
‘Trust deficit’ in Parliament hampers its effectiveness

By Lawson Naidoo

Lawson Naidoo is the Executive Secretary of the Council for the Advancement of the South African Constitution (CASAC) and a founding partner of the political consultancy, the Paternoster Group.

At the launch of the Institute for African Alternatives’ Checks and Balances: The Auditor-General Project Report, it became clear that the checks and balances laid out in our Constitution go far beyond financial accountability to refer to a broader understanding of the constitutionally defined requirements of our Members of Parliament. That was made clear in the opening address by LAWSON NAIDOO.



To quote from the founding provisions of the Constitution, South Africa is one sovereign democratic state founded on the following values: universal adult suffrage and a common voters' roll, regular elections, and a multi-party system of government to ensure accountability, responsibility and openness. It is those three principles – accountability, responsibility and openness – that are key to creating a vibrant and responsive democracy. We speak of checks and balances, the title of this report [by the Institute for African Alternatives], which is very appropriate because our Constitution is all about a system of checks and balances between the three arms of the state – the legislature, the executive and the judiciary – and it is the necessary tension between those three that ensures the vibrancy and the health of every democratic society.

To hone in on Parliament, it is clear that Parliament has failed us, particularly in recent years. It has failed in its constitutional mandate to scrutinise and oversee the actions of the executive. In the words of Ben Turok, it has allowed rampant corruption. During his years as an MP in Parliament it was an anathema to him that members of his own party could behave in such a fashion and he expected that Parliament could and should be able to do more to stop that. But [Parliament] has proved to be impotent, especially in the face of state capture.

There are a number of reasons for that. Foremost to me is the breakdown in trust, the trust deficit, between political parties and their representatives in Parliament, specifically in the National Assembly. That trust deficit has widened in recent years, and when you have that breakdown in trust the institution cannot operate optimally. It is certainly not in a position to exercise the very important mandate of oversight and accountability. This is a real problem, and the solution will have to be based on

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an understanding of the toxic political environment that continues to exist in Parliament, even in the sixth democratic Parliament that we now have.

There is something to be learned from the way the Standing Committee on Public Accounts [SCOPA] has operated over the years. It stands out as one of those committees of Parliament, perhaps the only one, that actually does its job consistently. It does what it is mandated to do. It scrutinises reports from the Auditor-General in great detail and submits reports to the National Assembly. The frustration of people like Ben Turok and the late former Auditor-General, Kimi Makwetu, is that there is then no follow up action.

It is worthwhile to examine why SCOPA has managed to function as well as does, [with] a spirit of co-operation across parties. Obviously one of the things that is germane to SCOPA is that it is the only committee in Parliament that is customarily chaired by a member of the opposition. In the Westminster tradition the main opposition party normally does that. In South Africa it is someone from another party. Maybe it is having [a Member from the] opposition as chair of that committee [that enables it to work so well].

The systemic evidence of Parliament not doing its job in holding the executive to account [goes back to] the insistence by the majority party of

using its majority to inhibit Parliament from carrying out its constitutional responsibilities, specifically stifling procedural issues, shutting down debates, saying to portfolio committees – on transport, public enterprises – that they cannot have investigations into Prasa or Transnet or Eskom.

In a democracy, of course the majority rules but you cannot have abuse of that power to stop debates from happening. If in an open debate the majority imposes its position, I don't think anybody could have a grievance about that (unless that position flies in the face of the evidence and is irrational); it is when Parliament is stopped from doing its job, from actually discussing the issues, that there is a significant problem.

This is one of the issues that has been highlighted at the Zondo Commission [into state capture]. One of the proposals we [CASAC – the Council for the Advancement of the South African Constitution] have made is that Parliament should perhaps rethink the issue of the chairmanship of committees and perhaps allocate other parties an opportunity to chair committees. It would create an environment for the multi-party system that the Constitution speaks of, and hopefully will develop a spirit of cooperation amongst members of committees.

This is also important in terms of the presiding officers of Parliament. When I worked at Parliament as special assistant to Frene Ginwala when she was Speaker, there was always at least one member of the opposition who had some role as presiding officer. In the early days of the Government of National Unity, Dr Banda Ranchod was Deputy Speaker. Later, we had presiding officers from other opposition parties to chair plenary sessions of the National Assembly. That gave a sense that this was a Parliament of the people, and not just a majority party-dominated assembly. That is something we have lost now. At present ►►

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all of the members of the presidium of the presiding officers come from the majority party. It is those kinds of things that lead to the breakdown of trust, the trust deficit, in Parliament.

We speak about the issue of accountability, and it is perhaps germane to this discussion, where we focus on finance, the Auditor-General and SCOPA, [to remember] that the origin of the term “accountability” is to account for money. In the context of the Checks and Balances report that is obviously critical, but its meaning is clearly broader now, and is about oversight and taking responsibility for actions, answering for things done in a policy and implementation space.

Perhaps we need to arm Members of Parliament with the legislative safeguard of saying this is the minimum that you need to do, and if your party tells you otherwise you have a legislative mandate to do so, and that deals with the party issue.

As the result of a Constitutional Court judgment in the New Nation Movement case in June last year Parliament is now in the process of reviewing the electoral system to amend



the Electoral Act [to] make provision for individual candidates to stand for election at national and provincial levels. Perhaps this is an opportunity for Parliament to go further than simply do what the Court pointed out was unconstitutional and instead to go for a wholesale review of the electoral system, which is something that has been on the agenda of South Africa for 20 years now.

We had the Van Zyl Slabbert Task Team in 2002, we had the recommendations of the Independent Panel on Parliament in the late 2000s and then more recently the High-Level Review Panel, which was chaired by former President [Kgalema] Motlanthe, which made its recommendations in 2017. It also recommended that we need to review the electoral system. So there has been a process that has led us up to this point and hopefully people will grasp the opportunity to create an electoral system that is not just proportionality representative but also enhances accountability.

I am certainly not suggesting that a different electoral system would either lead to a different electoral outcome or would necessarily lead to greater and enhanced accountability, but it may give us a little bit more influence over the kinds of people that

end up in Parliament. In the current pure Proportional Representation list system parties publish lists ahead of the election but nobody scrutinises those lists in any detail. If we recommend something along the lines of what was recommended by the majority of the Van Zyl Slabbert Task Team, of a multi-member constituency of between three and seven members per constituency and a list of 15 to 20 names on that list, you would expect that each of those 20 people would have some form of relationship with the people who vote [and they] would have some personal understanding of the candidate standing in that constituency. That could influence decisions on how [citizens] vote.

The late Auditor-General demanded of all of us to make our voices louder on this [issue], and as the broader South African society our responsibility is to become a more engaged citizenry, not just in the electoral process but in Parliamentary and government processes so that we become a proper participatory democracy and not a society that goes to the polls once every five years and spends the intervening five years complaining about the government that we elected. **NA**