

Ethics, Parliament and the elected representative

Why have our codes of conduct failed?

By Moira Levy

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South Africa has a well-established ethical framework to guide the behaviour of its political leadership. An array of codes of conduct is in place to regulate the behaviour of members of the legislatures, municipal councils and officials in diverse government entities. MOIRA LEVY asks why is there often a huge gap between the good conduct guidelines and the actual behaviour of politicians and public servants, as perceived by citizens in South Africa today?

South Africa has in place multiple codes of ethical conduct – there is one for national Parliament, another for provincial legislatures (except the Western Cape, which has its own legislated code of conduct), and many more – all of which differ to some extent and demonstrate varying degrees of success in enforcement. Yet the same question applies equally to them all: If the country has such an extensive ethical infrastructure, why is South Africa beset with lapses in integrity at all levels of political leadership?

This was the focus of a recent public workshop, titled 'Ethics, Parliament and the Elected Representative,' hosted by the Institute for African Alternatives (IFAA) in Cape Town at the end of August. This was part of its 'In Defence of our Constitutional Democracy' project, known as DECODE. The event took place in the boardroom of the Catholic diocesan office opposite Parliament.

Fazela Mahomed, the former parliamentary Ethics Commissioner of Members' Interests worked with the very first democratically elected representatives who came to Parliament in 1994. She elaborated on what she referred to as South Africa's "very well established ethics framework in all legislatures".

Based on the principles entrenched in the Constitution and some borrowed from the UK's 'Standards in Public Life', these demand of public representatives a commitment to values such as integrity, honesty and selflessness.

Mahomed listed some of the provisions found in almost all such codes of conduct, including stipulated sanctions and a range of mechanisms for investigation and enforcement; strict prohibitions on elected representatives lobbying for paid remuneration and doing business with the State; and rules related to conflict of interests and disclosure of financial interests, which in her experience were largely complied with. She said Parliament has a "history of disclosure" and by the time she left in 2016 the institution displayed "high levels of transparency when it came to financial interests".

Why our ethical system has failed, she said, and "the main problem of our

democracy, is not only that bad people do bad things. It's that good people remained silent".

The conflict between loyalty to the party and the obligation to serve the public interest is where MPs struggle with the ethics of representation, and that dilemma needs to be the starting point of the debate on ethics and Parliament's elected representatives.

In South Africa the point where public representation and party loyalty collide is inevitably a point of contention. According to Mahomed, "In a PR [Proportional Representation] system, where all the power is concentrated in the party, the balance between party obligations and public responsibility is at the core of all deliberations around ethics".

Under the PR system where seats for MPs are determined according to parties' lists the competing political parties may choose if they want to have a presence in constituencies – and to date only the ANC, and to some extent the EFF, run a flimsy system of constituency offices in parts of the country.

Mahomed commented: "People want to see their representatives. The visibility [of representatives] and the symbolic importance of actually seeing their representatives is lacking."

In the course of her almost 20-year tenure in Parliament, during which she investigated more than 70 cases of non-compliance by Members, Mahomed was responsible for setting up the code of Ethical Conduct for Members of Parliament, and she later led the technical team that reviewed the parliamentary ethics framework and the Executive Members Ethics Act.

She explained the thinking behind some of the controversial provisions in the code. Warning of the dangers of "unlimited democracy," for example, she noted "it was good that Parliament's committees were prohibited in terms of the Constitution from expelling Members because an abusive democracy can get rid of MPs based on party political considerations ... This is one of the important checks and balances in a democratic system".

In the process of drawing up the code it was also decided that sanctions for misconduct should be commensurate with the transgression. Members found guilty of high levels of corruption should not be slapped with a token fine amounting to only a portion of their monthly salary, said Mahomed – however she added that she did not think that this provision has ever been applied.

Mahomed distinguished between the "micro" political behaviour that refers to the individual politician within a broader system and the "macro", which operates at the level of the party, "where everyone is colluding to prevent the State from functioning effectively". She concluded it was a breach of macro ethics that allowed state capture to occur.

Addressing the question of what citizens require of their elected representatives, she pointed out that Members of Parliament are constitutionally mandated to pass legislation and to conduct oversight on the exercise of power by the Executive. "The people's expectation is that MPs do their job, which is to hold the government accountable."

Voters are not just election fodder, she said. Citizens expect the people who are chosen to represent them to ensure that the corrupt are not protected by a misplaced sense of loyalty to the party, that party obligations do not take precedence over their public responsibility and that public representatives fulfil their duties in the public interest.

Mahomed spoke about the concept of public interest, which goes directly to the question of whose interests Parliament serves. “Members have to balance their responsibilities vis a vis their party roles and the constitutional obligation to represent the public interest ... Acting in the public interest is fundamental to the role and function of a Member, however the codes of ethical conduct do not address these in a systematic way.

“Every single political code of conduct is premised on working for the public, but ‘the public interest’ is a vague and nebulous term and anybody can attribute any values to it.” Offering some thoughts on a definition, she said South Africans need to establish what the concept means in the local context, write it into the codes of conduct, embed it in the political culture and develop a social contract between citizens and their representatives that is based on working for the public good.

In rethinking the current ethical framework in South Africa, Mahomed proposed that there should be a single code for all elected representatives across the country which is equally applicable at all levels of government. There should also be a single database of all disclosures that can be publicly accessed and is searchable.

She pointed out that among all the codes currently in operation there are no mechanisms to ensure compliance. “Perhaps there is a need for a single national ethics office which monitors compliance by elected representatives.”

Among the matters she suggested for consideration in reviewing the existing codes of ethical conduct are:

- The need for an upper limit for a gift and any hospitality. Any gift, hospitality or benefit exceeding an agreed upon amount must be declined by the elected representatives.
- A need to include substantial assets and unsecured loans in disclosure of interests.
- Whilst there is a prohibition on lobbying for remuneration, there should be disclosure requirements for lobbyists operating at legislatures and details on gifts and benefits received by Members or councillors should be provided.

In her presentation Mahomed made reference to citizens’ declining levels of trust and confidence in their politicians, citing a 2021 Afrobarometer survey that showed South Africans’ level of trust in Parliament had halved since 2006 – down to 27%. She also pointed out that there was no evidence that the 1998 Executive Members Ethics Act was being applied to members of provincial Executive Councils – although this is an explicit provision of the law.

Listen to Fazela Mohamed’s speech in full on IFAA’s YouTube page at <https://youtu>.

[be/OLVyg4oZrnE](#)

Deputy Speaker's input

Lechesa Tsenoli, the Deputy Speaker of Parliament, queried at the workshop whether constituency-based representative ensured more effective responsiveness on the part of elected representatives. Pointing out that South Africa's municipal councils are elected by constituencies, he said this has not proven to guarantee improving accountability.

Tsenoli highlighted that the South African Parliament is an active member of the Commonwealth Parliamentary Association and the International Parliamentary Union – where questions of ethics are constantly on the agenda. >>

“The issue is how do we improve the institution and ensure that the systems are working?”

He also responded to comments on the need for MPs to be given adequate training and induction courses, reminding the workshop that many MPs had used the opportunities offered by Parliament to get university qualifications, even a PhD in one instance.

An international perspective

Presenters from the UK who participated in the workshop online also referred to the decline in trust in politicians and a general withdrawal from public and political life by citizens, saying this is a global problem.

Anthony Smith is Chief Executive of the London-based Westminster Foundation for Democracy (WFD), a body dedicated to supporting democracy around the world which has offices in 30 countries. He confirmed that recent evidence shows that in 2021, 63% of British citizens believed that politicians were merely “out for themselves” and skepticism about elected officials is growing in most countries around the globe. This was coupled with widespread and growing disengagement in public processes, which has been exacerbated since the onset of the Covid epidemic.

In his online presentation to the workshop he said codes of ethical conduct are increasingly prevalent and are even starting to become the norm in the majority of countries, but he warned that enforcement can be weak and the codes easily compromised, especially in the absence of external scrutiny. The enforcement of codes depends a lot on the local context: A proper understanding of the role and purpose of codes of conduct and a willingness to comply with them must be present for them to work effectively, he said.

Another problem emerges in countries where there are incentives that favour corruption. This happens when the cost of getting involved in politics is too high. He cited the example of Kenya where contesting a seat could cost the individual candidate about the equivalent of \$350,000.

“High costs can be a barrier in deciding who gets to be in Parliament,” he said, stressing “it is important that this should not be an elite group, [who could] more or less set their own rules, which can impact on the behaviour of MPs in Parliament.” He quoted a 2023 WFD study: “One impact of the high, and growing costs of politics, is the increased exclusion of ordinary citizens from

the political space. Young and female aspirants are particularly constrained, especially where there are no quotas for women representatives.

“Another is the increased incentive for members of the legislature to engage in corrupt practices to continue to meet constituent demands when in office, and to recoup investments made to get elected.”

He also told the workshop that political parties can subvert parliamentary conduct. In a reminder of problems felt acutely in South Africa he said MPs have to manage both institutional and party commitments and, adding that this was experienced world-wide, said “commitments MPs have to their parties is a perennial problem in any political system”.

He quoted from volume 6 of the Zondo report into state capture: *A system in which “Members of Parliament are accountable and beholden to their party bosses” is not well suited to securing Parliamentary oversight of the executive comprising, as it generally does, ‘party bosses’* (Zondo report vol 6 para 1010).

Earlier in his speech Smith had emphatically declared, “I am a fan of Parliament. I think Parliaments matter because democracy can only work if Parliaments work.

“We have found in our work around the world that ethics really matter and can be addressed by codes of conduct and [impacted] by the parliamentary culture.” He went on to say, “It is also true that the political culture of a country really matters,” quoting the following from a study by the World Bank Institute:

“If there is no consensus among MPs about what constitutes improper behavior, about the nature of the ethics problems, and about what changes should be made to make the ethics regime work, any ethics reform is bound to fail.” (World Bank Institute 2004)

Listen to Anthony Smith’s speech in full on IFAA’s YouTube page at <https://youtu.be/VmcumGh9gk4>

IFAA thanks the Australian High Commission (Pretoria) for its generous support for DECODE via its Direct Aid Program.

IFAA also thanks the Rosa Luxemburg Foundation and the Catholic Parliamentary Liaison Office for their support for the project.



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