



Acting on the evidence

By Moira Levy

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Following up the launch of IFAA's Checks and Balances: The Auditor-General Project Report, MOIRA LEVY requested a range of citizens to comment on IFAA's proposals in the report, and to contribute their own ideas on how to make our Parliament more effective in carrying out its oversight duties. The responses were practical and innovative and included many concrete suggestions that could be implemented to make our parliamentarians better at both checking and balancing. The same principles should extend to members of our provincial legislatures and municipal councils as well.

INTRODUCTION

“Where was Parliament?” Deputy Chief Justice Zondo asked bluntly at a hearing of the inquiry into state capture. The question could not have been more timely for the Institute of African Alternatives which released *Checks and Balances: The Auditor-General Project Report* just a few weeks before Deputy Chief Justice Zondo’s question. Where

indeed was Parliament? Political and civic voices are echoing this question as well. Not only when it comes to state capture, but where is it now, given the constitutional stipulation that the legislature must provide effective oversight and accountability?

The Speaker to Parliament, Ms Thandi Modise, in a subsequent session of the Zondo Commission held at the end of April 2021 conceded that Parliament had indeed failed to provide oversight. She apologised to “the people of South Africa,” reportedly saying: “It is regrettable that the impression is Parliament only woke up when things were really bad.”

Modise told the Zondo hearings that Parliament can interrogate any matter at any time — and determine its own ways of doing so. It can call on anyone and request any document. This is stipulated in the ordinary parliamentary rules that have been in place from the get-go of the democratic Parliament. MPs have always had the powers and the right “to pointedly put the executive on the spot”, not only in committees, but also in the House. But she said that the 2009 Oversight and Accountability (OVAC) model (which was designed by the 4th Parliament of 2009 to 2014) had yet to be fully implemented.

This came after the Zondo Commission had heard expert witnesses make serious allegations of the failure of Parliament to fulfil its mandate. In that context, a collective hope was expressed that the inquiry into state capture will include among its recommendations

that steps be taken to ensure that future parliamentary representatives are up to the task of serving the people.

IFAA canvassed opinions and proposals following the launch of its report about Parliament and the Auditor-General. We found that the problems extended well beyond a failure to act against incidents of fruitless and wasteful government expenditure. MPs, commentators and ordinary citizens were asked how South Africa could find a way to ensure that in future our democracy is able to withstand the kind of assaults it has experienced in the past decade and longer. The responses placed the blame firmly at the doors of the country’s legislatures, particularly at national level.

The message that emerged is that South Africa must take steps to make sure that the constitutional principles of transparency and accountability defend and protect the country’s democratic achievements.

Many are looking to the Zondo Commission as a way out of the current mire of corruption in which South Africa is currently trapped. Will the Commission’s findings include hoped-for recommendations to reform the electoral system?

Whatever the final outcome of the Commission, Professor Richard Calland of the University of Cape Town’s law department spelled out the main question: “How are we going to work to help make sure that the recommendations of Zondo and the changes required in the conventions ➤



and practice [of Parliament] are implemented?”

He was not the only person to make the point that all the mechanisms needed for our representatives to effectively exercise their constitutional duty to call the executive to account are in place, yet MPs consistently fail to make use of them.

“The legal provisions are there. They are abundantly clear; there is no question or ambiguity about them. In legal and constitutional terms Parliament’s role, and its authority and its duty, are clear. What is not clear is how to overcome the political inhibiting factors that have got in the way of [using] them,” said Calland.

Commentators emphasised how the Constitution provides for an effective “separation of powers” between the three arms of state – the legislature, the executive and the judiciary – and the need to revive a healthy tension between them which keeps each in check.

ELECTORAL REFORM PLUS SKILLED MPS...

Inevitably some of the views turned to the ongoing debate on the long-standing issue of electoral reform. Government is now compelled to act on this issue following last year’s Constitutional Court judgment to permit independent candidates to stand

as MPs. The Concourt found that the existing Electoral Law was incompatible with the Constitution, opening the way for electoral reform.

The Minister of Home Affairs, Dr Aaron Motsoaledi, acted fairly swiftly in response. Earlier this year the media reported him declaring, “in complying with the Constitutional Court judgment to accommodate independent candidates ... Parliament must actually take a giant leap and come up with a new electoral system”. A Cabinet committee has been established and a draft law is in the pipeline.

Once again, the spotlight falls on the existing Proportional Representation (PR) voting system that prevents voters from directly electing the Members of Parliament who will represent them. Whatever its strengths, it has generally been conceded that PR undermines accountability of MPs; it is difficult to call to account your representatives when you do not know who they are and, more importantly, if they owe their deployment primarily to the party that put them in Parliament and only indirectly to the voters – who chose the party, not them.

The details of government’s response to the required constitutional and legislative changes are not yet available. Combining parties’ PR lists with independently

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elected MPs could increase complexities and make things worse!

Nevertheless, it was suggested that the PR system alone was not the problem; at the very least what was needed was citizens’ active engagement in the process of compiling parliamentary political party lists. Voters must also be able to scrutinise potential candidates in advance of the poll.

Many of those surveyed confirmed one of the main findings of the IFAA Checks and Balance report. That was the need for parliamentarians to be fully trained and inducted, and for them to have access to the resources and skills required to exercise their constitutionally defined responsibilities.

This message was clear – Parliament must in future ensure that all its representatives understand and are able to live up to the oath they take when they are sworn into office. That boils down to one central point: Parliament needs committed, ethical and appropriately skilled Members to fill its 400 seats.



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...AND MORE EFFECTIVE COMMITTEES

The “need to support, educate, mentor and generally capacitate MPs” was put in a broader context by Professor Ivan Turok, son of the late Professor Ben Turok who founded the Institute for African Alternatives (IFAA). The younger Turok, who is Deputy Executive Director at the Human Sciences Research Council (HSRC) said, “As a senior HSRC executive I regularly make presentations to parliamentary committees, but these engagements are rarely effective. Committee members need to be encouraged and enabled to focus on the essential problems and get to grips with the underlying issues. Committees that simply skate over the surface of 101 different things cannot address the core problems and their root causes. Committee meetings are often poorly managed, with no clear agenda, no particular line of inquiry and no follow-up actions. This is inefficient and results in a lack of impact, with MPs apparently very often just going through the motions of having hearings and listening rather passively to all kinds of inputs from external interests and lobby groups.”

Committee performance was also raised by the Executive Director of the



Parliamentary Monitoring Group (PMG), Rashaad Alli, who pointed out that, “one of the biggest problems is the high turnover of MPs at each election. According to our research, at the start of the sixth Parliament, 42% of MPs were newcomers who did not have prior legislature experience. Most of them did not know about the committee system, budget cycle or how to read an Amendment Bill. It is a steep learning curve, and it takes time to develop the specialised knowledge of their portfolio and build up institutional memory.”

He said “the real, substantive work [of Parliament] – law-making, oversight and budget approval – happens in committees. Given their prominent role, it is important to look into who sits on these structures and how committee membership [is decided] to reduce turnover and build expertise. The effectiveness of these bodies depends on the long-term quality of the knowledge of its members.”

As a long-standing and objective observer of Parliament, Alli is well placed to identify the institution’s strengths and weaknesses, and what gaps need to be filled to improve its performance. The format of committee meetings needs to be looked at, he said.

“Chairpersons should insist that only the achievements and especially the challenges are orally presented in

depth at meetings as the presentation documents are required to be sent a week in advance so [that] committee members and research teams can peruse them. This means that the committee is able to ask as many questions as it wants to and receive detailed responses.”

For a committee to be effective, he said, it must have an efficient follow-up and resolution system where committee support staff are able to follow up on the responses they get from the submissions and deliberations the committees hear.

“The next time the committee meets with that entity, there must be follow-through on the key challenges facing that entity. It needs a strong team of MPs backed by committee and party researchers and secretariat to *follow-through*. It cannot be that each meeting with a particular entity starts afresh like Groundhog Day and the committee members react as if they are hearing the challenges for the first time.

“By its nature, Parliament is a political body. As a result, it is impacted by the dominance of the government, internal party dynamics and the electoral system. Parliamentary effectiveness depends on the attitude and commitment of Members of Parliament. Even if you have a well-resourced Parliament, it will provide poor outcomes if the lawmakers do not ➤

fulfil their duties in accordance with their oath of office.”

PUBLIC REPRESENTATIVES MATTER

Alison Tilley is Coordinator of the Judges Matter campaign which drives public scrutiny of the appointment of judges. At the time of writing this article Tilley was observing the process of filling two vacancies at the Constitutional Court. She raised questions on the educational requirements of those who serve the public. Some suggest that Members of Parliament must at the very least attain a stipulated level of education. She noted that this may be seen as exclusionary as historical factors in South Africa’s past have denied many a decent education, largely on racial grounds.

But Members need to be at least fully literate and numerate, “otherwise how can they read a budget and a balance sheet,” she said, supporting the proposal in the Checks and Balances report to capacitate MPs to follow up on the dodgy practices by the executive exposed in the AG’s audits.

Mr Gary Pienaar, a Senior Research Manager with the HSRC’s Developmental, Capable and Ethical State research division, suggested what he called an “indirect” approach; targeting political parties to improve the quality of oversight by their MPs. The intention would be to change internal parties’ rules and organisational culture to ensure their alignment with the Constitution, “thereby changing the conduct of MPs”.

“Certain ‘norms and standards’ should be established for incorporation into political parties’ constitutions. These norms and standards would require that party constitutions and conduct by members are consistent with the country’s Constitution.”

He said constitutional values and principles found in the Preamble and s.1 *Founding Provisions of the Constitution*, which are elaborated on in the Bill

of Rights, are particularly relevant. He includes among these: dignity, equality, social justice and human rights, *responsiveness, transparency and accountability*, and a “*democratic and open society in which government is based on the will of the people and every citizen is equally protected by law*” (emphasis added).

Pienaar said such norms and standards are applicable to private organisations, such as political parties, and quoted the Bill of Rights, which states:

A provision of the Bill of Rights binds a natural or a juristic person *if, and to the extent that, it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right* (emphasis added).

Pienaar added that the state provides public funding to private bodies such as political parties, “in return for which some reciprocity/accountability (beyond merely accounting for the funds used) can be reasonably expected.”

He cited as a cause for concern Minister of Natural Resources Gwede Mantashe’s recent evidence to the Zondo Commission in which he expressed support for the prioritisation of party over state. He made this clear by rejecting the authority of a parliamentary vote of no confidence to remove the country’s president where that person is also a party’s president.

“Such norms and standards would hopefully dispel misconceptions and halt perpetuation of the undemocratic dogma that a party’s interests are of greater importance than those of the state and more important than the rights of people living in South Africa.” **NA**

