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Immediately after the release of the final report of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State, more commonly called the Zondo Commission, the Parliamentary Monitoring Group (PMG) published a [review of parliamentary oversight](#). They pointed to institutional weaknesses that prompted Judge Zondo to ask “Where was Parliament” as state capture gripped the state.¹ In a 2023 [research paper](#)² commissioned by IFAA for its Defend our Constitutional Democracy workshop, the PMG provides a follow-up to that review. It sets out what Parliament has done since Chief Justice Zondo released his findings and recommendations – and present its views on how the institution can strengthen

its oversight processes, specifically those related to the committee system.

In his presentation to Decode’s workshop, PMG researcher Sabelo Ndlovu reminded us that Parliament only began its formal and substantial processing of the Zondo Report on state capture five months after the final report had been published. It waited for the President to submit his own Implementation Plan, dealing with the Executive. That took us almost to the end of 2022.

Parliament had been under considerable pressure to get on with responding to the damning criticisms of its role in state capture made in the final volume of the Zondo Report. Commission Chairperson Raymond Zondo had listed 16 recommendations for how the legislature could address its shortcomings.

Parliament had received legal advice that there was nothing to stop Members of Parliament from processing the State Capture Commission Report, especially the sections pertaining to its own failures in performing its oversight role. Parliament’s delay was criticised for being “reactionary” and, given its stated intention to wait for President Cyril Ramaphosa to present his plan first, for apparently “following the lead of the Executive”. This itself suggests that the House was

once again failing to independently exercise its oversight duty.

PMG has always approached its job of recording the proceedings of parliamentary committee meetings with level-headed commitment to impartiality and a great deal of integrity. It is almost unknown for PMG to put forward its own views, especially if they may be regarded as critical.

And it needs to be pointed out that Ndlovu opened – and closed – his presentation by reminding us that Parliament has not been working on its interrogation of the Report for very long. If he was making a point about the sluggishness of Parliament’s response, he also seemed to be suggesting that PMG is willing to give it a chance to demonstrate its willingness to correct the failings Zondo had identified, and that maybe the public should too.

Nevertheless, as Ndlovu went through his presentation it soon became clear that to date, a year since the release of the Report, Parliament has actually done very little indeed in response to Zondo. Most of the work that has been done was in the second parliamentary term (18 April to 15 June 2023). The concern was expressed that when the National Assembly (NA) reopens on 29 August after its mid-year constituency period, all eyes will be on the upcoming election and no further work will be done in the foreseeable future to address Zondo’s recommendations. This may then be



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left to the incoming seventh Parliament to tackle, burdening it with a huge challenge even before it has begun.

PMG dealt with the recommendations listed in the Zondo Report that were pertinent to Parliament’s Portfolio and Select Committees. Its research painstakingly looks at each of the Committees mandated in the NA Rules Committee’s 31-page [Implementation Plan](#)³ to deal with Parliament’s role in state capture. The bulk of these recommendations were allocated to the Rules Committees of both Houses and the Joint Rules Committee. But the Portfolio Committee of Home Affairs, the Select Committee on Security and Justice, the Standing Committee on Intelligence and the Joint Standing Committee on Financial Management of Parliament were also called in.

CLOSER VIEW OF DESIGNATED STRUCTURES PROCESSING THE RECOMMENDATIONS

The table below outlines the Commission’s recommendations that are specific to parliamentary oversight and accountability, and the designated structures assigned to process them.

State Capture Commission’s Recommendation to Parliament	Designated Structure
The establishment of a committee to oversee the president and the Presidency	NA Rules Committee
Enhancing the capacity of Members of Parliament to hold the executive accountable, through the introduction of a constituency-based electoral system	Portfolio Committee on Home Affairs Select Committee on Security and Justice
Protecting Members of Parliament from losing party membership and their seats in Parliament, by law	Portfolio Committee on Home Affairs Select Committee on Security and Justice Joint Rules Committee
Improved reporting of the Joint Standing Committee on Intelligence	Joint Standing Committee on Intelligence
Adequate resourcing for parliamentary oversight, including enhancing research and technical assistance to committees and the establishment of an Oversight and Advisory Section	Executive Authority Accounting Officer Secretary to Parliament Joint Standing Committee on Financial Management of Parliament
Improved attendance and reporting of the executive at parliamentary committees, including appropriate consequence management	Joint Rules Committee and Rules Committees of the NA and NCOP
A system to track and monitor the performance of the executive on resolutions of [the Houses of Parliament], where corrective action is proposed	Presiding Officers House Chairpersons for Committees in the NA and the NCOP Secretary to Parliament
The principle of “amendatory accountability” and possible legislation or amendment to Parliament’s rules in this regard	Joint Rules Committee
Appointment of chairpersons of committees to include more members of opposition parties	NA and NCOP Rules Committees
Amendment to Parliament’s rules regarding appointments by Parliament	Joint Rules Committee and Rules Committees of the NA and NCOP

Source: A PMG Review of Parliament’s Processing of the State Capture Commission Report, June 2023, pg 4 >>

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Parliament seemingly suggests that the institution already has mechanisms in place to deal with non-attendance of the Executive and matters of inadequate reporting.

More than a third of the PMG’s report is focused on the efforts of the NA Rules Committee, whose Subcommittee on Review of Assembly Rules met on 21 and 25 April 2023.⁴ The Rules Subcommittee addressed five recommendations.

OVERSIGHT COMMITTEE FOR THE PRESIDENCY

First up, it tackled a vexed question that Parliament has wrestled with – unsuccessfully – for many years, long before there was a Zondo Inquiry: Is there a need for a dedicated oversight Committee for the Presidency?

The Zondo Commission’s answer was unequivocally yes. It stated in its Report: “Our recent history [also] shows that the President’s conduct is not always subjected to adequate oversight by the existing portfolio committees.”

In terms of the NA Rules, the Speaker, together with the NA Rules Committee, must assign a Portfolio Committee to oversee all departments in the Executive. One of the curious anomalies within our parliamentary system is that there is no parliamentary



Sabelo Ndlovu, from PMG, presents his research report at the Decode workshop. Photo by David Southwood.

Committee to oversee the Presidency, which has been steadily burgeoning, with a direct budget for 2023/24 of R601 million – or R608 million including the presidential R4.2 million salary package and the R3.6 million for the deputy.

The Presidency has been extending its reach since the days of Thabo Mbeki, and President Ramaphosa has added a range of important entities including the Policy Analysis and Research Services, the Climate Change Commission, the Presidential Economic Advisory Council, the State-owned Entity Council, the shadowy National Security Council and even the newly set up Ministry of Electricity.

The PMG Report explains, “While Parliament has a toolkit of oversight mechanisms, parliamentary committees are the primary platform for robust oversight. This is lacking when holding the Presidency accountable. This is essentially the rationale behind this particular Zondo recommendation.”

The PMG Report refers to a research paper by the Parliamentary Budget Office (PBO) commissioned by Parliament to address this issue⁵ and noted “there is evidence that the structures of the current

Parliament oversight mechanisms may be insufficiently robust to achieve adequate monitoring of the executive by Parliament.” It cites the PBO’s view that a Committee on the Presidency could become an essential part of South Africa’s system of checks and balances which could enable Parliament and the wider public to hold Vote 1 (the Presidency) accountable. The PBO’s report was non-committal, however, concluding Parliament should strengthen its oversight over the Presidency but that further research would be beneficial.

After inconclusive debate within the NA Rules Sub-Committee, a decision was reached – not unanimously, PMG points out – that further research on the desirability of a Committee on Vote 1 was indeed necessary – after more research had been completed – and in due course a study tour comprising nine MPs will visit the UK and other countries to look at best practices elsewhere.

While this may look like Parliament kicking the can further down the road, PMG does not say so in its Report. Instead it points out that the Standing Committee on Public Accounts (Scopa) has strengthened its oversight over



the Presidency by scrutinising the reports of the Special Investigating Unit (SIU) into irregularities in Covid procurements, although “the Committee identified that there was seemingly inaction in implementing recommendations about what the SIU found and determined”. PMG went on to say, “Consequence management had not moved.” While debate on the need for a dedicated oversight mechanism for the Presidency rumbles on, it remains to be seen what impact Scopa’s efforts will have on the Presidency and this debate about the need for it to have a dedicated oversight mechanism.

IMPROVING EXECUTIVE ATTENDANCE AND REPORTING

The Commission recommended, “serious consideration should be given by Parliament to amendment to its own rules, with a view to addressing the problem of Ministers who fail to report back to Parliament on what if anything has been done in respect of remedial measures proposed by Parliament or on alternative methods preferred by them to address defective performance highlighted by Parliament.” It also raised its concern about unsatisfactory ministerial attendance at Committee meetings.

The NA Rules Subcommittee’s response at its 25 April 2023 meeting⁶ was a reminder that the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act (2004) already made it an offence for anyone to refuse to appear before or give evidence to a Committee, or willingly mislead Parliament – that would be considered contempt of Parliament. However, it made the point that invoking the Act had always been considered a means of last resort and it preferred reaching an agreement through cooperation between the Legislature and the Executive, which is already the practice of the Sixth Parliament.

“From the response above,

Parliament seemingly suggests that the institution already has mechanisms in place to deal with non-attendance of the Executive and matters of inadequate reporting,” PMG stated in its Report.

It suggested that this issue is “layered” and should be dealt with on a “case-by-case” basis as these Executive failings are not experienced across the board by all Committees. “A review of the PMG website will show that there is a disparity in ministerial attendance between committees. This is largely due to the nature of their portfolio (with some being demanding and having many difficult issues) and even the relationship between the executive authority and the committee.”

PMG went on to place the onus on the individual Committees themselves: “It essentially comes down to each committee clearly developing its own procedures and standards for dealing with problems of ministerial attendance at meetings, as these committees have the power and independence to set their individual standards of what will be tolerated and what will not.” PMG said the same principle applied to the issue of inadequate reporting, saying, it was up to the Committees to set the “accountability standard” and enforce remedial consequences.

APPOINTING CHAIRPERSONS FROM OPPOSITION PARTIES

The Zondo Commission recommended that to strengthen parliamentary oversight members of opposition parties should be appointed as chairs of Committees. Currently, all parliamentary committees are chaired by ANC MPs, except for Scopa, which – the Committee made clear – was a parliamentary practice, not a rule.

The NA Rules Committee pushed back strongly against this recommendation, with some MPs (mostly from the ruling party) accusing the State Capture Commission of overreach and saying this could only apply if there were coalition agreements

in Parliament. Ultimately, the NA Rules Committee rejected the proposal.

PMG expressed regret at this decision saying, “Many witnesses during the Inquiry also attested that the role played by the chairpersons of portfolio committees is influential in determining the extent to which committees succeed or fail in their oversight mandate” and that “the tone of committees is set by their chairs.

“Chairs of committees rarely demonstrate independence and impartiality in executing their duties and have been seen to hide behind parliamentary protocol through rigid interpretations of parliamentary procedure which ignore or miss the spirit of oversight institutions that limit active debate, scrutiny, and public participation”.

PMG agreed that appointing chairs from other parties would not guarantee that oversight will be strengthened, but suggested there were “nuanced and creative ways” to implement this, for example having opposition members chair some meetings, parts of a meeting or even some subcommittee meetings.

“We have observed larger political parties often give additional speaking time to smaller parties and make an effort to include them in committee structures. This approach recognises the multi-party nature of the institution and can be explored in respect of chairing committees.”

TRACKING AND MONITORING OF EXECUTIVE PERFORMANCE

Various witnesses who appeared before the Commission drew attention to the absence of a standard parliamentary system to “track and monitor” the implementation or nonimplementation of Committee recommendations, which become House resolutions after being passed in the respective Chambers.

This goes back to long before the Zondo Commission and the >>

Rules Committee in its deliberations accepted that some challenges with implementation are due to the technical nature of the decisions themselves and cannot be resolved through improved monitoring. The Committee identified as a basis for new Rules that recommendations from Committees should be “substantiated and specific” and fall within the purview of the NA. The Committee also suggested the Rules of Parliament could require the Speaker to maintain a record of resolutions and, in the event of a delay, liaise with the Leader of Government Business (LOGB). As a last resort, legal actions could be considered; and the Speaker could report to the Rules Committee possibly once a year on the status of responses. It also suggested timeframes be prescribed.

The PMG in its Report endorsed the need for parliamentary follow-up, which it called “oversight in action”. “Parliamentary committees, very broadly speaking, do good work producing detailed reports with considered recommendations related to various engagements with the Executive such as meetings and oversight visits ... This work is rendered useless if the recommendations are not followed up. Parliament and committees cannot depend on the goodwill of the Executive to respond – this simply must be enforced on the part of the institution. This ought to be a basic part of Parliament’s oversight architecture.”

PMG regards oversight as a continuum, “a cycle requiring constant follow-through, [as] oversight is ineffective without a clearly set out system for follow-through. While each committee would be responsible for tracking its own recommendations, the overarching standard system must be stipulated.”

AMENDMENTS TO PARLIAMENT’S RULES REGARDING PARLIAMENTARY APPOINTMENTS

The State Capture Commission highlighted the negative impact of the appointment of compromised people to prominent positions of leadership in government institutions and the risks posed by politically motivated appointments. It recommended that Parliament review legislation dealing with appointment processes; develop multi-stakeholder structures to oversee appointment proceedings; ensure that these processes are transparent and open to the public; and ensure that candidates are thoroughly vetted before being shortlisted.

The NA Rules Subcommittee pointed out that legislative review was beyond its scope but that parliamentary Rules could provide guidance around statutory appointments. It suggested Rules around the appointment of office-bearers to state institutions could stipulate that applicants have at least two weeks in which to apply; the names and qualifications of those shortlisted be published before interviews by the Committee; the public must be invited to submit written comments; and that the shortlisted candidates be appropriately vetted before recommendation to the NA.

The PMG report pointed out that currently all of these are already parliamentary practise but agreed “embedding them in the Rules will institutionalise and standardise processes”.

INTRODUCTION OF A CONSTITUENCY-BASED ELECTORAL SYSTEM TO ENHANCE ACCOUNTABILITY

The Zondo Commission recommended a constituency-based electoral system and the direct election of the President to strengthen accountability of Parliament and its elected representatives. The Portfolio

Committee on Home Affairs and the Select Committee on Security and Justice were tasked with dealing with this recommendation for electoral reform, which would require legislative amendments.

The PMG reported that the Portfolio Committee on Home Affairs was informed that the Electoral Reform Consultation Panel would deal with this recommendation. The Panel still has to be established by the Electoral Amendment Act, which only came into effect at the end of June 2023.

As PMG pointed out, the recommendation for electoral reform to provide for some form of constituency-based representation has been made repeatedly in the past – by the Van Zyl Slabbert Commission in the early 2000s, former President Kgalema Motlanthe’s High-Level Panel on the Assessment of Key Legislation more recently and other earlier Commissions of Inquiry. It remains to be seen what changes the controversial Electoral Amendment Act will introduce, given that it is concerned largely with legislating to allow for independent candidates to stand for public office, in response to a Constitutional Court ruling.

PROTECTING MPS FROM LOSING PARTY MEMBERSHIP AND PARLIAMENTARY SEATS

The Joint Rules Committee, Portfolio Committee on Home Affairs and the Select Committee on Security and Justice were given the task of responding to Zondo’s recommendation to consider whether it would be desirable to enact legislation to protect MPs from losing their party membership (and therefore their seats in Parliament) merely for exercising their oversight duties reasonably and in good faith.

PMG found that the Portfolio Committee on Home Affairs said in its most recent quarterly update published on 9 June that this recommendation would be referred to



the abovementioned Electoral Reform Consultation Panel for consideration in its [Electoral System Review](#).⁷

THE PRINCIPLE OF “AMENDATORY ACCOUNTABILITY”

The Commission recommended that Parliament consider whether it supports the principle of “amendatory accountability” and, if it does, whether it would be desirable to pass legislation to effect this, as suggested in the 1999 Corder Report, which stated: “The obligation to redress grievances by taking steps to remedy defects in policy or legislation can be termed ‘amendatory accountability’. It requires an acceptance by Ministers that something has gone wrong, whether or not they are personally culpable”.

This recommendation is yet to be dealt with by the Committees. Meanwhile PMG refers to the Oversight and Accountability (OVAC) Model initially proposed in the Corder report and suggests that in processing the Zondo recommendations Committees consider how they give effect to the Model in their oversight work.

ADEQUATE RESOURCING FOR PARLIAMENTARY OVERSIGHT

The State Capture Commission viewed the inadequacy of financial resources for Committees as a concern, but not an adequate explanation for failures of parliamentary oversight. A number of witnesses to the Commission lamented this problem but as PMG pointed out it’s not only the parliamentary committees that are facing this challenge. “The declining budget allocation to Parliament is set against the backdrop of declining budgets in the state as a whole.”

PMG believes oversight must be prioritised when it comes to budgeting and resourcing, “but it simply cannot be that oversight is not as effective as it could have been because of a lack of finances or resources”.

IMPROVED REPORTING OF THE JOINT STANDING COMMITTEE ON INTELLIGENCE

According to the State Capture Commission, the Joint Standing Committee on Intelligence’s (JSCI’s) failure to carry out its oversight duties meant, “Parliament has, at least to some extent, contributed towards state capture, because its failure to do its job meant that acts of state capture and corruption were allowed to spread and deepen”. The Commission recommended that Parliament consider amending section 6(1) of the Intelligence Services Oversight Act 40 of 1994 to ensure that before every election, the outgoing JSCI is required to report to Parliament as comprehensively as possible on its work during the preceding term.

In its Implementation Plan, Parliament said that all Committees are required to prepare a [Legacy Report](#)⁸ at the end of a five-year term, which is handed over to the next Parliament for follow through. PMG pointed out that the JSCI, which meets behind closed doors, has failed to meet the annual end-of-May deadline for its report to Parliament since 2017, which is concerning as this is the only public insight the Committee provides on its activities.

CONCLUDING THOUGHTS

The PMG’s assessment of Parliament’s progress in responding to the Zondo Commission Report is discouraging. While reminding us that “the processes relating to the implementation of the recommendations have only gotten underway so it is not possible to make a definitive assessment of the impact thus far,” it concludes “overall, our sense is the implementation of the Zondo recommendations has been a tick-box exercise and a missed opportunity in some respects.

“There is a nuance to many of the issues that Parliament did not

fully explore. In addition, for this to have any real impact, it needs to be fully embedded in the processes and approach of all committees.”

PMG reflects on oversight and accountability since the Zondo Commission, and concludes Parliament’s performance has been mixed at best. PMG points to the disappointing decision by Parliament to reject an independent panel’s report on the Phala Phala case but also to, for example, the legislature’s rigorous approach to the Thabo Bester matter.

PMG agrees there have been instances of improved oversight, but Parliament still fails when it comes to the “big things,” which it says “overshadows the good work being done” on routine matters.

PMG then asks the all-important question of whether Parliament would act any differently as an institution if another state capture occurred. It concludes that it is unlikely because Parliament simply lacks the requisite political will to do so.

“While tools for oversight are important, ultimately, political will to fully use such tools despite the inherent obstacles is paramount ... Usually, however, oversight involves mundane work that provides very little of the public profile important to politicians concerned with retaining their seats. Moreover, for members of the majority party, it may involve asking their colleagues in government awkward questions. These and other political disincentives to conducting oversight need to be acknowledged.”

So what then is the incentive to conduct effective oversight? PMG concludes that the main incentive is the recognition that oversight is a critical part of a democratic society committed to effective government and transformation⁹, and reminds us that civil society needs to be a “vigilant and vocal voice in supporting effective oversight”. **NA**