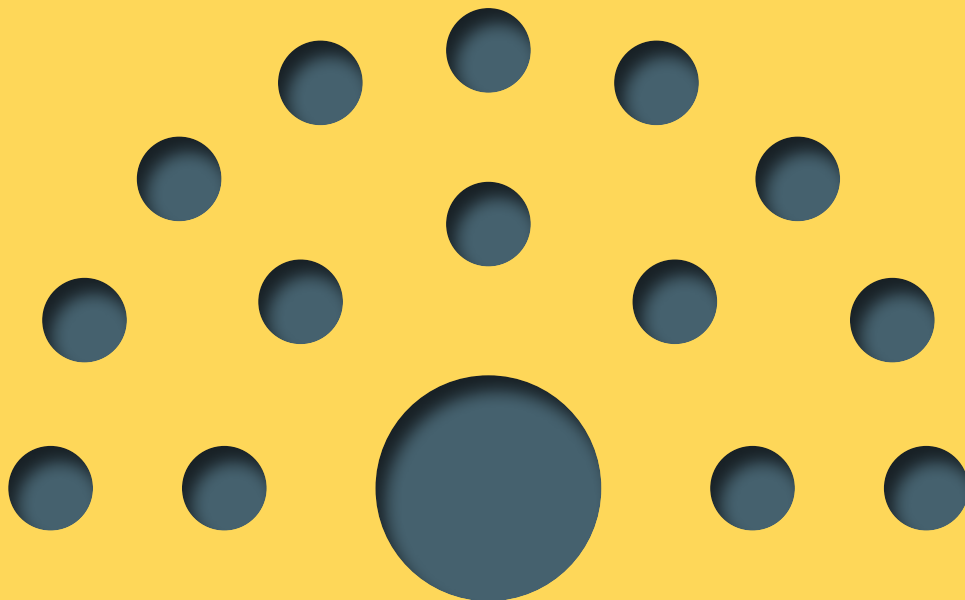


DEVI PILLAY AND SARAH MENY-GIBERT

STATE OF PARLIAMENT AND ITS MPs

IDENTIFYING OVERSIGHT CHALLENGES
AND PROPOSING SOLUTIONS





STATE OF PARLIAMENT AND ITS MPs:
IDENTIFYING CHALLENGES TO OVERSIGHT AND
PROPOSING SOLUTIONS

Devi Pillay & Sarah Meny-Gibert

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ACRONYMS

AG	Auditor-General
ANC	African National Congress
APP	Annual Performance Plans
ATC	Announcements, Tablings and Committee Reports
BRRR	Budgetary Review and Recommendation Report
CSO	Civil Society Organisations
DA	Democratic Alliance
EFF	Economic Freedom Fighters
IFP	Inkatha Freedom Party
ISD	Institution Supporting Democracy
LOGB	Leader of Government Business
MP	Member of Parliament
NA	National Assembly
NCOP	National Council of Provinces
OVAC	Oversight and Accountability (Model)
PBO	Parliamentary Budget Office
PCPE	Portfolio Committee on Public Enterprises
PFMA	Public Finance Management Act
PCJPS	Portfolio Committee on Justice and Correctional Services
PMG	Parliamentary Monitoring Group
PR	Proportional Representation
SCOPA	Standing Committee on Public Accounts

FOREWORD

RACHEL FISCHER (OUTA)

Within the pages of this report lies a profound exploration of the contemporary landscape of the oversight function in the South African parliament. It aims not only to assess the current efficacy of this function but also to dissect the myriad influences shaping its operations. Furthermore, it sets forth a collection of strategies intended to invigorate the parliamentary role in upholding governmental accountability. This report seeks to stimulate conversations and contemplations among engaged citizens and civil society groups, casting a spotlight on the condition of our parliament. Moreover, it aspires to offer guidance to members of parliament (MPs) and other individuals devoted to fortifying this indispensable pillar of democracy.

This endeavour builds upon the foundation of other projects funded by Konrad Adenauer Stiftung (KAS) and implemented by OUTA. The first venture yielded the publication *Permitted Plundering*, an exposé centred on State Capture and the glaring shortcomings of parliament in reining in governmental excesses. The second confronted Parliament's sluggishness in prioritising the Constitutional Court judgment of June 2020, which endorsed electoral reform by 11 June 2022. In partnership with My Vote Counts and IronHeart, OUTA addressed the critical need for public enlightenment on electoral reform and its significance.

As this third project unfolds, it dares to pose two pivotal questions:

- What obstacles confront Parliament?
- How can these obstacles be surmounted?

As the stage is set for the 2024 national and provincial elections, it becomes paramount to diagnose the maladies before the next cohort of MPs and Members of Provincial Legislatures (MPLs) takes the reins. Without a comprehensive understanding of the shortcomings and a clear roadmap for rectification, our parliament risks languishing as a feeble institution, rendering future MPs impotent in holding the executive accountable.

OUTA's observations have brought to light the insufficiency of Parliament's oversight over the executive, punctuated by intermittent improvements over the years. Since 2019, OUTA has scrutinised parliamentary proceedings in general, with a keen focus on several Portfolio Committees, to gauge their efficacy.

The necessity of a robust parliamentary system to reinforce accountability and foster meaningful electoral participation is undeniable. The extent to which Parliament can and does hold errant elected MPs accountable is currently enigmatic. In 2020, OUTA published 'Tips for MPs', a guide encouraging ethical leadership and harnessing parliamentary positions to combat corruption and champion good governance. This guide serves as a compass for MPs in combating corruption and mismanagement in the public sector.

While OUTA acknowledges the systemic impediments curtailing the autonomy and capacity of parliamentarians, there is no exoneration for MPs who consciously neglect their duty to hold the executive accountable. Such dereliction of duty diminishes their mandate to the public and necessitates civil society intervention when political parties falter.

A recurring theme across this research underscores the need for clearer standards for public participation in Parliament's Oversight and Accountability (OVAC) model. Committees must leverage public input to steer governance decisions and provide feedback. Public participation serves as a cornerstone of sound governance, offering alternative perspectives on departmental performance.

The imperative lies in reflecting upon foundational tenets that can infuse our democratic and accountable South African parliamentary system with enhanced principles. These principles encompass decisiveness, effectiveness, stability, representation, proportionality, and overarching accountability. Yet, improvement is only possible through explicit acknowledgment, rigorous deliberation, and subsequent enhancement of the challenges. This report functions as a roadmap toward unravelling the complexities of Parliament, striving to enhance its efficacy by offering recommendations for the incoming cohort of MPs and MPLs after the 2024 elections. OUTA contends that the focus must be on elected MPs and MPLs to ensure robust oversight, good governance, and ethical leadership. Addressing the shortcomings of the Parliamentary system demands a comprehensive grasp of the issues and a roadmap for rectification.

The Public Affairs Research Institute (PARI) has undertaken exhaustive research to furnish a contemporary and comprehensive understanding of Parliament's current state. OUTA extends its gratitude to Devi Pillay and Sarah Meny-Gibert of PARI for their exemplary research, encompassing interviews with a diverse array of stakeholders, culminating in this comprehensive report. The realisation of this report owes much to the financial support of the Konrad Adenauer Stiftung (KAS) and their steadfast dedication to freedom, justice, and solidarity. South Africa, often hailed as a beacon of hope for the African continent's future, has undergone transformative processes since its inaugural democratic elections in 1994. KAS has ardently nurtured and championed this journey, offering political education, consultancy, intensive research, and a steadfast commitment to bolstering Parliament's oversight function.

This report, *The State of Parliament and its MPs: Identifying challenges to oversight and proposing solutions*, is primarily aimed at forthcoming MPs and MPLs after the 2024 elections. However, it is imperative to dissect the prevailing challenges experienced within Parliament to furnish recommendations for its betterment when the new MPs assume their roles.

EXECUTIVE SUMMARY

Parliament is required by the constitution to “scrutinise and oversee executive action”: the key function of the system of separation of powers built into our democracy. The importance of parliamentary oversight cannot be overstated. The Constitutional Court’s ‘secret ballot’ judgment states: “[...] accountability is necessitated by the reality that constitutional office bearers occupy their positions of authority on behalf of and for the common good of the people. It is the people who put them there, directly or indirectly, and they, therefore have to account for the way they serve them. ... Members of Parliament have to ensure that the will or interests of the people find expression through what the state and its organs do.”¹

This study seeks to explore the nature of the oversight function in parliament in South Africa today: whether it is working, and how well, what shapes oversight in Parliament, and what can be done to enhance the role of Parliament in holding the government of the day to account. It is intended to support interest and debate about the state of our parliament amongst active citizens and civil society organisations, and to support the work of members of parliament (MPs) and others committed to strengthening this vital institution of democracy.

This report draws on a range of sources, that includes secondary literature, South African jurisprudence on the concept and exercise of oversight, statements by MPs and others on parliamentary oversight submitted to the Zondo Commission and the Commission’s reports, parliament’s own assessments of its work, and interviews conducted by the PARI research team with MPs, parliamentary staff, and others.

Parliament is mandated by the Constitution to exercise oversight over the executive and hold it accountable. It is empowered to do this by a number of constitutional provisions and supporting legislation. This is a vital part of our democratic system, and is inherent in the concept of the separation of powers, which provides for checks and balances on the exercise of executive power, making the executive accountable to an elected legislature.

¹ United Democratic Movement v Speaker of the National Assembly and Others (CCT89/17) [2017] ZACC 21; 2017 (8) BCLR 1061 (CC); 2017 (5) SA 300 (CC) (22 June 2017)

Explanatory and amendatory accountability

Explanatory accountability requires the giving of reasons and the explanation for action taken – as the Constitution, for example, requires of the executive. The bulk of the oversight work done in Parliament falls under this category. Indicators of basic levels of oversight in this regard include when Parliament receives and examines reports, calls the executive to give presentations and answer questions, and scrutinises financial accounts. For this to constitute actual explanatory accountability, questions must be robust, well-informed, and the executive's responses should be rational and timeous.

Amendatory accountability, on the other hand, is the “obligation to redress grievances by taking steps to remedy defects in policy or legislation”² – to amend or to make amendments. The requirements for this form of oversight in action are more exacting; members of the executive must accept that something has gone wrong and take positive actions to remedy it, which means remedial action could be instructed for errors, defects of policy or maladministration. Amendatory accountability is inherent in the concept of oversight and accountability.

Key oversight mechanisms

We reviewed the key oversight mechanisms used by Parliament to fulfil its oversight mandate.

Committees

The vast majority of oversight work occurs in committees, the ‘engine rooms’ of Parliament. Committees scrutinise reports from the state entities they oversee, interrogating reports and the officials or executives who present them. Committees can summon members of the executive to account for their actions. Committees assess the performance of government, including alignment to the National Development Plan (NDP), strategic plans, annual performance plans, budgets, in-year reports and annual reports with financial statements. Committees can also use their budget approval power to impose sanctions upon or influence government departments, although this seldom happens. Committees have other tools available to them, including oversight visits and formal inquiries.

The oversight mechanisms available to committees and individual MPs are generally sufficient for exercising their oversight duties. However, our research revealed that Parliament's ability to exercise oversight over the executive, and to hold the executive accountable, is weak. We found that committees are incredibly busy and spend a lot of time and resources on oversight work – but the effectiveness of individual committees is starkly uneven. A few committees perform well, while most others appear to be very weak. Effectiveness differs not only across portfolios, but also over time. Some committees have improved over time, while others which may have been effective in the past have deteriorated.

Effective committees scrutinise the work of the executive meaningfully, surface important information about government activities, and hold the executive accountable if it fails to fulfil its legal obligations and policy promises. Ineffective committees are more procedurally compliant, that is, they process all the same reports and undertake all the same activities, but do not ask meaningful questions and do not attempt to hold the executive accountable.

2 Hugh Corder, Saras Jagwanth, and Fred Soltau, ‘Report on Parliamentary Oversight and Accountability’ (Faculty of Law, University of Cape Town, July 1999).

4 reasons for the ineffectiveness of committee oversight

1

The political environment disincentivises close scrutiny of the executive.

MPs of the majority party must exercise oversight over senior members of their own party, the same members who may be able to influence the composition of the electoral list during the following elections. There is an inherent incentive to protect – rather than confront – senior members of the executive. It was clear from all our interviews – and all the testimonies at the Zondo Commission – that the political environment is the main obstacle to effective oversight. The governing party has frequently dissuaded its MPs from holding the executive accountable in any meaningful way.

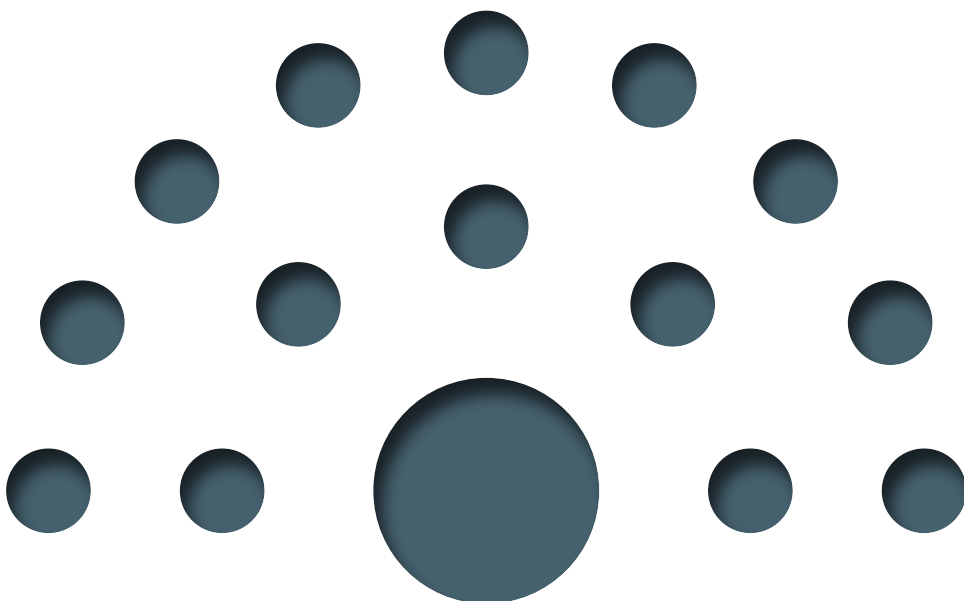
2

The way committees work is generally ineffective, inefficient, and sometimes even counter-productive.

Committees allow the executive to present lengthy reports, taking up most or all of the time allocated to oversight. When members are afforded the opportunity to ask questions, this is conducted in an unproductive format that allows members of the executive and their representatives to avoid responding properly. A preoccupation with protocol and formality often derails meetings on substantive matters.

Committees also tend to focus on financial and operational matters, to the exclusion of weightier matters like executive performance, meaningful impact, and the overall accountability chain in government.

Committees that seek to be effective limit the time allotted to executive presentations and focus on meaningful and direct engagements between committee members and the executive. Members can ask direct questions and follow-up questions and work together across party lines towards a common purpose. Effective committees always have an exemplary chair. The chair sets the tone for the committee, how its meetings will be run, what will be tolerated and what will not, and how robust discussion is allowed to be. The effectiveness of a chair depends on their leadership skills and the level of trust, respect, and collaboration they are able to foster within the committee and across party lines.



An effective oversight meeting:

- Is based on materials distributed sufficiently in advance;
- Allocates minimal time to presentations from the executive and as much time as possible for questioning;
- Proceeds on the basis that all attendees are familiar with the materials to be discussed;
- Provides for in-depth questioning by committee members, by allocating sufficient time per member and allowing direct follow ups, rather than taking rounds of questions and allowing a presenting entity to respond all at once;
- Takes into account the results of previous oversight activities, including following up on previous recommendations;
- Results in a comprehensive report, including actionable recommendations with clear timeframes, and which not only notes dissent from committee members on resolutions but records the reasons for the dissent.

3

Committees are under-resourced, especially in terms of technical support.

Parliament is an institution that relies on information, and its success depends to a great extent on its ability to gather, record, process, analyse, and generate information. Content advisors, researchers, legal advisors, and financial experts are indispensable in supporting these activities. Parliament itself has highlighted the need for enhanced research services, moving towards more analysis and scrutiny with high levels of specialisation. Our research showed that committees are generally underserved in this area. Research units are under-capacitated and unable to meet the growing demand for their services. More generally, oversight work is underfunded and does not have sufficient time allocated to it by committees, and by the National Assembly more generally.

4

Many MPs have neither the capabilities nor the commitment required to fulfil their oversight duties.

Parliament is only as effective as its members. The oversight function requires parliamentarians to be knowledgeable of the work of the departments they oversee, government processes, and the broader socioeconomic context, in order for them to interrogate the implementation of government policy for the benefit of citizens. They also need to understand the rules and powers of Parliament itself. They have many oversight tools at their disposal but must be able to use them effectively.

3 areas in which MPs lack the capability to pursue oversight effectively

Our research found three ways in which many MPs lack the capability to pursue oversight effectively.

1

Some MPs fail to adequately prepare themselves for oversight activities and make little to no effort to grapple with the issues at hand. These members view oversight as a 'tick-box exercise'.

2

Others lack the skill and experience to conduct oversight effectively, even if they are committed in principle. These members are not familiar with the relevant sector, do not know how the reporting institutions work, and are unable to conduct or use technical analyses. Many lack the institutional memory and experience required to understand the historical performance of the overseen entities. This is compounded by excessive turnover in committees and in Parliament more generally.

3

Some MPs – both majority and opposition – are overly concerned with showmanship and politicking, and fail to effectively fulfil their oversight duties due to this preoccupation

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An MP who is effective in terms of oversight:

- Is well-versed in the area overseen by their portfolio committee;
- Understands the mandates, functions and operations of overseen entities;
- Reads widely and seeks additional information where relevant;
- Is collegial and can work with members from other parties;
- Maintains connections with stakeholders relevant to the overseen entities;
- Is analytically-minded and can scrutinise complex issues;
- Asks informed, direct, and meaningful questions;
- Understands the rules and powers of parliament, and particularly of portfolio committees;
- Is dedicated to holding the executive accountable.



Other oversight processes

We also studied oversight processes that take place outside committees, including questions to the executive and plenary debates. We found that these mechanisms can be used effectively, but are affected by many of the same weaknesses identified in the committee system.

Overall, we found a rigid commitment to the processes and routines of explanatory accountability. Committees meet, receive reports, question ministers, and generally comply with all that is required of them in terms of oversight. Unfortunately, much of this is driven by procedural compliance – while the executive may be held to account for failing to report, it is not rigorously scrutinised for what it reports. There are, however, pockets of effectiveness; for example, certain portfolio committees conduct rigorous and in-depth oversight, but this is relatively rare.

Amendatory accountability is, unfortunately, barely extant. Although committees that do exercise oversight keep identifying the same problems and making the same recommendations, there have been no consequences for the executive authorities or observable impact on delivery. Again, this can be attributed largely to the political incentives involved. The tools that do exist to enforce accountability – such as rejecting a budget or passing a motion of no confidence – are too drastic to consider in the current political environment. There is a need for a programmatic strategy and set of tools for following up and enforcing House resolutions and ensuring that the executive responds to oversight recommendations.

Recommendations for strengthening parliamentary oversight and accountability

This report makes a number of recommendations for strengthening parliamentary oversight and accountability. These reforms can empower MPs who take their mandate seriously, and might go some way to institutionalising a culture of oversight. Ultimately, however, we will not have effective oversight if parliamentarians are not willing to use the powers given to them. The impact of the political environment and electoral system on parliamentary oversight cannot be overstated. A change in electoral system is unlikely to be a panacea. Although it may help improve accountability, many of the political incentives we have outlined here will remain. Careful and meaningful work on political reforms is needed by those within the political system committed to accountability.

Although broad recommendations on the nature of the electoral system and political structure are beyond the scope of this report, **it is recommended that presiding officers and House chairpersons be required to resign from senior party-political posts for the duration of their appointment.** Their duties – and the powers afforded to them for the fulfilment of those duties – require that they be impartial and independent, and they should not have competing obligations to their parties.

Adoption of a system of proportional allocation of committee chairs according to party seats is also recommended. In a system such as this, opposition chairs are not be subject to political pressures from the executive and party leadership but majority parties still make up the majority of committee members, and are therefore still empowered to pass resolutions and direct committee activities. In addition, the speaker, deputy speaker and

chairperson of committees would still be elected by the majority party, and could therefore hold opposition committee chairs accountable if they were to abuse their positions. This could insulate committees from the political pressures outlined in this report.

We support the recommendation that Parliament **establish a committee to exercise oversight over the president and the Presidency**. The activities of the president and the Presidency are presently not subject to adequate oversight, particularly given the increasing number of programmes and bodies that are being established in the Presidency. An effective oversight mechanism that is ongoing, systematic, and programmatic is needed for the president and the Presidency. This means the activities and the outcomes of the Presidency must be routinely scrutinised in a forum that is structured, predictable, resourced, supported by research, and open to the public. A portfolio committee is the best form for this kind of oversight.

This report's recommendations include ways to enhance the functioning of committees. We support **improving the resourcing of oversight specifically, in terms of financial resources and time allocated**. Other recommendations include strengthening the research and support capacity available to committees, specific ways for committees to structure their oversight meetings to improve oversight and accountability, and proposals for improving appointment processes conducted by Parliament for certain heads of institutions. The report also recommends that Parliament improve its processes for holding MPs accountable for ethical breaches. Parliament must ensure that the institution has the investigating capacity and appropriate mechanisms in place to strengthen the ethics committee(s). The rules that govern these processes must allow for clear and reasonable time frames for the resolution of complaints, and provisions for these processes to be open and transparent.

The report explores **the role of civil society and the public more broadly in parliamentary oversight**, both in terms of participating in activities, making submissions, attending meetings, etc., and monitoring Parliament's own performance. This means paying attention to committee meetings and reports, monitoring the performance of individual MPs (especially in prominent positions), undertaking research and investigations to assess the effectiveness of parliamentary oversight, noting issues that have fallen through the cracks, using parliamentary reports and resolutions to demand answers and accountability from the executive, and reporting on all the above in ways that are publicly available, accessible, and understandable.

For accountability to be effective – that is, to ensure that government fulfils its constitutional obligations and is responsive to the people it governs – it must include an amendatory component. **The executive must make things right**. Exactly how to achieve amendatory accountability is a thorny problem. Parliament cannot overstep the bounds of separation of powers and dictate the use of executive power but it can, and should, instruct the executive to take remedial action where they have failed to perform.

We support the creation of a mechanism to **track and follow-up on recommendations made to the executive, and for meaningful and appropriate use of amendatory powers** which Parliament already has but rarely uses. However, ensuring true amendatory accountability takes place, and not simply procedural compliance with the rules set out above, will ultimately require a productive political environment and culture of oversight within Parliament.

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INTRODUCTION

Parliament is required by the constitution to “scrutinise and oversee executive action”.³ This is the key function of the system of separation of powers built into our democracy. The importance of parliamentary oversight cannot be overstated. The Constitutional Court’s ‘secret ballot’ judgment states: “[...] accountability is necessitated by the reality that constitutional office bearers occupy their positions of authority on behalf of and for the common good of the people. It is the people who put them there, directly or indirectly, and they, therefore have to account for the way they serve them. ... Members of Parliament have to ensure that the will or interests of the people find expression through what the state and its organs do.”⁴

Various structural mechanisms ensure oversight and accountability over the executive, on behalf of the public, through Parliament.

This study seeks to explore the nature of the oversight function in Parliament in South Africa today: whether and how well it is working, what shapes oversight in Parliament, and what can be done to enhance the role of Parliament in holding the government of the day to account. It is intended to invite interest in and debate about the state of our Parliament among active citizens and civil society organisations, and support the work of members of parliament (MPs) and others committed to strengthening this vital institution of democracy.

The effectiveness of parliamentary oversight has been a subject of major public concern and debate since the first democratic parliament was elected. In 1999, parliamentary oversight entered the public eye when the African National Congress (ANC) used its majority to stop an investigation into the arms deal by the Standing Committee on Public Accounts (SCOPA). The pressure on ANC members to toe the party line has been described as “excruciating” as political intervention by party leaders “gradually snuffed out the flame of non-partisan independence.”⁵

The 2014 ‘Nkandla’ saga, concerning unlawful upgrades made to then-President Zuma’s Nkandla homestead, again attracted significant public scrutiny to the oversight function of Parliament. The ANC was roundly criticised by opposition parties, civil society organisations and the media for protecting Zuma and sparing the executive from accountability.

In 2016, the Constitutional Court handed down its unanimous judgment in the Nkandla matter.⁶ The court found that the National Assembly had “flouted” its constitutional obligation to hold the executive – specifically, President Zuma – accountable. In 2017, the Constitutional Court handed down another judgement, finding that the National Assembly failed to put in place mechanisms to hold President Zuma accountable, and instructed it do so.⁷

3 Section 42(3)

4 *United Democratic Movement v Speaker of the National Assembly and Others* (CCT89/17) [2017] ZACC 21; 2017 (8) BCLR 1061 (CC); 2017 (5) SA 300 (CC) (22 June 2017)

5 Commission of Inquiry into State Capture, ‘Part VI Vol. 2: State Capture Established, President Ramaphosa’s Evidence and the Role of the ANC and Parliamentary Oversight’, 2022, 602.

6 *Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others* (CCT 143/15; CCT 171/15) [2016] ZACC 11; 2016 (5) BCLR 618 (CC); 2016 (3) SA 580 (CC) (31 March 2016), hereafter EFF 1

7 *Economic Freedom Fighters and Others v Speaker of the National Assembly and Another* (CCT76/17) [2017] ZACC 47; 2018 (3) BCLR 259 (CC); 2018 (2) SA 571 (CC) (29 December 2017)

These judgements came at a time when the nation was seized with ‘state capture’; Parliament’s apparently failure to hold the executive accountable for a string of corrupt contracts was widely published in the media. The release of the ‘Gupta Leaks’, in 2017 prompted a renewed call for accountability. In May 2017, one parliamentary committee acted; the Portfolio Committee on Public Enterprises (PCPE) decided to commence an inquiry into state capture at Eskom. A month later, the house chairperson instructed four parliamentary committees (Public Enterprises, Transport, Home Affairs and Mineral Resources) to enquire into the allegations of state capture made by the media.

The PCPE inquiry appeared to signal a shift in Parliament’s attitude to oversight. It was fair, rigorous, transparent, and issued damning findings against members of the executive – although there were many attempts to interfere with the process from both within and outside of Parliament. The other committees, however, were less effective, with few real consequences arising from the PCPE’s report.

In early 2021, the Commission of Inquiry into State Capture (also known as the Zondo Commission) began hearing evidence on the role of Parliament in failing to address corruption and state capture. In the report, which was released in 2022, the commission found that Parliament had enabled state capture and failed to fulfil its oversight and accountability obligations because the ANC was determined to protect those of its leaders implicated in state capture and was unwilling to expose the allegations of malfeasance to transparent public scrutiny.⁸

It is within this context that our research is situated. These events and the consequent growing public concern have prompted a number of studies and inquiries into improving oversight and accountability in Parliament. Our research draws on, and builds upon, these developments.

The first democratic Parliament commissioned a research report to advise it on how to exercise its oversight responsibilities. The Report on Parliamentary Oversight and Accountability (the Corder Report), by Hugh Corder, Saras Jagwanth and Fred Soltau, was completed in July 1999.⁹ Although the report includes a number of recommendations to improve Parliament’s oversight function, these were never formally adopted or implemented. The theoretical and conceptual foundations of this report and its recommendations, are still useful and relevant 25 years later.

Several years after the release of the Corder Report, a parliamentary joint committee established a Task Team on Oversight and Accountability, the objective of which was to develop a ‘model’ for Parliament’s oversight function. The task team proposed an Oversight and Accountability (OVAC) model, apparently adopted by both Houses in 2009. The OVAC model is often referred to by parliamentarians and in parliamentary documents, including on Parliament’s web page on oversight. Although it was also never fully implemented, it shows us how Parliament understands its oversight mandate, and how oversight should function according to the institution itself.

8 Commission of Inquiry into State Capture, ‘Part VI Vol 2’.

9 Hugh Corder, Saras Jagwanth, and Fred Soltau, *Report on Parliamentary Oversight and Accountability*, Faculty of Law, University of Cape Town, July 1999.

In 2009, Parliament appointed an independent panel to inquire into, report and make recommendations regarding the extent to which Parliament was evolving to meet its constitutional mandate in promoting and entrenching democracy.¹⁰ The panel found a number of weaknesses in the oversight system – particularly the political incentives that might disincentivise rigorous scrutiny and accountability, and the lack of influence MPs had over the executive. The panel also noted that Parliament’s handling of the arms deal greatly damaged its credibility and legitimacy in the public eye, and urged Parliament to revisit the matter.

In 2017, the High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change, chaired by Kgalema Motlanthe, noted Parliament’s narrow interpretation of its powers of oversight enabled the executive to “get away with poor implementation.” The Panel called for a more active Parliament that would ensure strict enforcement of (or even the introduction of, where necessary) penalties for lack of performance by the executive, among other recommendations.¹¹

In 2022, the Zondo Commission’s report provided a comprehensive and scathing analysis of the state of Parliamentary oversight.¹² The commission’s work was based on testimony from a number of current and former MPs, experts, and others. The commission’s report and the transcripts and statements of the witnesses called during the hearings are both used extensively in this research.

Civil society and academia have been active in monitoring Parliament and in raising the alarm about the apparent ineffectiveness of parliamentary oversight and accountability.

The Parliamentary Monitoring Group (PMG) does invaluable work in monitoring and reporting on the work of Parliament and all its committees, providing accessible information to the public in far greater detail (and quality) than Parliament itself provides. It also does important research into the mandate, functions, processes and effectiveness of Parliament. Its 2022 report on Parliament in light of the Zondo Report is an invaluable analysis of the weaknesses of Parliament’s oversight system and how they contributed to state capture.¹³ PMG’s reviews of parliamentary terms and research papers on individual oversight mechanisms have also been tremendously useful.¹⁴

Parliament’s narrow interpretation of its powers of oversight enabled the executive to “get away with poor implementation.”

10 Parliament of the Republic of South Africa, ‘Report of the Independent Panel Assessment of Parliament’, 2009.

11 ‘Report of the High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change’, November 2017.

12 Commission of Inquiry into State Capture, ‘Part VI Vol 2’.

13 Monique Doyle, Jennifer Rault-Smith, and Rashaad Alli, ‘Where Was Parliament? A PMG Review of Parliamentary Oversight in Light of State Capture and the Zondo Report’ (Parliamentary Monitoring Group, August 2022), <https://pmg.org.za/page/research>.

14 Cited throughout this report.

In 2022, PARI partnered with the Council for the Advancement of the South African Constitution (CASAC), to host a conference on the findings and recommendations of the State Capture Commission. The conference hosted a rich discussion on Parliament's oversight and accountability role, which has informed much of our research.¹⁵

In addition to commissioning this study, the Organisation Undoing Tax Abuse's (OUTA) Parliamentary Engagement programme has been doing important work in this field since 2017. Its annual reports on parliamentary oversight, including detailed case studies of individual committees, have been excellent sources for this project.¹⁶

In 2020, a research project on the Auditor-General (AG) and Parliament conducted by the Institute for African Alternatives (IFAA) investigated why the checks and balances written into our Constitution have failed to hold the executive to account for financial mismanagement. The report found that Parliament was ineffective at holding the executive to account despite accepting the AG's repeated findings in this area, and that Parliament's oversight model needed a complete overhaul. IFAA attributed Parliament's ineffectiveness to "weakness of character of our parliamentarians".¹⁷

In the course of the Zondo Commission's investigation into parliamentary oversight, various CSOs (including PMG, OUTA, CASAC¹⁸ and Corruption Watch¹⁹) submitted their research and opinions and even testified at the commission's hearings. In addition, expert witnesses including Hugh Corder and Richard Calland gave testimony. We have found all of these submissions and testimonies to be invaluable.

15 Public Affairs Research Institute (PARI) and Council for the Advancement of the South African Constitution (CASAC), 'State Capture Commission Conference: Understanding the Findings and Recommendations of the Zondo Commission', 6 October 2022, <https://pari.org.za/report-state-capture-commission-conference/>; *State Capture Commission Conference Day 2 Panel 6*, Video recording, 2022, <https://www.youtube.com/watch?v=B9XBkmcb-X8>.

16 Cited throughout this report, and all available at: OUTA, 'Oversight of Parliament', Organisation Undoing Tax Abuse, accessed 21 July 2023, <https://www.outa.co.za/projects/government-policy/parliament>.

17 Institute for African Alternatives, 'Checks and Balances: The Auditor-General Project Report', December 2020, <https://ifaa.org/research/#checks>.

18 Council for the Advancement of the South African Constitution (CASAC), 'Why the National Assembly Failed to Exercise Effective Oversight in Respect of State Capture', Submission to the State Capture Inquiry, 17 July 2020.

19 Corruption Watch, '2nd Submission to the State Capture Commission', 2020, <https://www.corruptionwatch.org.za/we-need-to-fix-appointments-to-key-institutions-now/>.

UNDERSTANDING OVERSIGHT AND ACCOUNTABILITY

The role of oversight and accountability in our democracy

The term 'oversight' refers to the role of legislatures in monitoring and reviewing the actions of the executive organs of government and encompasses a wide range of activities carried out by Parliament. 'Accountability', on the other hand, refers to 'giving account' of the manner in which assigned responsibilities are carried out, 'accounting' for spending and the use of resources, etc. Accountability requires a justification for decisions or actions against criteria of some kind. These two related concepts are usually grouped together when discussing Parliament, often with 'oversight' as the umbrella term.

Oversight and accountability are central to our democratic system of government. The executive exercises considerable power over a country and its people. A condition of the exercise of that power in a constitutional democracy is that the executive is checked by being held accountable to an organ of government distinct from it – the concept of separation of powers. This ensures that no one entity – legislature, judiciary or executive – wields more power than the other. Ultimately, this system ensures that the executive is accountable to the people of South Africa.

The concepts of oversight and accountability are reflected in the Constitution. Section 42 obliges the National Assembly to "scrutinise and oversee executive action." (According to the Constitutional Court in *EFF v Speaker*, 'scrutiny' in this case means "a careful and thorough examination or a penetrating or searching reflection.")²⁰ Section 55 mandates the National Assembly to ensure that all executive organs of state in the national sphere of government are accountable to it, in addition to maintaining oversight over the exercise of executive authority and these organs of state.

Oversight and accountability must be recognised by those in power as the *central organising principle of our Constitution*.²¹ In short, Parliament must ensure that the executive fulfils its mandate, implements its promised policies, and meets its constitutional obligations, for the good of the people of South Africa. It does this by overseeing the executive's decisions and activities and holding it accountable for those decisions and activities.

The Constitutional Court, in its decision in *UDM*, stated that "accountability is necessitated by the reality that constitutional office bearers occupy their positions of authority on behalf of and for the common good of the people. It is the people who put them there, directly or indirectly, and they, therefore have to account for the way they serve them. [...] Members of Parliament have to ensure that the will or interests of the people find expression through what the state and its organs do."²²

20 *Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others* (CCT 143/15; CCT 171/15) [2016] ZACC 11; 2016 (5) BCLR 618 (CC); 2016 (3) SA 580 (CC) (31 March 2016) at para 85.

21 Corder, Jagwanth, and Soltau, 'Report on Parliamentary Oversight and Accountability', July 1999.

22 *United Democratic Movement v Speaker of the National Assembly and Others* (CCT89/17) [2017] ZACC 21; 2017 (8) BCLR 1061 (CC); 2017 (5) SA 300 (CC) (22 June 2017)

In *EFF 1*, the Court stated that:

“... the National Assembly, and by extension Parliament ... is the voice of all South Africans, especially the poor, the voiceless and the least-remembered. It is the watchdog of State resources, the enforcer of fiscal discipline and cost-effectiveness for the common good of all our people. It also bears the responsibility to play an oversight role over the Executive and State organs and ensure that constitutional and statutory obligations are properly executed. ... For this reason, it fulfils a pre-eminently unique role of holding the Executive accountable for the fulfilment of the promises made to the populace ... In sum, Parliament is the mouthpiece, the eyes and the service-delivery-ensuring machinery of the people. No doubt, it is an irreplaceable feature of good governance in South Africa.”²³

How Parliament defines oversight

The true test of democracy is the extent to which Parliament can ensure that government remains answerable to the people. This is done by maintaining constant oversight (monitoring) of government’s actions. – Parliament’s web page, on oversight²⁴

Parliament's official oversight and accountability strategy, the OVAC model, defines oversight as a constitutionally mandated function of legislative organs of state to scrutinise and oversee executive action and any organ of state:

[...] oversight entails the informal and formal, watchful, strategic and structured scrutiny exercised by legislatures in respect of the implementation of laws, the application of the budget, and the strict observance of statutes and the Constitution. In addition, and most importantly, it entails overseeing the effective management of government departments by individual members of Cabinet in pursuit of improved service delivery for the achievement of a better quality of life for all citizens.²⁵

²³ *Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others* [2016] ZACC 11 at para 22.

²⁴ <https://www.parliament.gov.za/oversight>

²⁵ Parliament of the Republic of South Africa, ‘Oversight and Accountability Model (OVAC)’, n.d., 7.

OVAC defines the functions of oversight as follows:

To detect and prevent abuse, arbitrary behaviour or illegal and unconstitutional conduct on the part of the government and public agencies.

To hold the government to account in respect of how the taxpayers' money is used. It detects waste within the machinery of government and public agencies.

To ensure that policies announced by government and authorised by Parliament are actually delivered.

To improve the transparency of government operations and enhance public trust in the government, which is itself a condition of effective policy delivery.

It is clear that, under the Constitution, Parliament has obligations to scrutinise and oversee executive action, to maintain oversight of the exercise of executive authority and to ensure that all executive organs of state are accountable to it. As we shall see below, Parliament and its committees have the power, both under the Constitution and its own rules, to summons persons to appear before them; and, under its rules, portfolio committees are empowered to monitor, investigate, enquire into and make recommendations concerning the exercise within their portfolios of national executive authority and to conduct public hearings.

Parliament has stated that a key strategic priority of the Sixth Parliament (2019 – 2024) is to strengthen oversight and accountability,²⁶ with its main goal for 2024 to “increase government’s responsiveness and accountability.” To achieve this, Parliament would in its own assessment need to:

[...] strengthen its oversight over the Executive. In turn, stronger oversight will require deeper insights and scrutiny, and more effective involvement. Should Parliament be able to respond to this opportunity, it will effectively fulfil its constitutional mandate, improve government’s responsiveness and accountability, cause faster service delivery, and gain the trust of the people.²⁷

Specifically, Parliament identified improving committee scrutiny and oversight as the ‘key activity’ for the Sixth Parliament.

²⁶ Parliament of the Republic of South Africa, ‘Strategic Plan for Parliament, 2019-2024’, March 2020, <https://pmg.org.za/committee-meeting/30197/>.

²⁷ Parliament of the Republic of South Africa, ‘Policy Priorities for the 6th Democratic Parliament’, February 2020, <https://pmg.org.za/committee-meeting/30197/>.

METHODOLOGY

Data sources

The study drew on a range of sources: secondary literature, South African jurisprudence on the concept and exercise of oversight, statements by MPs and others on parliamentary oversight submitted to the Zondo Commission and the Commission's reports, Parliament's own assessments of its work, and interviews conducted by the PARI research team. Interviewees include MPs from the governing and opposition parties (with a spread across different portfolio committees), parliamentary staff across different units and functions, staff at the Parliamentary Monitoring Group (PMG), a parliamentary reporter at a major publication, and a parliamentary liaison officer for an organisation that monitors legislation in parliament. Interviews were anonymised to encourage honest reflection on potentially sensitive topics.

Research questions

This research report seeks to answer the following questions:

- What is the mandate of Parliament in terms of oversight and accountability?
- What mechanisms are available to Parliament to conduct oversight over the executive, how are they used, and what factors determine their effectiveness?
- When has parliamentary oversight been conducted effectively, and what lessons can be drawn from these cases?
- When Parliament has failed to hold the executive accountable, what prevented the effective exercise of oversight?
- What is the impact of the political environment and electoral system on the effective exercise of parliamentary oversight?
- What changes in institutional design or policy could address the challenges identified?



Analytical framework

The research team developed a framework for analysis which guided the interview schedules and data analysis. First, we explored the extent to which there is an enabling environment for oversight, considering,

- (In brief) **the nature of the electoral system, the organisation of the state, and the wider political environment**, such as media freedom, the nature of organised civil society, etc.
- **Formal oversight institutions**: The extent to which there are formal institutions available to support oversight and the nature of these, including the legal framework for oversight, the formal tools at the disposal of parliament in exercising its oversight function (for example, written questions, parliamentary inquiries, etc., and the authority these provide Parliament), regulations and codes of conduct pertaining to the conduct of MPs, and so forth.
- The **financial and technical support environment for oversight**, including the nature of research and other content support, legal support and so forth available to MPs. This included looking at support services provided by parliament, and to a lesser extent, the nature of support within political party caucuses.

The study then looked for evidence of the extent to which these legal frameworks, powers, tools, and resources resulted in oversight of the executive and how this was achieved. The *de facto* role and impact of presiding officers and other official roles in parliament, such as the speaker, portfolio committee chairs, and the chair or chairs were also considered in this regard (given the power of these to shape parliamentary proceedings and determine what does and does not get tabled for discussion, follow-up with the executive and so on).

Explanatory and amendatory accountability

Regarding our conceptualisation of oversight, it is useful to distinguish between explanatory accountability and amendatory accountability, as proposed by the Corder report.²⁸ This distinction is used to build a basic model of levels of accountability.



28 Corder, Jagwanth, and Soltau, 'Report on Parliamentary Oversight and Accountability', July 1999.

**What is
Parliament's
mandate
in terms of
oversight and
accountability
and how is it
empowered
by law to
fulfil that
mandate?**

PARLIAMENT'S OVERSIGHT MANDATE AND POWERS

What the Constitution says

Parliament's oversight function is defined by the legal framework in which it operates, beginning with the Constitution. In addition to its legislative role, the Constitution is explicit that Parliament is obliged to exercise oversight over the executive and that the executive is accountable to Parliament. Section 42(3) of the Constitution provides a specific oversight mandate for the National Assembly:

The National Assembly is elected to represent the people and to ensure government by the people under the Constitution. It does this by choosing the President, by providing a national forum for public consideration of issues, by passing legislation and by scrutinizing and overseeing executive action.

Section 55(2) mandates the National Assembly to provide for mechanisms to ensure that all executive organs of state in the national sphere of government are accountable to it and to maintain oversight of the exercise of national executive authority and any organ of state. Similarly, in **Section 114(2)** the Constitution mandates provincial legislatures to exercise oversight over the executive.

In order to facilitate oversight, **Section 56** of the Constitution empowers the National Assembly (or any of its committees) to summon any person to give evidence, produce documents, or otherwise report to it, and to receive petitions, representations or submissions from any interested persons or institutions.

Sections 92 and 93 provide that members of the cabinet and deputy ministers are collectively and individually accountable to Parliament for the exercising of their powers and performance of their functions; they must provide Parliament with full and regular reports concerning matters under their control. **Sections 133(2) and (3)** similarly provide that Members of the Executive Council of a province are accountable to the provincial legislature to which they must provide reports.

The Constitution creates two mechanisms for oversight over the executive in **Sections 89 and 102**. **Section 89(1)** empowers the National Assembly, by a resolution adopted with a supporting vote of at least two-thirds of its members, to remove the president from office on grounds specified by the resolution. **Section 102** empowers the National Assembly, by a vote supported by a majority of its members, to pass a vote of no confidence in the cabinet, excluding or including the president.

A number of other constitutional provisions bolster oversight and accountability. **Section 58(1)** provides that cabinet members, deputy ministers and members of the National Assembly have freedom of speech in the Assembly and in its committees and are not liable to civil or criminal proceedings, arrest, imprisonment or damages for anything said or revealed or submitted to the Assembly or any of its committees. Section 59(1) provides that the National Assembly must facilitate public involvement in the legislative and other

processes of the Assembly and its committees and conduct its business in an open manner, and hold its sittings, and those of its committees, in public but that reasonable measures may be taken to regulate public access, including access of the media, to the Assembly. Section 59(2) provides that National Assembly may not exclude the public, including the media, from a sitting of a committee unless it is reasonable and justifiable to do so in an open and democratic society.

The Constitution further sets out that Parliament must perform oversight of the security services (section 199(8)), approve a state of national defence (section 203), approve the stopping of provincial funds (section 216); and, that the Houses must approve international agreements (section 231). There are also many examples of legislation requiring state institutions to report to Parliament.

Furthermore, the National Assembly maintains oversight of state institutions supporting democracy, commonly referred to as 'Chapter 9' institutions, such as the Public Protector, the Auditor-General, and the Electoral Commission. These bodies must account for their spending to the Assembly and report to the Assembly on their activities and performance at least once a year. Parliament also has a role to play in the appointment of institution heads (by recommendations to the president) as well as their removal (by adopting a resolution instructing the president to remove them). The oversight role of Parliament is somewhat limited as these bodies are constitutionally independent.

The legal framework

Section 57 of the Constitution allows the National Assembly to determine and control its internal arrangements, proceedings and procedures and make rules and orders concerning its business "with due regard to representative and participatory democracy, accountability, transparency and public involvement." These rules must allow for the participation in the proceedings of the Assembly and its committees of minority parties represented in the Assembly, in a manner consistent with democracy. The Constitutional Court has held that Section 57 must be interpreted "as empowering the Assembly to make rules that do not constitute an inadvertent deployment of invincible giants in a member's path to exercising their rights".²⁹

The current version of the Rules of the National Assembly is the 9th edition, and was adopted in May 2016. In line with Section 57, these Rules provide for several mechanisms to ensure accountability and oversight of the executive which include: motions of no confidence; discussion of urgent matters of public importance; members' statements; questions to the executive and the president; and various functions of portfolio committees.

Sections 14 and 15 of the Powers, Privileges and Immunities of Parliament and the Provincial Legislatures Act 4 of 2004 (the 'Powers Act') is the enabling legislation that gives effect to Section 56 of the Constitution and provides for summoning and examination of witnesses. Section 17(1) of the Powers Act makes it an offence, punishable by a fine and/or a prison term of less than 12 months, to fail to attend Parliament when summonsed, to refuse to be sworn in as a witness, to fail to answer questions, or to fail to produce a document. Section 17(2) of the Powers Act similarly makes it an offence to interfere with another person in respect of evidence to be given before Parliament or to produce any false information or documents.

29 Oriani-Ambrosini, MP v Sisulu, MP, Speaker of the National Assembly 2013 (1) BCLR 14 (CC) at para 64.

THE ROLE OF THE NCOP

“... a concomitant function of any legislature which passes legislation is to monitor the implementation of that legislation and review subordinate legislation made pursuant to it.”

This report deals almost exclusively with the National Assembly (NA) because of the unique oversight mandate assigned to it by the Constitution but also refers to the National Council of Provinces (NCOP) and provincial legislatures. Whereas the National Assembly is tasked with oversight over the national executive, and provincial legislatures are tasked with oversight over the provincial executive, the NCOP's role is narrower and more focused.

The NCOP's oversight role is determined (and limited by) its constitutional mandate. Although the Constitution does not specifically mention a general oversight role for the NCOP it mandates the NCOP to ensure that provincial interests are taken into account in the national sphere of government by participating in the national legislative process and providing a national forum for public consideration of issues affecting provinces. Its role is implicit in its constitutional function – “a concomitant function of any legislature which passes legislation is to monitor the implementation of that legislation and review subordinate legislation made pursuant to it.”³⁰ Section 92(2) indicates that members of the cabinet are responsible, individually and collectively, to Parliament as a whole, and not only to the National Assembly. The NCOP is also empowered by Section 66(2) which permits it to call Cabinet members to attend it.

The NCOP must exercise oversight over the national aspects of provincial and local government. The NCOP's role is to provide “an effective bridge between provinces and the national sphere of government, and to contribute to the realisation of the constitutional commitments to cooperative and effective government.” It is a crucial part of the framework of intergovernmental institutions, and should exercise oversight over the general structure and procedures of intergovernmental relations.³¹

While it is clear that the NCOP does have an oversight role, **its role does not – and should not – duplicate that of the National Assembly or of provincial legislatures.** It is uniquely situated to bridge national, provincial and local levels of government to exercise oversight over matters that affect various levels of government.³² The NCOP may be selective in its oversight activities because it is not obliged to oversee all executive action all the time. The NCOP can prioritise important issues and deal with them thoroughly; this is important because the NCOP is a small house with limited capacity.³³

The NCOP has specific oversight functions to protect the spheres of government – i.e., to guard against abuse of the various powers of intervention. For instance, under Section 100 and 139, the NCOP is required to approve interventions by one sphere of government into another sphere. The NCOP must also settle disputes about a province's administrative capacity (Section 125), must approve a decision by the Treasury to stop the transfer of funds to a province (Section 216), and can allow for a piece of delegated legislation to prevail over another law (Section 146).

In select cases, the Constitution requires joint oversight by the National Assembly and NCOP. Section 199(8) demands oversight of security services by a joint parliamentary committee. Section 231 requires that both National Assembly and NCOP approve international agreements. Section 203 requires that a declaration of a state of national defence must be approved by both houses of Parliament.

³⁰ Corder, Jagwanth, and Soltau, 'Report on Parliamentary Oversight and Accountability', July 1999, 14.

³¹ Corder, Jagwanth, and Soltau, 15.

³² See Parliament of the Republic of South Africa, 'Report of the Independent Panel Assessment of Parliament', 36.

³³ Christina Murray et al., 'Speeding Transformation: NCOP's Role in the Oversight Process' (National Democratic Institute for International Affairs (NDI), 1999). Also echoed in Corder, Jagwanth, and Soltau, 'Report on Parliamentary Oversight and Accountability', July 1999.

**How to
strengthen
oversight is
a question
of perennial
importance
in a
democracy.**

THE POLITICAL SYSTEM

The legislature has an important role to play in holding the executive accountable. This is a vital part of our democratic system, and is inherent in the concept of the separation of powers, which provides for checks and balances on the exercise of executive power, making the executive accountable to an elected legislature. We cannot ignore the question of how that legislature is elected.

The Constitution's founding provisions tell us that the Republic of South Africa is founded on values including "universal adult suffrage, a national common voters roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness."³⁴ Members of the National Assembly must be elected in terms of an electoral system that results, "in general", in proportional representation.³⁵ The executive is drawn from and is accountable to the legislature.

In South Africa's system of democracy, political parties play a central role in facilitating the exercise of political rights. To date we have used a closed-list system of proportional representation (PR). Political parties secure election of members of the national and provincial legislatures. Those elected members – as representatives of their respective parties – then carry out functions in the legislative process and in the oversight of the executive branch of the state. The Constitutional Court has reaffirmed the pivotal role played by political parties in our democratic system, for example, reminding us in *Ramakatsa* that parties are "vehicles the Constitution has chosen for facilitating and entrenching democracy."³⁶

The Constitutional Court's decision in the *New Nation Movement* case³⁷ and resulting changes to the electoral system effected through the controversial Electoral Amendment Act of 2023 mean that the contestation of elections no longer occurs solely between political parties; individuals are now able to stand for office as independent candidates. The Act has also been mandated in the establishment of the Electoral Reform Consultation Panel, which will make non-binding recommendations on potential reforms of the electoral system for future elections of the National Assembly and the provincial legislatures after the 2024 polls. Currently, some political parties and CSOs are advocating for a system that combines elements of proportional representation and parliamentarians elected by constituencies, and have raised serious concerns about the implications of the Electoral Amendment Act. However, we are yet to see the consequences of the shift from purely party-based proportional representation. Given our political history and the character of our political environment, parties will continue to play a central role in our democratic process going forward.

34 Constitution of the Republic of South Africa, 1996, Section 1

35 Constitution of the Republic of South Africa, 1996, Section 46

36 See for example *Ramakatsa and Others v Magashule and Others* [2012] ZACC 31 (CCT 109/12)

37 *New Nation Movement NPC and Others v President of the Republic of South Africa and Others* (CCT110/19) [2020] ZACC 11; 2020 (8) BCLR 950 (CC); 2020 (6) SA 257 (CC) (11 June 2020)

The impact of this electoral system reverberates throughout the legislature. Critics of the closed-list PR system note that there are no direct lines of political accountability between voters and parliamentarians – MPs are accountable to their parties only. MPs of the majority party must exercise oversight over senior members of their own party, the same members who may be able to influence the composition of the list during the following elections. There is an inherent incentive to protect, rather than confront, senior members of the executive. Opposition parties, on the other hand, can be incentivised to attempt to score political points to the detriment of meaningful and constructive oversight.³⁸ While the topic of electoral reform must now be actively debated by South Africans, it is unlikely to be a silver bullet for enhancing the oversight function in parliament. For one, even in a constituency-based system it is not an easy task to hold others in one's own party accountable – especially where a minister is likely to be a more senior member of the party than the average MP.

Although these tensions are inherent to multi-party systems across the world, they are more acutely felt in systems in which one party is dominant, as has been in the case in South Africa to date. The ANC-majority Parliament has received harsh criticism for being overly deferent to, and protective of, the executive branch.

Ultimately, government is accountable to the electorate; this is the core principle of our democracy and representation of the electorate in the legislature is the main mechanism through which this occurs. Through the holding of regular elections and the weight of public opinion, legislators are held responsible for their conduct in office. However, the governing party, the African National Congress, has enjoyed significant electoral dominance since the advent of democracy in 1994, which has blurred the lines between party and state. Even where one-party dominance is not a feature of a country's politics, there can be strong pressures acting against the institutions designed to hold the executive to account. This is especially the case where state resources are used to secure or retain political power, or where powerful economic lobby groups act to secure preferential treatment by the state. How to strengthen oversight is a question of perennial importance in a democracy.

Ultimately, government is accountable to the electorate; this is the core principle of our democracy and representation of the electorate in the legislature is the main mechanism through which this occurs.

38 Parliament of the Republic of South Africa, 'Report of the Independent Panel Assessment of Parliament', 37.

OVERSIGHT IN COMMITTEES

This section addresses the oversight mandate of committees, how they exercise that mandate, and the factors that determine the effectiveness of their work.

There is broad consensus that portfolio committees of the National Assembly are the primary instrument through which Parliament exercises its oversight mandate. They are often referred to as the 'engine rooms' of Parliament. This opinion was echoed by all our interviewees, as well as Parliament's OVAC model,³⁹ the Commission of Inquiry into State Capture,⁴⁰ various MPs giving testimony at the Commission,⁴¹ and researchers and experts in the field.

Committees are delegated instruments of the Houses of Parliament (comprising the NA and NCOP). They are responsible for scrutinising and processing legislation, overseeing government activities, and interacting with the public. They are empowered to maintain oversight of the executive and are supported in doing so by various institutions of Parliament.

In addition to the portfolio committees of the National Assembly, select committees in the NCOP focus on provincial issues and can encompass several departments, usually mirroring the 'clusters' of the executive. There are also joint committees with powers similar to those of portfolio and select committees that deal specifically with transversal issues; standing committees on financial matters; and ad hoc committees set up to deal with specific issues.

Committees also have an importance legislative function that is not dealt with in this report, although there is no doubt that some of the strengths and weaknesses of committees identified here impact this.

Committees are responsible for scrutinising and processing legislation, overseeing government activities, and interacting with the public.

39 Parliament of the Republic of South Africa, 'Oversight and Accountability Model (OVAC)', 18. See also Parliament's own web page on oversight: <https://www.parliament.gov.za/oversight>

40 Commission of Inquiry into State Capture, 'Part VI Vol 2', 312.

41 Calland, Exhibit ZZ 9 at PO-03-17; Mbete Day 397 p 174; Modise p 101

THE FUNCTIONS AND POWERS OF COMMITTEES

The parliamentary committee system is governed by the National Assembly Rules, which provide for the establishment by the speaker of a range of portfolio committees and the assignment of a portfolio of government affairs to each committee. The Rules mandate a committee to maintain oversight of the exercise of national executive authority within its portfolio, including the implementation of legislation. A committee must also maintain oversight of executive organs of state and constitutional institutions falling within its portfolio, as well as any other body assigned to it.

The Rules empower committees to monitor, investigate, enquire into, and make recommendations concerning any such institution, including its legislative programme, budget, rationalisation, restructuring, functioning, organisation, structure, staff, and policies. A committees can summons any person to appear before it to give evidence or to produce documents; to receive petitions, presentations or submissions from interested persons or institutions; to conduct public hearings; and to consult any other National Assembly or NCOP or joint committees or sub-committees.

Committees can determine their own processes, programmes, and general way of working. They are constituted based on proportional representation of political parties in the National Assembly and elect a chairperson from within the committee. Where practicably possible, each party is entitled to at least one representative in a committee.

A committee conducts its business on behalf of the House and must therefore report back to the House. Committees have no formal decision-making powers; rather, they advise the legislature on matters that they have considered. When a committee reports its recommendations to the House for formal consideration, and the House adopts the committee report, it gives those recommendations the force of a House resolution. The House is then supposed to monitor executive compliance with these recommendations.

Although committees have significant powers in terms of the Rules, Powers Act, and the Constitution, there are no consequences provided for in the legal framework if a person appears before a committee, and fails to provide the documents or information requested, or if recommendations of the committee are not taken forward or acknowledged. Even when it is demonstrated that the executive may be at fault, there is no mechanism to ensure redress.⁴² This is one of the biggest challenges posed to Parliament: oversight can be conducted, but accountability cannot be enforced.

Committees fall under the Committee Section of Parliament, which is headed by the House chairperson for committees, commonly referred to as the chair of chairs, who is elected by the House. The chair of chairs is responsible for general management of all committees and subcommittees, including scheduling and programming, reporting on the progress of committees, monitoring committee budgets and expenditure, facilitating committee support and training, advising on oversight, and a host of other duties. They are responsible for implementation and coordination of a Parliamentary Oversight Model.⁴³

⁴² See Martin Nicol, 'The Role of the Portoflio Committee on Mineral Resources in Scrutinizing and Overseeing Executive Action', 30 March 2017.

⁴³ 'NA Presiding Officers', Parliament of South Africa, accessed 19 July 2023, <https://www.parliament.gov.za/na-presiding-officers>.

How committees conduct their work

Generally, for each government department, there is a corresponding portfolio committee of the National Assembly to oversee the work of that department and the minister, as well as other state entities that fall within that portfolio. A notable exception to this is the Presidency.

Although the general mandate and operations of a committee are laid out in the Rules, there are no constraints on the manner in which a committee should exercise its oversight duties, and the mechanisms for doing so are not explicitly outlined. This means that determining how oversight should be carried out is largely dependent on the expertise, experience, skill, and political will of the leadership in the committee (and Parliament generally).⁴⁴ The Committee Section, headed by the chair of chairs, controls the scheduling of committee meetings and activities.

Committees meet at least once a week during the four Parliamentary terms, which take up about 28 weeks of the year. In these meetings committees receive reports and presentations from the departments and entities they oversee, on annual plans, financial and non-financial performance, audit outcomes, budgets, and any other issue the committee wants to discuss. Their business generally runs parallel to government's political cycle, unless there are specific *ad hoc* oversight functions required.⁴⁵

Committees have a support team of research and administrative staff, including a secretary, researcher, and content advisor. They are further supported by parliamentary structures such as the Parliamentary Budget Office and Parliament's legal services.

What are the oversight activities conducted by portfolio committees? The bulk of their work is to receive and process reports from the state entities they oversee, including investigating these reports and the officials or executives who present them. Committees can summon members of the executive to account to it and explain their actions.

The process by which Parliament oversees, scrutinises and approves the annual budget is set out in the Money Bills Amendment Procedure and Related Matters Act, Act 9 of 2009. In terms of this process, committees use various sets of information to assess the performance of government, including alignment to the NDP, strategic plans, annual performance plans, budgets, in-year reports and annual reports with financial statements. The key focus here is how Parliament can scrutinise and influence the budget through its oversight and budget recommendations. These are typically captured in the annual Budgetary Review and Recommendation Reports (BRRRs).

Parliament also has the power to approve executive expenditure, through the annual budget vote process. This is one of the most direct methods it has to exercise oversight over the executive. Committees can use their budget approval power to impose sanctions on or influence government departments. A committee has never actually refused to approve a budget presented to it by the executive, although there are rare cases where committees have threatened to do so in order to ensure action from the reporting minister.

⁴⁴ Doyle, Rault-Smith, and Alli, 'Where Was Parliament? A PMG Review of Parliamentary Oversight in Light of State Capture and the Zondo Report', August 2022, 7.

⁴⁵ See Parliament of the Republic of South Africa, 'Oversight and Accountability Model (OVAC)', 18.

To investigate particular issues, committees may also conduct oversight visits that provide them with further detailed information with which the executive may be held to account. The effectiveness of these visits depends on the quality of reports generated, the level of preparation of committee members and the extent to which issues which are raised are further pursued.⁴⁶

Committees have another powerful albeit rarely used tool available to them; a committee may initiate an inquiry into a particular matter and call anyone to testify before the inquiry. These inquiries are inquisitorial in nature and an evidence leader may be appointed to act on behalf of the committee to lead the investigation. Inquiries can also be carried out by *ad hoc* committees expressly set up for this particular task. Between 2009 and June 2022, no more than ten inquiries were held.⁴⁷

Committees can also call for submissions from the public, CSOs or invite experts to provide background knowledge and analysis on relevant issues.

The work of committees is captured in committee reports that are tabled for debate and adoption in the House. These reports reflect the committee's recommendations on what the department or state entity must improve, fix, address or provide a follow-up response to, update or provide progress on, usually within a stipulated timeframe. This committee report serves as a record of the interventions it sought and of directives for the executive or government to address. These reports are generally known as Announcements, Tablings and Committee Reports (ATCs). More than 1 000 reports are tabled in any given year.⁴⁸

46 Parliament of the Republic of South Africa, 'Report of the Independent Panel Assessment of Parliament', 39.

47 Doyle, Rault-Smith, and Alli, 'Where Was Parliament? A PMG Review of Parliamentary Oversight in Light of State Capture and the Zondo Report', August 2022, 8.

48 Martin Nicol, 'The Committee System of Parliament: Are the "Engine Rooms of Parliament" Exercising Their Powers Fully and Possible Areas of Reform', *PMG Review of the 5th Parliament* (blog), n.d.

How effective are committees at overseeing the executive?

Committees conduct the majority of Parliament's oversight activities, but the effectiveness of individual committees is starkly uneven. Some perform well, while it appears that others are very weak. Effectiveness differs not only across portfolios but also over time. Some committees have improved over time, while others that may have been effective in the past have deteriorated. Here we explore some of the main factors that determine the effectiveness of a portfolio committee's oversight function.

Members of Parliament: capacities and commitments

Parliament can only ever be as effective as its members. The oversight function requires parliamentarians to be knowledgeable of the work of the departments they oversee, government processes, and the broader socio-economic context, so that they are able to interrogate the implementation of government policy for the benefit of citizens. They also need to understand the rules and powers of Parliament itself. They have many oversight tools at their disposal but must be able to use them effectively.

Thus, a committee's effectiveness is strongly determined by the capacities and commitments of its members. Committees that perform well have knowledgeable and analytical members who are dedicated to oversight and accountability. Most of the oversight conducted by committees involves scrutinising reports and interrogating the performance of departments and state entities. In order for this to be effective, members must prepare thoroughly for committee meetings, and ensure that their questions to institutions or individuals who appear before the committee are informed, direct and meaningful.⁴⁹

An MP who is effective in terms of oversight:

- Is well-versed in the area overseen by their portfolio committee;
- Understands the mandates, functions and operations of overseen entities;
- Reads widely and seeks additional information where relevant;
- Is collegial and can work with members from other parties;
- Maintains connections with stakeholders relevant to the overseen entities;
- Is analytically-minded and can scrutinise complex issues;
- Asks informed, direct, and meaningful questions;
- Understands the rules and powers of parliament, and particularly of portfolio committees;
- Is dedicated to holding the executive accountable.

⁴⁹ See Parliament of the Republic of South Africa, 'Report of the Independent Panel Assessment of Parliament', 39.

Concerns about the capabilities of MPs

There are certainly many excellent MPs who pursue oversight as rigorously as they can. MPs from both sides of the House, for example, expressed admiration for the knowledge, expertise, and commitment of members on the Portfolio Committee on Justice and Correctional Services. However, MPs (from the majority party as well as the opposition), as well as other respondents in this study, expressed concern about the general skills, experience, and capabilities of many members. Some interviewees felt that the quality of members in the House has deteriorated over time, although some felt that this has improved between the Fifth and Sixth Parliaments. Many indicated to us that they felt parties included inappropriate individuals in their party lists and should take more care to consider the skills, experience and capacity of their candidates for Parliament. Parties do not appear to take action when their members are ineffective.



There were three major concerns both from within and outside of the House about the quality of MPs.

X **UNPREPAREDNESS.** Some members fail to adequately prepare themselves for oversight activities and make little to no effort to grapple with the issues at hand. These members view oversight as a 'tick-box exercise' and usually do little more than check if a reporting institution has been procedurally compliant. Some MPs are frequently absent from committee meetings.

X **A LACK OF SKILLS AND EXPERIENCE.** Some members lack the skills and experience to conduct oversight effectively. They are unfamiliar with the relevant sector, do not know how the reporting institutions work, and cannot conduct or make use of technical analysis. Many have neither the institutional memory nor the experience necessary to understand the historical performance of the overseen entities. This is compounded by excessive turnover and a lack of technical/knowledge support for committees, which we discuss below. Some of our interviewees felt that parties do not deploy their members to committees effectively, and should do a better job of matching expertise and experience to portfolios – for example, a member with significant experience in local government should have been assigned to the COGTA portfolio and not to the education portfolio.

X **SHOWMANSHIP AND POLITICKING.** Some MPs – both majority and opposition – are overly concerned with showmanship and politicking, and as a result fail to effectively fulfil their oversight duties. They will not work with colleagues from different parties, are unnecessarily combative, or only pursue topics that might spur public outrage for their benefit. Alternatively, they may steadfastly refuse to engage in real oversight in order to protect the executive.

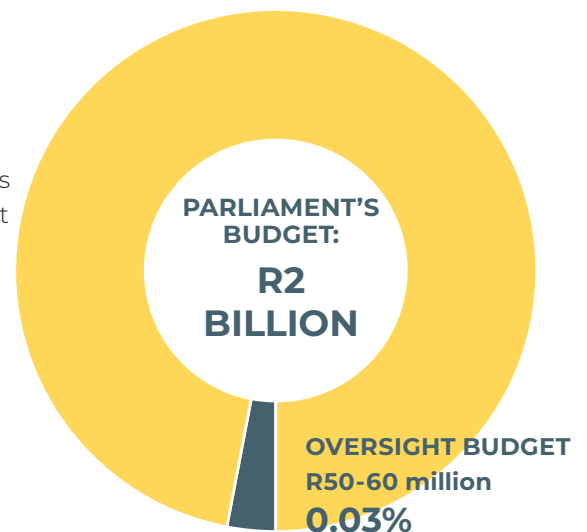
Many of our interviewees, as well as witnesses at the State Capture Commission, noted that committees are only effective when the members are able to work well together and put aside partisan differences when necessary. This is a broader debate on the political culture in Parliament, which is dealt with in more detail below.

A committee comprised of effective MPs, can have substantial impacts on the outcomes of oversight. A team of effective MPs can navigate, or even overcome, many of the challenges we highlight below. But the performance of MPs themselves, and therefore committees, remains extremely uneven. The Sixth Parliament's strategic plan noted that parliament's approach to skills development and knowledge management produces "an uneven spread and allocation of skills in the processes of Parliament" and that a more systematic approach to knowledge management and capacity-building of MPs would need to be developed.⁵⁰ It appears that this has not been implemented.

Financial resources

Parliament's budget currently exceeds R2 billion. According to the House chairperson, Cedric Frolick, the Budget Committee allocates about R50 to R60 million to the oversight function. This amount must cover the budgets of the different committees in both Houses to implement and host their regular meetings, as well as other costs for activities such as oversight visits. Frolick told the Commission of Inquiry into State Capture that the oversight function is not properly funded. He also testified that the OVAC model was adopted but never fully implemented simply because there were insufficient funds.⁵¹

Some MPs and parliamentary staff we spoke to also felt that the oversight work of committees was underfunded – or, sometimes, poorly allocated and under-prioritised. For example, a committee might be able to acquire funds for an expensive oversight visit, but not for critical research support. Financial resources are not distributed in ways that would have the biggest impact on improving oversight.



50 Parliament of the Republic of South Africa, 'Policy Priorities for the 6th Democratic Parliament', 12.

51 Cedric Frolick, 'Hearings Day 338' (Commission of Inquiry into State Capture, 5 February 2021), 160.

Research and content support to MPs

Parliament is an institution that relies on information, and the success of Parliament depends to a great extent on the institution's ability in gathering, recording, processing, analysing, and generating information. Content advisors, researchers, legal advisors, and financial experts are indispensable in supporting these activities. Parliamentary staff and MPs interviewed for this project felt strongly that one of the biggest weaknesses in the oversight system was the lack of support staff afforded to committees.

Committee content advisors do a massive amount of work to ensure that committees can effectively conduct oversight. They read all materials submitted to the committee and provide advice about the content, accuracy, and key issues of those reports, as well as any gaps or errors they might find. They advise the chair and committee members on the important issues to debate and vital questions to ask. They often do vital tasks that are not formally part of the job description: keeping minutes, drafting reports, and conducting quality assurance for the entire oversight chain. They also often maintain records and track the implementation of committee recommendations. Given that they usually remain in their positions longer than many MPs, they also host crucial institutional memory about the activities of the portfolio committee and its reporting departments. Committees generally have only one content advisor, although some have had two at certain points. Some of our respondents felt that content advisors are overburdened and are therefore unable to give every issue in a committee's portfolio the attention it may deserve.

Committee researchers provide research reports, briefings, and other inputs requested by the chair or committee members so that the committee can prepare effectively for oversight activities. They often pre-emptively research and write briefings and reports on key developments in their portfolios. The research unit currently comprises around 40 researchers; there are many vacancies, but these cannot be filled as the posts have been frozen. Portfolio committees are usually allocated only one researcher each. Concerns about the lack of research support have been articulated by MPs for many years; although capacity has increased, both the MP and staff felt committees are still underserved.⁵²

Similarly, all committees rely on the legal section of Parliament for legal advice, as the committees do not have dedicated legal advisors. In reality, only a few legal advisors are available to be allocated for portfolio committee work, and committees often do not receive the support they need. While legal support is generally made available during the legislative process, oversight activities suffer when committees are not able to access legal advice.

Portfolio committees also lack financial expertise; this is a concern because Parliament emphasises the importance of financial oversight, and some of these committees oversee departments with enormous budgets. While committees can make use of Auditor-General reports and other budgetary analysis to understand the general financial health of an institution, Parliament lacks the capacity to review programmatic expenditure, i.e., to adequately assess whether spending is in line with the objectives and mandate of an institution and to determine whether or not to make use of its amendatory authority. Many interviewees felt that each portfolio committee should have at least two researchers as well as a budget analyst.

The Parliamentary Budget Office (PBO), established in 2013, is meant to provide independent, objective, and professional advice and analysis to the Finance and Appropriations Committees located in the NA and NCOP, on matters related to the budget and other money bills. It has a number of other duties, including analysing documents

52 Parliament of the Republic of South Africa, 'Report of the Independent Panel Assessment of Parliament', 70.

tabled in Parliament by the executive in terms of the Money Bills Act, analysing fiscal and monetary policies, producing research reports and briefings, and monitoring and synthesising reports by other committees.⁵³ However, the PBO is under-capacitated and is barely able to provide technical support to the finance cluster committees.⁵⁴ MPs and committee staff lamented that the PBO is not made available to other committees requesting specific assistance on financial and budgetary analysis, leaving content advisors and researchers to conduct this work without the requisite expertise. We were told that only committee chairs can request PBO support; members may not, even if they feel they need the technical expertise.

Some MPs complained that the work provided by the PBO is not objective and espouses certain economic ideologies. The PBO has contended these claims since the office was established in 2013. This has created doubts about the technical capacity of the PBO, and has impeded the unit's work, regardless of the veracity of those complaints.⁵⁵

The lack of capacity in the research and knowledge sections of Parliament is an issue that has been raised over many years. Parliament itself has highlighted the need for enhanced research services, moving towards more analysis and scrutiny with high levels of specialisation. Parliamentary staff told us that the Sixth Parliament has repeatedly emphasised the importance of research and has identified high-quality research as a key part of its strategy to improve oversight but it has not acted to meaningfully enhance the capacity of the research unit.

At least 71 per cent of Parliament's employees (about 900 employees out of 1,300) are knowledge workers – it is estimated that this will increase to 80 per cent by 2030. In Parliament's own research into its staff and their work it was noted that "Parliament's ability to implement its strategic intent, to invest energy in work and the business, and to provide good customer service is impaired." The report further details that only 10 per cent of staff is highly engaged, with 54 per cent at risk of burnout, and that Parliament is paying a heavy cost for the disengagement. Reasons for this included inadequate communication, autocratic management style, inadequate job information and performance management, and inadequate growth and development opportunities.⁵⁶

Capacity and resourcing is not the only challenge facing researchers and other knowledge workers in Parliament. Some of our interviewees reported political interference in their work. For example, researchers have been reprimanded for presenting both pros and cons of certain policy proposals when MPs wanted only positive reports to support their agendas. In one instance, all research staff were told by a previous presiding officer that, since the ANC was the majority in Parliament, researchers must remember that they work for the ANC. To protect themselves from potential retaliation for refusing to comply with MPs, some researchers have become very cautious. This is a serious issue that could compromise the quality of research work and the trust and working relationships between researchers and MPs. Researchers must be backed up by the administration and top management of Parliament. Historically, staff have not been supported, although some interviewees indicated that this has recently started to improve.

53 Mohammed Jahed and A. K. Kithatu-Kiwetekete, 'Enhancing the Legislature's Fiscal Oversight with Parliamentary Budget Offices', *Administratio Publica* 28, no. 1 (March 2020): 16, <https://doi.org/10.10520/ejc-adminpub-v28-n1-a7>.non-partisan information to legislatures to enhance the capacity of parliaments in exercising fiscal oversight. The African Union's (AU)

54 M. Jahed, 'The Role of Parliamentary Budget Offices in Participatory Budgeting', *Administratio Publica* 28, no. 2 (2 June 2020): 71, <https://doi.org/10.10520/ejc-adminpub-v28-n2-a5>.

55 Jahed, 71.

56 Parliament of the Republic of South Africa, 'Strategic Plan for Parliament, 2019-2024', 12.

ACCOUNTABILITY AND PARLIAMENTARY STAFF DYNAMICS

**ONLY
10%**
OF STAFF ARE
HIGHLY
ENGAGED



54%
OF STAFF
ARE VULNERABLE
TO BURNOUT



60%
STAFF
TURNOVER

26%
ELECTED
REPRESENTATIVES
REPLACED

73%
AVERAGE
COMMITTEE
TURNOVER

Institutional memory, legacy and turnaround

When members leave the legislature, or are rotated to different committees, oversight work can suffer from the loss of expertise, experience and institutional memory. Too much turnover can seriously weaken a committee's ability to exercise oversight effectively.

Both newer democracies and proportional representation (PR) electoral systems have been shown to have higher turnover rates. Most turnover occurs at the end of each parliamentary term. At the start of the Fourth Parliament 68 per cent of MPs were new; the turnover for the start of the Fifth Parliament was marginally better with around 60 per cent new MPs. Over the course of the Fifth Parliament 26 per cent of elected representatives were replaced.⁵⁷

Turnover also occurs within committees. While rotation can have positive effects, committees generally need the knowledge and institutional memory that comes with experience. To pursue effective oversight, members need to be familiar with the content of the committee, the departments, and entities within their oversight ambit. The Parliamentary Monitoring Group (PMG) found that the average committee turnover for the Fifth Parliament was 73 per cent; the top five committees with the highest turnover averaged a 115 per cent turnover.⁵⁸

Although committees compile legacy reports to assist the incoming Parliament when their terms come to an end, these are either not used, or not used effectively. The recommendations and key issues raised in legacy reports are often not carried over, work is duplicated and important oversight issues simply fall through the cracks, which allows the executive to avoid accountability.

Silos

The relative isolation of parliamentary committees, and ineffective collaboration and conferral between them, weakens the effectiveness of Parliament in dealing with complex issues that touch on the mandate of various committees.⁵⁹ The executive itself often laments the siloed nature of government departments and state entities; portfolio committees mirror this isolation and as a result have no real oversight over the way executive entities interact with (or fail to interact with) one another.

Scheduling and time allocated to oversight

MPs and parliamentary staff felt that portfolio committees did not have sufficient time to fulfil their oversight duties. A portfolio committee is responsible for overseeing at least one national department and a range of state entities, all with their own budgets and activities, and all implementing a variety of programmes, policies and services. They generally meet once or twice a week for half a day, and many of these meetings are taken up by lengthy presentations (see below). Most committees have significant backlogs and are not able to give all issues the attention they deserve. Some MPs felt strongly that their committees should be meeting three to four times per week. Some committees want to meet more often but have not been allowed to do so by the House chairperson; the reason for this is not clear.

⁵⁷ Parliamentary Monitoring Group, 'MP & Committee Turnover', Review of the 5th Parliament, accessed 19 July 2023, <https://pmg.org.za/parliament-review/statistics/turnover>.

⁵⁸ Parliamentary Monitoring Group.

⁵⁹ Parliament of the Republic of South Africa, 'Report of the Independent Panel Assessment of Parliament', 39.

Committees also work to a fixed quarterly programme that disregards unusual or unexpected developments, which results in an overly bureaucratic and inflexible approach to oversight.⁶⁰

The Sixth Parliament's own strategic plan noted in 2020 that more time should be allocated for committee oversight activities. The plan specifically recommended dedicated weeks for constituency, committee and plenary work, to allow Parliament to optimise available time. As these weeks would focus on specific work, sitting times could also be adjusted, and the time for committee activities can be significantly increased.⁶¹ While some committees have independently organised themselves to increase time allocated to oversight committees, this part of the strategic plan has not yet been actioned.

Format of committee meetings

Inefficient and ineffective committee meetings were a major concern for all parliamentary staff and MPs interviewed for this report. Interviewees felt committee meetings generally afforded reporting institutions an inordinate amount of time to make presentations and read through reports, with very little time left for questions and debate. Where this is the norm, MPs often do not read the reports in advance, or sufficiently prepare themselves to engage with the reporting officials. There is often no follow-up, and critical issues that should be subjected to oversight may be overlooked.

When people are questioned before a committee, members take turns and ask the questions they wish to pose and the presenter then answers all the questions. The time allotted is often inadequate and the presenter determines which questions to address and which to skirt around. The MPs we spoke to, from the majority party as well as the opposition, felt that this traditional meeting format was unproductive and did not allow for targeted and effective questioning. This observation was also made by MPs who testified at the Commission of Inquiry into State Capture.⁶²

Furthermore, there was a strong sense that the rigid adherence to parliamentary protocols and rituals by many – if not most – MPs is unproductive. There is a generally strong insistence on formality, certain modes of address and so on. While some standards of behaviour are important, this seems to extend far beyond the initial standards and rules, and has become overly formal, deferential, and inflexible. This preoccupation with protocol and formality often derails meetings on substantive matters, and MPs end up spending more time discussing decorum than engaging with oversight.

60 James Selfe, 'Hearings Day 336' (Commission of Inquiry into State Capture, 2 February 2021), 120–21.

61 Parliament of the Republic of South Africa, 'Policy Priorities for the 6th Democratic Parliament', 8–9.

62 Zukiswa Rantho, 'Hearing Transcript: Day 336' (Commission of Inquiry into State Capture, 2 February 2021), 31–34.

A BETTER WAY?

MPs, parliamentary staff, and others we interviewed (such as PMG and parliamentary reporters) all pointed to the Standing Committee on Public Accounts (SCOPA) and the Portfolio Committee on Justice and Correctional Services (PCJCS) as examples of committees managing oversight and accountability effectively.⁶³

HOW THE PCJCS DOES IT

The PCJCS has developed an effective method of questioning, insisting on direct and specific answers to each question, and allowing committee members to pose immediate follow-up questions. This allows members to pursue lines of inquiry and insist on specific and non-evasive answers. The committee has been praised for fostering effective collaboration between members, for a common commitment to justice, and for pursuing rigorous and effective oversight. Respondents also pointed out that the committee had performed extremely poorly in the past, which shows that it is possible to significantly strengthen committee oversight if members are committed and the chair is effective.

HOW SCOPA DOES IT

SCOPA's style of questioning has also been praised and its insistence on early submission of reports, attendance of key role players, and timelines for responses have earned it a reputation for rigorous oversight. Many of our respondents noted that SCOPA was more focused and strategic, adhered strongly to a common objective, and allocated responsibilities to all committee members. However, some of our interviewees noted that although SCOPA performed better than most committees, it has weaknesses. The relatively high profile of SCOPA has the potential to attract political grand-standing at the expense of real oversight, and certain members were still frustrated that they had not received the information and support that they had requested.

Themba Godi was the chair of SCOPA from 2005 to 2019, spanning the Fourth and Fifth Parliaments. Godi described finding a committee “driven by divisions” in 2005. He had to deliberately and carefully inculcate a spirit of teamwork and a commitment to the public good, which was not easy, but he felt that by the Fifth Parliament, SCOPA was working particularly well as a cohesive and collegial unit. He attested that this way of working was completely different to his experiences on five other committees.⁶⁴

The format and tone of a committee meeting is ultimately dependent on the leadership of the chair; we cover this in more detail below.



⁶³ Monique Doyle, Jennifer Rault-Smith, and Rashaad Alli, 'Where Was Parliament? A PMG Review of Parliamentary Oversight in Light of State Capture and the Zondo Report' (Parliamentary Monitoring Group, August 2022), 7, <https://pmg.org.za/page/research>.

⁶⁴ Themba Godi, 'Hearing Transcript: Day 335' (Commission of Inquiry into State Capture, 1 February 2021), 236–37.

Executive reports and participation

Frequently, the departments appearing before a committee provide the material to be considered at the committee meeting very soon before – or even at – the meeting concerned. This may differ between committees; although some chairs have productive relationships with the departments and executives under their committee's purview, and ensure that reports, presentations and other materials are provided within a reasonable timeframe, there are exceptions. The issue of late submissions was a common complaint of MPs and parliamentary staff interviewed for this study (as well as by MPs testifying at the Commission of Inquiry into State Capture).⁶⁵ Without adequate time, MPs cannot properly analyse and interrogate the materials presented to them. Similarly, committees' researchers and content advisors may struggle to develop thorough briefings in time for members to consider them. This practice makes reporting to committees a compliance activity, rather than a true oversight engagement.

A related challenge is the overdependence of committees on materials produced by the overseen entities. MPs and parliamentary staff expressed that committees almost always consider the reports, plans, and presentations, etc., of overseen entities in isolation, and conduct oversight almost exclusively on the basis of these reports. In addition, reporting entities often tailor their reporting to appear positive, knowing that most MPs have no external references and that their reports are unlikely to be closely scrutinised. This is obviously extremely limiting. Externally produced materials would allow MPs to identify gaps in official documents, contextualise information, make comparisons, and generally benefit from a third party point of view. Some MPs and staff indicated that they found the submissions of CSOs as well as media reports to be useful in this regard, although they are not a routine or institutionalised part of oversight.

The role and influence of the committee chair

Each committee is led by a chairperson elected by the members of that committee. Because committees are proportionally constituted, and the majority of committee members come from the ANC, all committee chairs – save one – are ANC members. The ANC caucus decides on these chairs and they are formally voted on in committees. The exception is SCOPA, where the convention is that the chair is from an opposition party.

The role of chair is vital to the functioning of a committee. Chairs organise the administrative affairs of a committee and control its budget. They supervise the writing of the committee's reports to the House, formulate the agenda, preside over committee meetings, and provide direction to the committee staff between meetings. They are the face of the committee and are often tasked with communicating its views to the media and the wider public.⁶⁶

The chair's leadership is critical. The chair sets the tone of the committee: how meetings are run, what will be tolerated and what will not, and how robust discussion is. The effectiveness of a chair depends on their leadership skills and the level of trust, respect, and collaboration they foster within the committee and across party lines. Above, we described how committee meetings can be ineffective, inefficient, and uncondusive to good oversight. Committee chairs have the power to adopt more effective practices, as has been done in the case of SCOPA and in that of the justice committee.

⁶⁵ James Selfe, 'Hearings Day 336', 27.

⁶⁶ Parliamentary Monitoring Group, 'A Note to the Sixth Parliament: The Critical Role of Committee Chairperson', *That Week in Parliament* (blog), 18 June 2019, <https://pmg.org.za/blog/CommitteeChairperson>.

Our interviewees felt that the most effective chairs are able to engage all committee members across party lines and pursue a common purpose. Some felt that the most effective chairs are seasoned political operators with political gravitas and technical knowledge of the work of the departments overseen by the committee. They understand how to navigate the political environment and push back against partisan instructions that are not in the interests of oversight. They must be able to command the respect of the ministers they oversee. Members with political ambitions do not make effective chairs as they find themselves torn between pushing back against party instructions or having those ambitions dashed.

Good chairs also build strong relationships with support staff and make good use of the research and content support provided to them.

Committee chairs have a lot of power and, as we have heard from our interviewees, this power can be abused. They can refuse to place certain items on the agenda, limit the time given for questioning, refuse requests for additional resources, support or information, or use parliamentary protocol and rules to side-line committee members they disagree with.

Executive attendance and engagement

The Constitution and Rules envisage that ministers and deputy ministers should, as part of their accounting responsibilities, attend Parliament and its committees. Many MPs and expert witnesses told the Zondo Commission that ministers and others scheduled to appear at meetings of portfolio committees often failed to arrive, with or without belatedly tendered excuses.⁶⁷

Ministerial attendance is generally very uneven and depends on the portfolio committee and minister involved. Analysis by OUTA done in 2022 shows a general upward trend in ministerial attendance across ten committees. Of the ten committees that OUTA assessed for ministerial attendance, six ministries (COGTA, Communications, Health, Mineral Resources and Energy, Transport, and Women, Youth and Persons with Disabilities) attended fewer than half the meetings that took place; two ministers (Forestry, Fisheries and the Environment, and Water and Sanitation) had the highest attendance, at more than 70 per cent.⁶⁸

In its June 2023 analysis of the implementation of the Zondo Commission recommendations, PMG observed that generally, ministers attended committee meetings when big issues, such as annual performance plans and annual reports, were on the table. Ministers are not obligated to attend all meetings. Although some committees complained about the lack of ministerial attendance, this is not a widespread issue.⁶⁹

What is more worrying is the quality of the engagements between ministers and portfolio committees. A common concern among our interviewees was that ministers are “procedurally compliant”, that is, they attend meetings, but view reporting to the committee as a tick-box exercise and do not meaningfully account in any way.

67 Commission of Inquiry into State Capture, ‘Part VI Vol 2’, 483.

68 OUTA, ‘Kicking the Can down the Road: OUTA 2022 Report on Parliamentary Oversight in South Africa’ (Organisation Undoing Tax Abuse, October 2022), 29.

69 Sabelo Ndlovu, ‘A PMG Review of Parliament’s Processing of the State Capture Commission Report’ (Parliamentary Monitoring Group, June 2023), 11.

Some interviewees were particularly concerned that committees (and parliament as a whole) focus almost exclusively on overseeing the work of accounting authorities/heads of department (directors-general) and not the work of executive authorities (ministers). The work of executive authorities and heads of department is different, and both should both be subject to meaningful oversight. Executive authorities are responsible for strategic and policy direction and must hold the heads of their departments accountable but committees rarely probe these two functions; instead, they directly scrutinise the operations and finances of departments.

Portfolio committees should interrogate how ministers exercise oversight over directors-general and deputy directors-general, what work the minister is directly involved in, how is the minister delegates and directs the department, and how is the 'accountability chain' is working. These are questions that should be asked by portfolio committees, but are rarely addressed.

Finance dominates the agenda

The valuable – and limited – working time of a committee is dominated by the National Treasury's frameworks, guidelines and quarterly expenditure reports that give effect to Public Finance Management Act (PFMA), No. 1 of 1999. These issues dwarf other items on the agenda, severely limiting time and space for the Committee to monitor the implementation of legislation and policy.

The Money Bills Amendment Procedure and Related Matters Act, No. 9 of 2009 (the Money Bills Act) was arguably introduced as way to exert real influence over the executive. It was partly a response to the manner in which Treasury took charge of the budget and refused motivations from within Parliament to adjust its spending priorities. The Act did not allow Parliament to amend the budget, but it provided a new mechanism for Parliament to influence the budget-setting process – the intention of the annual Budgetary Review and Recommendation Reports (BRRRs) compiled for the Treasury by committees.⁷⁰

In practice, the BRRRs have become 'ritualised' and there is no available evidence to prove that they have any influence on budgeting decisions.⁷¹ The BRRRs are compiled to a template generated by the Committee Section. They are often very long and repetitive, and rely almost exclusively on information from the departments and entities being overseen. Committee support staff spend at least a month every year assembling reams of summaries of departmental and Treasury documents that are edited into further summaries for the consideration of committees. Some interviewees felt that this is a significant waste of staff effort.

The Money Bills Act requires Parliament to have considered and reported on all the annual reports of national departments and all their entities and all the state-owned enterprises within four weeks of receiving the voluminous documents. Committees must also interrogate Annual Performance Plans (APPs) and budgets, which take effect from 1 April each year – after being tabled only in the previous month. Committees are obliged to rubber-stamp executive reports and proposals without adequate oversight because of the short timelines set by Parliament.

70 Nicol, 'The Committee System of Parliament: Are the "Engine Rooms of Parliament" Exercising Their Powers Fully and Possible Areas of Reform'; Martin Nicol, 'The Role of the Portfolio Committee on Mineral Resources in Scrutinizing and Overseeing Executive Action'.

71 Martin Nicol, 'The Role of the Portfolio Committee on Mineral Resources in Scrutinizing and Overseeing Executive Action'.

One content advisor said portfolio committees adhere “slavishly” to the oversight mechanisms prescribed by the Money Bills Act and rarely venture further. This means portfolio committees end up spending an inordinate amount of time on overseeing the accounting authorities of state institutions, and not at all on executive action – that is, the activities of the minister. The effect of this in practice is to crowd out oversight on non-financial issues, for example, monitoring the implementation effects of legislation and on cross-cutting issues that affect several departments.

The role of the chair of chairs and parliamentary administration

We heard a number of complaints during our interviews about the role of the House chairperson on committees and the administration of Parliament generally. Specifically, respondents were concerned that they were sometimes prevented from conducting oversight, and that the committee section is “politicised”, overly bureaucratic and limiting in its support to committees.

INTERVIEWEE COMPLAINTS

- Parliament sometimes scheduled sessions when committees had oversight visits planned, forcing those members to abandon their work and return to parliament.
- Refusing to allow committees to meet more often, leaving them unable to process their oversight backlog.
- Refusing to provide the needed technical support for oversight work.
- Not allowing committee chairs to call special meetings.



Political culture and incentives

An overwhelming refrain of MPs, parliamentary staff, and other stakeholders, was that members of the governing party are simply unwilling to hold the executive accountable. The general view is that while the oversight tools available to Parliament are – theoretically – sufficient and effective, the ANC uses its majority in the House and in every portfolio committee to protect the executive and, in essence, protect the party.

Effective oversight is often seen as a tool of the opposition – a way of policing, exposing, and attacking the majority party – when it should be considered to be a central organising principle of the Constitution, and a means of complementing the executive’s delivery of its mandate. This problem is not unique to South Africa; it is inherent in all democratic multi-party systems of government. It is also exacerbated by the electoral system of proportional representation because members of parliament retain their seats through their membership of political parties.

The ANC’s majority since 1994 has essentially allowed it to set the rules, systems, and culture of Parliament since the dawn of democracy in South Africa. It occupies every leadership position in the institution, has a majority in every committee, and holds the chair of every committee bar one. If the ANC is unwilling to permit effective oversight, it has the power to do so. The ANC’s official position, as articulated by its conference resolutions and

statements by its leaders, is to encourage vigorous parliamentary oversight and demand that its MPs adopt an activist position in Parliament.⁷² It is undeniable that some majority party MPs are dedicated to this ideal. It is similarly undeniable, however, that the conduct of many ANC parliamentarians has not reflected this commitment to oversight.

Although recent harsh criticism by the Zondo report has spotlighted this issue in the public domain, it has always been a matter of concern for those paying attention to parliamentary activities. The ANC's interference in SCOPA's attempt to investigate the Arms Deal in 1999 is an instructive example, as is the Nkandla debacle for which Parliament was censured by the Constitutional Court for failing to fulfil its oversight mandate.

The testimonies at the Zondo Commission have also highlighted the extent to which internal contestations within the party can play out in Parliament. Former chair of SCOPA, Themba Godi, noted that when one political party is dominant, the extent to which oversight will be effective depends on the internal dynamics within that party ... not infrequently, partisan political battles including internal factional battles occur within committees.⁷³ The balance of power between competing factions within the ANC has been precarious for a long time. Many ANC leaders felt that pursuing accountability in Parliament would foster internal divisions and would taint the integrity of the ANC.

Members who belong to the majority party are often uncomfortable with calling a minister to account and fear the consequences of doing so, especially when – as is frequently the case – that minister is their senior within the party. The Zondo Commission heard multiple testimonies that ANC members were harshly criticised for fulfilling their oversight duties by party members who feared that demanding accountability from the executive would bring the party into disrepute. Some MPs faced personal attacks and threats of violence for going against the party line.⁷⁴ Godi noted that some of the most effective members of SCOPA were not retained by the DA and ANC – showing that those who show true commitment to accountability are often punished by their parties, or at least are not sufficiently valued.⁷⁵

In Parliament, this can play out in different ways. In the routine functions of Parliament, partisan MPs ask 'sweetheart' questions and do not interrogate the activities of the executive with any rigour. Often, MPs are effective within a portfolio committee setting – they ask sharp and important questions, demand explanations, and express dissatisfaction with the executive – but do not take any tangible actions to ensure accountability. Partisan committee chairs ignore requests from opposition committee members for information, support, or agenda items; conduct meetings in a manner that prevents effective scrutiny; and ignore or abuse parliamentary rules in order to protect party members or the image of the party. Similarly, the speaker, deputy speaker, and house chairperson have all been criticised for perceived bias in adjudicating and enforcing rules.

The ANC's study groups are often mentioned – by critics and supporters alike. These study groups correspond to portfolio committees and meet weekly to prepare for committee meetings. They include the ANC committee members as well as the relevant minister and deputy minister. These groups have researchers and other support. They discuss the issues on the agenda, question the minister or deputy minister, and decide on a strategy – often questions to be asked and comments to be made – for the subsequent committee meeting. Some respondents felt that ANC members were unwilling to truly engage in the committee meeting as everything was predetermined.

72 See, for example: Commission of Inquiry into State Capture, 'Part VI Vol 2', 565–66.

73 Themba Godi, 'Hearing Transcript: Day 335', 326.

74 Commission of Inquiry into State Capture, 'Part VI Vol 2', 601.

75 Themba Godi, 'Hearing Transcript: Day 335', 71–72.

Some ANC members we interviewed praised these study groups as sites of rigorous oversight in which members demand accountability and subject ministers to more scrutiny than they would in committee meetings. Others felt the quality of study groups was uneven: a few provided for quality oversight while most study groups were poor and actively impeded effective oversight.

Study groups are a common feature of parliamentary caucuses and can certainly play a positive role: one MP we interviewed from an opposition party even lamented the deterioration of their own study groups. Study groups can provide space for a party to discuss and develop its policies and agenda, which is particularly important when legislating. However, demanding accountability only internally and behind closed doors, away from the formal structures of Parliament, is antithetical to a democratic and transparent mode of governing.

Follow-through and enforcement

All MPs we spoke to indicated that executive non-responsiveness may be the most significant challenge to exercising effective oversight.

Portfolio committees 'speak' through reports that contain recommendations for remedial action, and are tabled before and (usually) adopted by the National Assembly. For example, they request ministers to report to Parliament on specified steps taken to address particular issues within a given period. However, non-implementation by the executive of remedial measures required by committee reports is a continuous problem.

The OVAC model, published in 2009, noted the need to track and monitor recommendations made to the executive, and the need for strengthened support services to enable this. In 2017, the High-Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change called for a more active Parliament to ensure strict enforcement of (or even the introduction of, where necessary) penalties for lack of performance by the executive.⁷⁶

Over the years, MPs have called for a system to monitor and follow up on recommendations made to the executive. Themba Godi testified that he had been promised in 2019 that the speaker's office would develop a "dashboard" for this purpose. To date, no such system has been implemented, which means there is no structured, programmatic monitoring mechanism through which MPs can ensure that the executive responds to the recommendations made by their reports and resolutions.⁷⁷

... executive non-responsiveness may be the most significant challenge to exercising effective oversight.

⁷⁶ 'Report of the High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change', 39–40.

⁷⁷ Themba Godi, 'Hearing Transcript: Day 335', 64–69.

Many of our interviewees noted that MPs will frequently raise serious issues, confront the executive about poor performance, and complain about executive failures, but rarely make any actionable recommendations for remedial measures.

Testimony at the Commission of Inquiry into State Capture showed that although exponential increases in irregular expenditure in state institutions such as PRASA were noted and flagged by SCOPA and the Auditor-General, parliamentary oversight proved unable to resolve this problem. Despite the committee repeatedly calling for action to be taken against officials, for example, action was hardly ever taken, and implicated officials continued in their positions with impunity. Godi warned that without real accountability for public funds spent, parliamentary oversight would be reduced to a mere ritual.⁷⁸

Year after year committees flag financial and budget issues, but continue to approve the budgets presented to them by the executive. Committees can refuse to approve budgets, which is – correctly – seen as a drastic measure of last resort. Committees have, in the past, threatened to refuse a department's budget in order to force the executive to act on their recommendations. This has been effective, but is rarely done.

Many of our interviewees noted that MPs will frequently raise serious issues, confront the executive about poor performance, and complain about executive failures, but rarely make any actionable recommendations for remedial measures. This is in part due to the political incentives outlined above, but also speaks to skills and capacity issues.

Ad hoc committees

The Rules provide for the establishment of an ad hoc committee for a specific task, which may include conducting an inquiry or investigation and reporting or recommending to the Assembly, steps to be taken pursuant to its findings. Opposition parties call for *ad hoc* committees far more often than the majority party, usually to investigate serious allegations of corruption in the media. There is a feeling that single-issue investigations with dedicated resources are more effective than the routine oversight conducted by portfolio committees. The majority party contends that portfolio committees should be able to deal with most issues as part of their normal oversight duties, and that too many ad hoc structures interfere with the work of Parliament.

78 Themba Godi, 49.

OTHER OVERSIGHT MECHANISMS

Other oversight mechanisms include:

1. *Questions for Written or Oral Reply*
2. *Plenary debates, motions and members' statements*
3. *State institutions representing democracy*
4. *Removal of the President and Cabinet*

1

Questions for Written or Oral Reply

Another oversight tool available to MPs is their right to ask questions of the executive (the president, deputy president, and ministers) which is obligated to respond.⁷⁹ Questions are a vital tool for MPs to collect information from the executive, place issues on the record, and raise issues of public concern. This is a mechanism used in parliamentary democracies across the world. MPs ask questions based on issues encountered in their portfolio committee work, their constituency work, their interactions with civil society and citizens, and salient political, social, and economic matters in the public discourse and media.

MPs are not limited in terms of which member of the executive they can address questions. This allows MPs to participate in oversight more broadly outside of their portfolios, and to engage with the executive on transversal issues. Additionally, it is one of few tools MPs can use to exercise oversight over the president.

Questions for Written Reply are limited to three questions per MP per week and must be replied to by the relevant cabinet member within ten working days. Members of the executive may request a ten-day extension from the speaker if they have a valid reason.

Questions may also be put for oral reply, although written answers allow for more detailed information. The president answers six questions, once a term, the deputy president answers four questions during ordinary question time (generally once every two weeks), and ministers are divided into three clusters for the purpose of questions, with a cluster answering questions each week on rotation.

THE QUESTIONS OFFICE AND SPEAKER'S OFFICE

Parliament's Questions Office helps MPs comply with the Rules, advise on style and content, and offer clarity where necessary. The Speaker's Office monitors answering of questions and escalates the matter of unanswered questions. The speaker is required to inform the Leader of Government Business (LOGB) – i.e., the deputy president – of all unanswered questions. Portfolio committee content advisors may also assist committee members with drafting questions.

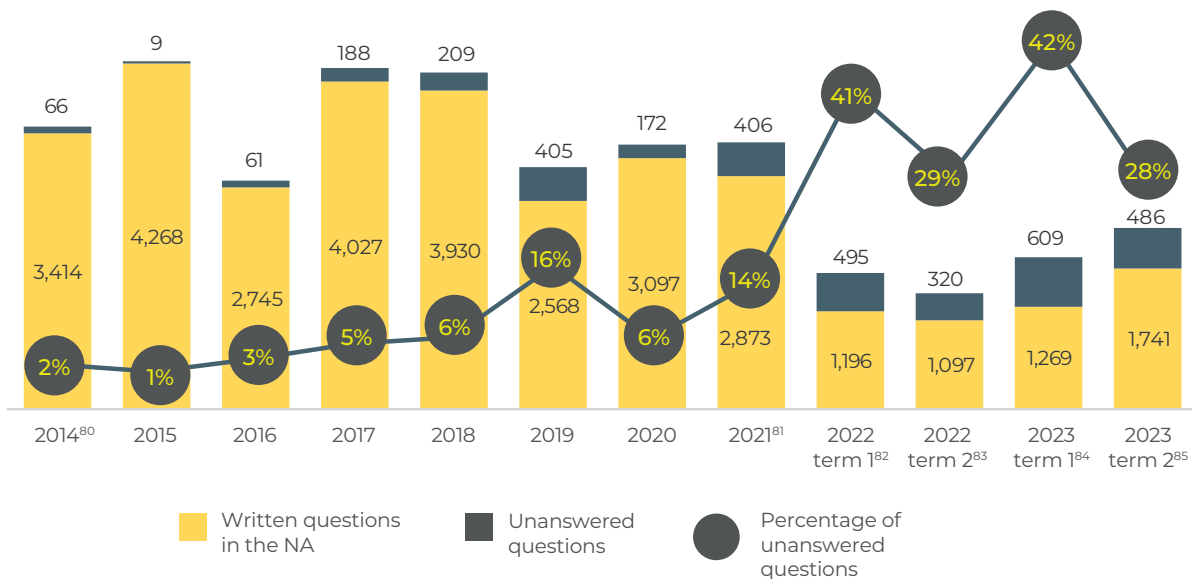
⁷⁹ For a comprehensive description of the question process and analysis of the oversight function of questions in Parliament, see: Rebecca Sibanda, 'Assessing the Effectiveness of Written Questions & Replies as an Oversight Mechanism' (Parliamentary Monitoring Group, 2021).

Late and unanswered questions

Unanswered and late responses to written questions have been contentious for many years, with MPs from all parties calling for a formal mechanism to track answered questions and sanction ministers who fail to answer. Although Parliament's Rules Committee has considered creating such a mechanism since at least 2000, it was only in 2017 that Rule 136 was established; Rule 136 requires the speaker, in consultation with the Rules Committee, to establish a system to monitor, and report regularly to the House on, unanswered questions. Although a system was proposed, it was not implemented before the end of the Fifth Parliament.

In August 2021 a mechanism was adopted by the Rules Committee of the Sixth Parliament, and by the National Assembly in September 2021. The mechanism mandated the speaker to write to cabinet ministers on a quarterly basis requesting reasons for their failure to meet the deadlines stipulated. The speaker must also alert the LOGB of outstanding replies on a quarterly basis. In the event of continuous non-compliance or lack of improvement, the speaker must consider a reprimand in the plenary, and, as a last resort, may direct a formal complaint directed to the LOGB.

It remains unclear what sort of action would be taken by the LOGB that would result in timeous action on the part of ministers. Some members of the rules committee were concerned that the nature of the theoretical reprimand was vague, and that there were no measures in place to deal with ministers whose answers were evasive or of poor quality.



From 2018 to 2020, 71% of questions were answered late.⁸⁶

⁸⁰ Data for 2014-2020 from Sibanda.

⁸¹ Parliamentary Monitoring Group, 'Review of Parliament 2021', PMG, 15 December 2021, <https://pmg.org.za/blog/Review%20of%20Parliament%202021>.

⁸² Parliamentary Monitoring Group, 'First Term Review 2022', PMG, 7 April 2022, <https://pmg.org.za/blog/First%20Term%20Review%202022>.

⁸³ Parliamentary Monitoring Group, 'Second Term Review of Parliament 2022', PMG, 29 June 2022, <https://pmg.org.za/blog/Second%20Term%20Review%20of%20Parliament%202022>.

⁸⁴ Parliamentary Monitoring Group, 'First Term Review of Parliament 2023', PMG, 5 April 2023, <https://pmg.org.za/blog/First%20Term%20Review%20of%20Parliament%202023>.

⁸⁵ Parliamentary Monitoring Group, 'Second Term Review of Parliament 2023', PMG, 3 July 2023, <https://pmg.org.za/blog/Second%20Term%20Review%20of%20Parliament%202023>.

⁸⁶ Sibanda, 'Assessing the Effectiveness of Written Questions & Replies as an Oversight Mechanism', 12.

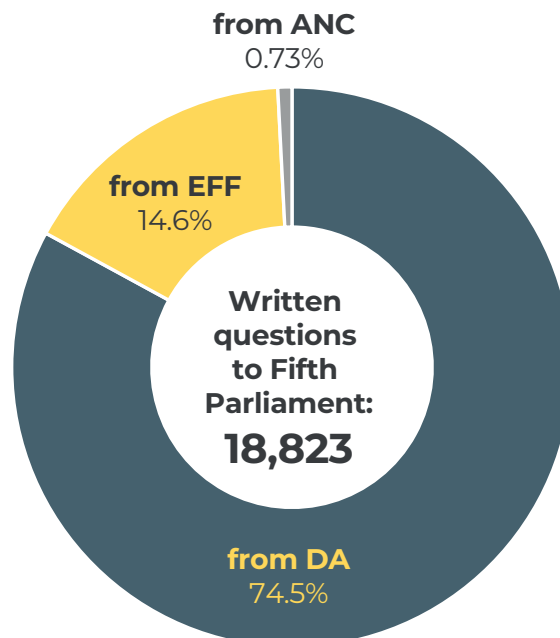
Effectiveness of questions

The MPs we spoke to frequently write questions and consider them to be a key oversight tool; they are an effective means of collecting information, as well as placing issues on record, raising matters of public concern, and placing pressure on the executive – and even on Parliament itself, and its committees – to address burning issues. MPs noted that questions were particularly useful, as they allow members to pursue oversight issues outside the realm of their portfolio committees, particularly regarding the Presidency, and to seek answers where the chair of a committee may not allow them to raise a particular issue.

In all parliaments, opposition parties are more active in asking questions than governing parties. MPs from the governing party tend to obtain information informally or bring government attention to issues due to their close relation to the government.⁸⁷ This is certainly true in South Africa. A total of 18,823 written questions was posed to the executive over the term of the Fifth Parliament; 74.5 per cent by the DA, and 14.6 per cent by the EFF. Only 0.73 per cent of the questions were posed by the ANC.⁸⁸

While questions can be – and certainly have been – used effectively for oversight, this is not always the case. MPs from the governing party do sometimes use this tool to support their colleagues in the executive by asking ‘sweetheart’, ‘praise-singing’ questions, while opposition MPs sometimes ask adversarial questions clearly geared towards scoring political points rather than obtaining information or explanations.

In general, written replies are comprehensive and accurate, although frequently late. However, members of the executive sometimes give vague, inadequate or obfuscatory responses, without facing any consequences, something MPs have complained about for years.⁸⁹



87 Parliamentary Monitoring Group, 'Written Questions: A Critical Oversight Mechanism', *This Week In Parliament* (blog), 17 February 2021, <https://pmg.org.za/blog/Written%20Questions:%20A%20Critical%20Oversight%20Mechanism>.

88 Parliamentary Monitoring Group.

89 See eg. Parliament of the Republic of South Africa, 'Report of the Independent Panel Assessment of Parliament', 50.

2

Plenary debates, motions and members' statements

In plenary debates, certain mechanisms for conducting oversight are used, including the consideration of committee reports; showcasing, scrutinising and debating the implementation of policy and budget votes; members' statements; and, questions by members of Parliament.⁹⁰ Debates can be an opportunity for the House to consider important national issues. Members can bring motions to propose that the House do something, order something to be done, express an opinion with regard to some matter, or debate a particular issue. Members of Parliament are also afforded the opportunity to make statements on any matter in the House.

On average, there are almost 100 National Assembly plenary sessions in a year, which are generally televised or livestreamed. The administration of plenary sittings largely runs well, with exceptions, and things are busy when Parliament is in session.⁹¹ However, being busy should not be confused with being effective. Most of our interviewees felt that plenary debates are ineffective in terms of oversight; many felt there is a generally poor level of debate; that speakers are often weak, waste time, and focus on political point-scoring over substance; and that the House is undisciplined (related to this, some felt that discipline was not enforced). The structure of debates is in itself not conducive to effective discussion; one MP told us: "To think that you can make a substantial point in five minutes is ridiculous." The poor quality of debate in plenary sessions has been a subject of concern for MPs for many years; the 2009 Report of the Independent Panel Assessment of Parliament urged Parliament to take steps to improve the quality of debate, both to increase the efficacy of Parliament and to protect its "eminence as a meaningful forum for debate of issues of national importance".⁹² There was consensus that portfolio committees are better placed to facilitate much more effective and focused debates, although generally speaking they do not.

To think that you can make a substantial point in five minutes is ridiculous

⁹⁰ Parliament of the Republic of South Africa, 'Oversight and Accountability Model (OVAC)', 21.

⁹¹ Doyle, Rault-Smith, and Alli, 'Where Was Parliament? A PMG Review of Parliamentary Oversight in Light of State Capture and the Zondo Report', August 2022, 9.

⁹² Parliament of the Republic of South Africa, 'Report of the Independent Panel Assessment of Parliament', 49.

3

State institutions representing democracy

The Constitution provides for specialised constitutional bodies with an oversight role. These State Institutions Supporting Democracy (ISDs) are constitutionally independent but must report to the Assembly on their activities and the performance of their functions – including how their budgets are spent – at least once a year. These bodies, which include Chapter 9 institutions and other associated bodies, are the Public Protector, the South African Human Rights Commission, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, the Commission for Gender Equality, the Auditor-General, the Electoral Commission, the Financial and Fiscal Commission, the Independent Communication Authority of South Africa, the National Youth Development Agency, the Pan-South African Language Board and the Public Service Commission.

These ISDs serve two important roles complementary to Parliament's oversight function: together with Parliament they conduct oversight over the government and organs of state; and they support and aid Parliament in its oversight function by providing it with information that is not derived from the executive. They are specialised and focused and therefore invaluable to Parliament; they perform functions that Parliament simply does not have the capacity for. It is difficult to imagine how Parliament would conduct effective oversight without, for example, reports of the Auditor-General. In addition, their constitutionally mandated independence and impartiality allows them to conduct investigations and make findings that MPs, because of party discipline, may not be able to.⁹³ Parliament's oversight function is therefore strengthened by ensuring that these bodies are effective and independent.

Given the varying nature of their mandates and functions, the interaction of these institutions with Parliament differs significantly. Parliament has the task of ensuring the accountability of these institutions without infringing upon their independence, which is critical to the work they do. This occurs for the most part through the tabling of their annual reports in Parliament. Some of the institutions, such as the Public Protector, may submit substantive reports to the National Assembly for consideration and action. In 2007, a comprehensive review of Institutions Supporting Democracy was completed by a multiparty *ad hoc* committee of the National Assembly specifically constituted for this purpose. It recommended establishment of a unit on constitutional institutions and other statutory bodies; the unit was finally established in 2010.

Given that the Constitutional Court has found that the findings of the Public Protector – and therefore other Chapter 9 bodies – are binding, it is even more important to ensure that there is an effective way to hold these institutions accountable for the use of that power.

93 Corder, Jagwanth, and Soltau, 'Report on Parliamentary Oversight and Accountability', July 1999, 33.

4

Removal of the president and Cabinet

In terms of Section 89 of the Constitution, the president may, by a resolution adopted with a vote of at least two-thirds of its members, be removed from office (impeached) by the National Assembly on certain specified grounds. In terms of Section 102 of the Constitution, the National Assembly can, by a vote of a majority of its members, pass a vote of no confidence in the president; if it does this, the president and the other members of the cabinet must resign.

The importance of Parliament's ability to remove the president was strongly supported by the Constitutional Court in *UDM*, which found that a motion of no confidence is "a potent tool" for accountability and responsiveness to the needs of the people. Although other accountability and oversight mechanisms exist, in cases where the president (and their cabinet) have "disturbingly" failed to fulfil their obligations, "terminal consequences" may be most appropriate, i.e., removal from office. Importantly, the Court notes that the power to remove the president strengthens regular and less "fatal" accountability and oversight mechanisms. In the final analysis, Moengoeng CJ wrote,

[...] the mechanism of a motion of no confidence is all about ensuring that our constitutional project is well managed; is not imperilled; the best interests of the nation enjoy priority in whatever important step is taken; and our nation is governed only by those deserving of governance responsibilities. To determine, through a motion of no confidence, the continued suitability for office of those who govern, is a crucial consequence-management or good-governance issue. This is so because the needs of the people must never be allowed to be neglected without appropriate and most effective consequences. So, a motion of no confidence is fundamentally about guaranteeing or reinforcing the effectiveness of existing mechanisms, in-between the general elections, by allowing Members of Parliament as representatives of the people to express and act firmly on their dissatisfaction with the Executive's performance.⁹⁴

Removing the president from office is clearly a drastic measure of last resort. Although there have been many such votes in Parliament, none have passed.

The Zondo Commission and the Court in *UDM* both noted that such a vote is necessarily an intensely political issue, and that MPs of the governing party might face significant pressure and personal risk in voting to remove a president of their party, even if they felt it was justified. These pressures were described in detail by witnesses at the commission, such as Dr Khoza and Gwede Mantashe.

To protect MPs from the consequences of voting with their consciences, in 2017 the Constitutional Court allowed the speaker to determine that a vote of no confidence could be conducted by secret ballot. The speaker at the time seemed to acknowledge that a "toxified or highly charged" atmosphere prevented members from voting according to their consciences and allowed for a secret ballot in the subsequent vote of no confidence.⁹⁵

94 United Democratic Movement v Speaker of the National Assembly and Others (CCT89/17) [2017] ZACC 21; 2017 (8) BCLR 1061 (CC); 2017 (5) SA 300 (CC) (22 June 2017)

95 Parliament of the Republic of South Africa, 'Statement by the Speaker of the National Assembly on the Appropriate Voting Procedure Regarding the Motion of No Confidence in the President', 7 August 2017, <https://www.parliament.gov.za/press-releases/statement-speaker-national-assembly-appropriate-voting-procedure-regarding-motion-no-confidence-president>.

APPOINTMENTS AND REMOVALS

The Commission of Inquiry into State Capture identified the primary mechanism of state capture to be the “the strategic positioning of particular individuals in positions of power”, which was then used to gain control of public procurement and over law enforcement agencies. Corrupt politicians and officials used appointment and disciplinary processes to remove law-abiding public servants and replace them with those willing to be complicit in corruption. Broad executive powers of appointment and removal, without effective checks and balances, have allowed patronage considerations to pervade public administrative personnel practices, blurring lines in the political–administrative interface. These dangers, however, are not limited to executive appointments.

The National Assembly is tasked with appointing the heads of important oversight institutions, including: Office of the Public Protector; Auditor-General; South African Human Rights Commission; Commission on Gender Equality; Commission for the Promotion and Protection of Rights of Cultural, Religious and Linguistic Communities; Independent Electoral Commission; Inspector-General of Intelligence; and, Independent Policing Investigative Directorate (through approving the Minister of Police’s appointment). Some of these appointments are guided by clear legislation that outlines the qualification criteria for the incumbent, and establishes that candidates should be deemed to have some form of personal integrity, and should be ‘fit’, ‘proper’ or ‘suitable’ for the positions they wish to occupy. However, as noted by Corruption Watch in its submissions to the Commission of Inquiry into State Capture, a lack of rules and uniformity in proceedings in this space gives rise to political influence over appointment processes.⁹⁶

Our research has shown that parliamentary oversight is, above all, uneven.

This is reflected in parliamentary oversight procedures. Although there has been some adoption of ‘best practices’ in appointment and removal proceedings over time, until recently these processes differed greatly according to which parliamentary committee was currently responsible for conducting the proceedings. It is absolutely critical that the heads of these institutions are appointed – and, if necessary, removed – fairly, transparently, and objectively. Parliament’s involvement in these decisions is primarily because these institutions play a vital role in exercising oversight over the executive. It is therefore particularly important that the heads of these institutions are independent, fit for purpose, and not beholden to any political constituency – especially since Chapter 9 institutions have considerable powers and can issue legally binding remedial actions.

While it is true that independent processes that are appropriately fair, objective and transparent may be adopted by committees, the absence of codified and uniform selection processes leaves the system open to abuse, especially in light of the political pressures discussed throughout this report. Respondents interviewed for this study, for example, expressed concerns over the way in which the Portfolio Committee on Police dealt with the renewal of the IPID director’s term in 2019.⁹⁷

We also note that the lack of an established removal process based on best practices has undermined the Section 194 proceedings to remove the Public Protector. The process to determine the rules of the committee was lengthy, and has been the subject of drawn-out and expensive litigation. The committee might have been in a stronger position had it been able to draw on – and be backed up by – an existing process based on best practices.

⁹⁶ Corruption Watch, ‘2nd Submission to the State Capture Commission’.

⁹⁷ Also dealt with in detail in the Corruption Watch submission.

SANCTIONING MPs

Many MPs who have been implicated in wrongdoing have not been held accountable. Interviewees flagged this as a serious problem that threatens the proper functioning and credibility of Parliament. Some interviewees said the Ethics Committee was inexcusably slow and opaque. One case involving threats of violence to an MP by another MP is ongoing after two years – and witnesses have not yet been called about the date of the interview.

In May 2023, Parliament's joint committee on ethics and members' interests cleared Cedric Frolick, the Chair of Chairs, of state capture allegations arising from the Zondo Commission. Parliament's legal division had recommended more than a year before that the ethics committee consider whether Frolick had breached the Code of Ethics. There was no explanation given as to why the investigation took so long – or why the committee cleared him. The process has been completely opaque.

Frolick is not the only MP to be implicated in serious wrongdoing, but his case demonstrates the weaknesses of the system. He occupies a powerful position and can materially affect the oversight work done by committees. He continued to wield that power as House Chairperson for over a year before he was cleared. The same is true for two other MPs in powerful positions who were cleared at the same time – the late Tina Joemat-Petterson, and Minister Thulas Nxesi.

Complaints were lodged against Mosebenzi Zwane for his involvement in state capture in 2017. Only in 2023, six years later, did the Joint Committee on Ethics and Members' Interests sanction him by recommending that he be suspended from his seat in parliamentary debates for one parliamentary term.

When individual MPs are not held accountable it severely harms parliament's credibility and allows MPs involved in corruption and other wrongdoing to use their positions to protect themselves and their allies.

ROLE OF THE PRESIDING OFFICERS

The presiding officers are empowered to materially affect the exercise of parliamentary oversight. The speaker is tasked with maintaining order and discipline in the House, while presiding over House meetings and debates. The speaker is also the final authority on the interpretation and application of the rules of the National Assembly. The speaker must exercise these functions independently and impartially, and should command respect from all parties represented in the House. The speaker must be able to mediate the contestation and competing interests within the National Assembly in the interests of Parliament and the country more broadly.⁹⁸

The impartiality of the speaker was called into question during the Fifth Parliament, which resulted in a motion of no confidence being brought against them. On numerous occasions during the Fifth Parliament, the speaker appeared to be biased and partisan.⁹⁹ This contributed to the dysfunction of Parliament and the general breakdown of trust between political parties in the National Assembly.

The speaker is responsible for following up with the executive on questions, and tracking the implementation of recommendations in House resolutions, etc., a key link between Parliament and the executive. To pursue accountability effectively, Parliament needs a speaker who is impartial, skilled, and able to navigate the political environment, failing which it cannot function well, and enforcement of accountability will be impossible.

The 2009 Independent Panel observed that a conflict of interest may exist, or may be seen by the public to exist, when a presiding officer simultaneously holds a senior position in a political party. In certain political systems the speaker or chairperson of the house is required to resign from senior party-political posts for the duration of their appointment. The panel recommended that Parliament give serious consideration to this issue.

⁹⁸ Commission of Inquiry into State Capture, 'Day 345 Hearing Transcript', 18 February 2021, 15 ff.; Council for the Advancement of the South African Constitution (CASAC), 'Why the National Assembly Failed to Exercise Effective Oversight in Respect of State Capture'.

⁹⁹ Detailed in CASAC, as above.

CONCLUSIONS

We agree, along with most of the respondents interviewed for this study, various other sources, and the Commission of Inquiry into State Capture, that Parliament enjoys the essential powers required to exercise oversight over the executive.¹⁰⁰ The oversight mechanisms available to committees and individual MPs are generally sufficient and appropriate for this task. However, it is clear from our research that Parliament's ability to exercise oversight over the executive, and to hold the executive accountable, is weak.

There are pockets of effectiveness – certain portfolio committees, for example, are managing to conduct rigorous and in-depth oversight – but the performance of committees is very uneven. Although there are indications that oversight in general is better in the Sixth Parliament than in the Fifth, there have been no tangible changes to the way in which Parliament operates, and therefore no assurance that positive change is institutionalised.

We found a rigid commitment to the processes and routines of oversight. Committees meet, receive reports, question ministers, and generally comply with all that is required of them in terms of oversight but, by and large, those processes and routines do not result in effective explanatory accountability. That is, while the executive may be held to account for failing to report, it is not rigorously scrutinised for what it reports. This is not because the powers afforded to committees and MPs is insufficient – in fact, they are robustly empowered to demand explanations from the executive; however, these powers are underutilised. We found four main reasons for this. Firstly, the political environment disincentivises close scrutiny of the executive. Secondly, committees' ways of working are generally ineffective, inefficient, and sometimes even counter-productive. Thirdly, committees are under-resourced, especially in terms of technical support. Fourthly, many MPs do not have either the necessary capabilities or the commitment required to effectively fulfil their oversight duties.

Amendatory accountability is, unfortunately, barely extant. Committees that do exercise oversight keep identifying the same problems and making the same recommendations, but there have been no consequences for the executive authorities and no observable impact on delivery. Again, this can be attributed largely to the political incentives involved. The tools that do exist to enforce accountability – such as rejecting a budget or passing a motion of no confidence – are so drastic as to be unthinkable in the current political environment. There is a need for a programmatic strategy and set of tools for following up and enforcing House resolutions and ensuring that the executive is responsible to oversight recommendations.

¹⁰⁰ Commission of Inquiry into State Capture, 'Part VI Vol 2', 564.

PROPOSALS FOR REFORM

Electoral reform and the political system

This report has highlighted the impact of the political environment and electoral system on parliamentary oversight. Reforms to the oversight mechanisms in Parliament can empower MPs who take their mandate seriously, and might go some way to institutionalising a culture of oversight; we discuss these reforms below. Ultimately, however, we will not have effective oversight if parliamentarians are not willing to use the powers given to them.

We have discussed how the political incentives that may compromise oversight are inherent in a multi-party democracy.¹⁰¹ Many political and CSOs are advocating for reforms to the electoral system that will change these incentives.

The 2009 Independent Panel Assessment of Parliament recommended that “the current electoral system should be replaced by a mixed system which attempts to capture the benefits of both the constituency-based and proportional representation electoral systems” – specifically to address the accountability gap.¹⁰² The Van Zyl Slabbert Electoral Task Team made a similar recommendation in 2003. In its 2017 report, the High-Level Panel on the assessment of key legislation and the acceleration of fundamental change, led by former President Kgalema Motlanthe, found that there were critical weaknesses in the accountability of Parliament to the public, given the indirect linkages between MPs and their constituencies. The Panel recommended that Parliament legislate a national electoral system that makes MPs accountable to defined constituencies in a mixed proportional representation and constituency system. The Zondo Commission recommended that Parliament consider whether introducing a constituency-based (but still proportionally representative) electoral system would enhance the capacity of members of Parliament to hold the executive accountable – and, if so, whether, when weighed against any possible disadvantages of, this advantage justifies amending the existing electoral system. CASAC, OUTA, MyVoteCounts and other CSOs have supported electoral reform for a mixed system – as did many individuals who were interviewed for this study.

While constituency-based systems certainly have their drawbacks, the general view is that a constituency-based system of proportional representation could empower MPs within a party to be more responsive to the political views and interests of their constituents and, therefore, less beholden to party leadership.

We cannot conduct a full interrogation of the electoral system and possible alternatives in this report. We do, however, agree that a change in electoral system is unlikely to be a panacea. Although it may help improve accountability, many of the political incentives outlined here will remain. A lot of work is needed to develop an appropriate system that is aligned with the constitutionally mandated principle of “in general, representation”. Even without substantial change to the electoral system, however, the political environment is rapidly changing. Coalition governments in all spheres are becoming more likely, and

¹⁰¹ Even the Constitution recognises the dangers here – In terms of S57 the Assembly rules must allow for the participation in the proceedings of the Assembly and its committees of minority parties represented in the Assembly, in a manner consistent with democracy. The Constitutional Court has held that Section 57 must be interpreted “as empowering the Assembly to make rules that do not constitute an inadvertent deployment of invincible giants in a member’s path to exercising their rights”.

¹⁰² Parliament of the Republic of South Africa, ‘Report of the Independent Panel Assessment of Parliament’, 8.

will necessarily change the way that oversight is conducted in provincial and national legislatures.

We recommend that civil society, and the public more broadly, pay keen attention to the ongoing debate on electoral reform and the political system. We must also carefully monitor the activities of committees and MPs to ensure that they are fulfilling their oversight duties. After all, the electorate is empowered to vote out representatives that do not work in their best interests.

We also recommend that presiding officers and house chairpersons be required to resign from senior party-political posts for the duration of their appointment. Their duties – and the powers afforded to them for the fulfilment of those duties – require that they be impartial and independent, and they should not have competing obligations to their parties.

Overseeing the Presidency

We support the recommendation that Parliament establish a committee to exercise oversight over the president and the Presidency. The activities of the president and the Presidency, barring those programmes such as the Department of Public Service and Administration and the Department of Planning, Monitoring and Evaluation that have been assigned to portfolio committees, are not subject to adequate oversight.

The Commission of Inquiry into State Capture has recommended the creation of such a committee,¹⁰³ and is endorsed by a variety of political and civil society organisations. The IFP has been calling for the establishment of a portfolio committee on the Presidency for some time, long before the Zondo Report was issued; the Democratic Alliance has endorsed this proposal as part of its '10-point action plan to reform Parliament'; and the Economic Freedom Fighters have also demanded it.

Some ANC MPs (in their remarks to the Commission, and in the meetings of the Rules Committee) have claimed that there is no need for such a committee, as all executive functions are delegated by the president to a department led by a minister, which is overseen by a portfolio committee. This is not correct.

The lack of a dedicated committee to oversee the Presidency is an obvious gap. The Presidency is the only department or entity that receives a budget from Parliament without detailed, rigorous parliamentary scrutiny by a parliamentary committee.¹⁰⁴ During the Sixth Parliament the Presidency has established a growing number of Presidential Advisory Councils, Panels, Task Teams, Committees, Summits and Commissions, which have in effect consolidated and centralised a lot of vital work within the Presidency – and outside of line departments. These are not subject to systematic oversight and are not made accountable to Parliament.

¹⁰³ Commission of Inquiry into State Capture, 'Part VI Vol 2', 406.

¹⁰⁴ Parliamentary Monitoring Group, 'Will Parliament Create a Committee to Oversee the Presidency?', *This Week In Parliament* (blog), 24 August 2022, <https://pmg.org.za/blog/ParliamentaryCommitteeonthePresidencyIsItFeasible>.

At present, both the president and deputy president appear in the National Assembly chamber to answer oral questions once per quarter, and are mandated to respond to Questions for Written Reply from MPs – their engagement with Parliament generally ends there. Questions are *ad hoc tools used by individual MPs at their own initiative. There is no ongoing, routine, structured oversight of the work of the president, or of the Presidency more broadly.*

Aside from questions, the only other mechanism available to Parliament to hold the president accountable is to remove him via impeachment or a vote of no confidence. As we noted above, this is a drastic measure of last-resort – and is unlikely to be effective as long as a governing party holds a significant majority, as is currently the case.

An effective oversight mechanism for the president and the Presidency that is *ongoing, systematic, and programmatic* is required. This means the activities and the outcomes of the Presidency must be routinely scrutinised in a forum that is structured, predictable, resourced, supported by research, and open to the public. A portfolio committee is patently the best mechanism for this kind of oversight.

Proposals for enhancing the functioning of committees

Resourcing

The Zondo Commission has recommended that Parliament ensure that adequate funds are allocated, particularly to portfolio committees, to enable effective parliamentary oversight, and that scale and skills of the research and technical assistance made available to the portfolio committees be enhanced. These recommendations – particularly the call for enhanced support to committees – were echoed by almost all of our interviewees.

PMG has drawn attention to the underfunding of oversight and has recommended that Parliament conduct an audit to assess whether its current resourcing is adequate for effective oversight. We agree. As the Sixth Parliament comes to a close, it must conduct a rigorous assessment of the resources allocated to committees' oversight activities.

The speaker has indicated that Parliament officials will engage National Treasury on impending shortfalls in the allocation of the Parliament's budget. In the executive's response plan, the President said National Treasury would engage with Parliament to determine the most appropriate way to give effect to the Commission's recommendations on the resourcing of Parliament, specifically with respect to its capacity to hold the executive to account. These discussions do not appear to have been initiated yet.¹⁰⁵

Strengthening research capacity

It is clear from our interviews and research that portfolio committees rely heavily on the work of parliamentary researchers. Often, MPs simply do not have the time to process all reports submitted to their committees, keep up with independently produced research and information, monitor the broader policy environment, and stay up to date with developments in their portfolios across the country. Members also often lack the background knowledge, institutional memory, and the skills to navigate the huge amount of information that goes through Parliament effectively.

¹⁰⁵ Ndlovu, 'A PMG Review of Parliament's Processing of the State Capture Commission Report'.

In its strategies for improving oversight and accountability, Parliament has emphasised the role of research and the need to strengthen research capacity. Nevertheless, the research unit remains seriously under-capacitated. Portfolio committees are generally assigned one researcher, which is not enough. The research unit currently comprises around 40 researchers; the many vacancies cannot be filled as the posts have been frozen. We recommend that these posts be unfrozen, and that serious consideration be given to increasing the capacity of the unit. Our research indicates that Parliament may struggle to attract and retain skilled researchers due to the level of remuneration and the lack of potential career growth. Lastly, the administration and top management of Parliament must support and back up research staff when they navigate thorny political issues. These issues should be taken seriously; the research used by committees must be high in quality in order to be useful for effective oversight.

Parliament is apparently exploring the possibility of moving away from dedicated committee researchers towards a shared services model to optimise the capacity that exists. There are, however, potential drawbacks to such a model. Researchers located within committees are able to build expertise in a specific area, understand ongoing policy questions within committees, and are possibly better able to predict the needs of committees and conduct proactive work. We recommend exploring a mixed model with room for dedicated committee researchers in addition to a shared service pool.

Opposition chairs

We have detailed in this report how much influence a chair of a committee has over its oversight activities – and how effectively the committee pursues accountability. In recognition of this vital role the Zondo Commission recommended that appointment of chairpersons of committees include more members of opposition parties. This recommendation was rejected by the ANC in the NA Rules Committee. However, we still believe that allocating committee chairs proportionally according to the number of seats held by a party in the legislature may strengthen oversight and accountability, and is worth pursuing.

Most of the vital oversight and accountability work in Parliament is done through committees. It is important that this work is protected to some extent from inappropriate political pressures, while ensuring that members fulfill their obligations as party representatives. Opposition chairs would not be subject to political pressures from the executive and party leadership – but majority parties would still make up the majority of committee members, and would therefore still be empowered to pass resolutions and direct committee activities. In addition, the speaker, deputy speaker and House chairperson of committees would still be elected by the majority party, and could therefore hold opposition committee chairs accountable if they were to abuse their positions.

Some of this study's respondents have endorsed this view, pointing to SCOPA as an example of the effectiveness of opposition chairs. The governing party must be able to work with minority parties in the legislatures. The increasing likelihood of coalition governments and stronger opposition parties means that it is becoming increasingly untenable for a single party to control every leadership position and every committee.

Changes to committee meetings

The way in which a committee meeting is run can either hamstring accountability or empower it. We have described how committee meetings are often not conducive to effective oversight. It is untenable for committee meetings to be dominated by lengthy presentations from the executive; receiving reports does not constitute oversight.

Some committees have independently developed more effective ways of running meetings, handling reports, questioning the executive and conducting oversight activities. This is laudable; other committees should take note of these innovations, not just in terms of adopting some of these practices, but also in terms of shedding the rigid adherence to old, institutionalised practices that have proven to be ineffective.

An effective oversight meeting:

- Is based on materials distributed sufficiently in advance;
- Allocates minimal time to presentations from the executive and as much time as possible for questioning;
- Proceeds on the basis that all attendees are familiar with the materials to be discussed;
- Provides for in-depth questioning by committee members, by allocating sufficient time per member and allowing direct follow ups, rather than taking rounds of questions and allowing a presenting entity to respond all at once;
- Takes into account the results of previous oversight activities, including following up on previous recommendations;
- Results in a comprehensive report, including actionable recommendations with clear timeframes, and which not only notes dissent from committee members on resolutions but records the reasons for the dissent.

The Rules committee(s) could adopt certain rules or guidelines for committee meetings, which are presently left almost entirely to the discretion of the chair. In the absence of formal rules – or even guidelines – however, MPs who are committed to ensuring rigorous oversight should strive to adopt these principles within their own committees and push for more effective meetings. Members should pay attention to the way in which other committees manage their oversight duties, learn from effective examples, and not be afraid to adapt and improve their ways of working.

We also agree with our interviewees who strongly felt that portfolio committees should generally meet more often and for longer periods. It has been noted that 3 to 4 hours is hardly enough time to fully probe a complex report from a large institution, let alone deal with all of the other issues within a portfolio. We also agree that committees should be able to call their own meetings without the permission of the chair of chairs.

We support PMG's recommendation that more committees look into dedicated subcommittees, especially when the committees oversee a large number of entities or the department they oversee has two distinct mandates. This would ensure that key issues do not get lost in the generally overburdened programmes of committees.

Proposals for strengthening amendatory accountability

The evidence and analysis presented in this report shows that Parliament does generally engage with *explanatory accountability*, albeit unevenly. Ministers and heads of state entities are often called to answer questions and explain themselves, reports of institutions are processed and interrogated to some degree, and financials are processed in significant volume.

But, as we have established above, explanation is only one half of the equation. For accountability to be effective, i.e., to ensure that government fulfils its constitutional obligations and is responsive to the people it governs – it must include an amendatory component. The executive must make things right.

Exactly how to achieve amendatory accountability is a thorny problem. Parliament cannot overstep the bounds of separation of powers and dictate the use of executive power. But it can, and should, instruct the executive to take remedial action where it has failed to perform.

At the most basic level, this means Parliament must be able to make meaningful and actionable recommendations. Committees already issue recommendations in their oversight reports to the House; when these are adopted, they are given the force of House resolutions. Our research shows that these recommendations need to be carefully developed to be effective. They must be clearly actionable – usually broken into different steps – and must include stipulated, reasonable timeframes. The recommendations themselves must be within Parliament’s remit – instructions to provide information, for example, or to present a plan to address a failing.

We would also recommend that the executive follow up on recommendations not only to the House but specifically to the portfolio committee responsible.

The next level is to develop a robust system for tracking and following up those recommendations. This has been recommended by the Zondo Commission, which noted that virtually all witnesses in this workstream agreed on the need to implement, as a matter of priority, such a system. Our interviewees also endorsed this recommendation, as do we.

For accountability to be effective it must include an amendatory component. The executive must make things right.

The National Assembly Rules Committee, as part of their duty to implement some of the recommendations made by the commission, identified the following as a basis for new rules:

A basis for new rules

- Recommendations emanating from committee activities should be substantiated and specific (e.g., include timeframes) and relate to a matter within the purview of the Assembly.
- The speaker is 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 is to report to the Rules Committee possibly once a year on the status of responses.
- The executive is to report to Parliament on measures emanating from resolutions within the timeframes prescribed or, in the event no timeframes have been given, it could be 60 days. In the event of a delay, a minister is to inform the speaker of the reasons and provide a reasonable timeframe within which a full report can be provided.
- The LOGB is to submit an annual report to the speaker on the status of executive compliance with resolutions, for inclusion in the speaker's report to the Rules Committee.

These rules, if adopted, would be a step in the right direction, but need to be carefully implemented.

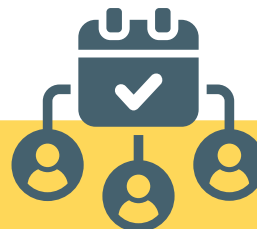
Some witnesses testifying at the Zondo Commission referred to a plan to develop a 'dashboard' that would keep track of deadlines and follow up and ensure compliance with House resolutions. No such dashboard was configured (and no alternative mechanism was adopted to monitor and enforce House resolutions). Nevertheless, we would support the creation of a mechanism in this vein that would be accessible on an ongoing basis to MPs. It could also serve as a useful repository for institutional memory.

If Parliament is slow to adopt an effective tracking and monitoring system, committees should develop their own systems in the meantime, keep careful track of recommendations, schedule specific follow-up meetings, and make timely reports to the speaker where there is noncompliance.

Beyond tracking and monitoring, Parliament has some amendatory powers that it rarely – if ever – uses, including amending budgets and instituting inquiries. Meaningful and appropriate use of these instruments would allow parliament to more effectively hold the executive accountable.

Ensuring true amendatory accountability takes place, and not simply procedural compliance with the rules set out above, will ultimately require a productive political environment and culture of oversight within Parliament.

Appointment reform



Proposals made by Corruption Watch and recommended by the Zondo Commission

- Review the necessary legislation to ensure that it provides guidance on fair and objective appointment processes;
- Develop multi-stakeholder structures to oversee appointment proceedings;
- Ensure that parliamentary processes are transparent and open and involve the public;
- Ensure that candidates are tested, inter alia, for integrity and ethics, using objective criteria; and
- Ensure that the shortlisted candidates are appropriately vetted before recommendation to the Assembly.

We would add that it is important that removal processes are treated with the same care.

Accountability of MPs

Many parliamentarians have been implicated in serious wrongdoing by the report of the Zondo Commission (and in other scandals since 1994). How can the people trust Parliament to hold the executive accountable when many of its own members continue to evade accountability their own transgressions?

We heard from our interviewees that many complaints against MPs are not timeously or appropriately resolved. One case, involving serious threats made by a member to another member, has been ongoing for two years, without witnesses being called to date. The joint committee on members ethics and members' interests have meanwhile cleared three MPs implicated in the Zondo report after a lengthy process, without providing any reasons for doing so.

The lethargy and opacity of these processes does nothing to help the credibility of Parliament as an institution, and parliamentarians in general. Parliament must ensure that the institution has the investigating capacity and appropriate mechanisms in place to strengthen the ethics committee(s). The rules that govern these processes must allow for clear and reasonable time frames for the resolution of complaints, and provisions for these processes to be open and transparent.

Public participation and citizen engagement

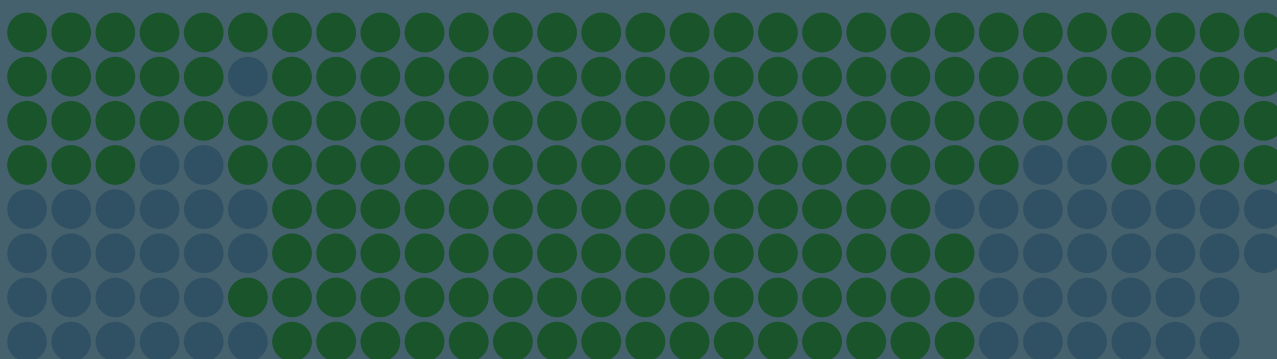
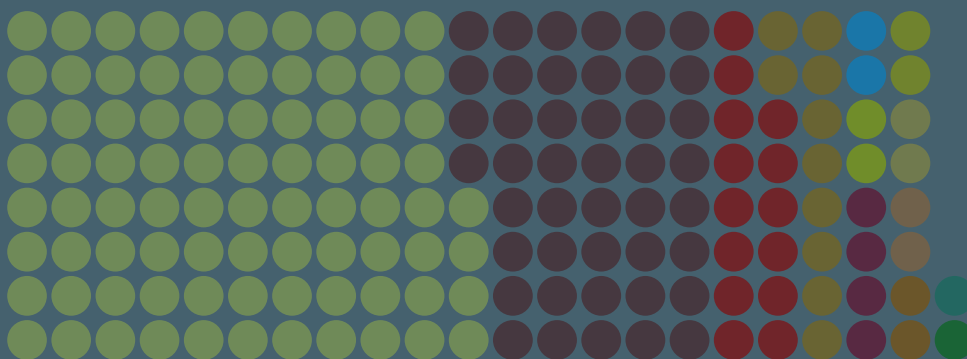
The MPs and parliamentary staff we interviewed for this project lamented that public participation occurs almost exclusively in the realm of legislating; even then, it is often a tick-box exercise that precludes meaningful engagement with the citizens and groups who will be affected. Is there a role for the public in oversight processes? We would say yes, in two ways.

The first is **participation in the activities of oversight committees**. CSOs, unions, community groups and other stakeholders can provide important information and draw attention to critical issues. Committees should encourage and facilitate them to make inputs and submissions on oversight matters.

The second is by **actively overseeing the performance of Parliament itself**. CSOs, the media, unions, research and academic institutions, etc., should take an active interest in the business of Parliament, especially the work of portfolio committees that directly correspond to the sectors in which they work. This means paying attention to committee meetings and reports, monitoring the performance of individual MPs (especially in prominent positions), undertaking research and investigations to assess the effectiveness of parliamentary oversight, noting issues that have fallen through the cracks, using parliamentary reports and resolutions to demand answers and accountability from the executive, and reporting on all the above in ways that are publicly available, accessible, and comprehensible.

Parliament's own 2020 strategic plan noted that oversight work performed by individual MPs in constituencies is not well linked with committee and plenary oversight work. Ideally, according to the plan, members should perform oversight activities in their constituency, and forward submissions or petitions to the committee system, thereby linking matters to the committee oversight process.

Theme	Recommendation	Who is responsible?	What MPs can do if they are committed to strengthening oversight	What civil society can do
Filling gaps in oversight	Establish a committee to oversee the Presidency	Parliament	Call for the committee to be established and persuade fellow members. In existing portfolio committees, highlight oversight matters directly concerning the Presidency that could fall through the cracks.	Research on how heads of the executive are held accountable in other countries. Give attention to critical activities undertaken by the Presidency that should be subject to oversight. Directly appeal to Parliament.
Enhancing functioning of committees	Ensure that enough time, money and resources are dedicated to oversight and accountability specifically.	Parliament	Conduct a thorough review of the resources used in your committees for oversight, and what the committee would need to strengthen oversight activities.	Advocate for improved resourcing of oversight.
	Strengthening research and content capacity	Parliament	Highlight the need for research support and advocate for strengthening capacity.	Advocate for improved resourcing.
	Enhancing committee functioning	Parliament	Chairs can implement the recommendations made in this report Individual MPs can work together to call for these changes and attempt to implement some of them in their individual work.	Devote attention to following committee meetings (especially in portfolios relevant to a CSO, for example) and evaluate their effectiveness Draw attention to both effective and ineffective oversight exercises
	Opposition chairs	Parliament	Elect opposition chairs or chairs of sub-committees	Draw attention to effective and ineffective chairs in committees, and advocate for change if necessary.
Improving amendatory accountability	Tracking and monitoring system	Parliament – Speaker and administration	Conduct a review of what your committee would need to track and which methods would be most useful to you. In the absence of a Parliament-wide system, conduct your own tracking and dedicate time to following up matters.	Track and monitor executive implementation of/responses to Parliamentary recommendations. Reach out to executives and parliamentarians, and raise public awareness where necessary, to ensure that issues are followed up.
Appointment reform	ISD appointment and removal processes to be established	Parliament	Build upon best practices of former appointment/removal processes	Monitor and participate in parliamentary appointments and removals Advocate for reform
Accountability of MPs	Improve ethics and members' interests committee	Parliament	Rigorously call for timelines and timely updates on ongoing ethics processes Demand transparency	Rigorously call for timelines and timely updates on ongoing ethics processes Demand transparency
Political environment	Presiding officers must not hold senior office in parties	Parliament	Call for implementation	Call for implementation Draw attention to incidences of bias



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