



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

**REPORT OF THE
INDEPENDENT PANEL ASSESSMENT
OF PARLIAMENT**

CONTENTS

CONTENTS

Panel Members	1
Extract from a speech by former president Nelson Mandela	3
Chairperson's Foreword	4
Executive Summary	7
Introduction	10
Background to the Independent Review	10
Terms of Reference	11
Methodology	11
Constraints	12
Chapter Outline	12
Chapter 1: The Framework for South Africa's Constitutional Democracy	15
1.1. The South African Parliament in Context	15
1.2. The Nature of our Constitutional Democracy	16
1.3. Parliament's Constitutional Mandate	17
1.4. Parliament's Strategic Goals	20
1.5. Criteria for Evaluating Parliament	21
Chapter 2: Parliament's Legislative Mandate	23
2.1. Introduction	23
2.2. Delegated Legislation	25
2.3. Amendment of Money Bills	26
2.4. The NCOP's Legislative Responsibilities	26
2.5. Internal Coordination of Legislation	27
2.6. Review of the Impact of Legislation	28
2.7. Parliament's Ability to Initiate Legislation	31
2.8. Outstanding Constitutionally Required Legislation	31
2.9. Concluding Remarks	33
2.10. Summary of Chapter Recommendations	33

CONTENTS

Chapter 3: Parliament's Oversight Mandate	35
3.1 Introduction	35
3.2 Constitutional Mandate Regarding Oversight	36
3.3. South Africa's Party List Electoral System and Parliament's Oversight Mandate	36
3.4. The Development of a Parliamentary Oversight Model	37
3.5. Oversight by Parliamentary Committees	38
3.6. The Role of the Committee on Public Accounts	40
3.7. The Oversight Role of the NCOP	41
3.8. Institutions Supporting Democracy (Chapter 9 Institutions)	43
3.9. Conclusion	45
3.10. Summary of chapter recommendations	45
Chapter 4: Mandate to Serve as a Forum for the Public Consideration of Issues	47
4.1. Introduction	47
4.2. Plenary Debates	48
4.3. Parliament and the Media	50
4.4. Question Time	50
4.5. The NCOP as a Forum for the Public Consideration of Issues Affecting the Provinces	51
4.6. Conclusion	52
4.7. Summary of chapter recommendations	52
Chapter 5: Public Participation	53
5.1. Introduction	53
5.2. Challenges to Public Participation in South Africa	54
5.3. Public Participation in the Legislative Process	55
5.4. Constituency Offices and Constituency Work	58
5.5. Parliamentary Democracy Offices	62
5.6. Petitions	63
5.7. Public Participation Events	63
5.8. Public Education and Access to Information	64
5.9. The Importance of Feedback	65
5.10. Conclusion	66
5.11. Summary of chapter recommendations	66

Chapter 6: The Parliamentary Service	69
6.1. Introduction	69
6.2. Research Support	70
6.3. Support to Committees	70
6.4. The Language Service	71
6.5. Multilingualism and Democracy	72
6.6. Constitutional and Legal Support Services	72
6.7. Conclusion	73
6.8. Summary of chapter recommendations	73
Chapter 7: Transforming Parliament Into a Democratic Institution	75
7.1. Introduction	75
7.2. Parliament in the International Environment	77
7.3. Ethics in Parliament	79
7.4. Women and Parliament's transformation	80
7.5. Floor Crossing	82
7.6. Parliament's Leadership Structure	83
7.7. Parliamentary Budget Trends	85
7.8. Conclusion	86
7.9. Summary of chapter recommendations	87
Chapter 8: Recommendations and Conclusion	89
8.1. Discussion	89
8.2. Summary of recommendations	92
8.3. Sources Consulted	100
Appendix I: Terms of Reference for the Independent Assessment of Parliament	101
Appendix II: Roles and Functions of Parliament	103



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

**REPORT OF THE
INDEPENDENT PANEL ASSESSMENT
OF PARLIAMENT**

PANEL MEMBERS

PANEL MEMBERS¹

Panel Chairperson: Pregs Govender was a political activist, teacher and trade unionist in the 70's and 80's. Between 1992 to 1994 she managed the Women's National Council through which women impacted on the transition and Constitution. An ANC MP from 1994-2002, she initiated South Africa's gender budget that catalysed similar initiatives globally. She chaired Parliament's Committee on Women, which ensured that 80% of its transformative legislative priorities were enacted. She resigned after opposing the arms-deal in the defence budget vote and chairing hearings on the impact of HIV/AIDS. Author of 'Love and Courage, A Story of Insubordination', she works locally and globally, building an alternative politics.

Selby Baqwa is currently Group Executive: Governance and Compliance at the Nedbank Group. Previously, he served as the National Public Protector (1995-2002). Baqwa was a part-time professor of mercantile law and an instructor at the School for Legal Practice at the University of Natal. Admitted attorney in 1976, practised until 1988 and thereafter practised as an advocate at the Durban bar. He was president of the National Association of Democratic Lawyers. From 1995-2003 he served as the Chancellor of North West Technikon (1995-2003) and is former vice-president of the International Ombudsman Institute.

Colin Eglin was a Member of Parliament from 1958-1961 and from 1974-2004. He has also served as Leader of the Official Opposition (1977-79, 1986-88). During South Africa's transition Colin served as the Democratic Party's Chief Constitutional Negotiator, he was also a member of the Planning Committee of the Multi Party Negotiating Forum and of the Management Committee of the Constitutional Assembly. During 1993-94 he served as the Co-Chair of the Transitional Executive Council. Colin has traveled widely as a lecturer and consultant on Constitutional and Parliamentary matters and is the author of 'Crossing the Borders of Power – The Memoirs of Colin Eglin' (2007).

Judith February is the Manager of the Political Information and Monitoring Service-South Africa at Idasa. She studied law at the University of Cape Town and she has worked extensively on issues of good governance, transparency and accountability within the South African context, specifically in the Parliamentary context. Judith was the civil society representative on the National Anti-corruption Forum in 2005 and is involved in the Civil Society Network Against Corruption. Her column, 'Between the Lines' appears in the Cape Times newspaper (South Africa), fortnightly.

John Kane-Berman is the Chief Executive of the South African Institute of Race Relations. Previously he was senior assistant editor of the Financial Mail and South African correspondent for various foreign newspapers. Since 1983 he has been the Editor-in-Chief of SA Survey (previously Survey of Race Relations in SA). He has also written four books on South African political and economic issues. A graduate of Wits and Oxford, he is a former Rhodes Scholar.

Papati Robert Malavi is a political activist, former Magistrate and former Speaker of the Limpopo Legislature who is now in private business. He holds a bachelor's degree in law from UNIZUL, a postgraduate diploma in Labour Law from RAU and a master's degree in Conflict Management from UPE. He has traveled widely in Africa, USA, Canada and Europe attending seminars on Parliamentary democracy and governance.

¹All members of the Panel, except one (John Kane-Berman), are signatories to this report.

Koko Mashigo, an educator at heart, taught at Lebowakgomo Senior Secondary School for Five years (1990-1995 June), then became a Member of Parliament (August 1995-June 1999) and then Commissioner for the Public Service Commission (July 1999 to date). In all these capacities she has learned to embrace the values and principles contributing to social cohesion, and central to these are promoting and building strategic partnerships in order to enhance public participation, accountability and effectiveness with the view to accelerate service delivery, and to promote gender equity in all spheres of life. Academic background: BA Education at UNIN in 1988; BA (Ed) at UDW in 1990; MPA at UWC in 1998.

Aubrey Matshiqi is a former member of the Strategy Unit in the Premier's Office in Gauteng. His services as an analyst are used by local and international media, government, political parties, policy institutes, academic institutions, foreign embassies and the corporate sector. He writes regularly for different publications (including a column in the Business Day) and has addressed several seminars and conferences on various political topics. He was involved in leadership and other capacities in the UDF (as National Treasurer of the National Education Union of SA) the ANC, Umkhonto WeSizwe, the student movement (AZASO), the civic movement, the union movement and the South African Communist Party.

Professor Sipho Seepe was until recently the Director and Head of The Graduate Institute of Management and Technology following a stint as the Academic Director of Henley Management College, Southern Africa. He has written extensively on matters of public interest, from politics, culture, affirmative action issues and education to matters relating to transformation of society and institutions. Among others, he is a recipient of the prestigious Fulbright South African Researcher Grant and Harvard South Africa Fellowship. He is presently a columnist for Business Day.

Max Sisulu is a member of the National Executive Committee of the ANC and serves on its National Working Committee (NWC) and on its Finance Committee. He also heads the ANC Economic Transformation Committee having done so for the past 10 years. He established and became the first Director of the National Institute of Economic Policies (NIEP) from 1991-1994. Mr. Sisulu served as Chairperson of the Portfolio Committee on the RDP (Reconstruction and Development Programme), in the National Assembly, Parliament, in 1994 and was later appointed to serve as the Chief Whip of the ANC in first Democratic Parliament of South Africa.

Frederick van Zyl Slabbert was appointed as Chancellor of Stellenbosch University in 2008. After completing his studies he was a sociology lecturer at the Universities of Stellenbosch, Rhodes, Cape Town and the Witwatersrand before being appointed as professor in 1973. He became a Member of Parliament for the opposition Progressive Party in 1974 and served as the Leader of the Official Opposition from 1979 – 1986. He was a co-founder of IDASA and has published several books including *The Other Side of History* (2006) and *The Quest for Democracy* (1992).



EXTRACT FROM A SPEECH BY FORMER PRESIDENT NELSON MANDELA AT THE FINAL SITTING OF THE FIRST DEMOCRATICALLY ELECTED PARLIAMENT, 26 MARCH 1999

Because the people of South Africa finally chose a profoundly legal path to their revolution, those who frame and enact the Constitution and law are in the vanguard of the fight for change. It is in the legislatures that the instruments have been fashioned to create a better life for all. It is here that oversight of government has been exercised. It is here that our society in all its formations has had an opportunity to influence policy and its implementation.

Questions have been raised, we know, as to whether this House is not a carriage on the gravy train, whose passengers idle away their time at the nation's expense. To those who raise such questions we say: Look at the record of our Parliament during these first years of freedom,

Look at the work of the nation's representatives when they formed themselves into a Constitutional Assembly.

With a breadth of consultation and public participation that few would have imagined possible, and in a spirit of unprecedented consensus-seeking, it was here that a constitution was formulated and adopted to enshrine our people's deepest aspirations.

Look at the one hundred laws on average that have been passed by this legislature each year.

These have been no trivial laws nor mere adjustments to an existing body of statutes. They have created a framework for the revolutionary transformation of society and of government itself, so that the legacy of our past can be undone and put right. It was here that the possibility was created of improving the lives and working conditions of millions.

Look at the work of the committees that have scrutinised legislation and improved it, posed difficult questions of the Executive and given the public insight and oversight of government as never before.

This is a record in which we can take pride.

But even as we do so, we do need to ask whether we need to re-examine our electoral system, so as to improve the nature of our relationship, as public representatives, with the voters!

CHAIRPERSON'S FOREWORD

CHAIRPERSON'S FOREWORD

As the Chairperson of the Independent Panel appointed to conduct an assessment of the Parliament of South Africa, it is my pleasure to write the Foreword to our final Panel Report. In December 2006, the former Speaker of Parliament, Hon. Baleka Mbete and the Chairperson of the National Council of Provinces, Hon. Johannes Mninwa Mahlangu established this Panel and appointed politically diverse individuals, recognised for their independence and integrity. This reflected a willingness to engage with criticism of the institution and themselves as the leaders of this institution, in the quest to strengthen Parliament.

The Panel members selected were Adv Selby Baqwa, Mr. Colin Eglin, Ms. Judith February, Ms. Pregis Govender, Mr. John Kane-Berman, Mr. Papati Robert Malavi, Ms. Koko Mashigo, Mr. Aubrey Matshiqi, Prof. Sipho Seepe, Mr. Max Sisulu and Dr. Frederick Van Zyl Slabbert. The Panel members elected the Chair of the Panel. During the Panel's deliberations, members expressed diverse viewpoints. This report however, reflects the consensus reached at the end of the process. Identifying times for Panel meetings was a challenge as all the Panel members are individuals with demanding work schedules. However, the Panel worked within this constraint to complete its task. While the Panel engaged extensively with Parliament, and heard from significant sectors of civil society, the Panel did not have the material or human resources to engage the broad South African public to the extent we would have liked.

The Panel developed its own Terms of Reference: "To inquire into, report and make recommendations regarding the extent to which Parliament is evolving to meet the expectations outlined in the Constitution and also to assess the experience and role of Parliament in promoting and entrenching democracy. The assessment will focus specifically on the extent to which Parliament ensures that there is accountability, responsiveness and openness regarding the implementation of matters enshrined but not limited to Chapter 4 and 5 of the Constitution."

The Panel's Report and Executive Summary reflect the Panel's recommendations. In developing and finalising our Report a two-day workshop of the Panel proved extremely useful. The Panel wishes to record its appreciation for the ongoing and invaluable support provided by Co-ordinator Fazela

Mahomed, Researcher Alex Benkenstein, and Administrator Fatima Isaacs. The Panel would like to thank Professor Shadrack Gutto who acted as the Panel's Resource Person.

Operating within its resource constraints, the Panel decided it was important not to re-invent the wheel. The first task therefore was to undertake a literature review of all relevant, previous investigations, reviews and hearings. The Panel recommends that Parliament engage the findings of reports emanating from the ad hoc Committee on the Review of Chapter Nine and Associated Institutions as well as Parliament's Task Team on Oversight and Accountability.

A multi-party Reference Group consisting of Members of Parliament was established at the outset. The first meetings with the Reference Group and Committee of Chairpersons was characterised by candid criticisms of the problems that impeded Parliamentarians in fulfilling their Constitutional mandate. Amongst other things, these criticisms encompassed the delay in passing legislation to give effect to Parliament's Constitutional mandate to amend money Bills and the difficulties in holding the Executive accountable for questions raised in the House as well as proposals made in Committee Reports.

The Panel received extensive briefings from Parliament's managers and staff on how they are working to strengthen Parliament's administration. They recognised that the current legal, administrative and research capacity of Parliamentary Committees including technical support, such as Hansard, have to be strengthened if Parliament is to be able to effectively exercise its oversight mandate. Timely scheduling of Parliament's programme is critical to ensure, for example, that the National Council of Provinces is able to take legislation or policy issues to the provinces and receive adequate feedback. The public participation program also needs to be integrated with the legislative program so that public feedback through this program is incorporated into the legislative program, rather than being seen as one-off events or public relations campaigns.

The Panel deliberated at length on the question of accountability to constituencies. The nature of the electoral system and the subsequent power of political parties over Parliamentarians and Constituency Offices were issues that were raised in this regard. After lengthy deliberations the Panel agreed that the electoral system would need urgent reform.

The Panel examined Parliament's role in monitoring and evaluating the impact of national legislation. Legislation brought to Parliament by the Executive needs to include an implementation plan that addresses its financial and gendered impact. In the 1998/1999 National Budget Review, Government committed itself to ensuring that the Budget would be gender-responsive. Unfortunately Government's commitment in the National Budget was not continued beyond 1998/1999. Parliament's focus on improving the quality of life and status of women is critical to transformation. If unequal gender roles

and lives of those who form the majority of the poorest is addressed, there is a high likelihood that the quality of life of society as a whole will improve.

The strengthening of Parliament's capacity, particularly in terms of research and legal drafting services, will ensure that the Executive fulfils its commitments. Parliament also needs to evaluate the impact of international treaties and trade agreements, especially on the socio-economic rights of South Africa's citizens.

To ensure a strong independent Parliament, requires strong, independent Parliamentarians and Committees who act to safeguard their integrity and the integrity of Parliament. This integrity came under question during the arms-deal, the HIV/Aids debacle, 'Travel-gate' and more recently during the dissolution of the Directorate of Special Operations (known as the Scorpions), when public criticism portrayed Parliament as a rubber stamp of the Executive and/or the ruling political party.

Submissions from a wide range of organisations in civil society were critical in highlighting the difficulties civil society experiences in engaging Parliamentarians and Committees. An important role of Parliament is to ensure that those directly affected by legislation are consulted on the potential negative impact (the current Bill on Traditional Courts being a case in point). Unfortunately the majority of those who participate in public hearings in Parliament remain those who are well resourced. Adequate communication strategies, timeframes and subsidised transport costs to change this situation is imperative if Parliament is to meet its vision of becoming a 'People's Parliament'.

As the first President of our democracy, Nelson Mandela made clear, "Because the people of South Africa finally chose a profoundly legal path to their revolution, those who frame and enact the Constitution and law are in the vanguard of the fight for change. It is in the legislatures that the instruments have been fashioned to create a better life for all. It is here that oversight of government has been exercised. It is here that our society in all its formations has had an opportunity to influence policy and its implementation."

The Panel tables its Report on the Assessment of Parliament in the hope that its work over the last two years will help Parliament use its power to 'create a better life for all'.

Pregs Govender

Pregs Govender
Chair of the Panel

EXECUTIVE SUMMARY

The assessment of Parliament by an Independent Panel was initially conceived as part of Parliament's engagement with South Africa's African Peer Review Mechanism (APRM) process. The section of the APRM questionnaire on democracy and good political governance required an assessment of Parliament. Parliament's Joint Coordinating Committee on the APRM considered it most appropriate that an independent panel conduct such an assessment; however, due to time constraints, this assessment was not possible for the purpose of Parliament's APRM process. Parliament's final report on the APRM process however indicated that an assessment of the independence, efficiency and effectiveness of Parliament would be conducted as a priority project. This project was subsequently initiated with the appointment of an Independent Panel in December 2006 by the Presiding Officers of Parliament.

The terms of reference of the Independent Panel was to inquire into, report and make recommendations regarding the extent to which Parliament is evolving to meet its constitutional mandate in promoting and entrenching democracy. The findings of the Panel have emerged through a detailed literature review combined with a public hearing process that included role-players from within Parliament as well as civil society. A number of recommendations have emerged from the Panel's research, particularly relating to the independence of Parliament vis-à-vis the Executive, and the degree to which Members of Parliament represent, and are accountable to, the electorate.

Key Findings

The Panel deliberations assessed the extent to which Parliament is evolving to meet the expectations outlined in the Constitution, and also to assess the experience and role of Parliament in promoting and entrenching democracy. The Panel grappled with questions such as: Is Parliament truly expressing its vision of being a "people's Parliament", and what does this concept mean in practice? Though Members of Parliament are elected representatives of the public, to what extent are they effectively fulfilling the role of representing the concerns of the public? Is Parliament promoting and entrenching key democratic principles such as accountability, responsiveness and openness, both within other organs of state and within the institution itself? In posing these questions the Panel sought to avoid speaking in general terms of the role Parliaments play in governance structures and rather focused the discussion on the particular case of South Africa with its unique historical and socio-economic context.

This report reveals that significant challenges remain for Parliament to realise its vision of becoming a people's Parliament. This relates specifically to the link between the electorate and Parliament. Surveys show that there is generally a very poor understanding among the public of Parliamentary procedures and opportunities for participation in Parliamentary processes. While South Africa does not have a constituency-based electoral system, constituency offices have been established and periods allocated for Members of Parliament to conduct constituency work. This report reveals, however, that there are notable challenges with this system.

It has been argued that the perceived lack of accountability of Members of Parliament to the public, as well as the poor link between the public and Parliament in general, can be ascribed to South Africa's party-list electoral system. The Panel deliberated at length on the impact of the party-list electoral system on various aspects of Parliament's work. It was noted that the party-list system tends to promote accountability of Members of Parliament to their political parties rather than to the electorate. The power of political parties to remove their members from Parliament also tends to discourage the expression of individual viewpoints as opposed to party political views. The Panel recognised that alternative electoral systems also have drawbacks. The Panel strongly recommends that Parliament debates the relative merits of various electoral systems and considers the impact of these systems on the institution's ability to give expression to its Constitutional mandate. The view of the Panel is that the current electoral system should be replaced by a mixed system which attempts to capture the benefits of both the constituency-based and proportional representation electoral systems.

In recommending that Parliament considers the impact of the electoral system on the work of Parliament, the Panel does not wish to reduce the debates around public participation, accountability and responsiveness to the matter of electoral reform. It is strongly felt that, even in the absence of electoral reform, Parliament should undertake various initiatives to improve the manner in which it fulfils its Constitutional mandate. The manner in which constituency work is structured, for example, may be improved through a number of practical interventions that do not require electoral reform. In this regard, the Panel recommends that

Parliament conducts a comprehensive review of the manner in which constituency work is structured.

With regard to Parliament's legislative mandate there is increasing focus on monitoring the impact of legislation. This trend will require significant changes with regard to how legislation is structured in order to facilitate the subsequent monitoring process. Throughout the Panel's investigations it was also clear that the support offered to Members of Parliament and committees by the Parliamentary Service is crucial to the effective functioning of the institution. While the research and legal services of Parliament have been expanded, these may have to be further strengthened, particularly with regard to legal services. There is also a need to address challenges in the production of transcripts and in the information management systems of the Committee Section.

An issue that received specific attention in the Panel's deliberations was the public perception of Parliament. This issue touched on a number of subjects, including the effectiveness of Parliament's Public Affairs Section, the manner in which the institution engages with the media, and the code of conduct for Members of Parliament.

The Travelgate² issue has recently focused attention on Parliament's relatively weak ability to enforce ethics. In terms of sanctions, the Constitution specifies that a Member of Parliament becomes ineligible to hold office if they are convicted of an offence and sentenced to more than 12 months imprisonment

² "Travelgate" is the term used to refer to the abuse of travel vouchers by Members of the South African Parliament, which emerged in 2005.

without the option of a fine.³ Considering the damaging impact that unethical behaviour has on the image of Parliament, the Panel felt strongly that the conditions under which Members of Parliament become ineligible to hold office should be reviewed. It proposed that any Member of Parliament who is convicted of corruption, fraud or a similar offence should be deemed ineligible to serve as a Member of Parliament. As this matter touches directly on section 47 of the Constitution it will be necessary to refer it to the Constitutional Review Committee for consideration.

This report contains a number of recommendations touching on all aspects of Parliament's Constitutional mandate. These recommendations reflect Parliament as a dynamic institution which faces a number of challenges in fulfilling its role of promoting and entrenching democracy. Though the nature of such an assessment tends to focus attention on remaining challenges, the Panel does not wish to denigrate the significant steps that have been taken by Parliament since the transition to democracy. While the observations of the Panel do serve to highlight certain achievements and challenges within the institution, it is hoped that this report will also initiate broader and deeper introspection on an individual and institutional level, thereby assisting Parliament in fulfilling its Constitutional mandate.

For ease of reference, the recommendations of each chapter are provided in summary form at the end of the chapter, and all the recommendations of this report are again presented in summary form in chapter eight.

³ Section 47 (1) (e) and (3) of the Constitution of South Africa.

INTRODUCTION

Background to Independent Review

The assessment of Parliament by an independent panel was initially conceived as part of Parliament's engagement with South Africa's African Peer Review Mechanism (APRM) process. The APRM is an instrument established by the New Partnership for African Development (NEPAD). It is a voluntary process acceded to by member states of the African Union as a self-monitoring initiative for good governance. The mandate of the APRM is to ensure that the policies and practices of participating countries conform to the values, principles, codes and standards enshrined in the Declaration on Democracy, Political, Economic and Corporate Governance. South Africa was the fourth country to undergo the peer review process, following Ghana, Kenya and Rwanda.⁴

During South Africa's self-assessment as part of the APRM process during September 2006 to March 2007, Parliament embarked on an independent process in close consultation with the national APRM Governing Council and the Focal Point, headed by Minister Fraser-Moleketi. In engaging with the African Peer Review Mechanism (APRM), it became evident that the role of parliaments in this continental initiative was not adequately addressed. The South African Parliament sought to strengthen the role of parliaments in the APRM processes and to concretize a space for parliaments in the country self-assessments. In particular, the effectiveness and efficiency of Parliament as a democratic institution in South Africa

was considered an important dimension of the review in South Africa.

The section of the APRM questionnaire on democracy and good political governance required an assessment of Parliament. Parliament's Joint Coordinating Committee on the APRM considered it appropriate that an independent panel conduct such an assessment. Unfortunately, due to time constraints, this assessment was not possible for the purpose of Parliament's APRM process. Parliament's final report on the APRM process however indicated that an assessment of the independence, efficiency and effectiveness of Parliament will be conducted as a priority project. This project was subsequently initiated with the appointment of an independent panel in December 2006. Members of the Panel were selected based on their knowledge of Parliamentary processes and an independent and informed perspective on governance issues in South Africa. The panellists (hereafter referred to as 'the Panel') were:

Ms. Pregs Govender (Chairperson)
Adv. Selby Baqwa
Mr. Colin Eglin
Ms. Judith February
Mr. John Kane-Berman
Mr. Papati Robert Malavi
Ms. Koko Mashigo
Mr. Aubrey Matshiqi
Prof. Sipho Seepe
Mr. Max Sisulu
Dr. Frederick Van Zyl Slabbert

⁴ 2007. APRM Country Review Report No.5 – Republic of South Africa. p.1.

Terms of Reference

As Parliament wanted to ensure that the Panel had the necessary freedom to conduct an effective assessment of the institution, the Panel was requested to develop its own terms of reference. Reaching a unanimous agreement of the Panel's terms of reference and approach was therefore an important first step in the assessment process.

The terms of reference developed by the Panel required it to inquire into, report and make recommendations regarding the extent to which Parliament has evolved to meet the expectations outlined in the Constitution and also to assess the experience and role of Parliament in promoting and entrenching democracy. The assessment was to focus specifically on the extent to which Parliament ensures that there is accountability, responsiveness and openness regarding the implementation of matters enshrined but not limited to Chapter 4 and 5 of the Constitution of South Africa.

In addition to the express mandates of the National Assembly and the National Council of Provinces as articulated in Chapter 4 and 5 of the Constitution, the Panel also investigated the extent to which there is cooperation with other organs of government, as well as the extent to which Parliament, as the custodian of the Constitution, assists in maintaining and guarding the independence of the legislature.

Finally, the Panel was tasked to investigate Parliament's administration and allocation of resources, as well as issues of importance within the public domain and any other matter relevant to the effective functioning of Parliament. The full terms of reference is provided in Appendix I.

Methodology

The Panel's first order of business was to discuss and finalise its terms of reference to guide the assessment of Parliament. The final terms of reference are the result of wide-ranging deliberations among Panel members. In these discussions it was determined that the Panel's assessment be guided by the authority of the Constitution, and for this reason the terms of reference was closely based on the Constitutional provisions relating to Parliament.

In the assessment process itself it was important for the Panel to gather insights from a broad range of stakeholders both within and outside of Parliament. Before engaging directly with stakeholders the Panel conducted an extensive review of literature pertaining to the South African legislature. Sources included academic papers, media articles, various studies commissioned by Parliament, as well as documents such as the annual reports of Parliament and its committees and Parliament's Strategic Plan. This review of the literature assisted the Panel in identifying the key issues regarding Parliament's performance, and allowed for focused interaction in the stakeholder engagement phase.

A number of stakeholder groups were consulted by the Panel in an effort to gain detailed information on the extent to which Parliament was fulfilling its Constitutional mandate. Though efforts were made to elicit the views of members of the public, few submissions were ultimately received; this issue is discussed in greater detail in the following section of the chapter dealing with constraints of the study. In a number of cases stakeholders were able to directly address the Panel, these included:

- Civil society organisations
- Representatives of the media
- The Presiding Officers of Parliament
- The Committee of Chairpersons of the NA and the NCOP
- The Chief Whips of the ANC and DA (the chief whips of other parties were requested to make written submissions to the Panel)
- Parliamentary Administration & Management
- Leaders of Political Parties

The Panel further sought to elicit inputs from Members of Parliament by requesting written responses to questionnaires. While Chairpersons of Parliamentary committees were afforded an opportunity to directly address the Panel, and a questionnaire was issued to them to make further detailed inputs if they wished.

Members of the media and institutions that had participated in Parliamentary processes in the past were specifically requested to make written submissions to the Panel, and members of the public were similarly invited to make written submissions through the placement of advertisements in major South African newspapers.

Constraints

In developing its report the Panel attempted as far as possible to incorporate all inputs received during the stakeholder engagement process. This report strives to present a clear picture of Parliament's current efforts at meeting its Constitutional obligations. It highlights areas that require attention and makes concrete recommendations on the steps that are required to address these issues. The Panel could not always address issues in depth, and in such cases care

was taken to flag these issues so that Parliament can initiate processes to address them in a comprehensive fashion. One of the constraints faced by the Panel was the difficulty of convening meetings due to the busy schedules of Panel members. Nevertheless, the Panel found ways of working around this constraint to address its mandate.

The Panel notes with appreciation that several representatives from organised civil society made important submissions to the Panel, yet it would have welcomed a larger number of responses from members of the public. Panellists noted that advertisements in major newspapers were inadequate to elicit a broad public response. These shortcomings reflect the general difficulty of using advertisements in gathering input from members of the public in such processes, given South Africa's unique socio-economic context. The challenges faced by the Panel in gathering input from members of the public thus led to a broader consideration of the manner in which public input is elicited in similar processes, particularly in terms of Parliament's own processes.

A final constraint faced by the Panel was the inability to finalise meetings with representatives from the Executive branch of government, despite several attempts to arrange such meetings. The Panel notes that the unresponsiveness of the Executive may feed the perception that it is dismissive of Parliamentary processes.

Chapter outline

This report addresses key aspects of Parliament's Constitutional mandate in separate chapters, for example, there are chapters dealing separately with

oversight, the legislative process, and Parliament's mandate to serve as a forum for the public consideration of issues. Though addressed separately, these various aspects of Parliament's mandate are interrelated, and the separation of issues is in some respects artificial. Public hearings, for example, are addressed in chapter five on public participation, though it forms part of the legislative process, which is addressed in chapter two. Similarly, question time and plenary debates, though they may serve as powerful oversight tools, are dealt with in chapter four on Parliament's mandate to serve as a forum for the public consideration of issues rather than chapter three on oversight. These challenges reflect the integrated nature of Parliament's mandate in entrenching and deepening democracy. The report attempts to provide cross references and explanations where such instances occur.

Chapter one of this report outlines the characteristics of South Africa's Constitutional democracy and discusses the principles and Constitutional provisions that guided the Panel in their assessment of Parliament. The chapter considers Parliament's Constitutional mandate, which determines the central criteria against which Parliament is assessed. The strategic goals which Parliament has set itself are also considered, particularly Parliament's 2004-2009 Strategic Plan.

Chapter two of this report considers Parliament's legislative mandate; issues that receive particular attention include the degree to which Parliament is reviewing the impact of legislation, the question of delegated legislation, and the amendment of money Bills.

Parliament's oversight mandate is the focus of chapter three. Issues that are addressed in this chapter

include the quality of reporting on oversight visits by Parliamentary committees, the oversight role of the NCOP, and the potential role of Chapter 9 institutions in supporting the oversight mandate of Parliament.

Chapter four addresses Parliament's mandate to serve as a forum for the public consideration of issues. Do these issues reflect the concerns of the South African public? Are Members of Parliament acting as effective public representative of all South Africans, including the poor and marginalised? In addition to posing these questions the chapter also investigates the efficacy of question time and ways in which debate may be reinvigorated. Chapter four also deals specifically with the extent to which the NCOP is succeeding in fulfilling its Constitutional mandate to provide a national forum for public consideration of issues affecting the provinces.

Chapter five addresses Parliament's public participation initiatives and assesses the depth of knowledge and participation of members of the public in Parliamentary processes. The constituency system is reviewed, looking particularly at challenges that arise from party political influence in South Africa's constituency system. This report also investigates a recent initiative by Parliament to increase awareness of and participation in Parliament, that of Parliamentary Democracy Offices.

The parliamentary service is considered in chapter six. During the stakeholder engagement process a number of challenges within the parliamentary service were highlighted. These inputs related particularly to the quality and extent of administrative and research support provided to Parliamentary committees.

Chapter seven considers aspects of institutional

transformation that Parliament is grappling with. An example is the participation of women in Parliament and the impact of Parliament in transforming women's lives in society. Another example is Parliament's role in the international environment, which is an issue receiving increasing attention. This chapter also looks into the question of ethics in Parliament, interrogating the extent of ethical concerns in Parliament and asking if Parliament has been effective in dealing with these challenges.

The final chapter outlines the conclusions of this report and presents the recommendations of the Panel in summary form.



CHAPTER 1: THE FRAMEWORK OF SOUTH AFRICA'S CONSTITUTIONAL DEMOCRACY

CHAPTER 1: THE FRAMEWORK OF SOUTH AFRICA'S CONSTITUTIONAL DEMOCRACY

1.1. The South African Parliament in Context

The Panel was sensitive to the fact that in assessing Parliament it was investigating a dynamic institution that is rooted in the unique political and socio-economic context of South Africa. The transition to democracy created a government that was for the first time legitimate in the eyes of South African citizens, and brought comprehensive change to the structures of government. Parliament changed not only in terms of its Members, but also in terms of its structure and functioning. Parliament had to transform the legislative framework that had underpinned the apartheid state. The considerable legislative workload of Parliament in its initial years led to the establishment of a number of new parliamentary committees, which also had implications for Parliament's administration. Parliament's Research Section was established in 1997. Together with other newly established administrative units, such as a Public Education Office and International Relations Section, these innovations reflected Parliament's efforts to respond to its Constitutional mandate. The challenges outlined in this report should be viewed in the context of the institution's continuing development. The Panel acknowledges the efforts that have been made in the past years and, in identifying challenges, it sought to take a forward-looking approach that would outline the issues with which the institution must grapple in order to further its role in promoting and entrenching democracy.

1.2. The Nature of South Africa's Constitutional Democracy

The principle of constitutional supremacy, which establishes the Constitution as the highest source of authority in the country, is the legal foundation of South Africa's constitutional democracy. Drafted during South Africa's transition to an inclusive, democratic dispensation, the Constitution was the result of extensive deliberations among political parties, constitutional law experts, civil society organisations and various other groups. A comprehensive public participation process ensured that citizens across the country were included in the development of the Constitution. The outcome of these processes is a document that does more than outline the organisation of government and the division of political power. The Constitution expresses values and principles which shape our society and government, and establishes fundamental rights to protect the human dignity, equality and freedom of all citizens.

Modern democratic governments consist of three components, namely the Executive, Legislative, and Judicial arms of government. The principle of the separation of powers determines that these structures have separate and distinct primary roles and functions, and the power of each is constrained within a system of checks and balances. Moreover, in a constitutional democracy such as South Africa, all arms of government are bound by the Constitution and must act within the limits of their distinct constitutional mandates. The three arms of government also have shared roles and functions. For example, the Constitution gives the Executive authority with regards to "preparing and initiating legislation"⁵, while Parliament has the power

to "consider, pass, amend or reject" legislation and also to "initiate or prepare" legislation, within certain specified limits⁶. The judiciary is empowered by the Constitution to develop common law and customary law to give effect to provisions in the Bill of Rights to the extent that legislation does not do so. While the judiciary is often viewed as being limited to the interpretation and application of law, it therefore also has a law-making function.⁷

While the size and complexity of modern democratic states require a governance system that delegates decision making power to elected representatives, it should be remembered that the mandate and legitimacy of representative institutions stem from the citizenry. With the adoption of the Constitution, the people of South Africa sought to "lay the foundations for a democratic and open society in which government is based on the will of the people".⁸ The governance structures outlined in the Constitution provide the mechanisms through which governance "based on the will of the people" is ensured, and these mechanisms go far beyond periodic elections.

Some of the key principles articulated in the Constitution include government that is accountable, representative and participatory. Through fulfilling its Constitutional mandate, Parliament should play an important role in establishing these principles within the country's governance structures. In exercising oversight, Parliament should ensure that government is held accountable for its actions; as a forum for debate consisting of freely elected representatives,

⁵ Section 55(1) and 68 of the Constitution of South Africa.

⁷ Gutto et al. 2007. *A Study on Enhancing the Status, Role, Image and Positioning of the Parliament of the Republic of South Africa.*

⁸ Preamble of the Constitution of South Africa.

⁵ Section 85(2)(d) of the Constitution of South Africa.

it should ensure that government is representative; and through allowing for public participation through various mechanisms, it should provide the means for citizens to help shape the governance processes of their country. Moreover, through its legislative function Parliament has a central role in shaping the legal framework which guides the actions of government and citizens, thereby contributing to the ongoing transformation of South Africa.

While various mechanisms exist through which Parliament incorporates the principles of accountability, representivity, and public participation, challenges remain in deepening and broadening these mechanisms. The Constitution states that the National Assembly is elected to represent the people and to ensure “government by the people under the Constitution”⁹, yet at times it appears that there is a tenuous link between the national legislature and the people of South Africa.

As South Africa’s democracy matures, the quality of governance will depend crucially on the extent to which the three arms of government fulfil their Constitutional mandate. This relates not only to their unique functions and the various mechanisms through which they balance each other’s power, but also to the principle of cooperative government, which enjoins all spheres of government to, *inter alia*, preserve the peace, national unity and indivisibility of the Republic, secure the well-being of the people of South Africa, and co-operate with one another in mutual trust and good faith.¹⁰

1.3 Parliament’s Constitutional Mandate

Parliament is bound by the Constitution and must act in accordance with it.¹¹ Parliament’s Constitutional mandate is thus the necessary starting point for an assessment of this nature. In considering Parliament’s Constitutional mandate the Panel focused not only on the specific roles and functions of Parliament as outlined in chapter four of the Constitution, but also gave consideration to the broader democratic values and principles that the Constitution gives expression to. The strong focus on human rights and democratic principles found in the South African Constitution is expressed most succinctly in the preamble and founding provisions of the Constitution. These values provide the broader context in which Parliament’s specific Constitutional roles and functions are outlined, and should form an integral part of how Parliament conceptualises its role within South Africa.

The preamble of the Constitution of the Republic of South Africa states that the Constitution was adopted to:

Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights;

Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law;

Improve the quality of life of all citizens and free the potential of each person; and

⁹ Section 42(3) of the Constitution of South Africa.

¹⁰ Section 41 of the Constitution of South Africa.

¹¹ Section 44 (4) of the Constitution of South Africa.

Build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations.

The founding provisions of the Constitution express the values on which South Africa is founded:

- a) Human dignity, the achievement of equality and the advancement of human rights and freedoms.*
- b) Non-racialism and non-sexism.*
- c) Supremacy of the Constitution and the rule of law.*
- d) Universal adult suffrage, a national common voters roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness.¹²*

In fulfilling their Constitutional mandate, Members of Parliament must at all times be guided by these basic values. Parliament must continuously question the extent to which it contributes to processes such as “the establishment of a society based on democratic values”, “human dignity, the achievement of equality and the advancement of human rights and freedoms” and in building “a united and democratic South Africa”.

In outlining the remaining Constitutional provisions that hold particular relevance for the legislative arm of government, we may distinguish between those dealing with the form of legislative authority, and those that ascribe functions to particular legislative institutions.

Regarding form, the Constitution stipulates that the legislative authority of the national sphere of government is vested in Parliament, while on the provincial and local levels legislative authority is vested in Provincial Legislatures and Municipal Councils respectively.¹³

The South African Parliament is bicameral, consisting of the National Assembly (NA) and the National Council of Provinces (NCOP). The primary functions of the two houses of Parliament are outlined in Section 42 of the Constitution. The NA is elected to represent the people and to ensure government by the people under the Constitution. It does so by choosing the President, by providing a national forum for public consideration of issues, by passing legislation and by scrutinizing and overseeing Executive action.¹⁴

The NCOP represents the provinces and ensures that provincial interests are taken into account in the national sphere of government. It does this mainly by participating in the national legislative process and by providing a national forum for public consideration of issues affecting the provinces.¹⁵ A summary of the functions of Parliament and relevant Constitutional provisions are provided as appendix II. Based on these Constitutional provisions, we may identify four major responsibilities of the South African legislature: law-making; overseeing the Executive; linking citizens and the government; and selecting officials for the legislature and elsewhere.¹⁶

¹² Section 1 of the Constitution of South Africa.

¹³ Section 43 a, b and c of the Constitution of South Africa.

¹⁴ Section 42(3) of the Constitution of South Africa.

¹⁵ Section 42(4) of the Constitution of South Africa.

¹⁶ Murray, C. and Nijzink, L. 2002. *Building Representative Democracy – South Africa’s Legislatures and the Constitution*. p.5-6.

1.3.1. Law-making

The Constitution specifies that the national legislative authority is vested in Parliament, but it should be noted that Parliament is not solely responsible for the process of enacting laws. The main responsibility of the legislature is rather to ensure that legislation initiated by the Executive is fully debated in an open public forum, that all the issues that the legislation may raise are adequately addressed, that the needs of citizens are properly accommodated and that appropriate changes are made.¹⁷ Despite the dominant role played by the Executive in initiating legislation, it should be noted that the National Assembly, the National Council of Provinces and provincial legislatures are empowered to initiate and prepare legislation.¹⁸ The Constitution further specifically states that a committee or Member of Parliament has the right to introduce Bills.¹⁹

1.3.2. Overseeing the Executive

It is the responsibility of Parliament to oversee the Executive, and to ensure that it acts in terms of the Constitution. The Constitution clearly states that overseeing government is the responsibility of the entire legislature, regardless of party affiliation. Chapter 9 of the Constitution also establishes a number of institutions to “strengthen Constitutional democracy”²⁰, including the Auditor-General, the Public Protector, the Commission on Gender Equality and the South African Human Rights Commission.

These institutions are independent and subject only to the Constitution and the law²¹, however, their work does complement the oversight role of Parliament, and in many cases the information generated by these institutions may aid Parliament in its oversight role.

1.3.3 Linking citizens and the government

The National Assembly provides a national forum for the public consideration of issues, while the NCOP fulfils the same role for issues affecting the provinces.²² Moreover, both the NA and the NCOP are required to facilitate public involvement in their processes, conduct their business in an open manner, and hold their sittings, and those of their committees, in public (with allowance made in certain limited circumstances only to regulate such access).²³ Parliament thus has a responsibility to link government and the people. Legislative proceedings must be accessible, but beyond that Parliament should also undertake public education programmes and information services that promote close contact between Members and their electorate.²⁴ Parliament should directly express the Constitutional principle of government based on the will of the people by providing a forum for the public consideration of issues, providing information to the public and facilitating public involvement in its processes.

1.3.4. Selecting officials for the legislature & elsewhere

Finally, Parliament is required to select officials for

¹⁷ Murray, C. and Nijzink, L. 2002. *Building Representative Democracy – South Africa’s Legislatures and the Constitution*. p.5.

¹⁸ Sections 55(1)(ii), 68(1)(ii) and 114(1)(ii) of the Constitution of South Africa.

¹⁹ Sections 73(2) and 119 of the Constitution of South Africa.

²⁰ Section 181(1) of the Constitution of South Africa.

²¹ Section 181(2) of the Constitution of South Africa.

²² Section 42(3)(4) of the Constitution of South Africa.

²³ Sections 59 and 72 of the Constitution of South Africa.

²⁴ Murray, C. and Nijzink, L. 2002. *Building Representative Democracy – South Africa’s Legislatures and the Constitution*. p.6.

the legislature and various other positions. Every legislature in South Africa must have procedures to elect its office bearers (presiding officers, committee chairs, etc). In addition, the National Assembly plays a role in choosing people for a number of national positions, including the President, the Judicial Service Commission, most of the institutions established under Chapter 9 of the Constitution and the Public Service Commission.²⁵

1.4 Parliament's Strategic Goals

In pursuing its Constitutional mandate, Parliament has articulated its own vision, mission and strategic objectives. While the Constitution remains the final word in terms of functions and principles, the articulation of a strategic plan assists the institution in moving forward in a structured fashion towards the realisation of its Constitutionally mandated role. Such efforts also attempt to align the complex operational aspects of Parliamentary work within the broader framework of a participatory democracy. The Panel thus recognises Parliament's strategic plan, which was tabled in May 2005. As a public articulation of the vision, goals, and values of Parliament, the strategic plan establishes criteria that have been incorporated into the assessment process of the independent Panel. Parliament's vision, goals and values are discussed in greater detail below.

Parliament's Strategic Plan seeks to "create a common vision for all at Parliament, establishing a high level of synergy and understanding regarding the direction in which the organisation is moving, whilst also directing

the operational components in everyday activities".²⁶ At the centre of Parliament's strategic plan is the vision *to build an effective people's Parliament that is responsive to the needs of the people and that is driven by the ideal of realising a better quality of life for all the people of South Africa.*

Parliament has also identified four core values that underpin the functioning of the institution, namely: Constitutionality, people-centredness, co-operative government, and professionalism and institutional governance. The value of Constitutionality expresses "Parliament's commitment to all the values and principles embedded in the Constitution, which is considered the foundation for establishing a society based on democratic values, social justice, and fundamental human rights".²⁷ People-centredness speaks to Parliament's respect for the people of South Africa, and its belief that Parliament belongs to all who live in it. This value expresses Parliament's belief in "building [a] democratic and open society in which government is based on the will of the people, aimed at improving the quality of life of all citizens and freeing the potential of each person".²⁸ The third core value expressed in Parliament's Strategic Plan is that of co-operative government, which is encapsulated in the provisions of chapter 3 of the Constitution. Important here is the commitment to "co-operate with other arms of government [in providing] effective, transparent, accountable and coherent government for the Republic as a whole".²⁹ Finally, Parliament commits itself to being a professional organisation with good governance, which is accountable, transparent

²⁵ Murray, C. and Nijzink, L. 2002. *Building Representative Democracy – South Africa's Legislatures and the Constitution*. p.5.

²⁶ *Strategic Plan for Third Parliament 2004-2009*. p.5.

²⁷ *Ibid.* p.46.

²⁸ *Ibid.* p.47.

²⁹ *Ibid.* p.47.

and efficient.³⁰

It is important that the concepts and principles outlined in Parliament's strategy document are incorporated into the day-to-day functioning of the institution. What does it mean, for example, to say that Parliament strives to be a "people's Parliament"? In conducting its business, whether it is a committee meeting hearing submissions from civil society organisations or a plenary debate, is Parliament being true to the concept of a people's Parliament? Considering the quality of debate during plenary and the activities of Members of Parliament during constituency periods, does Parliament at all times strive to "be responsive to the needs of the people"?

1.5. Criteria for evaluating Parliament

There are a number of measures that may be used to assess the effectiveness of Parliaments. While assessments of Parliaments differ in the exact composition and labelling of assessment criteria, these criteria generally centre on a few key principles. The Panel's point of departure in determining evaluation criteria was the South African Constitution.

Section 1(d) of the Constitution identifies accountability, responsiveness and openness as specific values which underpin the South African state. Section 42(3) further specifies that the National Assembly is elected "to represent the people and to ensure government by the people under the Constitution".³¹ Finally, section 59(1)(a-b) and 72(1)(a-b) require both the National Assembly and the National Council of Provinces to "facilitate public involvement" and to "conduct its business in an open manner".

³⁰ *Ibid.* p. 46-47.

³¹ Emphasis added.

The Panel also thought it essential that Parliament should act effectively in responding to these Constitutional requirements. This encompasses both Parliamentary processes and the support provided to Members of Parliament by the Parliamentary administration. These constitutional provisions thus led the Panel to identify the following evaluation criteria:

- Accountable
- Responsive
- Open
- Representative
- Participatory
- Effective

The Panel attached the following content to these criteria:

- accountable: this involves Members of Parliament being accountable to the electorate for their performance in office and integrity of conduct;

- responsive: this value speaks to the ability of Parliament to reflect the concerns and debates occurring within South African society and draw these issues into the governance processes of the country.

- open: that is, being open and transparent to the public through different media in the conduct of its business.³² Sections 59(b) and 72(b) of the Constitution are particularly relevant in this respect in that they require the NA and NCOP to conduct their business in an open manner, and hold sittings, and those of their committees, in public;

³² IPU. 2006. *Parliament and Democracy in the Twenty-First Century – A Guide to Good Practice*. p.10.

- representative: that is, socially and politically representative of the diversity of the people, and ensuring equal opportunities and protections for all its members.³³ The basic elements of ensuring representivity are a multi-party system of government, universal suffrage and regular elections. The implementation of these values is secured by Constitutional provisions outlining the political rights of citizens and requiring regular elections based on an electoral system that “results, in general, in proportional representation”.³⁴ In its workings Parliament is also enjoined to respect Constitutional democracy and ensure proportional party representation in its proceedings (sections 57 and 116 of the Constitution).³⁵

- participatory: this means involving the public, including the associations and movements of civil society, in the work of Parliament. Participation can occur through various means, including providing citizens access to their elected representatives, establishing effective modes of public participation in legislative scrutiny, the right to open consultation for interested parties, public right of petition, systematic grievance procedures, and the possibility for lobbying, within the limits of agreed legal provisions that ensure transparency.³⁶

- effective: this means the effective organisation of Parliament’s work in accordance with the aforementioned democratic values, and the performance of

Parliament’s legislative and oversight functions in a manner that serves the needs of the whole population.³⁷ This principle also requires efficiency in Parliament’s functioning, that is, the requirement for the work of Parliament to be conducted in ways that are timely and cost effective, and that ensure that the two chambers of the national Parliament and the nine provincial legislatures interact in a co-operative manner.³⁸

These values broadly correspond to the key characteristics of a democratic Parliament as defined by the Inter-Parliamentary Union. In the course of its investigations the Panel attempted to develop a clear understanding of the mandate and principles established by the Constitution, and by contrasting these with the observed practices within Parliament, provide meaningful commentary that will assist the institution in fulfilling its Constitutional mandate.

³³ IPU. 2006. *Parliament and Democracy in the Twenty-First Century – A Guide to Good Practice*. p.10.

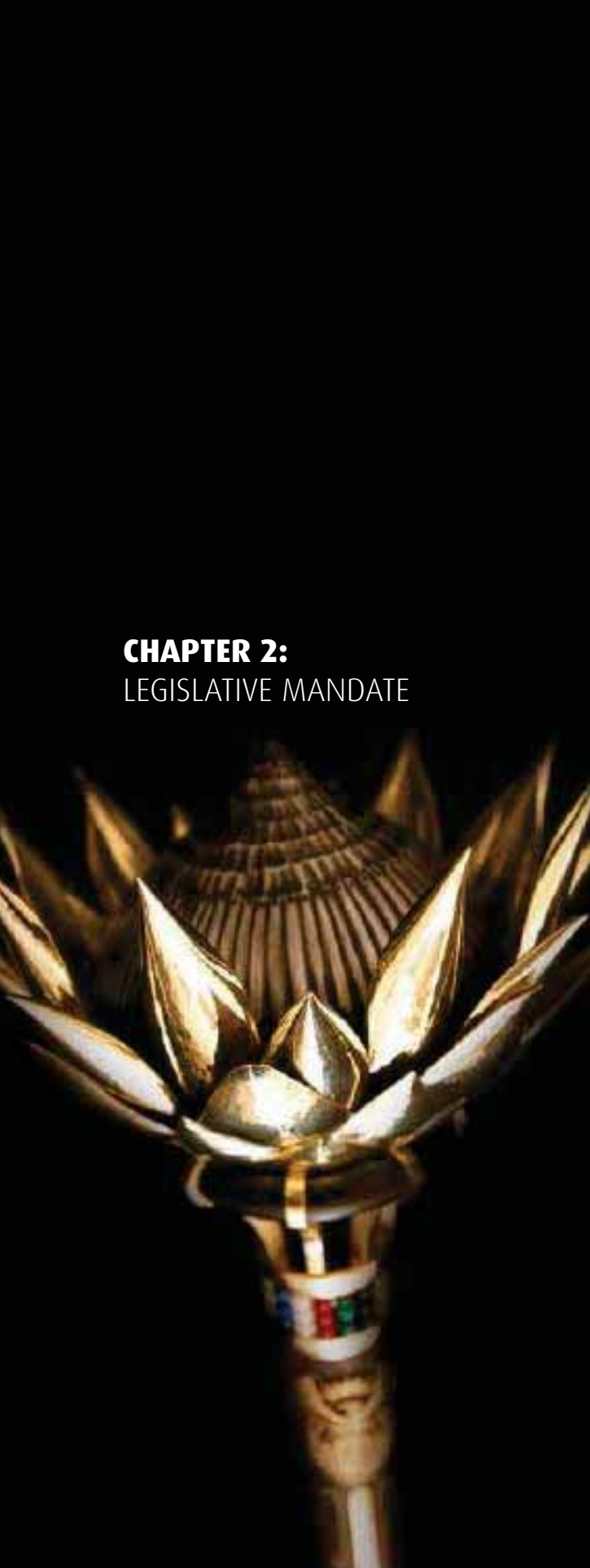
³⁴ Section 46(1)(d) of the Constitution of South Africa.

³⁵ Murray, C. and Nijzink, L. 2002. *Building Representative Democracy – South Africa’s Legislatures and the Constitution*. p.3-4.

³⁶ IPU. 2006. *Parliament and Democracy in the Twenty-First Century – A Guide to Good Practice*. p.10.

³⁷ IPU. 2006. *Parliament and Democracy in the Twenty-First Century – A Guide to Good Practice*.

³⁸ Murray, C. and Nijzink, L. 2002. *Building Representative Democracy – South Africa’s Legislatures and the Constitution*. p.4.



CHAPTER 2: LEGISLATIVE MANDATE

CHAPTER 2: LEGISLATIVE MANDATE

2.1 Introduction

The process by which laws are made and enforced in South Africa involves all spheres of government. Draft laws in the form of Bills generally originate from the Executive, while the enforcement and interpretation of laws rests with the Judiciary. The Constitution is clear, however, in assigning national legislative authority to Parliament.³⁹ While not controlling all aspects of the law-making process, Parliament's position as the central legislative institution is expressed through its mandate to scrutinize, amend, and enact legislation. Moreover, as both the National Assembly and the National Council of Provinces are specifically required to facilitate public involvement in the legislative process, Parliament should serve as a forum for public debate and involvement in the development of laws that govern our country.⁴⁰

In both the NA and NCOP committees play a central role in the legislative process. Parliament exercises its legislative authority through committees in order to facilitate the detailed scrutiny, debate and canvassing of public submissions that is entailed in the development of legislation. Committees, however, remain structures of Parliament and Bills can therefore only be adopted by the respective Houses. Given the central role of committees in the legislative process it is essential that they are effectively supported by the Parliamentary administration. Support to committees must be considered both in terms of capacity and the efficiency of available resources and services; these issues are discussed in greater detail in chapter six of this report. Other aspects of the legislative process are also dealt with in subsequent chapters of this report,

³⁹ Section 44(1) of the Constitution of South Africa.

⁴⁰ Section 59(1) and 72(1) of the Constitution of South Africa.

for example, the public hearing process is discussed in chapter five.

In the years following South Africa's transition to democracy Parliament's legislative work-load has been considerable. Not only have the number of Bills been very high, but in many cases these Bills have been complex, representing significant policy initiatives.⁴¹ This high level of legislative activity was a reflection of the transformation of society at large, as apartheid era laws were amended and new policies enacted. It has been noted that, while Parliament played an important role in establishing the legislative framework of democratic South Africa, the pace at which Bills were introduced in Parliament in some cases did not allow for close scrutiny. While Parliament's legislative mandate is thus well established, with the Constitution and the Rules⁴² providing a fairly detailed outline of the legislative process, the Panel identified a number of remaining challenges that require consideration. This chapter will look specifically at the issue of delegated legislation, the amendment of money Bills, the NCOP's legislative mandate, and the extent to which Parliament reviews the impact of legislation.

A number of the issues discussed in this chapter are linked to Parliament's willingness and ability to assert its independence. For example, it is essential that the implementation of delegated legislation is carefully monitored to ensure that Parliament's intent in

passing the primary legislation is expressed. Without such monitoring, the Executive may fail to draft subsidiary legislation required to implement the Act or draft regulations that do not give effect to the purpose of legislation enacted by Parliament. Parliament has not yet established a mechanism to monitor delegated legislation, despite a recommendation to this effect being expressed in the 2002 report of the subcommittee established to investigate this issue.⁴³

The ability of Parliament to amend money Bills is also a matter linked to the independence of the institution, as it provides a mechanism through which Parliament may interrogate the policy priorities of the Executive as expressed in financial frameworks. Moreover, the Constitution specifically requires that Parliament develop legislation establishing a process through which it may amend money Bills, yet at the time of writing Parliament had only recently enacted this legislation.

The independence of Parliament vis-à-vis the Executive has been highlighted with the tabling in May 2008 of the National Prosecuting Authority Amendment Bill and the South African Police Service Amendment Bill in the National Assembly, which effectively requires the dissolution of the Directorate of Special Operations (known as the Scorpions). In the view of some commentators this process relegates Parliament to a rubber stamp for decisions taken within the majority party.

⁴¹Murray, C. and Nijzink, L. 2002. *Building Representative Democracy – South Africa's Legislatures and the Constitution*. p.74.

⁴² Parliament has three sets of formal rules which have been established to govern Parliamentary business: The Joint Rules of Parliament, the Rules of the National Assembly, and the Rules of the National Council of Provinces.

⁴³ *Interim Report of the Joint Subcommittee on Delegated Legislation* – 29 October 2002.

2.2. Delegated legislation

Through the use of delegated legislation Parliament allows the Executive to develop subsidiary legislation by means of proclamations, regulations or other instruments. This authority extends only to supplementing and expanding on primary legislation passed by Parliament; Parliament cannot delegate the power to make, amend or repeal Acts of Parliament. Delegated legislation is thus legislation enacted by the Executive to regulate in greater detail matters provided for by the original enactments in outline form.⁴⁴

The use of delegated legislation is a common practice among Parliaments across the world. It is a useful mechanism for situations in which legislation covers highly technical matters, where there is a need for flexibility or experimentation in applying legislation, or in emergency conditions that require action in a short period of time. Legislative authority, however, remains vested in Parliament, and this together with Parliament's Constitutional obligation to exercise oversight over executive action makes it essential that Parliament has structures and processes through which delegated legislation is carefully monitored. Such monitoring lessens the risk of 'legislation by regulation' without the legislature having adequate control over the legislative process.⁴⁵

The Constitution gives Parliament the discretion to enact national legislation that specifies the manner

in which, and the extent to which, instruments of subordinate legislation such as proclamations and regulations must be tabled in Parliament and approved by Parliament.⁴⁶ Parliament has responded to this Constitutional provision by establishing a Joint Subcommittee on Delegated Legislation, which has sought to develop mechanisms through which Parliament may exercise an element of control over delegated legislation and thereby avoid ceding its legislative authority.

The work of the Joint Subcommittee on Delegated Legislation has resulted in a draft resolution which is currently before Parliament, proposing the establishment of an Interim Scrutiny Committee to scrutinise the delegating provision in the principle legislation, and then approve or advise the responsible Committee on the delegation.

The Panel notes that, although a draft resolution on the establishment of an interim scrutiny mechanism for delegated legislation has been adopted by the Joint Rules Committee, the resolution has not yet been considered by the Houses of Parliament. The Panel strongly urges that Parliament establish such a scrutiny mechanism, as this reflects directly on Parliament's independence and the effectiveness with which it exercises its legislative mandate. The fact that a mechanism to scrutinize and monitor delegated legislation has not yet been established is of concern to the Panel, particularly given the fact that an interim report from the Joint Subcommittee on Delegated Legislation proposing the establishment of such a mechanism had already been published in 2002.

⁴⁴ *Interim Report of the Joint Sub-Committee on Delegated Legislation*, p.14.

⁴⁵ Gutto, S et al. 2007. *A Study on Enhancing the Status, Role, Image and Positioning of the Parliament of the Republic of South Africa*. p.14.

⁴⁶ Section 101(4) of the Constitution of South Africa.

The Panel further notes that the resolution refers to an “interim” scrutiny mechanism, and provides no detail regarding the expected lifetime of the mechanism. Given the importance of scrutinizing delegated legislation the Panel does not believe that an interim mechanism will be sufficient, and strongly recommends that Parliament develop permanent structures and processes as a matter of urgency. It will be important that such a scrutiny mechanism also considers the time frames for passing subsidiary legislation. Without such scrutiny the implementation of primary legislation may be seriously delayed.

2.3. Amendment of Money Bills

The Constitution requires that an Act of Parliament must provide for a procedure to amend money Bills before Parliament.⁴⁷ In 1997 legislation outlining such a procedure was drafted by Treasury, but due to concerns regarding the extent to which it empowered Parliament to amend money Bills, the legislation was never tabled in Parliament. This task was subsequently taken up by the Parliamentary Task Team on Oversight and Accountability. One of the focus groups of the Task Team was specifically delegated with the responsibility to develop draft legislation for the amendment of money Bills. At the time of the Panel’s deliberations on this issue draft legislation had been developed,

which has yet to go through a public participation process.

The ability of Parliament to amend money Bills raised a number of concerns from the Treasury and other actors. These concerns related to, among others, the balancing of expenditure with revenue generation when budget changes are effected, the disruption of the budget cycle, and inadequate resources within Parliament to analyse the full implications of budgetary adjustments. The Panel recognises these concerns and acknowledges that the ability of Parliament to amend money Bills is a highly complex matter requiring thorough procedures and a significant expansion of capacity. The Panel notes, however, that the ability of Parliament to amend money Bills is an important expression of the institution’s independence and may serve as a powerful tool to exercise oversight over the Executive’s policy priorities. Furthermore, Parliament is specifically mandated by the Constitution to develop a procedure to amend money Bills. It is thus important that Parliament has completed the process of enacting legislation outlining a procedure through which it may amend money Bills.

2.4. The NCOP’s Legislative Responsibilities

All Bills that are adopted by Parliament must be considered by both the National Assembly and the National Council of Provinces (NCOP), but the NCOP has a unique role to play in relation to section 76 Bills. These Bills concern provincial powers, and the category includes all national Bills that cover matters within the concurrent jurisdiction of the national and provincial governments listed in Schedule 4 of the Constitution. Provincial input on these Bills is essential because section 125 of the Constitution

⁴⁷ A Bill is a money Bill if it – (a) appropriates money; (b) imposes national taxes, levies, duties or surcharges; (c) abolishes or reduces, or grants exemptions from, any national taxes, levies, duties or surcharges; or authorizes direct charges against the National Revenue Fund, except a Bill envisaged in section 214 authorizing direct charges [Section 77(1) of the Constitution of South Africa]. As well as Section 77(3) of the Constitution of South Africa: All money Bills must be considered in accordance with the procedure established by section 75. An Act of Parliament must provide for a procedure to amend money Bills before Parliament.

anticipates that provinces will be responsible for implementing them. National Bills dealing with the exclusive powers of provinces (schedule 5 matters) also fall under section 76.

The significance of the NCOP's role in relation to section 76 Bills is reflected in the procedure that section 76 sets out for their passage through Parliament. Provincial delegations have just one vote each on such Bills. When voting on these Bills provincial delegations must follow the mandate of their provincial legislatures. To prepare a proper mandate provinces need to consider the implications of the Bill for the province. This might involve holding public hearings, discussion with the relevant MEC and meetings with local government.

If section 76 Bills are to be properly considered before they are passed, the NCOP should have a programme which ensures that provincial decision-makers have adequate information about the Bills to make informed decisions about them. Furthermore, adequate time must be allowed for discussions involving both Ministers of Executive Councils and Members of Provincial Legislatures in each province, so that the final Bill addresses the particular needs of each province. Clearly there is a great need for detailed and considered programming. The NCOP has employed legislative cycles to manage the processing of legislation, but these cycles are short and are not always adhered to. The result is that Provincial Legislatures are often placed under significant pressure to develop a voting mandate in short time. There have been reports of provinces receiving no more than a few hours' notice for a mandate.

A number of changes are necessary before the NCOP will fulfil its role as a chamber representing provinces

in the national sphere properly:⁴⁸

- Provinces need more time to consider Bills and to reach well thought through positions;
- Mandates must reflect substantive provincial concerns and thus enrich national law-making processes; and
- Debates on Bills in the NCOP, both in committees and in plenary sittings, must be substantive and allow real engagement among provinces and with the national government.

2.5. Internal Coordination of Legislation

Following the first reading of a Bill the leader of the relevant House refers it to the appropriate committee. The committee considers the Bill in detail and then reports back to the House. The committee may recommend approval or rejection of a Bill or it may present an amended version of the Bill.

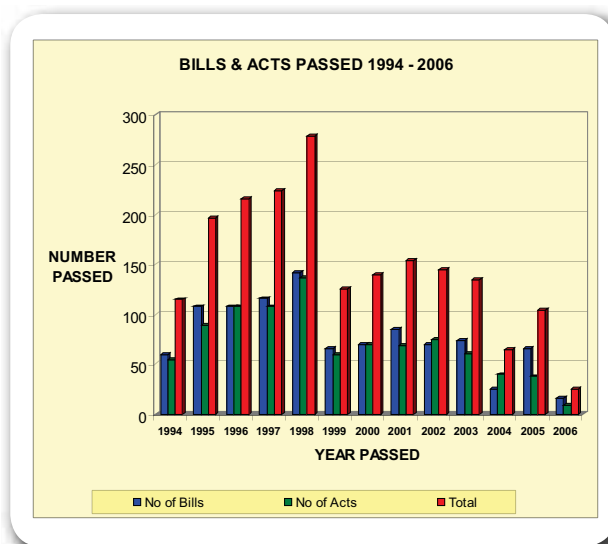
In cases where a Bill may be relevant to the work of more than one committee, these committees may confer, either at their own initiative or on the instruction of the Presiding Officer. There are in fact often cases where legislation touches on areas of relevance to a number of committees, yet conferral is a relatively uncommon practice, giving rise to concerns that committees work as isolated "silos". The danger of this tendency is that the full implications of the draft legislation are not fully considered and valuable perspectives may be lost. The authority to instruct committees to confer lies with the Presiding Officers. It is the view of the Panel that the Presiding Officers should employ this mechanism more frequently where

⁴⁸ These recommendations were first made in Murray *et al* 2004. *NCOP Second Term 1999-2004*. p.29. The Panel supports these recommendations.

appropriate. The Panel notes that Parliamentary rules have recently been established to allow for committees to report jointly to the House. Such new mechanisms, as well as established practices such as conferral, should be used with more frequency to improve the quality of legislative work.

2.6. Review of the Impact of Legislation

Parliament's legislative workload has been considerable in the first decade of democracy. As the transformation of South Africa's legislative framework has progressed the amount of Bills passing through Parliament peaked during the late 1990s and has been steadily decreasing in recent years, as shown in the graph below. In their engagement with the



Panel the Presiding Officers of Parliament at the time, Speaker of the National Assembly Hon. Baleka Mbete and Chairperson of the National Council of Provinces Hon. Johannes Mninwa Mahlangu, emphasised that this shift in the legislative workload of Parliament has initiated a new focus in Parliament: beyond

passing Bills, Parliament must now focus more closely on assessing the impact of legislation on people, programmes and service delivery.

One of the initiatives undertaken by Parliament to review the impact of legislation is the Equality Review campaign. In 2006 the Presiding Officers requested three Parliamentary committees dealing with gender and disability issues to assess the impact of legislation that had been passed since 1994 on these groups. The review process included extensive public hearings, which enabled Parliament to gain a clear picture of the impact of legislation on communities throughout South Africa. The review considered various aspects of gender inequality, including: income inequality, access to land, gender-based violence, institutional mechanisms aimed at promoting gender equality and women in decision-making positions.⁴⁹ The research conducted as part of the review process, combined with inputs received during the public hearings, allowed for specific recommendations to be made to Parliament aimed at increasing the efficacy with which the institution engages with gender-based issues. The insert below provides more detail on the Equality Review Campaign. Such an approach to the review of the impact of legislation may serve as a powerful oversight tool for Parliament, provided that they are supported by detailed research, broad public engagement and a detailed, specific strategy to incorporate the outcomes of the review in Parliamentary processes and ensure that the review leads to concrete action.

⁴⁹ *Report of the Joint Monitoring Committee on the Improvement of Quality of Life and Status of Women on the impact of the Equality Act on the lives of women and people with disabilities.* 2007.

Case Study of the Review of the Impact of Legislation – The Equality Review Campaign

The Equality Review Campaign was conducted in two phases. Phase one was initiated during February 2006, resulting in a draft report that was tabled at the People's Assembly in Oudtshoorn on 15 September 2006. The Draft Report provides an overview and analysis of the key themes pertaining to the Equality Act (Promotion of Equality and Prevention of Unfair Discrimination Act [No. 4 of 2000]), and emerging from a desktop study conducted by the Parliamentary Research Unit, written submissions as well as public hearings.

The following activities were undertaken during the first phase of the Equality Review Campaign:

- A desktop study aimed at consolidating the results of existing research and literature on the impact of the Equality Act on the lives of women and people with disabilities.
- A call for written submissions on the Domestic Violence Act (No. 116 of 1998). In reviewing the submissions received, this report only highlights key concerns as they specifically relate to issues of equality.
- Public hearings hosted by the two Joint Monitoring Committees (JMCs):
 - The JMC on Improvement of Quality of Life and Status of Women held public hearings on the Equality Act and the Domestic Violence Act (Act No 116, 1998).
 - The JMC on Improvement of Quality of Life and Status of Children, Youth and Disabled Persons conducted hearings on the work done by Office on the Status of Disabled Persons (OSDP) and Office on the Rights of the Child (ORC) in promoting people with disabilities and children's rights.

The second phase of the Equality Review Campaign commenced during September 2006, and unlike the process followed in phase one, had a more narrow focus on the Equality Act. Phase two involved the following activities:

The two Joint Monitoring Committees, as well as the Portfolio Committee on Justice and Constitutional Development held further public hearings in Parliament on the impact of the Equality Act on women and people with disabilities.

- The JMC on Improvement of Quality of Life and Status of Women conducted oversight visits in Mpumalanga and Limpopo during October 2006. In addition, the two JMCs, together with the Portfolio Committee on Justice and Constitutional Development, held joint public hearings, receiving submissions from Chapter Nine Institutions during October 2006.

In addition to conducting a review, Parliament has also initiated a process to popularise the Equality Act.

The Equality Review Campaign (continued)

In light of the insights emanating from the review process, the JMC made a number of recommendations, including the following:

- That, in light of the fact that Parliament is sometimes provided with misdirected and meaningless information with regard to the functioning of the national gender machinery, the relevant Committees of Parliament are explicit and specific with regard to information requested from government departments.
- That the relevant Committees of Parliament engage with the Department of Provincial and Local Government on the manner in which the national gender machinery has been put into operation.
- That the relevant Committees of Parliament avail themselves of additional information from stakeholders in order to facilitate a comprehensive, more accurate assessment of the national and provincial situation as it pertains to gender.

As Parliament's legislative work increasingly comes to emphasise the monitoring of the impact of legislation, Parliament must also consider how the form and content of legislation may facilitate such monitoring. Legislation must be drafted in such a way that it presents clear and realistic objectives. If the intended impact of legislation is outlined within the Act this will facilitate future monitoring exercises.

The Panel recommends that an Impact Assessment Report on the likely impact of each Bill should be attached when the Bill is tabled in Parliament. The Executive should be required to undertake such assessments before the Bill is tabled in Parliament. This report 1.) must examine the relevant and likely budgetary, financial, economic, administrative, social, gender, environmental and other impacts if the Bill in question is enacted; 2.) should further explain clearly the scope of any law-making and other

powers being delegated to ministers or officials, and why it is thought necessary to delegate; 3.) should also clearly set out the criteria in terms of which any discretionary powers are to be exercised; 4.) should summarise all submissions (written and oral) from outside bodies regarding the Bill and contain the Department's response to each of these submissions. The parliamentary committee processing the Bill should in turn respond to all submissions made to it.

The impact of legislation must also be monitored after its enactment. Such monitoring must consider *inter alia*: unintended consequences of legislation, failure by the Executive or other organs of state to take required actions in response to legislation, and the extent to which the objectives and implementation targets of legislation is achieved.

As Parliament begins to focus increasingly on

monitoring the impact of legislation it will have to ensure that it develops the necessary skills and capacity to effectively perform this function. The expansion of skills and capacity must empower Members of Parliament through, for example, training and the provision of administrative, technological and other forms of support. The Parliamentary service will also require development in order to ensure that Parliament effectively performs this aspect of its legislative and oversight mandate.

2.7. Parliament's Ability to Initiate Legislation

Section 55(1)(b) and 68(b) of the Constitution of South Africa empowers the National Assembly and the National Council of Provinces to "initiate or prepare legislation...except money Bills", yet to date Parliament has not employed this power. Instead, Parliament has adopted a reactive approach, allowing the Executive to draft Bills, which are then considered by Parliament. In the view of the Panel, the power of the National Assembly to initiate legislation is a powerful tool through which Parliament may address policy issues and assert its independence vis-à-vis the Executive. In some cases issues may be initiated through Parliamentary debates, but it is then left to the Executive to develop draft legislation, which may not have the same priorities as Parliament in terms of the development of legislation. The Panel observed that part of the reason for Parliament not initiating legislation lies in the relatively weak capacity of Parliament's legal services. This matter is discussed in greater detail in section six of this report dealing with the Parliamentary service. It is encouraging to note that Parliament's legal services are currently being expanded, but it remains to be seen whether these changes are adequate to address the institution's

needs. The Panel recommends that Parliament should explore the reasons behind its poor record in initiating legislation and address capacity gaps that may contribute to it.

2.8. Outstanding Constitutionally Required Legislation

In the course of its investigations the Panel was alerted to research conducted by the Parliamentary Legal Services Office relating to legislation required by the Constitution but not yet enacted. The Panel proposes that this required legislation is urgently engaged with by Parliament. Any subsequent evaluation must also investigate the extent to which Parliament has taken steps to ensure that legislation required by the Constitution is enacted into law. The list of Constitutional provisions requiring legislation is not exhaustive, and the Panel recommends that a detailed review be conducted in order to identify outstanding constitutionally required legislation.

In the same vein the recently instituted ad hoc Committee on the Review of Chapter 9 and Associated Institutions has noted in its report that Parliament has not carried out its obligation in terms of section 219(5) of the Constitution. This section empowers Parliament to initiate national legislation to establish frameworks for determining the salaries, allowances and benefits of judges, the Public Protector, the Auditor General, and members of any Commission provided for in the Constitution, including the broadcasting authority referred to in section 192. According to the Committee, the absence of this national legislation has created the existing disparities in the determination of remuneration and conditions of service amongst chapter 9 and associated institutions, such as the

Public Protector and the Auditor General.

The current list includes:

- Framework legislation in terms of section 219(5) of the Constitution must be adopted urgently either by amendment of the Independent Commission for the Remuneration of Public Office Bearers Act or through development of new legislation to remedy the discrepancies.
- Section 6(4) – The national government and provincial governments, by legislative and other measures, must regulate and monitor their use of official languages.
- Sections 47(2) and 106(2) – Persons who are not eligible to be members of the National Assembly or a provincial legislature in terms of subsections 1(a) or (b) of the respective sections, may be a candidate for the Assembly or the provincial legislature, subject to any limits or conditions established by national legislation.⁵⁰
- Section 65(2) – An Act of Parliament, enacted in accordance with the procedure established in either subsection (1) or subsection (2) of section 76, must provide for a uniform procedure in terms of which provincial legislatures confer authority on their delegations to cast votes on their behalf.⁵¹
- Section 125(3) – The national government, by legislative and other measures, must assist provinces to develop the administrative capacity required for the effective exercise of their powers and performance of their functions referred to in subsection (2).⁵²

⁵⁰ Section 47(1)(a) and (b) of the Constitution of South Africa provides that “[e]very citizen who is qualified to vote for the National Assembly is eligible to be a member of the Assembly, except –

(a) anyone who is appointed by, or is in the service of, the state and receives remuneration for that appointment or service, other than –
 (i) the President, Deputy President, Ministers and Deputy Ministers; and
 (ii) other office-bearers whose functions are compatible with the functions of a member of the Assembly, and have been declared compatible with those functions by national legislation;
 (b) permanent delegates to the National Council of Provinces or members of a provincial legislature or a Municipal Council;...”
 Section 106(2) provides similarly with the necessary changes in context for provincial legislatures.

⁵¹ Item 21(5) of Schedule 6 provides that “until the Act of Parliament referred to in section 65(2) of the new Constitution is enacted each provincial legislature may determine its own procedure in terms of which authority is conferred on its delegation to cast votes on its behalf in the National Council of Provinces.”

⁵² Section 125(2) of the Constitution of South Africa: The Premier exercises the Executive authority, together with the other members of the Executive Council, by –

(a) implementing provincial legislation in the province;
 (b) implementing all national legislation within the functional areas listed in Schedule 4 or 5 except where the Constitution or an Act of Parliament provides otherwise;
 (c) administering in the province, national legislation outside the functional areas listed in Schedules 4 and 5, the administration of which has been assigned to the provincial Executive in terms of an Act of Parliament;
 (d) developing and implementing provincial policy;
 (e) coordinating the functions of the provincial administration and its departments;
 (f) preparing and initiating provincial legislation; and
 (g) performing any other function assigned to the provincial Executive in terms of the Constitution or an Act of Parliament.

2.9. Concluding remarks

Though Parliament has passed a large number of Bills in the process of transforming South Africa's legislative framework, the institution continues to grapple with issues relating to its legislative mandate. A number of these issues seem to reflect a reticence on the part of Parliament to assert its independence. Both the development of a mechanism to monitor delegated legislation and the development of a procedure to amend money Bills are long standing issues that, if addressed, will significantly empower Parliament in its legislative and oversight mandate. This chapter has expressed recommendations regarding the monitoring of the impact of legislation. As this aspect of Parliament's legislative mandate gains prominence changes will have to be made in how legislation is drafted in order to facilitate subsequent monitoring processes, and Parliament will also have to ensure that the necessary training and capacity is put in place to ensure that the monitoring function is effectively performed. These changes can find full expression through Parliament's confident assertion of its pre-eminent role in the legislative process. As indicated by the ad hoc Committee on the Review of Chapter 9 and Associated Institutions, Parliament needs to perform all constitutional obligations diligently and without delay.

2.10. Summary of Chapter Recommendations

The Panel recommends that:

- Parliament establishes a scrutiny mechanism to oversee delegated legislation. Once established, a monitoring and evaluation schedule must be developed to ensure that the scrutiny mechanism for delegated legislation effectively fulfils its role.
- Parliament should make greater use of mechanisms such as conferral (joint committees), which allow committees to jointly engage with legislation that touches on the mandate of a number of committees.
- Review of the Impact of Legislation
 - Parliament should ensure that it develops the necessary skills and capacity (both among Members of Parliament and staff) to effectively monitor the impact of legislation, both before and after its adoption.
 - The Panel recommends that an Impact Assessment Report on the likely impact of each Bill should be attached when the Bill is tabled in Parliament. The Executive should be required to undertake such assessments before the Bill is tabled in Parliament. This report 1.) must examine the relevant and likely budgetary, financial, economic, administrative, social, gender, environmental and other impacts if the Bill in question is enacted; 2.) should further explain clearly the scope of any law-making and other powers being delegated to ministers or officials, and why it is thought necessary to delegate; 3.) should also clearly set out the criteria in terms of which any discretionary powers are to be exercised; 4.) should summarise all submissions (written and oral) from outside bodies regarding the Bill and

contain the Department's response to each of these submissions. The parliamentary committee processing the Bill should in turn respond to all submissions made to it.

- The impact of legislation must also be monitored after its enactment. Such monitoring by Parliament must consider *inter alia*: unintended consequences of legislation, failure by the Executive or other organs of state to take required actions in response to legislation, and the extent to which the objectives and implementation targets of legislation is achieved.
- Careful consideration must be given to cost, administrative and other implications of legislation before enactment in order to assess the feasibility of implementing legislation.
- The objectives and implementation targets of legislation should be clearly expressed in order to facilitate Parliament's role in monitoring the impact of legislation.
- Parliament should explore the reasons behind the institution's poor record in initiating legislation and address capacity gaps that contributes to this.
- Parliament should urgently address the outstanding legislation identified in chapter 2 of this report.



CHAPTER 3: OVERSIGHT MANDATE

CHAPTER 3: OVERSIGHT MANDATE

3.1 Introduction

...we need to ask whether we need to re-examine our electoral system, so as to improve the nature of our relationship, as public representatives, with the voters!

- Extract from a speech by former president Nelson Mandela at the final sitting of the first democratically elected Parliament, 26 March 1999.

In any Parliamentary system, oversight can only be effective if Parliament asserts its independence and embraces the authority conferred on it by the Constitution. There are various mechanisms which Parliament may use to hold the Executive to account, but it is the integrity, independence and authority with which these mechanisms are applied that will ultimately determine the extent to which oversight contributes to improved governance.

Meaningful oversight requires that interaction between Parliament and the Executive is guided by the goal of ensuring effective governance to the citizens of South Africa. In exercising their oversight mandate Members of Parliament must clearly understand their role and authority vis-à-vis the Executive, and must be willing to assert this authority to improve service delivery and the quality of governance.

The effectiveness of oversight thus depends to a great degree on matters related to values and decisions of conscience. It is therefore imperative that Parliament's efforts at improving oversight are not aimed solely at new oversight mechanisms or structures, but also seek to inculcate a culture of oversight among Members of Parliament, encouraging a deeper understanding of their role in the institution (and how it relates to their

party political role), and also promoting independence and assertiveness.

During the course of the Panel's deliberations the consequences of South Africa's party list electoral system on the ability of individual Members of Parliament to robustly hold the Executive to account was discussed at length. It was argued that South Africa's current electoral system encourages Members of Parliament to be accountable to their party rather than the electorate. The influence of political parties on the ability of Members of Parliament to freely express themselves is further strengthened by the unconditional power of political parties to remove their members from Parliament. Section 47(3)(c) of the Constitution of the Republic of South Africa specifies that a person loses membership of the National Assembly if that person... "ceases to be a member of the party that nominated that person as a member of the Assembly, unless that member has become a member of another party in accordance with Schedule 6A". In addition, these factors also have an impact on Parliament's mandate to serve as a forum for the discussion of issues of national importance. In a speech delivered at a 2002 Freedom of Information Conference former Speaker of the National Assembly Dr. Frene Ginwala said that this "resignation provision" could be viewed as restricting member rights to free speech in that they may feel obliged to "toe the party line".

3.2. Constitutional Mandate Regarding Oversight

In outlining the functions of Parliament the Constitution states that the National Assembly must provide for mechanisms to ensure that all Executive organs of state

in the national sphere of government are accountable to it, and further that the National Assembly must maintain oversight of the exercise of national Executive authority, including the implementation of legislation, and any organ of state.⁵³

While the Constitution is clear in assigning an oversight mandate to the National Assembly, the oversight role of the National Council of Provinces is less clearly spelled out. The NCOP is, however, given certain specific oversight functions. For instance, under section 100 and 139, the NCOP is required to review and approve or disapprove certain interventions by one sphere of government into another sphere. The NCOP must also settle disputes about a province's capacity to administer national legislation (section 125). The NCOP thus oversees the relationships between spheres of government and operates as a check on Executive action that might threaten the integrity of another sphere of government.

According to Section 92 (2) of the Constitution members of the Cabinet are accountable collectively and individually to Parliament for the exercise of the powers and the performance of their functions. Furthermore members of the Cabinet must provide Parliament with full and regular reports concerning matters under their control.⁵⁴

3.3 South Africa's Party List Electoral System and Parliament's Oversight Mandate

In Parliamentary systems the responsibility of ensuring Executive accountability is often perceived as the role of opposition parties in Parliament, however,

⁵³ Section 42(3) and 55(2) of the Constitution of South Africa.

⁵⁴ Section 92 (3) (b) of the Constitution of South Africa.

accountability and oversight are crucial aspects of the representative role of legislatures, which should not be left to opposition parties only. The need is all the more acute in a system in which one party is dominant and a change of government is unlikely in the medium term. This view is supported by the Constitution, which in all references to Executive accountability and the practice of oversight by the Legislature refers to Parliament or one of its Houses, and accords no special position to opposition parties in exercising these functions.

While all Members of Parliament have a common obligation to hold the Executive accountable, the party list electoral system undeniably does have an influence on the manner in which oversight is exercised. The use of party lists to fill seats in the legislature means that Members of Parliament of the majority party are often in a position where they must exercise oversight over senior members of their own party, the same members who may be able to influence the composition of the list during the following elections. There is thus an incentive toward avoiding confrontation and open criticism of senior members of the Executive. Opposition parties, in their turn, have an incentive to be stridently critical of government and are at times accused of political 'point scoring' at the expense of meaningful and constructive engagement with issues.

The Panel recommends that the impact of the party list system as it is currently structured in South Africa, as well as alternative systems, should be given consideration by Parliament. The view of the panel is that the current electoral system should be replaced by a mixed system which attempts to capture the benefits of both the constituency-based and proportional representation electoral systems.

3.4. The Development of a Parliamentary Oversight Model

The mechanisms through which Parliament exercises its oversight mandate are varied, including but not limited to questions posed to the Executive in plenary sittings, the consideration of the annual reports of departments by Parliamentary committees, and oversight visits to assess conditions on the ground in various areas of the country. Parliament has for a number of years been involved in a process of developing an oversight model through which these various oversight mechanisms may be integrated in a coherent, overarching approach.

In 1999 Parliament commissioned research on its oversight function. The Joint Rules Committee of Parliament established an Ad Hoc Joint Subcommittee to consider this report and make recommendations. The Joint Rules Committee then approved a final report during March 2003 and requested the development of an implementation plan. This process led to the establishment of a Task Team on Oversight and Accountability comprised of Members of both Houses of Parliament to comply with mandates relating to oversight emanating from the Constitution. The Task Team established three Focus Groups, namely the Budget, Projects and Committees Focus Groups. The overarching objective was to develop a model for Parliament's oversight function that was both in line with the new strategic vision and that would produce the resultant realignment of resources to fulfil Parliament's mandate with greater efficiency and effectiveness.

The Oversight Model proposes a number of new structures and mechanisms to enhance oversight,

while also making recommendations on how existing processes may be improved. Among the innovations proposed in the Model is the establishment of a Joint Parliamentary Oversight and Government Assurance Committee, which would deal with “broader, transversal and cross-cutting issues” relating to oversight and further monitor all “assurances, undertakings and commitments given by Ministers on the floor of the House(s)” in order to assess the extent to which these assurances are fulfilled. The Oversight Model also makes recommendations regarding Parliament’s international role, for example recommending that Parliament “ought to be robust and proactive in the negotiations that are conducted relating to international agreements” prior to the ratification of these agreements. The Model further recommends that “there ought to be a mechanism to oversee compliance with international agreements”. On an administrative level the Model proposes the establishment of an Oversight and Advisory Section, which would “provide advice, technical support, co-ordination, and tracking and monitoring mechanisms on issues arising from oversight and accountability activities of Members of Parliament and the committees to which they belong”.

The Panel notes the work done by the Task Team in the development of an Oversight Model, which has recently been adopted by the Joint Rules Committee. The Oversight Model represents an ambitious programme for change regarding the manner in which Parliament exercises its oversight mandate. It will be essential that a detailed implementation plan based on the Oversight Model is developed so that the implementation of the model may proceed in a structured and effective manner. It will further be important that the relationship between new

structures such as the Oversight and Advisory Section and existing structures such as the Committee Section and Research Section are clearly outlined to ensure the efficient use of resources and avoid duplication. Parliament will have to actively engage with this model, establish or amend rules, and assess the resources that are required for the successful implementation of the model.

3.5. Oversight by Parliamentary Committees

Parliamentary committees play a central role in expressing Parliament’s oversight mandate and thereby contributing to accountable government. Before the transition to democracy Parliament’s committee system consisted of only thirteen committees. Members of the public and the media were blocked from these committees, which were widely viewed as a rubber-stamp for legislation developed by the Executive. In the new Parliamentary system there has been a rapid and comprehensive proliferation of committees, and committee meetings have been opened to the public and the press.

Committees play an important role in oversight. As delegated instruments of the Houses of Parliament, they have the capacity to deal with detailed reports and can request that members of the Executive and public servants provide them with the necessary information. Committees may also undertake oversight visits to investigate particular issues, which provide them with further detailed information through which the Executive may be held to account. It is important to note that committees have no formal decision-making power; rather they advise the legislature on matters that they have considered.

It was noted in chapter two that insufficient conferral between Parliamentary committees weakens the effectiveness of Parliament in dealing with complex issues that touch on the mandate of various committees. This silo syndrome is also evident in the manner in which oversight is conducted.

Oversight visits by committees are an important oversight mechanism, as this allows for Members of Parliament to directly assess the implementation of policy in specific settings. The effectiveness of these oversight visits depends crucially on the quality of reports generated by these visits, the level of preparation of committee members and the extent to which issues which are raised are further pursued. These issues again raise the matter of an intangible “culture of oversight” that must be embraced by individual Members of Parliament. Parliament is an institution that relies on information, and the success of Parliament depends to a great extent on the institution’s proficiency in gathering, recording, directing and generating information. This places a responsibility on individual Members of Parliament to prepare thoroughly for committee meetings, and ensure that their questions to institutions or individuals who appear before the committee are informed, direct and meaningful.

When meeting with the chairpersons of Parliamentary committees the Panel was alerted to the fact that a number of reports generated by committees are never adopted by the House, but simply noted. When reports are not adopted Parliament cannot take action on the recommendations they may contain, and this report does not find further expression in Parliamentary processes. All reports are not intended for adoption by the House, and there may be a number of reasons

why the House chooses to note rather than adopt a report, but it appears that in a number of cases the reason that reports are not adopted is due to the poor quality of the report. The Panel recommends that this matter should be closely investigated by Parliament in order to identify and correct the factors contributing toward this issue. Factors that may play a role include insufficient training of Members of Parliament on the responsibilities and limits of Parliament’s oversight mandate, which leads to inappropriate recommendations being made in reports, as well as insufficient or ineffective administrative support to committees. It is essential that committees are supported by professional and appropriately trained staff; this issue is discussed in greater detail in chapter six of this report, which deals with the Parliamentary service.

The National Assembly has initiated a process to develop an attendance policy which would include sanctions against Members who were absent without leave from plenary sessions or committee meetings. This process was initiated in 2003, and towards the close of that year a draft leave policy was submitted to the Joint Rules Committee, but to date no decisions have been taken. The Panel strongly recommends that this process is reinvigorated and that concrete steps are taken to establish mechanisms that will monitor attendance of Members of Parliament and sanction unauthorised absenteeism. Parliament must recognise that this matter relates directly to the reputation and effectiveness of Parliament.

In hearings with the chairpersons of Parliamentary committees the Panel was struck by the frankness with which some committee chairperson admitted to their lack of influence over the Executive. The

following quote from a senior Member of Parliament is illustrative: “I think when we look at the issue of the relationship between committees and the Executive, it’s essentially a matter of power. We should not complicate this matter; it’s about power and whose views prevail. According to my experience...it tends to be the view of the Executive that prevails. For instance, when I came to Parliament I served in one committee for six years. I left it because I was sick and tired of wasting my time because the minister won’t listen”. Another long serving committee chairperson said, in speaking of the power relationship between Parliamentary committees and the Executive, “we do not have power...we are not taken seriously”. These views are concerning to the Panel, as the effectiveness of oversight is intricately linked to the independence and robustness of Parliament.

3.6. The role of the Committee on Public Accounts (COPA)⁵⁵

As the vast majority of expenditure by the Executive and other organs of state is financed through taxes, it is essential that this expenditure is governed by a comprehensive accountability system. In South Africa it is the task of the Auditor-General to audit the financial statements of government on national, provincial and local levels, as well as selected public entities. Within Parliament, the audited statements of government departments are referred to the Committee on Public Accounts (COPA). The responsibility of COPA is to inspect the accounts and to follow up on issues that the Auditor-General has identified as audit queries. The core function of public accounts committees, generally, is to satisfy the legislature that money has

been spent in accordance with its decisions in the budget vote, with probity and in an efficient, effective and economic manner.⁵⁶

One of the challenges currently faced by COPA is the effective tracking of responses to COPA reports by the Executive. Departments or institutions identified in COPA reports are given a sixty day period from the date of the adoption of the resolution by the National Assembly within which to respond to the House. Currently the secretaries to COPA follow up to ensure these submissions are made timeously. A report is compiled which is submitted to the Speaker, who in turn provides a copy to the Leader of Government Business and the relevant Minister. A lack of administrative support, however, means that responses are not always effectively tracked, particularly if a response by the Executive may require follow up questions and reports. As the Committee on Public Accounts plays such a central role in ensuring accountability of the Executive with regard to the expenditure of public funds, the Panel strongly recommends that the system through which Executive responses to COPA reports are tracked should be strengthened, both procedurally and administratively, to ensure that it functions effectively.

The investigation by the Committee on Public Accounts into the government’s arms purchases has been highly controversial. There was a strong public perception that Parliament’s role was seriously undermined by the Executive and that Parliament’s leadership did not defend COPA as it tried to carry out its constitutional mandate. Allegations relate to interventions from the ANC in an attempt to block

⁵⁵ The Committee on Public Accounts was formerly known as the Standing Committee on Public Accounts and referred to by the abbreviation SCOPA.

⁵⁶ Murray, C. and Nijzink, L. 2002. *Building Representative Democracy – South Africa’s Legislatures and the Constitution*. p.103.

the investigations, including the removal of one of the ANC COPA members at the time, Andrew Feinstein. The ongoing controversy ultimately led to the resignation of the committee chairperson, IFP member Gavin Woods. During a Parliamentary media conference following his resignation, Gavin Woods claimed that the Executive had inordinately influenced ANC members of the committee and interfered in the committee's oversight role, particularly in the arms deal investigation, thereby hampering Parliament's role of holding the Executive accountable to the people's public representatives.⁵⁷ It has been alleged that Executive interference in COPA's investigations into the arms deal was a turning point for the legitimacy of South Africa's democratic process.⁵⁸

The Panel draws attention to the fact that the controversies surrounding this issue have done great damage to Parliament's image in the eyes of the public. The Panel wishes to affirm that Parliament has a central role to play in combating corruption within all organs of state, and the Panel therefore recommends that Parliament should consider the lessons that emerged through the arms deal investigation process. Parliament must continue to exercise its oversight role with regard to the arms deal, relating specifically to current issues such as the implementation and impact of offset commitments. Moreover, the arms deal should not be considered only as an issue of alleged corruption, but should also raise questions regarding Parliament's role in reflecting the priorities of the institution as well as those of South African citizens in general. Beyond the question of the processes involved in the arms deal itself there lies a deeper

question about national priorities and Parliament's role in reflecting and expressing these priorities in legislation.

The Panel recommends that Parliament should revisit the arms deal and take such steps as are necessary, including a debate on the adoption of a resolution calling for the appointment of such a judicial commission of enquiry into the arms deal.

3.7. The Oversight Role of the NCOP

Two detailed reports on the NCOP's role and functions were published in 2004, namely *Speeding Transformation: Monitoring and Oversight in the NCOP* and *NCOP Second Term 1999-2004*. These reports provide detailed analysis and make several recommendations which the Panel found to be still relevant. The Panel therefore proposes that Parliament engages with these reports and gives detailed consideration to the recommendations contained therein.

The focus of the NCOP's oversight role is determined, and limited by, its Constitutional mandate. Its role is to represent the provinces to ensure that provincial interests are taken into account in the national sphere of government (section 42(4) of the Constitution). The Constitution does not specifically mention a general oversight role for the NCOP, unlike the National Assembly which is specifically tasked with a general oversight function in sections 42(3) and 55(2) of the Constitution. The oversight role of the NCOP is implicit in its Constitutional function – a concomitant function of any legislature which passes legislation is to monitor the implementation of that legislation. Moreover, section 92(2) of the Constitution clearly indicates that

⁵⁷ Cape Times. 26 February 2002. *Woods Quits over ANC Executive's meddling in Scopa's arms deal probe*.

⁵⁸ The Witness. 23 November 2007. *Towards open debate*.

members of the cabinet are responsible, individually and collectively, to Parliament as a whole, and not only to the National Assembly.⁵⁹

While it is thus clear that the NCOP does have an oversight role, it is important to recognise that the NCOP does not mirror the National Assembly's oversight mandate by overseeing all of national government, but rather that it should exercise oversight over the national aspects of provincial and local government. Through its oversight role, the NCOP should be directed by the goal to contribute to effective government by ensuring that provincial and local concerns are recognised in national policy making, and that provincial, local and national governments work effectively together. In this way the NCOP needs to respect the oversight roles of both the provincial legislatures and the National Assembly.

It is the task of provincial legislatures to conduct oversight of the provincial Executives. This will include oversight of programmes contained in national legislation that the provincial Executive is expected to implement, and for which the province receives national funding. The National Assembly is primarily responsible for overseeing the national Executive. Given the NCOP's Constitutional mandate, it is uniquely situated to bridge national, provincial and local levels of government to exercise oversight over matters that affect various levels of government.

In a situation where several provinces experience the same or similar problems with the implementation of national policy it will not be possible for the relevant provincial committees, exercising oversight and

acting separately, to resolve the problem. If such a matter is taken to the NCOP all the member provinces can be consulted and a realistic picture of how real and widespread the problem is can be gained. An approach that is appropriate and compatible with the needs of all provinces can then be arrived at. Continuing its oversight role the NCOP can provide a forum in which the provinces can engage the national Executive on the issue. In this way the NCOP serves as a channel of communication between provinces and national government.

In addition to the processes outlined above, the NCOP is also responsible to exercise oversight when one sphere of government intervenes in another in a manner that may affect its integrity. The NCOP is entrusted with the task of guarding against the abuse of the various powers of intervention. The specific instances where the NCOP exercises oversight is set out in the Constitution and may be summarised as follows:

- Where the national Executive intervenes in a province under section 100(1)(b) the NCOP must approve of and regularly review the intervention;
- Where a provincial Executive intervenes in a municipality under section 139(1)(b), the NCOP must approve of and regularly review the intervention;
- Disputes concerning the administrative capacity of provinces must be resolved by the NCOP under section 125(4);
- Both houses of Parliament are required to approve of a decision by the Treasury to stop the transfer of funds to a province under section 216;

There are also cases in which the NCOP exercises an oversight function jointly with the National Assembly,

⁵⁹ Corder *et al.* 1999. *Report on Parliamentary Oversight and Accountability*, p.21.

as required by the following Constitutional provisions:

- Section 199(8) demands oversight of security services by a Parliamentary committee;
- Section 231 requires both National Assembly and NCOP approval of international agreements;
- Section 203 requires that a declaration of a state of national defence must be approved by both houses of Parliament.

The NCOP clearly has an important and complex role to play with regards to Parliament's oversight mandate. At the same time, it must be recognised that the NCOP is a far smaller institution than the National Assembly. While this fact has been raised to argue for expanding the NCOP, the drafters of the Constitution undoubtedly had specific intentions when determining the size of the NCOP. Instead of arguing that the NCOP is too small to fulfil its functions, it may rather be necessary to revisit the Constitutional provisions which outline the functions of the NCOP and reassess the relationship between the NCOP and provincial legislatures in order to ensure that the NCOP focuses on effectively fulfilling its Constitutional mandate and does not appropriate unintended functions. The NCOP must avoid duplicating the functions of the National Assembly and instead assert its distinctive role as the upper house of South Africa's bicameral legislature.

3.8. Institutions Supporting Democracy ("Chapter 9 Institutions")

In addition to the tools used by Parliament, the South African Constitution also makes provision for specialized Constitutional bodies that have an oversight role. Whilst these "State Institutions Supporting Democracy" (ISDs) are accountable to the National Assembly and must report to the NA on their

activities and the performance of their functions, they enjoy Constitutionally guaranteed independence.

Chapter nine of the Constitution of the Republic of South Africa identifies six ISDs, these are:

- (a) The Public Protector;
- (b) The South African Human Rights Commission;
- (c) The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities;
- (d) The Commission for Gender Equality;
- (e) The Auditor-General; and
- (f) The Electoral Commission.⁶⁰

ISDs have a unique role to play with regard to oversight, as they conduct extensive research, possess technical expertise, and exercise specialized functions such as the auditing of public accounts. Given the varying nature of their mandates and unique operating styles, the interaction of these institutions with Parliament differs significantly. It is possible, however, to identify two key roles of ISDs in relation to Parliament; firstly, together with Parliament ISDs act as "watch-dog" bodies over the government and organs of state, and secondly, they support and aid Parliament in its oversight function by providing it with information that is not derived from the Executive.

The requirement for institutions supporting democracy to account to the National Assembly means that there are two interrelated but distinct ways in which Institutions Supporting Democracy engage with the National Assembly. Firstly, the annual reports of these institutions provide an account of their respective activities, as well as how their budgets are spent. These must be

⁶⁰ Section 181(1) of the Constitution of South Africa.

tabled in the National Assembly, and are then referred to the relevant portfolio committee.

Secondly, some of the institutions, particularly those concerned with human rights matters, may submit substantive reports to the National Assembly for consideration and action. For example, in terms of section 184(3) of the Constitution, the South African Human Rights Commission is required to regularly submit reports to the National Assembly on the measures taken by organs of state towards the realization of socio-economic rights concerning housing, health care, food, water, social security, education and the environment. Such reports are an important source of information and can considerably enhance Parliament's oversight of government departments. It appears, however, that not enough attention is given by Parliament to the value of these reports, which require more extensive circulation and consideration.

A comprehensive review of Institutions Supporting Democracy was recently completed by a multi-party ad hoc committee of the National Assembly specifically constituted for this purpose. In their interactions with the Committee, all the commissions except the Auditor-General expressed their frustration at the unsatisfactory opportunities for meaningful engagement with portfolio committees. Many of the institutions indicated that their interactions with Parliament were restricted to annual meetings with portfolio committees of very limited duration (approximately 2-3 hours).

The reasons given to the Committee for the limited interaction of portfolio committees with the Chapter 9 and associated institutions include uncertainty on

the part of the committees regarding the extent of engagement required from them given the independence of the institutions; capacity constraints and the extensive workloads of committees. On the positive side, the institutions were all in favour of frequent and more meaningful interaction with Parliament, calling for a review of the institutional arrangements in Parliament in order to facilitate a closer relationship.

It appears that the poor level of meaningful engagement between ISDs and Parliament can at least in part be ascribed to a lack of clarity by parliamentary committees regarding the independence of these institutions. In order to exercise their functions effectively it is important that ISDs are able to function independently without interference from external actors. As organs of state which utilize public funds, however, ISDs must be held accountable, and they are therefore required to report to the National Assembly annually. Though there is an accountability relationship, Parliament must respect the Constitutionally guaranteed independence of these institutions by refraining from actions that limit or interfere with the ability of these institutions to exercise their functions. Beyond this accountability relationship, however, there is broad scope for interaction between ISDs and Parliament.

By way of example, one of the ISDs established by the Constitution is the Office of the Public Protector (OPP). The OPP provides a free service to all South Africans to redress complaints regarding delivery of services by government at all levels including local, provincial and national government.

If the reports of this institution were utilized to full

potential by Parliament, Parliament would be able to determine with more accuracy which government departments were inefficient or at which level government delivery was lagging behind and needed more scrutiny. Parliament would be able to discern trends of negative or unbecoming behaviour on the part of civil servants and take the necessary action. These ISDs provide information which Parliament would not be able to obtain from the Executive or government departments. Hence the need to give better focus and attention to their reports.

The Panel notes with concern that the report of the ad hoc committee on institutions supporting democracy seems to have been shelved by Parliament. This report raises a number of recommendations that could meaningfully improve the relationship between Parliament and institutions supporting democracy, thereby contributing to the effectiveness with which Parliament exercises its oversight mandate. The Panel recommends that Parliament engages with the recommendations of this report.

3.9. Conclusion

The effectiveness of Parliament's oversight work is directly related to the independence of the institution and the ability of individual Members of Parliament to raise a critical voice against shortcomings identified in other organs of state, particularly the Executive. It is for this reason that the impact of the party-list based electoral system on the work of Parliament must be debated, both within Parliament and in the public domain.

The improvement of Parliament's oversight work is not, however, dependent on electoral reform. As this chapter has shown there are a number

of interventions that can be made to ensure that Parliament is more effective in holding the Executive and other organs of state to account.

3.10. Summary of Chapter Recommendations

The Panel recommends that:

- The impact of the party list electoral system as it is currently structured in South Africa, as well as potential alternative systems, should be given consideration by Parliament. The view of the Panel is that the current electoral system should be replaced by a mixed system which attempts to capture the benefits of both the constituency-based and proportional representation electoral systems.
- An extensive monitoring schedule must be put in place to ensure that the recommendations of the Oversight Model find expression in Parliamentary processes. The development of new oversight mechanisms identified by the Model should equally be monitored.
- The existing process which seeks to develop an attendance policy for Members of Parliament should be reinvigorated and finalised.
- The Panel recommends that Parliament take steps to improve the quality of reports emanating from parliamentary committees in order to minimise the number of cases where reports are noted rather than adopted due to the unsatisfactory quality of the report.
- The process through which the National Assembly and National Council of Provinces monitors responses to Parliamentary recommendations stemming

from its reports should be improved.

- The Panel strongly recommends that the system through which Executive responses to COPA reports are tracked should be strengthened, both procedurally and administratively, to ensure that it functions effectively.
- The Panel recommends that Parliament should consider the lessons that emerged through the arms deal investigation process. Parliament should continue to exercise its oversight role with regard to the arms deal, relating specifically to current issues such as the implementation and impact of offset commitments.
- The Panel recommends that Parliament should revisit the arms deal and take such steps as are necessary, including a debate on the adoption of a resolution calling for the appointment of a judicial commission of enquiry into the arms deal.
- Two detailed reports on the NCOP's role and functions were published in 2004, namely *Speeding Transformation: Monitoring and Oversight in the NCOP* and *NCOP Second Term 1999-2004*. These reports provide detailed analysis and make several recommendations which the Panel found to be still relevant. The Panel therefore proposes that Parliament engages with these reports and gives detailed consideration to the recommendations contained therein.
- While respecting the independence of Institutions Supporting Democracy, Parliament must endeavour to make better use of the information emanating from these institutions in the exercise of its

oversight mandate by engaging with reports emanating from these institutions. The Panel further recommends that Parliament engages with the recommendations of the report of the ad hoc Committee on the Review of Chapter 9 and Associated Institutions.



CHAPTER 4: MANDATE TO SERVE AS A FORUM FOR THE PUBLIC CONSIDERATION OF ISSUES

CHAPTER 4: MANDATE TO SERVE AS A FORUM FOR THE PUBLIC CONSIDERATION OF ISSUES

4.1 Introduction

Definitions of democracy are often confined to recognizable institutional features such as universal adult suffrage and the existence of political parties that compete in regular, free elections. Underlying these features, however, are deeper principles relating to the right of citizens to determine by whom and in what way they are governed, a respect for diversity, and a commitment to peaceful means (dialogue and electoral competition) through which to address differences. In a truly vibrant and healthy democracy, these principles are expressed in a variety of fora, including the press, educational institutions, civil society organizations and even informal discussions between family and friends. In addition, it is essential that state structures allow avenues for these debates to be expressed and to influence the governance of the country. Legislatures play an important role in this regard.

The Parliament of South Africa should serve as the premier forum for the public consideration of issues. Both houses of Parliament have a role to play, as the Constitution specifies that the National Assembly is to serve as “a national forum for the public consideration of issues”, while the NCOP serves as “a national forum for the public consideration of issues affecting the provinces”.⁶¹ This Constitutional requirement is also reflected in Parliament’s vision to serve as an effective people’s Parliament that is responsive to the needs of the people and that is driven by the ideal of realizing a better quality of life for all the people of South Africa. As Parliament’s vision indicates, the institution has a unique role to play within the context

⁶¹ Section 42 (3-4) of the Constitution of South Africa.

of South Africa's socio-economic development. South Africa is marked by extreme inequality, with large sections of the population struggling to achieve even basic standards in terms of employment, adequate housing and personal and financial security. Issues of service delivery and economic policy impact on the daily lives of South Africans, and it is important that Parliament provides a forum for these matters to be debated. Moreover, Parliament can potentially play an influential role in promoting nation-building among all sections of the South African population. Recent protests and xenophobic attacks have illustrated to what extent social and economic issues are interrelated, and underscored the importance of dialogue in fostering understanding and averting extreme behaviour.

The Panel recommends that Parliament deeply considers the implications of its Constitutional mandate to serve as a forum for the public consideration of issues. This mandate touches on Parliament's role in nation-building and its ability to reflect current public concerns and issues. Parliament also has an important role to play in informing and educating the public on particular issues. The hearings and parliamentary debates around the Civil Unions Act (No.17 of 2006), for example, sparked countrywide debate on issues such as Constitutional rights, the social institution of marriage, and the stance of religious organisations on homosexuality.

Despite the importance of Parliament's role in serving as a forum for the public consideration of issues, in the course of Panel hearings a number of participating Members of Parliament were critical of the effectiveness of plenary as a forum for effective public debate. Plenary sessions were described

as "dull" and "a talkshop". One MP characterized plenary debates as "boring, prepared speeches [that] are too often badly read". This sentiment, while not always so boldly expressed, seems to be widely shared. In some cases it appears that Parliament has not effectively taken ownership of national debates, with issues being led by the media and other forums, while Parliamentary debates receive far less attention. The challenges faced by Parliament thus relate not only to the style and professionalism of debate, but importantly also the substance of debates – the question of whether Parliament is effectively representing the issues and concerns that are current in broader society. If Parliament is to effectively serve as a forum for national debate, it is essential that the source of the negative sentiments expressed by Members of Parliament themselves is identified and addressed.

4.2. Plenary debates

In plenary sessions motions provide a mechanism through which issues for debate or particular perspectives on an issue may be expressed. In essence a motion is a proposal by a Member of Parliament or a party that the House do something, order something to be done, express an opinion with regard to some matter, or debate a particular issue. A distinction is made between draft resolutions, which require that the House take a decision on a matter, and subjects for discussion, which provide an opportunity for the House to debate a particular topic without the House being required, at the end of the debate, to take a decision.

Subjects for discussion are further subdivided into party motions, Members' motions by ballot, debates on national issues, and debates of matters of public or urgent public importance. Party motions provide parties an opportunity, on a rotational basis, to initiate debate in the House by a way of a motion. Similarly, individual members are afforded an opportunity to introduce a motion for debate through a ballot system. Debates on national issues are intended to provide an opportunity to consider important national issues not on a party-political basis, but rather as a mechanism for the collective leadership in the National Assembly to give the country guidance on such national issues. At times it may be felt that an issue is of such pressing public importance that it should take precedence over other programmed business in Parliament, thus allowing the House an opportunity to engage on short notice with pressing issues.

As plenary debates are generally televised, public perception of Parliament is often based on the conduct of such debates. It has been observed that the practice of monotonously reading extended speeches contributes to a negative perception of Parliament's efficacy and vitality. A number of Members of Parliament have noted that the quality of debate in Parliament has declined significantly in recent years, recalling that during the first two Parliaments debate was often animated and dynamic. It is essential that Parliament takes steps to improve the quality of debate within the institution, both to increase the efficacy of Parliament and to protect its eminence as a meaningful forum for debate of issues of national importance.

The style and vivaciousness with which a Member of Parliament delivers a speech or engages in a debate is

not easy to address through regulations, but steps can be taken, such as providing training to Members of Parliament on public speaking. In a submission to the Panel the Secretary to the National Assembly Table observed that debates are livelier when Members of Parliament deliver speeches in their mother tongue, as they feel more comfortable in expressing themselves and are less likely to read their speeches. The availability of transcripts may also contribute to enlivening debate by allowing Members to hold each other to account for statements made in previous debates and track the discussion of particular issues. It is thus clear that by addressing issues of procedural support such as translation services and the timeous production of Hansard transcriptions, Parliament may begin to take steps toward reinvigorating the level of debate during plenaries.

Members of Parliament should take steps to improve the content and substance of debates. Plenary sessions, for example, afford Parliament an opportunity to engage with issues raised in committee reports and take concrete action based on these reports. When debates on committee reports are not timeous and robust it risks undermining the considerable work undertaken in committees. For example, a report on the impact of HIV/AIDS developed by the Joint Monitoring Committee on the Improvement of the Quality of Life and Status of Women was debated a full year after the report was tabled. Furthermore, the report was not adopted, which meant that Parliament was not bound to act on the recommendations made in the report.

4.3. Parliament and the Media

Parliament must continually strive to strengthen its role as a forum for the public consideration of issues. This relates not only to timeous discussion of issues of public concern, but importantly also the communication of these debates to the public through the media and other channels. The media can potentially play a crucial role in communicating parliamentary debates to the broader public, but this requires proactive and strategic engagement with the media by Parliament. It appears that Parliament has in the past struggled to effectively engage with the media. In a submission to the Panel a member of the media noted that all too often Members of Parliament seem to have a defensive and adversarial approach to the media, without appreciating the positive role that they could play.

Parliament must also make efforts to ensure that matters of public concern are debated within parliamentary structures. It has been noted that there is a tendency for the Executive to conduct media briefings before it briefs Parliament, which moves the locus of public debate to the media rather than Parliament. While the media is undeniably an important avenue for debate and the dissemination of information, Parliament must ensure that its role as a forum for the public consideration of issues is not superseded by the media.

A recent study⁶² noted three facets required to improve Parliament's engagement with the media, including the need for politicians to understand how

the media works and how to make use of its reach and influence, the need for carefully developed media strategies and plans on an institutional, committee, and individual level, and the need for Members of Parliament and Parliament as an institution to be proactive in managing the legislature's relationship with the media. Parliament will have to respond to each of these facets if it seeks to improve the manner in which media engagements contribute to public awareness of debates taking place within Parliament.

4.4. Question time

Question time during plenary is an important mechanism for holding the Executive to account. Questions may be put for oral or written reply to the President, the Deputy President and Cabinet Ministers on matters for which they are responsible. The President answers six questions once per term, the Deputy President answers four questions during ordinary question time (generally once every two weeks), and Ministers are divided into three clusters for the purpose of questions, with a cluster answering questions each week on rotation.

There is a perception among certain Members of Parliament that question time is not operating effectively. Ministers are accused of giving vague or inadequate responses that do not address the substance of the question. In a submission to the Panel a Member of Parliament noted that questions to the Executive are often "sidestepped" or answered in such a way that it is "abusive to the Member". This is an issue of great concern as such behaviour may corrode the integrity and eminence of Parliament in its accountability role vis-à-vis the Executive. In a submission received from the Parliamentary Press

⁶² *Parliament's Media Engagement* (internal parliamentary report). p.6.

Gallery Association it was noted that “questions to Ministers and the President range from the most adversarial from among opposition parties (which seek to embarrass rather than to obtain information...) to the downright patronising and praise-singing (instead of asking informative and substantive questions). Questions, especially oral questions in both Houses, have no value to add to the debate”.

A further disturbing trend is the large amount of questions that are not answered, or answered after such a long delay that the matter may have become irrelevant. In the National Assembly all the accumulated unanswered questions for the year are recorded on a weekly internal question paper together with that week’s questions. The question paper of 5th November 2007 recorded 290 unanswered questions for written reply. In the past the Speaker would send a quarterly report to the Leader of Government Business indicating all responses more than six weeks overdue. This system has recently been amended to allow for weekly reports to the Leader of Government Business. In view of the disturbingly high amount of questions that were not answered during 2007, however, it is clear that Parliament’s current efforts to address this problem are not having an impact. Parliament must recognise that when questions to Ministers are poorly answered or not answered at all it impacts on the effectiveness and dignity of Parliament. The Panel thus proposes that the system through which the Presiding Officers hold the Executive to account for unanswered questions be reviewed and necessary changes be made to increase the efficacy of these procedures.

4.5. The NCOP as a forum for the public consideration of issues affecting the provinces

The NCOP plays a unique role in South Africa’s governance structure by providing a forum where issues affecting the provinces can be discussed on a national level. As provincial delegations include members of the provincial executive, and local government is represented in the NCOP through the South African Local Government Association (SALGA), the NCOP reflects a broad range of interests which may contribute to meaningful debate. The two primary mechanisms through which such debate can take place are plenary debates and in the work of committees.

A recent review⁶³ of the NCOP plenary debates noted that the subjects under discussion have been quite varied. The concern, however, is that the topics for debate do not reflect the NCOP’s unique mandate to serve as a forum for the discussion of issues affecting the provinces. While most subjects chosen for debate were certainly of interest from the point of view of national debate, in several cases the topics bore no clear link to provincial interests. While it is accepted that the relevance of certain topics may in some cases be more nuanced, it is nevertheless important to emphasise that the NCOP has a unique role to play in serving as a forum for the public discussion of issues affecting the provinces, and the provincial and local impact must therefore be the primary focus of these debates.

A positive feature of plenary debates in the NCOP, arising in part from the much smaller membership of

⁶³ Murray *et al.* 2004. *NCOP Second Term 1999-2004*, p.43.

this House, is the high level of participation in debates. Members of the NCOP seem keen to engage with issues raised in plenary, and report that debate is lively and inclusive of a variety of perspectives.

In addition to plenary sittings, NCOP committees provide an important mechanism through which provinces can share information and collectively discuss shared experiences. In order for this forum to be effective it is essential that the views of the provinces are actively solicited, particularly through the inclusion of special delegates who are more intimately involved in the work of the provincial legislatures.

4.6. Conclusion

In dealing with Parliament's mandate to serve as a forum for the public consideration of issues, this chapter has emphasised the importance of intangible values and principles more so than previous chapters. It is not always possible to develop rules which will ensure that debates are conducted in a sincere, respectful and professional manner, or indeed to govern the content and impact of questions levelled at the Executive during question time. A deeper understanding of the principle of the separation of powers, the Constitutional role of Parliament, and the values underlying Parliamentary work, however, will guide Members of Parliament in fulfilling the letter and the spirit of the Constitution in exercising their duties.

While individual Members of Parliament must therefore take responsibility for the quality of debate in the institution, a special responsibility lies with the Presiding Officers to ensure that Parliament serves

as an effective forum for the public consideration of issues. The attendance of Members of Parliament, the quality of speeches and particularly the extent to which heckling is allowed during debates is a matter that should be addressed by the leadership of Parliament in partnership with the leadership of political parties.

4.7. Summary of Chapter Recommendations:

The Panel recommends that:

- Parliament should take steps to improve the quality and substance of debate within the institution in order to increase the efficacy of Parliament in fulfilling its constitutional function of providing a forum for debate of issues of national importance.
- The mechanism through which the Speaker of the National Assembly engages with the Leader of Government Business to follow up on unanswered questions must be assessed and revised to ensure that the Executive is effectively held to account for unanswered questions.
- Parliament must develop a media strategy to ensure that the institution's engagement with the media contributes to public awareness of debates taking place within Parliament.
- The Panel notes that the topics of debate in the NCOP do not always reflect a specific focus on the challenges faced by citizens on provincial and local level, and recommends that the NCOP adopt a more focused approach in terms of its specific mandate.
- Parliament should strive to timeously debate current matters of public concern.



CHAPTER 5: PUBLIC PARTICIPATION

CHAPTER 5: PUBLIC PARTICIPATION

5.1 Introduction

In representative democracies citizens elect representatives to govern on their behalf. The extent to which the public participates in the governance process beyond casting a vote during elections varies from country to country; in some cases referenda and other mechanisms are used to ensure that the public are closely involved in various governance decisions, while in other systems elected representatives act more independently within the confines of their election manifestoes and Constitutional checks and balances. In the negotiations leading to the establishment of a new Constitution, it was clear that South Africa's democracy would emphasize active participation by the citizenry. This sentiment was encapsulated in the Reconstruction and Development Programme:

Democracy for ordinary citizens must not end with formal rights and periodic one-person, one-vote elections. Without undermining the authority and responsibilities of elected representative bodies (Parliament, provincial legislatures, local government) the democratic order we envisage must foster a wide range of institutions of participatory democracy in partnership with civil society on the basis of informed and empowered citizens and facilitate direct democracy...social movements and community based organisations are a major asset in the effort to democratize and develop our society.

This participatory approach was further reflected in the Constitution drafting process itself. An ambitious public participation and education programme was initiated to invite the public to send submissions on the new Constitution to the Constitutional Assembly.

Television, radio, print media and workshops in various areas of the country were employed to reach the public. Ultimately the Constitutional Assembly received about two million submissions from across the country.

Parliament has various mechanisms through which the public can make submissions to the institution, including public hearings on legislation and public participation events such as the People's Parliament and the NCOP's Taking Parliament to the People initiative. It is important to note, however, that the process of public participation does not end once the public has been afforded an opportunity to express their views; public participation can only be effective if inputs received from the public find expression in parliamentary processes and lead to concrete action. Submissions and debates that occur during a public participation event such as the Women's Parliament, for example, must be accurately captured in a report that is subsequently debated within relevant committees and the plenary, leading ultimately to the adoption of resolutions. Furthermore, it is essential that Parliament provides feedback to participating members of the public, including civil society organisations, in order to ensure that they do not become alienated from the public participation process.

5.2. Challenges to Public Participation in South Africa

While citizens of South Africa have been empowered with political rights, economic inequality remains severe. Large sections of the population have relatively limited access to resources. Furthermore, this inequality is also reflected in access to transport and communication infrastructure. These under-resourced

groups face unique challenges in accessing channels for public participation. In a report to the InterParliamentary Union the South African Parliament identified the following constraints on the effective participation of the disadvantaged in the processes of Parliament:

- **Time:** Time was identified as an important cost to poorer sections of the population, especially women and those who are employed. Heavy time obligations preclude active participation in anything beyond basic survival and the maintenance of livelihood. It is also essential that individuals and organisations are given enough time to prepare submissions. In its submission to the Panel, the Congress of South African Trade Unions noted that "the short timeframes for public participation through submissions etc. in many instances is unrealistic for the public to make significant input in any legislative process. On many occasions the time for comments is shrunk to a week or less, which prohibits thoughtful input and meaningful consultation. This is exacerbated by the delay in receiving gazettes from Pretoria.... The implication is that gazetting is purely for the purpose of meeting strict legal requirements for publication, with little consideration about the spirit of ensuring public access".
- **Communication and access to the media:** Although communication and access to the media is vital for public participation, the section of the population that has no exposure to media is likely to be poor, rural, female and African, with little education. These are the people who most need to access their Constitutional rights, yet it is extremely difficult for them to access information, let alone participate in Parliament's processes.
- **A lack of transport:** It is not always easy for people

to afford or access transport to visit Parliament.

- Sharp inequality in education: A prerequisite for an informed and active citizenry is a literate population. Thus, if people are unable to access information and communicate appropriately, it is difficult for them to participate in the processes of Parliament in a meaningful way.

It is essential that these challenges inform the manner in which Parliament seeks to engage with the public through its participation processes.

5.3. Public Participation in the Legislative Process

In recent years Parliament and Provincial Legislatures have been reprimanded by the courts and the press for not adequately allowing for public participation in legislative processes. Both Houses of Parliament as well as Provincial Legislatures are specifically required by the Constitution to facilitate public participation in legislative processes. In two recent cases, however, the Constitutional Court has found that Parliament and Provincial Legislatures have failed in adequately facilitating public participation. The first case concerned the re-demarcation of the boundary of Matatiele Municipality, which removed it from KwaZulu-Natal into the Eastern Cape Province. The Constitutional Court ultimately found that, while the Eastern Cape had complied with its duty to facilitate public involvement by holding public hearings in the affected areas, the KwaZulu-Natal Provincial Legislature, by not holding any public hearings or inviting written submissions, had failed in its obligation to facilitate public involvement.

In a second case relating to public participation Doctors for Life International challenged the Constitutionality

of certain Bills relating to health issues. The ruling by the Constitutional Court is informative in outlining the extent of Parliament's obligation to facilitate public participation in the legislative process. The Court found that "Parliament and the provincial legislatures have a broad discretion to determine how best to fulfil their Constitutional obligation to facilitate public involvement in a given case, as long as it is reasonable to do so".⁶⁴

The Traditional Health Practitioners Act [No. 35 of 2004] and the Choice on Termination of Pregnancy Amendment Act [No. 38 of 2004] had generated great public interest, but a majority of the provinces did not hold hearings on these Bills because of insufficient time, while the NCOP did not hold public hearings either. The court held that the failure by the NCOP to hold public hearings in relation to the Traditional Health Practitioners Act and the Choice on Termination of Pregnancy Amendment Act was unreasonable in terms of its obligation to facilitate public participation.

However, in relation to the Dental Technicians Amendment Act [No. 24 of 2004], the court found that when the Bill was first published for public comment, it did not generate any public interest. Having regard to this and the nature of the Bill, the court held that the NCOP did not act unreasonably in not inviting written representations or holding public hearings on this statute. The court thus concluded that the NCOP did not breach its duty to facilitate public involvement in relation to this statute. These judgements imply that the degree to which legislative bodies are required to actively facilitate public participation depends on the amount of interest which Bills generate among the public.

⁶⁴ Doctors for Life International v Speaker of the National Assembly and Others – Summary of judgment.

Further challenges to the public hearing process were highlighted during the public hearing of the KwaZulu-Natal Provincial Housing Portfolio Committee on the Slums Clearance Bill held on 4th May 2007. The perception among those attending was that the Portfolio Committee did not adequately explain the purpose and objectives of the Bill, which made it difficult for members of the public to make a meaningful contribution and led to considerable frustration. Tension increased due to the perception that members of the Housing Committee did not have an adequate understanding of Municipal plans in terms of housing. Ultimately the tense and confrontational atmosphere led to several members of the public prematurely leaving the hearing.⁶⁵

The fact that the national Parliament in South Africa has a particular geographic setting has certain implications for the ability of ordinary citizens to participate meaningfully in public hearings. Prohibitive travelling costs as well as accommodation costs alone make it difficult for individuals and representatives of poorly resourced community organisations to travel to a particular city to make oral submissions. Several Parliamentary Committees have made efforts at engaging with the public in the provinces in an attempt to ensure greater representivity of public input. The public hearings on child support benefits, for example, held in 1997, were organised by the national Portfolio Committee on Welfare and Population Development, but were held in various parts of the country.

Despite the fact that considerable effort has gone into ensuring that information about public hearings is made available to as wide an audience as possible,

language barriers still play a role in the effectiveness of their participation. Advertisements are generally broadcast in all the official languages and on all the regional stations of the public broadcaster. However, the simplicity or obscurity with which legislative measures are expressed could still serve as a barrier to participation. The majority of Bills are printed in English only, which impacts on the citizens' ability to understand them and comment on them, particularly given the high levels of illiteracy in South Africa. Parliament has embarked on a plain language initiative with the aim to make legislation more accessible, with the writing of the Constitution as one of the major examples. The Constitution has also been translated into all the official languages. The efforts by Parliament to increase the accessibility of its publications to all sectors of South African society should be further extended, particularly as it relates to translations of texts and the use of plain language versions of public documents.

Parliament may wish to consider certain practical innovations in the manner in which public hearings are advertised, for example, through placing all notices of public hearings on a single page in newspapers rather than having these notices dispersed among other advertising. Parliamentary committees may also establish a mailing list of all organisations that have made presentations to the committee, so that these organisations can be alerted when a call for public submissions is made in the future.

It has been noted that there is a perception among individuals and organisations that have participated in Parliament that their contributions are not taken seriously. One of the reasons cited for this is that there appears to be little feedback after the completion of

⁶⁵ Mhize, Z. 2007. *A Review of the KZN Slums Bill Public Hearing Process*. Centre for Public Participation.

the process. Participants therefore often do not see their views reflected in reports on the hearings, and consequently do not know whether their submissions have impacted on policy or legislation. The fact that reports on hearings are made available in electronic form still does not address the problems experienced by smaller community-based organisations that do not have regular access to the internet and other advanced communications resources. A number of submissions by civil society organisations noted that their submissions do not seem to be considered and no feedback is provided. The excerpts from submissions provided below are illustrative of these concerns:

"The quality and effectiveness of public participation cannot rest on simply providing a space for submitting comments. For legislation to be informed, responsive, rational and legitimate, constructive debate and engagement with the drafters is necessary. While it cannot be expected that comments and recommendations from the public will always be incorporated, Parliament must always substantively address the concerns and recommendations submitted to the committees regardless of whether the concerns are ultimately incorporated, amended, or rejected. Failure to do so is a dereliction of Parliament's Constitutional duties. In this regard, we submit that the contents of our various submissions have frequently been ignored by Parliament".
(AIDS Law Project)

"We were requested by Parliament to make a submission regarding the effects of pornography on young people. We felt that our submission was not taken very seriously and we received no feedback or any communication after we submitted our thoughts".
(Cape Youth Care)

"In general oral submissions do seem to be taken into account by members of committees; we suspect very strongly that written submissions are seldom read. That said, different members and different committees respond in various ways depending on the issue under discussion....We expect Parliament to see us as a useful informant and not as an adversary. Typically when our position does not enjoy broad political popularity or where it is not understood by a committee we (and many other service providers in the sector) are cast as irrational and our credibility is attacked".
(RAPCAN)

"The accessibility of the South African Parliament is remarkable compared to other jurisdictions in the developing world....In general, members of civil society making submissions are invited to feel at ease...they are invited to speak their mind and engage with members.....Whilst one appreciates the workload of Parliament, it has been observed on a number of occasions that written submissions are not read by some Members of Parliament and that they rely on the oral submission as the primary source of information. As a lot of energy is spent on writing these submissions and only a summary is given during the time-limited oral submission, this is frustrating and substantive issues are often left out of the debate when they are not raised in the oral submission."
(The Civil Society Prison Reform Initiative)

The submissions received from individuals and civil society organisations clearly indicate that significant challenges remain in facilitating public involvement in the legislative process. While positive comments were received, and respondents were generally appreciative of the structures and procedures in

place to facilitate public participation, there was widespread discontent with the effectiveness of public participation processes on a practical level. For example, while public hearings on draft legislation are advertised, these advertisements are often made very late and are not widely accessible. A number of respondents highlighted the difficulties posed by cancellation and postponement of public hearings. Often, these individuals or civil society organisations are poorly resourced and have made significant sacrifices to appear at these hearings. In a submission to the Panel, the Chamber of Mines of South Africa noted, for example, that “We have been received most cordially by Parliamentary Committees and greatly value the access given to the Committees and the time spent by their members in hearing our evidence and representations. In our experience, the willingness of the Committees to hear representations from the public is heartening and engenders a sense that we too are part of a common purpose to make a good law....Disappointingly, however, our endeavours to serve Parliament have been made more difficult by short notice of hearings, tight deadlines for submissions and last minute changes to the programme of Committees....This level of uncertainty makes proper logistical planning impossible and may in certain situations prevent interested and affected parties from presenting their views to Parliament”.

Of particular concern are the submissions which indicate that members of the public or representatives of civil society organisations are intimidated and second-guessed by the chairperson of the committee or by members of the Executive. The Civil Society Prison Reform Initiative, for example, noted that “on a number of occasions it has been observed (and experienced) that representatives of civil society

organisations making submissions are criticised (if not verbally attacked) for the content of the submission by the relevant minister or the director general present at the meeting. It is our view that submissions are made in good faith to provide the Committee with additional information and that it is for the Committee to ask substantive questions and decide on how it will use this information. For the Chairperson to allow the minister or DG an opportunity to respond to a submission during the hearings, aside from asking questions for clarification, runs the risk of alienating civil society from Parliament”.

Parliament must take note of these concerns, as they risk alienating the public, contributing to a lack of public participation in legislative processes and also a loss of faith in public institutions.

5.4. Constituency Offices and Constituency Work

In the course of Panel deliberations it was emphasised that, although Parliament has established ‘constituency’ offices and allocated time for Members of Parliament to conduct ‘constituency’ work, South Africa does not in fact have true constituencies in the sense of geographically defined, politically contested electoral areas. In the South African system Parliament allocates funds to political parties to undertake constituency work, without rigidly prescribing the location of constituency offices or the manner in which constituency work is performed. While these constituency offices were originally intended to be apolitical structures, it appears that they have increasingly taken on a party-political identity.

Ideally, constituency offices provide a direct link between Parliament and the public. These offices

should serve as two-directional information nodes, with information passing from Parliament to the public, providing education on Parliamentary structures and procedures, as well as up to date information on the business of Parliament, and also passing information from the public to Parliament, as members of the public alert Members of Parliament of their concerns and service delivery problems in the area. It is important that these constituency offices are adequately staffed and resourced in order to act as information nodes. In certain cases relatively simple steps can greatly assist, such as ensuring that pamphlets and other printed material is available in plain language, which explains for example how Parliament works, how citizens may participate in parliamentary processes, and outlines legislation currently being processed.

As noted previously, in South Africa the role that Members of Parliament play in their constituencies is not rigorously prescribed. This relatively unstructured approach to constituency work is both a strength and a weakness. On the one hand Members of Parliament are given the freedom to creatively respond to the divergent needs of their constituency. This may involve raising a concern in plenary or putting a question directly to the Executive, but can also involve putting citizens in contact with appropriate authorities or explaining how they may contribute to the legislative process. Constituency offices also provide a means for Members of Parliament to gauge the impact of legislation within communities, and assess the extent to which policy directives achieve their objectives. But the freedom accorded to Members of Parliament in fulfilling their constituency duties also leads to difficulties in identifying and addressing constituency offices that perform poorly. Debates on the effectiveness of the constituency work

undertaken by Members of Parliament generally focus on the electoral system and the alleged impact this has on the accountability of Members of Parliament to their constituencies. In South Africa Members of Parliament are assigned to specific constituencies by their political parties, and constituency offices are managed through political parties. As noted, the funding for these offices is also channelled through political parties. The central role of political parties in managing constituency work, as well as the fact that Members of Parliament are deployed to constituencies without being directly elected in that area, leads many to argue that Members of Parliament are more accountable to their parties than they are to the public when conducting constituency work.

Funding for constituency support forms part of the “associated services” category in Parliament’s budget. This category also includes political party support and party leadership support. The budget for associated services has increased dramatically in recent years, from R73, 694 000 in 2004/05 to R240, 452 000 in 2007/08, with an estimated further increase to R295,117 000 in 2010/11.⁶⁶ An analysis of this budget category shows that these dramatic price increases largely reflect an increase in funds for constituency support. Currently Parliament has a policy that outlines how funds allocated to constituency support may be spent. Parliament requires that political parties annually submit a declaration signed by the leadership of the political party and its external auditors giving assurance that expenditures are in line with the policy. The Panel recommends that the systems to ensure financial accountability for the substantial funds allocated to political parties for

⁶⁶ *Vote 2 – Parliament: Estimates of National Expenditure 2008*. p.4.

constituency support are improved.

The impact of the electoral system on the accountability of Members of Parliament to the electorate has been discussed in previous chapters. It is the view of the Panel that the challenges experienced with constituency offices in South Africa should inform the debate on the appropriate electoral system for South Africa. The issue of public accountability of Members of Parliament to the electorate, and the ability of members of the public to contribute to parliamentary processes through constituency offices, goes to the heart of Parliament's vision of being a people's Parliament. The challenges experienced with constituency work was an issue of concern to the Panel in assessing the extent to which Parliament is contributing to the deepening of democracy in South Africa.

A recent article by the Centre for Public Participation⁶⁷ addressed the challenges related to constituency offices, noting that among stakeholders within the legislature, there appears to be no common understanding of the role and function of constituency offices. Furthermore, roles which constituency offices are intended to perform are inadequately publicised within communities, leading to widespread confusion among the public and diminished participation. This report goes on to state that constituency offices are generally inadequately utilised as a means to disseminate information around legislative processes to communities, and office staff are not adequately trained or resourced to fulfil this function. Based on their interaction with the public, the Centre for Public Participation claims that there is a general perception

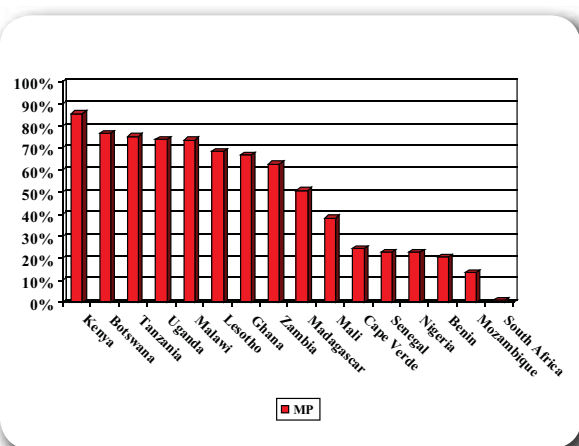
among community groups that Members of Parliament do not make adequate use of their constituency offices to liaise effectively with communities to which they are assigned and that these offices are not serving as an effective means to channel community concerns to designated Members of Parliament. This report also criticizes the role of political parties in managing constituency work. This party-political identity may make the offices inaccessible to certain groups within communities, and even in cases where no discrimination is present, members of the public may avoid approaching these offices. It is also noted as unsatisfactory that Members of Parliament are accountable to their parties for constituency work in which they essentially represent Parliament as an institution. Finally, it is argued that there are inadequate controls or reporting systems in place to assess the effectiveness of offices, or to adequately monitor the finances of the offices.

The graph below is based on statistics from a survey by Afrobarometer. The graph shows the percentage of survey respondents who were able to identify the Member of Parliament responsible for their constituency. The results clearly show that South Africans have the poorest knowledge of MP identity among all African states that participated in the survey. In the course of the Panel's deliberations it was pointed out that the graph below should not be taken as a direct measure of the effectiveness of parliamentary public participation initiatives. The disparities illustrated are in part the result of differing electoral systems, or may reflect apathy towards parliamentary processes within society rather than reflecting shortcomings of the institution. In constituency-based electoral systems voters directly elect the representative(s) for their constituency, and

⁶⁷ Hicks. 2003. *Government Mechanisms for Public Participation: How Effective are They?* p.7.

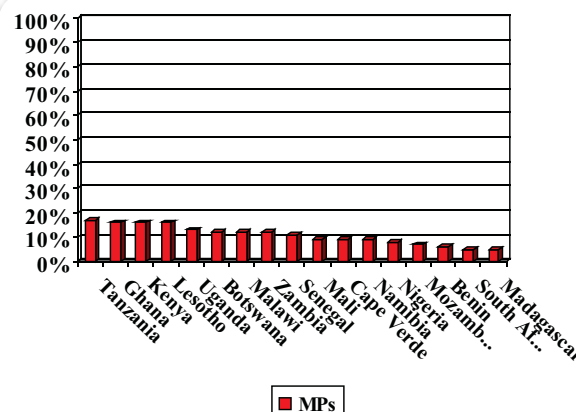
citizens therefore generally have more contact with and greater knowledge of Members of Parliament in these systems than in proportional system where Members of Parliament are elected based on party-lists.

Knowledge of Members of Parliament in Africa



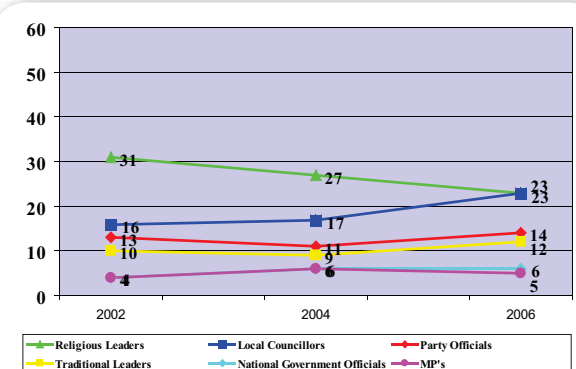
Given that there is such a widespread lack of knowledge among the South African public of the Members of Parliament responsible for particular constituencies, one could infer that the level of participation on a constituency level is very low. This is supported by further Afrobarometer survey outcomes measuring the level of public contact with Members of Parliament. On this measure South Africa is the second poorest performer of all African countries surveyed.

Public Contact with Members of Parliament in Africa



The Afrobarometer survey results also indicated that public contact with Members of Parliament has been declining in South Africa since 2004 while public contact with other leaders, such as Local Councillors and party officials, has increased. These results are shown in the graph below.

South Africa: Public Contact with Leaders Over Time



The very poor knowledge among South Africans of their constituency's Member of Parliament and the low level of public contact with Members of Parliament brings into question the effectiveness of constituency offices. Parliament will have to act

decisively to change these trends so that constituency offices may become an effective means for public participation. The concerns raised by the Centre for Public Participation regarding the confusion over the function of constituency offices, their poor visibility, lack of accountability to Parliament, and uncertainty regarding their party political role must be engaged with.

The Panel wishes to make the following specific recommendations regarding constituency offices and constituency work in general:

- The development of the parliamentary Public Participation Model must include detailed consideration of the constituency system and the responsibilities of constituency work.
- The consideration of the impact of the electoral system on the independence and effectiveness of Parliament which was proposed in chapter three must also give due consideration to the influence of the electoral system on the accountability and responsiveness of Parliament to the electorate.
- Parliament must develop mechanisms to ensure greater accountability on the part of political parties for funds allocated to constituency work.
- Parliament should provide the public with information regarding constituency offices, such as: the address and contact details of constituency offices, the names and contact details of Members of Parliament assigned to specific constituency offices, and the boundaries of constituency areas.

5.5. Parliamentary Democracy Offices

In 2005 Parliament launched a Parliamentary Democracy Office (PDO) pilot project. The project aims to establish PDOs in all nine provinces by 2009. These offices are intended to establish a meaningful and immediate Parliamentary presence in every province to sustain the interaction between Parliament and the people. The specific roles of these offices are:

- Informing and educating communities about Parliament, its work and other parliamentary related matters
- Informing communities on Bills before Parliament, etc
- Serving as a platform of interface between Parliamentary committees and local communities
- Providing a contact point to be used to interact with local communities in the process of oversight
- Providing parliamentary services to Members of Parliament during constituency period, e.g.
 - Parliamentary information
 - Educational products and materials
 - Publications and newsletters
- Assisting the public with making submissions to committee processes

The Panel notes that the role which parliamentary democracy offices are intended to fulfil appear very similar to the original intended role of constituency offices. The unique role of parliamentary democracy offices appear to be that they are situated in relatively under-resourced areas in order to give marginalised groups access to parliamentary processes. It is important that marginalised sections of society are

given access to parliamentary processes, however, it is essential to clearly distinguish the roles and responsibilities of parliamentary democracy offices and constituency offices in order to avoid duplication and ensure that maximum benefit is derived from these mechanisms.

5.6. Petitions

Section 17 of the Constitution guarantees the right of everyone to present petitions. The Constitution further places an obligation on Provincial Legislatures to proactively promote and facilitate the involvement of citizens in the Legislative process. Section 118(1)(d) empowers “a Provincial Legislature or any of its committees...to receive petitions, representations or submissions from any interested person or institutions”. The petitions committee in the Gauteng Legislature received 182 petitions from 1997-2004, and the National Assembly received 23 from 1996-2006.

Although the petition process is a Constitutional right, records show that most people do not know about petitions, especially in the rural areas. One factor that may impact on the relatively rare use of this mechanism is the inaccessibility of Parliament or Provincial Legislatures. It has been argued that petition committees should be established in municipalities to make it easier for citizens to submit petitions, and education programmes should be instituted so that civil society can learn about petitions and the relevant processes.

Petitions can be a powerful tool through which members of the public may express themselves in Parliament. It appears that on provincial level, particularly in Gauteng, best practices have been

developed which have facilitated greater use of petitions. Parliament should investigate the petition system, explore best practices developed in provincial legislatures, and take steps to encourage the use of petitions by the public.

5.7. Public Participation Events

In recent years Parliament has initiated various public participation events including the NCOP’s “Taking Parliament to the People” programme, as well as the Women’s Parliament and Youth Parliament events.

The NCOP’s Taking Parliament to the People programme was launched in 2002 as a major public participation event that would seek to afford rural communities an opportunity to directly take part in the affairs of Parliament. Once a year the NCOP bases itself in a different province for a period of one week, during which Members of Parliament hold a variety of meetings with various stakeholders from these provinces.

The objectives of the programme can be broadly categorised as:

- Interacting with people to gain a clearer understanding of possibilities and constraints with regard to the processes of pushing back the frontiers of poverty and under-development.
- Providing Parliament with an opportunity to reach those people who would otherwise not be able to participate in law-making and oversight processes in the country.
- Offering people in the different provinces a platform to articulate their needs and aspirations.

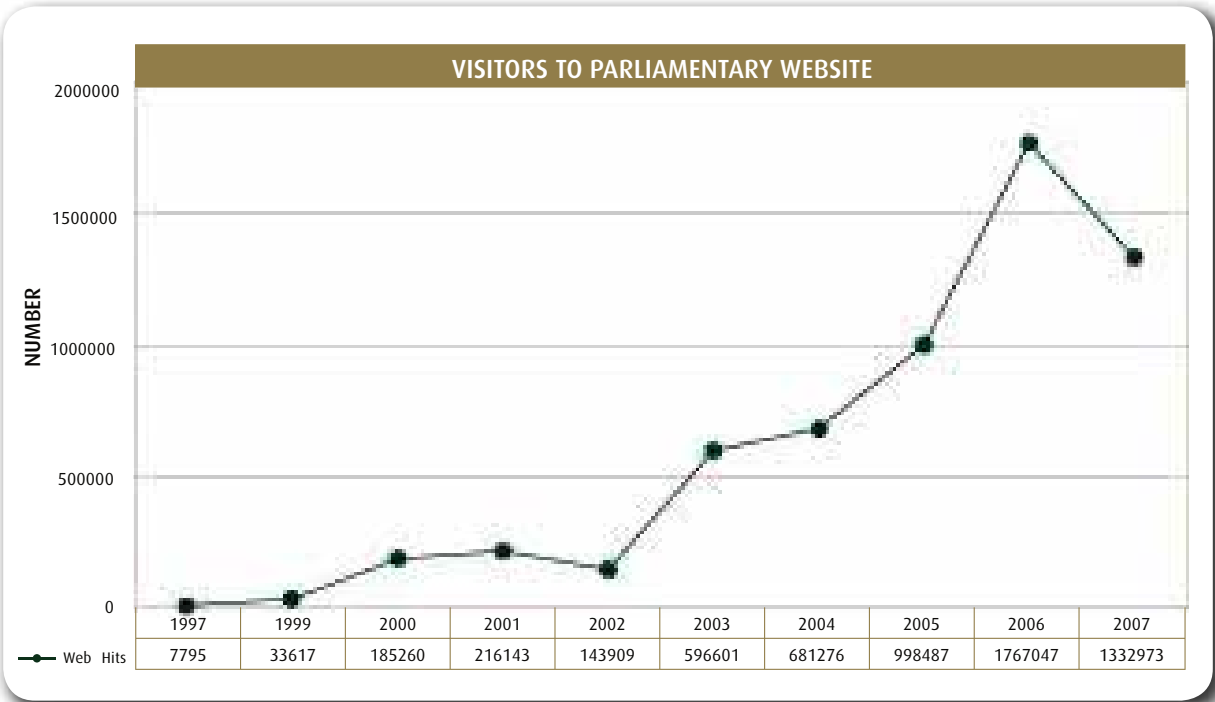
- Contributing to raising the profile of the NCOP within the communities.

In order to ensure the success of these events it is critical that effective follow up visits are made to participating communities to inform them how their inputs have been addressed and to monitor progress of the Executive on commitments based on these inputs. Furthermore, it is essential that the inputs received during these events are incorporated in Parliamentary processes, for example by debating an event report or assigning specific issues to committees for further consideration. In a submission to the Panel a senior Member of Parliament noted that “people speak in those particular forums [Taking Parliament to the People, People’s Assembly, etc.] but those issues don’t find access to committees themselves, neither to the plenary of the House where we are able to take on board issues as raised in those particular events.”

Parliament’s public participation initiatives appear to have become increasingly event-oriented. While initiatives such as Taking Parliament to the People and the Youth Parliament can potentially serve as effective means for public participation it should be noted that these processes, particularly when they are convened outside Parliament, are very expensive operations, and it is therefore all the more important that the inputs received during these initiatives are effectively incorporated into parliamentary processes, have tangible outcomes, and are strengthened through providing feedback to participating communities and organisations.

5.8. Public Education and Access to Information

Members of the public will only participate in Parliamentary processes if they know of mechanisms through which they can participate and understand the structure and systems of Parliament. The primary responsibility for promoting public understanding of public participation opportunities and the working of Parliament lies with the Public Education Office (PEO). While the Panel commends the initiatives undertaken by the PEO, it notes with concern that various reports and submissions to the Panel have made mention of general lack of understanding of Parliament among the public. Public education must underpin public participation, as individuals and organisations can only participate meaningfully in parliamentary processes when the issues under discussion and the mechanisms for participation are understood. Relatively simple interventions, such as carefully explaining the legislation under consideration in a public hearing, with care taken to use plain language and enumerate the main perspectives and controversial issues, can go a long way in assisting individuals and organisations to make effective, meaningful contributions. Access to information was raised as a key challenge by participants in the Women’s Parliament hosted by the South African Parliament in 2004. It was noted that parliamentary processes are generally not understood and are intimidating. Participants felt that information relating to the parliamentary schedule, Bills under discussion in committees, public hearings and the like are not easily available and many participating organizations admitted that they were not sure how to access this information. Clearly, Parliament needs to do more to foster understanding of its processes so that the public may engage more effectively with the institution.



Parliament’s website is an important resource for members of the public seeking information on the functioning of Parliament and mechanisms for public participation (Parliament’s website can be accessed through the following link: www.parliament.gov.za). Though access to the internet is limited in South Africa, the reach of information provided on Parliament’s website is extended by non-profit organisations that access information on Parliament through the website and distribute it to marginalised groups. The graph above shows that the number of visitors to the parliamentary website has been increasing rapidly in recent years.

A number of submissions to the Panel expressed frustration with Parliament’s website. It was felt that there is little information available through the website, for example, on reports, committee programmes and guidelines on making submissions to committees. Members of the public often resorted to the websites

of non-profit organisations such as the Parliamentary Monitoring Group and Participation Junction to access information on Parliament. During the period of the Panel’s investigations Parliament has introduced a new website in order to address the frustrations of the public. It appears that the new website is indeed a great improvement on the earlier version. Parliament must, however, remain sensitive to public concerns regarding the dissemination of information through the institution’s website. In order to be effective, it will also be necessary that the information available on the website is constantly updated.

5.9. The Importance of Feedback

Participants in the 2004 Women’s Parliament noted that there was little feedback when submissions were made to Parliament by members of the public or civil society organizations. This issue was also raised in

numerous submissions received by the Panel. The lack of feedback poses particular challenges to advocacy groups, as they are accountable to their members for their performance, including the resources expended when participating in parliamentary processes. It is essential that Parliament makes concrete efforts to provide individuals and organizations that participate in parliamentary processes with information regarding the impact of their submission and explain how these processes will ultimately result in tangible outputs. At the very least, receipt of written submissions should be acknowledged. Lack of information on the impact of their submissions threatens to discourage members of the public and civil society organization from participating in Parliamentary procedures and thus has a negative impact on the participatory democracy which Parliament seeks to foster.

5.10. Conclusion

Parliament's recently adopted Oversight Model recommends that Parliament develops a Public Participation Model which will investigate Parliament's public participation processes in detail. It is hoped that the issues identified in this chapter will be reflected in Parliament's Public Participation Model. Many of the issues raised in submissions from the public related to practical matters, which could be rectified by relatively simple interventions. For example, attention should be given to advertise public hearings timeously, avoid the postponement of such hearings and ensure that proper meeting procedures are followed when allowing members of the public to make submissions.

A matter that will have to be debated in great detail during the preparation of the Public Participation Model

is the role of Constituency Offices and Parliamentary Democracy Offices. This chapter has endeavoured to address the issue, yet within Parliament there seems to be confusion regarding the responsibilities of Members of Parliament during constituency work and the use of constituency offices, particularly as it relates to party political work on the one hand and on the other hand to parliamentary work.

Public participation events such as the NCOP's "Taking Parliament to the People", the Women's Parliaments and the Youth Parliaments have the potential to provide significant channels for public participation in parliamentary processes. As this report has pointed out, however, the success of these initiatives depends crucially on the manner in which submissions received during these events are fed into parliamentary processes and follow up is provided to event participants.

5.11. Summary of Chapter Recommendations

The Panel recommends that:

- The structures and processes around constituency work should be comprehensively reviewed and assessed. Furthermore:
 - The development of the Parliamentary Public Participation Model must include detailed consideration of the constituency system, the responsibilities of constituency work, and how these structures and processes relate to the newly established Parliamentary Democracy Offices.
 - The consideration of the impact

of the electoral system on the independence and effectiveness of Parliament which was proposed in chapter three must also give due consideration to the influence of the electoral system on the accountability and responsiveness of Parliament to the electorate.

- The Panel recommends that the systems to ensure financial accountability for the substantial funds allocated to political parties for constituency support are improved.
- Parliament should provide the public with information regarding constituency offices, such as: the address and contact details of constituency offices, the names and contact details of Members of Parliament assigned to specific constituency offices, and the boundaries of constituency areas.
- The reach and impact of the public education projects of the Public Affairs Section should be reviewed;
- Similarly, the reach and impact of public participation initiatives such as “Taking Parliament to the People” and the Women’s Parliament should be carefully reviewed to ensure that such initiatives result in tangible outcomes, including feedback to participating individuals and communities. It is necessary to

review the process whereby issues raised during these events are referred to relevant committees so that they may be incorporated into formal parliamentary processes.

- Parliament should develop a guidebook to cover the principles and requirements of the public hearing process directed to chairpersons and members of committees.
- Parliament should ensure that feedback is provided to members of the public and institutions that have made presentations to Parliament through public participation processes.
- The Public Participation Model should provide clear standards for public participation; these standards will provide the courts with a clear framework for assessing cases involving the public participation responsibilities of Parliament.

CHAPTER 6: THE PARLIAMENTARY SERVICE

CHAPTER 6: THE PARLIAMENTARY SERVICE

6.1 Introduction

The parliamentary service plays a crucial role in the effective functioning of Parliament. The broad range of administrative and research support offered by parliamentary staff must ensure that Members of Parliament are able to fulfil their Constitutional mandate.

Parliament's administration has undergone significant changes since 1994, both in terms of structure and capacity. As the institution became more modern and complex in its functioning, a significant expansion of parliamentary staff has been required. In 1994 politicians were supported by a staff of around 300, whereas today parliamentary service consists of over 1000 employees. The organisational design of the administration was evaluated and changed in an effort to meet the needs of a modern Parliament. These changes included the establishment of a Human Resource Section, the development of a labour relations policy, the recognition of organised labour, the establishment and later expansion of research services, and the transformation of committee support.

Despite the significant expansion of the parliamentary administration a number of Members of Parliament identified the capacity and efficiency of administrative support as a challenge. While the research and legal drafting capacity of Parliament is currently being expanded, it appears that the expansion of capacity has not always lead to a concomitant increase in the quality and efficiency of support offered to Members of Parliament and parliamentary committees.



6.2. Research Support

In submissions to the Panel a lack of research support was a common concern among Chairpersons of Committees. These concerns echoed earlier reports, which noted that Members of Parliament felt they lacked adequate research staff, that the available researchers did not have appropriate skills and that the present administrative structure did not allow researchers to develop the necessary technical skills to service the needs of Members of Parliament and committees properly.

Parliament is currently responding to these enduring concerns. The Research Unit is undergoing a major recruitment and restructuring process. Between 1997 and 2007 the staff of the Research Unit increased from 10 to 34, with additional appointments planned to meet the requirements of the restructuring process. The new structure of the Unit is headed by a Research Manager, who is supported by eight senior researchers who head up eight clusters encompassing related subject areas such as Constitutional and International Law, Peace and Security, and African Political and Economic Governance. These clusters will in turn consist of between 3 and 7 research specialists. This cluster approach is enhanced by assigning a researcher to each parliamentary committee in order to strengthen the linkages between individual committees and the respective research teams.

Research capacity has also been improved through training programmes for research staff. The Panel recommends, however, that increased emphasis is placed on the training that researchers receive on integrating a gender analysis in the research of every Committee.

The Panel commends the significant efforts underway to expand the research support available to Members of Parliament. It appears that the expansion and restructuring of the Research Unit will provide a meaningful response to the concerns raised in Panel hearings and earlier reports relating to the research capacity of Parliament. The remaining challenge lies in actively promoting research services to Members of Parliament to ensure that maximum benefit is drawn from these services and that Members of Parliament, both on an individual and committee level, are confident in drawing on available support.

In addition to the research support available to Members of Parliament through the Research Unit, there is a wealth of research conducted by Chapter 9 institutions, universities and civil society organisations that can serve as a source of valuable information and analysis. Parliament has been wary of engaging with these organisations as it is felt that the use of such research may compromise the independence of Parliament. If approached correctly, however, this need not be the case. Parliament must guard its independence and critically engage with information provided to it, while utilizing the research available through outside sources that enhance Parliament's capacity to fulfil its oversight and legislative mandate.

6.3. Support to Committees

Parliamentary committees are supported by the services of Committee Secretaries situated in the Committee Section of the Legislation and Oversight Division. The support provided by Committee Secretaries are wide ranging, including activities such as minute taking, drafting committee reports, securing

venues for committee meetings, and addressing the travel and catering requirements of the committee.

The Panel heard several submissions that voiced concern over the effectiveness of the Committee Section. One of the primary issues raised was the inadequacy of record keeping within the section. It appears that Members of Parliament and administrative staff often experience difficulties in accessing minutes of past committee meetings. This problem may have serious ramifications for the work of Parliament as committee meetings and the resulting minutes are public and committees may be called upon to respond to decisions made in past meetings. The newly developed Parliamentary Content Management System (PCMS) should assist with information management throughout Parliament, but the effectiveness of the PCMS depends to a large extent on the timeliness and quality of documents uploaded to the system. The Panel thus suggests that Parliament urgently assesses the information management processes and challenges in the Committee Section. It may be necessary to undertake an audit of documents in order to effectively catalogue minutes and other documents currently held in the committee section.

Related to the issue of information management is the need to improve institutional memory throughout the parliamentary service. Perhaps more so than in other areas of the parliamentary service, the committee section is faced with a relatively high turnover rate. Thorough and standardised record keeping systems and procedural manuals will lessen the disruption caused by new appointments and ensure that the best practices established by employees are retained within the institution. Moreover, it is essential that strategies are developed to retain key staff. Some of

the issues that appear to lead to dissatisfaction among Committee Section staff include the lack of clarity regarding roles and responsibilities, and the conflation of relatively specialised content support with routine administrative and logistical responsibilities. The proposed expansion of committee support to include a Content Specialist will require a clear delineation of responsibilities between this new position and that of Committee Secretary. There is also an obvious link between the work of the proposed Content Specialist and that of the Research Unit. The Committee and Information Services Sections must develop protocols to ensure efficient, coordinated support to committees.

6.4. The Language Service

The Language Services Section comprises three sub-units, the Hansard Reporting Section (responsible for recording and transcriptions), the Hansard Translation Section, and the Hansard Interpreting Unit. The Interpreting Unit was established in 2004 and represents an important development in Parliament's efforts to serve as a forum for national debate in South Africa's heterogeneous society. Whereas in the past Members' speeches were interpreted in English and Afrikaans only, they are now interpreted in all official languages, including sign language. In 2003 the analogue recording and transcription system was replaced by a digital system which was hoped would greatly improve the efficiency of the Language Section's services. It is understood, however, that the new system is currently not operational. This needs to be addressed as a matter of urgency.

The Language Services Section has experienced many challenges which led to a backlog in the production

of transcripts. It appears that these challenges are being addressed, with an expansion of personnel initiated in 2007. It has been noted, however, that the availability of transcripts is still subject to delays in many instances. In the past draft, unedited transcripts of House proceedings during a particular day had been available to Members and the public by noon of the following day. The Panel recommends that Parliament returns to this standard. The Panel further recommends that the soft-cover Hansard transcriptions should be published, speedily, on at least a quarterly basis during the parliamentary session.

While efforts are being made to expand the capacity and effectiveness of the Language Services Section and address the backlog in transcripts, it is apparent that major difficulties remain. The Panel proposes that, as a matter of urgency, a comprehensive internal assessment be initiated to investigate the capacity, organisation design and resource requirements to address the backlog in transcripts.

6.5. Multilingualism and Democracy

In democratic systems it is essential that citizens are afforded opportunities to express their views and to have avenues through which they may meaningfully contribute to governance processes. In a multilingual society such as South Africa the respect for language diversity is an important component of the inclusive and participatory principles underlying democracy. This is especially true in institutions of governance, particularly in legislative institutions which serve as a forum for debate and public participation. In 2004 Parliament initiated the Language Policy Implementation Project in order to ensure that Parliament ultimately has the capacity to deliver

all services in all official languages as well as sign language. The project seeks to significantly increase the number of Language Practitioners employed by Parliament and to employ additional infrastructure and technological support for language services.

The Language Policy Implementation Project is a commendable initiative, yet the Panel notes that a recent internal report identifies a number of remaining challenges regarding multilingualism. This report notes that Bills in Parliament are produced in only two languages, one of which must be English. This practice leads to exclusion and disempowerment, and should be urgently addressed. Furthermore, it is noted that Parliament's oversight practices currently do not include processes to oversee multilingual compliance within Executive departments and other organs of state. The integration of Parliament's language policy is said to be slow as a result of insufficient tangible high-level political and administrative support, which has a direct impact on Parliament's ability to effectively facilitate public participation. Finally, this report observes that Parliament does not appear to be providing sufficient support for the creation of international linguistic capacity within the institution, thereby negatively impacting on the quality of Parliament's engagement in parliamentary diplomacy and the hosting of international events. The Panel strongly proposes that the recommendations of this report on multilingualism in Parliament be considered by the institution and appropriate steps taken to address the challenges identified.

6.6. Constitutional and Legal Support Services

As most Bills originate in the Executive, state law advisors are generally responsible for drafting Bills.

In many cases these state law advisors will brief parliamentary committees when the legislation is under consideration, outlining the intention of the Bill and answering questions posed by committee members. In many instances parliamentary committees will also rely on the state law advisors to draft amendments to the Bill when such amendments are agreed to by a committee. This close relationship between Parliament and state law advisors who are situated in the Department of Justice has led to concerns that the independence of the Legislature vis-à-vis the Executive may be threatened. This was brought to the fore recently when it was claimed that state law advisors drafted amendments to legislation which exceeded the amendments agreed to by the committee. In the view of the Panel adequate legal drafting capacity is essential in ensuring the independence of Parliament, and therefore proposes that the expansion of the Legal Services Office be pursued as a priority.

6.7. Conclusion

The quality of Parliamentary Service plays a crucial role in the effective functioning of Parliament. The broad range of administrative and research support offered by parliamentary staff should ensure that Members of Parliament are able to fulfil their Constitutional mandate. The Panel notes the changes that have been put in place to improve the institutional support to Members of Parliament, such as the expansion of research capacity. It appears, however, that the quality of information management in the Committee Section requires attention, this relates specifically to the timeous drafting and record-keeping of minutes and committee reports. Parliament has already taken steps to address the challenge of multilingualism, the Panel recommends that these processes be pursued

with urgency to ensure that all South Africans have access to information on Parliament's activities.

6.8. Summary of Chapter Recommendations

The Panel recommends that:

- Parliament should ensure that the expansion of research services contributes directly to a more effective institution through actively promoting research services to Members of Parliament and parliamentary committees.
- Increased emphasis should be placed on the training that researchers receive on integrating a gender analysis in the research of every Committee.
- Parliament should urgently assesses the information management processes and challenges in the Committee Section, relating specifically to the drafting and record-keeping of minutes and reports. It may be necessary to conduct an audit of documents in order to effectively catalogue minutes and other documents currently held in the Committee Section.
- The relationship between the Research Unit and the Committee Section must be assessed to ensure coordinated support to committees.
- The systems and processes involved in the production and delivery of transcriptions must be assessed to improve the delivery time of transcriptions. The Language Service should commit itself to a standard delivery time for transcripts; a period of 24 hours is proposed for unedited transcripts. The Panel further recommends that the soft-cover Hansard transcriptions should be published, speedily, on at least a quarterly basis during the parliamentary session.

- The Panel notes that, while funding for support to Members of Parliament and committees has increased, the administrative and secretarial support has not increased commensurately. Parliament should investigate this issue to ensure that increased financial resources result in tangible benefits in terms of support to Members and committees.
- The Panel proposes that the recommendations of the internal report on multilingualism be considered and appropriate steps taken to address the identified challenges, these include:
 - Bills in Parliament are produced in only two languages, one of which is English; Parliament should ensure that translations of a greater number of official languages are produced.
 - Parliament does not currently oversee the multilingual compliance within executive departments and other organs of state; mechanisms should be established to undertake this function.
 - Parliament's translation capacity for some of the most widely used international languages should be increased in order to support Parliament's increasing international activity.
- In the view of the Panel adequate legal drafting capacity is essential in ensuring the independence of Parliament, and therefore proposes that the expansion of the Legal Services Office should be pursued as a priority.
- The Panel notes that a guidebook for Members of Parliament on their roles and responsibilities has been developed. It is important that this guidebook be made available in all official languages as well as braille.

CHAPTER 7: TRANSFORMING PARLIAMENT INTO A DEMOCRATIC INSTITUTION

CHAPTER 7: TRANSFORMING PARLIAMENT INTO A DEMOCRATIC INSTITUTION

7.1 Introduction

In the opening chapter of this report it was argued that the governance institutions of South Africa, including Parliament, encompass more than the bureaucracy of governance. Rather, these institutions are key agents in the transformation of South African society and the realisation of the values and principles expressed in the Constitution. It is important that Parliament responds to the changes occurring beyond our national boundaries, changes which invariably impact us in a world marked by increasing interdependence. Responding to these challenges requires introspection on an institutional level, with a broad perspective encompassing past lessons, current challenges and achievements, and future opportunities.

One of the major trends within Parliament is the decreasing volume of legislation processed each year and the concomitant shift in focus from its legislative to its oversight mandate. This trend reflects South Africa's maturing democracy, as the discriminatory laws of the past are repealed and new legislation introduced to reflect the fundamentally different values which underpin governance in the post-Apartheid dispensation. Parliament has responded to this shift by commissioning a number of internal and external research projects aimed at exploring its oversight mandate and developing an oversight model to serve as a broad coordinating framework for the institution's oversight activities. While the oversight model promises to clarify processes and structures relating to Parliament's oversight work, there will inevitably be a need for refinement of processes, training of politicians and administrative staff, and ongoing efforts to address challenges emerging from



both the practical implementation of the model and issues not addressed in sufficient detail in such a broad framework document.

In exercising oversight, there is a need to strike a balance between short term, delivery-focused oversight and policy oversight, which generally has a long term focus. For example, the Portfolio Committee on Housing may wish to assess the extent to which the Department of Housing has reached its target for the provision of low cost housing in a particular year by reviewing the departmental annual report of the current and preceding year. It is of course important to assess whether the department is meeting its delivery targets, but there are other questions that must also be asked. Are these targets appropriate given the long term trends in demand for low-cost housing? Is the department giving due consideration to the social tension that may arise in the allocation of housing? To what extent is the quality of these houses evaluated over a number of years to assess the extent to which they contribute to the establishment of sustainable communities, etc? There needs to be an understanding of the broader societal issues which inform particular departmental policies, and an interrogation of the appropriateness of these policies. In short, Parliament should not allow departmental delivery targets and existing policies to determine the framework within which oversight is exercised.

The preceding discussion underlies the increasingly important role of information management and analysis within Parliament. The vigorous exercise of Parliament's oversight mandate will require ongoing, high quality research and analysis which is focused on long term trends, emerging societal issues and other concerns. The expansion of Parliament's research

capacity and a shift in focus from information gathering to analysis are encouraging signs of change. It will be important, however, that the relationship between the Research Unit and the Committee Section is clarified to ensure coordinated support to committees, and further that Members of Parliament, both individually and within committees, are well informed of the research services and resources available to them.

Emerging trends in Parliament also place requirements on individual Members of Parliament. Members of Parliament must process a great amount of information in the execution of their duties. Substantial time and effort must thus be dedicated to reading reports, briefings and also media publications to ensure effective engagement with issues within Parliamentary processes. The increased information flow and the need to enhance public participation also require chairpersons of committees to maintain high procedural standards. There is a need for the best practices developed in certain committees to be communicated to other committees in Parliament. Parliament should consider assisting Members of Parliament, including chairpersons of committees, to fulfil their duties by developing plain language guidelines covering various aspects of Parliamentary procedure. It is also important that such guidelines are available in all South Africa's national languages as well as brail.

The remainder of this chapter will address some of the major issues currently facing Parliament and also address future trends in the institution. Attention is given to women and the transformation of Parliament. Parliament's focus on improving the quality of life and status of women is critical to transformation. If unequal gender roles and the lives of those who form

the majority of the poorest are addressed, the chances are strong that society as a whole will improve. Parliament's role in the international environment, ethics in Parliament, the issue of floor crossing, and the leadership structure of the institution are also considered in this chapter.

7.2. Parliament in the International Environment

The international activity of Parliament is an often-neglected aspect of the institution's functioning. In its submission to the Panel, the Inter-Parliamentary Union (IPU) noted that until recently there has been scant involvement of parliamentarians in international affairs. The IPU argues that parliaments need to take a broader view of their responsibilities, which extend beyond the national domain and encompass the whole range of international transactions, rather than focusing exclusively on international treaties.

With regard to international treaties, the IPU calls for parliaments to be involved in a variety of ways in the early stages of negotiating processes and not just at the conclusion of such agreements. For this to materialise, the IPU recognises a number of conditions that must be met, including:

- Parliamentary involvement must have a legal basis;
- Parliament must be informed in advance of government policies and negotiating positions together with accurate information about the policies and their background;
- Parliament should have the necessary organisation and resources to address the issues, including sufficient expertise;
- Parliament should be able to put questions to ministers and negotiators, and thus be able to

express its political views to government;

- Parliament must be included as a matter of course in governmental delegations to international organisations.

In recent years the Parliament of South Africa has been particularly active in the international arena. South Africa is involved in a number of multilateral fora and is developing new mechanisms to ensure that it is able to fully engage in the international political environment. At a multilateral level, Parliament participates in a number of organisations such as the Inter-Parliamentary Union, the Pan-African Parliament, the Southern African Development Community Parliamentary Forum, and others. Beyond its involvement with multilateral organisations, the South African Parliament is involved in a number of initiatives on the international level, including international conferences, inter-parliamentary groups, and tours to observe international best practice. Parliament's growing international activity is an example of how the role of Parliament continues to develop. Many of these new roles and responsibilities may have been underemphasised or not considered in the Constitution drafting process, and it is thus important that Parliament as an institution continues to grapple with emerging trends and its positioning within national structures of government and within the international environment.

Parliament's international engagements are supported by the International Relations Section, which has been active in formalising policies and guidelines for such activities. A multi-party Task Team on International Relations, which was formed in August 2005, developed a document entitled Policy Perspectives and Operational Guidelines for Parliament's Involvement

and Engagement in International Relations. In terms of this policy, which was adopted by the Joint Rules Committee on 3 November 2006, Parliament's international activities would focus on developing and strengthening partnerships in Africa, advancing multilateralism and building bilateral relations through friendship societies. A multi-party Parliamentary Group on International Relations has been established in order to manage Parliament's involvement in international relations.

In addition to Parliamentary diplomacy, the Parliament of South Africa also has a specific legislative role to play in terms of international agreements. International agreements are addressed in section 231 of the Constitution. The provisions within section 231 specify that the negotiating and signing of all international agreements is the responsibility of the national Executive, however, an international agreement is only binding after it has been approved by resolution in both houses of Parliament. International agreements of a technical, administrative, or executive nature are exceptions to this requirement, as they are binding without the approval of Parliament. It has been noted in a recent report that the challenge for Parliament in this regard is how to determine which agreements are of a technical, administrative or executive nature and do not therefore require ratification. Without such determination, the Executive has a free hand in deciding what requires ratification by Parliament and what does not.⁶⁸ The Constitution is clear in assigning responsibility for the negotiating and signing of international agreements to the national Executive, however,

there is a growing international trend toward involving Parliament in these processes despite there generally being no obligation on the part of the Executive to do so. This is particularly important given the role of Parliament as a forum for the debate of issues of national concern and its role in the subsequent ratification of these agreements.

It has been suggested that the South African Parliament establish a standing committee on international agreements, based on the British and Australian model, which would ensure pre-ratification scrutiny of all treaty actions. In addition to such a committee, Members of Parliament may enhance their monitoring role with regards to international agreements by informing themselves of the status of negotiations, putting written and oral questions to ministers on progress made in negotiations, initiating debates in plenary or in the relevant committees, and even accompanying ministers to the negotiations to assess the negotiating process.⁶⁹

Parliament's role in this regard is not simply to ratify treaties, but to evaluate and debate these treaties to consider their likely impact and decide whether, in fact, they should be ratified. For example, the General Agreement on Trade in Services (GATS), which was ratified by Parliament in April 1995, has led to the privatisation of utilities such as water supply. It was pointed out to the Panel that in some cases the privatisation of public utilities has had negative consequences in terms of both the cost and quality of basic services, which may not have been adequately considered by Parliament before GATS was ratified.

⁶⁸ Gutto et al. 2007. *A Study on Enhancing the Status, Role, Image and Positioning of the Parliament of the Republic of South Africa*. p.18.

⁶⁹ Gutto et al. 2007. *A Study on Enhancing the Status, Role, Image and Positioning of the Parliament of the Republic of South Africa*. p.20.

Many international agreements require states to take certain measures, including legislative measures, and to submit regular periodic compliance reports to the relevant councils, committees or commissions.

The International Covenant on Civil and Political Rights, for example, requires all states party to the agreement to submit reports to the Human Rights Committee on the measures they have adopted to give effect to the Covenant within one year of the entry into force of the Covenant for the state party concerned and thereafter whenever the Committee so requests. The International Convention on the Elimination of All Forms of Racial Discrimination similarly requires reports to be submitted to the Secretary-General of the United Nations for consideration by the Committee on the Elimination of Racial Discrimination within one year after the entry into force of the Convention for the state concerned and thereafter every two years and whenever the Committee so requests.

Unfortunately, although South Africa signed and ratified these and other conventions, its reports to the relevant monitoring committees have often been delayed. Parliament should establish mechanisms to monitor South Africa's reporting obligations resulting from international agreements to ensure timeous reporting.⁷⁰ It will be important to ensure that such a mechanism has adequate capacity to perform its function, both in terms of technical skills and administrative support.

⁷⁰ Gutto *et al.* 2007. *A Study on Enhancing the Status, Role, Image and Positioning of the Parliament of the Republic of South Africa.* p.25.

7.3. Ethics in Parliament

Ethics in Parliament came under the spotlight in recent years with the Travelgate scandal and the conviction of certain MPs. Both within Parliament and civil society the impression seems to be that these highly publicised events have caused serious damage to the reputation of Parliament and deeply affected the public's faith in an institution which is supposed to be the embodiment of the best leadership qualities, such as honesty and integrity.

Ethics in Parliament are governed by Parliament's Code of Conduct as well as the institution's Joint Rules. There is also a policy on the Disclosure of Financial Interest for Members of Parliament to avoid conflicts of interest. Complaints regarding ethics are directed to the Registrar for Ethics and Members' Interest. These issues are considered and, together with recommendations, passed on to the Joint Committee on Ethics and Members' Interest. The Committee may conduct detailed investigations into the matter, after which recommendations are made to Parliament for a final decision.

During Panel investigations a number of issues were identified regarding Parliament's framework for ethics management. On a general level it was noted that there is a need for greater detail and the development of guiding principles to ensure absolute clarity regarding the ethical standards of Parliament. The Executive Members' Ethics Act requires a high level of disclosure and the provisions in this regard are very clearly defined and detailed; this Act may serve as a standard for the ethics framework applicable to individual Members of Parliament. In this regard the Panel strongly recommends that the finalisation of the

current review and broadening of the Code of Conduct be pursued as a priority for Parliament.

A further issue is the restriction placed on the professional positions that Members of Parliament are allowed to take up after their tenure in Parliament to avoid conflicts of interest. Currently Parliament has no clear guidelines on post-tenure restrictions. Parliament should urgently develop such guidelines.

All Members of Parliament receive training in Parliament's Code of Conduct and its ethics management systems at the beginning of each Parliamentary term. There is a need, however, for this training to be expanded so that it runs continuously for new Members of Parliament, rather than just being provided at the beginning of the Parliamentary term. Furthermore, the demands placed on the time of executive Members of Parliament results in ethics training at times being omitted, but the high level of public scrutiny on these individuals makes it imperative that they not only receive the necessary training, but also that they be continuously made aware of the ethical parameters within which they are expected to operate.

The Travelgate issue focused attention on Parliament's relatively weak power to enforce ethics. "Travelgate" is the term used to refer to the abuse of travel vouchers by Members of the South African Parliament, which emerged in 2005. In terms of sanctions, the Constitution specifies that a Member of Parliament becomes ineligible to hold office if they are convicted of an offence and sentenced to more than 12 months imprisonment without the option of a fine.⁷¹

⁷¹ Section 47(1)(e) and (3) of the Constitution of South Africa.

While Parliament may reprimand Members of Parliament, only political parties have the power to remove their Members from Parliament in cases where transgressions do not result in a sentence of 12 months or more imprisonment without the option of a fine.

Considering the damaging impact that unethical behaviour has on the image of Parliament, the Panel feels strongly that the conditions under which Members of Parliament become ineligible to hold office should be reviewed. In the view of the Panel any Member of Parliament who is convicted of corruption, fraud or similar offences should be ineligible to serve as a Member of Parliament.

The Panel observes that even in cases where Parliament does have the power to sanction its Members, this does not always happen. In October 2008 Parliament withdrew its mandate to the liquidators of Bathong Travel to recover the remaining debt owed to the institution. This step elicited widespread criticism. Leader of the Independent Democrats, Patricia de Lille, for example, stated in Parliament that this step "sends out the wrong message entirely that MPs who have for years stubbornly refused to co-operate with liquidators, or pay back the funds, have now been let off the hook".⁷²

7.4. Women and Parliament's transformation

The South African Parliament is recognised as one of the top ten countries globally in terms of the numbers of women Parliamentarians. Before the 1994 election, only 3% of MPs were women. The ANC's 30% quota on its party lists was a significant

⁷² i-Africa.com News. *Travelgate MPs 'off hook'*. 03 October 2008.

factor in increasing the numbers of women MPs. The composition of Parliament after 1994 was radically altered with women constituting 27% of MPs. This proportion has continued to grow; in 1999 women made up 30% of Parliament and following the 2004 elections the figure increased to 32,8%. These numbers soon translated into the application of a gender lens to the Constitution, policies, laws, budgets and institutional transformation. This meant that the unequal power relations and roles of men and women that are deepened by race, class, sexual orientation, age and geographic discrimination, were now under scrutiny. This was necessary to challenge the gender inequalities that result in women and girls being the majority of the poorest and those who bear the brunt of violence and HIV/Aids.

In its first term Parliament established a number of structures aimed at supporting the participation of women in the legislative process and at ensuring impact on the unequal lives of women in society. These include the establishment of the Joint Monitoring Committee on the Improvement of the Quality of Life and Status of Women (referred to hereafter as the Committee), the establishment of a Multiparty Women's Caucus and the establishment of a Women's Empowerment Unit. Parliament also instituted a 'Women's Parliament' that brings women from civil society in all nine provinces to Parliament. Parliament needs to link public participation events such as the Women's Parliament to Parliament's legislative program to enable women to learn about Bills that may potentially undermine women's rights, such as the current Traditional Courts Bill, and to act on them. This is critical if these events are not to be reduced to public relations gatherings.

The Committee is tasked with monitoring Government's implementation of the United Nations Convention on the Elimination of all Forms of Discrimination against Women and the Beijing Platform of Action. However, to do this effectively all other international agreements that Government signs and ratifies must be similarly scrutinised for their impact on women and gender equality. For example, Government signed and Parliament ratified the General Agreement on Trade and Tariffs and the General Agreement on Services, both of which have been the subject of studies detailing their negative impact on pushing women into greater unemployment, poverty and vulnerability to violence and HIV/Aids.

The Committee achieved a major victory for women in the 1998/1999 National Budget Review, which committed to ensuring that the entire budget would eventually be gender-responsive. Unfortunately the pilot that Government undertook that year was not continued. The Panel recommends that Parliament use its power to ensure that this commitment be reinstated.

Several independent published evaluations conducted in the first and second terms of Parliament document the important role of this Committee. (See e.g.: 'Participation of Women in the Legislative Process' published by the European Union Parliamentary Support Program and 'Redefining Politics: South African Women and Democracy' published by the Commission for Gender Equality). All concurred that the Committee's ability to work across party divides, its clear set of priorities, focus, ability to build strategic alliances and effective use of power, were critical to its success in the first and second terms of Parliament. In the first term of the democratic Parliament,

the Committee established legislative priorities to improve women's lives in areas such as domestic violence, maintenance, customary law and labour law, and worked to ensure these changes were enacted. Thereafter it put considerable energy into monitoring its implementation. Over 80% of the priorities identified by the Committee were enacted by the end of the first term of Parliament. Parliament needs to find ways to strengthen and support this Committee to ensure that it is able to continue this important work, especially on legislation that seems to negatively impact on women's lives, such as the Communal Land Rights Act and the Traditional Courts Bill.

The need for Parliament to guard the independence and integrity of its Committees is illustrated in this Committee's experience of its 2001 HIV/Aids Report. It tabled its report in Parliament in February 2002 and asked for Parliament to debate and adopt its recommendations. Parliament did not debate the report for a full year after the report was tabled and even then the recommendations of the report were not adopted. The recommendations that Committees make after public hearings have to be taken further by Parliament if members of the public are not to dismiss such hearings as ineffective.

In its submissions to the Panel, the Joint Monitoring Committee on the Improvement of the Quality of Life and Status of Women noted that although much has been achieved in terms of increasing the number of women in Parliament, there is still a great need for a paradigm shift from a male-dominated, patriarchal system to one where gender awareness, sensitivity and mainstreaming accompany these quantitative changes. The committee noted that there is a

need for greater interaction and synergy between all committees of Parliament, as all legislation has gendered implications and impact. The Panel concurs with the proposal made by the Joint Monitoring Committee on the Improvement of the Quality of Life and Status of Women to institutionalize symposiums for chairpersons of committees to develop a common understanding of the importance of ensuring that legislation, including the budget, is gender-responsive.

The Women's Caucus was instrumental in addressing questions related to the working conditions of women MPs and staff. Questions such as parental rights, hours of work, childcare facilities, sexual harassment and disciplinary codes all came under the spotlight. The Panel recommends that Parliament ensure that clear codes, procedures, guidelines and training around sexual harassment are developed for staff and MPs so that all those who work within the precincts of Parliament are equally protected against any infringements of their rights.

The Panel has recommended that Parliament examine how to ensure greater accountability of elected representatives. In discussing electoral reform, Parliament will need to address the question of how to ensure reform that does not further entrenching the racist, sexist and ethnic prejudice and divides that continue to plague South Africa.

7.5. Floor Crossing

Floor crossing is a highly controversial feature of Parliamentary practice. Initiated in 2001, the system allowed Members of Parliament, Members of Provincial Legislatures and Local

Government councillors to change political party (or form a new party) without losing their seats.

Criticism of floor crossing focused on two issues. Firstly, it is argued that in South Africa's proportional representation system the electorate votes for political parties, rather than individuals. This means that when an individual MP crosses the floor it distorts the balance of representation as determined by citizens through the ballot box, essentially undermining the democratic process. The second criticism of the floor crossing process is that it lends itself to bribery and corruption. Given these concerns, the Panel supports the recent scrapping of the floor-crossing system.

7.6. Parliament's Leadership Structure

The South African Parliament has two equal political principals, the Speaker of the National Assembly and the Chairperson of the National Council of Provinces. The Constitution does not expressly provide for the position of the head of Parliament. In recent years, however, there has been a debate regarding the future leadership structure of Parliament. The various perspectives on this issue have been discussed in a recent report on the remuneration of parliamentary public office bearers.⁷³ This report identifies three dominant schools of thought within Parliament with regard to the relative seniority or equality of the positions of Speaker of the National Assembly and Chairperson of the National Council of Provinces, which are outlined below.

The first perspective supports the status quo, that is, the Speaker as the head of the National Assembly and

the Chairperson as the head of the National Council of Provinces are equal positions with distinct as well as joint powers, functions, roles and responsibilities.

The second school of thought is based on the interpretation of certain Constitutional provisions that might suggest a hierarchical relationship between the National Assembly and the National Council of Provinces, and consequently the Speaker and the Chairperson. Some of the key Constitutional provisions cited in support of this view include:

- The National Assembly as the elected representatives of the people, chooses the President and serves as the source for the selection of the Deputy President and the primary source for the selection of Ministers and Deputy Ministers.
- While members of the Cabinet and Deputy Ministers are accountable to Parliament only the National Assembly has the power to pass a motion of no confidence in the Cabinet and/or the President.
- The Speaker and not the Chairperson of the NCOP may serve as Acting President.

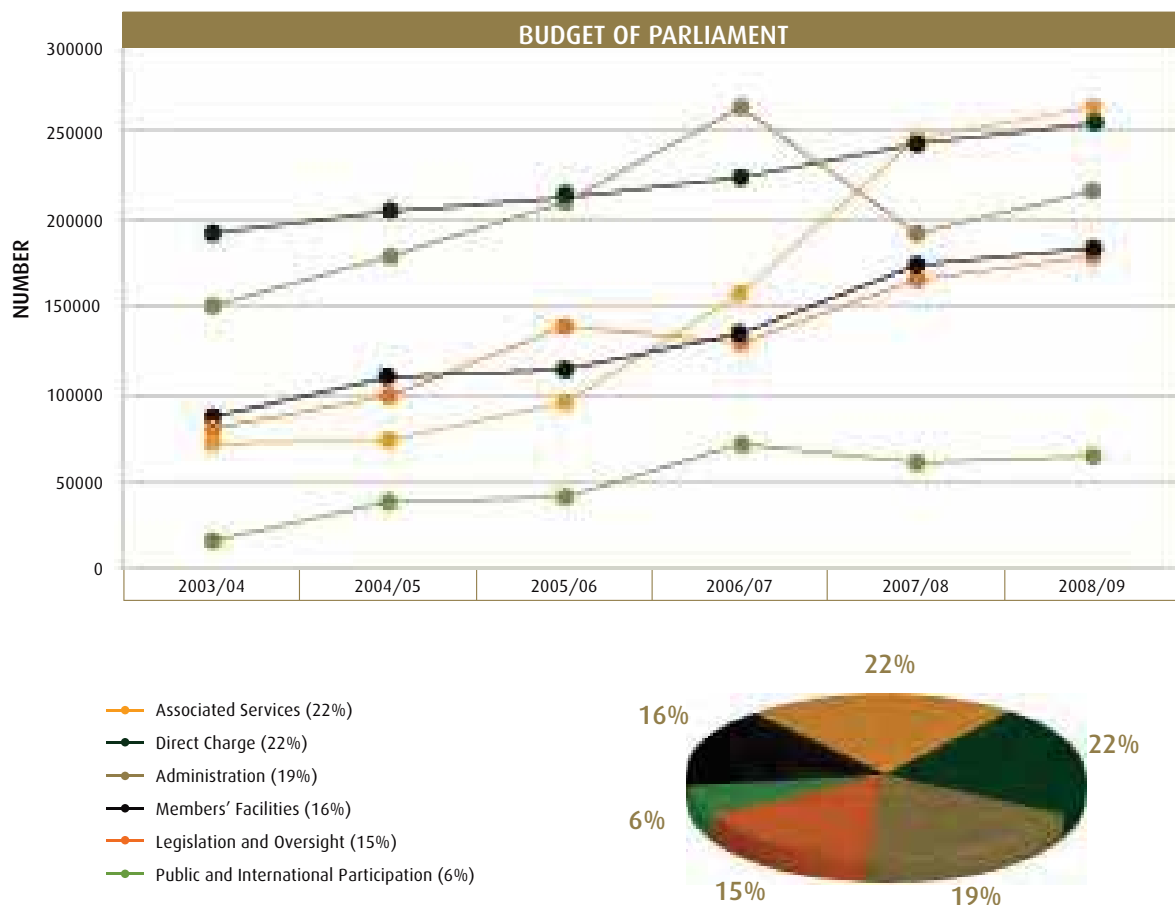
The third school of thought suggests that the positions of Speaker and Chairperson be accepted as equal, but that it is important that Parliament has a figurehead. This would be more of a ceremonial and representational role for the institution, particularly for international relations. It is suggested that the figurehead should be the Speaker. Alternatively, a third position as the head of Parliament could be created, with the Speaker of the National Assembly and the Chairperson of the National Council of Provinces retaining their positions as heads of the respective Houses.

⁷³ *Proposals on a Comprehensive Structure for the Remuneration of Parliamentary Public Office Bearers*. 4 August 2006.

While noting the debate on the leadership structure of Parliament as an example of how the institution continues to develop, the Panel considers the various options in the structuring of parliamentary leadership to be an internal matter which will have to be pursued on an institutional and political level.

During the Panel's deliberations it was observed that a conflict of interest may exist, or may be seen by the public to exist, when a Presiding Officer of one

of the houses of Parliament simultaneously holds a senior position within a political party. In certain political systems the speaker or chairperson of the house is required to resign from senior party political posts for the duration of their appointment. The Panel recommends that Parliament gives serious consideration to this issue.

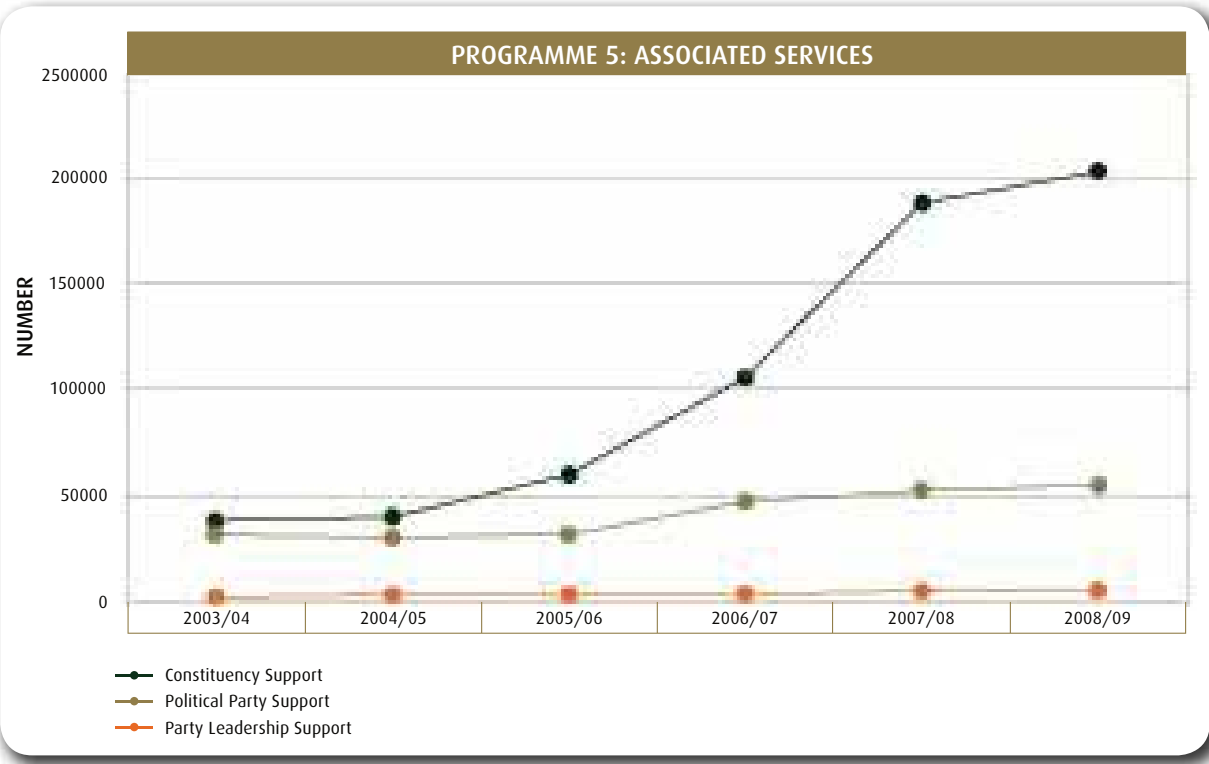


7.7. Parliamentary Budget Trends

The graph below presents trends in the parliamentary budget from 2003/04 to 2007/08. There are two categories which appear to warrant discussion, namely the category of Associated Services, which has increased dramatically in recent years, and the category of Public and International Participation, which has decreased in the 2006-2008 period.

The graph below provides a breakdown of the Associated Services category, which has experienced a marked increase in recent years. This category consists of three items, namely Constituency Support, Political Party Support, and Party Leadership Support. It is clear from the graph that the growth in the budget allocation for Associated Services is the result

of a dramatic increase in the funds allocated for Constituency Support. The effectiveness of constituency work conducted by Members of Parliament was discussed in detail in chapter five of this report. The overall assessment was that constituency offices were performing poorly as a link between Parliament and the public. The Centre for Public Participation claims that there is widespread confusion among the public concerning the role and function of constituency offices, and that constituency offices are not serving as effective channels for communication both from Parliament to the public and vice versa. Moreover, various sources have argued that there is inadequate accountability on the part of political parties for the management of funds allocated for constituency work. Clearly there is a disjuncture between the resources being allocated to constituency support and tangible



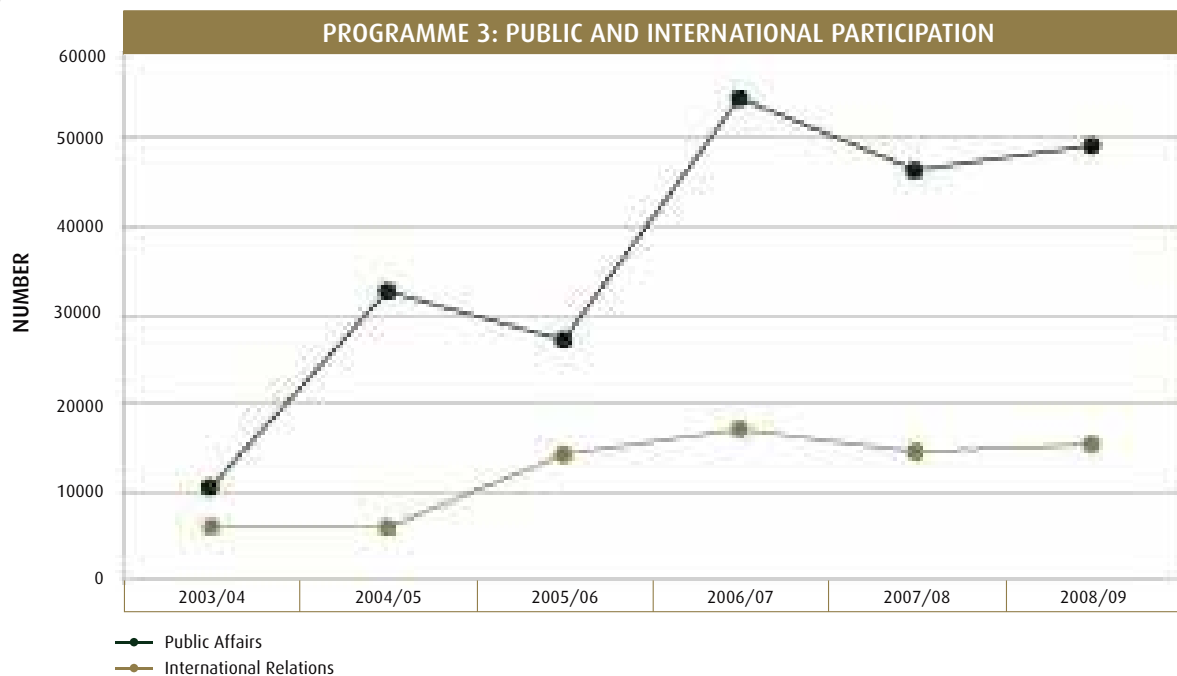
improvements in the functioning of these offices as channels of communication between Parliament and the public. Parliament will have to assess the impact of its expenditures on constituency support and significantly improve procedures for accountability by political parties for these funds.

The graph below tracks changes in the budget allocation for Public and International Participation, which consists of two sub-categories, namely Public Affairs and International Relations. Public Affairs provides education and information services, public relations, media relations and events management. The graph shows that expenditure on Public Affairs has decreased in the 2006-2008 period. The reduction of the budget allocation for Public Affairs is concerning given the low level of knowledge

about parliamentary processes and specifically public participation processes among the South African public. Parliament's efforts to promote knowledge of the institution and its processes among the public are essential to deepen and strengthen South Africa's democracy, as well as increase the legitimacy of the institution in the eyes of the public, and the Panel thus proposes that Parliament investigates the decline in the budget of the Public Affairs office.

7.8. Conclusion

Parliament is an evolving institution in a dynamic society. Parliament's focus on improving the quality of life and status of women is critical to transformation. If unequal gender roles and the lives of those who form the majority of the poorest are addressed, the chances are strong that society as a whole will improve. The



trends identified in this chapter reflect the institution's efforts to adapt to broader changes in the domestic and international environment. An important element of this change is the increasing role of Parliaments in the international environment. This aspect of parliamentary work continues to be developed by the Task Team on International Relations.

Ethics in Parliament are a matter of extreme importance. Unethical behaviour by Members of Parliament has the potential to seriously damage the prestige of Parliament in the eyes of the public. For this reason the Panel strongly recommends that the criteria by which a Member of Parliament becomes ineligible to hold office should be reviewed. Finally, the issues raised concerning Parliament's budget trends require investigation, specifically the monitoring of funds dedicated to constituency work and the decreasing budget allocation to public affairs.

7.9. Summary of Chapter Recommendations

The Panel recommends that:

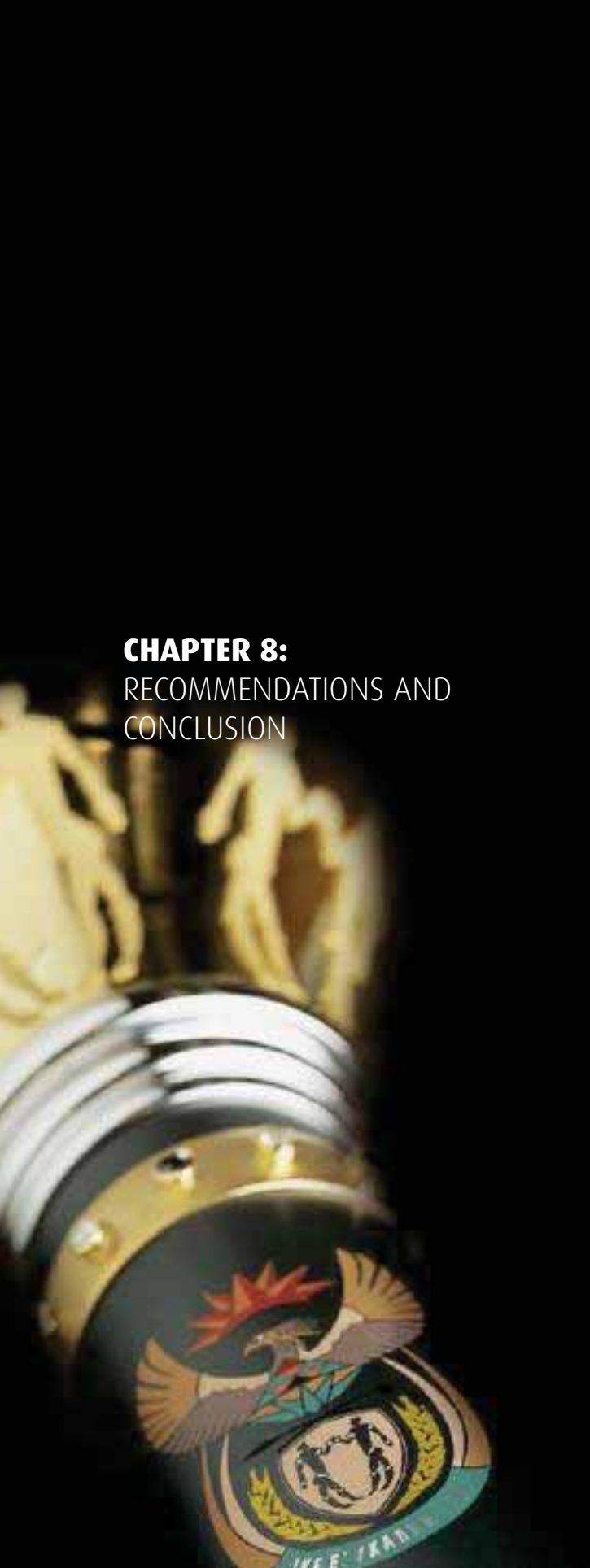
- Parliament should develop mechanisms and improve capacity to support its role in the negotiation and ratification of international treaties.
- Parliament should establish mechanisms to monitor South Africa's reporting obligations resulting from international agreements to ensure timeous reporting.
- Parliament's international activities must be well prepared, goal-oriented, and result in clearly defined outcomes.
- Ethics
 - There is a need for greater detail in Parliament's ethics framework, as well as the development of guidelines to ensure absolute clarity regarding the ethical standards of Parliament.
- Currently Parliament has no clear guidelines on post-tenure restrictions. Parliament should urgently develop such guidelines.
- In the view of the Panel any Member of Parliament who is convicted of corruption, fraud or similar offences should be ineligible to serve as a Member of Parliament.
- In view of the above and the comments by the Panel on the "unconditional power of political parties to remove their members from Parliament", Parliament should establish a task team to investigate the revision of the conditions under which a Member of Parliament may cease to be eligible to hold his/her position, as outlined in section 47 of the Constitution of South Africa.
- Gender and Parliament
 - Parliament needs to link public participation events such as the Women's Parliament to Parliament's legislative program to enable women to learn about Bills that may potentially undermine their rights.
 - Parliament should ensure that clear codes, procedures, guidelines and training around sexual harassment are developed for staff and MPs so that all those who work within the precincts of Parliament are equally protected against any

infringements of their rights.

- All international agreements that Government signs and ratifies must be scrutinised for their impact on women and gender equality.
- Parliament should use its power to reinstate Government's commitment in its 1998/1999 National Budget Review, to ensure that the entire budget would eventually be gender-responsive.
- Parliament must guard the independence and integrity of its Committees and ensure that what happened to this Committee's 2001 HIV/Aids Report is not repeated.
- Parliament needs to support the Joint Monitoring Committee on the Quality of Life and Status of Women to ensure that it is able to influence legislation that seems to negatively impact on women's lives, such as the Communal Land Rights Act and the Traditional Courts Bill.
- Parliament should institutionalize symposiums for Chairpersons of parliamentary committees to develop a common understanding of the importance of ensuring that legislation, including the budget, is gender-responsive.
- In addressing electoral reform, Parliament will need to address the question of how to ensure that any such reform does not further entrench the racist, sexist and ethnic prejudice and divides that

continue to plague South Africa.

- Leadership of Parliament – the Panel considers the various options in the structuring of parliamentary leadership to be a matter which should be pursued on an institutional and political level.
- During the Panel's deliberations it was observed that a conflict of interest may exist, or may be seen by the public to exist, when a Presiding Officer of one of the Houses of Parliament simultaneously holds a senior position within a political party. In certain political systems the speaker or chairperson of the house is required to resign from senior party political posts for the duration of their appointment. The Panel recommends that Parliament gives serious consideration to this issue.
- There is a disjuncture between the resources allocated to constituency work and tangible outcomes. Parliament should assess the impact of its expenditures on constituency support and significantly improve procedures for accountability by political parties for these funds.
- Parliament's efforts to promote knowledge of the institution and its processes among the public are essential to deepen and strengthen South Africa's democracy, as well as increase the legitimacy of the institution in the eyes of the public. For this reason the reduction in the budget allocated for public affairs is of concern and should be investigated.



CHAPTER 8: RECOMMENDATIONS AND CONCLUSION

CHAPTER 8: RECOMMENDATIONS AND CONCLUSION

8.1 Discussion

An assessment of this nature must necessarily have a frame of reference, a set of values, roles and objectives against which the performance of the institution may be measured. In its investigations the Panel was guided firstly by the provisions of the Constitution. These Constitutional provisions encompassed not only the mandate of Parliament, but also included the values expressed in the Constitution, such as human dignity, the achievement of equality and the advancement of human rights and freedoms. Linked to Parliament's Constitutional mandate, the Panel also wished to interrogate the experience and role of Parliament in promoting and entrenching democracy.

In chapter one of this report the criteria against which Parliament may be assessed were outlined. The Panel was guided by the Constitution in determining that Parliament should strive to be:

- Accountable
- Responsive
- Open
- Representative
- Participatory
- Effective

Accountable

Accountability involves Members of Parliament being answerable to the electorate for their performance in office and integrity of conduct. Two matters touched on in this report are of particular relevance to this principle, namely constituency work and ethics in Parliament. The Panel has discussed the practice of constituency offices at length, but feels strongly that

this matter will require detailed investigation and evaluation in the development of a parliamentary Public Participation Model. While Parliament clearly wishes to provide Members of Parliament with some flexibility in how they conduct constituency work, there appears to be insufficient monitoring of these activities to ensure that matters raised during constituency work are integrated into parliamentary processes. The proposed Public Participation Model will have to express itself clearly on the responsibilities of Members of Parliament during constituency periods, specifically by distinguishing responsibilities to the institution from party political responsibilities.

In the course of the Panel's deliberations the view was expressed that the use of a party-list electoral system makes Members of Parliament accountable to their political parties rather than the electorate. While the Panel has sought to stress that issues around accountability and representivity should not be reduced solely to a debate on electoral reform, the Panel does wish to recommend that a debate on the implications and relative merits of various electoral systems are given detailed consideration by Parliament.

On the matter of ethics Parliament will require greater detail in its regulations and the development of guiding principles to ensure absolute clarity regarding the ethical standards of Parliament. Unethical behaviour by Members of Parliament has the potential to seriously impact on the prestige and standing of the institution in the eyes of the public. In terms of sanctions, the Constitution specifies that a Member of Parliament becomes ineligible to hold office if they are convicted of an offence and sentenced to more than 12 months imprisonment without the option

of a fine.⁷⁴ Considering the damaging impact that unethical behaviour has on the image of Parliament, the Panel felt strongly that the conditions under which Members of Parliament become ineligible to hold office should be reviewed. It was proposed that any Member of Parliament who is convicted of corruption, fraud or similar offences should be ineligible to serve as a Member of Parliament.

Responsiveness

This value speaks to the ability of Parliament to reflect the concerns and debates occurring within South African society and draw these issues into the governance processes of the country. Chapter four discussed some of the challenges face by Parliament in terms of its ability to effectively serve as a forum for the public consideration of issues. The issue of responsiveness is also related to Parliament's public participation mechanisms, for example, in the efficacy of constituency offices as a mechanism through which communities may bring issues to the attention of Members of Parliament and the manner in which concerns raised during public participation events feed into other parliamentary processes to ensure tangible outcomes.

Openness

The Constitution provides for all committee meetings, except in very unique cases, to be open to the public. Plenary debates may also be attended by members of the public, but there are relatively few people who have the time or resources to travel to the seat of Parliament. For this reason most people rely on various communication media to learn more about Parliament

⁷⁴ Section 47(1)(e) and (3) of the Constitution of South Africa.

and its workings. The improvement of Parliament's website and the broadcasting of committee and plenary proceedings on television contribute to transparency in Parliamentary proceedings, but these media are generally available only to well-resourced South Africans. Research has shown that South Africans' knowledge of Parliament is quite poor, and this should be a cause for some concern to the institution. The Public Affairs Section, which deals with public education, public relations and media relations, will require a closer assessment of the reach and impact of their programmes. In submissions from civil society organisations the Panel were frequently reminded that, though the Constitution and the rules of Parliament may be aimed at ensuring transparency and accessibility, the reality may be very different.

Representative

Democratic parliaments must be socially and politically representative of the diversity of the people, and ensure equal opportunities and protections for all its members.⁷⁵ The basic elements of ensuring representivity are a multi-party system of government, universal suffrage and regular elections. The implementation of these values is secured by Constitutional provisions outlining the political rights of citizens and requiring regular elections "that result, in general, in proportional representation" (sections 19, 46 and 105 of the Constitution of the Republic of South Africa). In its workings Parliament is also enjoined to respect constitutional democracy and ensure proportional party representation in its proceedings (sections 57 and 116 of the Constitution).

The electoral system of proportional representation currently in place in South Africa ensures that a large number of voices are included in Parliament, including small parties with dispersed support. Within Parliament efforts are made to ensure minority party representation in committees and delegations. Representivity, however, requires more than the presence of alternative voices within parliamentary structures. It deals also with the space allowed for alternative views to be raised, and the manner in which these views are interacted with. Though Members of Parliament are per definition elected representatives of the people, the Panel deliberated on the extent to which Members of Parliament in fact effectively represent the people. This question touched on a number of issues, including the perception that the accountability relationship of Members of Parliament to their parties is far greater than their accountability to the electorate. Challenges identified in Parliament's public participation processes further brought into question the effectiveness with which Members of Parliament are representing the will of the people.

Participation

The Parliament's recently adopted Oversight Model recommends that Parliament develops a Public Participation Model which will investigate Parliament's public participation processes in detail. It is hoped that the issues identified in this report serve as a starting point in the development of a parliamentary Public Participation Model. Many of the issues raised in submissions from the public related to practical matters, which could be rectified by relatively simple interventions. For example attention should be given to advertise public hearings timeously, avoiding the postponement of such hearings and ensuring that

⁷⁵ IPU. 2006. *Parliament and Democracy in the Twenty-First Century – A Guide to Good Practice*. p.10.

proper meeting procedures are followed when allowing members of the public to make submissions.

Public participation events such as the NCOP's "Taking Parliament to the People", the Women's Parliaments and the Youth Parliaments have the potential to provide significant channels for public participation in parliamentary processes. As this report has pointed out, however, the success of these initiatives depends crucially on the manner in which submissions received during these events are fed into parliamentary processes and follow up is provided to event participants.

Effectiveness

This criterion speaks to the effective organisation of business in accordance with the abovementioned democratic values, and the performance of Parliament's legislative and oversight functions in a manner that serves the needs of the whole population. This principle also requires efficiency in Parliament's functioning, that is, the requirement for the work of Parliament to be conducted in ways that are timely and cost effective, and that ensure that the two chambers of the national Parliament and the nine provincial legislatures interact in a cooperative manner.

There are specific areas that Parliament should focus on to improve the efficiency of the institution. The first area is the newly developed Oversight Model. The Model is the outcome of prolonged investigations and discussions among various stakeholders, it covers both existing mechanisms and new structures that will contribute to Parliament effectively exercising its oversight mandate. It is essential that the momentum

gained through the development of this model is maintained. In many ways, the real work has only begun, as the Model now requires implementation and integration with existing mechanisms. It will be essential that this process is carefully monitored, with periodic reviews to ensure that the intent of the Model finds expression in Parliament's structures and processes.

A further area that requires focus is the information management within Parliament. While the Parliamentary Content Management System is an important innovation, there is also a need for better management of hard-copy documents. The production of minutes and transcripts of committee and plenary proceedings are also an important aspect of information management within the institution. In this regard a detailed assessment of Hansard and the information management systems of the Committee Section is required.

8.2. Summary of Recommendations

This section provides a summary of all recommendations contained in this report. The introductory chapter and chapter one are excluded, as they deal with the broader context and evaluation criteria for the investigation and do not contain recommendations.

Chapter 2: Parliament's Legislative Mandate

The Panel recommends that:

- Parliament establishes a scrutiny mechanism to oversee delegated legislation. Once established, a monitoring and evaluation schedule must be developed to ensure that the scrutiny mechanism for delegated legislation effectively fulfils its role.
- Parliament should make greater use of mechanisms such as conferral (joint committees), which allow committees to jointly engage with legislation that touches on the mandate of a number of committees.
- Review of the Impact of Legislation
 - Parliament should ensure that it develops the necessary skills and capacity (both among Members of Parliament and staff) to effectively monitor the impact of legislation, both before and after its adoption.
 - The Panel recommends that an Impact Assessment Report on the likely impact of each Bill should be attached when the Bill is tabled in Parliament. The Executive should be required to undertake such assessments before the Bill is tabled in Parliament. This report 1.) must examine the relevant and likely budgetary, financial, economic, administrative, social, gender, environmental and other impacts if the Bill in question is enacted; 2.) should further explain clearly the scope of any law-making and other powers being delegated to ministers or officials, and why it is thought necessary to delegate; 3.) should also clearly set out the criteria in terms of which any discretionary powers are to be exercised; 4.) should summarise all submissions (written and oral) from outside bodies regarding the Bill and contain the Department's response to each of these submissions. The parliamentary committee processing the Bill should in turn respond to all submissions made to it.
- The impact of legislation must also be monitored after its enactment. Such monitoring by Parliament must consider *inter alia*: unintended consequences of legislation, failure by the Executive or other organs of state to take required actions in response to legislation, and the extent to which the objectives and implementation targets of legislation is achieved.
- Careful consideration must be given to cost, administrative and other implications of legislation before enactment in order to assess the feasibility of implementing legislation.
- The objectives and implementation targets of legislation should be clearly expressed in order to facilitate Parliament's role in monitoring the impact of legislation.
- Parliament should explore the reasons behind the institution's poor record in initiating legislation and address capacity gaps that

contributes to this.

- Parliament should urgently address the outstanding legislation identified in chapter 2 of this report.

Chapter 3: Parliament's Oversight Mandate

The Panel recommends that:

- The impact of the party list electoral system as it is currently structured in South Africa, as well as potential alternative systems, should be given consideration by Parliament. The view of the Panel is that the current electoral system should be replaced by a mixed system which attempts to capture the benefits of both the constituency-based and proportional representation electoral systems.
- An extensive monitoring schedule must be put in place to ensure that the recommendations of the Oversight Model find expression in Parliamentary processes. The development of new oversight mechanisms identified by the Model should equally be monitored.
- The existing process which seeks to develop an attendance policy for Members of Parliament should be reinvigorated and finalised.
- The Panel recommends that Parliament take steps to improve the quality of reports emanating from parliamentary committees in order to minimise the number of cases where reports are noted rather than adopted due to the unsatisfactory quality of the report.
- The process through which the National Assembly and National Council of Provinces monitors responses to Parliamentary recommendations stemming from its reports should be improved.
- The Panel strongly recommends that the system through which Executive responses to COPA reports are tracked should be strengthened, both procedurally and administratively, to ensure that it functions effectively.
- The Panel recommends that Parliament should consider the lessons that emerged through the arms deal investigation process. Parliament should continue to exercise its oversight role with regard to the arms deal, relating specifically to current issues such as the implementation and impact of offset commitments.
- The Panel recommends that Parliament should revisit the arms deal and take such steps as are necessary, including a debate on the adoption of a resolution calling for the appointment of a judicial commission of enquiry into the arms deal.
- Two detailed reports on the NCOP's role and functions were published in 2004, namely *Speeding Transformation: Monitoring and Oversight in the NCOP* and *NCOP Second Term 1999-2004*. These reports provide detailed analysis and make several recommendations which the Panel found to be still relevant. The Panel therefore proposes that Parliament engages with these reports and gives detailed consideration to the recommendations contained therein.
- While respecting the independence of Institutions Supporting Democracy, Parliament must endeavour to make better use of the information emanating from

these institutions in the exercise of its oversight mandate by engaging with reports emanating from these institutions. The Panel further recommends that Parliament engages with the recommendations of the report of the ad hoc Committee on the Review of Chapter 9 and Associated Institutions.

Chapter 4: Mandate to Serve as a Forum for the Public Consideration of Issues

The Panel recommends that:

- Parliament should take steps to improve the quality and substance of debate within the institution in order to increase the efficacy of Parliament in fulfilling its constitutional function of providing a forum for debate of issues of national importance.
- The mechanism through which the Speaker of the National Assembly engages with the Leader of Government Business to follow up on unanswered questions must be assessed and revised to ensure that the Executive is effectively held to account for unanswered questions.
- Parliament must develop a media strategy to ensure that the institution's engagement with the media contributes to public awareness of debates taking place within Parliament.
- The Panel notes that the topics of debate in the NCOP do not always reflect a specific focus on the challenges faced by citizens on provincial and local level, and recommends that the NCOP adopt a more focused approach in terms of its specific mandate.
- Parliament should strive to timeously debate

current matters of public concern.

Chapter 5: Public Participation

The Panel recommends that:

- The structures and processes around constituency work should be comprehensively reviewed and assessed. Furthermore:
 - The development of the Parliamentary Public Participation Model must include detailed consideration of the constituency system, the responsibilities of constituency work, and how these structures and processes relate to the newly established Parliamentary Democracy Offices.
 - The consideration of the impact of the electoral system on the independence and effectiveness of Parliament which was proposed in chapter three must also give due consideration to the influence of the electoral system on the accountability and responsiveness of Parliament to the electorate.
 - The Panel recommends that the systems to ensure financial accountability for the substantial funds allocated to political parties for constituency support are improved.
 - Parliament should provide the public with information regarding constituency offices,

such as: the address and contact details of constituency offices, the names and contact details of Members of Parliament assigned to specific constituency offices, and the boundaries of constituency areas.

- The reach and impact of the public education projects of the Public Affairs Section should be reviewed;
- Similarly, the reach and impact of public participation initiatives such as “Taking Parliament to the People” and the Women’s Parliament should be carefully reviewed to ensure that such initiatives result in tangible outcomes, including feedback to participating individuals and communities. It is necessary to review the process whereby issues raised during these events are referred to relevant committees so that they may be incorporated into formal parliamentary processes.
- Parliament should develop a guidebook to cover the principles and requirements of the public hearing process directed to chairpersons and members of committees.
- Parliament should ensure that feedback is provided to members of the public and institutions that have made presentations to Parliament through public participation processes.
- The Public Participation Model should provide clear standards for public

participation; these standards will provide the courts with a clear framework for assessing cases involving the public participation responsibilities of Parliament.

Chapter 6: Parliamentary Service

The Panel recommends that:

- Parliament should ensure that the expansion of research services contributes directly to a more effective institution through actively promoting research services to Members of Parliament and parliamentary committees.
- Increased emphasis should be placed on the training that researchers receive on integrating a gender analysis in the research of every Committee.
- Parliament should urgently assess the information management processes and challenges in the Committee Section, relating specifically to the drafting and record-keeping of minutes and reports. It may be necessary to conduct an audit of documents in order to effectively catalogue minutes and other documents currently held in the Committee Section.
- The relationship between the Research Unit and the Committee Section must be assessed to ensure coordinated support to committees.
- The systems and processes involved in the production and delivery of transcriptions must be assessed to improve the delivery time of transcriptions. The Language Service should commit itself to a standard delivery time for transcripts; a period of 24 hours is proposed for unedited transcripts. The Panel further recommends that the soft-cover

Hansard transcriptions should be published, speedily, on at least a quarterly basis during the parliamentary session.

- The Panel notes that, while funding for support to Members of Parliament and committees has increased, the administrative and secretarial support has not increased commensurately. Parliament should investigate this issue to ensure that increased financial resources result in tangible benefits in terms of support to Members and committees.
- The Panel proposes that the recommendations of the internal report on multilingualism be considered and appropriate steps taken to address the identified challenges, these include:
 - Bills in Parliament are produced in only two languages, one of which is English; Parliament should ensure that translations of a greater number of official languages are produced.
 - Parliament does not currently oversee the multilingual compliance within executive departments and other organs of state; mechanisms should be established to undertake this function.
 - Parliament's translation capacity for some of the most widely used international languages should be increased in order to support Parliament's increasing international activity.
- In the view of the Panel adequate legal drafting capacity is essential in ensuring the independence of Parliament, and therefore

proposes that the expansion of the Legal Services Office should be pursued as a priority.

- The Panel notes that a guidebook for Members of Parliament on their roles and responsibilities has been developed. It is important that this guidebook be made available in all official languages as well as braille.

Chapter 7: Institutional Growth and Development

The Panel recommends that:

- Parliament should develop mechanisms and improve capacity to support its role in the negotiation and ratification of international treaties.
- Parliament should establish mechanisms to monitor South Africa's reporting obligations resulting from international agreements to ensure timeous reporting.
- Parliament's international activities must be well prepared, goal-oriented, and result in clearly defined outcomes.
- Ethics
 - There is a need for greater detail in Parliament's ethics framework, as well as the development of guidelines to ensure absolute clarity regarding the ethical standards of Parliament.
 - Currently Parliament has no clear guidelines on post-tenure restrictions. Parliament should urgently develop such guidelines.
 - In the view of the Panel any

Member of Parliament who is convicted of corruption, fraud or similar offences should be ineligible to serve as a Member of Parliament.

- In view of the above and the comments by the Panel on the “unconditional power of political parties to remove their members from Parliament”, Parliament should establish a task team to investigate the revision of the conditions under which a Member of Parliament may cease to be eligible to hold his/her position, as outlined in section 47 of the Constitution of South Africa.
- Gender and Parliament
 - Parliament needs to link public participation events such as the Women’s Parliament to Parliament’s legislative program to enable women to learn about Bills that may potentially undermine their rights.
 - Parliament should ensure that clear codes, procedures, guidelines and training around sexual harassment are developed for staff and MPs so that all those who work within the precincts of Parliament are equally protected against any infringements of their rights.
 - All international agreements that Government signs and ratifies must be scrutinised for their impact on women and gender equality.
 - Parliament should use its power to reinstate Government’s commitment in its 1998/1999 National Budget

Review, to ensure that the entire budget would eventually be gender-responsive.

- Parliament must guard the independence and integrity of its Committees and ensure that what happened to this Committee’s 2001 HIV/Aids Report is not repeated.
- Parliament needs to support the Joint Monitoring Committee on the Quality of Life and Status of Women to ensure that it is able to influence legislation that seems to negatively impact on women’s lives, such as the Communal Land Rights Act and the Traditional Courts Bill.
- Parliament should institutionalize symposiums for Chairpersons of parliamentary committees to develop a common understanding of the importance of ensuring that legislation, including the budget, is gender-responsive.
- In addressing electoral reform, Parliament will need to address the question of how to ensure that any such reform does not further entrench the racist, sexist and ethnic prejudice and divides that continue to plague South Africa.
- Leadership of Parliament – the Panel considers the various options in the structuring of parliamentary leadership to be a matter which should be pursued on an institutional and political level.
- During the Panel’s deliberations it was observed that a conflict of interest may exist,

or may be seen by the public to exist, when a Presiding Officer of one of the Houses of Parliament simultaneously holds a senior position within a political party. In certain political systems the speaker or chairperson of the house is required to resign from senior party political posts for the duration of their appointment. The Panel recommends that Parliament gives serious consideration to this issue.

- There is a disjuncture between the resources allocated to constituency work and tangible outcomes. Parliament should assess the impact of its expenditures on constituency support and significantly improve procedures for accountability by political parties for these funds.
- Parliament's efforts to promote knowledge of the institution and its processes among the public are essential to deepen and strengthen South Africa's democracy, as well as increase the legitimacy of the institution in the eyes of the public. For this reason the reduction in the budget allocated for public affairs is of concern and should be investigated.

8.3. Sources consulted

Abrahams, F., Dawood, S., Mvulane, Z. and Watson, J. s.a. *Public Participation in Parliament: Realising the pivotal role of Parliaments in democratic governance: the experience of the Parliament of South Africa*. (Report submitted at the Inter-Parliamentary Union 2nd World Conference of Speakers of Parliament).

Beetham, D. 2006. *Parliament and Democracy in the Twenty-First Century – A Guide to Good Practice*. Inter-Parliamentary Union: Switzerland.

Corder, H., Jagwanth, S. and Soltau, F. 1999. *Report on Parliamentary Oversight and Accountability*. Parliament: Cape Town.

De Villiers, S. 2001. *A People's Government, The People's Voice: A Review of Public Participation in the Law and Policy-Making Process in South Africa*. Parliamentary Support Programme: Cape Town.

Gutto, S., Soncga, R. and Mothoagae, M. 2007. *A Study on Enhancing the Status, Role, Image and Positioning of the Parliament of the Republic of South Africa*. University of South Africa: Pretoria.

Hicks, J. 2003. *Government Mechanisms for Public Participation: How Effective Are They?* Report of the Centre for Public Participation.

Murray, C. and Nijzink, L. 2002. *Building Representative Democracy – South Africa's Legislatures and the Constitution*. Parliamentary Support Programme: Cape Town.

Murray, C., Bezruki, D., Ferrell, L., Hughes, J., Hoffman-Wanderer, Y. and Saller, K. 2004. *Speeding Transformation: Monitoring and oversight in the NCOP*. Parliamentary Report.

Murray, C., Hoffman-Wanderer, Y. and Saller, K. 2004. *NCOP Second Term 1999-2004*. (Unpublished Report).

Parliament of the Republic of South Africa. 2002. *Interim Report of the Joint Subcommittee on Delegated Legislation*. Parliament of the Republic of South Africa: Cape Town.

Parliament of the Republic of South Africa. 2006. *Parliament Since 1994 – Achievements and Challenges*. Parliament of the Republic of South Africa: Cape Town.

Parliament of the Republic of South Africa. 2007. *Report of the ad hoc Committee on the Review of Chapter 9 and Associated Institutions*. Report to the National Assembly of the Parliament of South Africa, Cape Town, South Africa.

Parliament of the Republic of South Africa. 2007. *Strategic Plan for the Third Parliament 2004-2009 (2007 Review)*. Parliament of the Republic of South Africa: Cape Town.

Parliament of the Republic of South Africa. 2007. *Report of the Joint Monitoring Committee on the Improvement of the Quality of Life and Status of Women on the Impact of the Equality Act on the Lives of Women and People with Disabilities*. Parliament of the Republic of South Africa: Cape Town.

The Constitution of the Republic of South Africa – as adopted on 8 May 1996 and amended on 11 October 1996 by the Constitutional Assembly.



APPENDIX I

Appendix I: Terms of Reference for the Independent Assessment of Parliament

The Panel for the Independent Assessment of Parliament emanates from the report of the Joint Coordinating Committee on the African Peer Review Mechanism tabled in Parliament, in which the Presiding Officers reported that Parliament will embark on a comprehensive self assessment to be conducted by an independent Panel.

The Panel's Terms of Reference are to inquire into, report and make recommendations regarding:

The extent to which Parliament is evolving to meet the expectations outlined in the Constitution and also to assess the experience and role of Parliament in promoting and entrenching democracy.

The assessment will focus specifically on the extent to which Parliament ensures that there is accountability, responsiveness and openness regarding the implementation of matters enshrined but not limited to Chapter 4 and 5 of the Constitution:

1.1 That Parliament scrutinizes and oversees Executive action and provides a national forum for public consideration of issues [Sec.42(3)(a)] read with section 68 in the case of the NCOP which states: the National Assembly is elected to represent the people and to ensure government by the people under the Constitution. It does this by choosing the President, by providing a national forum for the public consideration of issues, by passing legislation and by scrutinizing and overseeing executive action.

1.2 That the NCOP represents the provinces to

ensure that provincial interests are taken into account in the national sphere of government [Sec.42(4)]. The National Council of Provinces represent the provinces to ensure that provincial interests are taken into account in the national sphere of government. It does this mainly by participating in the national legislative process and by providing a national forum for public consideration of issues affecting the provinces.

1.3 That Parliament has a mechanism to summon and compel attendance of persons or institutions to give evidence and produce documents and to receive petitions, representation or submissions from any interested persons or institutions [Sec.56] and in the case of the NCOP Section 69.

The National Assembly or any of its committees may :

- a) summon any person to appear before it to 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); and
- d) receive petitions, representations or submissions from any interested persons or institutions; and also

1.4. that Members of the Cabinet are accountable collectively and individually to Parliament for the exercise of their powers and the performance of their functions [Sec.92(2)].

2. The extent to which there is cooperation with other organs of government and also to which Parliament as the custodian of the Constitution,

assists in maintaining and guarding the independence of the legislature

3. Parliament's administration and the allocation of resources

4. Issues of importance within the public domain and any other matter relevant to the effective functioning of Parliament.

APPENDIX II

Appendix II Roles and Functions of Parliament⁷⁶

- Law making
 - Legislating national legislation – sections 42(3), 43, 44, 55, 68;
 - Initiating and preparing legislation, except Money Bills – section 55
 - Making rules or subsidiary legislation for its own governance – sections 45, 57, 70.
- Scrutinizing and overseeing executive action
 - Sections 42(3) and 55(2) in general; and
 - 201(3) on the deployment of the defence force
 - Including the implementation of legislation – sections 42(3) and 55(2)(b)
- Receiving reports and holding independent Constitutional institutions accountable
 - Sections 55(2)(a) and 181(5)
- Choosing the President
 - Section 42(3)
- Power to dissolve the Executive
 - Section 102
- Forum for the public consideration of issues
 - Section 42(3), (4)

⁷⁶ Gutto, S. 2007. *A Study on Enhancing the Status, Role, Image and Positioning of the Parliament of the Republic of South Africa.*

- Subpoena powers to compel appearance and presentation
 - Section 56(a)-(c)
- Receiving and considering petitions
 - Section 56(d)
- Representation of the people (NA) and the provinces (NCOP)
 - Section 42(3)
- Facilitating public participation
- Ratification of international agreements
 - Section 231(2) and (3)
- Membership of the Judicial Service Commission, together with the judiciary and the executive
 - Section 178

