between companies, mineral, insolvency and environmental laws in effect encourage fraud and asset stripping. This leads to poor custodianship over mineral resources in practice. Closure is part of the life cycle of mines and is presently not regulated in an integrated manner.* **Ex-mineworkers**

DMR needs to co-ordinate inter-governmental action on developing a comprehensive strategy on ex mineworkers. This must include harmonising compensation laws to remove the bias against mineworkers. The one stop service centres are a welcome innovation, but the planned expansion to Kuruman and Burgersfort has not happened and there is a lack of policy on how the one stop shops should be sustainably resourced. Their services will be needed by ex-miners up to 2028 at least. Retirement fund managers and regulators need to act to pay the (reported) R5-billion in unclaimed benefits to the beneficiaries in the mining sector.  | **30 April 2017****30 September 2017****30 September 2017**  |
| * Address lack of standardisation on how it deals with **community structures**, e.g. Bapo Ba Mogale situation, furthermore brief the committee on how it is dealing with issues pertaining to the above case.
 | 30 June 2017 |

**9.1 Further Recommendations** (Recommendations made in the 2014/15 financial year which are still outstanding)

| **2015 BRRR Recommendations** | **Time Frame** |
| --- | --- |
| 1. The Department should develop a comprehensive report on the outcomes of the mining charter including the names of the companies that did not comply with commitments or meet the targets. Such a report should also provide clarity on the interim measures.
 | 31 March 2017 |
| 1. DMR should report on applications for and the granting of the rights to minerals and provide the outstanding information on SAMRAD requested in March 2015.
 | 31 March 2017 |
| 1. The department and the entities to prioritize the filling of critical and strategic positions. This should include an effective and cost saving interview process
 | 31 March 2017 |
| 1. Introduce a better coordinating mechanism in ensuring that there is better co-ordination between activities of the respective Provincial and Local Governments and the DMR
 | 31 June 2017 |
| 1. The DMR should carefully scrutinize its participation in multilateral forums, and be able to make a business case for its participation, taking into account cost and benefits of such an arrangement
 | 31 March 2017 |
| 1. The Women in Mining Strategy needs to be finalized and implemented urgently.
 | 30 September 2017 |
| 1. The DMR has to interrogate the management structure of its entities, and ensure that the business categorisation is consistent with the mandate of the organisation, as to enable the entities to deliver on their mandates effectively.
 | 30 September 2017 |
| 1. There is a need for better legislation and intergovernmental co-operation to deal properly with the closure of mines. The DMR should research sustainable mine closure, that considers both the environment and community issues.
 | 30 June 2017 |

**Summary of recommendations with financial implications**

Treasury needs to attend to the adequate resourcing of the Council for Geoscience to allow the DMR to have the geological knowledge to fulfil its function as the custodian of the mineral wealth of the nation.

The DMR needs to incorporate the budgetary requirements to produce a proper annual report on its environmental management of the mining sector.

Treasury should come up with a **funding framework**, that encourages the Department and its entities to perform optimally, in their financial stewardship, continued trimming of the budget for a well-managed state organ, **punishes** rather than **reward** prudent financial management

**10. APPRECIATION**

The Committee would like to express its appreciation to the Department under the leadership of the Minister, Deputy Minister and the Acting Director General, the Auditor- General of South Africa and the all the entities. Another unreserved word of appreciation and gratitude goes to the support staff of the Committee who worked diligently during the entire BRRR process including going beyond normal hours of work. This is what is expected from public servants who are committed to see this country moving forward.

Report to be considered.

1. [↑](#footnote-ref-1)
2. [↑](#footnote-ref-2)
3. [↑](#footnote-ref-3)