

**Legacy Report of the Select Committee on Land and Mineral Resources on its activities undertaken during the 5th Parliament (May 2014 – 27 November 2018)**

**Key highlights**

1. **Reflection on committee programme per year and on whether the objectives of such programmes were achieved**
2. **Committee’s focus areas during the 5th Parliament**

During the 5th Parliament the focus of the Committee was on mining, its socio economic impact on mining communities, its role in the upliftment of mining provinces as well as the impact of mining on environmentally protected areas. The Committee further undertook to investigate / research the viability of Aquaculture, in the fight against poverty, which is also in line with Operation Phakisa.

The Committee managed to conduct a follow up visit to Madibeng (North West) to monitor the socio economic impact on mining communities, its role in the upliftment of mining provinces as well as the impact of mining on environmentally protected areas. The Committee also undertook a visit to Isimangaliso Wetland Park in order to assess the challenge facing DAFF and DEA in pursuing their respective but conflicting mandates of developing small-scale community fisheries and expand protected areas. In 2017 the Committee undertook a Study Tour to Australia to conduct research and investigate the Aquaculture Industry, with the hopes of stimulating the same industry in South Africa.

1. **Key areas for future work**

* The further monitoring of mining in South Africa. This includes rising court challenges to mining rights and permits, its impacts on the environment and mining-affected communities;
* The development of aquaculture policy, legislation and support capacity, as well as the implementation of aquaculture developments in South Africa;
* A continued focus on the impacts of different departmental mandates on the attainment of NDP targets. These include overlapping objectives of DAFF, the DMR and DEA in terms of future land use policy;
* The shifting patterns of land ownership in South Africa, including an audit of current land ownership and the impact of land reform on agriculture, employment, the rural economy and patterns of economic activity;
* DAFF agriculture development and support focus, including the neglect of agro-ecological practices, small-scale farmers and the potential of the small-scale and urban farming sector to supplement commercial agriculture outputs; and

The allocation and management of fisheries resources, including the plight of small-scale fishing communities

1. **Key challenges emerging**

A major challenge within the committee is the lack of staff. Since the commencement of the 5th Parliament, the committee has had to operate without a key content support staff member. Initially, the Content Adviser resigned, but the post was filled through the appointment of the Researcher to this post. The researcher has never been replaced. As a result, the committee at present operates without research support. The Committee Assistant is also responsible for more than one committee, resulting in significant pressure at times.

The committee has also been struggling to meet its oversight and meeting targets due to the pressure of legislation, and frequent changes in the NCOP schedules, which resulted in the cancellation of at least one oversight opportunity and most of the 3rd and 4th term meetings initially scheduled during the strategic planning session of the committee. With legislation dominating the time-table for the foreseeable future, it became clear that the committee will be able to perform meaningful oversight over all its departments in 2018. The clustering of Department results in the fact that the committee cannot truly pay any significant attention to each department and their key entities as the amount of meeting dates available per year, even without the presence of legislation, does not allow for meaningful oversight.

1. **Recommendations**

* In the interests of being able to do justice to the costs of performing oversight, it is suggested that Select Committees abandon the concept of joint oversight. Excluding travel days, each committee is not afforded sufficient time to deal with challenges thoroughly when only 2 days are available.
* Short-staffed committees should be staffed as soon as finances allow. Committees without sufficient support struggles to achieve their mandate and it is not a solution to require staff of other committees to assist. This only increases the workload on remaining staff and reduces functionality of all committees, not only those that are short-staffed.
* The NCOP should, if at all possible, publish its annual meeting schedule, including plenary sessions, earlier in a year and should not continue to deviate from its planned activity, as the uncertainty this creates impacts on the planning and efficiency of Select Committees.
* Sufficient time should be allocated to the processing of legislation, with the unnecessary pressure of the six-week rule for Section 76 legislation a major concern. Portfolio Committees have no time limits for engagement on a piece of legislation, yet it is believed that the NCOP can do justice to a piece of legislation in just six weeks. This is unrealistic. The LAMOSA judgement clearly outlines the need for sufficient public engagement on a Bill by a Select Committee, regardless of the actions taken by the Portfolio Committee. This, coupled with experiences of poorly-drafted Bills clearly indicate that due diligence and sufficient public engagement on legislation in the NCOP requires more time.
* The challenges surrounding the current clustering of NCOP committees should be considered. While the constraints of member numbers are evident, the number of departments assigned to committees does not adequately permit oversight over all departments and their entities. Improving the programming of both Houses can alleviate the pressure on Select Committee timetables. Alternatively, the meeting schedules of Committees should be expanded to allow more oversight opportunity. It is simply not possible for this committee to do efficient oversight over all its Departments and all their entities with the number of meeting days available per year. Sufficient oversight requires more meeting opportunities or less Departments per Committee.
* Although committee meeting times are limited at present, there is also a need for greater integration between planning of the Portfolio Committee and Select Committee’ activities, particularly in terms of financial oversight. Currently, much of the work of the Portfolio Committees is duplicated in Select Committees, while Select Committees fail to adequately track financial allocations such as Grants. The impact of Grant expenditure, as well as the adherence to Provincial and local government financial management legislation need to be focused on more effectively. Additionally, there is a need to integrate the outcomes of sectoral parliaments with the oversight capacity of the Committees in order to provide better tracking and monitoring of resolutions taken during sectoral parliaments. If done correctly, sectoral parliaments could strengthen IGR and truly elevate provincial interests and challenges to the National sphere, but if there is no integration of findings and committee follow-ups post-event, these opportunities are lost. Portfolio Committees should also be included in this process in order to ensure that the matters raised are brought to the attention of the Executive.

1. **Introduction**
   1. **Department/s and Entities falling within the committee’s portfolio**
      1. **Department of Environmental Affairs**

The Department of Environmental Affairs is mandated to give effect to the right of citizens to an environment that is not harmful to their health or wellbeing, and to have the environment protected for the benefit of present and future generations. To this end, the department provides leadership in environmental management, conservation and protection towards sustainability for the benefit of South Africans and the global community.

**Strategic Objectives:** Administration; Legal Authorisations and Compliance Enforcement; Oceans and Coastal Management; Climate Change and air Quality Management; Biodiversity and Conservation; Environmental Programmes; and Chemicals and Waste Management.

| **Name of Entity** | **Role of Entity** |
| --- | --- |
| **South African National Biodiversity Institute (SANBI)** | The South African National Biodiversity Institute (SANBI) was established in September 2004 in terms of the National Environmental Management: Biodiversity Act (2004). The Act expands the mandate of the National Botanical Institute to include responsibilities relating to the full diversity of South Africa’s fauna and flora, and build on the internationally respected programmes in conservation, research, education and other visitor services developed over the past century by the National Botanical Institute.  The mandate of SANBI is to monitor and report on the state of biodiversity in the country and the mission is to champion the exploration, conservation, sustainable use, appreciation and enjoyment of South Africa’s exceptionally rich biodiversity for all people. The implementation of the international Convention on Biological Diversity is also within this mandate. |
| **South African National Parks (SANParks)** | The SANParks established in terms of the National Environmental Management: Protected Areas Act (2003), and manages a system of 20 national parks that represents most of the country’s fauna, flora and unique natural features. Tourism, conservation and commercial development comprise the core competencies of the South African National Parks’ biodiversity management mandate. |
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| **South African Weather Service (SAWS)** | The SAWS was established in accordance with the South African Weather Service Act (2001). The objectives of the SAWS are to; maintain, extend and improve the quality of meteorological service; ensure the ongoing collection of meteorological data over south Africa and surrounding southern oceans; and fulfil government’s international obligations under the Convention of the World Meteorological Organisation and the Convention of the International Civil Aviation Organisation as South Africa’s Aviation Meteorological Authority. |
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| **Marine Living Resources Fund (MLRF)** | The MLRF was established in accordance with the Marine Living Resource Act (1998). The aim of marine living resource fund is to finance activities related to managing the sustainable use and conservation of marine living resources, preserving marine biodiversity and minimising marine pollution. Other socio-economic objectives include broadening access to resources by restructuring the industry to address historical imbalances and promote economic growth. |
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| **ISimangaliso Wetland Park Authority (iWA)** | The iWA, which began operating in April 2002, was established through the World Heritage Convention Act (1999). The objective of the iWA include conservation of ISimangaliso Wetland Park areas’ world heritage values, optimising tourism development and contributing to local economic development and transformation. |
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**Strategic Outcomes**

* Environmental Economic Contribution Optimised: Facilitate sustainable socio- economic growth and development by catalysing, optimising and scaling up the contribution of the environmental sector to economic prosperity contributing to an environmentally sustainable, low-carbon economy as a result of a well-managed just transition. Managing the transition will require strong institutional and governance mechanisms that create an enabling environment for stakeholders to contribute to the transition.
* Socially Transformed and Transitioned Communities: Provide leadership in promoting and ensuring environmental sustainability through the management, utilisation, conservation, protection and valuing of our natural resources including management of threats to environmental integrity (climate change, waste and chemicals, atmospheric pollution and alien invasives). Ecosystems will be sustained through an increase in the conservation estate, the protection of biomes and endangered species, rehabilitation and restoration of degraded land and ecosystems as well as through sustainable exploitation of natural resources. The desired outcomes include a reduction in impacts of climate change, risk mitigation through appropriate disaster responses and the deployment of innovative technologies that combat the effects of climate change. The NDP also recognises that the actions related to adaptation will depend on strong policies supported by a sound technical understanding and operational capacity to deal with developmental challenges.
* Environmental/ Ecological Integrity Safeguarded and Enhanced: Facilitate sustainable socio- economic growth and development by catalysing, optimising and scaling up the contribution of the environmental sector to economic prosperity contributing to an environmentally sustainable, low-carbon economy as a result of a well-managed just transition. Managing the transition will require strong institutional and governance mechanisms that create an enabling environment for stakeholders to contribute to the transition.
* Environmental/ Ecological Integrity Safeguarded and Enhanced: Provide leadership in promoting and ensuring environmental sustainability through the management, utilisation, conservation, protection and valuing of our natural resources including management of threats to environmental integrity (climate change, waste and chemicals, atmospheric pollution and alien invasives). Ecosystems will be sustained through an increase in the conservation estate, the protection of biomes and endangered species, rehabilitation and restoration of degraded land and ecosystems as well as through sustainable exploitation of natural resources. The desired outcomes include a reduction in impacts of climate change, risk mitigation through appropriate disaster responses and the deployment of innovative technologies that combat the effects of climate change. The NDP also recognises that the actions related to adaptation will depend on strong policies supported by a sound technical understanding and operational capacity to deal with developmental challenges.
* Global Agenda Influenced and Obligations Met: Enhance regional and international cooperation supportive of South African environmental / sustainable development priorities and influence the global environmental agenda. Ensuring adherence to international governance and regulatory frameworks, instruments and agreements while delivering on national and regional imperatives for South Africa and the global community.
* A Capable and Efficient Department: Improve departmental service delivery capacity and capabilities through creation of a harmonious and conducive working environment and provision of delivery platforms such as ICT infrastructure and services; development and implementation of an effective Human Resource strategy to attract, develop and retain a skilled, transformed and diverse workforce that performs in line with the DEA Culture and Values; aligning and transforming our business processes and systems to support strategy execution, and sound corporate governance thereby optimising efficiencies and strategic agility.
  + 1. **Department of Mineral Resources**

The mandate of the department is to promote and regulate the minerals and mining for transformation, growth, development and ensure that all South Africans derive sustainable benefit from the country’s mineral wealth.

The strategic objective of the Department of Mineral Resources is to formulate and implement policy to ensure optimum use of the country’s mineral resources. With Citibank estimating in 2010 that South Africa had R2,5 trillion worth of mineral reserves, it is clear that the mining industry is crucial in the war against poverty and underdevelopment in South Africa.

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| **Name of Entity** | **Role of Entity** |
| **Council for Geoscience** | The Council for Geoscience was established in terms of the Geoscience Act (1993). Its principal mandate is to develop and publish world class geosciences knowledge products and to provide geosciences related services to the public and to industry. The Geoscience Amendment Act (2010) extends the entity’s functions to include providing advisory services on geo hazards and environmental pollution, and being the custodian of all geosciences information related to the South African mining industry. |
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| **Mintek** | The mandate of the Mintek, as set out in the Mineral Technology Act (1989), is to maximise the value derived from South Africa’s mineral resources. To this end, the council develops appropriate, innovative technology for transfer to industry, and provides industry with test work, consultancy, analytical and mineralogical services. |
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| **Mine Health and Safety Council** | The Mine Health and Safety Council was established in terms of the Mine Health and Safety Act (1996). The council is mandated to advise the Minister of Mineral Resources on occupational health and safety at mines, develop legislation, conduct research, and liaise with other statutory bodies. The council operates through the tripartite partnership between organised labour, employers and the national departments of health and labour. |
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| **South African Diamond and Precious Metals Regulator** | The South African Diamond and Precious Metals Regulator is a schedule 3A public entity in terms of the Public Finance Management Act (1999), as amended. The regulator was established in terms of section 3 of the Diamonds Act (1986), as amended. The regulator’s mandate is to implement and enforce the provisions of the Diamonds Act (1986), the Precious Metals Act (2005), the Diamond Export Levy (Administration) Act (2007), and the Diamond Export Levy Act (2007). |
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| **State Diamond Trader** | The State Diamond Trader’s mandate, as defined in the Diamonds Amendment Act (2005), is to facilitate equitable access to South Africa’s rough diamond resources, promote local beneficiation, undertake research, develop a client base, contribute to the growth of the local diamond beneficiation industry, and develop efficient means to market diamonds not suitable for local beneficiation. |
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**Strategic Objectives**

* 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.
* 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.
* 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.
* 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 promote corporate governance.
    1. **Department of Agriculture, Forestry and Fisheries**

The mandate of the department is aadvancing food security and transformation of the sector through innovative, inclusive and sustainable policies, legislation and programmes.

**Strategic Objectives:** Effective and efficient strategic leadership, governance and administration; Enhance production, employment and economic growth in the sector; Enabling environment for food security and sector transformation; and Sustainable use of natural resources in the sector.

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| **Name of Entity** | **Role of Entity** |
| **National Agricultural Marketing Council (NAMC)** | The NAMC was established in terms of section 3 of the Marketing of Agricultural Products Act, 1996 (Act No. 47 of 1996). The core mandate of the NAMC is to do investigations and advise the Minister of Agriculture and Land Affairs on agricultural marketing policies and their application, and to co-ordinate agricultural marketing policy in relation to national economic, social and development policies and international trends and developments. |
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| **Agricultural Research Council (ARC)** | The ARC was established in terms of section 2 of the Agricultural Research Act, 1990 (Act No. 86 of 1990). The Council is the principal agricultural research institution in the country. It provides agricultural research and development, technology and support to the agricultural community. In addition, the council is the custodian of the country’s national collections of insects. |
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| **Onderstepoort Biological products (OBP)** | The company was established in terms of the Onderstepoort Biological Products Incorporation Act, 1999 (Act No.19 of 1999). OBP is a bio-technical company manufacturing vaccines and related products for global animal health care industry. |
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| **Perishable Products Export Control Board** | The Board was established in terms of Section 2 of the Perishable Products Export Control Act, 1983 (Act No. 9 of 1983). It controls the export shipment of perishable products from South Africa and the order of shipment at all ports, makes recommendations on the handling of perishable products when moved to and from railway trucks and other vehicle or cold stores; and promotes uniform freight rates for the export of perishable products. |
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| **Ncera Farms (Pty) Ltd** | Ncera Farms (Pty) is a public company listed under schedule 3B in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999) as amended. The Department of Land Affairs is the sole shareholder. It is situated in the Eastern Cape on the state-owned land of approximately 4 000 hectares, and is dedicated to assisting small and emerging farmers through various services to the surrounding rural communities in the form of advice, extension services, training and so on. |
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* SG 1: Increased profitable production of food, fibre and timber products by all categories of producers

Strategic objectives

* + SO 1: Promote efﬁ cient production, handling and processing of food, ﬁbre and timber
  + SO 2: Coordinate government food security initiative
  + SO 3: Improve production systems anchored in commodities with a competitive and comparative advantage in each province
  + SO 4: Comprehensive support towards rural development
* SG 2: Sustained management of natural resources

Strategic objectives

* + SO 1: Ensure the sustainable management and efﬁcient use of natural resources
  + SO 2: Ensure protection of indigenous genetic resources
  + SO 3: Increase contribution to green jobs to improve livelihoods
* SG 3: Effective national regulatory services and risk management systems

Strategic objectives

* SO 1: Manage the level of risks associated with food, diseases, pests, natural disasters and trade
* SO 2: Establish and maintain effective early-warning and mitigation systems
* SG 4: A transformed and united sector

Strategic objectives

* SO 1: Increase equity, ownership and participation of PDIs
* SO 2: Enhance systems to support the effective utilisation of assets
* SO 3: Improve social working conditions in the sector
* SO 4: Provide leadership and support to research, training and extension in the sector
* SG 5: Increased contribution of the sector to economic growth and development

Strategic objectives

* SO 1: Increase growth, income and sustainable job opportunities in the value chain
* SO 2: Increase the level of public and private investment in the sector
* SO 3: Increase market access for South African and African agricultural, forestry and ﬁsh products, domestically and internationally
* SO 4: Increase production of feedstock to support the manufacturing sector
* SG 6: Effective and efficient governance

Strategic objectives

* SO 1: Establish and strengthen cooperative governance and functional relations with local and international stakeholders
* SO 2: Strengthen policy, planning, monitoring, evaluation, reporting and sector information
* SO 3: Provide effective audit, investigative and legal, human resources and ﬁnancial risk management
* SO 4: Improve departmental service excellence through implementation of quality standards, Batho Pele principles and the general legislative mandate
* SO 5: Provide leadership and manage communication and information
  + 1. **Department of Rural Development and Land Reform**

The mandate of the department is derived from sections 24, 25 and 27 of the Constitution. Section 25 (property clause) establishes the framework for the implementation of land reform, and sections 24 (environment clause) and 27 (health care, food, water and social security clause) establish the framework for the implementation of the CRDP.

**Strategic Objectives:**

* Forster corporate governance and service excellence through compliance with the legal framework
* Improve land administration for integrated and sustainable growth and development
* Promote equitable access to and sustainable use of land for development
* Promote sustainable rural livelihoods
* Improve access to services in rural areas through the coordination of quality infrastructure
* Promote economically, socially and environmentally viable rural enterprises and industries
* Restoration of land rights in terms of the Restitution of Land Rights Act, as amended.

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| **Name of Entity** | **Role of Entity** |
| **Kwazulu – Natal Ingonyama Trust Board** | The Ingonyama Trust was established in terms of the KwaZulu-Natal Ingonyama Trust Act, 1994 (Act No. 3 of 1994). The Act of 1994 is amended by National Act of 1997 (Act No. 9 of 1997). Amongst other things, the KwaZulu-Natal Ingonyama Trust Amendment Act provided for the establishment of the Ingonyama Trust Board. The core business of the trust is to manage its 2.7 million hectares of land, spread throughout KwaZulu-Natal, for the material benefit and social well-being of individual tribe members. The department, together with the Land Bank, are currently trying to salvage the project by involving other strategic partners. |

* 1. **Functions of committee:**

Parliamentary committees are mandated to:

* Monitor the financial and non-financial performance of government departments and their entities to ensure that national objectives are met.
* Process and pass legislation.
* Facilitate public participation in Parliament relating to issues of oversight and legislation.
  1. **Method of work of the committee (if committee adopted a particular method of work e.g. SCOPA.)**

No Specific method of work adopted

* 1. **Purpose of the report**

The purpose of this report is to provide an account of the Committees on … work during the 5th Parliament and to inform the members of the new Parliament of key outstanding issues pertaining to the oversight and legislative programme of the Department of … and its entities.

This report provides an overview of the activities the committee undertook during the 5th Parliament, the outcome of key activities, as well as any challenges that emerged during the period under review and issues that should be considered for follow up during the 6th Parliament. It summarises the key issues for follow-up and concludes with recommendations to strengthen operational and procedural processes to enhance the committee’s oversight and legislative roles in future.

1. **Key statistics**

The table below provides an overview of the number of meetings held, legislation and international agreements processed and the number of oversight trips and study tours undertaken by the committee, as well as any statutory appointments the committee made, during the 5th Parliament:

| **Activity** | **2014** | **2015** | **2016** | **2017** | **2018** | **Total** |
| --- | --- | --- | --- | --- | --- | --- |
| Meetings held | **11**  **July - Nov** | **17**  **March - Nov** | **20**  **March - Nov** | **22**  **Jan - Nov** | **21**  **Feb - Nov** | **91** |
| Legislation processed | **9** | **None** | **1** | **None** | **6** | **16** |
| Oversight trips undertaken | **1** | **2** | **1** | **1** | **1** | **6** |
| Study tours undertaken | **None** | **None** | **None** | **1** | **None** | **None** |
| International agreements processed | **4** | **1** | **1** | **None** | **None** | **6** |
| Statutory appointments made | **None** | **None** | **None** | **None** | **None** | **None** |
| Interventions considered | **None** | **None** | **None** | **None** | **None** | **None** |
| Petitions considered | **None** | **None** | **None** | **None** | **None** | **None** |

1. **Stakeholders:**

None

1. **Briefings and/or public hearings**

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| --- | --- |
| **Event** | **Follow – up Issues** |
| Follow up visit to Madibeng Municipality – North West Province | The Committee resolved to return to the area as part of its programme of monitoring socio economic impacts on mining communities and protected areas and the effectiveness of Social Labour Plans. |
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| Public hearings on mining (MPRDA): Matters identified by the Select Committee on Land and Mineral Resources | * The Committee supports the urgent need for resolving the regulation of fine particulate matter (PM) pollution emanating from mining activity, including blasting, digging and transporting of rocks and sediment. The complexity of the regulatory environment is of such a nature that close so-operation will be required between parliament, the Department of Environmental Affairs and all spheres of government; * The Committee supports the assertion that the MPRDA is a framework Act and as such, should not be amended to include the details that public submissions called for regarding many critical Sections of the Bill. The Committee, however, feels strongly about the fact that the concerns raised are valid, and that sufficient public participation should be ensured during the development of regulations. Mining impacts on so many aspects of rural livelihoods, the rural economy, and in cases even the functioning of municipal structures. Under such circumstances, and having observed in person the degree of discontent with the state of public consultation between the Department and interested and affected parties, the Committee feels strongly that the interest of the public will be best served in ensuring that the regulations that will address the details sought by the public and industry is also scrutinised by Parliament. |
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| Australia Study Tour | The Committee resolved to further its research / study aquaculture opportunities that can be developed in co-operation with Australia. See relevant section of report for greater detail. |
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| Free State Visit | Committee is yet to adopt the report |
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1. **Legislation**

The following pieces of legislation were referred to the committee and processed during the 5th Parliament:

| **Year** | **Name of Legislation** | **Tagging** | **Objectives** | **Completed/Not Completed** |
| --- | --- | --- | --- | --- |
| **2014** | Marine Living Resources Amendment Bill [B 30B-2013].  Referred 7 November 2013. | S76 | To amend the The Marine Living Resources Act, 1998, so as to insert, amend or delete certain definitions; to amplify the objectives and principles provided for in that Act; to make provision for measures relating to small-scale fishing and for the powers and duties of the Minister in this regard; to effect technical amendments; and to provide for matters connected therewith. | **Completed** |
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|  | National Environmental Management: Protected Areas Amendment Bill [B28B - 2013].  Referred 4 March 2014. | S75 | To amend the National Environmental Management: Protected Areas Act, 2003, so as to amend or insert certain definitions; to authorise the declaration of marine protected areas; to provide for the management of marine protected areas; to provide for transitional measures; and to effect certain textual alterations; and to provide for matters connected therewith. | **Completed** |
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|  | National Environmental Management: Waste Amendment Bill [B32B - 2013].  Rreferred 27 February 2014. | S76 | To amend the The National Environmental Management: Waste Act, 2008, so as to substitute and delete certain definitions; to exclude the department from the spheres of government that are required to compile integrated waste management plans; to require the MEC responsible for waste management to act in concurrence with the Minister when requesting certain persons to compile and submit industry waste management plans; to provide for the exclusion of the provincial department responsible for waste management from the requirement to compile an industry waste management plan; to establish a pricing strategy; to provide for the content and application of the pricing strategy; to establish the Waste Management Bureau; to provide for the determination of policy and the Minister’s oversight in relation to the Waste Management Bureau; to provide for the determination of policy and the Minister’s oversight in relation to the Waste Management Bureau; to provide for the objects, functions, funding, financial management, reporting and auditing, immovable property of the Waste Management Bureau; to provide for the employees of the Waste Management Bureau; to provide for the appointment and the functions of the Chief Executive Officer of the Waste Management Bureau; to prescribe certain matters in relation to the Waste Management Bureau; to provide for transitional provisions in respect of existing industry waste management plans; and to provide for matters connected therewith. | **Completed** |
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|  | National Water Amendment Bill [B 3 - 2014].  Referred 27 January 2014. | S75 | To amend the the National Water Act, 1998, so as to make provision for the correct designation of the Department and Minister; to correct outdated references; to provide for an alignment and integration of the process for consideration of water use licences, relating to prospecting, exploration, mining or production activities; to provide for the appointment of the Minister as the responsible authority for appeals relating to prospecting, exploration, mining or production activities; to amend the authority of the Water Tribunal as appeal authority relating to prospecting, exploration, mining or production activities; to provide for the concurrence between the Minister, the Minister responsible for mineral resources[,] and the Minister responsible for environmental affairs when amending provisions of the Agreement related to prospecting, exploration, mining or production activities and to provide for matters connected therewith. | **Completed** |
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|  | National Environmental Management: Air Quality Amendment Bill [B27B - 2013].  Referred 05 November 2014. | S76 | To amend the The National Environmental Management: Air Quality Act, 2004, so as to substitute certain sections; to provide for the establishment of the National Air Quality Advisory Committee; to provide for the consequences of unlawful commencement of a listed activity; to provide for monitoring, evaluation and reporting on the implementation of an approved pollution prevention plan; to empower the MEC or Minister to take a decision in the place of the licensing authority under certain circumstances; to provide for the Minister as licensing authorities in situations where the province, as a delegated licensing authority by the municipality, is the applicant for an atmospheric emission licence, where the applications are trans-boundary, where the air activity forms part of national priority project, where the activity is also related to the environmental impact and waste management activities authorised by the Minister, where the air activity relates to a prospecting, mining, exploration or production activity; to delete cross references to the Environmental Conservation Act, 1989; to clarify that applications must be brought to the attention of interested and affected parties soon after the submission to the licensing authority; to provide for a validity period of provisional atmospheric emission licence; to create an offence for non-compliance with controlled fuels standards; to provide for the development of regulations on climate change matters and the procedure and criteria for administrative fines; to delete certain obsolete provisions; and to provide for matters connected therewith. | **Completed** |
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|  | National Environmental Management: Integrated Coastal Management Amendment Bill [B8B - 2013].  Referred 05 November 2013. | S76 | To amend the the National Environmental Management: Integrated Coastal Management Act, 2008, so as to amend certain definitions; to clarify coastal public property and the ownership of structures erected on and in coastal public property; to remove the power to exclude areas from coastal public property; to clarify and expand the provisions on reclamation; to clarify definitions and terminology; to simplify the administration of coastal access fee approvals; to simplify and amend powers relating to coastal authorisations; to replace coastal leases and concessions with coastal use permits; to extend the powers of MECs to issue coastal protection notices and coastal access notices; to limit the renewal of dumping permits; to simplify the composition and functions of the National Coastal Committee; to clarify the powers of delegation by MECs; to revise offences and increase penalties; to improve coastal authorisation processes; to provide for exemptions; and to provide for matters connected therewith. | **Completed** |
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|  | National Environmental Management Laws Third Amendment Bill [B 26B-2013].  Referred 27 February 2014. | S76 | To amend the National Environmental Management Act, 1998, so as to amend certain definitions and to define certain words and expressions; to provide for the review of environmental management instruments; to provide for minimum information requirements to be included under environmental management instruments; to provide for the Minister responsible for mineral resources to be the competent authority for environmental matters in so far as they relate to prospecting, exploration, mining or production of mineral and petroleum resources; to empower the Minister to take an environmental decision in so far as it relates to prospecting, exploration, mining or production instead of the Minister responsible for mineral resources under certain circumstances; to clarify the provisions relating to integrated environmental authorisations; to strengthen the financial provisions in the Act; to provide for consultation with State Departments; to provide for the management of residue stockpiles and residue deposits; to empower the Director-General of the Department responsible for mineral resources to issue section 28 directives in so far as they relate to prospecting, exploration, mining or production; to empower the Minister responsible for mineral resources to designate environmental mineral resource inspectors within the Department responsible for mineral resources for compliance monitoring and enforcement of provisions in so far as they relate to prospecting, exploration, mining or production; to provide the Minister with the power to direct environmental management inspectors to perform compliance monitoring and enforcement duties instead of mineral resource inspectors under certain circumstances; to empower the provincial head of department to delegate a function entrusted to him or her under this Act; to provide for the suspension of a decision on receipt of an appeal; to provide for appeals against directives; to further provide for the power of the Minister to make regulations; to provide for consultation in the event that an Act of Parliament or regulations are amended that impact on the Agreement; to provide for the criteria for condonation applications in the case of appeals that relates to prospecting, exploration, mining or production;  • National Environmental Management: Waste Act, 2008 so as to insert certain definitions; to empower the Minister to prohibit or restrict waste management activities in specified geographical areas; to empower the Minister responsible for mineral resources to be the licensing authority to issue waste management licences in so far as it relates to prospecting, exploration, mining or production activities of mineral and petroleum resources; to empower the Minister responsible for mineral resources to delegate a function entrusted to him or her under this Act;  • National Environmental Management Amendment Act, 2008, so as to provide for transitional arrangements; to amend the commencement provisions; and to delete certain obsolete provisions; and to provide for matters connected therewith, and to provide for matters connected therewith. | **Completed** |
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|  | Property Valuation Bill [B54B - 2013].  Referred 12 March 2014. | S75 | To provide for the establishment, functions and powers of the Office of the Valuer-General; to provide for the appointment and responsibilities of the Valuer-General; to provide for the regulation of the valuation of property that has been identified for land reform as well as property that has been identified for acquisition or disposal by a department; and to provide for matters connected therewith. | **Completed** |
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|  | Restitution of Land Rights Amendment Bill [B 35B-2013].  Referred 26 February 2014. | S76 | To amend the the National Environmental Management: Integrated Coastal Management Act, 2008, so as to amend certain definitions; to clarify coastal public property and the ownership of structures erected on and in coastal public property; to remove the power to exclude areas from coastal public property; to clarify and expand the provisions on reclamation; to clarify definitions and terminology; to simplify the administration of coastal access fee approvals; to simplify and amend powers relating to coastal authorisations; to replace coastal leases and concessions with coastal use permits; to extend the powers of MECs to issue coastal protection notices and coastal access notices; to limit the renewal of dumping permits; to simplify the composition and functions of the National Coastal Committee; to clarify the powers of delegation by MECs; to revise offences and increase penalties; to improve coastal authorisation processes; to provide for exemptions; and to provide for matters connected therewith. | **Completed** |
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| **2015** | **NONE** | | | |
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| **2016** | Mineral and Petroleum Resources Development A/B [B 15D-2013]  **Referred 1 November 2016** | Sec 76 | To amend the Mineral and Petroleum Resources Development Act, 2002, as amended by the Mineral and Petroleum Resources Development Act, 2008 (Act No. 49 of 2008); so as to remove ambiguities that exist within the Act; to provide for the regulation of associated minerals, partitioning of rights and enhance provisions relating to the regulation of the mining industry through beneficiation of minerals or mineral products; to promote national energy security; to streamline administrative processes; to align the Mineral and Petroleum Resources Development Act with the Geoscience Act, 1993 (Act No. 100 of 1993), as amended by the Geoscience Amendment Act, 2010 (Act No. 16 of 2010); to provide for enhanced sanctions; to improve the regulatory system; and to provide for matters connected therewith. | To be completed |
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|  | Plant Improvement Bill  [B 8B-2015]  **Referred 17 November 2016** | Sec 76 | To provide for—  ● the registration of certain types of business relating to plants and propagating material intended for cultivation and sale and the registration of premises on or from which that business is conducted;  ● quality standards for plants and propagating material intended for cultivation and sale and conditions of sale of plants and propagating material;  ● a system for national listing of plant varieties;  ● the evaluation of plant varieties in order to ensure value if there is doubt in respect of the value for cultivation and use of plant varieties intended for  cultivation and sale;  ● import and export control of plants and propagating material; and  ● a system for different types of schemes for plants and propagating material; and to provide for matters connected therewith. | Completed |
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|  | Plant Breeders’ Rights Bill  [B 11B-2015]  **Referred 17 November 2016** | Sec 76 | To provide for a system where under plant breeders’ rights relating to varieties of certain kinds of plants may be granted; for the requirements that have to be  complied with for the grant of such rights; for the scope and protection of such rights; and for the grant of licenses in respect of the exercise of such rights; and to provide for matters connected therewith. | Completed |
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| **2017** | Extension of Security of Tenure A/B [B 24B-2015]  **Referred 6 June 2017** | Sec 75 | To amend the Extension of Security of Tenure Act, 1997, so as to amend and insert certain definitions; to substitute the provision of subsidies with tenure grants; to further regulate the rights of occupiers; to provide for legal representation for occupiers; to further regulate the eviction of occupiers by enforcing alternative resolution mechanisms provided for in the Act; to provide for the establishment and operation of a Land Rights Management Board; to provide for the establishment and operation of Land Rights Management Committees to identify, monitor and settle land rights disputes; and to provide for matters connected therewith. | Completed |
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|  | Liquor Products A/B [B 10B – 2016]  **Referred 17 October 2017** | Sec 75 | To amend the Liquor Products Act, 1989, so as to insert certain definitions and to amend and delete others; to provide for the renaming and reconstitution of the Wine and Spirit Board and to limit its powers; to provide for requirements regarding beer, traditional African beer and other fermented beverages; to repeal a provision in respect of the authorisations regarding certain alcoholic products; to empower the Minister to designate a person to issue export certificates; to align certain provisions with the Constitution; to extend the Minister’s power to make  regulations; to provide gender-equal terminology; and to provide for matters connected therewith. | Completed |
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| **2018** | Marine Spatial Planning Bill [B 9D - 2017] (s76)  **Referred 24 Apr 2018** | S76 | To provide a framework for marine spatial planning in South Africa; to provide for the development of marine spatial plans; to provide for institutional arrangements for the implementation of marine spatial plans and governance of the use of the ocean by multiple sectors; and to provide for matters connected therewith**.** | Completed |
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|  | Communal Property Association [B12B-2017] (s76)  **Referred 30 May 2018** | S76 | To amend the Communal Property Associations Act, 1996, so as to amend, insert and delete certain definitions; to provide for clarity on the objective of communal property associations; to provide for the establishment of a Communal Property Associations Office and the appointment of a Registrar of Communal Property Associations; to provide for general plans for land administered by an association; to repeal the provisions relating to provisional associations; to provide improved protection of the rights of communities in respect of movable and immovable property administered by an association; to provide for name changes of associations; to improve the provisions relating to the management of an association that has been placed under administration; to provide clarity on the content of an annual report in respect of associations; to make provision for transitional arrangements; and to provide for matters connected therewith. | To be completed |
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|  | National Forests Amendment Bill [B 11B – 2016] (s76)  **Referred 28 Aug 2018** | S76 | To amend the National Forests Act, 1998, so as to provide for clear definitions of natural forests and woodlands; to provide for public trusteeship of the nation’s forestry resources; to increase the promotion and enforcement of sustainable forest management; to increase the measures provided for in the Act to control and remedy deforestation; to provide for appeals against decisions taken under delegated powers and duties; to reinforce offences and penalties; and to provide for matter connected therewith. | Prioritised for 2019 |

1. **Challenges emerging**

The following challenges emerged during the processing of legislation:

* The number of technical errors that had been identified in critical pieces of legislature such as the MPRD Bill is concerning. It is typically assumed in the current parliamentary processes that a Bill that has passed scrutiny in the NA will be free of technical errors. This is not the case under all circumstances and where Bills with technical errors are encountered, the 6-week cycle is simply not sufficient to ensure that the Bill is properly dealt with.
* The LAMOSA ruling makes a number of statements regarding the responsibility of the National Legislature in terms of determining who made inputs at public hearings, for instance. The recommendations were incorporated into the Practice Note developed by Parliament without considering the Mandating Procedures of Provinces Act. This Act does not require provinces to furnish detailed records of the origin of submissions used during the development of mandates, and it does not require provinces to furnish such information to parliament. It is therefore impossible to enforce the details of the Practice Note as it is not based on legal requirements of the Act.
* The passage of the MPRD Bill, once remitted by the President, highlighted a number of key rule challenges within the rules of the Houses of Parliament and the Joint Rules of Parliament. At present, the desire of the Executive to withdraw the remitted Bill is the most recent challenge. There is no clear rule on how the Executive should engage with the Committee or the NCOP on the matter and what grounds can be provided for withdrawing the Bill at this late stage. Even the role of the Department in consultation has proven to be contentious. The Department cannot withdraw the Bill, as it is considered to be a Bill of Parliament, yet when consultation was taking place, it was also considered improper for the Department to provide inputs as it was argued that the Bill originated with them. Thus, rule interpretation at different stages of the processing of the Bill appeared to be contradictory. A number of public challenges, via the consultation process, also revolved around the interpretation of parliamentary rules. Clarifying these contestations took some time. A last challenge that emerged is that, where rule updates have taken place as a result of experiences in the NA, these changes were not filtered through to NCOP rules. Thus, where vaguely worded rules were revised in the NA to clarify the meaning of the rule, the same was not done in the NCOP rulebook. This also resulted in delays and contestation in the Committee, where legal advice sought to request the committee to follow a precautionary approach to amendments as was adopted in the NA already, but where it was not yet a requirement of the NCOP rules.
* Where clarity was sought on matters regarding the interpretation of parliamentary rules, challenges were experienced in the turnaround time for critical consultations. Delays were experienced at critical times and as a result of these, processing of the Bill became protracted. In other cases, there was disagreement between the interpretation of the Rules, with Table staff and Legal Services disagreeing with the application or interpretation of a rule. It became apparent that some rules need clarification or to be redrafted in clearer language.
* As was the case at the end of the 4th Parliament, Departments continue to delay the introduction of new legislation until the last half of the final year of a parliamentary cycle. This behaviour always creates a bottle-neck in the NCOP. To avoid challenges with inadequate consultation, the Committee sought extensions on the 6-week cycle rule where deemed necessary, but in the end, overloaded provincial administrations are not in a position to provide mandates and the Committee runs out of time. This challenge not only dilutes the quality and extent of public consultation on late Bills, but creates artificial challenges. In most cases, Bills introduced in 2018 were already listed in the Strategic Plans of Departments at the beginning of the 5-year cycle.
* The deliberation process on Section 76 Bills, and in particular the mandating phase, came under scrutiny in the Committee. There were a number of instances where members questioned the mandating procedure, and in particular the voting rules in relation to their own province’s mandate. It was felt that the current Mandating Procedures were too rigid and invariably results in almost no amendment to a Bill being possible as a result of current procedure.
* Content-related challenges were experienced with the MPRD Bill. The legal adviser identified a litany of technical and drafting errors that were not corrected in the preparation of the Bill or its passage through the NA. This resulted in some delays as the Bill was remitted and all changes to the Bill had to be carefully considered in order to avoid making what could be considered to be substantive changes to a remitted Bill that was referred back to the NCOP for consultation, not content.

1. **Issues for follow-up**

The 6th Parliament should consider following up on the following concerns that arose:

* Monitoring of new entities being established
* New mechanisms or corrections to challenges, etc

1. **Oversight trips undertaken**

| **Date** | **Area Visited** | **Objective** | **Recommendations** | **Responses to Recommendations** | **Follow-up Issues** | **Status of Report** |
| --- | --- | --- | --- | --- | --- | --- |
| 20 – 24 Oct 2014 | Gauteng | **The Council for Geoscience (CGS)**  The Council for Geoscience: The entity is responsible for laying the groundwork for mineral exploration and commercial exploitation in South Africa, by producing detailed geological maps of the country. As such, they are the first step in the process of mining and ultimately mineral beneficiation. The Council's mapping capabilities are also used for other very important activities, such as the classification of soils (needed for the identification of good agricultural land and for planning farming practices), the identification of high-risk areas such as dolomitic regions where sinkholes can form, and in mapping areas affected by Acid Mine Drainage.  **The Agricultural Research Council (ARC)**  The Agricultural Research Council: The Council conducts research with partners, develops human capital and fosters innovation to support and develop the agricultural sector. One such important programme is the Agricultural Economics and Capacity Development programme which is responsible for translating the ARC's research results into useable outputs in support of agrarian transformation and the efficiency and competitiveness of the sector. This is achieved through analysis of research activity in order to allow the ARC to exploit its IP, maximise utilization of R&D outputs and transfer technology to farmers and agribusiness.  **Onderstepoort Biological Services (OBS)**  Onderstepoort Biological Services: Onderstepoort Biological Products' mandate is to prevent and control animal diseases that impact food security, human health and livelihoods. The mandate is delivered through continued development of innovative products and efficient manufacturing that ensures vaccine affordability and accessibility through varied distribution channels. | * The Department of Agriculture, Forestry and Fisheries to provide details on the funding model used to provide the transfer to the OBP. * A feasibility study on the use of the OBP as a service provider (service provider of choice) for the Department of Agriculture, Forestry and Fisheries and all the provincial Departments of Agriculture, should be conducted to assess the potential of the OBP in securing a market share of State procured vaccines. * The DAFF needs to report to the Committee on the development (including budget) of the new premises for OBP to achieve the GMP status |  |  | Adopted |
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| 18 – 22 August 2018 | North West - Madibeng | The Department of Mineral Resources manages mining applications, prospecting and mining operations at provincial level through its Regional Offices. Even though the department therefore does not have any provincial government representation, the Regional Offices are vital in managing the activities of mining companies, as well as being responsible for the engagement of interested and affected members of the public and communities. Past submissions to the Committee, as well as member input during Strategic Planning sessions have highlighted the need for provincial-level oversight of Regional Offices in order to investigate the manner in which these offices of the National Department are performing with regard to their mandated responsibilities. This visit will be conducted in order to receive a detailed briefing of the activities of the North-West Regional Office, as well as to investigate recent reports of a specific case where concerns have been raised with regards to proposed mining activity in the province. The Select Committee on Land and Mineral Resources (previously Land and Environmental Affairs) does not have significant previous oversight experience with regards to the Department of Mineral Resources and Regional Offices have been identified as a logical focus for the Committee. It is the intention of the Committee to perform oversight over each Regional Office during the 5th Parliament. | It is important to focus the Committee’s way forward on the matters at hand starting with the most critical actions. The committee’s mandate, derived from the mandate of the NCOP calls for a focus on:   * Improving the functioning of IGR; * Improving and expanding public engagement opportunities; and * Legislative oversight.   The Committee suggested that the secretariat schedule a follow-up visit to the Madibeng Local Municipality in order to verify the status and impact of mine Social and Labour Plan projects and housing developments. In light of the current weak performance of the mining sector, the visit can also gauge the capacity that SLPs have had to develop alternative sustainable income for mining communities  Additionally, the Committee would be considering the following:   1. Assisting in improving the relationship between the Department of Mineral Resources, the provincial government and municipal authorities. The most critical outcomes of such an improved relationship will be:    1. Improved linkages between S&L Plans of mining companies and the IDP and LED strategy of municipalities    2. Improved functioning of the Mining Forum 2. A volume of evidence has emerged from this and other oversight/committee briefing events suggesting that there is room for a critical review of the current legislative environment regulating mining and exploration permits in order to assess potential shortcomings as highlighted by the community. The degree to which mining companies engage with communities, assess the environmental and community agriculture impacts of mining activity, the rehabilitation of mined areas and the impact of mining on municipal infrastructure are all aspects causing concern at present. Areas for potential review include:    1. The amount of autonomy given to mining companies to manage the application and public engagement process;    2. The consultative process;    3. Regulations pertaining to environmental and agricultural impacts, as well as mine rehabilitation;    4. Improved inspection and conflict resolution mechanisms to prevent mining activity severely impacting on community property and livelihoods. 3. Expand this exercise to include the remaining Regional Offices of the DMR in order to determine how wide-spread the issues observed during the visit to the North-West Province are in the rest of the country. This will add to the volume of evidence required to critically assess potential shortcomings of the current legislation. |  |  | Adopted |
| 7 – 11 September 2018 | Mpumalanga | Rhino poaching has become a significant challenge to the Department of Environmental Affairs, escalating to over 1000 poaching incidents per year in the last three years. The combatting of rhino poaching is a complex challenge, requiring an integrated approach that includes the input and support of a number of State departments and entities. The committee has identified the problem of rhino poaching as a key issue in its strategic planning, but to date has not been briefed on the matter by the Department. This workshop will bring the committee up to date on the fight against poaching, the current actions taken by the relevant departments and the way forward. | The following recommendations were raised by the Department and members of the Committee during the visit to the Kruger National Park and are worth repeating in this section:  The DEA needs support in shifting the fight against rhino poaching from the current anti-poaching enforcement focus to a point where activities aimed at devaluing the horn, and decreasing the viability of and demand for ivory and rhino horn trade dominate. To this end, the following can be promoted:   * The anti-poaching budget at present is not insignificant but due to the expanse over which poaching must be combatted and the level of technology required, is not nearly enough. Apart from motivating for increased financial contribution towards the Department’s anti-poaching commitments, the committee can consider raising with the relevant committees the current challenges experienced with the Central Firearms Register, both in terms of import licenses as well as the refusal to allow SANParks access to surplus military stock. * Legislative and judicial strengthening of the fight against poaching through the establishment of a permanent court dedicated to wildlife crime within the KNP; * While the Department assured the Committee that the working relationship between the various State Departments and Entities involved in the fight against poaching is sound, there is room for improved anti-poaching capacity within individual provinces and especially provincial conservation areas close to Kruger National Park. The Committee can direct oversight activity towards reviewing the financial and staff challenges of provincial nature conservation structures within provinces affected by rhino poaching. * Toughened bail conditions and more severe sentences proposed for poaching suspects and those convicted; * Renewed focus on the prosecution, through targeted law enforcement efforts and asset forfeiture, of the middle men and syndicate heads that at present are not significantly affected by the anti-poaching efforts taking place within the Kruger National Park; * The seizure of assets associated with poaching or bought with the proceeds of wildlife crime such as rhino poaching; * Improved cooperation with counterparts in Mozambique, including the signing of an extradition agreement and assistance to the Mozambique government towards developing and implementing their own environmental legislation; * Although SANParks insists that the main security focus at their entry points into the Park should not detract from the tourism experience, the reality of the poaching challenge is that weak security at gates will remain to pose a challenge to the anti-poaching effort and it is worth encouraging the Department to develop a workable solution for this challenge. |  |  | Adopted |
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| 30 Aug – 2 September 2016 | Isimangaliso Wetland Park | The proposed oversight is significant to the Committee as it focuses on two conflicting mandates of the DAFF and the DEA that both require access to the near shore coastal zone and marine resources. South Africa is internationally committed to conserve a specific percentage of its coastal areas, and is in the process of expanding its conservation footprint. Simultaneously, a commitment to UNESCO agreements and the proclamation of a World Heritage Site requires adherence to international law. At the same time, the DAFF is attempting to comply with its mandate of expanding access to coastal resources for previously disadvantaged fishers and excluded coastal communities.  It is therefore not clear how to resolve such conflicts of interest where both parties can claim to be adhering to their mandates and responding to the objectives of national policies and priorities. Both activities – Small-scale fishery development and marine conservation, is also high priorities for government and as such, solutions for situations such as these are important to find. It is therefore clearly within the scope of the Select Committee’s role in terms of improving Inter-Governmental Relations between the Departments they oversee to undertake this oversight trip. | **A. Operation Phakisa: Oil and Gas sector**   1. In the past, investor concerns over the legislative context of oil and gas exploitation in South Africa had been raised as a serious constraint in the development of the industry in South Africa, but this presentation was largely silent on the matter. Investor skepticism and a low oil price are important factors that could impact on the cost, and the speed of delivery on Operation Phakisa’s oil and gas sector development. Most of the planning for the development of the sector transpired in an environment characterized by prolonged periods of high oil and gas prices. It is perhaps prudent to workshop the impact of the current oil and gas prices, legislative challenges (if they exist) and investor commitment with the DMR to determine if there is significant risk to the projected timelines developed at the onset of the plan. 2. It is understood that the development of an oil and gas industry is a prolonged and costly exercise. There are, however, a number of matters that the committee could request further clarification on. These include:    1. The likelihood of an oil and gas sector being established in Kwa-Zulu Natal versus the current plan to develop oil and gas infrastructure along the entire coastline of South Africa. It is understood that the oil and gas pipeline is a phased development, but to what extent is the development of oil and gas shore-based infrastructure informed by the discovery of commercially viable resources?    2. Related to the development of land-based oil and gas infrastructure in Kwa-Zulu Natal is the already existing investment by South Africa (through the parastatal SASOL) in a gas pipeline from Mozambique to Sasol refineries? How is this already existing supply of gas interpreted in the costing of Operation Phakisa? 3. The planning of Operation Phakisa, oil and gas lab, was presented to the Committee without seeking parallel input from the Department of Environmental Affairs, as it was understood that the oil and gas lab planning would include in its situational analysis the potential risks of operating offshore oil and gas exploitation in the Agulhas current. This topic was not adequately covered and should potentially be explored further by the committee through engagements with the DMR and DEA.   **B. Operation Phakisa: Aquaculture Sector**  The Department of Agriculture, Forestry and Fisheries presented accurately the developmental status of aquaculture in South Africa at present – the only significant participants at present is relatively poorly transformed, privately owned businesses focused on niche market export products with a high rate of return. South African aquaculture does not produce high volumes of product geared towards relieving the pressure on wild caught fisheries in decline for the local market. Both in terms of Fresh- as well as marine water aquaculture, South Africa’s output is low even when considered against African countries only.  In part, the challenge relates to difficult environmental conditions – a very active coastal environment and low water supply for large parts of the country does not stimulate aquaculture development. Second, there is a tendency for a consultancy and research-orientated interest in high-tech aquaculture technology, which is likely to exclude many potential participants in community-based aquaculture development. This interest in high-tech systems is not merely a result of profiteering or academic interest, but is also driven by extremely strict environmental legislation that severely constrains the potential for low-cost, low-technology developments.  A final challenge highlighted in discussions that will be highlighted here is the high cost of imported technology and consumables. A lack of aquaculture developments results in a lack of local manufacturers or high-volume imports. All of these factors combine to challenge the development of aquaculture. Where developments are possible, environmental legislation is strict and will require significant investment in closed aquaculture systems that are compliant with the likely requirements of a license. Such equipment is costly and requires skilled operators. Even when operations similar to international open-water culture practices are allowed, costs are still significant.  It is proposed that the Committee remains in contact with the relevant DAFF directorate responsible for the development of aquaculture, in order to continue to offer assistance with matters related to IGR and legislative clarification. In particular, it is suggested that the committee conducts a detailed study tour to a developing/developed country that has successfully employed low-technology aquaculture in order to improve fish supply to domestic markets and to facilitate rural economic development.  Such a tour can focus on:   * Solutions to legislative conditions that place severe restrictions on aquaculture opportunity, without compromising environmental sustainability; * Solutions for the supply of cost effective technology and consumables, as well as the establishment of local suppliers over time. * Suitable technology that does not result in the establishment of an industry that by necessity sustains a significant number of consulting support. Suitable technology should be considered to be such that DAFF, in its extension services offered to farmers, can train communities and entrepreneurs in the majority of cases.   If possible, the committee can also engage with the Department and industry stakeholders in order to identify legislative and developmental obstacles that have restricted aquaculture development for a significant period of time, and to propose solutions for these.  **C. iSimangaliso Wetland Park and Small-Scale Fishery Policy**  The economic benefits for the communities adjacent to iSimangaliso Wetland Park is an integral part of both Department’s planning, as presented to the Committee. Both Departments include co-management and resource sharing as integral part of community engagement and park management strategy, but to a large extent, the status of the Park as a World Heritage Site, including Marine Protected Areas, likely presents a significant obstacle to the development of any small-scale fishery industry inside park boundaries that does not conform to allowable practice within World Heritage Sites.  That being noted, the committee was clear about the fact that greater management and business ownership opportunities should be afforded to the communities adjacent to it. At present, the Park has the opportunity to become a significant economic asset to the region and as such, the Committee expressed its desire to see the rural economy, and by default thus the communities around the Park, develop in tandem with the Park.  Small-scale commercial fishing is not likely to be the sole answer to this. The lack of detail around the “proposed basket of species”, as well as the need to collaborate in co-operatives to apply for fishing rights remain largely untested and as such, require close monitoring.  It is proposed that the Committee remains in close communication with both Departments in order to track the developments with regards to Small-Scale Commercial fishery development in the Province. It is further proposed that:   * Definitive clarity is sought regarding the type of fishing activity that can be allowed within a World-Heritage Site; * Clarity is provided about the number of fishers DAFF intends to register; * Clarity is provided about the “basket of species” DAFF is considering, as well as the resource status of these species; and * That the committee continue to liaise with iSimangaliso Wetland Park management and DEA with regards to opportunities for communities to expand their co-management opportunities and sustainable benefit-sharing opportunities emanating from the Park. |  |  | Adopted |
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| 28 – 31 March 2017 | North West Province – Madibeng | The Department of Mineral Resources manages mining applications, prospecting and mining operations at provincial level through its Regional Offices. Even though the department therefore does not have any provincial government representation, the Regional Offices are vital in managing the activities of mining companies, as well as being responsible for the engagement of interested and affected members of the public and communities. Past submissions to the Committee, as well as member input during Strategic Planning sessions have highlighted the need for provincial-level oversight of Regional Offices in order to investigate the manner in which these offices of the National Department are performing with regard to their mandated responsibilities. This visit will be conducted in order to receive a detailed briefing of the activities of the North-West Regional Office, as well as to investigate recent reports of a specific case where concerns have been raised with regards to proposed mining activity in the province. The Select Committee on Land and Mineral Resources (previously Land and Environmental Affairs) does not have significant previous oversight experience with regards to the Department of Mineral Resources and Regional Offices have been identified as a logical focus for the Committee. It is the intention of the Committee to perform oversight over each Regional Office during the 5th Parliament. | As there were few signs of improvement at the municipality regarding the oversight focus areas, the recommendations of the previous oversight still hold value, coupled with follow-up recommendations. The committee’s mandate, derived from the mandate of the NCOP calls for a focus on:   * Improving the functioning of IGR; * Improving and expanding public engagement opportunities; and * Legislative oversight.   These three areas, and in particular the improvement of IGR and the review of policy and legislation, remain core requirements for the solution of this impasse. The proposal is repeated that the committee:   1. Continue to engage the Department of Mineral Resources with the aim of improving the relationship between the Department of Mineral Resources, the provincial government and municipal authorities. The most critical outcomes of such an improved relationship will be:    1. Improved IGR in order to make constructive, positive efforts towards improved linkages between S&L Plans of mining companies and the IDP and LED strategy of municipalities. Additionally, it was suggested that the mining houses should be given the option to initiate and fund their own projects that are aligned to municipal IDP’s and LED’s, and not have to be limited to contributing funds to municipal initiatives.    2. Improved functioning of the Mining Forum    3. Additionally, the delegation resolved during the follow-up visit that the continued absence of political decision makers of the Department at these oversight engagement was unsatisfactory. It was decided that the committee should make time in its meeting schedule to invite the Minister, Deputy Minister and Director General of the DMR to a meeting where this situation will be discussed.   Linked to this is the two instructions the committee gave during this follow up visit. These were directed at the municipality as well as to the DMR. The delegation resolved:   * 1. To give the department and the MLM 21 days, after the departure of the delegation, to submit a report detailing how communication issues will be resolved and how previous concerns of the Committee will be addressed.   2. The DMR and MLM were asked to provide feedback the same time as they submit their report on communication and consultation matters, 21 days, after the departure of the delegation   The return visit continued to reveal challenges with mine Social and Labour Plans, and in particular, how the municipality and community is engaged during planning. The type of projects initiated, as well as the sustainability/maintenance of projects after the initial donation from the company was also questioned. It is clear that there is a need to review how the Mining Charter directs public consultation during the Development of Social and Labour Plans, the suitability of projects initiated and the linkages to municipal IDP. The following list was carried over from the 2015 oversight:   * 1. The amount of autonomy given to mining companies to manage the application and public engagement process;   2. The consultative process;   3. Regulations pertaining to environmental and agricultural impacts, as well as mine rehabilitation;   4. Improved inspection and conflict resolution mechanisms to prevent mining activity severely impacting on community property and livelihoods.   The 2017 oversight re-enforced that validity of these recommendations, but highlighted the need for additions:   1. The perceived consultation differences between S&LP and IDP development, as well as the long-term feasibility of projects initiated within the municipality; |  |  | Adopted |
|  |  |  |  |  |  |  |
| 15 – 19 October 2018 | Free State Province – Thaba Nchu and Xhariep | The Department of Agriculture, Forestry and Fisheries have launched a large array of efforts, programmes and interventions around the development of small-scale commercial agriculture, interventions to combat food insecurity and efforts to improve the productivity on redistributed farms. Central to many of these interventions has been the creation or promotion of co-operatives (in conjunction with the use of similarly-constituted Communal Property Associations (CPAs) by the DRDLR). The only thorough investigation into co-operatives, and annual reports on CPAs indicates that both are not performing as organizational structures. It will be impossible for government commitments to be reached when the structures into which recipients of support are structured are prone to failure. In the 2017 SONA, the President referred to the launch of an initiative to lift 450 small-scale farmers into the commercial agriculture sphere. While commendable, the statement did not provide details on the funding method or indeed the departmental programme responsible for the initiative.  The Department has as one of its goals set out in the NDP the creation of 1 million jobs in agriculture and returning a million hectares of under-utilised agricultural land to production. The performance indicators of the Departmental budget does not speak clearly to these objectives and further details are required regarding putting land into production, as annual targets are stated without evidence required that previous land returned to production is still being utilized. The job creation targets of the Department is clearly less than the million jobs set as a target in past years. It is also known that activity and employment in agriculture is decreasing, not increasing. Economic stimulation in a sector such as agriculture, which employs significant numbers of the rural workforce, need to be improved and it is not clear how this “status quo” budget will achieve this.  The financial support set aside for the development of small scale farmers and agri-villages need to be interrogated further in order to determine whether these are sufficient to reach the stated objectives for these programmes. It is a fraction of the resources spent by the commercial sector each year, thus it is debatable whether the targets set in the budget is realistic.  The Committee is actively tracking the progress of Agri-villages (also referred to as Agri-Parks). These support-hubs are critical in uplifting and developing black commercial, small-scale and subsistence farming efforts around the country. The 2017/18 ENE gives a useful breakdown of the programme’s implementation to date, highlighting that:   * Agri-parks are expected to contribute to government’s targets of creating 1 million new jobs in rural economies by 2030, through the development of 300 000 new small-scale farmers and the creation of 145 000 agro-processing jobs by 2019. * Since the inception of the initiative in 2015/16, approximately 10 566 smallholder farmers have been identified to benefit from agri-parks, and 69 692 hectares of land has already been distributed. * A total of R2 billion per year, over a 10-year period beginning in 2015/16, was allocated for the development of agri-parks in 44 districts. | The Committee was able to interact with the Provincial Department of Agriculture and Land Reform officials, as well as officials from DAFF and DRDLR, and even though there were clarity obtained on some matters, the over-arching goal of the oversight trip was not attained.  Despite very clear requests for an opportunity to discuss grant funding support with beneficiary farmers and to be briefed on the mechanisms employed by the provincial and national departments when allocating, spending, monitoring and reporting on grant funding, these requests were not met. Without the opportunity to develop an understanding of how the questions of sustainability, successful commercialisation, increased production or increased employment in agriculture can be assessed. To refresh, the following MTSF targets that the Department of Agriculture and Land Reform are set to be met in 2020:   * To provide comprehensive agricultural services to 14 700 producers by 2020 * To ensure household food and nutrition security to 25 625 households by 2020 * To ensure healthy animals, food safety, and access to export markets through provision of veterinary service to clients by 2020 * To improve the agricultural production through conducting, facilitating and coordinating 16 medium to long term research and technology development projects by 2020 * To disseminate information on research and technology developed to clients, peers and scientific communities through twenty research presentations and twenty one improvement schemes by 2020 * To provide Agri-Business support as well as macroeconomic and statistical information to 2008 clients by 2020 * To enhance agricultural education and training capacity by 2020 * To plan, facilitate and coordinate the development of rural enterprises and industries through establishment of 5 Agri-Villages by 2020   The Committee wanted to be in a better position to determine how the targets are assessed, but the oversight did not provide the information required.  Interacting with officials from the Department, it was possible to determine that in some of the sites that the committee wished to visit, detailed information on the planning, financial allocation and performance monitoring was available. This information was also made available to committee officials after the oversight visit. It is clear from the information received that detailed project management systems were in place for the projects co-ordinated by the DRDLR, and that follow-up questions could be made to officials.  From the Perspective of the Committee’s interaction with DAFF, the information forthcoming was less useful. Apart from providing introductory presentations that did not contain the critical information requested by the Committee prior to the visit, the Department failed to provide any opportunity to interact with farmers. From the information provided during the oversight, it also became clear that there are areas of concerns for the committee, particularly:   * the lack of detail provided in terms of how beneficiaries are supported to become commercialised. The Committee visited two adjoining farms with vastly different levels of support. Milton farm, apart from the 7 tractors and a uneconomically small herd of cattle, had very little other visible signs of support. Khumo farm, by contrast, had received significantly more support in terms of the provision of fencing, cattle, watering troughs, mechanisation and inputs for planting and feed production. DAFF need to clarify how projects are conceptualised and what objectives are to be reached by the support provided.; * how the mechanisation support is managed. The DAFF could not provide detailed accounts of where all tractors were located, while a single farm visited contained 7 tractors without any sign of significant use for these. In discussions with officials from DRDLR, it became apparent that there are no service agents for Massey Ferguson tractors in the district. Most of the tractors observed at Milton farm that were in a state of disrepair were Massey Ferguson. * The number of challenges that the provincial department is experiencing in terms of fines being issues by DEA in terms of illegal developments or non-compliance regarding impact assessment requirements is of concern. This was explained in some instances as a result of inheriting projects initiated under previous government structures. This explanation does not resolve all the fines incurred. Such fines are substantial and would not be incurred if due diligence was applied to all projects at all times. * The Agri-hub developments visited were in an advanced stage of planning. The presentation given by the Department was detailed, and provided good insights into where the focus of the hub will be post-development. The types of commodities that can be supported was identified through careful economic studies, and the rationale behind the economic objectives of the hubs were clearly articulated. What became clear, however, was that the level of provincial specialisation invested into the planning and development of the hub differed substantially from the generic presentation provided to the Committee in the past by national DRDLR. The fine incurred at the Gariep Agri-hub site was, according to opinions expressed during oversight, a result of DAFF ignoring advice not to fence the property earmarked for the development during planning. There is a need to determine what lead to the situation as it has unfolded and whether the non-compliance fine issued by DEA could have been avoided. * The DAFF did not provide sufficient information for the Committee to evaluate how expenditure of conditional grants are planned, monitored and reported, and what criteria defines the outcomes recorded in the finalisation of projects on supported farms or in support of specific farmers. Without this information, the Committee cannot determine what criteria is used when evaluating grant expenditure. This, in turn, implies that the Committee is not in a position to evaluate whether it supports the DAFF’s annual reporting on meeting of targets of the MTSF. It is a stated objective of the Committee to develop an oversight mechanism that focuses on the value-for-money and impact of grant expenditure by DAFF, and therefore the fact that the Department did not supply the requested information creates delays for the development of an oversight mechanism. One positive outcome of the oversight is the development of a clearer understanding of how approved projects are published. This information will be used to develop an alternative database of funded projects, from where an oversight mechanism can be developed. |  |  | Still to be adopted |
|  |  |  |  |  |  |  |

1. **Challenges emerging**

One of the biggest challenges regarding oversight was the constant changes being made to the NCOP timetable and the limited opportunities provided for committee oversight. The number of Departments (4) and number of entities (20+) that the Committee oversees cannot be properly visited on the current oversight regime of parliament. There is an urgent need to free up more time for committees to perform proper oversight.

The second challenge has been the desire of the NCOP to require committees to perform joint oversight. The focus of this committee and the Select Committee on Communication and Public Enterprises does not overlap sufficiently to enable oversight in the same geographic area. Joint oversight further created time constraints, as each committee did not have sufficient time to perform in-depth oversight. Halfway through the 5th Parliaments, the two committees, through their respective management committees, agreed to depart from the joint oversight model in order to allow each committee a turn at a full oversight opportunity. This has impacted positively on the amount of work that could be performed during oversight but did have a negative impact on the number of oversight opportunities each committee had.

1. **Issues for follow-up**

**I can populate this one in terms of the strategic plan’s stuff that has not been addressed, plus what was raised above.**

The 6th Parliament should consider following up on the following concerns that arose:

* The continued challenges faced by mining-affected communities, including
* Consultation and consent
* The role of traditional authorities in relation to consent and receiving of any royalties resulting from mining
* Mining in sensitive agriculture or conservation areas
* Challenges with Acid mine drainage
* Challenges with the implementation of the One Environmental System
* S&LP integration with municipal LED and IDP
* DAFF success with post-settlement support of land reform beneficiaries
* The development and expansion of smallholder agriculture, including access to the value chain
* The current undesirable state of permit and right allocation in fisheries
* The development of green economic opportunities in the waste management sector
* Air quality management
* The continued challenges in supporting CPAs and in ensuring compliance with the CPA Act
* Progress with land reform and restitution

1. **Study tours undertaken**

The following study tours were undertaken:

| **Date** | **Places Visited** | **Objective** | **Lessons Learned** | **Status of Report** |
| --- | --- | --- | --- | --- |
| 21 – 28 October 2017 | Australia | To study Australian aquaculture policy and legislative development that were put in place in order to foster a thriving aquaculture industry | The committee intended to study the outcomes of the study tour closely when the Aquaculture Act is reviewed, with a particular intent to study the policy provisions for enabling aquaculture development while shouldering as much of the work towards legal compliance and infrastructure development as possible. Unfortunately, the anticipated Bill was not referred to the Committee in 2017 or 2018. It is anticipated that the report of the study tour will be presented to the Select Committee at the time of deliberations on the Aquaculture Bill, whenever that would be.  The current committee noted that the Australian model, while not perfect in terms of National (federal) and provincial (state) synergy in legislation, provides a clear example of state involvement in developing aquaculture zones, ensuring legal compliance, environmental sustainability and economic viability.  The Australian experience further emphasised the need for strong technical support from government in terms of market access and market stimulation, as well as dedicated research and development support in order to ensure that companies are able to capitalise on local markets and opportunities. | Adopted |
|  |  |  |  |  |

1. **Challenges emerging**

The following challenges emerged during the study tours:

* Content-related challenges:

The Committee secretariat attempted through-out the design and planning of the study tour to liaise, through the High Commissioner’s office, with role-players in the Australian aquaculture sector in order to clarify the aims and objectives of the tour. For reasons unknown, the High Commissioner’s office did not allow for the anticipated communication efficiency. The impact of this challenge was felt in terms of focus. The study tour was not designed to focus on the most lucrative Australian aquaculture examples, but on those industries from which the country is most likely to learn. As a result, there was challenges experienced in terms of explaining chosen study tour visits to both the hosts and the committee members. Unnecessary time was lost in trying to re-establish the aims and objectives of the visit while in Australia.

It was felt that the High Commissioner’s office could have played a more effective role in understanding the aims and objectives of the study tour and to communicate these effectively to hosts.

1. **Issues for follow-up**

The 6th Parliament should consider following up on the following concerns that arose:

1. **Continued engagement opportunities**

As communicated to our Australian counterparts during the visit, the committee intends to study the outcomes of the study tour closely when the Aquaculture Act is reviewed. It is believed that many opportunities for further engagement has been identified. These will most definitely be explored in due course as the committee’s review of the Aquaculture Act is initiated.

Of major interest is studying more closely the development of the regulatory environment at Federal level that Australia undertook. The committee has expressed interest in comparing and contrasting the provisions in South Africa’s draft Aquaculture Bill with the legislation and policy provisions of the Australian Federal Government and relevant departments. The committee was impressed with the focus on enabling aquaculture development while shouldering as much of the work towards legal compliance and infrastructure development as possible. The committee noted that the Australian model, while not perfect in terms of National (federal) and provincial (state) synergy in legislation, provides a clear example of state involvement in developing aquaculture zones, ensuring legal compliance, environmental sustainability and economic viability.

1. **Opportunities for technical and academic exchange**

The Australian experience further emphasised the need for strong technical support from government in terms of market access, market stimulation, dedicated research and development support and training in the culture techniques showcased at Port Stephens and Bribie Island. While South Africa has universities with a long history of teaching aquaculture, it is considered vital to consider receiving training from individuals that have actively researched and commercialised species or types of technology that could be used in South Africa. Apart from trout, oyster, mussel, algae and abalone culture, South Africa lacks sufficient exposure to commercialisation expertise.

1. **Potential joint activities between South African departments and their Australian counterparts**

The committee identified a number of areas where potential exist to exchange information and ideas with the possibility of setting up projects in SA with the assistance from the Australian Government and Aquaculture Industry:

* Investigating the possibility of developing Cobia aquaculture along the Eastern Cape and KZN coastlines;
* Studying the Australian experience regarding developing cost-effective feeds for their kingfish (yellowtail) and Mulloway (kob) and culture technology in order to determine whether the local industry can benefit;
* Investigating the opportunity to study and potentially use the “fortress cage” technology under development in Australia. These nearshore and offshore fish cages hold great potential for high-energy shores and could play a role in South African Aquaculture.
* Investigating the possibility of facilitating farmer and student training between DAFF and the Port Stephens facility; and
* Liaising with DAFF and the DRDLR in terms of their plans for small-scale family-based aquaculture development, and to investigate the possibility of developing small-scale aquaculture systems for freshwater environments as were observed at the barramundi farm of Taylor Made Fish Farms.

1. **International Agreements:**

The following international agreements were processed and reported on:

| **Date referred** | **Name of International Agreement** | **Objective** | **Status of Report** | **Date of enforcement** |
| --- | --- | --- | --- | --- |
|  | Agreement for the Establishment of the Indian Ocean Tuna Commission (IOTC) | The Commission shall promote cooperation among its Members with a view to ensuring, through appropriate management, the conservation and optimum utilization of stocks covered by this Agreement and encouraging sustainable development of fisheries based on such stocks. | Adopted | 4 November 2014 |
|  |  |  |  |  |
|  | Convention for the Conservation of Southern Bluefin Tuna (CCSBT) | The Commission for the Conservation of Southern Bluefin Tuna (CCSBT) is an intergovernmental organisation responsible for the management of southern bluefin tuna throughout its distribution.  The CCSBT's objective is to ensure, through appropriate management, the conservation and optimum utilisation of southern bluefin tuna. | Adopted | 4 November 2014 |
|  |  |  |  |  |
|  | Agreement on Port State Measures to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing | The Agreement on Port State Measures (PSMA) is the first binding international agreement to specifically target illegal, unreported and unregulated (IUU) fishing. Its objective is to prevent, deter and eliminate IUU fishing by preventing vessels engaged in IUU fishing from using ports and landing their catches. In this way, the PSMA reduces the incentive of such vessels to continue to operate while it also blocks fishery products derived from IUU fishing from reaching national and international markets. The effective implementation of the PSMA ultimately contributes to the long-term conservation and sustainable use of living marine resources and marine ecosystems. The provisions of the PSMA apply to fishing vessels seeking entry into a designated port of a State which is different to their flag State. | Adopted | 4 November 2014 |
|  |  |  |  |  |
|  | Acceptance of the DOHA Amendment to the Kyoto Protocol to the United Nations Framework Convention on Climate Change | The Doha Amendment establishes a second commitment period (2013–20) for the Kyoto Protocol, an international agreement to reduce the emissions of greenhouse gases. The Kyoto Protocol to the United Nations Framework Convention on Climate Change was adopted in 1997 by the third Conference of the Parties in Kyoto (Japan). | Adopted | 25 November 2014 |
|  |  |  |  |  |

1. **Challenges emerging**

The following challenges emerged during the processing of international agreements:

* Technical/operational challenges

None

* Content-related challenges

None

1. **Issues for follow-up**

The 6th Parliament should consider following up on the following concerns that arose:

None

1. **Statutory appointments**

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

| **Date** | **Type of appointment** | **Period of appointment** | **Status of Report** |
| --- | --- | --- | --- |
| **None** | **None** | **None** | **None** |
|  |  |  |  |

1. **Challenges emerging**

The following challenges emerged during the statutory appointments:

* N/A

1. **Issues for follow-up**

The 6th Parliament should consider following up on the following concerns that arose:

* N/A

1. **Interventions**

The following interventions were referred to and processed by the committee:

| **Title** | **Date referred** | **Current status** |
| --- | --- | --- |
| **None** | **None** | **None** |
|  |  |  |

1. **Challenges emerging**

The following challenges were experienced during the processing of interventions:

* N/A

1. **Issues for follow-up**

The 6th Parliament should consider following up on the following concerns that arose:

* N/A

1. **Petitions**

The following petitions were referred to and considered by the committee:

| **Title** | **Date referred** | **Current status** |
| --- | --- | --- |
| **None** | **None** | **None** |
|  |  |  |

1. **Challenges emerging**

The following challenges were experienced during the processing of petitions:

* N/A

1. **Issues for follow-up**

The 6th Parliament should consider following up on the following concerns that arose:

* N/A

1. **Obligations conferred on committee by legislation:**

* **N/A**

1. **Challenges emerging**

The following challenges emerged during the statutory appointments:

* N/A

1. **Issues for follow-up**

After the committee received the remitted MPRDA Bill, the process followed in correcting the lack of public engagement resulted in the need to re-evaluate the Section 76 process typically followed by committees, The LAMOSA judgement was studied by Parliament, and a Practice Note was developed to guide future public engagement processes.

In particular, the Constitutional Court Judgement focused on the role and responsibilities of the NCOP when public hearings are held in provinces. The ruling stated “For all the reasons I have given, the NCOP public participation process was unreasonable and thus constitutionally invalid. Failure by one of the Houses of Parliament to comply with a constitutional obligation amounts to failure by Parliament. The deficient conduct of the NCOP in facilitating public participation in passing the Bill taints the entire legislative process and is a lapse by Parliament as a whole. This is of particular significance where – as here – there was a heightened need for the involvement of the NCOP.” The challenge with the judgement, and the way in which Parliament responded in terms of developing the Practice Note, is that the mandating procedure followed by provinces is based on the Mandating Procedures of Provinces Act, as well as the rules of the provincial legislatures. While it is possible to hold the NCOP ultimately responsible for the outcomes of public engagement through provinces, it is not possible to insist that legislatures supply additional information regarding the public participation process to accompany mandates that is not required by the aforementioned Act. The Practice Note as it currently reads does require additional information regarding public consultation and the origin of inputs, but as these are not mandatory to comply with the Act, provinces do not supply it. The 6th Parliament should consider following up on this matter by aligning the Practice Note with the Mandating Procedure of Provinces Act and the rules of provincial legislatures.

1. **Summary of outstanding issues relating to the department/entities that the committee has been grappling with**

The following key issues were not resolved during the committee’s activities during the 5th Parliament:

| **Responsibility** | **Issue(s)** |
| --- | --- |
| DAFF and DRLDR | Sustainability of agricultural co-operatives and CPAs |
| DRDLR | Settling of outstanding land claims |
| DAFF and DEA | Aquaculture development (including regulatory environment) |
| DMR | The continued management of Acid Mine Drainage |
| DEA and Local Government | Air quality management (priority areas such as the Vaal) |
| DMR, DEA, DAFF | Developing the Oceans Economy |
| DEA | Current patterns in Rhino poaching – an update on the effectiveness of government counter-poaching efforts |
| DEA | Developments in Waste Management including the impact of Landfill sites on Communities (Waste management) |
| DEA, DMR | Waste water management |
| DEA | Occurrence and threats of Mines in sensitive ecological areas (current and old) |
| DMR | Measuring the impact of Mining Company S&LP on local economic development |
| DAFF, DRDLR | Government efforts towards agricultural projects on under-utilised high potential agricultural land |
| DAFF, DRDLR | The utilisation of State-owned farms and performance of land reform projects |
| DMR, DEA | Plans for the oil and gas sector, with specific reference to the current position on fracking |
| DAFF, DMR | The impacts of Mining on land utilisation patterns |
| DEA | Government achievements in mainstreaming green economy in each province |
| DAFF | Outcomes of challenges to Fishing Rights Allocation Process (FRAP) and the development of a small-scale commercial sector |
| DRDLR | Results from Farm equity schemes (public hearings) and the arrangements with the parties |

Apart from matters that are ongoing or unresolved from the 5th Parliament, the Committee identified the following emerging matters during Strategic Planning:

**DAFF**

* + Which DAFF programme was the President referring to when highlighting commercialization support to 450 small scale farmers? How is this announcement distinct from Agri-villages or the Department’s Smallholder farmer development framework, which incidentally, promotes the use of co-operatives fore this task?
  + There are an estimated 250 000 to 300 000 small scale farmers and nearly 3 million households practicing agriculture in South Africa. How will the relatively small number of 450 farmers earmarked for support in the SONA be selected? Which programme and budget will be funding this exercise?
  + What, if any, is the relationship between this announcement and past (2013 onwards) efforts to utilize small scale farmers to combat food insecurity through big-budget programmes such as Fetsa Tlala?
  + DAFF continues to list marine aquaculture projects for Operation Phakisa, but indications from industry and academic sources are that not all these are ready to be commercialized. The committee should also consider a workshop where industry can supply their inputs on the commercial viability at present of the various aquaculture options listed by the Department.
  + It is vital to get concrete statements from the Department on outstanding matters related to the finalization of the small-scale fishery policy, including timelines to rights allocation, the “basket of species” and quota size, as well as the support package on offer to co-operatives.
  + Additionally, the department needs to ensure the conservation, protection, rehabilitation and recovery of depleted and degraded natural resources by developing recovery plans in prioritised areas of fish stocks such as abalone, west coast rock lobsters and deep water hake by 2019/20 and compiling one research report to indicate the levels of fish stock to ensure the sustainability of resources and the industry by 2019/20
  + It is important that matters such as climate smart agriculture, suitable mentoring and extension, post settlement support and viability of land reform farms become a priority of this department as well as of the DRDLR.

DRDLR

* + South African subsistence and small-scale farmers are dropping out of farming, as indicated by official statistics. This is not because people do not have access to land. It is because people are finding conditions for agriculture discouraging. This should be addressed in terms of DAFF and DRDLR agriculture support programmes.
  + Key to successful post settlement support reforms is to track the implementation and success of agri-villages (Also referred to as Agri-parks) The strategic plan captures government expenditure and performance indicators that can be used to track progress.
  + Recapitalising and redeveloping redistributed farms should also be a continued focus for the Committee. The Department’s poor performance at post-settlement support could be driving up the costs of land reform as money that could have been used for land purchases are now increasingly being diverted towards recaptitalisation of farms. It has to be established what percentage of this money has to be spent on farms that were once productive but where poor post-settlement support and management had led to the need for further resources to be directed at the land.
  + One aspect that the committee has not focused on recently under the Land Reform programme has been the One Household, One Hectare programme. It is supposed to be a key mechanism used to provide the landless access to land and promote agrarian transformation. Recipients of this form of land reform are also candidates for support by the Agri-villages. The Committee should consider oversight over this initiative, particularly in light of the fact that the Agricultural Land Holding Account is not receiving significant annual increases in allocation and this initiative therefore could experience financial stress for this initiative.
  + There is a need to assess the land reform process to date in terms of the functioning of Section 25 of the Constitution, and the Department’s implementation of its own legislation to achieve fair and equitable compensation for land. A review of court challenges to land purchase offers and the average price paid for land during the reform process to date is required.
  + The Department is not operating efficiently in terms of policy and legislative development. The White Paper on land reform is still not completed and a raft of legislative amendments have been introduced in short succession in order to address what the Department considers to be impediments to the reform process. This scenario requires some review.

DMR

* + Clarity is needed in terms of the flagship projects of Operation Phakisa. These include the land-based shale gas sector, as well as the developments and support commitments for the offshore oil and gas sector’s development. Government has committed R9.2 billion investment in gas and oil exploration in the port of Saldanha as part of the Operation Phakisa initiative. From here, government committed to explore Operation Phakisa in the mining sector in order to develop win-win solutions to beneficiate our mineral resources. Progress on these developments can be sought in 2017/18.
  + The following milestones were highlighted in the past and can be visited in oversight:
    - * The implementation of programmes under the Framework Agreement for a Sustainable Mining Industry;
      * The functioning of Mine Crime Combating Forums;
      * Progress with the revitalisation of distressed mining towns;
      * The outcomes of the assessment of informal settlements for upgrading through the National Upgrade Support Programme;
  + Support to mining towns i.t.o Integrated Development Plans and the development of Special Economic Zones;
  + Government reviews of the compliance of mining companies with Mining Charter targets;
  + The development a mining industry transformation strategy based on the revised mining charter.
  + Mining rights and permits will be granted to 450 historically disadvantaged South Africans, and 636 social and labour plan verification inspections will be conducted over the medium term.
  + Over the medium term, the department aims to support 240 SMMEs, particularly those involved in small-scale mining, by providing financial and technical support. An estimated budget of R91.5 million has been set aside for this, with a view to create decent employment and sustainable small businesses.
  + As part of the safety and environmental goal policy, the rehabilitation of derelict and ownerless mines is one of the department’s key activities. Over the MTEF period, 135 sites are set to be rehabilitated at an estimated cost of R540 million. An additional R3.2 million is allocated to accelerate rehabilitation activities.

DEA

* + The department plans to expand the proportion of the country’s land under conservation from 12.2 per cent in 2016/17 to a projected 13.7 per cent by 2019/20. R143.1 million of the programme’s total budget of R2.2 billion over the medium term is allocated to this task. Clear mandate challenges are developing with departments such as DMR and DAFF regarding conflicting land uses. The committee could investigate the current land uses of areas earmarked for the expansion of conservation in order to seek out further conflicts.
  + The Department has set the target for the diversion of waste away from landfill sites for recycling purposes from 10% in 2013/14 to increase in increments to 60%, or 62 079 tonnes, in the current financial year. The committee can track the progress of this target as well as the performance of the Waste Management Bureau. It is tasked with monitoring recycling plans, and provides specialist services to government and recycling companies.
  + One of the recycling initiatives worth monitoring, and set to commence this year, is the tyre recycling initiative, which is set to receive operational funding of R210 million in 2017/18, R230 million in 2018/19 and R245 million in 2019/20.
  + Air quality management is another important function falling within the mandate of the Committee. The department plans to increase the number of government-owned air quality monitoring stations reporting to the South African air quality information system, from 115 in 2016/17 to 125 in 2019/20, in an attempt to reduce air pollution.

1. **Other matters referred by the Speaker/Chairperson (including recommendations of the High Level Panel)**

| **Date of referral** | **Expected report date** | **Content of referral** | **Status of Report** |
| --- | --- | --- | --- |
| **High Level Panel Report: See comments below** | | | |

1. **Challenges emerging**

The following challenges emerged during the processing of the referral:

* Technical/operational challenges

N/A

* Content-related challenges

N/A

1. **Issues for follow-up**

The 6th Parliament should consider following up on the following concerns that arose:

* See below

The following other matters were raised in the High-Level Panel report, and captured in the Strategic Plan of the Committee:

While it is likely that many committees have begun a process of cherry-picking aspects of the Panel’s recommendations with the view of identifying actions required by their committee, the impact of the report on the activity of the NCOP could be far more far-reaching. Committees such as the Select Committee on Land and Mineral Resources could be faced with a major task ahead. The number of Acts identified as impacting negatively on land ownership prospects and tenure security is numerous, while further pieces of legislation are also called for by the Panel.

Considering that the new President has made strong commitments towards expedited land reform in his SONA address, it is unclear why reference was not made to the High Level Panel’s report. Actioning the recommendations made in the report will go a long way towards land reform and improved tenure security.

**It is vital that Parliament immediately develop an implementation plan for the recommendations contained in the report, or alternatively, clearly state its position on it and the role it will play in the work of Parliament moving forward. This committee currently has 2 pieces of legislation mentioned in the report under review, and it is vital that the committee knows how to deal with the recommendations on the MPRDA and ESTA before these bills are finalised.**

Implementing the recommendations of the report will require focused and prolonged review of inter-related pieces of legislation. In some instances, it will provide significant discomfort for government as it will require a potential review and change to the powers currently assigned to the traditional leadership of South Africa. The Report’s recommendations will force a singular approach to land management and ownership that has the potential to fundamentally change the face of communal land rights, ownership and management in rural communities. There is currently ambiguities between the constitutionally entrenched individual rights of citizens and legislation incorporating traditional leadership structures into legislation. The report has highlighted the uncomfortable attempts at co-existence between current pieces of legislation such as the Communal Property Associations (CPAs) and the Ingonyama Trust and Traditional Leaders. The report highlighted the challenges created by the MPRDA when negotiations is required between mining companies and the owners and occupiers of land.

The High Level Panel’s final report contains recommendations on the following policy or pieces of legislation that will influence the work of the committee:

**Strengthen National Agricultural Plan**

A bold national agricultural plan will help to create jobs in rural areas. Leke *et. al.* estimate that by capitalising on the country’s existing agriculture and agro-processing capacity, South Africa has the potential to triple its agricultural exports by 2030. Based on these projections, R160 billion can be added to the annual GDP, creating up to 490 000 jobs.

**Support Youth Entrepreneurship**

The African Development Bank (AfDB) provides key policy recommendations to support youth employment (African Development Bank, 2016). One which may be useful for South Africa is fostering dynamic youth entrepreneurship. This requires government’s proactive support for entrepreneurial training, and start-up capital is also needed. International good practice suggest that government interventions should target the most viable projects, extend greater financial support to a fewer high-potential entrepreneurs rather than spread resources thinly, and provide complementary packages of services instead of a single measure.

**Support informal sector business**

Another proposal to reduce poverty is to grow informal businesses. The need for this policy change was recognised by government itself as ‘absence of a nationally co-ordinated policy as well as an integrated legal and regulated framework, coupled with a lack of policy and regulatory alignment between local government, national and provincial departments’ (DTI, 2014). Furthermore, there is ‘no strategic focus by Government on informal businesses, but in certain instances there is over-regulation of the sector. In both cases the growth of business is stifled’ (DTI, 2014).

**Support the poor to benefit from tourism**

The final proposal to reduce poverty is to grow tourism. Global trends show that tourism is growing, with tourists visiting emerging economies at a higher rate than advanced economies; the gap will widen by 2030. In 2015, 60% of tourist arrivals were to emerging economies. Africa’s share will grow from 3% in 2010 to 7% in 2030 and the overwhelming majority of these tourists come to South Africa (Saunders, 2017).

**Overlap between delivery failures and tenure security issues**

A key issue raised at the public hearings is that the relatively few people who do manage to get land through redistribution and restitution do not get secure rights to the land they acquire. Current policy is that people should not get ownership of redistributed land. Instead the land remains the property of the state and beneficiaries get leases or ‘conditional use rights’. Research indicates that in practice, in many cases, they get no recorded rights to the land whatsoever. This makes it very difficult, if not impossible, for them to develop the land or protect their right to it.

**Pace of land redistribution**

There has been a downward trend in the pace of redistribution, measured by hectares, since 2008, as shown in Figure 1 below. The pace of redistribution has fluctuated with the changing of ministers but also in response to changes in budget allocation. The high point of redistribution was in 2007/08, and 2015/16 was at the lowest level since 2000/01.

**Budgetary issues for land reform**

The budget for land redistribution is contained within the budget vote for Rural Development and Land Reform and appears as a line item entitled ‘Land Reform’ alongside ‘Restitution’ and ‘Rural Development’. Here our focus is on the ‘Land Reform’ budget line only. Expressed as a percentage of National Expenditure, the Land Reform budget has generally been between 0.15% and 0.4%, reaching a peak of 0.44% of the national expenditure in 2008/09 and then declining to 0.2% in the current financial year.

The land reform budget includes current costs, including operational costs of the offices of the Department and its staff. Capital costs include land reform grants (previously SLAG, LRAD, commonage and other products, and now also Recap) and an Agricultural Landholding Account (for state purchase of land for redistribution). Since land grants were abandoned in 2011, the Agricultural Landholding Account is the only budget line for acquiring land for redistribution. Overall, land reform grants have constituted a declining share of the Land Reform budget**.** By 2016, expenditure on land reform grants had returned to the levels of 20 years ago. However, land acquisition is no longer included under ‘Land Reform Grants’, given the creation of the Agricultural Landholding Account through which the state purchases land for redistribution on leasehold. On 6 May 2016, the Minister announced a plan in Parliament for speeding up land reform, and outlined a reallocation of the Land Reform budget across different policy areas. Key among these is Agri-parks, the initiative by the Department to establish agro-processing infrastructure in hubs connected to black farmers – which is nonetheless being funded out of the land reform budget. Two new and not yet formalised policies were also allocated funds – ‘50/50’ and ‘One Household, One Hectare’. Overall, just R750m was earmarked for land acquisition**.**

**Proposal for a new framework law on land reform**

The Panel proposes new framework legislation that addresses the deficiencies in law and policy described above, and provides potential solutions in the form of a coherent and consistent set of guiding principles; definitions of key terms such as ‘equitable access’; clear institutional arrangements (particularly at district level); requirements for transparency, reporting and accountability; and other measures that promote good governance of the land reform process. It would also allow government to consider both urban and rural land reform as part of a broader land reform programme, designed to address the spatial restructuring objectives of the National Development Plan, and thus address spatial inequality. The precedents for such legislation include the National Environmental Management Act No. 107 of 1998 and the Spatial and Land Use Planning Management Act No. 16 of 2013.

Finally, the absence of a law on land redistribution to give full effect to Section 25(5) of the Constitution is another constraint on effective land reform:The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis. This proposal seeks to address that gap as well. The text below sets out the possible framework for a National Land Reform Framework Bill.

**Land redistribution principles**

The Panel has seen evidence that changes in policy and practice since the 1990s mean that there is no transparent system to ensure that land redistribution gives priority to the landless and the poor. Land redistribution needs to address an array of different land needs, but the requirement of Section 25(5) in the Constitution of ‘equitable access’ implies that priority must be given to those most in need. A system for rationing the scarce public resources available is needed. The Panel is concerned that there is no longer adequate provision in policy and practice for the provision of land for non-agricultural purposes – specifically, for rural and urban settlement and for multiple livelihood purposes, which are the mainstay of poor families.

It has also heard evidence that, despite policy commitment to gender equality, women constitute only a small proportion of beneficiaries. The Panel would like to see more robust provisions to tailor land reform projects to meeting women’s interests and needs, and to promoting gender equality in land access and land control.

Further, coherent plans are needed to ensure that whatever land is acquired for redistribution is part of integrated development planning at the local level, and forms part of provincial plans. Such plans must be informed by an appreciation of who wants what land for what purposes. They must also present a strategic vision for overcoming the legacy of spatial apartheid, in both the rural and the urban areas. Put simply, land redistribution needs to break down the divides between white and black, rich and poor, in both our cities and the countryside. For this to happen, the targeting of land, and the selection of people to benefit, must happen in a more strategic and coordinated manner that is transparent and can be seen to give priority to the poor and landless and their land needs.

**Land restitution principles**

The Panel has learnt of widespread dysfunction in land restitution projects where claimants gain few if any benefits in practice, due to institutional arrangements that see either strategic partners or dominant claimants monopolising land and other resources. The key to avoiding such situations in the future is to affirm the rights of all claimants to choose the manner in which they seek restitution, including their right to opt into or opt out of group-based claims. The Commission can determine the manner in which this is operationalised, but a statement of broad principle is needed in legislation to underpin this. More broadly, ‘equitable redress’ under restitution can be understood to be redistributive, so there is an overlap between restitution and redistribution. A major controversy has emerged about the parameters of land restitution, and the wide array of potential claims that fall outside the ambit of the Act, especially due to the cut-off date of 19 June 1913. Clearly, due to the manner in which colonial conquest and dispossession proceeded across the country, this prejudices the interests of those descended from the communities dispossessed earliest, especially in what are now the Northern Cape and Western Cape.

Simply put, due to the vagaries of history and colonial interests, their claims cannot be addressed within the current law. However, the Restitution of Land Rights Act empowers the Minister to address such claims – that are legitimate but not valid in terms of the eligibility criteria of the Act – by giving them priority within the land redistribution programme. There is no evidence that any mechanism exists through which this can be done, nor that the Minister has done so to date. The Panel proposes that the Minister must not only be empowered to address claims falling outside the cut-off date of the Act, via the redistribution process, but must be required to provide reasons for doing so or not doing so.

**Land tenure reform principles**

Apartheid denied black people rights in land, not only via dispossession but also by imposing a discriminatory tenure system that created a second-class set of rights. This was most clearly the case in relation to rights to land derived from customary law, or similar systems of norms and values, and involving group-based (or social) land tenure systems. A clear statement of principle is required that gives high priority within the land reform programme to securing such rights, both urban and rural. In the proposed legislation, the right of people to choose their land rights system and the system of land rights governance they prefer must be affirmed. Similarly, the informal rights held by millions of South Africans who live in informal settlements in urban and peri-urban areas must be affirmed, and choices provided in relation to the form in which land rights are recorded and secured over time.

The Panel has also heard extensive and worrying evidence that despite the constitutional requirements of Section 25(6), implementation of tenure reform laws has been weak and ineffective. This is particularly the case with the Extension of Security of Tenure Act 62 of 1997 and the Land Reform (Labour Tenants) Act 2 of 1996. Court judgments confirm that the developmental provisions to provide for secure long-term rights, under both these laws, have largely not been implemented. The proposed law must place a positive obligation on the executive to secure the land tenure rights of farmworkers and farm dwellers, as well as to make available alternative land to farm dwellers and labour tenants on a long-term and secure basis. Identification of target groups and their prioritisation The majority of South African citizens are eligible to become beneficiaries of land reform. Effective implementation of tenure reform programmes can benefit large numbers of people: residents in the communal areas of the former Bantustans; occupiers of commercial farms; and occupiers of land in informal and peri-urban settlements.

Effective implementation of the land restitution programme can benefit large numbers of people previously dispossessed of rights in land, or their descendants. However, in the land redistribution programme, clarity about who the target groups are and how their competing interests and needs are to be weighed up, is urgently needed.

The Provision of Land and Assistance Act 126 of 1993 (as amended) provides inadequate guidance on this core question: who is land reform for, and who should be the primary beneficiaries? For this reason, a strong principled statement is needed on who are the various target groups, but also which principles should guide their prioritisation. As argued above, the new law must provide a clear definition of what constitutes ‘equitable access’ as provided in Section 25(5) the Constitution. It needs to specify how the rights and interests of those who have property or other resources of their own and those who do not, those who have other livelihood resources and those who do not, should be addressed within the programme. Given the absence of any rationing system equivalent to the housing subsidy (or the prior land reform grants which were set at specific levels), such statements are needed to guide the allocation of public resources to ensure that the constitutional requirement of ‘equitable access’ is realised in practice.

**Beneficiary selection**

Who should land reform benefit? With respect to the restitution process, this is clear: claimants with valid claims should benefit. With respect to the labour tenant reform process, this is clear: labour tenants with valid claims should benefit. However, with respect to the land redistribution process, the question of who should benefit is far from clear. The Panel has engaged with evidence that the current process of selecting beneficiaries is not transparent or subject to public review or parliamentary oversight. With respect to tenure reform, and the interventions required to ensure that farm dwellers and residents in communal areas have their tenure secured via ESTA or IPILRA, there is similarly no clarity on how and why the state chooses to intervene or not to intervene. So there needs to be guidance as to the state’s selection of beneficiaries for both redistribution and tenure reform.

While there has been reference to public and participatory processes of land reform in various policy documents, the Panel is not convinced that the selection of beneficiaries has been transparent, or guided by such processes. The area-based planning (ABP) processes initiated more than a decade ago have foundered, been revived in some areas, and in others not.

Many have been driven by consultants without substantial and meaningful public participation. Most importantly, to conduct a transparent and principle-driven selection of beneficiaries, the Department needs to know from which potential population of beneficiaries it is selecting. For this to be the case, it is essential that public participation processes lead to the creation of a list of those who want land for a variety of purposes. It is only once it is known who wants land, what kind of land they want and for what purposes that beneficiary selection can be conducted in a transparent and accountable manner, taking full cognisance of the requirement of ‘equitable access’ to land as required in Section 25(5) of the Constitution.

**Land acquisition and the choice of land for redistribution**

The willing buyer, willing seller principle has shaped South Africa’s land reform process to date, despite this not being contained in the Constitution. It has been a policy choice, and one that has led to particular farms being acquired and redistributed. Often there is no good fit between these particular farms and the real needs of local people; rather, the farms are acquired merely because they have been offered for sale by their owners. This is not a good way to run a land redistribution programme, and the Panel has heard evidence of people having no choice but to take land that does not fit their priorities and needs, for instance land that is far away from towns and infrastructure, or big farms rather than smallholdings.

Legislation to guide land reform should address how specific land is identified for redistribution and its prioritisation. Area-based planning should be promoted so that there are opportunities for local people to participate in setting priorities for which land should be acquired and redistributed. This should relate not only to the demand for land for agricultural purposes, but also land for settlement. Where agricultural land is identified, the availability of adequate water and water rights must be assessed. Such processes should cross-reference the district land reform committees and require the involvement of district and local municipalities in these committees and prioritising areas for redistribution, and joint planning must ensure ongoing support from local government within the ambit of Integrated Development Plans (IDPs). Once such areas or specific properties are identified for land reform, the state may choose to make offers to purchase, negotiate or expropriate such properties. Legislation should not dictate the manner of acquisition but the full range of options must be spelt out.

**Transparency and accountability**

The proposed law must provide effective mechanisms for transparency in and accountability for the implementation of land reform policies, to allow the public and their representatives in parliament to assess whether or not the executive arm of government is delivering on its constitutional commitments. The suggestions below specify how such transparency and accountability is to be achieved, and emphasise the central importance of ensuring that the main beneficiaries of land reform are the poorest and most vulnerable sectors of society. Other measures of performance, such as the location and area of land transferred or secured through land reform, are also specified as reporting requirements. This section also requires that district-level land reform implementation frameworks provide the framework for reporting on progress, and that these reports be included in annual reports at national level.

**Subdivision**

The state must proactively promote the subdivision of large-scale landholdings in situations where those in most need are in want of smallholdings to address their land needs. Subdivision in such situations must be undertaken so as to promote the availability of smallholdings, to promote equitable access. The district land reform implementation plan will take into account the needs reflected in land redistribution applicant registers and waiting lists when planning for proactive subdivision of land reform land, whether previously state land or commercial farmland.

**Commonage**

Commonage is a public asset that is held by the state precisely for the provision of access to land for ordinary people. Given that municipalities own commonage, national government must cooperate with and support municipalities to use and manage their commonage, including by assisting with infrastructure grants and financially supporting the acquisition of additional land to augment and expand municipalities’ commonages. A commonage programme initiated in the 1990s showed relative success in providing poor people, particularly livestock owners, with access to land for grazing, as well as access to small allotments for cultivation, especially by women. In these ways, promoting the use of commonage can make a significant contribution to realising the vision of land reform and promoting equitable access to land.

There have been several constraints to the commonage programme. First, many municipalities have rented out their commonage to commercial farmers, often in return for very nominal rents. This constitutes a subsidy for commercial farmers from the citizens of the areas, and must be stopped. Bringing public land back to public use is a priority, alongside the need to expand and improve the infrastructure and management of commonages. One of the reasons why commonage land is so important and strategic for poor people is that they can access such lands in the immediate vicinity of rural towns – they are able to use public agricultural land without foregoing other livelihood opportunities in towns, and the social infrastructure (schools, clinics, etc.) that these afford.

For these reasons, any legislation to guide land reform should privilege commonage as one of the important ways in which access to land can be expanded and made more equitable. Policy decisions may determine whether the state chooses to proactively expand commonages around the country. Legislation should require that both the Department of Rural Development and Land Reform, and municipalities around the country, ensure that commonage is made available in a manner that promotes equitable access and prioritises the needs of the poor and landless, that they acquire secure and long-term rights, that commonages are well managed, and that, where groups of commonage users are formed, they are assisted to develop institutions capable of democratically managing the land, water and other resources that they use.

**Allocation of secured long-term use and benefit rights**

Equity in access to land and equity in tenure arrangements go hand and hand and are co-dependent. Without respected, supported and resilient tenure, land reform and redistribution will not be sustainable. All persons who receive a grant of equitable access to land and property rights under Section 25(5) including statute law, common law and customary law, shall be entitled to participate in any decision about the form of tenure right under which the grant will be held into the future. Land redistribution beneficiaries should be able to choose their preferred form of tenure and the statute will provide statutory support for the procedure to be followed and the institutions to underwrite the tenure forms. Entry and exit rules can promote meaningful use of the redistribution and tenure grant, and penalise unearned profits and speculation. Rights must be protected and enforceable by way of accessible and effective remedies.

Tenure transformation is about increased diversity in the way land is owned and used: in

other words, more variety in ownership and management arrangements (private, public, partnership, community or not-for-profit) which will decrease the concentration of ownership and management control in a limited number of hands, particularly at local level, to promote sustainable and equitable rural development.

**Alternative dispute resolution: Land Rights Protector**

There must be provision for alternative dispute resolution, to provide for facilitation and mediation, and to refer matters for conciliation. Where land disputes cannot be resolved through these processes, the Panel proposes that such disputes can be referred to a Land Rights Protector – either in the proposed Land Framework Bill or in separate legislation. Any land dispute that involves conflicts between citizens/land occupiers and any state institution or state officials should be directly referred to the Land Rights Protector, as in this case conciliation would constitute a conflict of interest for the state institutions or officials involved. The panel proposes that mechanisms to promote alternative dispute resolution must be promoted, except for such cases where a Land Rights Protector must take over cases, investigate, and produce findings and recommendations for remedial action.

**OUTCOMES OF THE HIGH LEVEL PANEL REVIEWS PERTINENT TO THE IMMEDIATE LEGISLATIVE REVIEWS OF THE COMMITTEE**

**THE MPRDA**

The Panel proposed[[1]](#footnote-1) specific amendments to the MPRDA to address the way it is being implemented. The Panel concluded that the MPRDA undermines customary land rights and customary accountability requirements in the former homelands. It further concluded that mining has led to land dispossession and loss of livelihoods, while there are no real benefits for mine-hosting communities. Regarding royalties and reparations paid, it stated that hundreds of millions of rands that were paid over to traditional councils by mining houses have not been accounted for. The Panel made recommendations for amendment in relation to compensation for loss of land and livelihoods, for the transparent sharing of benefits accruing from mining, and for explicit compliance with IPILRA before the granting of a mining-related right. The Panel further made specific detailed recommendations to address the pattern of serious problems described during the public hearings, specifically that the DMR advises mining companies to transact directly with traditional leaders even where they have no legal authority to do so, and have not complied with the financial oversight and composition requirements set out in law.

The three sections of the MPRDA that the High Level Panel recommendations require to be amended did not receive as much attention in the Committee’s public engagement process compared to other clauses, but the topics addressed in the High Level Panel’s report match inputs received from that sector of the public focused on in the report. While the sentiments expressed is very similar to this sector of the public that responded to the Bill during the Committee’s engagement process, it was not reported on in such detail as it made up a relatively focused segment of concern regarding inputs on:

* The right to Free, Prior and Informed Consent;
* Recognition of IPILRA;
* The fate of royalties and other mining related payments to traditional leaders;
* The compromised nature of public consultation when directed through traditional leaders
* The right to refuse mining activity;
* The need for greater transparency during all aspects of mining related applications and decision making by the Department; and
* Better compensation for those affected by mining.

As the captured inputs from mining affected communities and NGO’s representing such communities clearly indicate, the comments captured in the report are considered accurate and in line with representation received by the Committee. When these were put to the Department for comment, however, the response was invariably that the suggested changes were contrary to policy guiding these interactions and would therefore not be considered.

The High Level Panel’s report recommendations dealing with the MPRDA poses a unique challenge to the Committee. As the Bill has been remitted by the President, the Committee is barred by the rules of Parliament to make any of the recommended amendments to the Bill while it is before the Committee. The proposals in the report are also not part of provincial mandates received after the provincial mandate were developed. Further, it is clear from the recommendations that many of the proposed amendments to the Bill will not only require significant re-drafting of the piece of legislation but will also impact significantly on the policy of the Department.

Additionally, the report calls for simultaneous amendments to other pieces of legislation such as the Ngonyama Trust Act and the Traditional Leadership and Governance Framework Act (TCGFA). There clearly is a significant degree of legal uncertainty regarding the interactions of traditional councils with mining companies. In its reporting focused on the TCGFA, the High Level Panel stated the following:

*“In the thirteen years since the TLGFA came into force, there has been inconsistent and poor implementation of the requirement for tribal authorities to transform into properly constituted traditional councils. Government has explicitly acknowledged these failures in the Memorandum accompanying the Traditional Leadership and Governance Framework Amendment Bill 8 of 2017”.*

The Memorandum highlights doubt about the legal status of many traditional councils as many have not complied with the transformation requirements set out by law. This obviously affects any agreement signed by such traditional councils with third parties. Significant agreements with mining companies, for example between Lonmin and the Bapo ba Mogale traditional authority in North West, Anglo American Platinum and Kgosi David Langa in Mapela, Limpopo, Pallinghurst and Kgosi Nyalala Pilane of the Bakgatla ba Kgafela traditional council in North West and Mineral Commodities Limited (MRC) and the Xolobeni community in the Eastern Cape.

Should there be consensus in government that the proposed policy changes will be implemented, it will require a simultaneous review of a number of pieces of legislation before the proposed changes to aspects of the MPRDA, agreements with traditional councils and interactions with people occupying communal land proposed in the High Level Panel Report will take effect.

**ESTA AND THE LAND TENURE ACT**

We have recommended that the Extension of Security of Tenure Act (ESTA) and the Labour Tenants Act be amended slightly. However, our main recommendation is that they be properly enforced, particularly their neglected redistributive components.

**Historical investigations into the implementation of ESTA**

Challenges related to tenure security and the eviction of farm workers have resulted in numerous investigations in the past. Findings of these include:

* Widespread non-compliance with ESTA.
* A ‘disturbing lack of knowledge of ESTA by all role players’ (South African Human Rights Commission, 2003).
* A ‘complete lack of compliance with the legislative provisions of ESTA in some court proceedings resulting in farmworkers being evicted in terms of common law’ (South African Human Rights Commission, 2003).
* High numbers of evictions associated with the change of farm ownership.
* A failure of the state to adequately train its officials to implement legislation resulting in a high rate of illegal evictions.
* Lack of access to adequate housing for many farmworkers. The report noted that the Department of Housing ‘demonstrated little understanding of the rural context’ and that they were ‘clearly not grappling with the issues of farming communities’ (South African Human Rights Commission, 2003).
* Inadequate provision of emergency housing, and required that ‘relevant government departments submit a reasonable plan to the SAHRC that addresses people in crisis situations after an eviction’ (South African Human Rights Commission, 2003).

The SAHRC report identified lack of political will to implement the law and provide services to farmworkers and dwellers as the primary cause of failure as opposed to attributing this to the inadequacies in the laws passed to protect farmworkers’ rights.

The evidence from these sources makes it clear that the then Department of Land Affairs (DLA) and its successor the Department of Rural Development and Land Reform (DRDLR) have failed to provide adequate resources for the implementation of ESTA and the LTA.

**The ESTA Amendment Bill**

The ESTA Amendment Bill is being debated in Parliament. The Legal Resources Centre in their submission has critiqued the Bill for failing to provide sufficient measures to ensure security of tenure for all occupiers. It has argued that Sections 8(2) and 8(3), which provide the principal grounds relied on by the owners of farms for ESTA eviction orders, remain unchanged and as such render occupiers vulnerable.

Our experience is that in most successful eviction cases, all that the owner has to do is to show that the labourer/worker has been dismissed and that there are no pending proceedings before the CCMA. In our experience, most farm labourers/workers are not aware of their rights at the CCMA and they often sign settlement agreements arising from their employment disputes without fully understanding that an eviction application will follow (Legal Resources Centre, 2016). The LRC has proposed that Section 9(3) of ESTA should be amended so that it is expressly stated that a court cannot grant an ESTA eviction order in the absence of a probation report and a report from the local municipality on the availability of emergency housing. It has observed that cases are often heard without a probation officer’s report being prepared.

**What were the unintended consequences?**

In relation to farm dwellers, the legislative and policy framework has become increasingly confusing and contradictory, without clear focus. There have been a wide range of policy proposals that don’t take forward the aims of ESTA and the LTA, and therefore the Constitution.

For example, the Draft Policy entitled Strengthening the Relative Rights of People Working the Land (better known as the 50/50 policy) discussed above is an incoherent and potentially dangerous policy. The most dangerous aspect of these policy proposals is that workers and their families living on farms should not have rights to live where they are, but rather should earn their tenure by performing a set of ‘duties and responsibilities’. The policy even suggests that land rights management committees will decide who stays and who goes. Such a provision would have grave consequences, and represents a step backwards from the promise of tenure security made in the Constitution of 1996 and in ESTA in 1997.

**Implementation of legislation**

As noted above there is widespread agreement that minimal resources have been allocated to the implementation of two pieces of legislation. The DRDLR have never produced comprehensive or costed plans to implement the LTA or ESTA. A further challenge with implementation of legislation has been that a broad range of Government officials do not fully understand the legislation protecting farm dwellers – this includes SAPS members, DRDLR and Municipality officials. This has a negative impact on eviction cases, for example Section 9 (3) of ESTA provides that in each eviction case there must a report compiled by the probation officer.

**RECOMMENDATION 3.7**

**ESTA AMENDMENT BILL**

**Section 1(b)**

The Bill establishes a definition of ‘dependant’ whereas the Act contains no such definition. Section 1(b) defines a dependant as ‘a family member whom the occupier has a legal duty to support’.

First, this is not the meaning of dependant in South African common law, which includes recognition of dependants to whom a person has no legal duty. Second, this provision infringes on the right to family life, especially in the context of extended households including relatives other than spouses, parents and children and grandchildren. Third, what is the purpose of defining ‘dependant’? The purpose appears to be to exclude

(a) non-relatives who live with occupiers on farms and

(b) relatives including adult children who live with occupiers on farms.

Fourth, this provision therefore seems to serve the purpose of excluding a category of people living on farms from the protections provided in ESTA. If enacted, this would disproportionately affect poor and unemployed young adults, and especially young women.

This definition should be removed or expanded to include a much broader definition of ‘dependant’, in line with customary and common law.

**Section 1 (c)**

No amendments have been suggested by DRDLR despite the controversial nature of this section. This relates to a limitation in the income of occupiers, which is stipulated in the Regulations as R5 000 a month. There is no justification for why the income of a family should restrict their rights to occupation. This section should be removed.

**Section 6 (d)**

While the Bill proposes that the state pays landowners for providing accommodation and services to occupiers, it proposes that occupiers maintain their dwellings at their own cost. There are two problems with this. First, this imposes an unfair requirement of occupiers, who

are typically poor.

Second, where owners construct dwellings for occupiers, this is fixed property, and any maintenance and improvement accrues ultimately to the owner. This section should be amended to provide occupiers the right to maintain and improve their dwellings but not to impose a duty on them to do so.

**Section 8 (2)**

The section states that ‘the right of residence of an occupier who is an employee and whose right of residence arises solely from an employment agreement, may be terminated if the occupier resigns from employment or is dismissed in accordance with the provisions of 35 the Labour Relations Act’. This section should be removed as rights of occupation are not tied to employment.

**Section 8 (5)**

An occupier’s right to reside should not depend on his/her family member’s right. This section should be removed.

**Section 9 (3)**

This section of ESTA should be amended so that it expressly states that a court cannot grant an ESTA eviction order in the absence of a probation report and a report from the local municipality on the availability of emergency housing. In addition, it should be compulsory for a probation officer to be present in court at the time of hearing of ESTA cases.

**Section 21**

The Bill proposes to amend Section 21 to indicate that the Director-General may refer disputes to the Board for mediation or arbitration. In principle, we strongly support the emphasis on mediation and arbitration as forms of alternative dispute resolution. However, this requires that the Board is suitably constituted and skilled to undertake mediation and arbitration. This contradicts the purpose of establishing the board as a ‘stakeholder.

**Section 23 (5)(c)(i) and 23 (5)(c)(iv)**

These sections should be amended to replace the title ‘Attorney-General’ with the title ‘Director of Public Prosecutions’ As South Africa no longer has an Attorney-General.

**Section 23 (2)**

This should be amended to include municipalities as officials, and the words ‘under this Act’ should be removed, to enable basic services (including sanitation, potable water and energy) to be delivered on farms by Municipalities. The end of this section should be reworded to read: ‘… or the Municipal Services Act.’

**Other issues**

* Dedicated budget and human resources must be ring-fenced for ESTA
* implementation, monitoring, accountability and Section 4 grants, and aligned with the National Housing Code.
* The DRDLR must set up and maintain District Registers of Section 4 of ESTA cases. This should detail the circumstances of the case and which relate to applications to access subsidies for on-site or off-site settlement for farm dwellers, both successful and unsuccessful. The DRDLR must collect and collate data on implementation of Section 4 of ESTA and make it publicly available, including how many Section 4 cases were implemented; and if they were not, then the reasons for this.
* Consideration should be given to rezoning land on which farm dwellers reside from agricultural land to residential land, in terms of Spatial Planning and Land Use Management Act (SPLUMA).
* Long-term occupiers who are currently living on farms should have their tenure security strengthened for them and their family by being able to acquire title or equivalent secure rights to land either on or off the farm.

**RECOMMENDATION 3.6**

**GENERAL RECOMMENDATIONS**

**Training**

* Government needs to develop and implement a training programme for the South African
* Police Service (SAPS), Prosecutors and Magistrates on understanding, interpretation and implementation of ESTA and LTA.
* The South African Police Service needs to ensure that ESTA violations appear on the database of the SAPS.

**A National Register of Evictions**

* A National Register of farm dwellers
* A National Register of farm dwellers still living on farms to record off-register rights, tied into a National Register of ALL off-register rights.
* The register should be compiled by a Chapter 9 Institution or the Legal Aid Board.
* A review of legal assistance to farm dwellers
* Legal assistance for farm dwellers is currently offered via the Land Rights

**Management Facility.**

* This is managed by the DRDLR, who contracts a private company via tender procedures to manage a panel of lawyers to provide legal services around land rights.
* However, many farm dwellers remain inadequately supported and represented, due to absence of referrals to the LRMF and lack of skills and expert knowledge of some lawyers appointed to the panel of service providers.
* A thorough review of legal services provided to farm dwellers should be undertaken, with recommendations for an improved system. It is worth noting that it could potentially reduce the cost to Government and improve the delivery of legal services to farm dwellers if the Legal Aid Board take responsibility for providing these legal services again.

**Information campaigns about farmworkers’ land rights and communal land rights**

* Government must at all times disseminate information in farming communities about farmworkers rights. Such information can be captured in the form of posters that highlight key messages from ESTA and IPILRA.
* This information should be widely circulated in most rural and far-flung parts of South Africa and must be on display in all police stations, post offices, municipalities, traditional councils’ offices and other public spaces.
* The Department of Justice and Constitutional Development should regularly update prosecutors, magistrates and judges about new ESTA and IPILRA judgments, and how these change the jurisprudence.
* The ESTA Amendment Bill went to the National Assembly in Parliament on 15 February 2015, following a long process of consultation, which began with public submissions to the Portfolio Committee in December 2015. Some submissions argue that it appears as if the DRDLR doesn’t wish to amend the sections of ESTA that have been repeatedly proven to be problematic. Instead, they propose the introduction of a Land Rights Management Board (LRMB) and Land Rights Management Committees (LRMC). The function of these structures is unclear, as is what benefit they will bring to farm dwellers. The Bill does not explain how these will address the limited capacity for enforcement in the existing duty-holder, i.e. the Department.

1. **Recommendations**

Refer to text of individual sections in the above report

1. **Committee strategic plan**

See Annexure A

1. **Master attendance list**

See Annexure B

1. Recommendations on the Mineral and Petroleum Resources Development Act, Page 59, Report Of The High Level Panel On The Assessment Of Key Legislation And The Acceleration Of Fundamental Change [↑](#footnote-ref-1)