|  |  |  |
| --- | --- | --- |
| UNION INTERPARLEMENTAIRE |  | INTER-PARLIAMENTARY UNION |



**association des secrétaires *association of secretaries***

**générauxdes parlements *general of parliaments***

**COMMUNICATION**

**by**

**Mr Xolile GEORGE**
**Secretary to Parliament of the Republic of South Africa**

**on**

**“Oversight and Accountability in the South African Parliament: the Evolution of Constitutional, Legal and Procedural Instruments”**

**Geneva Session**

**March 2024**

**Introduction – the Basis of Accountability**

This paper outlines the evolution of procedures intended to enforce Executive accountability by the South African Parliament. In so doing, it describes the constitutional basis for the relations between Parliament and the Executive and documents the transition to an open and transparent Legislature. Next, it details the evolution of the legal system and Parliament’s rules to support accountability and, lastly, reflects on recent developments and opportunities.

South Africa’s general election in 1994 marked the transition from an oppressive State to a constitutional democracy[[1]](#footnote-1) founded on human rights, openness and accountability[[2]](#footnote-2). For the first time, the majority of South Africans could vote for leaders to carry forward their interests, and who would be accountable to them. As the primary vehicle of the democratic State, the Constitution created a bi-cameral Parliament, comprised of the National Assembly (NA) and the National Council of Provinces (NCOP), each with specific functions and obligations.The task of the Assembly, as a collective, was to –

*…ensure Government by the people under the Constitution. It does this by choosing the President, by providing a national forum for public consideration of issues, by passing legislation and by scrutinizing and overseeing executive action[[3]](#footnote-3).*

At present, the Assembly is comprised of four hundred members from different political parties, elected every five years in accordance with a system of proportional representation. Currently, 14 parties are represented in the NA. Once constituted, the NA elects the President, as the head of the National Executive. The President then appoints the Cabinet from among the members of the NA. Thereafter, the NA must oversee the Government to ensure that it acts in the public interest. Conversely, the Constitution[[4]](#footnote-4) states that the Executive is accountable collectively and individually to Parliament, and must provide members with full and regular reports.

Even though the principle of accountability was at the heart of the new constitutional dispensation, the democratic Parliament did not have the benefit of established procedures or experience. Accordingly, it first had to construct a legal and procedural framework to facilitate its business and then develop the requisite institutional knowledge and best practice.

**The Accounting Framework**

*A Transparent and Accessible Parliament*

Those who drafted the Constitution understood that political accountability necessitated a transparent and open Parliament so that the people could follow proceedings and weigh the work of their representatives. Moreover, they realized that the Executive must explain their actions mindful of public opinion. In this respect, the Constitution prescribed that, *inter alia*, the Assembly must -

*….conduct its business in an open manner, and hold its sittings, and those of its committees, in public...* (and the) *Assembly may not exclude the public, including the media, from a sitting of a committee unless it is reasonable and justifiable to do so in an open and democratic society[[5]](#footnote-5).*

Since then, Parliament has actively sought to expand public access and involvement in its affairs. The parliamentary precinct itself is open and the media and interest groups have frequently attended meetings[[6]](#footnote-6). There has also been considerable media coverage of Parliament on various platforms. Parliament itself has its own television channel and routinely releases statements and updates. In addition, there have been ongoing efforts to reach out to local communities, owing to the fact that many citizens do not have the resources to travel or access media outlets. Parliament has also taken measures to facilitate access for people living with disabilities – most facilities accommodate wheelchairs, and debates in the House are, in addition to the indigenous languages, translated into sign language.

*Statutory Framework to compel Accountability*

During the first years of the democratic order, Parliament considered a number of statutes and regulations to foster oversight and accountability. These included, *inter alia*, laws to empower members, to regulate the public service and state finances, and to consolidate other independent institutions to support the system of checks and balances such as the Human Rights Commission, Gender Commission, Public Protector and Auditor General (AG) (the so-called Chapter Nine Institutions)[[7]](#footnote-7). Parliament also overhauled its own rules to this end.

As part of the steps to empower members, Parliament adopted the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, 2004 (Act 4 of 2004)[[8]](#footnote-8). This Act amplified the constitutional right of members to speak freely in Parliament without fear of prosecution. It also laid down procedures to allow Parliament to summon any person or organization to appear or give evidence, and made it an offense for any person to refuse a summons, refuse to give evidence or willingly mislead Parliament. These powers were essential to ensure that the Government could not escape scrutiny.

In 1999, Parliament adopted the Public Finance Management Act, 1999 (Act 1 of 1999)[[9]](#footnote-9). This Act detailed the accounting commitments of the Executive and, among other things, determined that every minister must annually submit budgetary and operational plans as well as audited reports to the Legislature. Soon after, Parliament passed the Public Audit Act, 2004 (Act 25 of 2004) to regulate the operations of the AG - the AG routinely conveys its audits to the NA[[10]](#footnote-10).

*Rules and Orders*

The Constitution stipulated that Parliament, as an independent arm of State and an oversight body, could determine and control its own internal arrangements, and make rules and orders concerning its business with due regard to representative democracy, accountability, transparency and public involvement[[11]](#footnote-11). The NA, however, must also provide mechanisms to ensure that all executive organs of state in the national sphere of Government are accountable to it and to maintain oversight over the exercise of national executive authority[[12]](#footnote-12).

Given the constitutional imperatives, the post-1994 Parliament had to adopt new rules. As one way to promote accountability, the revised rules ensured that matters of public interest could find expression in the NA and NCOP. As such, they provided for debates – on legislative initiatives, committee reports and motions. Furthermore, the rules empowered individual members to propose subjects for consideration by the NA. Parliamentary debates routinely involve ministers. The NA also put in place an array of permanent committees to oversee each national department. While these committees determine their own agendas, they must monitor their respective portfolios and engage the Executive when there is a need. The NA also established standing committees on finance, appropriations and public accounts – the latter traditionally chaired by a member of the opposition. Permanent committees have fostered continuity, as well as encouraged subject specialization among members. Changing membership, especially from one term to the next, has been a problem in the pursuit of accountability.

In addition to committees, the rules entitle members to pose questions to the Executive – both for written and oral reply[[13]](#footnote-13). In the NA, each member can put up to two questions for oral reply each question day, and up to three for written reply every week. There are separate questions to the President – who must answer in the House at least four times in a year – the Deputy President and the respective ministers. The Executive answer oral questions in the NA every Wednesday – question days – during session. Questions have become a key instrument for individual members to solicit information from the Government and press for action.

**Reforms to reinforce Accountability**

*Oversight and Accountability Model*

There has been a perception that the South African Parliament has over time not always exercised oversight and held Government to account, a situation that, in turn, has compromised the State. Such criticisms have been raised on various platforms. In 2009, for instance, the Speaker commissioned an external review of Parliament[[14]](#footnote-14), which found that Parliament should be more rigorous in its oversight activities. More recently, another assessment of the implementation of existing laws and their implementation, published in 2017, advocated for a *“more active Parliament, one that ensures the strict enforcement of (or, where lacking, introduces) penalties for lack of performance by the Executive”[[15]](#footnote-15).* Such shortcomings have been attributed to various factors including the electoral system, political dynamics and a lack of experience.

As early as 1999, following the inception of the second democratic Parliament, the institution commissioned a study of its oversight and accountability mandate, procedures and practices[[16]](#footnote-16). This led to the development of an Oversight and Accountability Model[[17]](#footnote-17). Among other things, the Model defined the concepts of oversight and accountability in the context of South African law, as well as members’ responsibilities in this regard. In so doing, it asserted that these functions were not necessarily adversarial in nature or the purview of the opposition but the institution as a collective. Moreover, it averred that accountability should be applied in relation to all aspects of the State’s mandate and operations – political, legal, economic and administrative. From a practical perspective, the Model pointed to a need to further empower and capacitate members. Parliament subsequently allocated additional resources to committees and employed specialised advisors for each portfolio. Parliament, together with the provincial legislatures, also developed training programmes and published a variety of induction materials and procedural manuals for members and staff.

*Amending Budgets*

Another initiative, which emanated from the Model, was the enactment of the Money Bills and Related Matters Act, 2009 (Act 9 of 2009)[[18]](#footnote-18), which gave the Legislature the means to amend budgets. In terms of the Constitution, this power was subject to enabling legislation. Parliamentarians nevertheless maintained that such power was indispensable to safeguard the public interest. At the same time, the Act accorded with the Executive’s prerogative to formulate policy[[19]](#footnote-19). In this respect, it specified that Parliament should ordinarily only amend budgets following a process of consultation with the public and the Government, which must include an annual assessment of departmental performance and spending – the outcomes of which are conveyed to the Minister of Finance who must consider them in formulating the next budget. Amendments would follow in the event the Executive failed to take account of Parliament’s concerns. The Act also established a Parliamentary Budget Office (PBO) to offer independent advice to members. To date, Parliament has not fully applied its budget powers.

*Motions of no Confidence*

One of the most significant constitutional tools for the NA to check and hold the Executive to account is by way of a motion of no confidence in the President. Another is by way of a motion of impeachment. In terms of motions of no confidence, the Constitution determines that –

*If the National Assembly, by a vote supported by a majority of its members, passes a motion of no confidence in the Cabinet, excluding the President, the President must reconstitute the Cabinet* (and) *if the National Assembly, by a vote supported by a majority of its members, passes a motion of no confidence in the President, the President and the other members of the Cabinet and any Deputy Ministers must resign[[20]](#footnote-20).*

The rules initially determined that it was the prerogative of the Programme Committee[[21]](#footnote-21), the structure responsible for scheduling business in the NA, to place a motion of this kind, once tabled, on the agenda of the House. This committee typically took decisions by consensus, albeit with the understanding that the majority party led items. In 2012, however, pursuant to a member tabling a motion of no confidence in the President, the committee could not agree as to when the matter should be considered. Following court proceedings, the rules were amended to place the onus to schedule these motions on the Speaker, who must accord them due priority over other business[[22]](#footnote-22).

In 2017, there was a further challenge to procedures associated with motions of no confidence – that of the use of secret ballots. The Courts[[23]](#footnote-23) concluded that the Speaker should allow members to vote in secret in certain circumstances. In making a determination to allow a secret ballot, the Courts prescribed that the Speaker, *inter alia*, must take account of the need for transparency, as well as the right of members to follow the dictates of personal conscience. In addition, the Speaker must evaluate the prevailing circumstances in the country, specifically whether they would allow members to vote in a way that would not expose them to illegitimate hardships. The NA has since considered a number of motions of no confidence in the President, one of which was held by secret ballot.

*Motions of Impeachment*

Together with motions of no confidence, the Constitution allows the Assembly to impeach the President[[24]](#footnote-24) -

*The National Assembly, by a resolution adopted with a supporting vote of at least two thirds of its Members, may remove the President from office only on the grounds of - a serious violation of the Constitution or the law; serious misconduct; or inability to perform the functions of office[[25]](#footnote-25).*

As distinct from a motion of no confidence, if the NA passes a motion to remove the President, he or she may not receive any benefits of that office and may not serve in any public office. In 2017, the Courts[[26]](#footnote-26) clarified that the NA must have standing (as opposed to *ad hoc*) procedures to regulate the impeachment process. The House subsequently addressed this lacuna. A feature of these rules was that they compelled the Speaker, upon receipt of a motion, to establish a panel of three independent experts, from a list of nominees put forward by political parties, to make a preliminary assessment of whether the evidence, as advanced in the motion, would justify an impeachment process. The NA must then consider the findings of the panel and decide whether to proceed with an inquiry or not. The inclusion of the panel was intended to mitigate against possible political considerations, which may otherwise frustrate the ability of a member to instigate impeachment proceedings, and thereby hold the President and Executive to account.

Aside from the President, Parliament’s rules also provide for the removal of various other constitutional office-bearers such as the heads of the Chapter-Nine Institutions and related bodies. These rules are similar to those for the impeachment of the President[[27]](#footnote-27).

*Monitoring House Resolutions*

Apart from law making, the South African Parliament takes various kinds of resolutions. Many of these arise from oversight work such as committee reports and serve to highlight Government failings. While these resolutions are not binding in the same way as legislation, the Executive is nevertheless expected to report to Parliament on the implementation or otherwise thereof. There has been a concern that Parliament has, to date, not effectively monitored compliance with these decisions, which, in turn, has undermined accountability. To address this, a register was set up for the House to track resolutions. In this regard, the Speaker corresponds with ministers and other stakeholders to follow-up in the event of delays. It should be noted that Parliament is, if circumstances allow and warrant, able to enforce certain resolutions. As described above, this can be by way of budget amendments. As a last resort, the Assembly can also remove the Executive.

*Reviewing the Rules*

Together with incremental changes to the rules, the NA undertook a comprehensive review of its procedures in 2014; a process which took two years and which culminated in the adoption of the Ninth Edition of the Rules on 26 May 2016. One of the objectives of this undertaking was to reinforce oversight and accountability. Reforms included the introduction of special sub-plenary forums (mini-plenaries) to provide more opportunity for debate and engagement with the Government. In addition, the updated rules extended time of ministers to respond to oral questions from two to three hours (every Wednesday). Further, the rules obliged the NA to put in place a system to monitor the timeliness of responses to written questions. The House has recently put in place such a system,[[28]](#footnote-28) which, *inter alia*, specifies that the Speaker can both follow-up and publically reprimand ministers. Over and above the review of the rules, there remains an appreciation that Parliament’s procedures are not static but living articles to be continually evaluated.

**Changes and Conclusions**

As previously mentioned, presently members of the NA are elected by proportional representation. In this regard, the NA has not been immune to the phenomena common in similar dispensations – that of party dominance. This has resulted in ongoing calls for electoral reform. In 2020, the Courts[[29]](#footnote-29) ruled that the Electoral Act[[30]](#footnote-30) was unconstitutional, as it did not allow independent candidates to contest elections. As a result, the Electoral Act was amended in 2023 to allow independents to run for office for the first time in the next election[[31]](#footnote-31). This will mean that parliamentarians will potentially not be as dependent on the dictates of political parties in future, which may lead to a change in political dynamics between the Legislature and the Executive.

As has been the case elsewhere, South Africa’s Parliament had to manage the onset of the Covid-19 pandemic and the resultant restrictions. This limited both the ability of members and the public to attend proceedings. The NA has since made use of a hybrid system, where a limited number of members can be present in the House while others participate online. Committees have been meeting virtually for the most part. These arrangements have posed challenges but also provided new opportunities. Some online meetings, for example, have made it easier for officials to report to committees. This is especially pertinent in South Africa as the seat of Parliament and that of Government are in different provinces – Parliament is in Cape Town, Western Cape Province, and the Government is in Tshwane, Gauteng Province. Nevertheless, online meetings can limit political exchanges. Covid-19 restrictions have also exacerbated social disparities and made it more difficult for those without resources to access Parliament.

Lastly, to aggravate these problems, in January 2022 a fire gutted the National Assembly building – the Chamber itself remains inaccessible and will require years to restore. Consequently, the Assembly has had to convene at another venue. As such, it has been difficult to accommodate all stakeholders and ensure the NA can operate as intended. These realities will necessitate continued innovation.

*Concluding Remarks*

South Africa’s democracy and Parliament have evolved and matured markedly since the first free election in 1994. Since 1994, there have been six national elections, the last in 2019, which have seen the citizenry express their preferences and political fortunes ebb and flow. Over this period, the National Assembly has consolidated its status and procedures in respect of its obligation to hold Government to account, and examples of best practice have emerged. Nonetheless, the country remains beset by, among other things, deep poverty, unemployment and inequality. The capacity of the public service including a constrained fiscus are further impediments to sustained development. These realities suggest that, in some measure, parliamentary oversight and accountability have not had the requisite outcomes and that the State has not always been held answerable and accountable for its deficiencies. The findings of the State Capture Commission have been noted as an example.

The State Capture Commission was established in 2018[[32]](#footnote-32) by the President on the basis of a recommendation by the Public Protector in order to investigate allegations of widespread corruption and the improper influence of private actors in state affairs – a phenomenon called *“state capture”.* The Commission tabled its final report in Parliament in 2022. As part of its mandate, the Commission discussed the evolution of parliamentary oversight and its perceived failure to arrest corruption. It then identified a number of weaknesses in the legislature and how these could be remedied. As a start, the Commission advocated for a more proactive and consistent approach to oversight and endorsed the concept of “*amendatory accountability[[33]](#footnote-33)”* – which requires that, where Government defects have been uncovered, they be corrected.

In part as a response to the findings of the State Capture Commission, and to complement the procedures that had been put in place, Parliament has attempted to shift to a more outcomes-based approach to oversight, with a focus on qualitative, impact-making interventions and service delivery. To accomplish this, Parliament has, as part of its strategic plan, begun to identify a set of over-arching indicators against which progress can be measured. The evolving regulatory framework together with renewed necessity for change is expected to serve as a firm foundation for enhanced legislative oversight and Executive accountability.

**References**

1. Constitution of the Republic of South Africa (Act 108 of 1996).

2. Constitutional Court in the matter of Lindiwe Mazibuko vs the Speaker and others (CC 115/12).

3. Constitutional Court in the matter of The Economic Freedom Fighters vs the Speaker and others (CC 76/17).

4. Constitutional Court in the matter of the New Nation Movement vs the President of the Republic of South Africa and others (CC 110/19).

5. Constitutional Court in the matter of the United Democratic Movement (UDM) and others vs the Speaker and others (CC 89/2017).

6. Electoral Act (Act 73 of 1998) (as amended).

7. See Electoral Amendment Bill (B1 of 2022).

8. Money Bills and Related Matters Act (Act 9 of 2009) (as amended).

9. National Assembly Rules of Procedure (2016), (Ninth Edition, as amended).

10. Oversight and Accountability Model, Parliament of the Republic of South Africa, 1999.

11. Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act (Act 4 of 2004) (as amended).

12. Public Finance Management Act (Act 1 of 1999) (as amended).

13. Report of the Independent Panel Assessment of Parliament, 2009.

14. Report of the High-Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change, 2017.

15. Report on Parliamentary Oversight and Accountability. Corder, Jagwanth and Soltau. University of Cape Town, 1999.

16. Report of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State, 2022.

**To note:** All these reference documents are available online. Alternately, they can be sourced from Mr M Xaso, at mxaso@parliament.gov.za or Mr P Hahndiek at phahndiek@parliament.gov.za.

1. Parliament adopted the interim Constitution in 1994 and the Final Constitution in 1996. [↑](#footnote-ref-1)
2. Section 1 of the Founding Provisions of the Constitution. [↑](#footnote-ref-2)
3. Section 42(3) of the Constitution. [↑](#footnote-ref-3)
4. Section 92(2) of the Constitution. [↑](#footnote-ref-4)
5. Section 59 of the Constitution. Assembly Rules 57 and 184 detail the procedures for public access to the House and committees respectively. [↑](#footnote-ref-5)
6. In terms of the media, Section 16 of the Constitution safeguards freedom of the press and other media. [↑](#footnote-ref-6)
7. These particular institutions are formally known as the State Institutions supporting Constitutional Democracy but fall under Chapter 9 of the Constitution. [↑](#footnote-ref-7)
8. Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act (Act 4 of 2004) (as amended). [↑](#footnote-ref-8)
9. Public Finance Management Act (Act 1 of 1999) (as amended). [↑](#footnote-ref-9)
10. The AG can also conduct performance audits and can now take remedial actions against errant departments. [↑](#footnote-ref-10)
11. Sections 57 and 70 of the Constitution. [↑](#footnote-ref-11)
12. Section 55(2) of the Constitution. [↑](#footnote-ref-12)
13. National Assembly Rules 134-146 [↑](#footnote-ref-13)
14. Report of the Independent Panel Assessment of Parliament, 2009. [↑](#footnote-ref-14)
15. Report of the High-Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change, 2017, page 535. [↑](#footnote-ref-15)
16. Report on Parliamentary Oversight and Accountability (Corder, Jagwanth and Soltau), 1999. [↑](#footnote-ref-16)
17. Oversight and Accountability Model, Parliament of the Republic of South Africa, 1999. [↑](#footnote-ref-17)
18. Money Bills and Related Matters Act (Act 9 of 2009) (as amended). [↑](#footnote-ref-18)
19. Section 85 of the Constitution. [↑](#footnote-ref-19)
20. Section 102 of the Constitution. [↑](#footnote-ref-20)
21. National Assembly Rules 205-210. [↑](#footnote-ref-21)
22. The revised rules also provided that, in general terms, if the Programme Committee was not able to reach consensus on a particular matter, the Chief Whip of the Majority Party, acting with the concurrence of the Speaker and the Leader of Government Business (as a member of the Executive), could thereafter decide. [↑](#footnote-ref-22)
23. Constitutional Court in the matter of the *United Democratic Movement (UDM) and others vs the Speaker and others* *(CC 89/2017).* [↑](#footnote-ref-23)
24. The Constitution itself does not use the word “*impeach”* but the term has since become part of South Africa’s legal lexicon. [↑](#footnote-ref-24)
25. Section 89(1) of the Constitution. [↑](#footnote-ref-25)
26. Constitutional Court on the matter of *The Economic Freedom Fighters vs the Speaker and others (CC 76/17).* [↑](#footnote-ref-26)
27. National Assembly Rules 129R-AF. To note: these rules were adopted after the latest edition of the Rules, and will therefore be incorporated in the next edition. [↑](#footnote-ref-27)
28. National Assembly Rule 136. [↑](#footnote-ref-28)
29. Constitutional Court in the matter of the *New Nation Movement vs the President of the Republic of South Africa and others (CC 110/19).* [↑](#footnote-ref-29)
30. Electoral Act (Act 73 of 1998). [↑](#footnote-ref-30)
31. The next general and provincial elections will be held on 29 May 2024. [↑](#footnote-ref-31)
32. Officially known as the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State. [↑](#footnote-ref-32)
33. This concept was first proffered in the Report on Parliamentary Oversight and Accountability (Corder, Jagwanth and Soltau) (1999) – which later informed Parliament’s Oversight and Accountability Model. [↑](#footnote-ref-33)