

6th DEMOCRATIC PARLIAMENT

Presentation to the PC on Social Development



**Portfolio Committee on Social Development
Legacy Report: 2019 - 2024**

20 August 2024



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA



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1. Introduction

- Legacy report captures the main performance areas of the erstwhile portfolio committee – oversight focus areas, key areas for future work, key challenges emerging, key legislation processed and passed, and key challenges experienced, issues for follow-up, oversight visits and study tours undertaken, statutory appointment and recommendations for the new term/portfolio committee.
- The report is critical as a source document for the Committee's 5 Year Strategic Plan and Annual Performance Plan (APP).
- It also serves as a progress report of the Committee against its 5 Year Strategic Plan and APP

2. Highlights

- The Committee focused on these MTSF priorities:
 - food security** – intervention in response to Covid 19 pandemic through distribution of food parcels, coordination of food distribution by DSD and civil society.
Oversight focus – implementation of a digital system to monitor distribution and improve coordination.
 - gender-based violence** – oversight over the implementation of the National Strategic Plan on GBVF, Family Preservation Programmes and anti-substance abuse programmes, including the National Drug Master Plan.
Oversight focus– need for a national survey on the prevalence of GBVF, proper referral system between relevant departments (Social Development, Police, Justice, Correction Services, Health)
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- ❑ **sheltering** – this became a serious challenge during the period of Covid 19 pandemic when homeless people needed to be provided with shelter. It is also a continuing challenge due to the impact of natural disasters, e.g. in KZN and EC.

Oversight focus: need for a clear mandate between DSD and COGTA.

- ❑ **Social Relief of Distress (SRD) Grant and other grants** – the implementation of the grants was faced with a lot of administrative challenges - digitisation of application process, access to updated data (from banks, UIF, NSFAS) fraud, migration from South African Post Office (SAPO) to Postbank (resulted in failed payment transactions), closure of SAPO branches, long queues at SASSA offices.

Oversight focus: implementation of the SRD Grant provided a best practice for the Basic Income Grant.

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- ❑ **provision of psychosocial support services** – intervention during the period of Covid 19 pandemic.
- ❑ **employment of Social Service Professionals (SSPs)** – critical shortage of social workers even though it was declared in 2001 as a scarce skill (2030 NDP vision and MTSF target was 55 000 vs 22 168 employed by the sector – DSD, DBE, DCS, SAPS, DOD). This is against the increasing social ills. There is also a need to close a gap of professionalizing Child and Youth Care Workers (CYCWs), Social Auxiliary Workers, Community Based Care Workers and recognise the value of these professionals.

Oversight focus: development of a Sector Strategy on the Employment of Social Service Professionals that was submitted to National Treasury for funding. Sector departments need to present their sector strategies and budget for the employment of SSPs and probation officers.

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- ❑ **services for and employment of persons with disabilities (PWD)** – 2% government target of employment of PWD have not been met, lack of support and services for people with disabilities incl. children, lack of legislation on services PWD, lack of reporting from government departments, lack of mainstreaming of planning and budgeting on APPs on disability specific targets, lack of institutionalising disability (lack of deployment of a Disability Focal Person)

Oversight focus: need for development of the legislation on services for PWD. More oversight on the departments' reporting on their mandates. Mainstreaming of the sign language.

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❑ **child targeted violence and child protection services** – child targeted violence and murder is on the rise, the 4th National Plan of Action for Children (NPAC) 2019 -2024 does not address substance abuse, teenage pregnancy, lack of access of children with disabilities to schools with special needs and balancing of children’s rights and discipline. It also does not provide a sense of the Plan’s real impact on the lives of children. There is also looming child trafficking via social media platforms. Lack of safety of school children on the way to school due to increasing crime and taxi violence, lack of tracking of withdrawn child abuse cases.

Oversight focus: follow up oversight on the NPAC

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❑ **NPO support and funding** - lack of NPO support and non-payment and delayed payments of NPOs continues to be a major concern of the Committee. of non-compliance by NPOs to reporting requirements as stipulated by the NPO Act. This impacts on their funding approval.

Oversight focus: development, implementation and impact of the NPO electronic system and the E-Learning platform for the DSD Sector Funding Policy.

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❑ **accessibility of DSD and SASSA offices and information dissemination** – concerned about DSD and SASSA offices not accessible and responsive to the people. It is only when Members of Parliament intervene on their behalf that their issues get resolved. This indicates that their issues are solvable. Policies and programmes are not known by communities.

Oversight focus: updating websites, information dissemination strategy.

3. Key areas for future work.

- Oversight into the impact of the Social and Behaviour Change programmes.
- Finalisation of the Femicide Watch Dashboard by the Department of Justice and Constitutional Development as it is a key instrument in the reporting of the GBV related cases in the country.
- Oversight on the implementation of the Intersectoral Protocol on the Management of Child Abuse, Neglect and Exploitation.
- Drafting of the overarching legislation governing services to people with disabilities by the mandated department.
- Mainstreaming of disability by the social development portfolio in its planning, budgeting, auditing, monitoring and evaluation programmes.
- Compliance by the social development portfolio on the reporting requirements on disability.

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- Enforcement of monitoring and evaluation of disability rights instruments by the social development portfolio.
- Implementation of the Auditor-General's recommendations to the social development portfolio to address the Material Irregularities (MIs) and complete investigations on them and other findings on non-compliance and financial misconduct (irregular expenditure).
- Implementation of the National Development Turnover Strategy.
- Filling of critical vacant positions especially at DSD and SASSA.
- Oversight on the finalisation and implementation of the Policy on Income Support for 18–59-year-olds, Policy on Maternal Support for Vulnerable Pregnant Women and Children and Policy on Integrating Children's Grant Beneficiaries with Government Services.

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- Auditor-General's recommendations to the Committee:
 - It closely monitors the MIs identified to ensure that they are adequately addressed.
 - It follows up on the progress of the development and implementation of an action plan to prevent re-occurrence.
 - It oversees the filling of key vacancies at DSD and NDA.
 - It continues to actively engage with all role players within the accountability ecosystem to ensure that appropriate measures are implemented to resolve the MIs and repeat audit findings.
 - It utilizes the preventative control guides as developed by the AGSA to assist other oversight functions and to ask relevant questions during their oversight roles.

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- Turnaround Strategy of the NDA: The current budget structure of the NDA created a situation where the bulk of the budget allocation goes to Programme 1: Governance and Administration, which does not implement the core mandate of the NDA. The core mandate is implemented through Programme. To rectify this, the Agency developed a Turnaround Strategy, which is planned to be implemented from 2024/2025 financial year.

4. Key challenges emerging

- Increase in natural disasters (floods and increase in temperatures) and the role of the social development portfolio. The portfolio because of its constitutional mandate it has been expected to play a central role in providing relief interventions to affected communities. Some of these interventions are unfunded mandates and fall outside the mandate of the social development portfolio. These involve the department's ability to respond and provide services such as shelter and meals to displaced people. Disaster management largely falls within the jurisdiction of Department of Cooperative Governance and Traditional Affairs.

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- Challenges in the payment of social grants which include fraud in the grant administration system, long queues at SASSA offices and beneficiaries sleeping outside SASSA offices, technological challenges in Postbank payments system that result in non-payment of the social grants, status of SASSA cards and closure of Post Office branches.
- Reports on the abuse of Child Support Grant and the Older Persons Grant by family members who use them for their own needs.
- Escalating increasing in social ills – gender-based violence, child targeted violence and abuse, including child trafficking, substance and drug abuse, teenage pregnancy.
- Impact of electricity loadshedding on service delivery.
- Increase in the cost of living which threatens food security.

5. Legislation passed

- ***Social Assistance Amendment Bill [B18 – 2018]*** – the Act was amended to respond to the North Gauteng High Court ruling that DSD and Parliament had to develop a comprehensive legal solution to the challenges in the foster care system. It provided for the Child Support Grant Top Up for orphans and child headed households, establishment of the Independent Tribunal to consider appeals against decisions taken by SASSA and establishment of an Independent Inspectorate as a national government component.

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- ***Children's Amendment Bill [B18 – 2020]*** – the Act was also amended to respond to the Court's ruling and address implementation challenges of the Act such as in the ECD sector, rights and responsibilities of unmarried fathers, extension of the jurisdiction of the Children's Courts, designation and functions for a Registrar of the National Child Protection Register, adoption and inter-country adoption, prohibition of child marriages, etc. It also inserted new definitions, e.g. an orphan, abandoned child, intercountry adoption, unaccompanied migrant child, etc.

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- ***Fund Raising Amendment Bill [B29 – 2020]*** – the Act was amended to provide for the discontinuation of 5 dormant funds and their boards and establish the Disaster Relief and National Social Development Fund and to transfer any amounts remaining in the discontinued funds to the Disaster Relief and National Social Development Fund.
- ***Children’s Amendment Bill [B19 – 2023] Private Members Bill*** – sought to insert a definition of micro partial care which is provided when a person takes care of six or less children on behalf of their parents, guardians and care-givers during specific hours of the day or night. The Bill was declared as undesirable by the Committee – the insertion was already included in Section 34 of the Children’s Amendment Bill, Committee did not have sufficient time to process the Bill, DSD may face financial and human resource constraints to implement the proposed amendments.

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- ***Older Person's Amendment Bill [B11 – 2022]*** – the Act was amended to insert new definition, e.g. older person, abuse of older persons; removal of older persons to a temporary safe care without a court order, M&E of all services to older persons.

6. Challenges that emerged

- **Children's Amendment Bill** – because of its size (147 clauses), the Committee had to decide to either split the Bill into two or consider it in its entirety. The Bill was tabled in August 2020, three months before end of Court's deadline (26 November 2020). The Committee received a legal advice with **two options** – 1) fast track the Bill to meet the Court deadline, which would have required Parliament to shorten its legislative process, 2) DSD with the assistance of Parliament apply for an extension of the deadline and that would allow Parliament more time to follow all legislative process requirements.

The Court extended the deadline by a further 18 months, to 27 November 2022.

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- The public participation process was affected by Covid 19 travel restrictions. Both provincial and national public hearings were held virtually.
- The public hearings were also affected by local government elections which were to be held on 1 Nov 2021. Parliament had to adjourn to allow MPs to prepare for the elections.
- The other challenge experienced arose when SALGA informed the Committee that it was not consulted by the DSD on ECD and other related clauses, even though it has a constitutional mandate to provide certain ECD services – structural, health and safety standards, inspections and infrastructure. The Committee then requested the department to present a legal opinion on the matter.

A legal advice was obtained. It advised that all ECD related clauses be removed, consulted with SALGA and published separately as a second amendment. In that way the Committee would be able to meet the Court deadline.

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- The Committee was also advised of the imminent (1 April 2022) ECD function shift from DSD to the Department of Basic Education. The implications of that was that it would not be prudent for the Committee to legislate for a function that it would not conduct oversight over.

At the formal stages of the legislative process, the Committee then rejected all the ECD related clauses.

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- The Committee later received another legal advice that it should prioritize foster care related clauses because they had a Court order deadline attached to them. This would allow the Committee to meet the Court deadline.
- The remaining substantive clauses would be considered in the Committee Bill as a second amendment.
- The legal team identified 12 foster care related clauses, however some Committee Members proposed that clause 10 amending Section 21 of the Act that deals with responsibilities and rights of unmarried fathers be added to the 12 identified clauses.

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- It was motivated that clause 12 is important because there are many abandoned and orphaned children who are living with their unmarried fathers. Therefore, the application of this clause will prevent these children from ending up in the foster care system.
- Another challenge was raised that when the Committee considered the Bill clause by clause, it did not consider the matrix which contained the public inputs and responses from DSD.

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- The Committee in general agreed with the 12 proposed foster care related clauses except for clause 10. The majority Members argued that this clause received substantial public inputs that needed an extensive public participation process which could possibly also have to include consultation with the House of Traditional Leaders and the Department of Justice and Constitutional Development.
- The minority Members objected and stated that the Committee had agreed to include clause 10 in its previous meeting. They questioned the exclusion of clause 10 with the motivation that giving effect to this clause will have an impact on the foster care system in that it will lessen the pressure off the system as biological fathers will have access to their children.

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- Consequently, the minority Members rejected the adoption of the Committee report on the Bill.
- Subsequent to the adoption of the report, the Committee on 06 March 2023 received a presentation and legal advice from Parliamentary Legal Drafter, Advocate Charmaine van der Merwe on the development of a committee bill.
- **The Adv. will be requested to brief the Committee.** In summary, she emphasised that these are these are issues she advised needed to be considered when the Committee is developing a committee bill:

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- ❑ develop a policy that inform the bill, what the Committee hopes to achieve the principles that apply to the solution, the methods that will be used to achieve the goal and give effect to the principles, and the mischief / gap in the law / the problem that concerns the Committee. The policy must be developed before the Committee can receive a permission to introduce the Bill from the Speaker and the National Assembly.

Development of a committee bill can take between 1 to 2 years. Bills which focus on 1 or 2 topics, where the policy is **fully developed**, can be completed within a year. Where the policy direction is not clear at the outset, the development of a Bill takes much longer.

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- Legislative process to follow if approval is granted:
 - Consult JTM on classification (and NHTKL if applicable),
 - Report on the Bill to the House,
 - Advertise intention to introduce and call for comments (public involvement)
- Interested persons must be given at least three weeks after publication to comment.
- Relevant Department / Organ of State must be given sufficient opportunity to make submissions to the Committee.
- Deliberations, amendments, further consultations etc. until the Committee is satisfied that the draft can be introduced

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- The Committee adopts the Bill and a report that speaks to the Bill;
- The Committee again consults the JTM on the classification of that Bill;
- The findings of the JTM as per NA Rule 275(c) is tabled with the Bill when it is introduced;
- Legal Service certifies the Bill as per the NA Rules;
- The Committee introduces the Bill by submitting a copy thereof and a supporting memorandum to the Speaker;
- Bill has a second reading and is transferred to the second House.

7. Children's Amendment Bill (Committee Bill)

- Drafting a committee bill will be a new process – the fact that the Minister introduced a Bill and that there was a call for comments on that Executive Bill only means that there is information available to use. All processes MUST be done anew;
- A large number of clauses are suggested by the Department to be included in the Committee Bill – approximately 126 clauses (only ECD clauses (to Education) and the foster care clauses (Act 17 of 2020) removed);
- The more clauses (themes) a Bill has, the longer it takes to process in the Committee;
- There were between 9 and 10 months left until Parliament rises for 2024 elections;

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- The introduction of the Bill by the Committee is the LAST step in the Committee's process – if not introduced in this 6th Parliament, the Bill has NO status (no revival in the 7th Parliament). It will only be mentioned in the legacy report;
- The new committee will have to start from scratch if they decide to also do a Committee Bill (permission, call for comments etc);
- If the Committee decides to include all the clauses (multiple themes), the Committee must accept the risk that the Bill may only go through to the 7th Parliament as part of a legacy report.
- **Recommended that the Committee choose one or two themes and only proceed with that as a Committee Bill.**

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- **The Executive can start the process from the Executive's side to take the rest of the clauses through the Cabinet process in a new Executive Bill.**
- **Some clauses in the Executive Bill elicited a lot of comment and debate – these clauses as they appear in the Executive Bill cannot be incorporated as is into the committee Bill:**
 - E.g. rights of unmarried fathers and the adoption fees issue;
 - Various redrafting proposals were received on a number of definitions and clauses of the Executive Bill;
 - The content adviser must advise the Committee on these and other issues that attracted a lot of comment;
 - The Committee must deliberate on the inputs and decide on the policy direction that must be captured in the Bill.

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The role of the Department is very important on this Committee Bill:

- The policy that that was converted into a draft Bill was developed and researched by the Department i.e. the Department must advise on the mischief that each clause / theme was addressing, what the policy / views are on how each clause / theme would address that mischief; when considering public comments it is possible that further policy consideration and policy development may be required; the redrafting of these clauses will require a clear policy direction.
- Constitutional Legal Service Office (CLSO) will require clear decisions and drafting instructions from the Committee in order to be able to draft.
- Lack of a clear direction will impact on the time to draft and process the committee bill.

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Proposed steps on drafting of the Children's Amendment (Committee Bill)

- **Policy development:** Content Advisor to present the clauses considered for the Committee Bill (Clauses of the Executive Bill that were not passed). In the presentation, the Content Adviser must brief the Committee on all comments received from the public on those clauses. The Department must brief the Committee on each of those clauses, comments received and their views on what that clause should stipulate.
- Once the Committee has considered the above, the Committee may then decide what clause should or theme should be included in the Committee Bill? If it must be included, what is the policy direction that informs that clause?

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- **Permission:** Once all clauses have been decided on, the Committee must do a report to the House asking permission to introduce a Bill setting out the clauses / themes decided on to include in the Bill.
- **Developing and processing a draft Bill:** CSLO will then take these decisions of the Committee and put that into a Draft Bill. Once the Bill has been drafted to the satisfaction of the Committee, the Committee calls for comments on the Bill.
- **Note: A Committee Bill which contains the clauses of the Executive Bill word for word would attract the same comments from the public – especially on controversial issues.**

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- The Committee adopts the Bill and a report that speaks to the Bill;
- The Committee again consults the JTM on the classification of that Bill;
- The findings of the JTM as per NA Rule 275(c) is tabled with the Bill when it is introduced;
- Certification of the Bill: Legal Service certifies the Bill as per the NA Rules;
- The Committee introduces the Bill by submitting a copy thereof and a supporting memorandum to the Speaker;
- Bill has a second reading and is transferred to the second House.

8. Critical issues the Committee should consider

- Considers and processes the Children’s Amendment Bill [B18 of 2020] – clauses that were deferred by the 6th Parliament Committee, including the proposed amendments contained in the Private Member’s Bill.
- Gauteng High Court judgement dated 29 June 2023 in the matter between VJV and Another v Minister of Social Development and Another [2023] ZACC 21, which found that Section 40 of the Children’s Amendment Act (No. 38 of 2005) is constitutionally invalid as it “unfairly and unjustifiably discriminates on the basis of marital status and sexual orientation by excluding the words – (a) “or permanent life partner” after the word “spouse” and “husband” wherever such words appear in Section 40 of the Children’s Act,

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- (b) “or permanent life partners” after the word “spouses” wherever such word appears in Section 40 of the Children’s Act”. The declaration of invalidity took effect from 1 July 2023 and its operation was suspended for 24 months from the date of the order, or any extended period allowed by it, to allow Parliament to an opportunity to remedy the constitutional defects that gave rise to the declaration of invalidity.
- The Children’s Amendment Bill [B18 of 2020] already provided a remedy to the aforementioned in the proposed amendment to section 40(3).

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- The implication of this court judgement is that the upcoming Committee has a very stringent timeframe to provide the remedy and meet the Court's deadline. As pointed out in the advice from Adv. Van der Merwe, there are approximately 126 clauses of the Bill that were put in abeyance by the Committee to be considered as Second Amendment. Some of these clauses require policy(ies) to be formulated before they can be incorporated into the Bill. Policy formulation can take up to two years or more to be formulated as they may require extensive research to be conducted prior to them being formulated.

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- Also, as indicated in Adv. Van der Merwe's advice, the Bill received submissions with extensive proposed amendments/drafting, particularly relating to clause 10 amending Section 21, clause 122 amending Section 249, and clause 128 amending Section 259 of the Act and definitions of various terms/phrases. There were also new proposals that were made by stakeholders, which would require policy and legislative frameworks and involvement of other government departments.

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- These were:
 - **Proposals on “safe abandonment of Children (Babby savers):** There is currently no policy provision for this policy and child abandonment is a criminal offence in South Africa. To develop a policy framework on this would require involvement of the Departments of Social Development, Justice and Constitutional Development and the Department of Police and probably the Department of Health as well and any other relevant organs of State.
 - **Proposals on parental rights and responsibilities:** the Department of Social Development is yet to finalise the revised White Paper on Families. Some of the proposals that were made also have a bearing on the justice sector and the National House of Traditional Leaders.

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- **Insertion of ban to corporal punishment:** the Constitutional Court banned corporal punishment. The Department is yet to develop policy proposals/recommendations.
- **Proposals on Genital mutilation (Intersex):** Amendment to Section 12 of the Act prohibits all forms of genital mutilation. However, DSD and the Department of Health would need to engage on the proposals made and their policy implications.
- **Proposals on deletion of adoption fees:** the Department may need to review the adoption policy to respond to the recommendations made during the public participation process. This clause also attracted substantial inputs both during public hearings and on written submissions.

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- The Committee's content advisory and research capacity is very limited to provide a well-researched work and policy development for the aforementioned proposals. The departments have dedicated policy units that have resources and capacities to formulate policies. They are also the implementors and so they are better placed to formulate policies.

9. Oversight visit to KZN

- The Committee conducted oversight to KZN and GP in the aftermath of the July 2021 civil unrest. Some of SASSA and DSD offices were either destroyed or damaged.
- Follow up issues:
 - Restoration of damaged offices.
 - Reconstruction of SASSA beneficiary files that were destroyed.

10. Study tour

- The Committee went on a study tour to Canada about its policies, programmes, services and best practices in elderly care and protection of basic rights of older persons.
- Lessons learned:
 - Dedicated ministry for Seniors;
 - Federal/provincial/territorial (FPT) forums for Seniors;
 - National Council of Seniors;
 - Official statistics and national/provincial surveys;
 - New Horizons for Seniors Programme;
 - Age Well at Home Initiative;
 - MADA Support Programme.

11. Statutory appointment

1. Recruitment of board members to serve in the Central Drug Authority

- Section 53 (3)(b) of the Prevention of and Treatment of Substance Abuse Act (No. 70 of 2008 stipulates that parliamentary committees for Social Development within the National Assembly and the National Council of Provinces shortlist, interview and submit recommended names to the Minister of Social Development for the purpose of appointing suitable candidates to serve on the CDA.
- This process is done once in every 5 years, as members of the CDA have a 5-year term of office. Current term is 2019-2024.

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2. Consultation on recommended candidates to serve on the Independent Tribunal for Social Assistance Appeals

- Section 18 of the Social Assistance Amendment Act (No 16 of 2020) stipulates that *“the Minister must, after consultation with Parliament, appoints an Independent Tribunal comprised of appropriately qualified persons, as may be prescribed, to serve as members of the Independent Tribunal, to consider appeals against decisions of the Agency.”*
- The members of the Tribunal have a 3-year term, with a possibility of an extension, however, it may not serve longer than 6 consecutive years. The current term is April 2023 – March 2026.

12. Petitions

- The processed two petitions – 1) Petition by the community of Tembisa, Ekurhuleni, Gauteng: Build proper offices of SASSA in Tembisa and 2) Petition by Unemployed Social Workers Movement in South Africa for Parliament to investigate the inability for government to create permanent employment unemployed social workers in South Africa.

13. Recommendations

- A need for a coordinated joint oversight (meetings and oversight visits) between the Portfolio Committee of Social Development and the Select Committee on Health and Social Services as well as other relevant portfolio committees. Relevant accounting departments should also be invited. This will eliminate the challenge of oversight stampede. It will also address challenges relating to interdependencies between relevant government that have affected service delivery.
- The Portfolio Committee to also invite provincial DSD MECs to account on the performance of their departments on their respective areas of competency. This will also be applicable to SASSA regional managers.

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- Related to the aforementioned, there is a need to address the intergovernmental relations framework that governs response to natural disasters as a result of climate change and pandemic related disasters by relevant government departments.
- There is a need for a more focused oversight programme that will have dedicated weeks for specific focus area – child protection services, gender based violence, substance abuse, social assistance programme, older persons, people with disabilities, etc.
- Related to the aforementioned, there is need for joint oversight over the implementation of legislation, including delegated legislation and regulations by the social development portfolio.

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