



"WHERE WAS PARLIAMENT?"

A PMG review of parliamentary oversight in light of State Capture and the Zondo Report

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Key recommendations

Ahead of the full report, we thought it useful to highlight upfront the salient recommendations for Parliament to strengthen its oversight function. These recommendations are to be read in association with recommendations made by the Zondo Commission, Corder Report, academics and civil society.

We support the 16 recommendations made by the Zondo Commission and have not repeated all of them here. Parliament should review and develop a plan for these recommendations urgently.

Accountability legislation	<ul style="list-style-type: none"> •Parliament should draft and enact Corder's recommended Accountability Standards Act and an Accountability and Independence of Constitutional Institutions Act •Parliament should review the Oversight and Accountability Model and ensure all recommendations are implemented fully
Amending Rules, Internal Guides and Conventions	<ul style="list-style-type: none"> •Parliament should develop clear rules on action to be taken when the Executive does not respond to committee recommendations in tabled reports (similar to the Executive not replying to written questions on time) •Parliament should review and strengthen the NA Guide to Procedure as well as existing practices and conventions
Zondo Report	Parliament should request each parliamentary committee engage with the Zondo Commission's Report and report back on how it will implement its findings and recommendations
MP Turnover	Parliament should monitor the turnover in the Houses and committees
Budget and resourcing	<ul style="list-style-type: none"> •Parliament should do an assessment of the budget allocated for oversight. If necessary, additional funds should be reallocated and sourced in future budgets
Training	<ul style="list-style-type: none"> •MPs should undergo continuous training with an emphasis on the Code of Conduct, oath of MPs, financial literacy, and the sub judice rule •Chairpersons should be prioritised in training
Reforming the committee system	<p>Parliament should re-imagine the committee system in the following ways:</p> <ul style="list-style-type: none"> •More committees should be chaired by the opposition; consider rotational basis •More time should be dedicated to the discussion and less time to presentations •Committees should allocate time to deal with resolutions at the end of each meeting •Committees should borrow from the effective style adopted in SCOPA meetings •Committees should forge relationships with civil society to assist in their work to reinforce information considered when conducting oversight. •Committees should be workshopped on the OVAC model and report on how it will be applied to the committee's work
Assessing effective oversight	<ul style="list-style-type: none"> •Parliament should enhance the monitoring and evaluation of its performance and impact
Tracking reports	<ul style="list-style-type: none"> •Each committee should maintain a standardised tracking system for monitoring resolutions and recommendations captured in tabled committee reports •Committees should hold regular meetings to review reports tabled in a given quarter and Executive response thereto •At the beginning of a new Parliament, committees should report on how they plan to implement outstanding issues from Legacy Reports of the prior committee

Introduction

To remain impartial, the Parliamentary Monitoring Group (PMG) rarely goes beyond reporting the activities of parliamentary committees. However, the debate around oversight has been a critical focus area of the Commission of Inquiry into Allegations of State Capture (the “Zondo Commission”)¹. Observing the work of Parliament as well as strengthening and protecting our legislative body lies at the heart of PMG, so it would be remiss of us if we did not reflect on this watershed moment.

While the true test of democracy is perceived as the extent to which Parliament ensures government remains accountable to the people by maintaining oversight of the government’s actions, it is vital that citizens are able to observe Parliament maintaining that oversight process. The activities of both Houses are recorded in the publicly-available Hansard. Although Parliament’s media services broadcast most meetings, detailed records of parliamentary committee meetings are not readily available to the public. Since the parliamentary committee system is a key component of parliamentary oversight of the executive, this represents a transparency lacuna. PMG fills this gap by providing a near-verbatim public record of each committee meeting accompanied by the audio recording of the meeting and copies of documents presented at each meeting. As the Zondo Commission looked back at the work of Parliament over the time of State Capture, we came to understand why a public record of the details of committee meetings is so important.

For purposes of this report, we are specifically referring to the National Assembly (and its committees), even though the National Council of Provinces has a similar mandate. The report references an online discussion² hosted by The Midpoint on 6 July 2022.

Constitutional & other provisions for parliamentary oversight

Embossed on the stairs leading to the National Assembly and National Council of Provinces are the words: OVERSIGHT and ACCOUNTABILITY. The role of Parliament is very clear: elect the President, consider legislation, provide a national forum for public consideration of issues, and hold the executive accountable. Parliamentary oversight is one of the cornerstones of democracy and vigorous monitoring of the executive is one of Parliament’s primary responsibilities. Oversight holds the executive accountable for its actions and ensures that it implements policies in accordance with the laws and budget passed by Parliament. The concept of oversight is a wider one than accountability alone. Broadly, Parliament is required to oversee the executive to ensure transparency in governance and keep it accountable to the people. Parliament represents the people.

Parliamentary oversight is not a difficult concept to grasp – put simply, Parliament has the constitutional duty to exercise oversight over the executive. In the same breath, the executive is accountable to Parliament.

Referring to the post-amble of the Interim Constitution, Professor Hugh Corder emphasized during his testimony at the Zondo Commission, that the current constitutional dispensation is, firstly,

“a rigging and decisive break from the past. . . So there was a determination in the Constitution-making process to ensure that the new constitutional dispensation would not fall foul or not run the risk of becoming a lap dog Parliament.”³

¹ <https://www.statecapture.org.za/>

² <https://themidpoint.org.za/events/state-capture-under-parliaments-watch-wilful-blindness-test/>

³ State Capture Commission, Day 345, 18 February 2021

https://www.statecapture.org.za/site/files/transcript/359/Day_345_-_2021-02-18.pdf

At the core of Parliament's oversight function are the constitutional provisions that empower Parliament to carry out its oversight work.

In the Constitution, Section 55 (2)⁴ reads that the National Assembly must provide for mechanisms:

- (a) To ensure that all executive organs of state in the national sphere of government are accountable to it; and
- (b) To maintain oversight of the exercise of national executive authority

Section 56 empowers the National Assembly or any of its committees to:

- (a) Summon any person to appear before it or give evidence on oath or affirmation, or to produce documents;
- (b) Require any person or institution to report to it
- (c) Compel, in terms of national legislation or the rules and orders, any person or institution to comply with a summons or requirement in terms of paragraph (a) or (b)

Section 92(2) provides that members of the Cabinet are "accountable" collectively and individually to Parliament for the exercise of their powers and the performance of their functions.

Section 92(3) provides that members of the Cabinet must provide Parliament with full and regular reports concerning matters under their control.

Other relevant sections of the Constitution which enhance oversight include:

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 specified grounds.

Section 102 empowers the NA, by a vote supported by a majority of its members, to pass a vote of no confidence in the Cabinet excluding the President, or in the President.

In addition to the Constitution, the Powers, Privileges and Immunities of Parliament and Provincial Legislatures [Act](#) 4 of 2004⁵ addresses the powers of Parliament, inter alia, to summon and question witnesses, a key function in ensuring oversight, particularly through inquiries.

In 1999, Parliament commissioned the Corder Report⁶ to assist with understanding oversight and accountability within the constitutional framework. The Report is a seminal piece in this respect and contains clear recommendations to give these concepts a practical meaning. The Report was largely ignored⁷.

Parliament's Oversight and Accountability [Model](#) was drafted in 2008 to outline and explain the nature of the obligation that section 55 (2) of the Constitution places on the National Assembly, which is the oversight provision. The Model also speaks to the mechanisms and procedures that should be put in place to fulfil the constitutional obligation of parliamentary oversight of the executive:

"Accountability is the hallmark of modern democratic governance. Democracy remains clichéd if those in power cannot be held accountable in public for their acts or omissions, for their decisions, their expenditure or policies. [...Accountability] has become a symbol of good governance both in

⁴ <https://constitutioncompass.org.za/>

⁵ <https://pmg.org.za/bill/800/>

⁶ <https://pmg.org.za/committee-meeting/2099/>

⁷ Corder, Professor Hugh. 2021. "An oversight failure? Reasons why Parliament has failed in its constitutional mandate". Accessed on 8 July 2022 <https://www.news24.com/news24/analysis/analysis-an-oversight-failure-reasons-why-parliament-has-failed-in-its-constitutional-mandate-20210224>

the public and private sectors. Accountability refers to institutionalised practices of giving account of how assigned responsibilities are carried out.”⁸

The Model further reads,

“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 better quality of life for all citizens.”⁹

This Model, Professor Corder’s Report and expert testimony provided Judge Zondo with much insight in his examination as to how Parliament ought to have conducted effective oversight and accountability. It allowed for a point of comparison which demonstrated how ineffective oversight allowed state capture to flourish.

However valuable the OVAC model may be, it has not yet been implemented in its entirety.

We should not forget the parliamentary [Code](#) of Conduct¹⁰, which details the behaviour expected of a Member of Parliament, be that person an ordinary member or a member of the executive. It is unambiguous. Members must:

“by virtue of the oath or affirmation of allegiance taken by all elected Members, uphold the law; act on all occasions in accordance with the public trust placed in them; discharge their obligations, in terms of the Constitution, to Parliament and the public at large, by placing the public interest above their own interests”¹¹

Between the Constitution, Rules of Parliament, and even court judgements affirming the responsibilities of Parliament, the institution is well empowered to carry out its oversight responsibilities. Professor Corder emphasises that multiple provisions in the final Constitution require Parliament to oversee the executive government and to hold it accountable.

Oversight as a critical function of Parliament

There are numerous pieces and opinions to cite on why oversight is a significant function of Parliament. It is neatly summed up by the Inter-Parliamentary Union (IPU) that

“In the absence of effective oversight, two problematic outcomes are possible: states become too strong, or they become too weak. The literature on state strength is varied, but essentially it describes excessively strong states as those ruled without check. Decisions are made autocratically, without any recourse to the people and are ‘repressive’. In excessively weak states, institutions are not able to build political consensus and are vulnerable to various forms of rent-seeking in which corrupted elites seek to maximise their own private interests over the public interest. A significant disconnect between elites and the people, and poor-quality decision-making, are common features of both types of governance.

Effective oversight, on the other hand, has two positive outcomes: an improved process and improved policy. There is a direct link between effective oversight and the democratic process:

⁸ <https://www.parliament.gov.za/storage/app/media/oversight-reports/ovac-model.pdf - Chapter 2>, Defining Accountability

⁹ <https://www.parliament.gov.za/storage/app/media/oversight-reports/ovac-model.pdf - Chapter 2>, Defining Oversight

¹⁰ <https://www.parliament.gov.za/code-conduct>

¹¹ <https://pmg.org.za/page/code-of-ethical-conduct>

effective oversight brings more people into decision-making so that decisions better reflect the interests of the society as a whole; it improves accountability and transparency and reduces corruption; it enhances Parliament's legitimacy as a responsive, inclusive and representative institution. There is also a strong link between effective oversight and economic and human development: policy and legislation are strengthened and governance becomes more effective as a consequence of review and amendment."¹²

Parliament's mechanisms for oversight mechanisms: Examining the toolkit

According to the OVAC model, Parliament exercises oversight to detect and prevent abuse; to prevent illegal and unconstitutional conduct on the part of the government; to protect the rights and liberties of citizens; to hold the government answerable for how taxpayers' money is spent, to make government operations more transparent, and increase public trust in the government¹³.

Parliament has a responsibility to organise itself in such a way that it can hold the executive to account in an effective and meaningful way. The Constitution allows Parliament to determine its own internal arrangements, proceedings and procedures.

Committee system

While Parliament has a toolkit of oversight mechanisms, we agree with the Zondo Commission that parliamentary committees are the primary platform for oversight. Associate Professor Richard Calland said the committee system is the most important institutional infrastructure for exercising meaningful executive oversight¹⁴.

Rule 227 of the National Assembly¹⁵ describes the role of portfolio committees in performing this oversight function. Rule 227(1)(b) provides that a portfolio committee must maintain oversight of the exercise within its portfolio of national executive authority, including the implementation of legislation, any executive organ of state falling within its portfolio, any constitutional institution falling within its portfolio, and any other body or institution assigned to it.

Broadly, for each government department, there is a portfolio committee to oversee the work of that department and the Minister.

Rule 227(1)(c) specifically states that a portfolio committee may monitor, investigate, enquire into and make recommendations concerning any aspect of an executive organ of state, constitutional institution or other body or institution, including the legislative programme, budget, rationalisation, restructuring, functioning, organisation, structure, staff and policies.

Further, Rules 167(d) and (f) confer a wide mandate on a committee to "conduct public hearings" and to "determine its own working arrangements".

In committees, meetings of a wide nature are held as part of this oversight function. This includes meetings where government and the executive account for quarterly and annual financial and non-financial performance, audit outcomes, budgets, and any other issue a committee wants to discuss. Committees are also able to conduct their oversight on the ground through oversight visits to relevant locations. Each

¹² <https://www.ipu.org/file/3131/download>

¹³ <https://www.parliament.gov.za/storage/app/media/oversight-reports/ovac-model.pdf>, Chapter Two, Functions of Oversight

¹⁴ State Capture Commission Day 340, 9 February 2021

https://www.statecapture.org.za/site/files/transcript/354/Day_340_-_2021-02-09.pdf

¹⁵ National Assembly Rule 227, Ninth Edition, https://static.pmg.org.za/160526NA_RULES_PDF_LAYOUT.pdf

committee provides for specific engagement with one department and its entities, allowing for oversight of performance, financial matters and service delivery.

Committees are empowered to determine their own processes, programme, and general way of working. Committees are led by the Chairperson and are constituted based on proportional representation of political parties in the National Assembly. Committees have a support team of research and administrative staff. They are not called the engine rooms of Parliament without reason – these are the arenas where the real work of Parliament takes place. This includes detailed processing of legislation, public participation, and of course, oversight. The House votes on decisions and processes which primarily take place in committees – they are critical forums of accountability. Committees operate as an extension of the House. Vital expertise and detailed knowledge of the department are built up in these committees.

Two committees have been set up to deal very specifically with the oversight of monetary matters: The Standing Committee on Public Accounts (SCOPA) and the Standing Committee on Appropriations (SCoA). SCOPA acts as Parliament's watchdog over how the executive spends taxpayers' money. Every year, the Auditor-General reports on the accounts and financial management of the various government departments and state institutions. This committee regularly calls heads of government departments and institutions to report and account for expenditure. The committee can recommend that the National Assembly takes corrective actions. In line with Westminster tradition, this is the only committee that is chaired by a member of the opposition.

SCoA derives its mandate from section 4(3) of the Money Bills Amendment Procedure and Related Matters [Act](#) No. 9 of 2009¹⁶, which requires that the Committee considers and reports on spending issues, actual expenditure published by National Treasury, recommendations of the Financial and Fiscal Commission and amendments to the Division of Revenue Bill and Appropriations Bill.

SCOPA, in particular, has been recognised as having developed a skilful and highly effective method of questioning ministries, their departments, entities, or agencies. The committee's insistence on direct and specific answers to each question, and its insistence on early submission of reports, attendance of key role players, and timelines for responses have earned it a reputation for in-depth and rigorous oversight.

There are no constraints on how a committee should discharge its duty to hold the executive accountable. However, the mechanisms for doing so are not explicitly outlined. This means that it is largely dependent on the expertise, experience, skill, and political will of the leadership in the committee (and Parliament generally) to determine how oversight should be carried out and the procedures to be followed. A [Legacy Report](#)¹⁷ written at the end of each administration is intended to convey to a successor committee what has been done and what concerns or unfinished matters require a follow up.

The salient work of committees is captured in committee reports which are tabled for debate and adoption in the House. When the committee completes its various oversight interactions and meetings, it is required to produce an official committee report reflecting on the interaction. These reports are critical as they explicitly capture the committee's recommendations on how / 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 committee record of the interventions it sought and of clear directives for the executive or government to address. This could be read together with Corder's concept of "amendatory accountability"¹⁸ which refers to the duty inherent in the concept of accountability to rectify or make good any shortcoming or mistake that is uncovered. Ideally, the executive ought to comply

¹⁶ <https://www.gov.za/documents/money-bills-amendment-procedure-and-related-matters-act>

¹⁷ <https://pmg.org.za/page/LegacyReports>

¹⁸ Corder Report, 1999, page 4

https://www.parliament.gov.za/storage/app/media/1_Stock/Events_Institutional/2021/28-04-2021_NCOP_Budget_and_Fiscal_Oversight_Workshop/general_resource_documents/Report_on_Parliamentary_Oversight_and_Accountability.pdf

and address the committee's recommendations in these reports. Our calculations show that there are, on average, 1 000 committee reports tabled in any given year¹⁹.

At the Zondo Commission, former National Assembly Speakers Mbete and Modise confirmed that the committee system is the main instrument through which Parliament exercises oversight; committees are actually where the bulk of oversight and accountability gets done and "if you look at the powers of committees, no committee actually has an excuse for not asking pointed questions, for not investigating, for not calling witnesses, for not summoning people"²⁰.

Questions

Written and oral questions are important oversight tools. Members of Parliament are empowered to ask questions for oral reply in special sittings dealing with questions and can pose written questions for written reply throughout the year. The detailed workings of these oversight tools are well structured and defined.

Statistics show that written questions are particularly a tool of the opposition. A total of 18 823 written questions were posed to the executive over the Fifth Parliament - 74.5% of these questions were asked by the DA, followed by 14.6% by the EFF. Only 0.73% of the questions were posed by the ANC²¹.

Oral and written questions to the President and Deputy President are particularly critical when discussing these tools because it is the only way Parliament can directly oversee and hold the presidency accountable. This is because there is no committee on the presidency so the rich interaction that would take place on the presidency, as occurs with other departments, is lost.

Compared to the committee system, these tools have limitations in demanding accountability. For example, there is a limit to the number of written questions submitted in a year, questions for oral reply only take place at particular plenary sessions and there are also limits to the number of questions asked.

Inquiries

Falling within the scope of the committee system, a potentially powerful item in the oversight toolkit is the power of a committee to initiate an inquiry into a particular matter and call anyone to testify before the inquiry. Rule 227(c)²² allows for an inquiry in which the committee may monitor, investigate, enquire into and make recommendations concerning any executive, organ of state, constitutional institution or other body or institution, including the legislative programme, budget, rationalisation, restructuring, functioning, organisation, structure, staff and policies of such organ of state, institution or other body or institution. 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.

Undertaking an inquiry is usually a last resort. A committee will, after a proper analysis of the evidence and information presented to it, typically arrive at conclusions that could result in recommendations for proposed action by appropriate authorities.

Available data show that this power is rarely exercised. Between 2009 and June 2022, no more than ten inquiries were held²³.

¹⁹ Read more: https://pmg.org.za/static/resources/docs/Martin_Nicol-Engine_Rooms_of_Parliament.pdf

²⁰ State Capture Commission, 19 April 2021, Day 377

https://www.statecapture.org.za/site/files/transcript/392/Day_377_-_2021-04-19.pdf

²¹ <https://pmg.org.za/blog/Written%20Questions:%20A%20Critical%20Oversight%20Mechanism>

²² National Assembly Rule 227, Ninth Edition https://static.pmg.org.za/160526NA_RULES_PDF_LAYOUT.pdf

²³ This number excludes calls and planning for inquiries which did not actually get underway

MPs as individuals

Acting alone, MPs can have an impact and make an important contribution to building an effective system of parliamentary oversight. Oversight begins with specific steps MPs take, such as receiving and using information received from whistleblowers, carrying out independent oversight visits, posing specific questions to a minister or department, or calling for further engagements, an inquiry or action.

So far, we have made it clear that Parliament is constitutionally empowered, and through various other provisions, to theoretically conduct its oversight effectively and hold the executive accountable. We have also outlined the toolkit Parliament can access to put this oversight into effect.

Through our years of observing Parliament in action, both in plenary and, of course, more so in committees, Parliament appears efficient. The administration of plenary sittings largely runs well, and things are busy when Parliament is in session. Our calculations show there are, on average, almost 100 National Assembly plenary sessions in a year and 1 200 committee meetings in a year on average. Committee meetings are often lengthy, and there can be many presentations and discussions encompassing wide-ranging questions and responses of varying nature. In the afternoon, Members engage in plenary activities where a flurry of questions are asked and answered, reports debated, and statements made, while hundreds of written questions are submitted and answers provided.

However, effort and outcome are not the same thing. Despite packed programmes, it cannot be acceptable that “Parliament was very busy, it didn’t have time to investigate rumours”²⁴, as the former Speaker of the National Assembly, Baleka Mbete, testified to the Zondo Commission.

Taking all of this into account, why did the Zondo Commission find that Parliament essentially abdicated its oversight obligation which played a part in allowing State Capture to flourish? This analysis will review these dynamics broadly.

Where do things go wrong?

In many ways, the Zondo Commission has cemented what many commentators and civil society have pointed to before, namely that parliamentary oversight is ineffective, executive accountability is lacking and the institution does not inspire public confidence²⁵. At the referenced webinar²⁶, Dr Martin Nicol added that “the Zondo report outlines deep and perpetual problems from the very start of the democratic era in holding the executive to account”.

Parliament itself admitted to this in May 2021 when the then Speaker of the National Assembly, Thandi Modise, apologised to the nation for Parliament’s complicity in state capture by failing in its key constitutional functions of holding the executive to account.

At the heart of it, effective oversight and accountability rest on two fundamental requirements: institutional strength and political will. Individual Members of Parliament and political leaders in Parliament must display that they are willing to use the oversight mechanisms and array of tools at their disposal effectively and the institution must possess the structural strength to make oversight effective.

Ineffective oversight not only allows the executive to act without constraint – it also fails citizens. Ebrahim Fakir writes that ineffective oversight fails citizens by ensuring ineffective government performance, in rand

²⁴ State Capture Commission 18 May 2021

²⁵ <https://www.oua.co.za/blog/newsroom-1/post/parliament-is-a-failed-institution-says-oua-1133/> / <http://www.saflii.org/za/cases/ZACC/2017/47.pdf/> https://afrobarometer.org/sites/default/files/publications/Dispatches/ad474-south_africans_trust_in_institutions_reaches_new_low-afrobarometer-20aug21.pdf

²⁶ <https://themidpoint.org.za/events/state-capture-under-parliaments-watch-wilful-blindness-test/>

value for money, in expenditure areas ranging from health and education through to crime prevention, policing and security and the provision of basic services²⁷.

Political will

The Zondo Commission report sharply displayed Parliament's unwillingness to act on allegations of state capture even when committees were instructed to act by House Chairperson Frolick. Four committees were tasked with this responsibility and the only genuine attempt [to inquire into allegations of State Capture](#) was made by the Portfolio Committee of Public Enterprises into Eskom (mindful this coincided with a change in the chairperson of the committee)²⁸.

Prior to this, the Ad Hoc Committee inquiring into the fitness of the SABC Board is a rare example of MPs exercising political will and using the mechanisms to enforce accountability.

Below we look generally at how the willingness to act essentially lies at the heart of effective oversight, broad contextual factors at play and how the lack of willingness impedes accountability.

Political culture

In South Africa, the executive and Parliament are not neatly separated – members of the executive (ministers and deputy ministers) are also Members of Parliament. The executive literally sits alongside the Members of Parliament meant to hold them accountable. Another contextual layer to add to this is that both groupings (the executive and ANC MPs) represent and owe their seats to the same political party. This section on political will broadly relates to the ANC as it is the governing party and political will ultimately rests with those with power to take decisions requiring majority action.

The Zondo Commission writes at length about how party politics plays itself out in the ANC caucus in Parliament. Salient and overarching decisions are often made in the high echelons of the party, which the caucus is required to carry through in Parliament. We know that this is how political parties function. However, when required to make critical choices often of a moral nature, it is not easy to operate independently when acting on a party mandate. This is compounded by our electoral system, where one can acquire a seat in Parliament only by appearing on a party list and political parties have the sole discretion of taking away a seat from a member if, for example, the party line is not towed. Members of Parliament act with these party mandates hanging over their heads.

This inherent tension between acting as an independent Member of Parliament and owing that position to your political party has always existed. We can point to [Andrew Feinstein breaking party ranks in Parliament](#)²⁹ when corruption in the ANC surfaced involving the "Arms Deal" in the late 90s and Ben Turok [not voting with his party](#)³⁰ on the Protection of State Information Bill. In these examples, these MPs courageously acted according to their conscience and were subsequently removed from Parliament by their parties. While a secret ballot is a way around this, the [courts](#)³¹ have indicated that it should be used in exceptional circumstances and should not be the usual way Parliament operates.

This tension, constraint and essentially fear that ordinary MPs felt speaking out against State Capture is excellently captured in the Zondo Commission's Report and does not need repeating here. The Commission shows how State Capture involved senior figures in the ANC, including the President and members of the executive, and how a backbencher must have felt acting against those superior to them

²⁷ Fakir, Ebrahim. "Wither Parliament". 2021. Accessed on 8 July 2022 <https://www.polity.org.za/article/wither-parliament-2021-08-19>

²⁸ <https://pmg.org.za/page/state-capture>

²⁹ <https://www.iol.co.za/news/politics/ancs-feinstein-resigns-from-parliament-74036>

³⁰ <https://www.news24.com/news24/anc-raps-vote-rebels-for-ill-discipline-20111123>

³¹ <http://www.saflii.org/za/cases/ZACC/2017/21.html>

and the consequences for doing so. The Commission also summarised how the balance of powers influences political will within the ruling party and how the tide started turning once the Zuma administration was replaced. This reality was also pointed out by UCT Professor of Public Law Danwood Chirwa and law lecturer Phindile Ntliziywana in their book *“Political Parties in South Africa: do they underpin or undermine democracy?”*. They highlight the impediment to effective oversight created by the relationship between the legislature and the executive arising from the “tendency of all parties to take their most senior members to the executive and fill their parliamentary seats with more junior members”. “MPs are at a political disadvantage in holding to account members of the executive who also occupy senior posts in the party,” they say. “This further hampers oversight”³².

The overarching point we wish to make explicit with this section is that Parliament is an institution brought to life by actors inherently political in nature – we cannot remove the politics from the institution. However, when this atmosphere frustrates Parliament acting as an independent arm of the state and does not allow for effective oversight, concerns are raised. Also, the need for Members of Parliament to act independently cannot be left to the balance of powers in the caucus.

The Zondo Commission and various judgments involving Parliament have made it explicit that Members of Parliament took an oath to represent the Republic and party mandates can never supersede this. Yet it is not envisaged that these statements reflect reality unless drastic change is made to our electoral system or other legislative provisions to protect Members of Parliament. This section shows that political culture is central to the willingness to act.

Important role of committee chairpersons

Each committee is led by a committee chairperson. National Assembly Rule 158 says the chairperson is elected by the committee members³³. As the majority of committee members come from the ANC, it follows that the elected chairperson will be from the same party. The ANC caucus decides on these chairpersons and they are formally voted on in committee. The exception is SCOPA where, in line with Westminster tradition, the chairperson is from an opposition party³⁴. PMG has written about the critical role of the chairperson ([see more](#)³⁵), but in light of State Capture, we wish to reiterate that the chairperson can make or break the committee. The chairperson sets the tone for the committee, how its meetings will be run, what will be tolerated and what not and essentially, how robust discussion can be. It would be prudent to remind readers, as we emphasized earlier, that the committee is the primary terrain for parliamentary oversight. The chairperson has a great deal of influence over how the committee works and how proceedings will be conducted. They set the boundaries of the scope and extent to which engagements are robust and if all committee members feel free to express themselves.

The Zondo Commission wrote that Parliament is responsible for how the executive treats it – much of this comes down to the role of committees and their chairpersons. The Commission reinforces our point above that the role played by the chair of a portfolio committee is influential in determining the extent to which a committee succeeds or fails in its oversight mandate. Sound leadership facilitates proper oversight and accountability.

In his testimony to the Commission, Associate Professor Calland said committee chairs were the most important parliamentary positions, barring the Speaker, but effective committees largely did not depend on

³² Chirwa, Professor Danwood & Ntliziywana, Phindile, ““Political parties and their capacity to provide parliamentary oversight” in, *“Political Parties in South Africa: do they undermine or underpin democracy?”*. 2017. Accessed on 8 July 2022 at <https://www.news.uct.ac.za/article/-2017-09-13-why-the-peoples-parliament-is-failing-the-people>

³³ National Assembly Rule 158, Ninth Edition https://static.pmg.org.za/160526NA_RULES_PDF_LAYOUT.pdf

³⁴ <https://www.pa.org.za/blog/standing-committee-public-accounts-scopa-analysing>

³⁵ <https://pmg.org.za/blog/CommitteeChairperson>

the chair's party affiliation. Rather, their effectiveness depended on the chair's leadership skills and the level of trust and respect they were able to foster within the committee³⁶.

Beyond the above skills, the chairperson must be a person of integrity – lack of integrity undermines effective oversight. A good leadership example is not set when chairpersons have unethical legacies, including being implicated in State Capture. To illustrate this, in a 2019 mini-plenary session, a DA Member of the Correctional Services Portfolio Committee stated that the Portfolio Committee was briefed on the BOSASA scandal as early as 2009, and yet no action was taken. Indeed, the contract was renewed thereafter, despite what the Special Investigating Unit reported to the committee on evidence of corruption. The same was true of the contract awarded, at vast cost, for inmate tracking devices. For Parliament to fulfil its responsibilities, the Portfolio committee needed to be rigorous and independent. The DA member declared that part of the reason the committee had allowed itself to be used and abused by BOSASA was that the committee was chaired by a Member who himself received gratuities from the company³⁷.

The Zondo Commission states it is up to the political leaders in Parliament to lead the charge on the political will to drive robust oversight. The chairperson is one such critical leader – surely if the chairperson demonstrates independence and uses the constitutional power to run the committee as they see fit, it will inspire confidence in many of the backbenchers they lead in committee.

There are a minority of cases where a genuine attempt was made to address the issues uncovered during oversight. These occasions have been possible because there was political will (on the part of the chairperson) to use the mechanisms to enforce accountability. However, there was a real risk in following one's moral conscience to make a change instead of following the party line. We think here of Zukiswa Rantho bravely chairing the Eskom parliamentary inquiry. As was pointed out at the Zondo Commission, her reward for standing up against corruption was to be removed from the parliamentary list at the next election, whereas others, some of whom have been very gravely implicated by evidence given to the Commission, were sent back to Parliament, and even found themselves as chairs of committees in the new Parliament.

On this same question, Themba Godi, a former SCOPA chair, [says](#) that having an opposition member chair a committee "has an obvious advantage as the Chairperson is not immediately constrained by narrow party considerations, especially the instinct to defend or avoid embarrassing their own party's Minister"³⁸. Further he adds that "overfamiliarity and political seniority can be a hindrance if the Chair and government are from the same party. An opposition Chair is immune from the internal party backlash, and is readily available to communicate messages to the public via the media"³⁹.

The Commission recommends that more members of the opposition could be appointed as chairs of committees. We support this recommendation and further recommend that this could work on a rotational basis.

At the referenced webinar, Professor Corder said committee chairs hold too much power in determining the effectiveness of a committee. He argues that there is no reason why the role of committee chair should belong, as of right, solely to the dominant party. He pointed out it is not accidental that the only committee that has shown significant commitment to its oversight role has been SCOPA, which traditionally is chaired

³⁶ <https://www.dailymaverick.co.za/article/2021-02-10-parliamentary-overhaul-is-needed-to-keep-executive-in-check-commission-is-told/>

³⁷ State Capture Commission 2 February 2021, Day 336, https://www.statecapture.org.za/site/files/transcript/350/Day_336_-_2021-02-02.pdf

³⁸ <https://pa.org.za/blog/standing-committee-public-accounts-scopa-analysing>

³⁹ Ibid.

by a member of an opposition party. Why should committee chairs not be allocated proportionately among the three largest parties, let us say, or even rotate every year or so among a wider range of parties?⁴⁰ It is also interesting to consider Associate Professor Calland's assertion above that effective chairs do not necessarily depend on the party affiliation of the chair but on the *culture* created in the committee.

The Sub Judice Rule

The Sub Judice rule has long been a favoured mechanism for deflecting discussion or shielding against honest answers to robust questions.

At a National Assembly (NA) Programming [meeting](#) on 31 March 2022, Adv Steve Swart (ACDP) expressed concern about the application of the sub judice rule. Frustrated about how its invocation impeded the work of Parliament over years, he indicated that sub judice should be generally reconsidered⁴¹.

Speaking at the same meeting, Dr Corné Mulder (FF Plus) agreed that the sub judice rule needed to be reviewed. He believed that the concept was irrelevant and not being applied anymore, while the provision of it in the NA rules⁴² was unconstitutional and a legal opinion should be sought on the matter.

Parliament's legal service has repeatedly advised that a mere investigation does not invoke the application of the sub judice rule. Even where a matter is pending before a court of law, the sub judice rule cannot be applied in a manner that may compromise the constitutional mandate of Parliament of exercising oversight over the executive. This opinion is firmly rooted in the precedence of the 2007 [Supreme Court of Appeal Midi Television judgment](#), where South Africa's courts effectively made sub judice obsolete⁴³.

Despite this assurance, there is still confusion and uncertainty about its application.

With the support of legal advice, the committee chairperson's role is to enforce the principle that sub judice is no excuse not fully to account to Parliament.

The Presiding officers have a similar responsibility when chairing proceedings in the main chamber.

Role of the opposition

Given the constraints party politics places on ruling party MPs in Parliament, which we have outlined earlier, it would not be a surprise to note that robust questioning, bringing issues to the fore, and making use of all avenues and tools for oversight, is largely carried out by the opposition.

Again, while removing politics from the institution is not realistic, Ebrahim Fakir makes interesting comments about the antagonism, conflict, and confrontation that do not contribute to the nuances of oversight.

"Oversight here takes on the spirit of responsibility and answerability, a cooperative mutuality and a desire to seek and provide guidance, where those who have been given authority are guided in how to exercise it, and those entrusted with responsibility are aided to dispense it"⁴⁴.

Parliament is the embodiment of multiparty democracy. One party dominance and majoritarianism should not be used to frustrate debate and efforts of the opposition to play their role. This is illustrated by the official opposition's deputy chief whip, who writes about the "disdain" all opposition MPs are treated with when seeking

⁴⁰ Corder, 2021, "An oversight failure? Reasons why Parliament has failed in its constitutional mandate"

⁴¹ [https://pmg.org.za/page/National Assembly Programming Committee](https://pmg.org.za/page/National%20Assembly%20Programming%20Committee)

⁴² Rules of the National Assembly. Rule 89 [https://static.pmg.org.za/160526NA RULES PDF LAYOUT.pdf](https://static.pmg.org.za/160526NA_RULES_PDF_LAYOUT.pdf)

⁴³ <http://www.saflii.org/za/cases/ZASCA/2007/56.html>

⁴⁴ Fakir, "Wither Parliament", 2021

to scrutinise government action⁴⁵. We should come back to the point about political culture when considering the theme of the role of the opposition. The opposition in Parliament is a necessary and indispensable component of democracy. For it to be effective, however, the government and society must accept the essentials of parliamentary democracy⁴⁶. Opposition parties play an important role and contribute to the effectiveness of parliamentary oversight.

As we conclude this section, MPs must be reminded that their obligation as public representatives is more than just attending meetings, reading documents and voting in the House. There must be more to being a public representative. The pursuit of oversight ought to be tireless, rigorous, constructive and evidence-based. This must be the grounding to ask the tough questions, prepare and follow through on the critical issues. As public representativeness, Members of Parliament must be driven by the need to see change and not maintain the status quo.

There must be a balance between party mandates and robust, independent-minded MPs so that party influence does not frustrate effective oversight⁴⁷. It is apparent that this balance cannot be found so reforms are needed to allow for effective oversight. Electoral reform is naturally turned to but there are also other reforms in considering how to insulate MPs from stifling party influence.

Institutional weaknesses

As outlined earlier, effective parliamentary oversight requires both willingness to act and institutional strength. We would frame institutional strength as variables not relying on people or politics and should be built into the institution for effective oversight. These variables form part of institutional memory and do not rely on the political actors inhabiting the institution. Having said this, we are of the view that institutional strengths cannot completely make up for lack of political will – think of it as a case of “where there’s a will, there’s a way”, which is not the case in the reverse. Nevertheless, it would be important to look at how institutional weaknesses contribute to poor oversight.

Committee meetings

As we have made clear, while Parliament has access to a variety of tools through which to exercise oversight, the committees are the primary forum for effective and robust oversight. Committees naturally lend themselves to this – they are an extension of the House, can do more detailed work, can decide on their own programmes and are empowered to call anyone to appear before them. In addition, Members can become subject matter experts and each committee has support staff to assist in carrying out the committee’s work.

However, we have identified several shortcomings in the way committee meetings tend to be conducted – this fashion has become entrenched and carried over from one Parliament to the next and hampers the

⁴⁵ Gwarube, Siviwe. 2022. “Parliament repeating the same mistakes which led to state capture”. Accessed on 8 July 2022 <https://www.news24.com/news24/columnists/guestcolumn/opinion-siviwe-gwarube-parliament-repeating-the-same-mistakes-which-led-to-state-capture-20220512>

⁴⁶ <http://archive.ipu.org/dem-e/opposition.pdf>

⁴⁷ Zondo Commission: the fact that members of the Assembly assume office through nomination by political parties ought to have a limited influence on how they exercise the institutional power of the Assembly / Party discipline may not legitimately be directed at obstructing Members of Parliament from doing what they believe, in good faith and on reasonable grounds, to be appropriate in order to address concerns as to allegations of corruption or state capture.

carrying out of effective oversight. It also ties in with the Zondo Commission's view that Parliament, and by extension its committees, set the tone for how they want to be treated.

Too often, committee meetings are dominated by lengthy presentations and not enough time is left for robust discussion – form over substance. It would seem at times that the executive exploits this and presentations can run into hundreds of slides with an overload of information. While useful and not without value, slides and documentation can easily be provided before a meeting. Ideally, Members should arrive prepared, a high-level summary can be provided by the department or entity accounting in the meeting but emphasis is placed on allowing as much time as possible for robust questioning.

Through this ineffective fashion of questions and answers, time often runs out and the executive is requested or makes an undertaking to provide answers to unanswered questions, often within a specified time. These additional responses are often not provided or do not form part of the public record, as our research proves⁴⁸.

Another routine in committee meetings is that when the discussion begins, each member of the committee will ask all the questions they have prepared, one after the other. Committees usually consist of no fewer than ten permanent members so this can be laborious, especially when the meeting is particularly topical. The executive and accounting authorities are then required to respond to these innumerable questions in one go. Sometimes there is time for follow-up discussion where the same format will follow again. Our observation is that this does not lend itself to robust discussion and effective oversight. We recommend that committees use an inquisitorial approach where a set number of minutes are allocated per member to interact with those present to account directly. This would allow for a direct back-and-forth discussion and enable more robust oversight. It could also minimise the chances of questions going unanswered. This would contribute to Parliament setting the tone for how it wants to be treated.

SCOPA, in particular, has been recognised as having developed a skilful and highly effective method of questioning ministries, their departments, entities or agencies. The committee's insistence on direct and specific answers to each question, and its insistence on early submission of reports, attendance of key role players and timelines for responses, has earned it a reputation for in-depth and rigorous oversight. Each committee member is given a specific focus area to prepare beforehand and that member leads the direct back and forth discussion on that matter. While other committees don't have the laser focus of SCOPA in holding the executive accountable for misused funds, it would bode them well to lend from the practices of the SCOPA meetings.

What can other parliamentary committees learn from the way SCOPA operates?

– Comment by Themba Godi (SCOPA Chair: October 2005 - May 2019)⁴⁹

"Two lessons:

The unity in action of the Committee subordinates, to a large extent, partisan approaches to oversight. The camaraderie that existed in the SCOPA Committee was exemplary and deserves emulation. During questioning, no one could distinguish between opposition and majority party Members of Parliament.

Paying attention to details ensured that officials prepared themselves better than they normally do. I have heard tales from officials who upon being called to SCOPA went through their annual reports like they were preparing for exams. We got reports and asked questions, and there was no time for long-winded stories. This helped SCOPA to get to the core of the issue, instead of focusing on generalised statements without

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<https://pmg.org.za/blog/TESTING%20THE%20LIMITS%20OF%20OPENNESS,%20TRANSPARENCY%20AND%20ACCESS%20TO%20INFORMATION>

⁴⁹ <https://www.pa.org.za/blog/standing-committee-public-accounts-scopa-analysing>

precise meaning. This approach, however, means that Committee members MUST read and prepare for meetings, supplementing their work with research in order to engage intelligently.

It is my personal view that having SCOPA alone being chaired by the opposition is not enough, and doesn't fully achieve its intended function as the guardian of the public purse. I think if the Standing Committee on Appropriations (SCOA) was in the opposition's hands, then we can say there is full oversight on public funds at the same level. SCOPA and SCOA, in my view, are two sides of the same coin. The one guards current expenditure, whereas the other focuses on reviewing expenditure. Surely, there should be a lot of notes exchanged between these two Committees on financial management".

SCOPA has also adopted a different approach to its oversight work involving other investigatory bodies. In all SCOPA Committee hearings, there are officials from National Treasury, the Auditor-General as well as the Anti-Corruption Task Team. When required, these officials are requested to provide clarity on issues raised by the Members of the Committee. The Committee can also refer matters to these offices for further attention. It is an example of how Parliament feeds into an accountability chain.

Recently, SCOPA noted that the Special Investigating Unit (SIU) reports had findings, determinations, and recommendations. However, there is inaction in the implementation of recommendations from the SIU. As a result, it is developing a monitoring framework with the Presidency to ensure that this Office leads by example on the critical question of consequence management.

While committees are extraordinarily busy during sessions and deal with all manner of business, the overriding consideration should be: is the time for a meeting used most efficiently? Has the engagement been effective and robust when required? We also recommend that committees could benefit from standardised resolutions and further action required at the end of each meeting. This would ensure all parties are clear on further steps. While we acknowledge this forms part of the official minutes, minutes are often adopted weeks or even months after the meeting has taken place. Committee meetings are often lengthy and filled with discussion and one could walk away with a feeling of "what now" - effective oversight could benefit from a standardised wrap up of resolutions and further action required at the end of each meeting.

The Western Cape Provincial Parliament has institutionalised a standardised actions and resolutions item at the end of the agenda for each meeting. We would encourage national parliament committees to emulate this functional practice.

Lack of follow-through

Mention was made earlier in the piece about tabled committee reports and how the salient work of committees is captured in these reports. As prodigious as the work going into these reports may be, they are only useful if the recommendations captured are followed up and acted on. The Zondo Commission wrote about Parliament lacking a centralised dashboard to follow up on these recommendations. Perhaps a centralised system is a complex task (given the number of committees in Parliament). However, it should undoubtedly be the responsibility of each committee to track and follow up on their recommendations in a standardised fashion. Oversight is a continuum, a cycle requiring constant follow-through, so oversight is ineffective without a clearly set out system for follow-through. While each committee would be responsible for tracking its own recommendations, the overarching standard system must be stipulated. It might prove prudent for committees to have quarterly meetings to review reports tabled during the quarter – while some do this, it is not a standardised process. Standardising these processes removes discretion and vagueness. It is also strongly suggested that all recommendations have timeframes associated to remove discretionary action on the part of the executive.

Reports should serve as more than just evidence that an oversight meeting has taken place – for oversight to be effective, the recommendations must be acted on.

Legacy reports

Closely tied to the above points, when one term of Parliament ends to make way for the new Parliament following a national election, each committee is required to produce a legacy report⁵⁰. These reports summarise the salient work of the committee over the past four years and, most pertinently, outline issues for the next committee to be aware of and carry through – a passing of the baton, if you will. This forms part of institutional memory and ensures the new committee is not repeating its work. Again, these legacy reports are only useful if the new committee acts on them. Too often, this does not occur, resulting in the same issues being dealt with as if they never occurred years prior. The Auditor-General has raised the concern that the same audit findings are repeated from year to year. When Parliament holds the government accountable for audit outcomes, it cannot be that the same findings are discussed year after year – surely this is evidence of ineffective oversight and lack of accountability? This ineffectiveness has its roots in lack of follow-through or follow-up.

Kimi Makwetu, the late Auditor-General (AG), expressed frustration at Parliament's apparent deafness to all the warnings and alarms⁵¹. Irregular expenditure was growing because of a lack of consequences for those responsible. The problems revealed by government auditing – and the lack of follow-up on reports and recommendations of the AG – have been widely reported.

On the lack of follow-through, the official opposition's deputy chief whip remarks on a "culture of fake accountability"⁵² which has been allowed to prevail. This could also be seen as tick box or ritualistic oversight where as long as a meeting is held or a report written, this is sufficient but there is no real accountability in that nothing changes. Our reference to Speaker Mbete's comment above is salient⁵³. It is a point we will circle back to in the conclusion but even though tracking and following up on reports and recommendations are primarily a structural deficiency to address, it also requires strong willingness to implement.

Budget and resources

Budget and resources follow where the priority is – looking at Parliament's latest Annual Performance [Plan](#), less than 40% of its budget is spent on oversight (clumped together with another important function: legislation). The committees and units dealing with the oversight tools should be prioritised in terms of budgeting and resourcing. By resources we refer to sufficient staff, researchers, legal advice and other tangibles required. We acknowledge that this is easier said than done, given Parliament's complex machinery, but it simply cannot be that oversight is not as effective as it could have been because of a lack of finances or resources (as was the case with the mineral resource committee's testimony for not initiating an inquiry into state capture involving the Minister)⁵⁴.

Financial resources are of serious consideration for effective oversight. The Chairperson of Committees has explained that currently a mere R50 to R60 million of the R2 billion annual budget of Parliament is allocated to the oversight function. That allocation of funds, he said, was a decision made by Parliament's Budget Committee that worked closely with the Executive Authority and that the Chief Financial Officer engaged with National Treasury regularly on what was received by Parliament and how it was sub-divided

⁵⁰ <https://pmg.org.za/page/LegacyReports>

⁵¹ Nicol, Dr Martin. 2021. "Parliamentary Oversight, checks and balances are weak and ineffectual – and it's largely the fault of bad MPs". Accessed on 11 July 2022 <https://www.dailymaverick.co.za/article/2021-03-02-parliamentary-oversight-checks-and-balances-are-weak-and-ineffectual-and-its-largely-the-fault-of-bad-mps/>

⁵² Gwarube, Siviwe. 2019. "Parliament again found wanting on fulfilling its critical oversight role". Accessed on 8 July 2022 <https://www.dailymaverick.co.za/opinionista/2019-10-31-parliament-again-found-wanting-on-fulfilling-its-critical-oversight-role/>

⁵³ State Capture Commission 18 May 2021, "Parliament was very busy, it didn't have time to investigate rumours"

⁵⁴ Judicial Commission of Inquiry into State Capture Report. Part VI Volume 2: State Capture Established, President Ramaphosa's Evidence and the Role of the ANC and Parliamentary Oversight. Page 348 <https://bit.ly/3QHfebB>

into the different parliamentary programmes⁵⁵. The R50 to R60 million was intended to pay for implementation and hosting of regular committee meetings, placing advertisements to invite public comment on legislation, oversight visits, including the travelling of Members and staff, and general oversight expenditure. He added that, with such a budget, it was not sustainable to exercise oversight. The Chairperson also informed Judge Zondo that the Oversight and Accountability Report was adopted but never fully implemented, simply because there were insufficient funds⁵⁶.

Perhaps in thinking of financial resources, it could be argued that it would be inappropriate to underfund the executive for implementing government's programmes and it would be inappropriate to underfund the judiciary for carrying out justice – it should be equally inappropriate to underfund Parliament for the carrying out of its oversight function.

On this matter, we recommend that Parliament conduct an audit to assess if its current resourcing is adequate for effective oversight.

When looking at the Annual Reports and Performance Plans of Parliament, there is an emphasis on numbers⁵⁷ – number of meetings held, number of oversight visits conducted etc. but this lacks reporting on the effectiveness, quality or impact of these efforts. Parliament should look at examining and reviewing its impact in terms of oversight. To do so, we recommend Parliament engage with experts or look into appointing a panel.

Training⁵⁸

We are of the view that Members' training should be continuous and not once-off when first sworn into the legislature (induction training). Members are not required to be subject matter experts but should understand how to be effective in their roles as overseers. The overarching point is that Members should be equipped and empowered through training to know which irregularities or concerns to look out for when poring over detailed information.

Parliament's performance depends on the calibre and capability of individuals elected to serve in it. Political parties have different systems, criteria and interests when they select their members. They also do not have the necessary capacity, expertise and resources to develop MPs and provide them with the specialised training they need.

At the referenced webinar, Professor Corder suggested that Members require regular training on the oath they took as public representatives.

On their own, induction programmes are insufficient as they tend to be short and touch on the most basic details. It therefore needs to be combined with practical studies, exchanges with peers, study visits to different parliaments, engagement with civil society and other experts (including institutions supporting democracy), and ongoing training on specific key themes. Further, Parliament encourages MPs to capacitate themselves by registering for courses that would support them in their work, including basic skills. These include communication skills, critical thinking, conflict management and teamwork, to name a few. A crucial skill is time management. Most MPs report difficulty in juggling various tasks and having to read large volumes of material.

Coghill, Donohue and Lewis usefully write:

⁵⁵ Zondo Commission 5 February 2021 Day 338

https://www.statecapture.org.za/site/files/transcript/352/Day_338_-_2021-02-05.pdf

⁵⁶ Ibid

⁵⁷ https://static.pmg.org.za/Parliament_AnnualReport2020-2021.pdf page 21

⁵⁸ <https://pmg.org.za/blog/Training%20Members%20of%20Parliament>

“While the role of MP is unique, it does not preclude them from undertaking education and training programs to enhance the knowledge, skills and abilities they need to undertake their role and functions in the complex environment that is the Parliament. Furthermore, participation in such programs could help develop and strengthen a culture favorable to the improved performance of oversight and other parliamentary functions”⁵⁹.

We have already cemented the important role committee chairs play so training should be prioritised for this group of individuals.

Parliament needs to assess whether the training it offers is adequate. Does the current training effectively emphasise ethical competence? The recommendations in the Zondo report allow for an opportunity for Parliament to rethink the effectiveness of its training programmes as contributing to effective oversight and robust scrutiny.

Turnover

Turnover occurs when members leave a legislature (removal, death, resignation or loss of election). A legislator may also rotate between committees, creating turnover without leaving the legislature. Loss of expertise and experience accompanies the resignation of experienced politicians. Too much turnover is undesirable and weakens the institution’s watchdog functions. One quarter of elected representatives were replaced over the Fifth Parliament, which is excessive. The Economic Freedom Fighters had the highest turnover in the previous Parliament, with 16 out of 25 Members being replaced, i.e. a turnover rate of 64%. At the start of the Fourth Parliament, the National Assembly table staff reported that 68% of MPs were new to the house.⁶⁰

Beyond the natural loss of MPs, parties should be mindful of keeping turnover low because this contributes positively to essential institutional memory. A lack of institutional memory may lead to contempt for the past that leads to repeated failures⁶¹.

Keeping turnover low within committees is also important. In theory, it is ideal to have minimal change to the membership of committees. Members should be given the full term of Parliament to grasp the matters of the committee fully. Identifying irregularities is easier when members are au-fait with the content of the committee, the departments, and entities within their oversight ambit. Members are not expected to be experts but are given a better chance the more time is spent on a committee.

The more time a Member spends in Parliament or a committee, the more expertise is built. Alexander interestingly thinks of expertise as a resource to support legislative work⁶² [after going on to argue that there are a number of benefits to frequent turnover such as revitalisation of ideas].

The consequence of turnover, at first glance, is likely to mean inexperience replacing experience⁶³. When a legislator who has built up expertise in a specific area leaves a committee, their years of accumulated

⁵⁹ Coghill, Ken, Donohue, Ross & Lewis, Colleen. 2017. “Developing parliament’s oversight capacity through MPs Professional development”. Accessed on 11 July 2022 <https://www.aspg.org.au/wp-content/uploads/2017/09/Developing-parliaments-oversight-capacity.pdf>

⁶⁰ <https://pmg.org.za/parliament-review/statistics/turnover>

⁶¹ <https://paulcainey.wordpress.com/2018/03/01/policy-concepts-in-1000-words-institutional-memory/>

⁶² Alexander, David. 2022. “Expertise, turnover and refreshment within the committees of the European Parliament: as much like Sisyphus pushing the boulder up the mountain as we may think?” Accessed on 11 July 2022 <https://www.tandfonline.com/doi/full/10.1080/07036337.2022.2084541>

⁶³ <https://www.cambridge.org/core/journals/state-politics-and-policy-quarterly/article/abs/retention-of-expertise-and-productivity-in-state-legislative-committees/A3E0E9291C009D5F658383756A079801>

political experience, including the institutional relationships they have cultivated, are lost from the committee⁶⁴.

To an extent, turnover can be offset by other factors contributing to institutional memory such as accumulated knowledge and experience of staff, technical systems including electronic databases and various kinds of paper records, the management system and the norms and values of organisational culture⁶⁵.

We call on Parliament to carefully monitor the turnover in the Houses and committees with a view to maintaining its own efficacy.

Recommendations for reform

The Zondo Commission is clear and explicit in its recommendations for reforms that strengthen parliamentary oversight and we agree with each of the well-formed recommendations. Below we offer some additional thoughts for consideration.

Parliament needs to identify which major gaps exist giving rise to weak oversight. One such gap was identified by Professor Corder, who expresses that the constitutional provisions empowering oversight are a “skeleton”. It requires “flesh”⁶⁶ in the form of legislation to give detail to what is expected of MPs, how to achieve that and, we would add, *consequences* for the executive. Parliament must draft and enact Corder’s recommended *Accountability Standards Act* and an *Accountability and Independence of Constitutional Institutions Act*. Effective oversight requires legal authority and rules to enforce accountability.

Such legislation will remove accountability from the “realm of political vagueness” to that of concrete law. The Commission believes it should not be beyond Parliament’s ingenuity to devise mechanisms that promote responsiveness and effective accountability, as alluded to above.

The above will mitigate a point raised by the former chairperson of SCOPA that the lack of action on the committee’s reports is not an indication of the committee’s effectiveness but on the lack of will of the executive to address recommendations⁶⁷. Through legislation for amendatory accountability, discretion is removed and it is made clear that the executive is compelled to act or face legislated consequences. This will give meaning to the enforcement aspect of the constitutional obligation of “holding to account”.

Parliament recently amended its rules to address ministers that do not respond to written questions within the required timeframes and introduced sanctions as a form of consequence management. This was a welcome step. There is no reason that the same cannot be done for ministers who fail to act on tabled committee recommendations when the tracking process is implemented.

We support a call made by Dr Nicol at the referenced webinar⁶⁸ that the leadership of Parliament require each portfolio committee to engage with the Zondo analysis and findings in detail. Portfolio committees could convene colloquiums that can involve stakeholders outside Parliament. All committees should consider all the Zondo recommendations. He points out that “Portfolio committees lie at the root of why Parliament ‘dropped the ball’ on State Capture”.

⁶⁴ Alexander, 2022

⁶⁵ *Ibid*

⁶⁶ ⁶⁶ Corder, 2021, “An oversight failure? Reasons why Parliament has failed in its constitutional mandate”

⁶⁷ Judicial Commission of Inquiry into State Capture Report. Part VI Volume 2: State Capture Established, President Ramaphosa’s Evidence and the Role of the ANC and Parliamentary Oversight. Page 348 <https://bit.ly/3QHfebB>

⁶⁸ <https://themidpoint.org.za/events/state-capture-under-parliaments-watch-wilful-blindness-test/>

We recommend that Parliament revisit the OVAC Model⁶⁹ and ensure it is fully implemented into the oversight work of the legislature, especially the committees. There are specific recommendations to look into, including

- Oversight Advisory Section (also recommended in the Corder report)
- Reporting on responses by the executive on resolutions adopted by Parliament
- Parliament to utilise the Joint Parliamentary Oversight and Government Assurance Committee to implement effective measures to ensure compliance by the executive in the event that all existing avenues of eliciting a response from the executive have been exhausted
- Amend rules to effect change in order for the Model to find its expression within the rules of the NA, the NCOP and the Joint Rules

We recommend that each committee of Parliament be workshopped on the OVAC model and report on how it will be applied to the committee's work.

This is an ideal time to reimagine the committees and how meetings are conducted for reform for more effective oversight. We have noted shortcomings in the earlier section but we would also call for committees to tap into additional expert information from civil society, including credible media exposes⁷⁰, to reinforce information considered when conducting oversight. Committees should build relationships with organisations and independent entities from which to draw. Civil society organisations can strengthen the capacity and efficacy of Parliament⁷¹.

We would also stress that Parliament focuses on reforms relating to tracking recommendations. This would work hand in hand with accountability legislation. Much work is put into drafting committee reports with thought-through recommendations but this is perfunctory without these recommendations being acted on. While we are aware that each committee is responsible for following up on recommendations in their reports, the system would be more effective if it was standardised across the board with public meetings to report on progress made. We strongly recommend that this system be electronic or digital in nature to contribute to institutional memory. Should the recommendations not be acted on by the executive, accountability mechanisms in the legislation would kick in. This would aid in preventing the perennial problem of the same issues reoccurring, year after year, with no redress.

Concluding thoughts

It might be prudent to remind ourselves of what state capture is and how it came about - Professor Hellman and Dr Kaufmann, while conceding that there is no all-embracing concept of state capture, identified state capture as principally a product of institutional deficiencies and a systemic failure of governance⁷². This piece has highlighted the critical institutional shortcomings in Parliament.

Associate Professor Calland stated at the Zondo Commission that some bigger structural issues concerning institutional political conventions and climate are more important than the tools and mechanisms of oversight. Tinkering with the rules of Parliament and the system of accountability from a technical sense, even improving the budget to resource Parliament better, would be a waste of investment, a waste of reform

⁶⁹ <https://www.parliament.gov.za/storage/app/media/oversight-reports/ovac-model.pdf>

⁷⁰ The Zondo Commission stated that when Portfolio Committees become aware of media reports that fall within their portfolios they need to weigh them and if they are serious enough, they need to take steps using their powers and the rules of Parliament and the mechanisms of Parliament to do what they need to do

⁷¹ <https://democracyworks.org.za/policy-brief-32-how-civil-society-can-strengthen-the-capacity-of-south-african-parliament/>

⁷² <https://resourcegovernance.org/sites/default/files/documents/state-capture-in-transition.pdf>

time, if the big structural issues were not tackled⁷³. He was referring to leadership, political climate, and the willingness of individual members of Parliament, in particular the chairpersons of committees, to really stand up and take their responsibility seriously.

We would agree that institutional weaknesses are not insurmountable and faced by legislatures worldwide. Political will is primary for effective oversight – this will allow for effective use of budgets, mechanisms, rules, resources and support. It simply cannot work the other way round. *Political will is the crux of the matter. Parliament tells departments to do more with less, prioritise and ensure the efficient use of resources – the same should be expected from it.* It is summed up best by the Zondo Commission that “*genuine will to exercise oversight is distinguished from difficulties experienced in making such oversight effective*”.

The Fifth Parliament's Strategic Plan stated that Accountability is essential to democracy⁷⁴. There are several weaknesses in the accountability chain, with a general culture of blame-shifting. The accountability chain has to be strengthened from top to bottom, with a strong focus on strengthening oversight and accountability. In any democracy, the link between the legislature and the executive is critical for ensuring that government delivers, the executive is held to account, that policies are subject to rigorous debate and that questions are asked when things go wrong⁷⁵.

Perhaps Parliament also needs to be reminded of its 2020/21 Annual Report where it states, “Strengthening oversight over the Executive, so as to increase government’s responsiveness and accountability, is the main policy priority of the 6th Parliament”⁷⁶.

In its response to the Zondo Commission, Parliament must prove that it is not reactive, still relevant, and an independent arm of the state. Civil society lauds our independent judiciary and turns to it on key issues so why cannot Parliament be seen the same way? For oversight to be effective, it is clear there must be codification of practices and amendment of the rules of Parliament for clear consequences for executive non-action.

In their book “*Political Parties in South Africa: do they underpin or undermine democracy?*”, UCT Professor of Public Law Danwood Chirwa and law lecturer Phindile Ntliziywana express that while Parliament has made progressive reforms to its rules and mechanisms over the years, especially in the way institutions can be called to account, “but it’s when it matters most – in calling the president and cabinet ministers to account – that the system fails”. They further observe that Parliament only functions as long as the executive performs well, is ethical and observes the constitutional boundaries⁷⁷.

We argue that to prevent this, Parliament urgently needs to implement the Zondo Commission’s recommendations. Institutions go through events and watershed moments that fundamentally shift how things were done before – this is the South African Parliament’s time for such evolution.

⁷³ State Capture Commission Day 340, 9 February 2021

https://www.statecapture.org.za/site/files/transcript/354/Day_340_-_2021-02-09.pdf

⁷⁴ <https://www.parliament.gov.za/storage/app/media/StratPlan/5/strat%20plan%2013may2015.pdf>

⁷⁵ https://www.parliament.gov.za/storage/app/media/StratPlan/5/Revised_APP_Parliament_18-19_V_R5_FMO_EA_ES.pdf

⁷⁶ https://static.pmg.org.za/Parliament_AnnualReport2020-2021.pdf

⁷⁷ Chirwa & Ntliziywana, “Political parties and their capacity to provide parliamentary oversight”, 2017