

HOLDING THE EXECUTIVE ACCOUNTABLE: PARLIAMENT AS THE BEACON OF HOPE TO THE PEOPLE

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ABSTRACT

In recent times, the work of Parliament has been receiving attention on the public domain and discourse. This however does not necessarily mean that it successfully fulfils its mandate to hold the executive accountable. Parliament has been faced with various challenges that have placed doubt in its ability to oversee the executive. Hence, this article examines whether the South African Parliament has a potential and capability to hold the executive to account for its actions or inactions. This is done through inter alia revisiting the systems, procedures, and mechanisms as well as the environment where oversight is performed. In addition, this takes into consideration the theme of Parliament for 2016 which is: "following up on our commitments to the people". Shija (2012) argues that the true test of a maturing democracy should be determined by the extent of the government's response to the needs of the people. In this regard, the article argues that Parliament should be the beacon of hope to the people, and be in a position to hold the executive accountable for its activities.

1. INTRODUCTION

Parliament is an institution of democracy responsible for law-making, conducting oversight over the executive and facilitating public participation among others (Madue, 2012:431). It is mandated to ensure that government delivers to the needs of communities. This refers to the constitutional obligation to hold the executive accountable (Shija, 2012:5). Conversely, the South African Parliament has been facing public scrutiny in a time wherein the country is relishing over 21 years of democracy (Seedat & Naidoo, 2015:3). This is a significant time and milestone in the country wherein scorecards and reviews are released with the aim to consider the performance of the country's democracy through assessing institutions of democracy. In this instance, Parliament is one of the most important institutions of democracy (Shija, 2012), which is regarded

as a representative body of the people.

It is for this reason, among others, that organisations such as the World Bank Institute and Inter-Parliamentary Union have directed their efforts in strengthening the ability of Parliament to perform its roles effectively (Stapenhurst & Pelizzo, 2006). This particularly relates to the ability to oversee the executive. It is the contention of this article that recent events and discourse affecting Parliament have placed doubt in its ability to hold the executive accountable. For example, the landmark judgement by the Constitutional Court (*Cases CCT 143/15 and CCT 171/15*) on how Parliament poorly dealt with the Nkandla issue in response to the *Public Protector's findings* raises several questions in the public discourse and domain (Business day Live, 2016). Then one of the central questions is: *does Parliament has a potential and capability to hold the executive accountable?*

From the foregoing, Stapenhurst and Pelizzo (2002) underline that for Parliament to effectively hold the executive to account it needs to understand the significance of its roles. This is in part assuming that Parliament as an institution and Members of Parliament (MPs) as legislators know their roles, hence understanding the importance of their roles is a crucial facet. It is interesting that in recent times the public is continuously engaged with the work of Parliament; however, this in-turn has not made its

work easy as each step it take is under public scrutiny. Therefore, taking into account direct or indirect positive connotations of the new theme of Parliament for 2016, which is coined as "following up on our commitments to the people", the article examines whether Parliament has a potential and capability to oversee the executive.

As a point of departure, it is important to put assumption aside and provide a clear conceptualisation of the term oversight.

2. CONCEPTUALISATION OF OVERSIGHT

In the conceptualisation of the term oversight which is the bone of contention in the article, the premise is founded in *Section 55(2)* of the Constitution of the Republic of South Africa, 1996. It stipulates the roles of Parliament to oversee the activities of government and any organs of state. The Oversight and Accountability Model of the South African Parliament (2009) also acknowledges that legislative organs of state are mandated by the Constitution of the Republic of South Africa, 1996 to scrutinise and oversee executive action and any organ of state *inter alia* State-Owned Enterprises (SOEs). This forms the basis of what oversight entails; however, various scholars have outlined their views on what the concept of oversight pertains.

In consideration of the literature review, Schick (1976) cited in Peliz-

zo, Stapenhurst and Olson (2006:8) asserts that oversight comprises of the supervision of policies and programmes ratified by the executive. Johnson and Nakamura (1999:4) are also of the opinion that oversight happens subsequent to the enacting of legislation. Oversight consists of scrutinizing the correctness and efficiency of policies and programmes implemented. These denotations support the long held view that Parliament is a reactive institution because its function transpires after an event has taken place. Contrariwise, Pelizzo *et al.* (2006:8) agree with the delineation provided by Maffio (2002) that oversight also comprises of the supervision of government's plans before their implemented by the government and any organs of state.

This infers that oversight can be conducted *ex ante*- before and during the implementation of a programme – as well as *ex post*, after its implementation (Pelizzo & Stapenhurst, 2004: 3-4; Pelizzo *et al.*, 2006; Stapenhurst & Pelizzo, 2002 in Madue, 2012: 434). This is in contradiction to the orthodox that Parliament respond to the activities of government to determine value for money which for this reason is mostly criticised of being reactive than proactive institution. Moreover, Zvoma (2010:3) is of the opinion that oversight is not the same as supervision. This is not a contrary view to the prior explanations of oversight; but the author argues against the use of the concept supervision, which is

justified as to respect the separation of powers.

Madue (2013:39) observes that oversight is a vehicle to hold the executive accountable in realising the programmes enacted and adequate spending by the executive. Lees (1977:193) defines oversight as “the behaviour by legislators and their staffs, individually or collectively, which results in an impact, intended or not, on bureaucratic behaviour”. On the other hand, it is argued that oversight is a process that should be discussed in the framework of democracy (Shija, 2012:1). Particularly, oversight should ensure that the policies of the government represent the needs of the people (Yamamoto, 2007:9). The oversight role of Parliament should be to the benefit of all citizens of the country and this should be emphasised.

Furthermore, Oversight Model of the South African Legislative Sector (2012:4) defines the concept of oversight as “the proactive interaction initiated by a legislature with the executive and administrative organ that encourages compliance with the constitutional obligation on the executive and administration to ensure delivery on agreed-to objectives for achievement of government priorities”. It is crucial to note that this definition attempts to capture both *ex-ante* and *ex-post* events, and further asserts the significance of parliamentary oversight which is a constitutional obligation.

3. THE SIGNIFICANCE OF PARLIAMENTARY OVERSIGHT

Parliamentary oversight is good for the proper running of a democratic system of government (West & Copper, 1989; Pelizzo & Stapenhurst, 2006; Shenga, 2007; Madue, 2012). These scholars elaborate that for a democratic government to operate effectively, MPs who are elected representatives need to closely monitor the activities of the executive. West and Cooper (1989) cited in Pelizzo *et al.*, (2006:8) emphasise that amongst the benefits of effective oversight in a democratic system is to ensure that government improves its programmes and Parliaments' enact policies. This makes oversight an important feature in a political system (Nijzink & Piombo, 2004: 3). Its significance is to safeguard the constitutional obligation of the separation of powers. This separation of powers is between the legislature, executive and judiciary which is aimed at maintaining transparency and accountability amongst others. Johnson (2005:3) argues that this is to uphold the systematic checks and balances between Parliament and the executive, and it has several interconnected purposes and objectives.

Simmonds (2002:3) and Zvoma (2010:3) spell out those purposes and objectives of oversight as to improve the efficiency, economy and effectiveness of government operations; evaluate programmes and performance; investigate and prevent poor administra-

tion, waste, abuse, arbitrary and illegal and unconstitutional conduct; protect civil liberties and constitutional rights; inform the general public and ensure that executive policies reflect public interests; gather information to develop new legislative proposals or amend existing statutes; and ensure administrative compliance on legislative authority and prerogatives.

The purposes and objectives of oversight stress the significance of oversight in holding the executive to account for its actions or inactions. These facets among others stress the obligation of Parliament to uphold and defend the constitution. This is essential and it underscores the significance of the existence of a democratic Parliament. In performing its constitutional mandate, the relations between Parliament and the executive is fundamental as defined through the separation of powers. Thus, the complexity of this relation is outlined in the next section as power relations.

4. POWER RELATIONS BETWEEN THE EXECUTIVE AND LEGISLATURE IN PARLIAMENTARY SYSTEM

Scholars of legislative studies state that over the years the executive had endured criticism for Parliament's inability to effectively hold the executive accountable, yet recognising the weaknesses of Parliament (Shenga, 2007; Musavengana, 2012; Malapane, 2015). For example, Rapoo (2004:5) asserts that inadequate resources and

weak institutional capacity create the over dependence of the legislative branch to the executive. This takes place regardless of the clearly defined constitutional mandate of Parliament to conduct oversight over the executive. In the South African context, this is defined through *section 55(2)* of the Constitution of the Republic of South Africa, 1996. Khmelko and Beers (2011:501) concede that effective oversight is required to maintain the balance of power between the executive and legislative branch; however, the article argues that the nature of the relations between the two branches influence effective oversight. This is in reference to the existing and emerging literature defining the power relations.

Cheibub and Limongi (2011:21) are of the opinion that politicians across all systems have the same motivation regardless of the form of government. This pertains to the reference to presidential, semi-presidential and parliamentary system which is not discussed in detail in the article yet the latter is underscored. This article argues that the role played by the form of government cannot be easily discarded. For example, Friedberg (2011:526) states that in a parliamentary system, the government emerges from Parliament. Although, Ahmed (2011:15) is of the opinion that there is a strong relation between the legislative and executive branch in the parliamentary form of government, this creates ambiguity with regard

to the separation of powers as the members of the executive are also MPs. Musavengana (2012:2) writes that: "the Westminster-inspired systems of government that are prevalent in most countries of Southern Africa tend to compromise the principle of separation of powers. Under these systems, ministers are most often drawn from MPs, which, ironically, should oversee their performance".

It is fair to point fingers to the nature of the political systems which include among others electoral rules, constitution and nature of political parties for the dominance of the executive and marginalisation of Parliament (Hudson & Wren, 2007:4). This places Parliament in a difficult situation as defined by Salih (2005:252) that in the process were Parliament endeavours to perform its oversight function, the executive fights to dominate it. The emphasis is that both the two parties compete to influence policy making and in-turn its outcomes. Johnson (2005:1) however argues that this should not be the case as "modern democracies are characterised by shared decision making between the legislative and executive branch of the state".

The foregoing entails that the two branches of the state should be able to compromise in fulfilling their constitutional mandates. For instance, the legislative branch of the state should have capacity to conduct oversight and in-turn the executive should be keen to conform to its requests. With re-

gard to the example provided in the article, this compromise is obscured. Thus, it is crucial that going beyond the complexities of the executive-legislative relations, Parliament should have capacity to be in a position to utilise its mechanisms to promote effective oversight, such as questions and committees of Parliament whether ad hoc or permanent among others.

5. PARLIAMENTARY OVERSIGHT TOOLS AND CAPACITY

Scholars have identified and studied several tools utilised to oversee the activities of government (Pelizzo & Stapenhurst, 2002; Simmonds, 2002; Rapoo, 2004; Yamamoto, 2007). These studies were conducted utilising the data collected by the World Bank Institute and Inter-Parliamentary Union through a survey of 82 countries in the early 2000s to determine the presence of oversight tools in various parliaments. The oversight tools identified as utilised in various countries include but are not limited to Committee Hearing; Hearing in plenary sitting, Questions, Question time, Commission of enquiry and Ombudsman (Public Protector in the case of South Africa). The tools have been broadly studied to investigate the potential of oversight depending on the number of tools employed (Pelizzo & Stapenhurst, 2004). Countries such as Germany and Sweden using the parliamentary form of government have more tools than the others, and South Africa as one of them has 5 out of 7 available

tools. Pelizzo *et al.* (2006:8) however highlight that effective oversight should not be determined by only the number of tools in effect, because it also depends on other conditions such as amongst others the information to conduct oversight and powers allocated to the legislative branch of government.

Yamamoto (2007:11) states that the absence of one tool in a parliament does not make it less powerful than the other. For example, before modern political parties tools such as question time and questions have been perceived as ineffective by how they are utilised. Payne (2009:22) writes that although questions time remains important wherein MPs are afforded the opportunity to raise questions, it has vast weaknesses such as irrelevant responses. Regardless of irrelevant responses provided, which is the case for most questions asked by opposition MPs; the executive utilises fewer time replying to questions, and more time making lengthy speeches. This has been playing out in the South African Parliament, more importantly with the contentious issue of Nkandla. In addition, Nijzink and Piombo (2004:6) stress that committees have a primary role in parliamentary democracy and the functioning of Parliament. Committees become representative in partisan composition and perform their roles better (Ahmed, 2011:11). This is relevant in this country that has espoused multi-party democracy although

it has been dominated by the African National Congress (ANC), and in-turn reduced to be a dominant party system. Thus, the ad hoc Committee which dealt with the contested issue of Nkandla was dominated by the ANC and in-turn partisanship prevailed.

Regardless of the above, the role of opposition parties or opposition MPs should not be excluded. The opposition continues to play a pivotal role in Parliament; although, its role is more prevalent in some parliamentary tools of oversight than others. For Example, Proksch and Slapin (2010:68) argue that opposition parties are dominant during question time, and they ask more questions than the governing parties. Although, the reasons for opposition parties' dominance may vary, question time presents an opportunity to opposition MPs to challenge the executive over policy or personal conduct (Saalfeld, 2011:272). In addition, Salmond (2004:77) states that "it is the only time the opposition can force government to address issues it would rather ignore. The opposition is able to set the agenda for large part of the proceedings in question time, something it rarely do in other parliamentary tools". The Nkandla debacle remains a good example wherein the opposition remained persistent to get answers from the executive.

As stated in the discussion, among others, powers and technical capacity to a certain extent deter-

mines the ability of Parliament to conduct oversight (Shenga, 2007; Musavengana, 2012). Powers and capacity may be vested in various aspects such as Parliament's independence, expertise and resources. In borrowing from the parameters that are utilised by Yamamoto (2007) to measure the potential of both Committees and questions, information and expertise are emphasised as important factors in the effectiveness of oversight tools. Simmonds (2002:6) asserts that information is vital to effective oversight; this entails Parliament possessing knowledgeable staff and members. Moreover, one cannot over-emphasise internal research offices as important assets. Generally, the staff complement supporting committees of Parliament is broad comprising of Researchers, Content Advisers, Legal Advisers and Information Officers among others (Oversight and Accountability Model, 2009). The details could not be discussed further in this article; however, expertise is expected to be the case in the South African Parliament which considers itself to be a modern legislature.

Furthermore, the time available is also important, this entails the time MPs have to attend to their assignments as well as the time to do such assignments. Although, time is a grave issue that parliaments in general struggle with, in particular when dealing with budget and quarterly reports from the executive, for other matters outside this

scope wherein external tools of oversight such as Public Protector are employed, time should not be a justification. According to the Oversight Model of South African Legislative Sector (2012:43) "Parliament conducts Oversight visits, and such visits take place whenever a committee decides to produce one". This is one of the tools that were utilised for the Nkandla issue wherein the MPs undertook a visit to Nkandla to inspect the President's compound (Business Day Live, 2016). Despite this effort, the contribution that the visit made is elusive judging by how the overall issue was resolved.

Thus, if the argument presented in the foregoing discussion is to be carried forward; since Parliament possesses the necessary tools of oversight, with the constitutional powers and capacity to hold the executive accountable, then what influences the decisions of the majority of MPs? It is important to discuss what motivates individual legislators' decisions in the oversight activities used to oversee the executive. This is done through focusing on party discipline and unity discourse in parliamentary oversight.

6. INFLUENCE OF PARTY DISCIPLINE AND UNITY IN OVERSIGHT

This section pertains to the role or rather influence of politics, in particular parties on the oversight role of Parliament. Mickler (2013:423) denotes that partisan theory supports the role of political parties

in Parliament. Political parties in this theory are the key actors, which makes MPs accountable to their own parties. On the one hand, Fredriksson and Wollscheid (2014:54) define party discipline as "the degree to which elected legislators keep their party's campaign promises after being elected". This points out that MPs are required to safeguard the interests of their political parties in the process of delivering to its electoral mandate. On the other hand, party unity "means that individual legislators of the same party votes as a bloc" (Field, 2013:362). It implies that MPs of one party maintains unity when it comes to matters before Parliament or voting whether there are agreements or disagreements. The Nkandla debacle remains an example.

Heller and Mershon (2008:911) argue that discipline is one of the approaches political parties use to maintain party unity, and also control negative agendas, and cohesion. The link between party discipline and party unity infers that MPs should uphold the party line. These are some of the main reasons why there is a need for party discipline. The absence of party discipline may lead to party disunity – a threat to political stability and democratic accountability. Since in parliamentary system, the electorate gives an electoral mandate to a political party, not individual MPs, hence party unity is essential for the effectiveness of parliamentary government (Heller & Mershon, 2008).

On the other hand, the manifestations of party disunity may include among others leadership challenges, party splits, party switching, and branches clashing with the central party line as well as speaking against party line in the press (Field, 2013:361). This is somewhat relevant to the South African discourse. Then a question arises: is this what the country's maturing yet fragile democracy needs to survive?

Brierley (2012:420) studying party unity in the African perspective with specific attention to Ghana's Parliament in comparison to Kenya National Assembly (KNA) in part holds a contrary view about the significance of party unity in Parliament. The author notes that strong party unity among others is held responsible for the restricted development in Ghanaian Parliament, and on the other hand, claims that weak party unity turned the KNA to be among the sturdiest African Parliaments. This is because MPs are caught between serving their party or electorates; however, based on the parliamentary system, this line becomes clear as parties are elected to Parliament, not individual legislators. The foregoing stresses that systems have a direct role in either improving or hampering both oversight and accountability (Obiyo, 2013:106).

Taking this African perspective and relating it to South Africa, stable party identities is the motive for MPs of the governing party to vote in line or adopt a similar po-

sition (Brierley, 2012; Obiyo, 2013). It entails that the ruling party utilises the whip system to maintain strong discipline and unity among its MPs who are a majority in Parliament. This particularly, relates to the country wherein the ANC has been in majority, since the advent of democracy in 1994. Stressing the importance of the whip system lead by a Chief Whip of a political party which is not discussed in detail in this article; the recent resignation of Mr Stone Sizani the 11th Chief whip of the ruling party after the Nkandla debacle underscores this position (Business Day Live, 2016). Instilling discipline and unity in Parliament may not come as an easy job to do; it takes a lot of compromises.

Based on the above argument, the MPs of the ruling party in Parliament have been supporting the executive whether there is an agreement or not. Regardless of the manifestations of signs of disunity when some broke ranks, when the time comes to defend the executive and the President party unity is maintained, which is professed as defending their political party. This stresses the influence of party discipline and unity in oversight. The former relating to defending their political parties is discussed below as the environment in which oversight is taking place.

7. PARLIAMENTARY OVERSIGHT SETTING

Parliament is the representative body of the people (*Section 42(3)*)

of the Constitution of the Republic of South Africa, 1996). This is mainly a mandate which is defined by how it is established as an institution of democracy (Malapane, 2015). It has been discussed in this article that MPs are elected representatives which represent the interests of the electorate and to a certain degree the mandate of their political parties. This underscores the political context in which parliamentary oversight takes place (Wohlstetter, 1989; Aberbach, 2002). Salih (2005:3) asserts that Parliament is faced with competing roles as it is part of the machinery that confers legitimacy on the executive, yet it is constitutionally mandated to hold the executive to account for its actions to safeguard the public interests. As stated, in the parliamentary system the executive is created from Parliament who are expected to play the principal role over the agent, which is the executive in terms of the Principal-Agent theory (Basheka & Mubangizi, 2012:6; Madue, 2012:862). While the complex nature of the environment is recognized, this should not be the motive to neglect oversight.

It is noted that oversight used to be linked to opposition parties in most democratic Parliaments (Malapane, 2015). It is because the executive is established from a majority in Parliament. In the South African context, the ANC still enjoys an uninterrupted majority. This however does not suggest that the governing party's majority has been inactive in oversight. More-

over, Johnson (2005:8) states that the electoral system also contribute to lack of effective oversight. The author states that in proportional representation (PR) system espoused, MPs will tend to be most responsive to their parties' leaders who determine whether and where a candidate will be placed on the party list in the next election. This is because candidates are placed on a list, and citizens vote for parties than for candidate directly". On the one hand, it is for the above reasons among others that oversight encounters political opposition, and becomes constrained to protective relationship between Parliament and the executive (Ethridge, 1984:341). Deducting from the reviewed literature, this article argues that this should not be the case. Aberbach (2002:62) stress that oversight should be bi-partisan. In other words, it should be an institutional activity, putting aside petty political motives. This will make oversight constructive, systematic and objective enough. On the other hand, recognising the ever presence of partisanship, low level of partisanship is a contextual factor in determining the success of Parliament (Rockman, 1984).

From the foregoing, Malapane (2015) argues that it takes the willingness of Parliament to attain effective oversight, and also the possible influence of the available incentives or lack thereof. This is stressed as political will yet it requires positive incentives to be

nurtured (Pelizzo & Stapenhurst, 2014:259). Ethridge (1984:342) earlier stated that the absence of positive incentives for MPs is a systematic impediment in promoting effectiveness. Effective oversight is lacking in an environment wherein the cost of conducting oversight outweigh the benefits. For example, Malapane (2015) argues that MPs may know what is expected to them, but the fear of losing their seats in Parliament if they become more objective in their work is a hindrance. This insinuates that MPs may know the difference between right and wrong, yet they decide to do the latter as they are perpetually caught between serving the interests of the electorate and the mandate of their political parties.

8. ANALYSIS

It is clear that while oversight is a constitutional mandate of Parliament, it is faced with various challenges. The challenges are wide encompassing political opposition, partisanship, political competition and the power relations between the executive and Parliament, resulting to reluctance of the executive to cooperate. The systems and environment where oversight takes place contribute to lack of effective oversight. For example, the PR system makes it easier to recall an MP. In addition, while Parliament attempts to hold the executive accountable, the executive fights to influence policy. This is the root of the power relations as NiJzink and Piombo (2004:3) stress that the executive

has occupied the responsibility to make laws, and it creates most of the bills. It has reduced Parliament in its main mandate to merely rubber stamping as most bills are prepared and drafted by the executive and presented to Parliament for approval.

On the other hand, it is noted that oversight is dependent on the willingness of the MPs. This point out to the environment parliamentary oversight is taking place wherein legislators are continually caught between responding to the interests of the electorate or their political parties. Regardless of the South African Parliament's commitment that MPs should be accountable to the people or electorate, the foregoing is a reality. This is because the nature of the parliamentary form of government results in protective relationships between Parliament's majority and the executive. This is the case with regard to the South African Parliament, as the ANC continuously inflicts its majority, and with the view that it will still maintain its majority in the next election. This highlights that the cost for oversight to individual MPs outweigh the incentives, so there is a leeway for the influence of party discipline and unity to succeed.

Furthermore, there is a notion that capacity is fundamental for effective oversight. It has been acknowledged that the executive is generally dominant over Parliament; however, Shija (2012:7) has maintained that Parliaments have been fighting to be independent

and diverge from the influence of the executive. This relates to Parliament building its own capacity to support oversight. This includes the capacity to generate its own independent information, and it is pointed out that the South African Parliament has such capacity. It is also stressed in the article that oversight tools have been studied focusing on oversight potential based on the number of tools utilised by Parliament. Thus, the South African Parliament uses most of the oversight tools, and this in part highlights its potential.

9. CONCLUSION

This article concludes that Parliament as an institution of democracy has a potential and capability to hold the executive to account for its actions or inactions, and it could effectively follow-up on the commitments made to the people. As discussed, this is depended on various issues which have either negative or positive connotations. This makes oversight appears to be weak or strong in certain instances. It is however important to emphasize that the setting in which oversight takes place has an influence on oversight. This includes party politics, discipline and the executive-legislative power relations. Therefore, for oversight to be effective it should be viewed as an institutional activity, and this may minimise petty party political motives amongst others.

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