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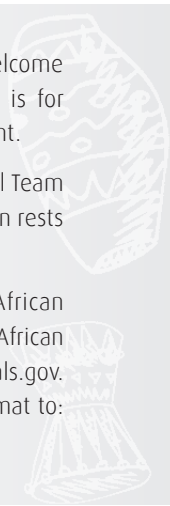
Notice to Authors

The Journal of the South African Legislative Sector is published by the Legislative Sector Support. The Journal publishes original academic articles of maximum 20 pages that will be of interest to audiences in the legislative, government, civil society and academic environment. The main goal of the Journal is to publish research articles based upon legislative and parliamentary studies with a focus on the South African legislative context in the main. The Journal aims to enhance dialogue, stimulate debate and contribute to the body of knowledge pertaining to legislative sector matters in South Africa.

The Editors seek to establish and maintain the nature of this journal and welcome submissions from those interested in related themes and subjects. The quest is for contributions that further the general understanding of the legislative environment.

All submitted articles will undergo a process of independent review by the Editorial Team in order to ensure a high standard of output. The selection of articles for publication rests with the Editorial Team.

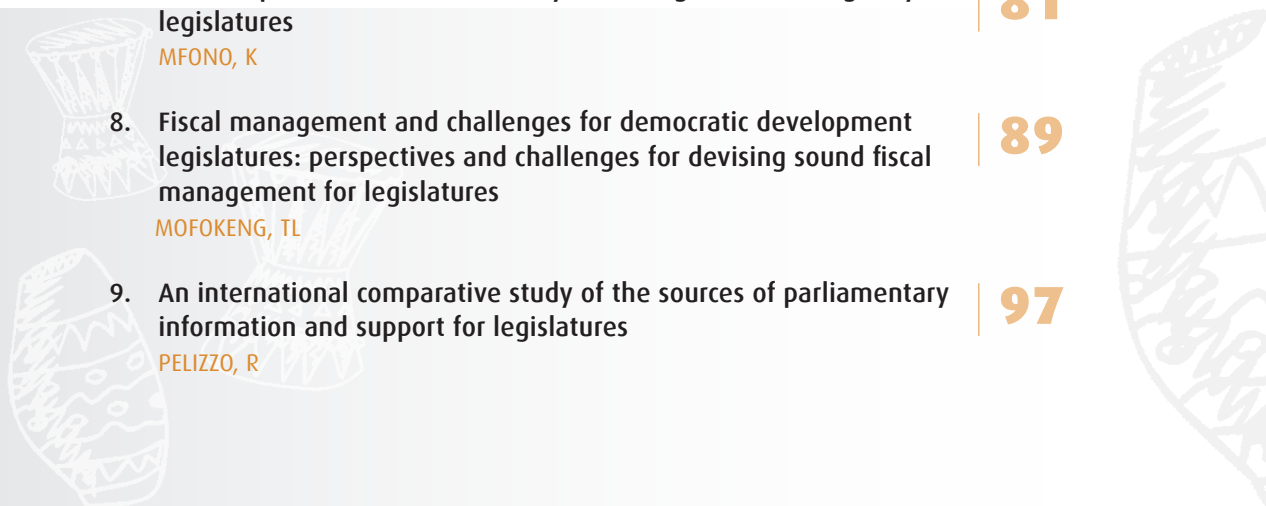
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Parliamentary Institutes as Centres of Excellence for Capacity Development, Research, Training, Knowledge and Information Management – Prospects and Challenges: A Literature Review and Lessons from Kenya and Uganda



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Abstract

The philosophy that knowledge production and capacity-building are critical to effective development is not new, and its pertinence in the context of African democracies is being increasingly recognized. To this end, there has been a proliferation of Parliamentary Institutes in Africa and all over the world. In essence, the rationale behind the establishment of Parliamentary Institutes is to provide independent and quality research, analytic and capacity-building services to Parliamentarians and support staff with the definitive end of creating well-functioning Parliaments. Such centres of excellence, it is argued, are critical for developing skilled Parliamentarians who are able to make informed decisions and develop relevant, effective and responsive policies. South Africa is committed to building a developmental state with the ultimate aim of actively steering economic development to alleviate poverty and address the needs of its citizens. Transformation into a developmental state requires intense capacity informed by critical thinking and analytical skills. As South Africa has become a developmental state, there is a need to define the role of the Legislative Sector in the state. Could the establishment of such an institute assist the South African Legislative Sector to play a meaningful role in this development? The purpose of this paper is to review the existing literature and also to present lessons learned from Kenya's and Uganda's Parliamentary Institutes as centres of excellence for capacity development, research, training and knowledge and information management.

Keywords: *parliamentary institutes, knowledge and information management, capacity development and training*

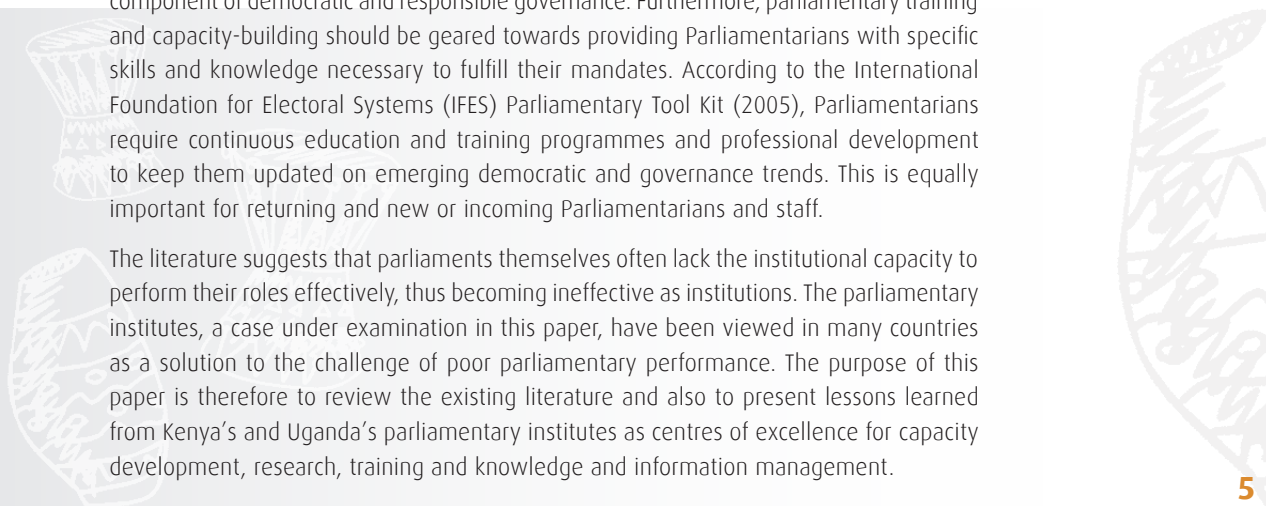
Introduction

Parliaments are an important component of national governance systems. In essence, parliaments are primarily responsible for legislation (law-making), oversight, public participation and representation (Hudson, 2007). Hudson (2007) further explains that 'legislation' entails passing the laws which form a country's legal framework, while 'oversight' refers to keeping an eye on the activities of the executive and holding the executive to account – particularly focusing on budget and checking that spending decisions are in line with government's priorities, and finally 'representation' is about collecting, aggregating and expressing the concerns, opinions and preferences of citizen-voters, i.e. public participation. When these roles of parliament are played effectively, parliament can contribute to the effective governance elements, namely: state capability, accountability and responsiveness.

However, parliaments are said to be ineffective as they rarely perform their key roles and mandates (explained above) with efficiency and effectiveness in most African countries. This is owing to the fact that parliaments often "lack the knowledge and skills to do their jobs effectively..." (Hudson, 2007:4). In addition, it is strongly acknowledged that parliaments continue to lack institutional capacity and resources, and this hinders Parliamentarians in performing their functions satisfactorily and adequately. Thus, parliamentary capacity development and strengthening have become significantly important for improving the performance of parliaments in exercising their main functions of oversight, public participation and law-making.

Therefore, the strengthening of Parliamentarians and support staff is an "important element of work to foster capable, accountable and responsive governance" (Hudson, 2007:7). This is based on the premise that effective parliaments are an essential and integral component of democratic and responsible governance. Furthermore, parliamentary training and capacity-building should be geared towards providing Parliamentarians with specific skills and knowledge necessary to fulfill their mandates. According to the International Foundation for Electoral Systems (IFES) Parliamentary Tool Kit (2005), Parliamentarians require continuous education and training programmes and professional development to keep them updated on emerging democratic and governance trends. This is equally important for returning and new or incoming Parliamentarians and staff.

The literature suggests that parliaments themselves often lack the institutional capacity to perform their roles effectively, thus becoming ineffective as institutions. The parliamentary institutes, a case under examination in this paper, have been viewed in many countries as a solution to the challenge of poor parliamentary performance. The purpose of this paper is therefore to review the existing literature and also to present lessons learned from Kenya's and Uganda's parliamentary institutes as centres of excellence for capacity development, research, training and knowledge and information management.



Defining the Parliamentary Institutes

There is no single definition of parliamentary institutes. In Pakistan, a parliamentary institute is defined as “a premier institution, created by an Act of the parliament, to provide legislative, research, capacity-building and public outreach services to members of national and state legislatures” (Goraya, 2012:1). This institution was created to provide quality research and capacity-building services for Parliamentarians and parliamentary functionaries. In Canada, it is viewed “as an independent NGO originally established to provide contracted research for committees within the Canadian House of Commons” (Miller et al., 2004: 9). In South Africa, a parliamentary institute is viewed “as a membership-based non-governmental organization which serves as a cross-party parliamentary forum” (Parliamentary Institute of South Africa, 2012: 1). In Cambodia, a parliamentary institute is defined “as a new independent parliamentary support institution based in the Senate compound of the Cambodian Parliament” (Session, 2011:2).

The parliamentary institutes may differ from one country to another, but they all have a common function, that is to provide support, conduct research and provide information, as well as give training to Parliamentarians and support staff. They all strive to be centres of excellence in performing the roles for which they were established.

History and Establishment of Parliamentary Institutes

Miller et al. (2004) and Hudson (2007) noted that parliamentary institutes were established as a solution to the problem of weak parliaments and libraries. Miller et al. (2004) further argued that while these institutes may be intended to compensate for the weaknesses of parliamentary library resources, their roles and functions are much broader than those of parliamentary libraries. Three types of parliamentary institutes can be identified from an organizational view, namely: (1). ‘internal institutes’ referring to those that are part of the parliamentary bureaucracy or administration; (2). ‘external institutes’ referring to those that are independent and external to parliament; and (3). ‘mixed institutes’ referring to those that display the features of both internal and external institutes (Miller et al., 2004).

Some examples of internal institutes are the “Legislative Information Centre (LIC) in Bangladesh, the Parliamentary Institute in the Czech Republic, and the Bureau of Parliamentary Studies and Training (BPST) in India” (Miller et al., 2004:8). Contrary to these, examples of the external institutes are the “Parliamentary Centre in Canada, Center for Legislative Development in the Philippines, and the Foundation for the Development of Parliamentarism in Russia” (Miller et al., 2004:8). While the King Prajadhipok Institute (KPI) in Thailand is a good example of a mixed institute –“it is originally created as a division of the Secretariat of the Thai House of Representatives and is formally linked to the Parliament (i.e. internal facet) and working as an independent and autonomous institute (making it an external institute)” (Miller et al., 2004:8)

The location of the parliamentary institutes is very critical for their functioning. Parliamentary institutes need to be operationally autonomous in order for them to perform



their task adequately (Miller et al., 2004). In other words, they need to be free of control by government, of partisan influence and of the influence of institutional figures such as the Speaker of the House. Despite their operational autonomy, these institutes need to be sufficiently attached to the parliamentary system to ensure that they are relevant (Miller et al., 2004). The 'mixed institute' approach to a parliamentary institute seems to be better positioned to provide the best solution as they are external and autonomous from any sort of influence, but to a certain extent linked to the parliament and able to satisfy parliament's informational and capacity needs.

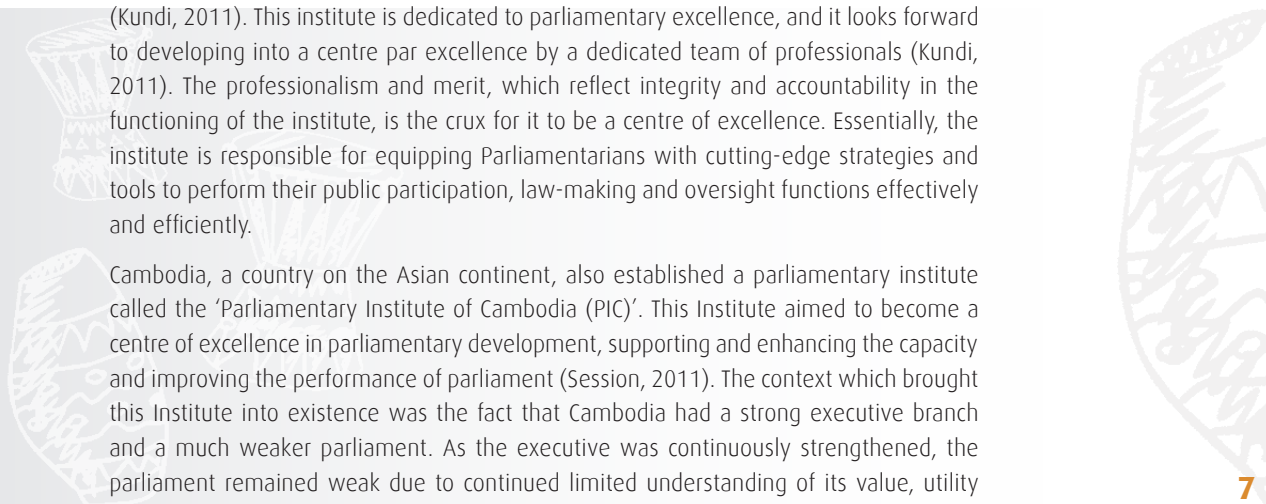
The Trends

Asian perspective: Review of Pakistan and Cambodia

Asian countries have successfully established effective parliamentary institutes. For the purposes of this paper, Pakistan and Cambodia will be reviewed. Pakistan has established a sustainable institute for legislative research and capacity-building for Parliamentarians and parliamentary staff (Kundi, 2011). The institute is called the 'Pakistan Institute for Parliamentary Services', also famously referred to as PIPS. Because of a checkered history of democracy marred by decades of dictatorship, the Parliament of Pakistan could not evolve an institutionalized system of supporting legislators and providing technical assistance in the performance of their law-making, public participation and oversight functions (Goraya, 2012). The Pakistan Parliament, unlike its counterparts all over the world, notably India; Bangladesh; Australia; Canada; UK; US; South Africa; the Philippines and the Czech Republic, had no independent research and informational support for its Members (Kundi, 2011). Thus the Pakistan Institute for Parliamentary Services was established formally as exclusive and independent, the first of its kind to provide research and capacity-building for Parliamentarians through an Act of Parliament in 2008 (Kundi, 2011).

Interestingly, the Pakistan Parliament realized that it was deprived of the power of knowledge that comes from timely, accurate and credible information on and objective analysis of the most sensitive of national matters until the institute was established (Kundi, 2011). This institute is dedicated to parliamentary excellence, and it looks forward to developing into a centre par excellence by a dedicated team of professionals (Kundi, 2011). The professionalism and merit, which reflect integrity and accountability in the functioning of the institute, is the crux for it to be a centre of excellence. Essentially, the institute is responsible for equipping Parliamentarians with cutting-edge strategies and tools to perform their public participation, law-making and oversight functions effectively and efficiently.

Cambodia, a country on the Asian continent, also established a parliamentary institute called the 'Parliamentary Institute of Cambodia (PIC)'. This Institute aimed to become a centre of excellence in parliamentary development, supporting and enhancing the capacity and improving the performance of parliament (Session, 2011). The context which brought this Institute into existence was the fact that Cambodia had a strong executive branch and a much weaker parliament. As the executive was continuously strengthened, the parliament remained weak due to continued limited understanding of its value, utility



and inadequate technical and financial support available for its development (Session, 2011). Hence, the need for, and intention to establish a parliamentary institute or centre to support the legislature came about and was also outlined in the Strategic Frameworks for the Parliament of Cambodia. In addition, it is also important to note in this regard that Parliamentarians themselves acknowledged that they needed to further improve their capacity and capability to play their roles effectively (Session, 2011). The creation of a permanent independent body to support the parliamentary democracy of Cambodia – the ‘Parliamentary Institute of Cambodia’ - was established in response to the issues presented above.

European Perspective: Review of the Czech Republic and the United Kingdom

Like Asian countries, European countries have successfully established parliamentary institutes. The Czech Republic and the United Kingdom – countries in Europe - will be reviewed in this paper. In the Czech Republic, the Parliamentary Institute was established in 1990. This Institute performs scientific research and training tasks for Chambers of Parliament, Parliamentary Committees and other sub-bodies (Glacova, 2008). The scope of the Parliamentary Institute’s work is made to fit the needs of Parliament. It adheres to the rule of impartiality: information, research, opinions, studies and expert appraisals that are provided explore all available materials and resources and do not express politically-based opinions, treating all users on an equal basis (Glacova, 2008). Any personal data collected about Deputies requesting opinions are also kept confidential.

In the United Kingdom, a number of organisations (parliamentary institutes) are involved in parliamentary strengthening activities in various forms. These are: the Commonwealth Parliamentary Association UK, the Inter-Parliamentary Union UK, and the Westminster Foundation for Democracy (Hudson, 2007). According to Hudson (2007), all these institutes have excellent access to UK Parliamentarians and they organize numerous conferences, seminars and study visits, which enable Parliamentarians and parliamentary staff to exchange information and ideas about the work of their parliaments, including the roles they play in promoting good governance and poverty reduction. These institutes are relatively autonomous, and aimed at promoting parliamentary democracy (Hudson, 2007).



African Perspective: Lessons from Kenya and Uganda

Literature reveals that the establishment of parliamentary institutes is a relatively young phenomenon, with origins being the mature democracies such as Canada. Other countries such as India and Pakistan have followed suit, becoming some of the most well-established and well-known parliamentary institutes in the world. African countries such as Mozambique, Nigeria, Ghana, Kenya and Uganda have patiently started establishing their parliamentary institutes in an attempt to strengthen their parliaments and relatively young democracies (Stapenhurst, 2004). However, despite these trends, there is no documented evidence of best practices regarding the establishment and functioning of parliamentary institutes. Instead,

the trend appears to be “learning from other parliaments and customize”. This is the approach countries such as Kenya and Uganda have adopted, in establishing the Centre for Parliamentary Studies and Training (CPST) and Institute for Parliamentary Studies (IPS) respectively (see Box 1). Relevant representatives from these two countries, for example, have travelled to well-established parliamentary institutes or training centres in Europe and Asia to learn. Upon finishing these visits, they have concluded that “there are no best practices” regarding the establishment and management of parliamentary institutes (Mwambua, 2012; Okumu, 2012). The diagram below (Figure 1) shows broadly how the two countries have conceptualized a parliamentary institute. It should be noted that this diagram was developed after engagements between the authors of this paper and representatives from Kenya’s CPST and Uganda’s IPS. It is, however, not prescriptive regarding a process that can be followed in conceptualizing and establishing a parliamentary institute.

Box 1: The Case Study of The Kenyan Centre for Parliamentary Services and Training (CPST)

The establishment of the CPST was resolved by the Kenyan Commission of Parliamentary Services in November 2008. The Centre was developed with the vision of becoming a “Centre of Excellence Parliamentary and Governance Affairs” in Kenya. It is grounded in the mission to enhance the capacity of Hon. Members and Staff of Parliament for the effective and efficient execution of the mandate, roles and functions of Parliament in democratic governance.

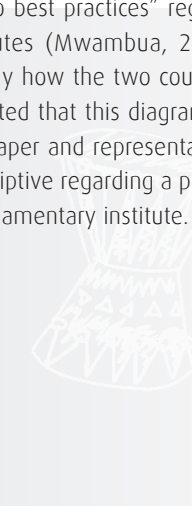
Mandate of CPST:


Initiating and conducting research studies, courses in a format that is appropriate for the exposition and enhancement of the knowledge, skills and experience of the parliamentarians, staff serving in Parliament and other persons whose functions/work relate to and/or interact with that of Parliament.

The role and function of the CPST:

- *Enhancing the capacity of the Hon. Members, staff of the Parliament and others, by offering learning and training opportunities/courses through suitable modules.*
- *Facilitation of training and capacity development for the Parliament and Country (regional) Assemblies.*

Source: The Centre for Parliamentary Studies and Training, 2012.





Idea: requires buy-in from all political parties represented

***Establishment of steering committee/commission:** this committee requires representation from all parliamentary directorates/units, e.g. committees, legal, research, etc. The size of the committee is dedicated by the number of departments.*

***Concept Development/Business Plan:** the main responsibility of the SC is to draft a concept document upon which the institute operates. This concept document should be presented to the executive parliament and then to the House. Additions and corrections from this process are documented and incorporated into the concept document.*

***Development of Curriculum/Activity Plan:** in consultation with other relevant institutions in the field of training and capacity building, the steering committee develops modules that speak to certain thematic areas, e.g. rules, information technology, report writing, etc.*

***Pilot Developed Modules:** Once modules have been developed and reviewed, they are piloted to identify what works and what doesn't work. For example, CPST has adopted this approach by piloting modules with their own staff, employing the "train the trainer" concept.*

***Training:** The training of Members and staff as informed by the training needs assessment.*

A well established and reputable parliamentary institute

*NOTE: * Deduced from the establishment of the Kenya CPST and Uganda IPS*

Figure 1: The broader process of establishing a parliamentary institute in Kenya and Uganda

Countries that have well-established institutes as well as those that are in the process of developing these institutes have a common goal, and that is to develop the capacity of parliamentary members and staff. However, in terms of developing specific tools for achieving the strengthening of their parliaments, Kenya and Uganda have adopted somewhat different approaches (Figure 2). Uganda's IPS has focused on establishing a discussion platform with current and ex-parliamentary Members and staff with the aim to identify training and capacity-building deficiencies. It is hoped that this discussion process will eventually lead to the development of a training manual, which will be used as a framework going forward. The manual will then be adapted, as dictated by training and capacity-building needs in the future. On the other hand, Kenya's CPST has emphasized the development of a curriculum, which will then be used as a framework for training. This curriculum has subsequently been exposed to a review process with the aim of identifying gaps and strengthening the structure and design of the different modules.

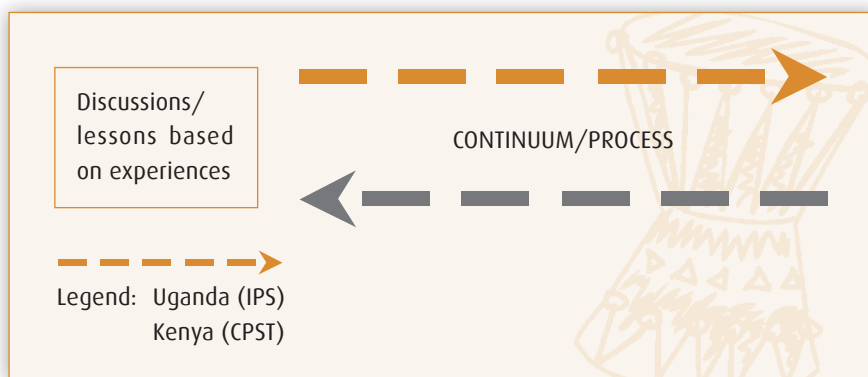


Figure 2: The process of capacity-building and designing the “training tools”

Evidently, it would appear that Kenya’s approach to developing training tools for capacity-building and training is outward-looking in terms of sourcing external expertise (academics, consultants, etc.) to strengthen their curriculum, whereas Uganda is focusing on utilizing internal expertise such as former members of parliament and staff to develop a training manual.

Key Principles That Guide Parliamentary Institutes

Parliamentary institutes around the world are guided by a set of principles. These principles are aimed at ensuring that parliamentary institutes, as centres of excellence, provide relevant, adequate and effective support to Parliamentarians and their support staff. Hudson (2007) argues that these guidelines ensure that parliamentary centres of training respond to specific parliamentary demands, and address challenges and causes of these challenges. In achieving this, the context and political dynamics need to be taken into consideration. Below is an attempt to elaborate on these principles based on a literature review as well as experiences from Kenya and Uganda. However, it should be noted that this list of principles is not prescriptive and exhaustive.

EXCLUSIVE, INDEPENDENT AND QUALITY RESEARCH

By description parliamentary institutes are non-partisan organizations that are established to provide specific support to Members and staff of parliament. Under normal circumstances, it would be expected that political parties, especially a leading political party, do not interfere with the processes and functions of parliamentary institutes. In some countries, parliamentary institutes are completely autonomous. Autonomous institutes are often self-funded, independent and conduct objective research. Examples of these completely autonomous institutes include the Pakistan Institute for Parliamentary Services (PIPS). It must, however, be noted that in other countries parliamentary institutes do not enjoy such autonomy. This is especially the case in countries where parliamentary institutes are funded through government programmes or in some cases through intergovernmental relationships between countries and their development partners. The Kenyan Centre

for Parliamentary Services and Training (CPST) is an example of a semi-autonomous parliamentary institute. It is funded by and is answerable to the Parliamentary Services Commission, which operates through government funding (Mwambua, 2012).

Parliamentary Institutes (PIs) or training centres should offer independent and objective research that is intended to enhance the functioning of the legislature in its oversight role. Well-equipped parliamentary institutes or centres should be able to conduct quality research, which will strongly and positively influence the oversight functions of parliaments or legislatures.

FOUNDED ON AND GUIDED BY A SOUND LEGAL FRAMEWORK

Parliamentary institutes and their capacity-building or -strengthening cover a wide range of issues. These issues have various implications, including political, financial and even social implications. Often, these implications have legal implications for institutes or for parliaments. Legal regulations, therefore, become a critical component of the proper functioning of parliamentary institutes. Legal regulations provide a framework for governance, structure and functioning of institutes. The CPST in Kenya, for example, was founded on a solid legal foundation. Just like any entity or institution, an Act or regulations cover power issues and functions of an institution or individuals that serve in various capacities or levels in an institution. For example in Kenya, the establishment of the governing board for the CPST is spelled out clearly in the legal notice (Act). In addition, the Act pronounces the powers and functions of the Board in the functioning of the institute (The Parliamentary Service Act, 2000).

CAPACITY- BUILDING AND ENHANCEMENT OF PERFORMANCE OF LEGISLATURES

One of the primary functions of parliamentary institutes is to build the capacity of Members of Parliament and parliamentary support staff to ensure that parliaments deliver accordingly and satisfactorily on their duties of oversight and service delivery in general. Members “come and go”, and this causes a certain level of instability with regard to long-term skills development and institutional memory. The situation and extent of this problem is worse in some countries than others. In 2008, the Kenyan parliament experienced a complete overhaul regarding the composition of parliament. This resulted in a complete loss of existing skills, knowledge and memory in and about the institution. This necessitated training and induction of new Members to various aspects of parliament and its functioning. Here, the focus was on building capacity to ensure that Members, regardless of the time they had spent in parliament, were able to deliver on their mandate and perform their duties. In essence, parliamentary institutes should be able to capacitate new Parliamentarians in such a way that there is no destruction in the parliament’s functions of oversight and service delivery.

It is widely acknowledged that parliamentary institutes can be seen as a mechanism for enhancing this, through the provision of various types of expertise, technical and non-technical. Additionally, parliamentary institutes can further be seen as a mechanism of enhancing public consultation and outreach practices.



DRAWING FROM OTHER INTERNATIONAL EXPERIENCES

Some countries, especially in the developing world, are argued to be characterized by poor governance and parliamentary performance (Hudson, 2007). This has resulted in extensive and deep ineffectiveness in service delivery in developing countries. Interestingly, there is a developing trend of establishing parliamentary service and training centres in many developing countries with the aim of addressing these governance and service delivery challenges. In Africa alone, countries such as Mozambique, Ghana, Nigeria, Uganda and Kenya have established these training and capacity-building centres. Despite this trend, it is argued that the process is often 'a trial and error' undertaking. For example, the CPST drew experiences and lessons from other countries. However, as discussed above, it should be acknowledged that there are no best practices regarding parliamentary strengthening and capacity-building. Instead, parliamentary institutes are designed and respond to the needs and context of a specific country (Kioko, 2012; Mwambua, 2012). The situation has been complicated by the lack of documentation of impacts and success outcomes in parliamentary strengthening (Hudson, 2007).

CREDIBILITY AND ACCOUNTABILITY

Strengthening parliaments is an important aspect of fostering capable, accountable, responsive and credible governance in developing countries. Hudson (2007) argues that although parliamentary capacity-building is not the only way of improving performance, the credibility and accountability of parliamentary institutes play a significant role in enhancing the effectiveness of legislatures. While accountability can be seen in the beginning, the credibility of parliamentary institutes may not be obvious during the early stages/inception of the institutes (Hudson, 2007). To enhance its credibility, CPST has drawn from existing international and national centres of training and capacity development, including those that are not involved in parliamentary services. In addition, they have involved specialist consultants to design a set of modules that will be delivered, especially to new Members and staff. The latter is characterized by the "training the trainer" concept, which is aimed at building capacity within the institute as part of the long-term strategy.

FLEXIBILITY AND ADAPTABILITY

It is perceptible in many democracies that parliaments and the entire legislative institution function within a dynamic, non-static and politically charged environment. In such an evolving environment, both Parliamentarians and support staff perform their duties, often under immense pressure to deliver immediate results to relevant stakeholders. The environment that is characterized by a quest for immediate results therefore requires that parliamentary institutes design their programs in such a way that they are flexible and adaptive enough to cater for the unique needs of each parliamentary term. The capability of parliamentary institutes to adapt to new political environments is important, particularly in view of the fact that one parliamentary term is always different from the next. The Institute of Parliamentary Studies in Uganda, for example, has adopted a tailor-made and customized approach to capacity-building.

Challenges and Prospects of Parliamentary Institutes

It has been mentioned above that the establishment of parliamentary institutes is a relatively new phenomenon and is as such is characterized by a suite of challenges. These challenges range from infrastructural to human resources and sustainability challenges. However, despite these challenges, the authors of this paper argue that there are prospects for parliamentary institutes around the world, both in developed and developing democracies. Below is an attempt to elaborate on the nature and extent of these challenges and prospects for parliamentary institutes.

INFRASTRUCTURAL DEVELOPMENT

There is evidence of lack of skills and institutional capacity in many young legislatures. However, challenges regarding basic infrastructural requirements for effective and efficient parliamentary institutes are often not given satisfactory attention. It is argued that, in addition to poorly developed and weak institutional capacity, problems relating to information, accommodation, adequate computer and library facilities require substantial interventions. For example, the CPST is faced with accommodation and training room shortages (Mwambua, 2012). As a result, the institute is forced to rely on other neighbouring institutions for accommodation. If this fails, training is often cut short to accommodate the needs of the participants of the training and workshop classes.

ADEQUATE HUMAN RESOURCES

Human resources are the soul and the engine of any institution. Putting together a seasoned, committed and merit-based, pool of human resources remains one of the most demanding challenges parliamentary institutes face (Kundi, 2011). The Pakistan Institute of Parliamentary Studies recognized that in order to deal with human resource challenges they would have to develop a “well-knit” team of professionals through establishing collaborative relationships with academic and policy institutions (Kundi, 2011). In Kenya, the CPST currently has ten dedicated staff members. However, these staff members were deployed from the various departments of the parliament and sometimes these staff members are expected to perform duties for these departments and abandon their responsibilities as staff of the CPST. According to Mwambua (2012) and Kioko (2012), there are periods where people’s commitment to the CPST is not seen as a priority by those in power, namely, the Parliamentary Services Commission.

SUSTAINABILITY OF PARLIAMENTARY INSTITUTES

Lack of adequate funding is arguably one of the major challenges faced by parliamentary institutes. It is noted that many of these institutes are funded by donor agencies and/or governments. The shrinking sources of revenue of both donors and governments, particularly in times of economic meltdown, pose a serious threat to the sustainability of these institutes. Parliamentary institutes are thus expected to diversify their sources of revenue to ensure viability. Importantly, the issue of funding is central to the effective functioning of such institutes as it determines their scope and overall functioning. Institutes

that rely heavily on government for funding may be susceptible to influence, thereby compromising their autonomy and independence.

Prospects for Parliamentary Institutes

It is evident from the literature and lessons from Kenya and Uganda that parliamentary institutes have a crucial role in strengthening parliaments and ensuring that parliaments continue to perform their functions meaningfully. It is also apparent that parliamentary institutes have a future around the world, in both young and mature democracies. The success and prospects of parliamentary institutes rely on how effectively and efficiently they deal with and address the various challenges that they may encounter. We argue that the future of parliamentary institutes relies heavily on adequate resource allocation, mainly financial and human resources. Importantly, parliamentary institutes will need to focus on building capacity through working with and building the capacity of the broader civil society. This can be achieved through the establishment of mentorship, internship and research programmes. Moreover, parliamentary institutes will remain the central depository of knowledge and institutional memory of parliamentary work.

Conclusion

Parliamentary institutes, also referred to as centres of excellence for training and capacity-building for Parliamentarians and staff, have become more and more relevant to and imperative for effective and efficient functioning and performance of parliaments. The conceptualization of capacity development at these institutes requires that proper and functional structures be in place. There are no best practices in this regard, and this has resulted in different countries adopting different approaches, especially when it comes to the development of training and capacity-building tools. However, literature has shown that in terms of the broad process, there are commonalities across the world. The well-established institutes started as an idea, which developed into a full concept. The concept evolved into specific tools that respond to specific training and capacity-building needs that are unique to individual parliaments. We argue that there is a need for more research on the feasibility of establishing such an institute in the South African context. Such research should inform the purpose of establishing a parliamentary institute as it is evident that different countries establish these institutes in response to different sets of needs.



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2

Effective Public Involvement in the Oversight Processes of Parliaments and Provincial or Regional Legislatures



AUTHOR:
Aida Girma

Abstract

Quality oversight cannot be separated from meaningful public participation. It is important that public involvement in oversight (public participation) must include children as citizens and stakeholders in the South African democracy. This also applies to other vulnerable groups. Involving children through public participation requires special skills and knowledge of children's participation; ethical principles in children's participation; and most importantly an enabling environment. Listening to and responding to those who are most vulnerable, and with the least opportunity to have their voices heard, can build a true democracy and eradicate the inequality in South African society in the years to come. Parliament and the Provincial Legislatures have a key role to play in this regard.

Keywords: children, parliament, legislature, participation, oversight, information

1. Introduction

The Parliament of the Republic of South Africa and the nine (9) Provincial Legislatures play an important role in the execution of oversight in terms of legislative developments; implementation of laws; application of budgets; and the effective management of government departments, amongst others. Oversight by Parliament is at the core of good democratic principles, most importantly accountability. One cannot separate quality oversight from true and meaningful public participation, which this paper will be focusing on, as the oversight mechanisms are often the most important vehicles that facilitate public participation.

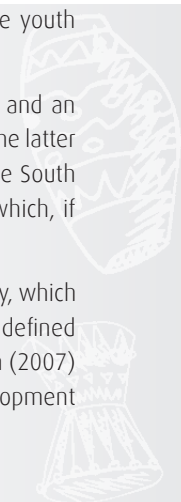
Public access to and involvement in the National Assembly, National Council of Provinces and Provincial Legislatures are safeguarded in the South African Constitution (compare sections 59, 72 and 118 of the South African Constitution, 1996) (RSA, 1996) and thus lie at the heart of an open democracy. We know that various studies have been done on public participation in the South African legislative sector, of which the Report on the Independent Panel of Assessment of Parliament, 2009, is an important landmark. It makes clear and very important recommendations, which include aspects such as public education, the development of a Parliamentary Public Participation Model; the importance of feedback; and clear standards for public participation, amongst others (RSA, 2009). These are very insightful and useful recommendations, not only for the South African legislative sector, but also for many other parliaments and legislatures to consider.

2. Defining Public Participation

There should be clarity on what is meant by the term public before we enter into a dialogue on effective public participation. For the purposes of this discussion public refers to the general population or the ordinary citizens of the country (Merriam-Webster Online Dictionary, 2011). In a diverse and complex society such as South Africa, we also need to acknowledge that the term public is inclusive and diverse in its very nature. There should be, in this context, a focus on those who are confronted with poverty and a lack access to resources, including children, women, people with disabilities and the youth (Nzimande, 2003).

Public participation is a fundamental dimension of democracy (Southall, 2003) and an important factor in the strengthening and maturing of democracies (Scott, 2009). The latter is of particular interest and importance in a young and prominent democracy like South Africa and, as indicated later, good examples and opportunities are emerging, which, if nurtured, can set a trend and example on the continent and internationally.

As indicated earlier, the South African Constitution asserts a participatory democracy, which calls for the active involvement and participation of the citizenry as well as more defined interest groups (Scott, 2009). The International Association for Public Participation (2007) has developed seven (7) core values for public participation for use in the development and implementation of public participation processes. These are:



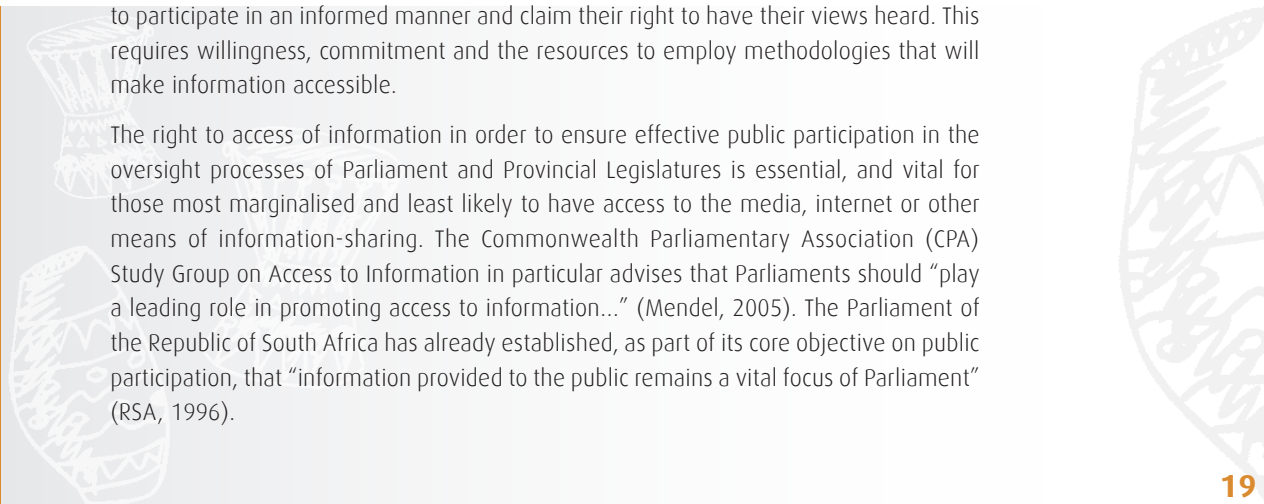
1. Public participation is based on the belief that those who are affected by a decision have a right to be involved in the decision-making process.
2. Public participation includes the promise that the public's contribution will influence the decision.
3. Public participation promotes sustainable decisions by recognizing and communicating the needs and interests of all participants, including decision-makers.
4. Public participation seeks out and facilitates the involvement of those potentially affected by or interested in a decision.
5. Public participation seeks input from participants in designing how they participate.
6. Public participation provides participants with the information they need to participate in a meaningful way.
7. Public participation communicates to participants how their input affected the decision.

These values cut across all areas of public participation and can provide a useful benchmark for the legislative sector.

3. Access to Information to Ensure Effective Public Participation

Access to information is not only a Constitutional Right (section 32 (1)) (RSA, 1996), but an important prerequisite for effective public participation in a manner that is meaningful for the majority of the "public". Children, people with disabilities, people living in rural and/or under-resourced areas, and people with limited literacy due to the legacy of the past have a need to get information timely and in a manner understandable and digestible to them (Selebalo, 2011). An example that is very close to UNICEF is children's rights to information. Children, as part of the public, with an equally important right to public participation, need information that is presented in a manner that is understandable to them and takes into account their age and language ability to ensure that they are able to participate in an informed manner and claim their right to have their views heard. This requires willingness, commitment and the resources to employ methodologies that will make information accessible.

The right to access of information in order to ensure effective public participation in the oversight processes of Parliament and Provincial Legislatures is essential, and vital for those most marginalised and least likely to have access to the media, internet or other means of information-sharing. The Commonwealth Parliamentary Association (CPA) Study Group on Access to Information in particular advises that Parliaments should "play a leading role in promoting access to information..." (Mendel, 2005). The Parliament of the Republic of South Africa has already established, as part of its core objective on public participation, that "information provided to the public remains a vital focus of Parliament" (RSA, 1996).



Thus, access to information is critical to ensure equity in public participation, with an emphasis on the accessibility of information. Lack of access to information, or often the manner in which we present information, can hamper effective public participation or, of greater concern, it can become a way in which we exclude people, especially those most left behind and/or most deprived of a voice to claim their right to participation.

4. Opportunities for Effective and Meaningful Public Participation

The Parliament of the Republic of South Africa as well as Provincial Legislatures has some of the best mechanisms that can facilitate opportunities for public participation. The paper will highlight a few specifically from the perspective of the participation of children in the oversight processes. This is important in view of the Inter-Parliamentary Union (IPU) resolution adopted by consensus by the 122th IPU Assembly in Bangkok in 2010 on Youth Participation in the Democratic Process (IPU, 2010). Though the focus is on children, it can similarly be applied to other groups.

Children have the right, like all other members of the public, to participate in the oversight processes of Parliament and Provincial Legislatures. The following are some reasons why Parliament should involve children in its oversight processes (IPU & UNICEF, 2011):

- Children’s participation improves Parliament’s representative function. Members of Parliament do not only represent adults, they also represent children. Children are part of their constituency. It enables Members of Parliament to know what the needs of children are, how children experience services and to make decisions within Parliament that are in the best interest of children.
- Children’s participation improves legislative outcomes. Hearing what children have to say; their perceptions and experiences will have a positive impact on legislative developments, oversight of the executive and more equitable and effective budget allocations. It will place children at the heart of the oversight processes and improve services to children.
- Children’s participation offers a long-term perspective. Children’s lives matter in the present, but also in the future. The participation of children may often help towards a longer term outlook, rather than a short-term solution. For example, in 2011 we consulted children on climate change as part of a research study on the impact of climate change on children. The children’s views and visions were long-term and future-orientated, as one child from rural Limpopo province most profoundly indicated: “We are the future generation; we are the people who this global warming is going to affect. (...) We are the future scientists; we are the future doctors who are going to have to deal with diseases and our lives because of global warming. We are the people who are going to suffer; we are the economy that is going to suffer.”
- Children’s participation promotes civic engagement and civic education. Children’s involvement in public decision-making provides children with a real opportunity in civic education. It can enhance their social responsibility, and develop social, communication and civic skills. They engage as citizens in social dialogue, which benefits them, the



legislative sector and the public as a whole (Jamieson, Bray, Viviers, Lake, Pendlebury & Smith 2011).

The public participation of children in Parliament is growing across the globe. One example that comes to mind is the proposal that three learners presented in Brazil's Chamber of Deputies on the dangers of using certain trucks as school transport, which was taken up by one congressman, who sponsored the proposal, and it was ultimately approved by Congress.

Involving children through public participation requires special skills and knowledge of children's participation; ethical principles in children's participation; and, most importantly, an enabling environment (Viviers, 2010).

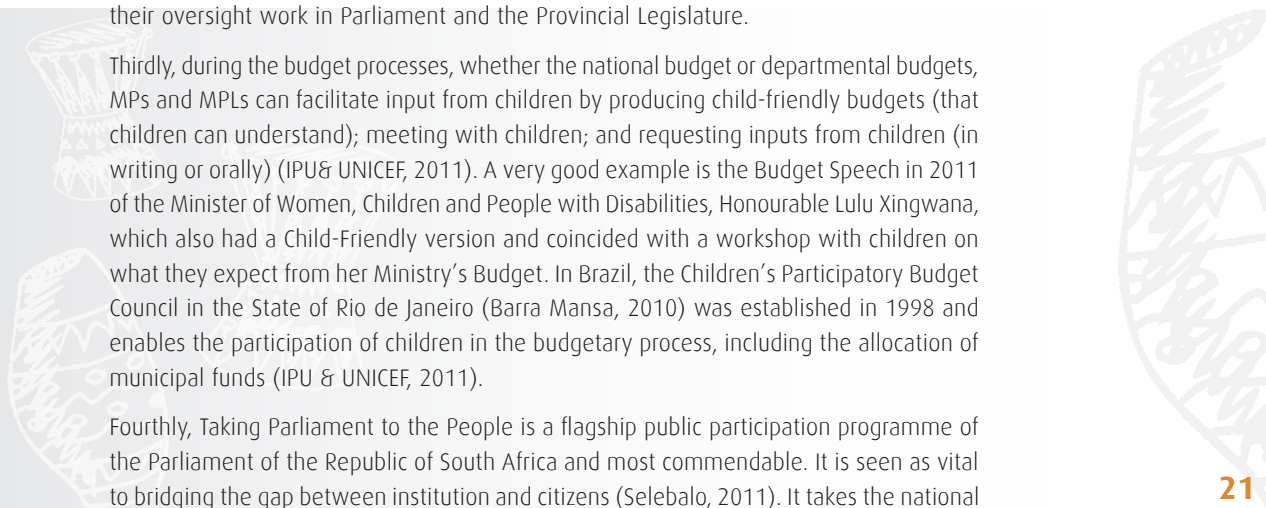
There are many opportunities that can ensure and facilitate effective public participation of children in the oversight processes of Parliament and Provincial Legislatures.

Firstly, through the Parliamentary Committee System, both in the National Assembly as well as the National Council of Provinces, as well as in the Provincial Legislatures, children can have the opportunity to share their views or make submissions. It can create a safe, supportive and enabling environment. It is known that in Parliament the Portfolio Committee on Social Development heard the voices of children in the development of the Children's Act, and their opinions were given due consideration. In the Parliaments of Bahrain, Germany and Turkey, special child rights committees have been established that examine all laws, policies and government budgets from a child rights perspective, and they invite children to participate in their proceedings and provide testimony (IPU & UNICEF, 2011).

Secondly, through constituency work, Members of Parliament and Members of Provincial Legislatures, have the opportunity to seek and enhance the participation of children. Children can be engaged in their natural spaces such as clubs, schools, churches, mosques, early childhood development centres, amongst others, by MPs and MPLs to hear what the real issues are that children face on a day-to-day basis. Such opportunities are fairly easy to organise and can provide MPs and MPLs with real-time information to include in their oversight work in Parliament and the Provincial Legislature.

Thirdly, during the budget processes, whether the national budget or departmental budgets, MPs and MPLs can facilitate input from children by producing child-friendly budgets (that children can understand); meeting with children; and requesting inputs from children (in writing or orally) (IPU & UNICEF, 2011). A very good example is the Budget Speech in 2011 of the Minister of Women, Children and People with Disabilities, Honourable Lulu Xingwana, which also had a Child-Friendly version and coincided with a workshop with children on what they expect from her Ministry's Budget. In Brazil, the Children's Participatory Budget Council in the State of Rio de Janeiro (Barra Mansa, 2010) was established in 1998 and enables the participation of children in the budgetary process, including the allocation of municipal funds (IPU & UNICEF, 2011).

Fourthly, Taking Parliament to the People is a flagship public participation programme of the Parliament of the Republic of South Africa and most commendable. It is seen as vital to bridging the gap between institution and citizens (Selebalo, 2011). It takes the national



legislature to the most remote corners of the country and allows ordinary people to have the opportunity to engage with Members of Parliament or Members of the Provincial Legislatures. This provides a landmark opportunity to ensure that special time and effort is made to include children and have them participate in the “Taking Parliament to the People”.

Fifthly, oversight visits by committees provide Members of Parliament and Members of Provincial Legislatures with the mechanism and opportunity to engage children through public participation on specific issues.

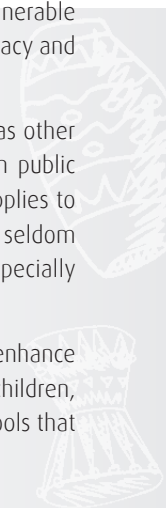
Sixthly, another interesting development is the establishment of children’s parliamentary caucuses, similar to the very successful Women’s Caucus that the Parliament of South Africa has, where like-minded Members of Parliament and Members of Provincial Legislatures can review all policies, budgets and legislation from a child rights perspective and can meet with children in their constituencies or invite children to participate at Parliament. It allows members to bring a child’s perspective to their respective committees, no matter whether it is the Finance Committee, Public Administration Committee or the Health Committee. Relatively close to home, the Zambian Parliament established the Zambian Parliamentary Caucus on Children with support from UNICEF and is open to all members of parliament. This caucus “aims to influence relevant national institutions to place children, in particular vulnerable children, at the top of the political and development agenda”. It also contributes to the strengthening of capacity of Members of Parliament in Zambia on child rights at all levels (IPU & UNICEF, 2011).

5. Conclusion and Recommendations

Effective public participation in the oversight processes of Parliament and the Provincial Legislatures safeguards and promotes citizens’ Constitutional rights, but it also places an obligation on these institutions to provide feedback and share information in an accessible manner. More importantly, it allows the MPs and MPLs to identify and address inequities in the realisation of human rights of all citizens through the work of Parliament and the Provincial Legislatures. Listening to and responding to those who are most vulnerable and have the least opportunity to have their voices heard can build a true democracy and eradicate the inequality in South African society in the years to come.

Children, as citizens, have an equal right to be heard and access to information as other members of the public. This will require specific attention to methodologies in public participation and oversight. Though the focus has been on children, it equally applies to all those who are in need of a voice in the oversight process of Parliament, but are seldom given that voice. Everyone needs to be custodians of democratic governance, especially as it is increasingly becoming a foreign policy priority (Sahgal, 2001).

UNICEF is committed to supporting Parliament and the Provincial Legislatures to enhance public participation in oversight processes, particularly as far as it pertains to children, through capacity development, sharing of information and the development of tools that will enhance this.



The importance of giving children a voice and a part in democracy is captured in the profound and inspiring words of Mr Nelson Mandela. "One way that we can build a better future for children is by empowering them through allowing them to speak up for themselves. Of course, we as adults have to guide them and to take ultimate responsibility but that is something quite different from patronising them. The rights of children must, importantly, include the right to be themselves and to talk for themselves."

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3

The Developmental State: Implications for Parliament and Legislatures in South Africa



AUTHOR:
Jaya Josie

Abstract

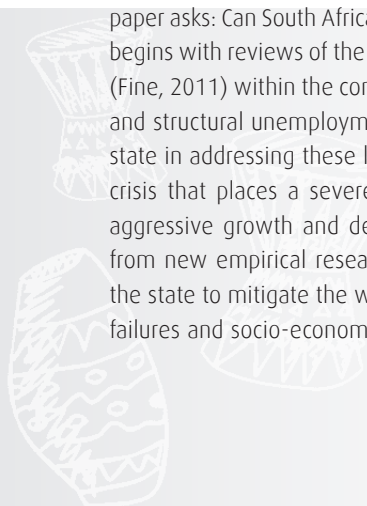
This paper examines the role of South Africa as a democratic developmental state and the possible implications this has for parliaments and legislatures across the national, provincial and local government spheres of the state. In recent years there has been a conscious move to give Parliament and the legislatures a greater role in determining and debating budget allocations and economic policy through the introduction of the Money Bills Act (2009). This Act also envisages the setting up of the Parliamentary Budget Office to provide Parliament with the necessary expertise and research capacity to interrogate all money Bills brought before the legislatures. With respect to development, the question for Parliament and the legislatures in South Africa today is: What is the nature of the developmental state for the country, and how can Members of Parliament actively direct and influence the trajectory of socio-economic development to address the apartheid legacies of inequality, structural unemployment and poverty?

Keywords: allocation, apartheid, budget, development, inequality, legislature, poverty, parliament, unemployment, state

Introduction

Despite eighteen years of democracy, post-apartheid South Africa still has one of the highest rates of inequality in the world and an unemployment rate close to 30% (Statistics South Africa, Census 2012). The economy is still largely in the hands of the minority white population. Given this situation, one would expect that Parliament and the legislatures would play a more prominent role in defining a high growth and development trajectory for the country, as is the case in many other emerging economies. Unfortunately, the role of Parliament in defining and directing the growth and development trajectory in South Africa is extremely limited. The reason for this is that from 1994 onwards, economic policy objectives in South Africa have been the preserve of the Ministry of Finance and the South African Reserve Bank. Both institutions placed the repayment of the apartheid domestic debt and the curbing of inflation above the attainment of full employment and policies to combat inequality and poverty. The fact of the ruling party's dominance of the legislature and its institutions also means that economic policy debates in Parliament are a procedural formality with no substantial amendments or new inputs from members. In the past fiscal policy and budget debates were limited to parliamentary committees. Parliamentary committees have played, and continue to play a more assertive and substantial role in monitoring public expenditure. This function includes the monitoring and evaluation of executive performance in relation to approved policy objectives, targets, legal, administrative and institutional instruments and performance in respect of under- or overspending of budget allocations. The difficulty for the committees was the choice of development indicators against which to measure performance.

There are many development indicators that can be used to illustrate the impact of apartheid legacies on the disadvantaged communities in South Africa. However, the most significant and devastating legacy of apartheid must be the impact of socio-economic disparity on the lives of children and youth in the country. This is a segment of the society that constitutes the foundation for future growth and development. The paper first presents a picture of how the apartheid legacies of inequality, unemployment and poverty impact on children and youth. Given the bleak picture of the situation of children and youth, the paper asks: Can South Africa be called a developmental state? The response to this question begins with reviews of the critique of the notion that South Africa is a developmental state (Fine, 2011) within the context of combating the apartheid legacies of inequality, poverty and structural unemployment, and promoting growth and development. The role of the state in addressing these legacies is further complicated by the current global economic crisis that places a severe constraint on the legislatures and the executive to pursue aggressive growth and development policies. Nevertheless, in keeping with evidence from new empirical research (Muinelo-Gallo and Roca-Sagales, 2011) it is possible for the state to mitigate the worst effects of the apartheid legacies, economic crises, market failures and socio-economic conflict through effective fiscal policy intervention.



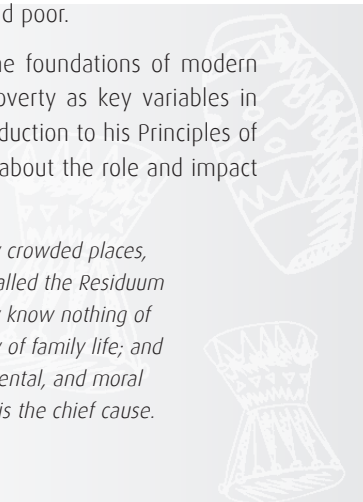
The Notion of a Developmental State

The notion of a developmental state has become a buzzword in recent years. It is often used to encompass anything to do with development that involves any successful state intervention. The mundane use of the term does not necessarily imply systemic or positive transformation of the structure of the economy in favour of the disadvantaged (Fine, 2011). To the extent to which the term implies state intervention in the process of economic development, it has won favour among economists and political scientists alike. In fact, economists and political scientists have discussed economic growth from a developmental perspective in response to a wide range of issues that include the role of the state in the presence of market failures, public investment to address unemployment, inequality and poverty. In this list of issues the main characteristic of the developmental state is the role of state intervention in the economy in the presence of market failures. Other features of the developmental states discussed in the literature include the protection of local industries, the promotion of import substitution and export-led growth through state investment in infrastructure, industrialization, research and development (especially in technology) and human resource development to increase skills and productivity. However, despite some early successes many South East Asian (SEA) and other economies that pursued these policies also succumbed to economic stagnation and the financial crises of the early nineties and later years.

From an historical perspective the notion of addressing market failures and the resultant economic inequalities and other socio-economic disparities goes back to the 18th century. Extreme forms of market failures and the devastating impacts of poverty, inequality and unemployment characterized the transition from feudal agriculture to industrialization in Europe during this period. Thus, inequality and disparity in society have been a concern for political economists over the centuries and can be found in the writings of Adam Smith in his famous treatise entitled “The Wealth of Nations” published in 1776. For Adam Smith inequality and poverty posed a serious threat to the economy and the interests of the wealthy. He noted in “The Wealth of Nations” that for every rich person there were about five hundred poor and that affluence for a few presupposes the poverty of the many. Such poverty, he implies, may provoke conflict between the rich and poor.

Alfred Marshall is often considered to have laid many of the foundations of modern economic theory. Marshall also considered inequality and poverty as key variables in undermining economic growth and development. In the introduction to his Principles of Economics first published in 1890 Marshall writes eloquently about the role and impact of income inequality on household poverty.

... the conditions which surround extreme poverty, especially crowded places, tend to deaden the higher faculties. Those who have been called the Residuum of our large towns have little opportunity for friendship; they know nothing of the decencies and the quiet, and very little even of the unity of family life; and religion often fails to reach them. No doubt their physical, mental, and moral ill health is partly due to other causes than poverty: but this is the chief cause.
(Marshall, 1920, Principles of Economics, Book I)



Marshall was keenly aware of the role played by public investment in social and physical infrastructure and public capital stock in the creation and distribution of wealth. In particular, he recognized the importance of unequal access to public infrastructure services as a key determinant in defining capabilities in the creation of wealth, and that its unequal distribution and inadequacy generates and exacerbates poverty. Discussing physical public goods that are common to all members of a community, Marshall supported the right of citizens to security, roads, energy, water and sanitation and housing (Marshall, 1920, Principles of Economics, Book II). He acknowledged that poor drainage can cause diseases and overcrowding, and slum conditions can lead to poor health and low self-esteem (Book IV, Chapter V, Marshall, 1920). He advocated for government to provide public social and physical infrastructure facilities in the interests of the greater good of society and to promote economic growth.

In South Africa the role of the state in economic growth and development can be traced to the first half of the 20th century, when successive colonial and apartheid-led governments intervened in the interests of the white minority. The idea of a developmental state for South Africa was first articulated in November 1991 by the then President of the ANC, and later first President of South Africa, Nelson Mandela. In launching the programme for the Macroeconomic Research Group (MERG) to define a new economic strategy for a democratic South Africa Mandela said,

A mixed economy includes both the role of the state and the market in directing re-distribution of wealth and promoting growth of the economy. Many developed and developing countries have different forms of the mixed economy with varying degrees of state and market interventions. In many instances the degree of intervention depends on the level of transformation, readjustment and transition from an economic crisis situation to a situation of stability. History provides us with many examples of state intervention being used as a means of promoting growth and redistribution. The experience closest to us is the use of the state by the (minority white) Nationalist (Party) government to promote the interest of whites in general and poor whites in particular. In this case the budget was used as an effective instrument for redistribution.

The most significant catalysts for Afrikaner/white capital accumulation in particular was the emergence of what has become known as the mineral-energy complex (MEC) in South Africa. Ultimately it was the revenues from this accumulation that were used to finance state intervention under apartheid. The growth and dominance of the MEC in the South African economy was the result of massive state subsidization (Fine 2011). Fine, who was a member of the MERG, acknowledges the fact that the MEC was the accumulative base for Afrikaner capital during the inter- and post- World War Two periods up to the end of the nineteen-eighties. The state supported the MEC through massive investment in state corporations involved in iron and steel, transport, electricity and harbours. Of course, the goal of this accumulation process was to maintain the system of apartheid to secure the interests of the mining finance houses and Afrikaner and white political and economic power in general. This historical lesson was not lost on the leaders of the anti-apartheid liberation movement during the negotiations for a post-apartheid South Africa in the early 1990s.

In arguing for a post-apartheid state to use fiscal policy to stimulate economic growth and development and the redistribution of wealth in the interests of the majority previously disadvantaged communities Mandela (1991) elaborated.

In as much as it was possible for whites to claim a full share of public expenditure irrespective of their tax contribution, so must blacks be entitled to equal treatment by a democratic state. We must reserve the right to use any economic instrument to stimulate growth and effect redistribution to redress historical economic imbalances and injustices. In addition, apart from using the budget previous minority governments have established and administered state enterprises as instruments for economic policy objectives.

The Developmental State Paradigm (DSP)

Fine (2011), more recently, assessed the role of the state and economic development within an intellectual framework referred to as the developmental state paradigm (DSP). As a way of explaining state intervention in economic development, the DSP can trace its origins back to eighteenth and nineteenth century policies of protectionism in the USA and Germany; industrialization through import substitution in Japan and Latin America in the middle of the 20th century and, the successes of the South East Asian (SEA) countries in the late 20th century. In the latter case the DSP discourse is characterized by successful opposition to the so-called neo-liberal and Washington consensus arguments against state intervention in economic development.

In aiming to apply the main features of the DSP to economies in transition it seems as if DSP proponents have overlooked or ignored the structural constraints faced by such economies (Fine, 2011). Is it possible for economies in transition to engage in catch-up policies for industrialization? Is it possible to apply the DSP, given the failures of many instances of state intervention? How can DSP be applied to economies in transition from an agrarian to an industrial economy? Given the limits to fiscal policy, can the DSP offer such economies a way to deal with the role of health, education, welfare, democracy, labour, macroeconomic policy and globalization in economic development? Proponents of the DSP continue to assume that all economies can achieve the status of a developmental state if only they address market failures or ensure political independence from vested interests.

Despite the successful state intervention in the SEA economies, Fine believes that this success was achieved at the expense of unresolved tensions and limitations of the paradigm and that these tensions and limitations continue to be overlooked. He questions the significance of applying the DSP to emerging economies such as South Africa, given that the paradigm has been preoccupied with issues that may not be currently relevant or applicable. The reason for this is that the DSP emphasizes state/industrial and capital relations and tends to downplay the role of class, political, ideological and social formations and conflicts that have emerged as a result of the state and market interrelations and their impact on society. Fine argues that South Africa cannot be described as a developmental

state because the mineral-energy complex (MEC)¹ and a high level of international integration and “financialization” characterize its economic structure.

The mining finance houses have always invested heavily in the MEC and the latter has been the accumulative base for the growth of the financial sector. In South Africa finance and related services have been the fastest growing sector in the economy over the past twenty years, contributing to 20% of GDP. In general “financialization” can be described as the widespread dominance of financial assets over real economic investment for the production of goods and services (Fine, 2011). This shift from productive investment to financial gain is based on speculation and different financial products such as derivatives, futures markets, financializing basic health and education services and increased access to credit for consumption. This shift, in turn, has resulted in massive debt, unemployment, inequality and poverty.

Notwithstanding this critique there is no doubt that the MEC itself emerged as a result of state intervention in the South African economy. Mandela was aware of the important role played by the private and public monopolies and was mindful of the need for the State to use all instruments to intervene in favour of the previously oppressed and disadvantaged members of South African society. In particular he argued for the post-apartheid state, through Parliament, to use the budget to effect the transformation necessary from minority control of the political economy to an economy that addressed structural inequality, unemployment and poverty.

The biggest threat to democracy, socio-economic justice and economic growth in this country is the monopoly control by a few companies of the whole economy.

Thus, for us, state intervention will ensure equal opportunities for hitherto disadvantaged communities and groups from all sections of our society...

Maintaining a balance between meeting socio-economic obligations to the disadvantaged and oppressed people of our country and at the same time stimulating economic growth will be a daunting task at the best of times. It is, however, not impossible. The budget can be used as an instrument to adopt fiscal policies that will meet in the medium-term, to some degree, our social expenditure requirements while guarding against fiscal indiscipline. In the absence of the capacity to effect dramatic transformations overnight, the expenditure side of the budget becomes an effective instrument of redistribution. On the other hand fiscal discipline should not be used as a means to maintain the present (1991) discriminatory character of the budget. (Nelson Mandela, 1991)

¹ The MEC is the specifically South African system of accumulation that has been centered on core sectors around, but more wide-ranging than, mining and energy, evolving with a character and dynamic of its own that has shifted over time. Its history and consequences can be traced back to the emergence of mining in the 1870s through to the present day. In the interwar and immediate post-war period, core MEC sectors drove the economy, furnishing a surplus for the protection and growth and, ultimately, incorporation of Afrikaner capital. State corporations in electricity, steel, transport and so on, represented an accommodation across the economic power of the mining conglomerates and the political power of the Afrikaners, an uneasy compromise of evolving fractions of classes and their interests forged through both state and market. (Fine, 2011)

Notwithstanding Mandela's hope for a more interventionist role of the state in development, South Africa did not manage to extricate itself from the domination of the MEC in the economy. In fact, the MEC, now firmly in control of mining finance capital and financial institutions, continues to be the driving force behind attempts to recover and make up for the financialization and globalization "benefits" that were lost during the apartheid period because of international sanctions, and the resulting massive apartheid state domestic debt burden. This preoccupation with reintegration into the global financial markets has led to the neglect of domestic investment; an increase in capital flight; the dominance of financial services in the economy; an increase in credit-driven consumption, and a decrease in savings and domestic accumulation in support of economic development, growth and transformation envisioned by Mandela in 1991.

Is South Africa a Developmental State - Situation of Children and Youth?

The previous discussion questions South Africa's claim to be a developmental state from a conceptual perspective. From a more empirical and applied policy perspective, can South Africa be called a developmental state? While there are many other development indicators, a country's level of development potential may be evaluated by the extent to which indicators for its children and youth show positive or negative trends. In this regard child nutrition and hunger; poverty; access to education, health, water and sanitation; early childhood development, youth unemployment and child mortality are key indicators of a country's potential for development.

In the global context, Save the Children (Press Release, February 15, 2011) reported that chronic childhood malnutrition will put almost half a billion children at risk of permanent damage over the next 15 years, and affects one in four children around the world. It is not only a major killer of children but it also results in permanent lifelong damage to their physical and intellectual development. Although this fact is not as obvious, it is very often ignored and overlooked as a key development indicator. The Save The Children release points to extensive evidence to show that well-nourished children are better performers at school, and will eventually earn more on average than those who were malnourished as children. The release quotes recent evidence suggesting that nutritional interventions can increase adult earnings by 46% and that developing nations lose an estimated two to three percent of their GDP as a result of malnutrition, thus extending the cycle of poverty, inequality and low economic growth when this growth is most needed.

The current situation of children and youth in South Africa presents an unflattering picture of the state of the country's development. In March 2011 the South African Human Rights Commission (SAHRC) reported 11.9 million children living in poverty and 17 times more likely to experience hunger; having two times less of a chance of accessing water, sanitation and early childhood development, and being three times less likely to complete secondary education. Furthermore the SAHRC reported that 60% of African children under the age of 18 were living in hunger, and that the majority of children living in poverty were raised by single and unemployed mothers. UNICEF, on the other hand, reported malnutrition as the major underlying cause of death in 64% of children under 5 years of age; despite the



availability of primary health care, child mortality has increased since 1990 and 75 000 children do not make it to their 5th birthday.

The National Treasury in the Ministry of Finance reported that in the age group 15-35 in 2011 34.5% were unemployed, representing 72% of overall unemployed, and 49% in the 15-24 age group, or 30% overall. The Statistics South Africa (2012) Labour Force Survey reported a rate of 30% youth unemployment, with the largest year-on-year increase of 2.3% for the 15-24 age group, and 53.4% of all young Africans in the age group 15-24 by 2009. By December 2011 the “not economically active” rate for the 15-24 age group was 75.1%, of which 77.3% were women and 73% were men.

The devastating levels of poverty, deprivation and unemployment amongst children and youth in South Africa are not without psychosocial consequences. These consequences were revealed in the Poverty Youth Vulnerability and Risk Behaviour Survey of Out of School Youth (OSY) and conducted across four provinces by the Medical Research Council (MRC) in 2010. Twenty-three percent of youth surveyed gave no reason for being out of school. Eighteen percent left school because they were pregnant; 16%, left to help their families, and 18% did not have money to pay school fees.

The MRC survey also reported that risk behaviours and vulnerability were manifested in indicators for sexual and hygiene practices, and injury and trauma related to violence. With respect to sexual behaviour: 24.6% initiated sex before the age of 14, of which 67.9% reported concurrent multiple partners in the 3 months before the survey, and of those who had sex 41.9% reported being pregnant or making someone pregnant, and more than 25,8% said they were in it for financial gain. Almost 18% of OSY who had sex reported that they or their partners had had abortions, with 34.3% taking place at a traditional doctor or healer and 28% at a hospital or clinic. For female respondents access to sanitary towels was a major hygiene issue, with 66.5%, or 2 in every 3 female respondents, reporting that they had no access to sanitary towels.

Physical vulnerability and risk for OSY were expressed in indicators for chronic diseases, violence-induced injury and trauma. For chronic diseases more than 34.5% rated their body weight as “underweight” while 12.2% rated their body weight as “overweight”. For injury and trauma related to violence 31,4% reported carrying a weapon 30 days before the survey; 21.8% had been convicted of a crime; 23.5% had been in a prison or cell; 40.8% had been bullied in the past month; 44.8% had been involved in a physical fight, of which 53.4% had been injured; 18.5 % reported being forced to have sex; 17.7% had ever forced someone else to have sex, and 23.9% had belonged to gangs in the past six months.

Psychological and mental risk and vulnerability were expressed in indicators for suicide and drug abuse amongst OSY. The study revealed that 23% had made a plan to commit suicide; 31.2% had attempted suicide, and of these 32.2% required medical treatment; 24.8% had ever used mandrax; 27.1% used cocaine; 22.4%, heroin; 27.5%, prescription drugs, and 33.2% used marijuana (dagga).

From the above it is clear that monitoring development indicators for children and youth must become an essential tool in evaluating trends in economic growth and development.

In this respect the situation in South Africa today does not bode well, and in fact diminishes the country's claim to be a growing developmental state. However, by monitoring and evaluating development indicators for children and youth, Parliament and the provincial legislatures in South Africa can play a leading role in determining the trajectory of the developmental state.

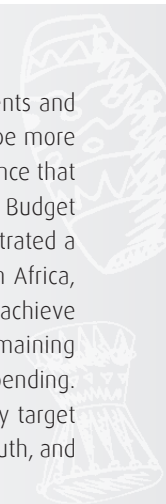
FISCAL POLICY IMPACTS ON ECONOMIC ACTIVITY AND INCOME INEQUALITY

While it may be possible to use fiscal policy and budget allocations to arrest the upward trend in the indicators of disparity discussed above, the riposte from economists and some policymakers has been that Parliament, the legislatures and government (executive) may have to choose between economic growth with efficiency, and policies to address growth and development with equity. The Muinelo-Gallo and Roca-Sagales (2011) study of a sample of 43 upper-middle and high-income countries found that although some tax and revenue policies may reduce inequality and diminish economic growth, increases in public investment in capital expenditure reduce inequality without reducing output.

In challenging the conventional wisdom that there is a trade-off in fiscal policy objectives between economic growth with efficiency and equity the authors argue that most empirical research focused on fiscal policy impacts on economic activity to the exclusion of its redistributive effects. By contrast, and using data from the sample of countries, the authors investigate the role of fiscal policy in the trade-off between efficiency and equity by constructing a model that incorporates income inequality in a growth equation and GDP growth in an inequality equation. The results of the study revealed that fiscal policies have significant impacts on both growth and inequality. The study found that while higher direct taxes and current expenditure contract economic growth, they also reduce economic inequality. However, the authors also found that this is not always the case. In fact, the results of the study indicate that fiscal policy targeting public capital and infrastructure investment is the single policy instrument that breaks the trade-off. Increases in such public investment reduce inequality without compromising economic output whether it is financed through direct or indirect taxes.

PLANNING AND BUDGETING FOR CHILDREN & YOUTH

Given the results of the Muinelo-Gallo and Roca-Sagales (2011) study, parliaments and legislatures in South Africa can heed the call by former President Mandela and be more bold and less apologetic in promoting a more proactive role for a fiscal policy stance that targets growth and development with equity. In fact, the 2011 Medium-Term Budget Policy Statement and the 2012 presidential State of the Nation Address demonstrated a clear fiscal policy bias towards budgeting for children and youth issues in South Africa, albeit indirectly. The main objectives were to focus on economic infrastructure to achieve economic growth and employment through the multiplier effects, while remaining committed to social expenditure in real terms and promoting efficiency in social spending. In the short, medium and long term social expenditure was expected to directly target youth unemployment, poverty, hunger and malnutrition amongst children and youth, and vulnerability and risk behaviour among youth.



Allocations in the 2011 Medium-Term Budget Policy Statement (MTPBS) show a 27% increase for social security and health care aimed at fundamental reforms in health and social security systems. This increase is linked to employment services in training and a pilot National Health Insurance (NHI) primary district-based health services project. The education allocation was the largest with social protection, local government and housing, and health services following in that order.

Of course, the constraints to consider in focusing allocations on social spending are the concerns for meeting unemployment and job creation targets, as well as the rise in the cost of servicing the national debt and the concomitant increase in the public sector wage bill. The increased wage bill will have to be balanced against the effectiveness of public administration institutions and agencies for efficient and accountable implementation of programmes and delivery of public services. This is particularly true with respect to underspending of capital budgets by municipalities and provinces and the need to support effective management and planning.

Within the context of children and youth the question to ask at this point is, how can Parliament and the legislatures hold the executive accountable for ensuring that fiscal policy in general, and budget interventions in particular, ensure that the rights of children and youth are prioritized? In this regard Parliament and the legislatures in South Africa have at their disposal a constitutional Bill of Rights with clauses that protect the rights of children, and they are expected to uphold Chapter 13 of the Constitution, which sets out the financial obligations of the state. In the Bill of Rights children are entitled to basic health, basic education, basic care and social services, and the right to shelter. Budget Votes in support of these rights include allocations for health, education, social security and development, local government, housing and community amenities/facilities (including water and sanitation, electricity, public transport, roads and street lights).

In the 2012/13 Budget Estimates the allocations for identified child rights-type Votes showed education increases from R207bn in 2012/13 to R236bn in 2014/15. This allocation included an additional MTEF allocation of R18.8bn equalization for subsidies for no-fee schools and expanded access to pre-primary school grades; R235 million to extend the national assessment system; and R850 million to improve university infrastructure, including student accommodation. The health allocation saw an additional 12.3bn over the MTEF with R1bn for the NHI pilot projects and increasing primary health care visits and R908, million for access to ARV at 350 CD4 count level. The Social Welfare Vote saw an allocation of R1.4bn over the MTEF for Early Childhood Development and Child Care Protection (called Isibindi).

The Human Settlements Vote for housing was increased from R120bn in 2012/13 to R139bn in 2014/15. In addition there was an increased allocation of R9.9bn over the MTEF for upgrading informal settlement water and sanitation services. The unemployment-related jobs Fund that was launched in June 2011 received a commitment of R1bn in response to 2 500 applications. The MTPBS targeted poverty directly through job creation via an expanded public works programme and an allocation in the social wage of about R3 940 pm for a family of 4 and the funding of no-fee schools for 60% of learners.

In addition to the regular budget allocations based on fiscal policy, and twenty years after the demise of apartheid, 2012 also saw the launch of the National Development Plan - Vision 2030. This plan is perhaps one expression of former President Mandela's great vision for a democratic developmental state. The Plan articulates very specifically broad indicative 20-year policy objectives and targets for economic and social development within the framework of South Africa's constitutional democracy. In particular the plan implicitly recognizes the need to balance the imperative of meeting the social and economic obligations of our Bill of Rights against the financial and budgetary requirements and considerations of Chapter 13 of our Constitution.

When the NDP policy objective was articulated the first media reaction was: "How will it be financed through the equitable sharing system?" Legislators and their support staff must be prepared for such reaction. The findings from the Muinelo-Gallo and Roca-Sagales (2011) study indicate that public investment in infrastructure is the only fiscal policy instrument that addresses equity and development without compromising growth with efficiency. Using this conclusion as a point of departure, it is indeed instructive to observe the South African government's consolidated expenditure estimates for the 2011/12 to 2014/15 medium term [South African Reserve Bank (SARB) Quarterly Bulletin, March, 2012]. The Bulletin reported that expenditure was estimated to increase from R973 billion in 2011/12 to R1.2 trillion in 2014/15. As a percentage of GDP this expenditure was projected to equal 32.5% in 2011/12 and amount to 31.0 % by 2014/15. Social services make up 58.2% of total spending in 2012/13 with education and health accounting for 19.6 % and 11.5% respectively.

In 2012/13 public investments spending on economic infrastructure for transport, communication, fuel and energy would constitute 7.9%. This is the beginning of government's attempt to accelerate public infrastructure investment as a catalyst to encourage more private investment. Thus, infrastructure spending estimates show an increase from R83.6 billion in 2012/13 to R98.3 billion in 2014/15, an annual average increase of 6.4%. Policy targets for public investment in infrastructure include expansion of the rail commuter transport system that was severely constrained by aging and poor condition of the rolling stock. To meet this target an additional R4 billion was allocated in 2014/15 to the Passenger Rail Agency of South Africa to purchase 233 coaches. Other policy targets included an increase in allocations for municipal infrastructure to meet the demands of a growing population with concomitant demands for basic services. Municipal infrastructure grew by 12.1 per cent a year from 2008/09 to 2011/12, and is expected to total R139 billion in 2014/15. By the same token the upgrading of informal slum settlements was targeted with an additional amount of R1 billion.

In addition to the regular budget allocations the NDP sets some very ambitious targets for future public infrastructure investment. Among others, these include increasing the proportion of people with access to electricity from 70% in 2010 to 95% in 2030; ensuring that all people have access to clean potable water and that there is enough water for agriculture and industry; significantly expanding the proportion of people who use public transport, and encouraging more people to live closer to their places of work. All of these targets will require equitable share allocations to national, provincial and local governments. They may also require legal, institutional, administrative and financial



policy instruments in order to be implemented. Finally, they will require strict monitoring to ensure adherence to and compliance with public finance management legislation. It is precisely in these areas that the legislatures have a key role to play in ensuring that the democratic developmental state achieves its policy objectives. In doing so, however, parliaments and their supporting staff have to also be cognizant of government's need to achieve an effective balance between its redistributive role and economic efficiency.

THE MONITORING ROLE OF PARLIAMENT AND LEGISLATURES

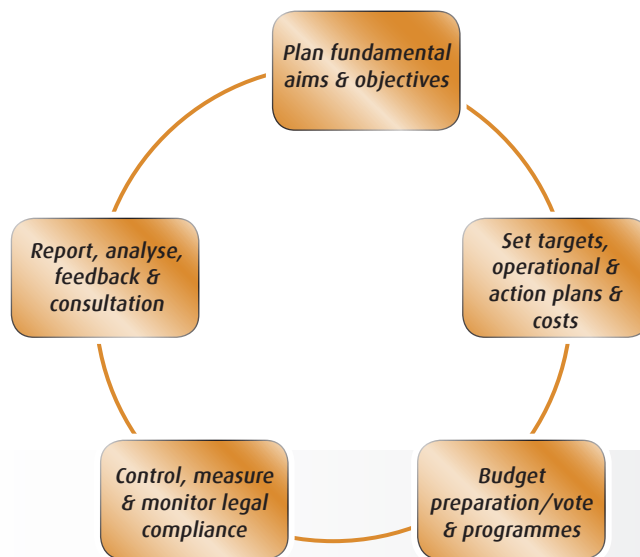
While the NDP is a long-term strategy, the passing of the various annual Budget Votes is the most important entry point for the legislatures to influence the trajectory of the South African developmental state. In the case of ensuring the rights of children and youth in particular, Parliament has to play a key role in ensuring that budgets are equitably allocated and take account of all constitutional and legal requirements and considerations. It is important for MPs to be adequately briefed and informed about the budget allocation rule (Peyton Young, 1994) targeting developmental policy objectives by the relevant legislative officials.

Peyton Young (1994: 8) defines the allocation rule as a method, process, or formula that allocates any supply of goods among any potential group of claimants according to the salient characteristics of those claimants, and in keeping with the theories of distributive justice and equity principles of parity, proportionality and priority. Parity means that all claimants should be treated equally; Proportionality recognizes that goods and services must be divided according to the established differences amongst claimants and, Priority affirms that the person with the greatest need is entitled to a first claim on the goods or services. These principles are at the heart of our system of the equitable sharing of national revenue through the budget and are very succinctly expressed in Chapter 13, Section 214 (1) and (2) of the South African Constitution . They are also the generally accepted foundations for achieving development through the allocation, distribution and stabilization functions of public finance. Based on these developmental principles of public finance, legislatures have to also be knowledgeable and informed about the budget preparation processes that underlie a public sector gearing up for the implementation of the NDP.

From the foregoing, it is apparent that the Constitution approaches the requirement for equity in a particular manner and requires the mechanism of "equitable shares" to play an important role in financing a developmental state with equity through national, provincial and municipal government. Thus, to achieve the objectives of a developmental state, the annual budget will be an important planning tool and will express in financial terms the plans to be implemented for each financial year according to the indicative policy objectives and targets set in the NDP. These will be expressed as capital income and expenditure, and revenue income and expenditure Budget Votes. They will have to be approved and monitored by Parliament based on principles of planning and control in the public sector and prepared according to an annual or medium-term budget cycle. The cycle is prepared as follows:

- Planning of fundamental aims and policy objectives.
- Setting policy targets/outputs/outcomes, operational implementation (personnel & HR resources) planning and periodic (3-6 months) action plans with financial costs.
- Setting policy instruments (legal, institutional, financial, administrative, other).
- Budget preparation according to Vote and programmes.
- Controlling, measuring and monitoring legal compliance (in South Africa: Public Finance Management Act; Municipal Finance Management Act, other) through Parliament, Auditor-General, independent statutory institutions (eg Public Protector, Human Rights Commission), civil society.
- Reporting, analyzing and feedback (in South Africa) through Parliament, intergovernmental institutions (President's Coordinating Council, Budget Council, Budget Forums, Financial & Fiscal Commission-FFC, South African Local Government Association-SALGA).

Figure 1: The Budget Planning Cycle



In South Africa the annual Budget has several important functions of which Parliament must be aware. It determines income and expenditure; assists policy making and planning; authorizes future expenditure; provides the basis for controlling income and expenditure; sets standards for evaluating performance; motivates managers and employees; and is the basis for the co-ordination of programmes and multi-purpose organizations and departments. Ensuring that the policy objectives, targets and instruments are implemented and attained is the main responsibility of the legislatures and their supporting officials. The South African Parliament has recently passed legislation to facilitate this role of the legislatures. In 2009 the passing of the Money Bills Act significantly enhanced this role and responsibility.

Implicitly the Money Bills Act (2009) provides guidelines for the monitoring role of Parliament to ensure that money Bills such as the Budget and related legislation achieve the objectives of a developmental state. The purpose of the Money Bills Act is to provide the National Assembly and the National Council of Provinces (NCOP) with a legislative instrument to exercise oversight of all money Bills that come before Parliament. As Members of Parliament have a constitutional mandate to pass legislation and monitor the Executive, the implications of the Money Bills Act are that it gives Members of Parliament a means to ensure that the objectives of the democratic developmental state as envisaged in our Constitution and the NDP are on the right path. Of course, there are certain guidelines and limits to the extent to which legislatures can amend the money Bills.

In amending money Bills legislatures are obliged to take into account relevant documentation submitted to and adopted by Parliament. Section 8 (5) of the Act also requires that amendments must consider: the balance between budget revenues, expenditures and borrowings, and that the debt levels and debt interest costs are reasonable. This section also provides legislatures with clear guidelines for amending money Bills. These guidelines require the following: that legislatures should be aware of the balance between revenue, expenditure and borrowing; that debt levels and interest costs are reasonable; that there is adequate spending on infrastructure development and maintenance; that recurrent spending is not passed on to future generations; that short, medium and long-term implications of the fiscal framework on the Budget, economic growth and development are taken into account, and that cyclical factors that impact on fiscal policy and all public revenue and expenditure (including extra budgetary funds and contingent liabilities) are carefully considered.

Sections 9 (c) and 10 of the Act also provide guidelines for reports on proposed amendments to the Main Appropriation Bill and section 11 (3) provides parliamentary committees with guidelines for amending revenue Bills and revenue proposals. Finally, section 15 presents guidelines for the establishment of a Parliamentary Budget Office. All in all, it is evident that the Money Bills Act of 2009 offers the legislatures and parliamentary support staff an effective legislative policy instrument to influence the trajectory of a developmental state in South Africa. Thus, as fiscal policy in South Africa is ultimately decided by Parliament and the legislatures, these institutions can play a significant role in determining the nature of the developmental state in overcoming inequality, poverty and unemployment. However, the role of Parliament and civil society in general in using fiscal policy and the budget to pursue the development agenda has to be supported by effective implementation of regulatory policy instruments. Figure 2 illustrates the process for Parliament's oversight planning, budgeting and monitoring system.

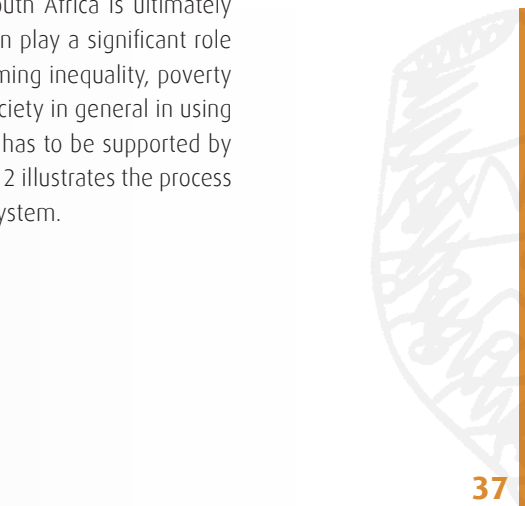
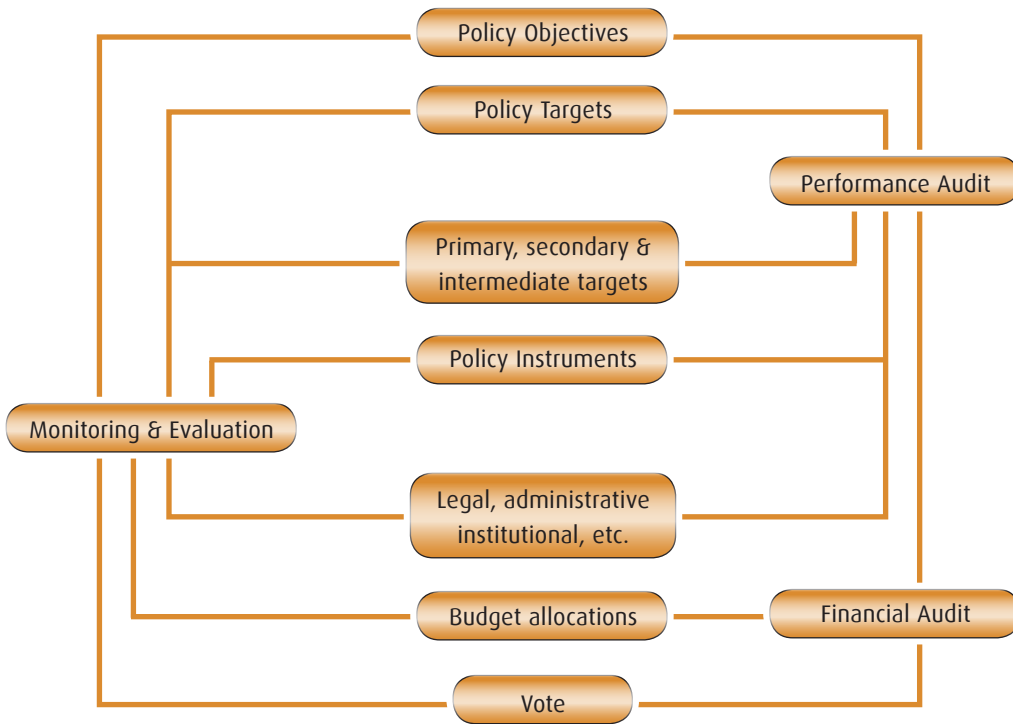


Figure 2: Parliament Oversight Programme, Planning, Budgeting & Monitoring System



Legend



Conclusion

It seems that the obsession with labels and jargon has come to characterize political economy debates with little substance as to how economic theory and policy can address what Alfred Marshall saw as the unequal distribution and inadequacy of wealth, generating and exacerbating poverty and undermining the capabilities of the disadvantaged. Surely, it cannot matter whether a state is called a developmental state or not. The most important role for the South African state, Nelson Mandela opined, is to maintain a balance between meeting the socio-economic obligations to the disadvantaged and poor, and stimulating sustainable economic growth and development. South Africa's developmental and socio-economic objectives are clearly defined and articulated in Chapter 2 and Chapter 13 of the Constitution. The most effective policy instrument for meeting this challenge is the Budget. The effective use of the Budget to address inequality, poverty and development is the responsibility of both the legislature and the executive. The legislature must ensure that the executive fulfils the constitutional mandate for which it was elected.

The principles of parity, proportionality and priority are at the heart of our constitutional obligation to equitably share the national revenue and take account of disparities, development and redistribution. Members of Parliament have a responsibility to monitor the performance of the executives of the three spheres in meeting this obligation. Figure 2 provides a useful framework for Parliament's oversight planning, budgeting and monitoring role in ensuring that the South African state meets its constitutional obligations.

While the challenges appear daunting, the progress already made in South Africa's short history in building a democratic and fair society inspires hope and confidence that the vision of the Constitution and the commitment to a better life for all will be realized.

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4

The Role of Legislatures' Oversight Committees in Deepening Democracy and Accountability for the use of Public Resources



AUTHORS:

Hlanganani Nyathela & Rudzani Makhado

Abstract

This paper aims to contribute to the body of knowledge and discourse around oversight and accountability. It also broadens the understanding of the concept of oversight and accountability in the role played by Members of Parliament, and argues that effective service delivery is achievable through conducting rigorous oversight. The executive needs to be summoned to appear before the oversight committees of Parliament and legislatures to account on how public resources have been used. The paper further highlights the processes followed by oversight committees when holding the executive to account for its decisions. Various challenges that hinder effective oversight are also identified and discussed as well as suggesting the way forward in addressing such challenges. It is also argued in the paper that effective oversight is not all about micro-management. It is about raising relevant questions in relation to the implementations of approved Annual Performance Plans or Strategic Plans and effective monitoring of the Budget in relation to service delivery.

Keywords: oversight, accountability, committees, legislature, monitoring, governance

1. Introduction

The primary aim of this paper is to contribute to the body of knowledge and discourses around oversight and accountability over and above the different definitions. The paper broadens current understanding of the roles and responsibilities when conducting oversight. The paper also attempts to broaden the understanding and implications, and further strengthen the roles and responsibilities, of those involved in the process of oversight in ensuring improvement of service delivery. It is noted that South African legislatures are autonomous institutions that have embraced multiparty democracy, thus opening up space for political debates and discussion from the opposition and organised civil society.

Sections 42(3), 55(2), 92, 114(2), 115(a) and (b) and 133(2) of the Constitution of the Republic of South Africa, 1996, vest Parliament and provincial legislatures with powers to conduct oversight over their respective executive and to hold them accountable for the use of public resources. In line with the provisions of the Constitution, committees of the legislatures have a critical role to play in overseeing the effective, economic and efficient use of public funds. This implies that Portfolio and Standing Committees need to effectively conduct oversight over the executive and hold them accountable for the use of public funds. The Constitution of the Republic of South Africa confers powers to Parliament to summon individuals or institutions to appear before it to account or produce either verbal or written evidence. As such, the legislatures' oversight committees' role in deepening democracy and accountability in the use of public resources can make the legislative system adjust gracefully to the realities of modern democracy.

2. Defining Oversight and Accountability

In the South African context, oversight and accountability are constitutionally mandated functions of the legislatures, which are to scrutinize and oversee executive action and action of any organ of state. Oversight therefore entails supervision, watchful care, management or control, strategic and structured scrutiny exercised by legislatures in respect of the implementation of policies and regulations, the application of budget and the strict observance of statutes and the Constitution. Scholars such as Caparine (2002) suggest that oversight involves a watchdog function over ongoing activities of an agency, while others such as Smith (2003) argue that it involves learning, especially about an organ of state or agency, and controlling its behaviour. However, Ogul (1979) defines oversight as behaviour of legislators and their staff, individually or collectively, which results in an impact - intended or not - on bureaucratic behaviour.

Smith (2003) proposed that oversight can also be defined in terms of what the legislatures and their members do, which involves reviewing, monitoring and supervising the executive and other organs of state's programmes, activities and policy implementation. Oversight activities may seek to determine the efficacy of agents, or their capacity to fulfil their mandate. Efficacy is about whether an organ of state has made sufficient use of public funds and whether it provides good value for money. It may, as well, seek to identify or determine the propriety of actions, that is, whether an agency acted correctly and complied with legal or ethical norms in its activities and objectives.

The Oversight Model of the South African Legislative Sector (2012) refers to oversight as the legislature's review and evaluation of selected activities of the executive branch of government. The legislative branch conducts oversight activities because it does not only enact new programmes for the state, but also has a duty to ensure that existing programmes are implemented and administered efficiently, effectively and economically, and in a manner which is consistent with the legislative intent. Oversight is the focus of select committees and special oversight committees, and can be part of the hearings and work of standing committees.

The oversight role of the legislature is different to that of the executive. The legislature focuses more on accountability for performance rather than to resolve management issues or problems. It is the last point of accountability and should in general only check that the executive has acted appropriately when there are problems (Masehela, Nkuna, Mothoa & Mamogale, 2009).

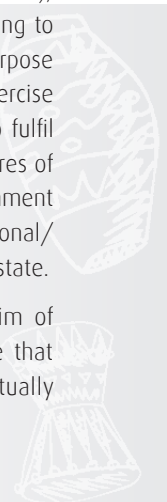
On the other hand, accountability refers to a social relationship where an actor (an individual or an agency) feels an obligation to explain and justify his or her conduct to some significant other (the accountability forum, accountee, specific person or agency) (Ghutto, Soncga and Mothoagae 2007). Accountability is therefore considered the hallmark of modern democratic governance. This means that, without accountability, democracy will be compromised if those in power cannot be held accountable in public for their acts or omissions, for their decisions, their expenditure or policies. It should be noted that, historically, the concept of accountability was closely linked to accounting in the financial sense. Current analysis shows that the concept of accountability has, however, moved far beyond its origins to include performance, and has become a symbol of good governance both in the public and private sectors. Accountability can thus be simply defined to refer to institutionalised practices of giving account of how assigned responsibilities are carried out (Legislative Sector Support 2012).

2.1 The Purpose of Oversight

As also indicated in the Guideline for Legislative Oversight through Annual Reports (2005), oversight committees need to have a clear understanding of what they are seeking to achieve through the oversight of the state's strategic reports. In other words, the purpose of conducting oversight should be clearly defined so that the outcome of such an exercise can be measurable. However, in the first instance, the purpose of oversight is to fulfil the obligation which the Constitution places on Parliament and provincial legislatures of ensuring that all executive organs of state in the national/provincial spheres of government are accountable to it, and to maintain oversight of the exercise of power by the national/provincial Minister/MEC, including the implementation of legislation by organs of state.

However, in fulfilling this constitutional obligation, it is suggested that the aim of the oversight process should be to give an oversight committee the confidence that the department, constitutional institution or public entity under review is actually delivering:

- high quality services economically, efficiently and effectively;



- in line with its constitutional and/or legislative mandate, strategic plans and budgets; and
- a meaningful contribution to the realisation of government's overall objectives.

It is in this light that an oversight committee's work should also aim at gathering information on the views of customers and clients of the departments, constitutional institutions or public entities being reviewed, and to take this into account when evaluating the performance of the particular entity and making recommendations as to how it can improve the responsiveness and quality of its services and functions. In this respect, for service delivery departments such as Education, Health, Home Affairs and CoGHSTA, it may be useful to develop a process where ward councillors from each municipality are provided with an opportunity to submit written reports on the quality of services offered by the various service delivery departments in their particular municipal ward. This could be done by Members seeking such reports from ward councillors in their constituency. They would thus be the eyes and ears of members of an oversight committee in the provincial legislatures and Parliament as well.

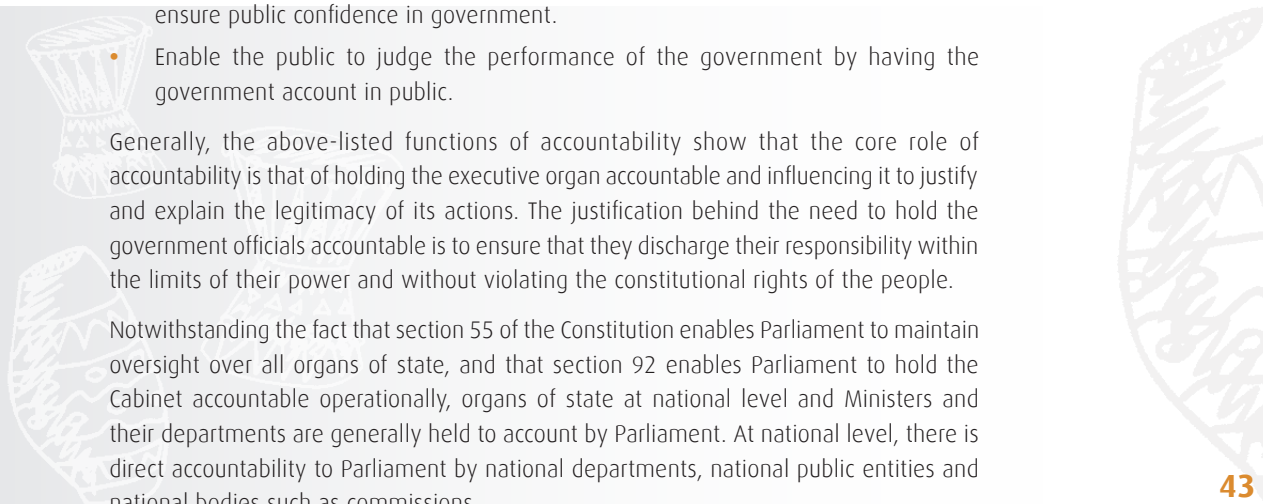
2.2 The Purpose and Functions of Accountability

In terms of Section 115(a) and (b) of the Constitution of the Republic of South Africa, a provincial legislature or any of its committees has powers to summon any person to appear before it and or to require any person or provincial institution to report to it. Such powers give the legislatures' oversight committees authority to conduct oversight over the state organs to:

- Enhance the integrity of public governance in order to safeguard government against corruption, nepotism, abuse of power and other forms of inappropriate behaviour.
- Use as an institutional arrangement, to effect democratic control.
- Improve performance which will foster institutional learning and service delivery.
- Monitor transparency, responsiveness and answerability, to ensure public confidence in government and bridge the gap between the governed and the government and ensure public confidence in government.
- Enable the public to judge the performance of the government by having the government account in public.

Generally, the above-listed functions of accountability show that the core role of accountability is that of holding the executive organ accountable and influencing it to justify and explain the legitimacy of its actions. The justification behind the need to hold the government officials accountable is to ensure that they discharge their responsibility within the limits of their power and without violating the constitutional rights of the people.

Notwithstanding the fact that section 55 of the Constitution enables Parliament to maintain oversight over all organs of state, and that section 92 enables Parliament to hold the Cabinet accountable operationally, organs of state at national level and Ministers and their departments are generally held to account by Parliament. At national level, there is direct accountability to Parliament by national departments, national public entities and national bodies such as commissions.



It is thus critical that, when conducting oversight and accountability, the principles of co-operative governance and intergovernmental relations are taken into consideration, including the separation of powers and the need for all spheres of government and all organs of state to exercise their powers and perform their functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere (LSS, 2012).

2.3 Tools for Oversight and Accountability

There are various tools which can be used to effectively hold the executive accountable for its actions or decisions when spending public resources. These oversight and accountability tools need to be used maximally in order to promote good governance and effective financial management. As also proposed by Makhado, et. al (2012), oversight and accountability tools should include amongst others, but not be limited to the following:

Oversight Tools:

- Annual reports
- Financial statements
- Audit reports
- Investigation reports
- Performance and Compliance reports

Accountability Tools include:

- Budget Votes or Integrated Development Plans (most direct tool to enforce accountability)
- Public hearings (the power to summon the executive bodies to explain their actions or decisions)

3. The Role of Portfolio Committees in an Oversight Process

According to the Guideline for Legislative Oversight through Annual Reports (2005), portfolio committees are ideally placed to exercise oversight over the service delivery performance of departments and public entities that fall within their portfolios. The portfolio committees' role in overseeing annual reports is crucial to closing the accountability loop of planning, budgeting, implementation, reporting, auditing and oversight. In essence, the portfolio committees should exercise oversight as to whether departments, public entities and constitutional institutions have delivered on the service delivery promises they made in their strategic plans or Annual Performance Plans, which are approved by the legislature.

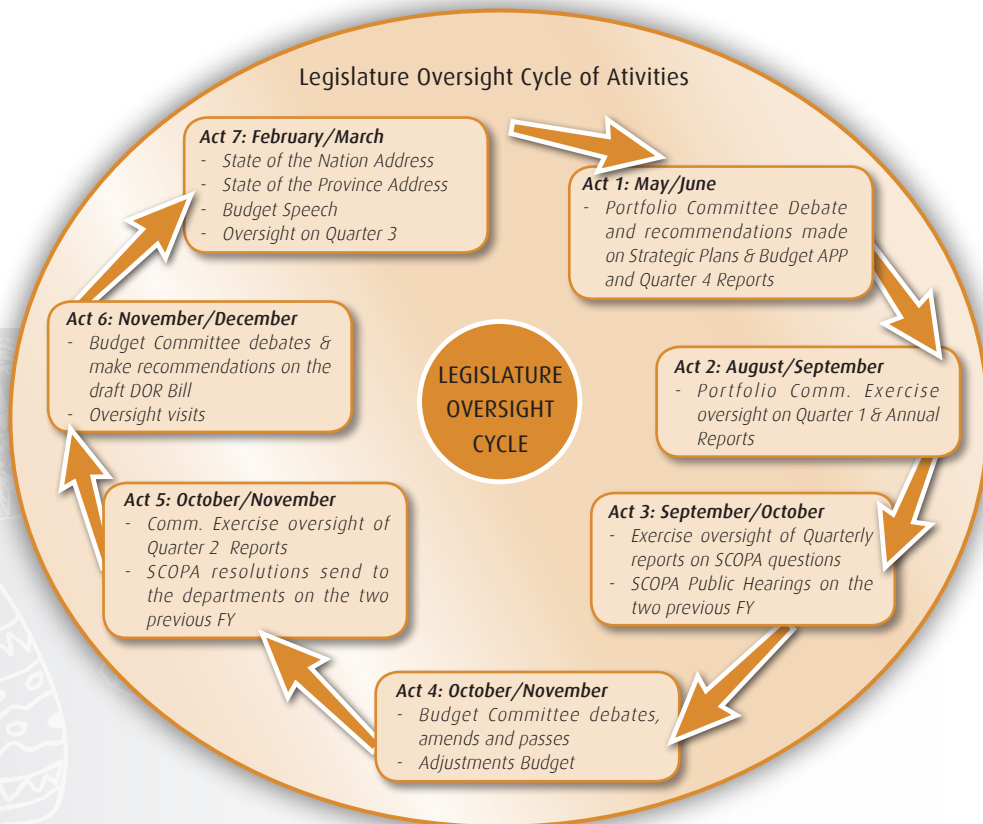
To give effect to this role, it is proposed that portfolio committees should consider annual reports focusing on:



- Implementing the entity’s service delivery improvement programme;
- Evaluating management’s explanations as to why the entity’s service delivery performance did not attain the targets set in the strategic plans and budgets;
- Investigating the circumstances that led to under- or over-expenditure of the entity’s budget, the impact this had on service delivery and the measures taken by management to comply with the budget;
- Commenting on the Minister’s or MEC’s evaluation of the accounting officer’s performance and the appropriateness of the proposed performance bonus or sanction; and
- Assessing whether entities report on each and every performance target specified in their strategic plans, Annual Performance Plans and budget;

Whilst portfolio committees focus primarily on service delivery, they must also assess entities’ financial performance. This is to ensure that the portfolio committee develops a holistic understanding of the department’s or public entity’s performance in the exercise of its oversight responsibility. Figure 1 provides the proposed model of the process that needs to be followed to conduct effective legislative oversight.

Figure 1: The proposed model for effective oversight



4. Challenges Towards Effective Oversight by the Portfolio Committee

There are a number of factors that hinder effective oversight, ranging from a committee's available support staff, knowledge and capacity to planning. Currently, oversight and accountability are exercised by committees of legislatures in an ad hoc manner hence the customisation of an oversight model by the different legislatures in South Africa. The availability of an oversight model to be followed will ensure the effectiveness and efficiency of the oversight.

Due to the manner in which oversight was done, committees often failed to notice problem areas in budgets.

- Committees are reactive rather than proactive to documents they receive from departments and, in most cases, are dealing with past issues.
- Committees have failed to reconcile departmental expenditure with policy priorities, or even focus on actual policy priorities. Portfolio committees almost never track performance in any key programme area over a period of time due to overlapping of activities.
- Committee support staff also needs to be well capacitated in their roles and responsibilities for a better understanding of what is expected of them.
- Sufficient support in the form of necessary resources needs to be ensured to provide for effective support to the committee.
- Proper planning for effective oversight well in advance is necessary. Support staff should ensure that enough information is available on the sites to be visited. Information gathering should be conducted on time to learn and understand issues under discussion so as to prepare the committee before the actual oversight visit. Such arrangements will ensure that members of the committee ask relevant questions, raise issues, take informed decisions and avoid micromanagement where minor issues, which do not add value to issues of service delivery, are followed up.

In addition, poor planning has also caused members of the public to ignore visits by different stakeholders due to oversight stampede where different groups come for the same issue at different times and dates but without providing any solution to the problems.

5. Conclusion and Recommendations

Parliament and provincial legislatures are required by the Constitution to provide for mechanisms to ensure that all executive organs of state, within their respective spheres, are accountable to them, and that they maintain oversight of the executive and any organ of state, including in terms of the implementation of legislation. For effective and efficient oversight, it is crucial to ensure that committees are well resourced in terms of capacitated support staff and the availability of financial resources. Committee support staff should also be in a position to support members of the committees and be responsive to issues of oversight stampede and micromanagement. There is also a need for continuous capacity

development for committee members in order to strengthen their understanding of the concepts of oversight and accountability.

The oversight reports should be made available since they are important in providing Parliament and provincial legislatures with an opportunity to give input into the current planning and budgeting processes. It is therefore crucial that the whole oversight process is managed to ensure that the oversight reports are finalised on time. Most importantly, risk of service delivery failures can be minimised through conducting effective and rigorous oversight and better management. Better oversight is critical for improving the quality of service delivery to the public.

Over and above this, the legislatures need to have and follow the oversight model that clearly outlines the roles and responsibilities of committees, support staff and also provides a framework of how the committee should function. The presence of an oversight model in the legislature will enable committees to respond and address issues of service delivery appropriately.

In order to conduct effective and efficient oversight, it is therefore noted that:

- Continuous capacity development of Members of Parliament and support staff attached to committees is necessary, ranging from improving skills in information and communications technology, budgeting practices and other skills required to enhance their oversight capacity;
- Committee support staff should be provided with necessary resources and upgraded in terms of technologies related to oversight and accountability;
- Stakeholders should be informed well in advance on issues of interest to avoid oversight stampede;

Committees should be well-prepared for oversight, with the necessary information for proper phrasing of questions which directly relate to the issue of service delivery rather than putting questions reflecting micromanagement of the issues.



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5



Women in Politics: Participation and Representation in the South African Legislatures

AUTHORS:

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Abstract

In spite of their huge numbers in South Africa, women are under-represented in important public institutions such as the Legislatures or Parliament. Using qualitative research methods to collect and analyse the data, the study found that although, there are great variations between the Legislatures in terms of women representation, South African Legislatures have consistently increased the percentage of seats held by women as parliamentarians between 1994 and 2012. However, a huge gap still exists between males and females in the Legislatures, except in two provincial Legislatures. The study further found that 50% more women than men serve as Chairpersons of Parliamentary Oversight Committees in six South African Legislatures, but that fewer women held leadership positions as Ministers in Parliament or MECs in the provincial executives. To bridge the gap between male and females parliamentarians and reach the 50/50 gender parity set by the governing party, the study suggests that literacy development of women is very critical to equip and empower women in politics. The study concludes that South African Legislatures and Parliament serve as a good model for promoting gender equity and empowering women in politics, especially the law-making institutions.

Keywords: *gender equity, South African legislatures, women in politics, parliamentary oversight committee, provincial executives*

Introduction

Women make up most of the world's population and within their individual countries they still make up the most of the country's population, their numbers exceeding those of men. Despite their huge population numbers, women are still under-represented in many societal structures, including National Parliaments and Provincial Legislatures. Generally, discrimination against women in all aspects of life is both historical and political. Politically, women have been looked upon with contempt by the patriarchal society and the traditional ways of teaching or socialisation further reinforced and perpetuated male domination to coerce, control and silence women. As a result of these traditional ways of teaching, unrealistic patriarchal stereotypes were built around women. Thus men believe that women have no role to play in a country's development, especially when trying to uplift the standards of living of their populations. Discrimination against women in society is well articulated by Brown's sociological argument, which goes thus;

"More than any other kind of human activity, politics has historically borne an explicitly masculine identity. It has been more exclusively limited to men than any other realm of endeavour and has been more intensely, self-consciously masculine than most other social practices" (Brown, 1998: 4 cited in Angevine, 2006: 14).

Brown suggests that women around the world have generally been marginalised for decades, thus reducing their status to being at the mercy of a patriarchal society. Women's role in society has been confined to private life, meaning home and family, as opposed to public life. Women could not hold any public office as a politician or even lead any organisation. However, with the increasing democratisation of the world order based on the universal principles of human rights for everyone, irrespective of race, gender, religion, and so forth, the perspective of society has changed and the general notion of working for the emancipation and empowerment of women started gaining momentum, especially through gender equality policy frameworks and feminist movements. Furthermore, many governments around the world began to introduce measures to raise the status of women in society and this was followed by the introduction of legislation banning discrimination based on gender and race, among others (Wood, 1994). As a case in point, the American and South African constitutions both banned discrimination based on race and gender in order to promote, attain and protect gender equality¹.

Purpose of the Study

The primary goal of any democratic government in relation to the promotion of gender equality is to breach the gap between males and females. With this goal in mind, and the solidarity of women for their emancipation and empowerment, the post-apartheid South African state introduced a gender-sensitive Constitution, repealed apartheid laws and introduced a series of new laws that took the interests and needs of women into account.

¹ Section 9(3) of the South African Constitution states "the state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth".

Government institutions such as the Commission for Gender Equality and the South African Human Rights Commission to promote gender equality were also created. Furthermore, the African National Congress as the governing party in government introduced the 50/50 gender parity policy for implementation in all three spheres of government. Therefore, earlier scholarships concerning the participation and representation of women in politics as members of Parliament only focused on National Parliaments. This suggests that no research exists that can shed light on the political status and representation of women in the provincial Legislatures in South Africa.

It is within this context that this paper aims to assess progress made by all nine South African Legislatures in promoting gender equity and women's empowerment. The study further analyses the number of leadership positions held by women parliamentarians as Chairpersons of parliamentary oversight committees and as members of executive councils (MECs). These parliamentary oversight committees include both portfolio and standing committees, which play an oversight role over the Executive. It is worth noting that promotion, attainment and protection of gender equality and women's empowerment by the South African state is in line with 'international best practices', global agreements or declarations in particular. The main objectives of the study were framed thus:

1. To assess the number of parliamentary seats held by women within the Provincial Legislatures and National Parliament.
2. To assess the number of leadership roles such as Chairpersons of oversight committees and Members of the Executive Council held by women parliamentarians.

Limitations of the study

Some challenges experienced in collecting the required quantitative data from all the Provincial Legislatures, included a lack of information pertaining to the previous government administrations. The study collected and collated quantitative data dating back from the first democratic government administration in 1994 until the current administration of President Jacob Zuma in terms of number of parliamentary seats and leadership positions held by women. However, four Provincial Legislatures did not have this required information readily available, thus negatively impacting on the duration of the study. The study was planned to be completed within six months, but this was not possible due to delays experienced in getting the data from the Legislatures. Lack of quantitative information from the Legislatures dating back from 1994 suggests that record management systems within some institutions are very poor and needs to be improved. In addition, websites of most Legislatures were not regularly updated, therefore making it difficult for the researchers to retrieve the archival records of these institutions.

The Legislatures that submitted information dating back to 1994 until recently were Limpopo, Northern Cape, North West, Mpumalanga and the Free State as well as the National Parliament. Most of the information received from the Legislatures in time was relevant to the recent government administration that was inaugurated in July 2009 under the leadership of President Jacob Zuma.

Methodology

Experiences of women parliamentarians in South Africa, particularly at national level, have been qualitatively examined in a study by Sara Angevine (2006). However, given the nature of this study, which required statistical information, a quantitative research paradigm was deemed to be an appropriate research methodology to assess the progress made by National Parliament and the nine Provincial Legislatures in promoting gender equity through emancipation and empowerment of women as parliamentarians. The data collection method employed for this project included electronically sending out a questionnaire in the form of a spreadsheet to all Legislatures and Parliament. A period of four weeks was reserved for returning the questionnaires; however, some Legislatures were able to return the questionnaire within a two-week period. Follow-ups by telephone were conducted to remind the Legislatures to return the questionnaires. Although statistical information was received, there was some missing information, thus making the data analysis process somewhat difficult. Despite this challenge, data received was quantitatively analysed. Empirical evidence suggests that quantitative measurements provide numerical precision about properties such as amount and size, whereas qualitative measurements provide useful information about people's perceptions (Frey, Botan and Kreps, 2000, p. 84).

Concept Clarification

Although the term 'Legislature' bears different names like Parliament, Congress, National Assembly and so forth, there is no contention about its definition in the literature. For example, Leowenberg (1995, p. 736) sees "Legislature" as 'an assembly of elected public representatives from geographically defined constituencies, with lawmaking functions in the governmental process'. Similarly, Jewell (1997, p. 172) defines legislatures as public but autonomous institutions with formal powers to pass laws, which are implemented and interpreted by the executive and judicial branches of government and their members are normally elected rather than appointed to represent various elements in the population. While this paper subscribes to these definitions, we believe the definitions provided by the two scholars cited above miss two core tenets that form the core mandate of the democratic Legislatures or Parliaments around the world. Building on their conceptualisation, this paper defines Legislature as public assembly of elected representatives that make, pass and amend laws, exercise oversight over the executive branch of government and facilitates citizens' engagement and involvement in public policy decision-making processes.

International Experiences and Global Agreements for Women's Emancipation

Despite the promotion of gender equality as one of the primary objectives of many democratic governments around the world, research shows that women still continue to be discriminated against in many structures of society such as Parliament or Legislatures. This is because they are still under-represented in these parliamentary institutions, not only as parliamentarians, but also as chairpersons of parliamentary oversight committees.

According to Powley (2003) and Soumare (2006), the under-presentation of women has adverse effects on service delivery and economic growth. The Inter-Parliamentary Union (IPU) shows that by the end of 2010 globally and in politics women held a total of 19.1% of all parliamentary seats as parliamentarians (IPU, 2005; 2010).

It could be argued that women did not sit back passively and accept the status quo, but instead challenged the patriarchal status quo. Feminist movements were very instrumental in the fight against discrimination against women around the globe, but they did not make significant gains in terms of emancipating and empowering women. This is because these movements were often not national in scope and mostly located in cities and towns, therefore not reaching out to women in rural areas. Of course, these women's movements are important. Similarly, in a study of women's organisations in the United States, Susan Carrol argues that women's organisations help women legislators express 'women's culture' and 'women's issues' inside government (Carrol, 1992 cited in Angevine, 2006: 46). Angevine agrees that an institutionalised feminist presence helps to remind policy-makers to develop gender equitable policies. Furthermore, these feminist movements help to remind women parliamentarians in national assembly, where they exist, that they have a responsibility to represent women's interests within the institutions in which they serve, like parliaments or the legislatures.

Also in Africa, women's fight for their freedom, emancipation and empowerment was prevalent even before some international declarations or commitments for gender equality and women's empowerment could be signed or started. The representation of women during the colonial or apartheid period in South Africa, for example, was only 3% (Commission for Gender Equality Report, 2007 and Lowe-Morna, 1999). The literature indicates that women in South Africa organised themselves from all political and racial lines through the Federation of South African Women, which drew up the Women's Charter in the 1950s to fight for their emancipation from the patriarchal apartheid regime. They further organised themselves during negotiations pre-1994 for a new democratic South Africa under the slogan "no woman, no vote". It could be further argued that the establishment of gender sensitive institutions such as the Commission on Gender Equality (CGE) and the Parliamentary Women's Group have helped to shape the political landscape, particularly in South Africa. In a similar vein, Mtintso (1999) argues that the setting up of gender-specific institutions like the CGE, the Joint Committee for the Improvement of the Quality of Life and Status of Women and the African National Congress Women's Caucus, were at the behest of women. He points out that "these institutional changes not only contributed to the participation of women in Parliament but were also critical for the legislative transformation that took place (Mtintso, 1999: 43).

There is no doubt that the United Nations' Beijing Platform for Action of 1995 provided a roadmap for progressive initiatives for gender equality and the empowerment of women. Many governments around the world, including Third World countries, were signatories to this international declaration to emancipate and empower women. For example, it was agreed at the Beijing Conference that all governments globally have to at least reach a thirty percentage mark in terms of women's representation in their parliaments. Therefore, the agreed global 30% mark is used in this paper to assess the progress made

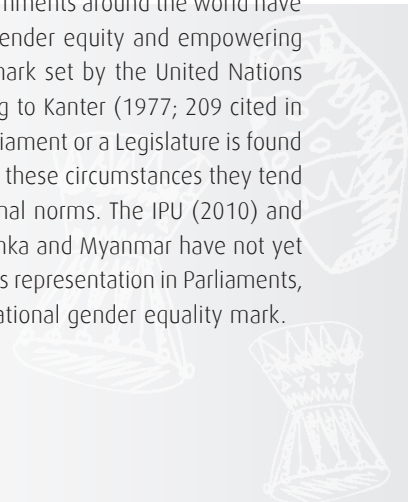


by all nine provincial legislatures and National Parliament in South Africa in terms of empowering women in politics. Goal number three of the Millennium Development Goals is the promotion of gender equality and women's empowerment. Angevine (2006) and Wood (1994) argue that women's participation in huge numbers in government, either as elected or appointed leaders, is one of the largest shifts recorded in current global politics and governance. It could be argued that equality goes hand in glove with investment in education and training, economic opportunity and reproductive health as powerful means for progress in poverty reduction, improved quality service delivery and development.

Global Challenges for Attaining Gender Equality and Women's Empowerment

Women's participation in public life and their empowerment through legislation is not without challenges, particularly because they are storming a predominantly male bastion. The Inter-Parliamentary Union argues that limited participation of women in large numbers in politics, particularly in National Parliaments or legislatures, may be partly explained by the absence of support networks, lack of financial assistance for aspiring women parliamentarians, and also by traditional stereotypes that do not encourage their political participation as well as a lack of training for women. It is argued that social structures like Parliaments and legislatures have historically been designed by men and also include the language and behaviour that men find familiar and are comfortable with, while women may not find it that easy to adjust to (Angevine, 2006). Another challenge may stem from women themselves, as Nicolsen (1996 in Angevine, *ibid*) points out, women in male-dominated institutions such as Parliament may feel that they need to distance themselves from 'stereotypical femininity' in order to gain power and status. In Africa, Vos (1999 cited in Angevine, p. 28) argues that feminist ideas are sometimes rejected in Parliaments as "un-African". Many African men believe that feminist ideas are Western social values meant to undermine African culture and values, particularly respecting a man as the head of the family.

Despite these challenges, research shows that many governments around the world have made some significant progress in terms of promoting gender equity and empowering women, especially in relation to the thirty percentage mark set by the United Nations through the Beijing Platform for Action of 1995. According to Kanter (1977; 209 cited in Angevine, 2006: 1), where women's representation in Parliament or a Legislature is found to be less than 15%, they are perceived as 'tokens' and in these circumstances they tend to be ineffective in challenging the entrenched institutional norms. The IPU (2010) and Lyer (2011) show that some countries like Bahrain, Sri Lanka and Myanmar have not yet even reached the ten percentage mark in terms of women's representation in Parliaments, whereas other nations have already exceeded the international gender equality mark.



Instruments used by Parliaments or Legislatures to Empower Women

The literature shows that many African countries are making a significant progress in emancipating and empowering women in politics as parliamentarians. Various tools such as electoral approaches are used to facilitate empowerment of women in national politics (Reynolds, 1998; Powley, 2003). The electoral systems to promote women's representation in national politics, especially in Parliaments, include electoral quotas, majoritarian system and mixed-member proportional representational systems and, of course, different countries adopt different electoral systems depending on their political circumstances and/or type of regime. As Nijzink, Mozaffar and Azevedo (2006, p.317-318) argue, for example, all the former British colonies such as South Africa, Botswana, Uganda, Burundi, Mauritius and so forth adopted a 'parliamentary system' as a form of governance at independence, with Zambia being the only exception because it adopted a 'presidential system' at independence, like some countries such as Ghana, Angola, Burkina Faso, Mali, etc². The Inter-Parliamentary Union (2005) illustrates that Tanzania uses a majoritarian electoral system whereby parliamentary seats are reserved for women during elections. As a result of a Constitutional amendment in 2000, the number of parliamentary reserved seats for women as parliamentarians increased from 20% to 30% (IPU, *ibid*).

Burundi adopted an electoral quota system since its Constitution guarantees women's participation in politics by setting out that 30% of the Members of Parliament and government must be women (Reynolds, 1998). As a consequence, competing political parties are requested to provide a list of candidates including women to the electoral commission during elections. This clearly shows that political parties voluntarily apply different systems to promote the candidacies of women as parliamentarians.

Although South Africa has been praised as a global leader for prioritising gender equity and women's empowerment, not only in politics, but also in general, research shows that women held 56% of seats in Parliament after the genocide in Rwanda (Powley, 2003). According to Powley, this is a major factor in protecting and advancing women's rights in Rwanda. Thus Rwanda is regarded as an 'example of progress' in emancipating women. Powley further argues that the percentage of women in Parliament places Rwanda among only the few nations around the world with such a huge representation of women in politics through their Parliament (South Institute of Race Relations, 2012). The importance of women in development is being realised. It could be argued that international and regional development goals cannot be attained if women have no part or are not given the same opportunities as men. Nehru correctly points out that "you can tell the condition of a nation by looking at the status of its women" (Nehru cited in Lyer, 2011, p. 2). Some scholars have also gone to the extent of arguing that whenever a woman gains control of her destiny, the local standard of living increases, together with the spread of the value of human rights.

² It is not the purpose of this paper to discuss the distinction between these two types of regime.

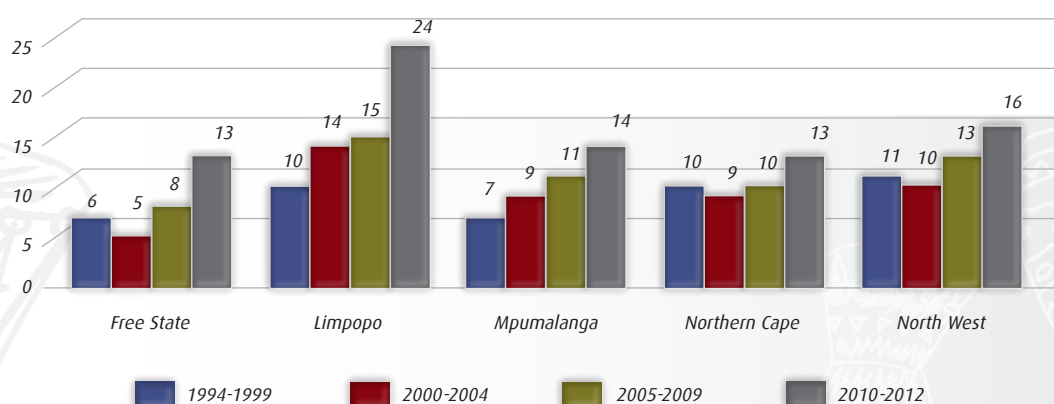
Also see Pert Kopecky (2011). "Political Competition and Party Patronage: Public Appointments in Ghana and South Africa". *Political Studies*, vol. 59: pp. 713-732.

Research Findings & Discussion

Since 1994 the percentage of parliamentary seats held by women in the Provincial Legislatures and Parliament in South Africa has been increasing steadily. This milestone achieved by the Legislatures and National Parliament suggests that the South African state is indeed a global leader in promoting gender equality and empowering women in public life. This further implies that women are becoming more emancipated from the bondages of patriarchal control and domination in order to play an active role in transforming society and the economy as well as consolidating democracy. Although the local sphere of government was not investigated, research points out that the participation and representation of women as members of municipal councils slightly decreased from 40% to 38% in the 2010 local government elections. This decrease, according to President Zuma (2011), was attributed to some competing political parties during the elections not featuring an adequate number of women in their candidate lists for local government.

Notwithstanding the slight drop at local government level, the impressive increase in terms of women's representation as parliamentarians in the Legislatures and Parliament is partly the result of the democratic electoral system being a "mixed-member proportional representation system". The electoral system entails combining political party lists with constituency elections. It could be argued that many women parliamentarians in the Provincial Legislatures gained their seats through party lists, with some being elected from their constituencies in communities. The steady increase in terms of percentage of parliamentary seats held by women between 1994 and 2012 is well illustrated by graph 1 below, but data implies that men still dominate in the Legislatures.

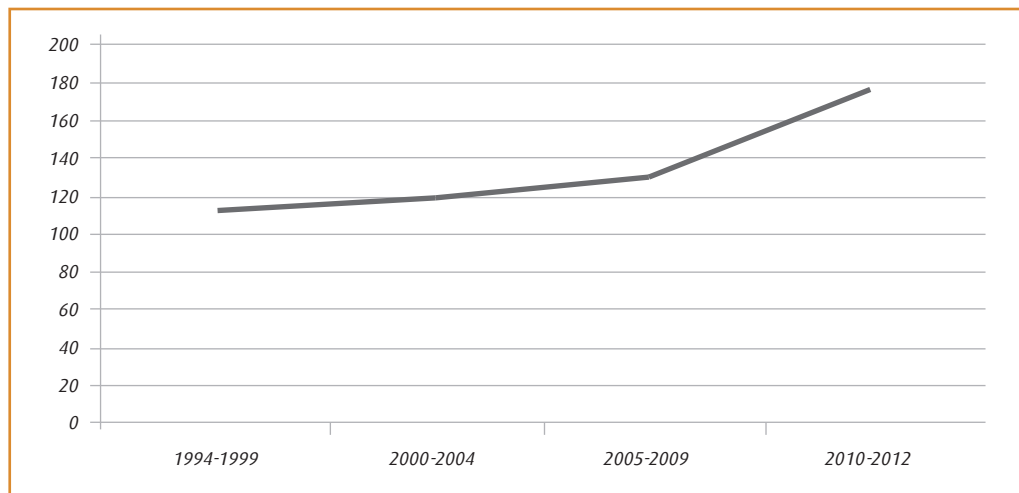
Graph 1: Seats held by Women at Provincial Legislatures



³ The data on this graph include information dating from 1994 until 2012 for only five provincial Legislatures. Information going back to 1994 was missing for the other four provincial Legislatures and is not reflected in this graph. It must also be noted that this graph does not show the number or percentage of male parliamentarians in the five legislatures, but it is presumed that the percentage of male parliamentarians in all the five Legislatures has been higher than that of women parliamentarians since 1994

The previous graph suggests that there is a steady increase in terms of number of parliamentary seats held by women between 1994 and 2012 in five Provincial Legislatures. At the national level, meaning the National Assembly, there has also been a tremendous increase in women Members of Parliament, as illustrated by graph 2 below.

Graph 2: Seats held by Women at National Parliament



This increased empowerment of women in politics in terms of percentage confirms literature findings that South Africa is indeed a global leader in promoting gender equity and empowering women in public life. For instance, the percentage of women or parliamentary seats held by them in the Mpumalanga Legislature increased from 23% between 1994 and 1999 to 31% in 2012. This was an increase of twenty-four percentage points between the two periods. In addition, the percentage of parliamentary seats held by women in the Limpopo Legislature also increased from 20% during the first government under former President Nelson Mandela to 31% during the Mbeki era between 2000 and 2009 and subsequently to 49% in 2012 under the leadership of President Jacob Zuma. In the North West province, the percentage of parliamentary seats held by women further increased from 27% in the first Legislature to 41% in the fourth Legislature. In the Eastern Cape Legislature, the increase in terms of seats held by women was from 23% in the period 1994 to 1999 to 49% in 2012.

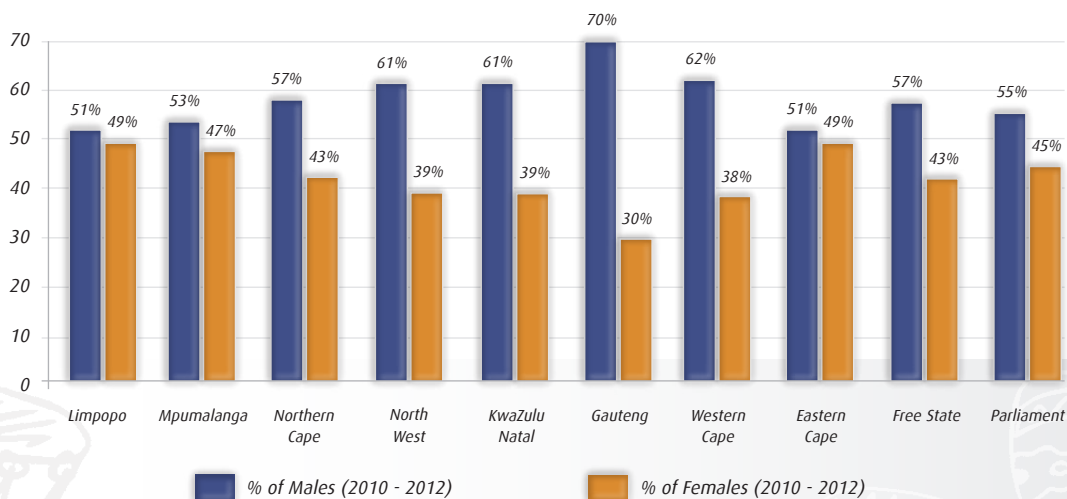
Similarly at the national level, meaning at the level of National Parliament, the increase in terms of women's representation as parliamentarians jumped from 27% during the first democratic government of national unity (GNU) to 33% during the Third Parliament under Thabo Mbeki and later to 44% in 2012. During the first and third governments, the increase at national level was four percentage points.

Graph 2 entails quantitative information pertaining to women's representation at national level also dating back from 1994 until 2012.

Despite this steady increase in women’s representation in Legislatures, the study revealed that in a few cases the number of parliamentary seats held by women may fluctuate depending on a number of factors, such as Cabinet reshuffles or death or the resignation of members. Justification for this argument is provided by the number of parliamentary seats held by women during the first term (1994-1999); and third term (2000-2004) of democratic government in the Northern Cape Provincial Legislature. For example, the number of women who held seats as Members of the Provincial Legislature (MPLs) decreased from ten in 1994 to nine in 2000, but nevertheless increased to thirteen in 2012.

Although significant progress was being made by the South African state in promoting gender equity and empowering women in politics, the findings further show that there is still a huge gap in terms of representation in the Legislatures and Parliament between male and female parliamentarians, given the total number of parliamentarians per political term. Graph 3 below further illustrates the gender imbalances in relation to parliamentary representation in the South African state. However, the period covered for this imbalance was just for the fourth government, beginning in 2010.

Graph 3: % of Male v/s Female Parliamentarians-2010-2012



Graph 3 indicates that over 60% of provincial parliamentary seats in KwaZulu-Natal, Gauteng, the Western Cape and the North West Legislatures were still held by male parliamentarians. This observation confirms the claim made earlier in this study that men still dominate in terms of numbers in the provincial Legislatures or Parliament. It must be stated again that the ANC has also set a 50/50 gender parity to be implemented in the civil service, the private sector and in the government. In line with this 50/50 gender parity policy, it can be deduced from the graph that the Legislatures and Parliament have not yet reached the set target. However, two Provincial Legislatures, namely; Limpopo and the Eastern Cape, nearly reached the 50/50 gender parity in terms of women’s

participation and representation as parliamentarians because of the 49% of women in these Legislatures. It could be argued that the increased percentage of women's participation and representation at 49% in Limpopo and the Eastern Cape Legislatures could be attributed to the ruling party's quota system, which states that for every two seats held by men, one must be held by a female political candidate. At least four Legislatures were still under the 40% mark in terms of women's representation in these public assemblies, but as stated earlier, they have exceeded the international percentage mark set by the United Nations through the Beijing Platform for Action of 1995.

Empirical studies suggest that the quota system as an electoral approach is an effective way to secure women's participation in politics in the face of pervasive obstacles. However, for this electoral approach to facilitate women's participation in politics, it needs to be supported by other measures such as training and education of women in general, development of gender-sensitive environments in order to provide a supportive political culture for female political candidates. Feminist writers like Bell Hooks argue that increasing the literacy levels of women in society is a necessary ingredient of continued growth of women's movements⁴. According to Bell Hooks, the lack of basic reading and writing skills exclude many women from feminist consciousness.

Moreover, the study further shows that all nine Provincial Legislatures and National Parliament have exceeded the percentage mark of 30% set by the United Nations through the Beijing Platform for Action in 1995. In addition, this remarkable achievement made by the South African state is further in line with the 'Convention on the Elimination of all Forms of Discrimination against Women', goal number three of the MDGs, which is "promotion of gender equality and women empowerment" and also the Southern African Development Community (SADC) targets. It could be argued that, comparatively, South Africa is doing better in empowering women in public life and promoting gender equality than most Arab states.

Women's freedom and empowerment in the Legislatures and Parliament are not only limited to their participation in these important political institutions of the state as ordinary members, but they also need to be given more leadership roles such as Speakers or Deputy Speakers, Members of the Executive Councils (MECs) and Chairpersons of Parliamentary Oversight Committees. The research findings on this particular aspect suggest that more women parliamentarians are being given more leadership roles such as Chairpersons of Oversight Committees of Parliament or Legislatures than their male counterparts. However, it must be noted that data for this leadership aspect in the Legislatures only reflect the current government administration, which started after the 2009 general elections. Table 1 below clearly illustrates this remarkable milestone achieved by the South African state through the Legislatures in promoting, attaining and protecting gender equality and the empowerment of women, especially in leadership roles.

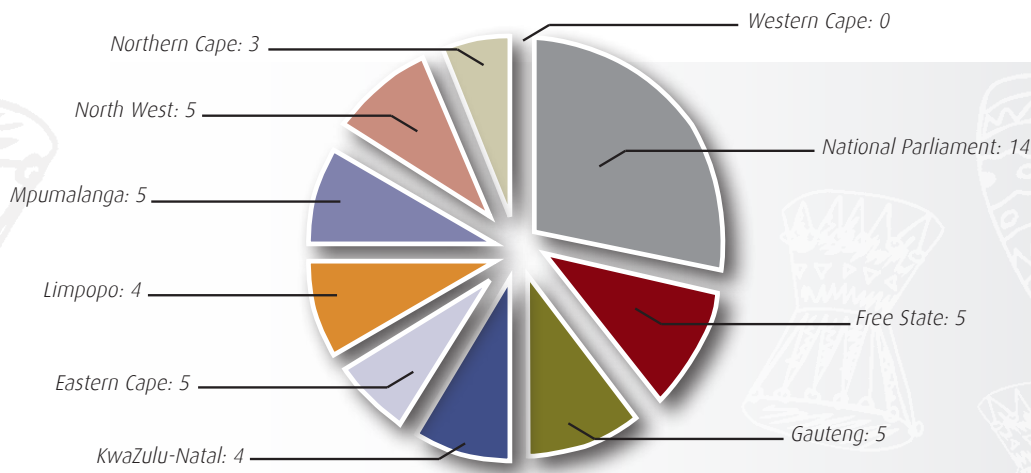
⁴ It has been indicated in many selected and published interviews or quotations from Bell Hooks that she prefers her name and surname being written in lower case, meaning that writers should not start either the name or surname with a capital letter. However, I decided not to honour her wish of writing her name and surname in the lower case, as she prefers. I am very sorry for this, but because in my culture it shows lack of respect not to start somebody's name or surname with capital letters, I could not do so.

Table 1: Women Chairpersons of Parliamentary Oversight Committees in 2010-2012

Name of the Provincial Legislature	Female Chairpersons of Committees 2010-2012	Male Chairpersons 2010-2012	Total No of Oversight Committees	% of Women Chairpersons of Committees
Limpopo Legislature	8	6	14	57%
Free State Legislature	4	4	8	50%
Gauteng Legislature	8	6	14	57%
North West Legislature	4	6	10	40%
Northern Cape Legislature	5	2	7	71%
Mpumalanga Legislature	5	4	9	55.5%
KwaZulu-Natal Legislature	11	10	21	52.3%
Eastern Cape Legislature	4	13	17	23.5%

In the Mpumalanga Provincial Legislature, there are nine Portfolio Committees that play an oversight role over the executive departments and these oversight committees are organised into clusters (social cluster, economic cluster & infrastructure cluster) headed by women parliamentarians as Chairpersons. In all the Legislatures, with the exception of two, namely the North West and the Eastern Cape Legislatures, the percentage of women holding Chairpersonships of Parliamentary Oversight Committees was above 50% in 2012. It must be noted that data on the leadership role for women parliamentarians was missing only from the Western Cape Provincial Legislature. Women have also been given the leadership roles in the Legislatures and Parliament as MECs and Ministers respectively, as illustrated by the graph below;

Graph 4: Female Ministers at Parliament & MECs at Provincial Level: 2010-2012



Also see her book titled "Educating Women: A Feminist Agenda".

While 50% of women held parliamentary seats in the four Legislatures, namely; the Eastern Cape, North West, Mpumalanga and Gauteng, as Members of the Executive Council (MECs), data reveals that very few women held parliamentary seats as MECs in most legislatures compared to male MECs in five Legislatures in South Africa. For example, in both Limpopo and KwaZulu-Natal Provincial Legislatures, four female parliamentarians as opposed to six males held seats as MECs of various government portfolios. At national level, data reveals that women held approximately 41% of parliamentary seats as Ministers of various government portfolios in National Parliament. This suggests that there are still gender imbalances in terms of women's representation as members of the provincial and national Cabinets. However, there were no women appointed as MECs in the Western Cape Legislature between 2010 and 2012 and this implies that gender equity and empowerment of women in leadership roles are not being promoted in that province. Of course, this is a political decision by the Premier of the Province, who is a woman. Another reason might be the political changes which happened when the African National Congress in general lost massive electoral support in the Western Cape Province in the April 2009 general elections, thus gaining fewer seats in the Provincial Legislature⁵.

Nevertheless, it is most imperative to note that the increased percentage of parliamentary seats held by women as Chairpersons of Oversight Committees, Ministers and or MECs can change at any given time during the five-year term of government depending on the prevailing political circumstances. For instance, changes within the Legislatures and Parliament, which either negatively or positively affect women, normally occur during Cabinet reshuffles, whereby the President or the Premiers of Provinces decide to make changes to the Cabinet. Reshuffling the Cabinet is the sole discretion of the President or the Premier and they do not have to account for the changes made to their Cabinets, either to Parliament or the Legislature, including the citizens. These changes sometimes also affect the composition of representation of members of Legislatures.

Notwithstanding the above dilemma, it could be argued that women in South Africa are now beginning to make a significant contribution to the development and influence of the political agenda of the country and its transformative social policy-making process. They furthermore make a huge impact on the democratic consolidation project of the country. A study by Kanter (1977, p. 209) indicates that where the percentage of parliamentary seats held by women is found to be less than 15%, they are then perceived as "tokens". This implies that women in such situations would become less effective in challenging the institutional norms and culture that perpetuate and facilitate their discrimination and marginalisation in society in general.

Generally, in post-apartheid South Africa, there are concerted efforts on all political and social fronts through awareness campaigns by civil society organisations and feminist

5 Since the 2004 general election, no party has ever achieved an absolute majority in the Western Cape Province. Having won 45% of the parliamentary seats in the province during that period, the ANC entered into an alliance with the New National Party, which had won 11% of the votes, which then allowed the ANC & NNP coalition to form a Western Cape Provincial Parliament. Fortunately, during the 2005 floor-crossing period, all the members of the NNP moved to the ANC, thus giving it an absolute majority in the province. For complex reasons the ANC was unseated by the Democratic Alliance (DA) winning an overwhelming 51.4% of the vote in the 2009 general elections. This gave the DA an opportunity to constitute a Provincial Cabinet with only one woman, the Premier of the province. Of course, the move was heavily criticized by the African National Congress, but in vain.

movements to increase and strengthen the participation of women in politics, thus promoting gender equality and the empowerment of women in public life. Empirical studies suggest that women's "sisterhood", meaning the solidarity of women, or what is commonly known as "wathinta abafazi watintha imbokodo" further strengthen resistance struggles against patriarchal coercion and reinforcement of male domination. Through their sisterhood and participation in democratic and transformative social policy-making, women can relinquish traditional ways of teaching that reinforce male domination in order to promote, attain and protect gender equity and empowerment of women.

Conclusion

The representation of women in South African politics in national and provincial spheres of government is consistently gaining momentum. An investigation of Parliament and all nine Legislatures reveals that South Africa has exceeded the percentage norm set by the United Nations through the Beijing Platform for Action of 1995, which stated that women's representation in all national Parliaments should be at least 30%. The African National Congress as the governing party has also adopted 50/50 gender parity at its Polokwane ANC National Conference in 2007 to promote, protect and attain gender equity and women's empowerment. These are some of the policy initiatives undertaken to promote gender equity and the empowerment of women, with an increasing percentage of women as parliamentarians in South Africa as a result. Significant changes in areas such as legal status, attitudes, women's involvement in decision-making, particularly political decision-making, ownership of homes, the justice system and economic participation have been observed in a study by the South African Commission on Gender Equality.

The paper concludes that there has been a steady increase in the percentage of women in South Africa as parliamentarians over the last eighteen years since 1994 and South Africa is ranked third in the world in terms of women's representation in Parliament⁶. This suggests that women play an equally important role both in national and sub-national politics. They are deeply involved in the democratic consolidation project as well as the development of the country. Future study may look at the contribution being made by the local government in South Africa to consolidate the democratisation project through the promotion of gender equity and the empowerment of women in regional politics. Although, important advances have been made to attain gender equality in politics, much still needs to be done to ensure that 50/50 gender parity is realised, not only in politics, but in society in general. A study report by the Commission for Gender Equality concurs that the tempo of change in South Africa is slow, and if the current trends persist, it would take centuries to achieve real substantive gender equality and empowerment of women. Therefore, the paper suggests that the literacy development of women is very critical for the attainment and protection of gender equality and the empowerment of women, not only in politics, but also in social structures.

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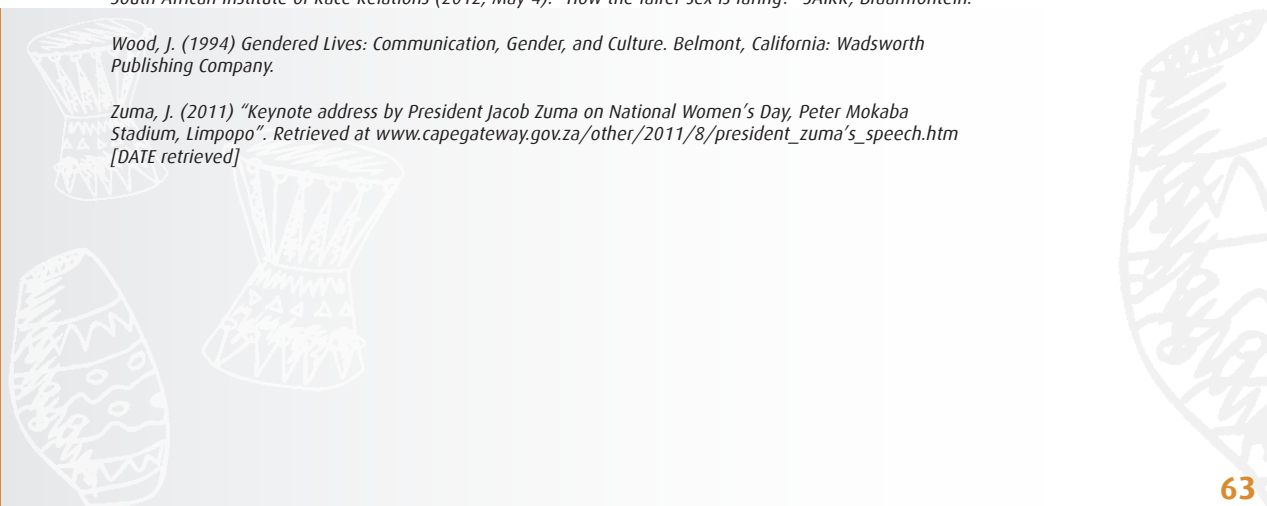
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6

The Role of Constitutional Institutions Supporting Democracy in Facilitating Effective and Proactive Oversight Over the Executive



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Abstract

Although South Africa has successfully established a wonderful cohort of Institutions Supporting Democracy (ISDs), however, ISDs are not fully utilised to complement legislative oversight over the executive government. These constitutional institutions are established to support the legislatures in overseeing the executive government. The study tested the role and the best practice of ISDs benchmarked with international counterparts. The ISDs play a key role in ensuring accountability of the executive government as they provide independent and reliable information to legislatures. Therefore, the institutional arrangement of some of the ISDs needed to be reviewed in order to enhance their capacity. ISDs have in common that they assist with the building of a united South African nation bound by loyalty to the country and its people. In addition, ISDs will be of assistance to legislatures with technical expertise to provide useful information, and knowledge that legislatures may use to conduct oversight over the executive. Currently legislatures conduct oversight over the annual reports and the financial statements that are produced by the executive, which may not promote effective and proactive oversight. Therefore there is a need for legislatures to fully utilise ISDs in conducting oversight as independent institutions.

Keywords: *democracy, oversight, executive, accountability, independence, institution, effectiveness, legislature, proactive, assurance, impartiality, prejudice, budget, transparency.*

1. Introduction

Governance goals of greater transparency, accountability and participation are directly related to Legislatures' three primary functions – passing laws, overseeing the executive and representing citizens. The Legislatures, Executive Government and judiciary, together with the institutions that support the constitutional democracy and wider society, provide the overall governance framework of South Africa. The good functioning of the Legislatures in collaboration with the constitutional Institutions Supporting Democracy (ISDs) is fundamental to promoting good governance. The effective oversight requires Members of the Legislature to fully understand the constitutional justifications and rationale behind the accountability of government. Therefore, oversight helps to promote the constitutional values of transparent, accountable government and good governance.

Legislatures are not making full use of some ISDs to complement oversight of the Executive Government and to brief Members of the Legislatures on various matters of public interest on which these institutions may have reported. However, South Africa has successfully established wonderful constitutional Institutions Supporting Democracy. Section 181(1) of the Constitution of South Africa provides for the establishment of the ISDs to strengthen constitutional democracy¹ (South Africa, 1996:108).

This study tested the role and the best practice of ISDs benchmarked with international counterparts. The study also highlights challenges and recommendations to enhance performance and profound engagement of ISDs with legislatures. In this regard, this study concludes by stating key challenges and highlighting possible recommendations to enhance the capacity of the ISDs.

The research methodology consists of:

- An analysis of legislation pertaining to the individual ISD
- Empirical analysis of the role, independence, status and practice of the individual ISD compared to international counterparts
- Reports of the ISDs
- Commissioned research papers
- Compilation of information contained in Parliamentary reports
- Government Gazettes

The structure of the study is divided into four parts. The first part describes and asserts the topic and gives an overview of the relationship of the legislatures with the role of the ISDs and outlines research methodology used. The second part contains highlights of the constitutional responsibilities of the ISDs to benchmark with international counterparts. The third part contains the closing remarks of the study which are relative to the challenges of the ISDs. The fourth part deals with the general observation and possible solutions to improve the role of the ISDs and their relationship with legislatures.

¹ South Africa, 1996: 108.

2. Constitutional Responsibilities of the Institutions Supporting Constitutional Democracy

These institutions are expected to be independent, impartial and perform their functions without fear, favour or prejudice² (South Africa, 1996: 108). No person or organ of state may interfere with their functioning and they are subject only to Constitution or Law. They are constitutionally enabled to monitor, regulate, advise and assist the Legislatures in conducting oversight. The Constitution of South Africa establishes the following state institutions strengthening democracy, whose mandates and guiding principles are outlined in their respective legislation:

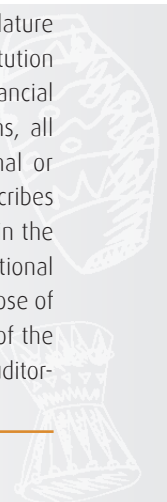
2.1 The Auditor-General

The Auditor-General serves as an independent assurance which Parliament relies on for overseeing public sector organisations for their actions and performance in accordance with Parliament's intentions. Their independent assurance gives confidence to both Parliament and the public. The independent assurance is enhanced through the statutory reporting requirements set out in the legislation that established the Auditor-General. Section 188 of the Constitution provides that the Auditor-General of South Africa (AGSA) must audit and report on the accounts, financial statements and financial management of all national and provincial state departments and municipalities. In addition, the Constitution requires that the AG audits and reports on any other institution or accounting entity required by national or provincial legislation to be audited. Therefore, the AG is entrusted with audits of the actions of government organisations as far as regulatory and performance audit and the development of audit standards are concerned (South Africa, 2004). The AG also conducts special investigations to respond to queries from the ratepayers, taxpayers and Members of Legislatures.

Auditor-General of South Africa (AGSA) - is an independent Supreme Audit Institution (SAI) of South Africa which carries out an audit of government accounts in order to determine whether government did in fact implement the budget as appropriated by the Legislature and complied with the financial prescripts. Therefore, section 188(1) of the Constitution empowers the AG to audit and report on the accounts, financial statements and financial management of all national and principal state departments and administrations, all municipalities and any other institution or accounting entity required by national or provincial legislation to be audited by the AG. Section 188(3) of the Constitution prescribes that the AG must submit audit reports to any legislature that has a direct interest in the audit, and to any other authority prescribed by national legislation. The AG has additional powers and functions prescribed by the Public Audit Act 25 of 2004 (PAA). The purpose of this Act is to provide guiding principles to the AG and give effect to the provision of the Constitution by establishing the oversight mechanism, the Standing Committee on Auditor-

2 South Africa, 1996: 108.

3 South Africa, 2004: 25.



General (SCoAG) that oversees the AG. The PAA also assigns functions to the AG and outlines the appointment process of the AG and Deputy Auditor-General (DAG). Section 55(2) of the Constitution prescribes that the National Assembly (NA) must provide for an oversight mechanism to ensure that all organs of state in the national sphere of government are accountable to it and maintain oversight over the executive and constitutional institutions. Therefore, the SCoAG was established in 2005 and its mandate, as outlined in section 10(3) of the PAA, gives effect to section 52(2) of the Constitution, hence the mandate of the SCoAG is to assist and protect the AG in order to safeguard its independence, impartiality, dignity and effectiveness⁴ (South Africa, 2004: 25).

SUMMARY OF THE GENERAL AUDIT FINDINGS BY THE AG ON PUBLIC SECTOR AUDIT OUTCOMES

Although the Legislatures are collaborating with the AG, there are still challenges in resolving the following recurring audit findings that would be improved by following up the recommendations and resolutions of the Public Accounts Committees and enhancing transparency, accountability and oversight in all spheres of government:

No.	General Findings on Audit Outcome
1.	<i>Shortcomings in internal controls that limit the government in achieving clean audits relate to reporting on predetermined service delivery objectives and compliance with laws and regulations.</i>
2.	<i>Lack of oversight by the leadership in the provincial and local government spheres.</i>
3.	<i>Lack of capacity to manage financial and performance information and compliance with laws and regulations, which is further eroded by shortcomings in human resource management in some auditees and the lack of Information Technology (IT) governance frameworks in some auditees.</i>
4.	<i>Repeated qualification of audit opinion.</i>

Source: AG Report (2010)

The AG indicated that experience has taught them that when the country's political leadership sets the right tone and acts on the AG's audit findings and recommendations, the results tend to be positive⁵ AG (2010). The audit opinion of the AG is important in this instance as it serves to inform Legislatures about the accuracy of the information tabled before them.

Auditor-General of Canada - the primary function of the AG in Canada is to provide independent and reliable information concerning the federal government's use of public funds⁶ (Canada, 1985: c.A-17). In fulfilling this role, the AG performs regular financial audits of how the federal government collects and spends public funds. This involves independently producing reports for Parliament and the general public. As an officer of

⁴ South Africa, 2004.

⁵ AG (2010)

⁶ Canada, 1985: c.A-17.

Parliament, the AG reports his or her findings directly to the House of Commons, not to the executive government. According to the Auditor General Act of 1985 No. c.A-17 of 1985 this grants the Office of the AG specific powers and responsibilities which are spelled out in two key pieces of legislation. The first legislation is the Federal Auditor-General Act, which is directly concerned with Parliament and the operation of the Office of the AG. The Act outlines the AG's powers and duties, his or her access to government information, staffing entitlements and obligations as well as who is to audit the financial records of the AG. The second key piece of legislation is the Federal Financial Administration Act, which provides the legal framework for general financial management and accountability of public service organisations and Crown Corporations.

The AG plays a key role in ensuring accountability at the federal government level. In order for Parliament to effectively hold the federal government accountable for its use of public funds, it requires access to independent and reliable financial information. It is the AG's responsibility to provide the independent and reliable financial information to Parliament.

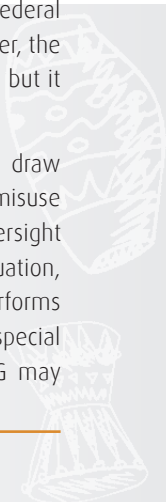
OPERATIONS OF THE AUDIT OFFICE OF CANADA

The AG in Canada is more than an individual as he or she is also an Office, the Office of the AG. The Office of the AG is a multidisciplinary staff establishment which includes accountants, engineers, lawyers, management specialists, information technology professionals, environment specialists, economists, historians, and sociologists⁷ (www.oag-bvg.gc.ca, 2004: Online). The staff is organised into teams that are assigned to the audit of specific government departments, agencies and Crown Corporations. The AG in Canada has the Executive Committee, which consists of the AG, the Deputy Auditor-General (DAG) and 12 Assistant Auditors-General (AAGs). Also included in the Executive Committee is the Commissioner of the Environment and Sustainable Development, who is responsible for reviewing government policies and action in areas of environmental protection and fostering sustainable development. The AG's Office has the power to examine and report on the financial activities of government departments, agencies and Crown Corporations. It also has the power to comment on whether or not the federal government has implemented its policies in a financially effective manner. However, the AG does not have the power to comment on the government's choice of policies, but it is empowered by the Public Audit Act of 2001 to:

Comment on how effectively the federal government spends public funds and draw attention to incidents of what he or she believes to be government wastage or misuse of public funds. The Act also empowers it to examine the procedures and oversight mechanisms the government has put in place with regard to monitoring and evaluation, as well as precisely how and where the government is spending its money. It performs three main types of audits, such as a financial audit, a performance audit and special examinations⁸ (South Africa, 2001). According to the Public Audit Act, the AG may

⁷ www.oag-bvg.gc.ca, 2004

⁸ South Africa, 2001



access all information that relate to the fulfilment of its responsibilities and demand and receive from the members of the federal public service any information, reports and explanations that the AG considers necessary; Examine any person under oath on any matter pertaining to an audit undertaken by the office, and share the same powers as a Public Enquiry Commissioner in doing so; Place his or her staff in any public service office whenever it is deemed necessary; Perform financial audits, which focus on whether the federal government keep proper accounts and records of its financial activities; Report any other financial matters he or she thinks should be brought to the attention of Parliament. In addition the Office of the AG in Canada carries out the Performance Audit, which is commonly referred to as “value-for-money-audits”. The Performance Audit is for assessing whether government departments and programs are being run in an adequate manner.

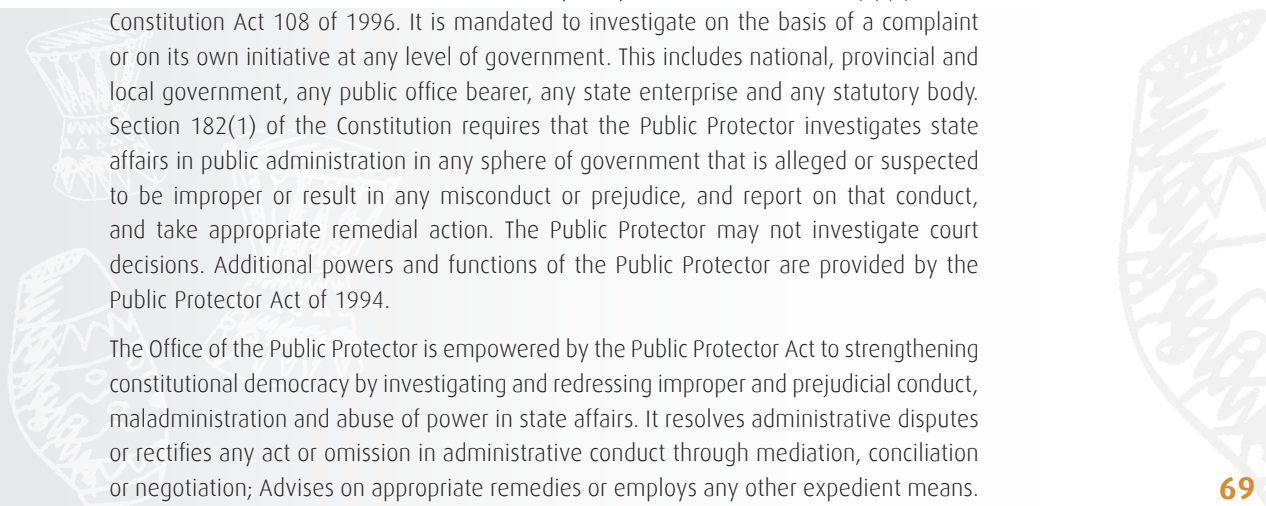
INDEPENDENCE OF THE AUDITOR-GENERAL OF CANADA

According to the Auditor General Act No. c. A-17 of 1985 (Canada, 1985), the Office of AG in Canada is meant to operate independently of the federal government. This is to ensure that findings of the AG are objective and without influence from government officials. The Office does not submit itself to several mechanisms of review and oversight as it is subject to refraining from performing financial audits of its own office. Instead such reviews are performed by an external auditor, which is appointed by the Treasury Board of Canada. The external auditor’s report is submitted to the Treasury Board and then forwarded to the House of Commons. It is also subjected to review by its international counterparts to assess to what extent the Office of the AG’s systems and practices are appropriately designed to ensure the independence and quality of its audits, and whether they are being implemented effectively. An effective independent and quality management system means that Parliament can rely on the AG’s reports when using them to examine the government’s performance and hold it to account.

2.2 The Public Protector

The Public Protector is an Office established by the provision in section 181(1)(a) of the Constitution Act 108 of 1996. It is mandated to investigate on the basis of a complaint or on its own initiative at any level of government. This includes national, provincial and local government, any public office bearer, any state enterprise and any statutory body. Section 182(1) of the Constitution requires that the Public Protector investigates state affairs in public administration in any sphere of government that is alleged or suspected to be improper or result in any misconduct or prejudice, and report on that conduct, and take appropriate remedial action. The Public Protector may not investigate court decisions. Additional powers and functions of the Public Protector are provided by the Public Protector Act of 1994.

The Office of the Public Protector is empowered by the Public Protector Act to strengthening constitutional democracy by investigating and redressing improper and prejudicial conduct, maladministration and abuse of power in state affairs. It resolves administrative disputes or rectifies any act or omission in administrative conduct through mediation, conciliation or negotiation; Advises on appropriate remedies or employs any other expedient means.



The Public Protector also enjoys the privilege of making recommendations on findings and reporting accordingly. According to the Executive Members Ethics Act No.82 of 1998 the Office of the Public Protector also advises and investigates violations by the Executive Members. The scope of work of the Public Protector overlaps with the Promotion of Access to Information Act 2 of 2000, where he or she is empowered by this Act to resolve disputes relating to operations. In addition the Public Protector discharges other responsibilities as mandated by the following legislation:

The Electoral Commission Act 51 of 1996; Special Investigating Units and Special Tribunals Act 74 of 1996; Protected Disclosures Act 26 of 2000; National Archives and Record Service Act 43 of 1996; National Energy Act 40 of 2004; Housing Protection Measures Act 95 of 1998; National Environmental Management Act 108 of 1999; Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000; Public Finance Management Act of 1999; and Lotteries Act 57 of 1997.

The Public Protector has jurisdiction over all organs of state, any institution in which the state is the majority or controlling shareholder, and any public entity as defined in section 1 of the Public Finance Management Act of 1999 (PFMA)⁹.

REPORTING RESPONSIBILITY OF THE PUBLIC PROTECTOR

According to the Constitution Act No. 108 of 1996, the Public Protector is accountable to the NA and must report on his or her activities and performance of his or her function at least once a year. The Public Protector must, however, at any time submit a report to the NA on findings of a particular investigation if he or she believes it necessary or he or she deems it to be in the public interest. The Public Protector may also report a matter that requires the urgent attention of, or an intervention by, the NA, or if requested to do so by the Chairperson of the National Council of Provinces (NCOP). Any report issued by the Public Protector must be open to the public unless exceptional circumstances require that a report be kept confidential.

Although the Public Protector is entrusted with the above constitutional responsibilities and producing information and knowledge that are critical to oversight over the executive, however, it is one of the ISDs' concerns that the Legislatures are not making full use of them to facilitate effective oversight. However, some countries do not have a statutory body as a Public Protector, like South Africa. Instead they established an ombudsman that is not statutorily empowered, and therefore cannot be compared to the Public Protector of South Africa.

2.3 Public Service Commission

Section 196(1) of the Constitution regulates that a single Public Service Commission be established for the Republic of South Africa¹⁰. The Constitution prescribes that the Public Service Commission must be independent, impartial, and exercise its constitutional

⁹ South Africa, 1999

¹⁰ South Africa, 1996



powers and perform its functions without fear, favour or prejudice in the interest of the maintenance of effective and efficient public administration and a high standard of professional ethics in the public service. The functions of the Public Service Commission are subject to the provisions of the Constitution in which the Commission may exercise its powers and perform the duties entrusted to it by the Constitution, the Public Service Commission Act 46 of 1997 or the Public Service Act (PSA) of 1994. The Commission may inspect government departments and other organisational components in the public service, and has access to official documents or may obtain information from the heads of those departments or organisational components or from other officers of the department or organisational components. The Commission may make rules which are not inconsistent with the Constitution and the PSCA.

The functions of the Public Service Commission are to promote the constitutionally prescribed values and principles that govern public administration in the public service. The Commission is also empowered to investigate, monitor and evaluate the organisation and administration and personnel practices of the public service. It is responsible for proposing measures to ensure effective and efficient performance within the public service. The Commission helps to give directions aiming at ensuring that personnel procedures relating to recruitment, transfers, promotions and dismissals comply with the constitutionally prescribed values and principles. It is responsible for reporting in respect of its activities and the performance of its functions, including any finding it may make and directions and advice it may give, and to provide an evaluation of the extent to which the constitutionally prescribed values and principles are complied with. According to the Public Service Commission Act No. 46 of 1997, either of its own accord or on receipt of any complaint, the Commission must investigate and evaluate the application of personnel and public administration practices, and report to the relevant executive authority and legislatures. The Commission is also empowered to investigate grievances of employees in the public service concerning official acts or omissions, and recommend appropriate remedies. In addition, it monitors and investigates adherence to applicable procedures in the public service. Furthermore, it advises national and provincial organs of state regarding personnel practices in the public service, including those relating to the recruitment, appointment, transfer, discharge and other aspects of the careers of employees in the public service.

The Public Service Commission monitors and evaluates the Department of Public Service and Administration, which is mandated to foster good governance and sound administration in the public service. The Department is a state department which deals with public service personnel matters relating to conditions of service, management of compensation, human resources, labour relations, public service governance, service delivery, state information technology, capacity-building and skills management. Therefore, the Department of Public Service and Administration has a technical oversight role over all state departments as they deliver a service to the people of South Africa. In that instance the Public Service Commission oversees the overseer of all state departments, therefore the Commission has a very important function, to assist the Legislatures in facilitating proactive and effective oversight.

REPORTING RESPONSIBILITY OF THE PUBLIC SERVICE COMMISSION

Section 196(5) of the Constitution regulates that the Commission must account to the NA. Section 196(6) prescribes that the Commission must report at least once a year to the NA in respect of its activities and the performance of its functions, including any finding it may make and directions and advice it may give, and to provide an evaluation of the extent to which the values and principles of Public and Service Administration, as set out in section 195 of the Constitution, are complied with. The Commission is also required by the Constitution to report at least once a year, in respect of its activities in a province, to the provincial legislature.

It seems South Africa is the only country that has a Public Service Commission with a clear constitutional mandate and functions. Therefore, it was not possible to compare it with the Public Service bodies that have no clear constitutional mandate and functions.

2.4 Human Rights Commission of South Africa

The South African Human Rights Commission is a national institution established to entrench constitutional democracy. Human rights are the basic rights that everyone has, simply because they are human. Chapter 2 of the Constitution of South Africa contains a Bill of Rights which is meant to protect human rights. The Human Rights Commission is established in terms of section 181(1) of the Constitution and the Human Rights Commission Act of 1994.

The constitutional functions of the Public Service Commission are outlined in section 184 of the Constitution. Some of its functions are to promote respect for human rights and a culture of human rights and protect, develop and attain human rights. In addition it monitors and assesses the observance of human rights in South Africa.

The powers of the Human Rights Commission are also regulated by the Human Rights Commission Act of 1994. The Act empowers the Commission to investigate and report on the observance of human rights. It takes steps to secure appropriate redress where human rights have been violated. The Commission carries out research and educate society about human rights. Each year the Human Rights Commission must require the relevant organs of state to provide the Commission with information on the measures that they have taken towards the realisation of the rights in the Bill of Rights concerning housing, health care, food, water, social security, education and the environment. It promotes an awareness of human rights among the people of South Africa. The Commission is also responsible for making recommendations to the state to improve the exercising of human rights. Furthermore, it undertakes studies and reports to Parliament on matters relating to human rights and investigates complaints of violations of human rights and seeks appropriate relief.

Although the Human Rights Commission performs the above-mentioned functions across all government departments and municipalities on the basic social needs of the people of South Africa and produces valuable information and knowledge that are critical to oversight. However, it has not been fully utilised by the Legislatures to facilitate proactive and effective oversight.



EQUALITY AND HUMAN RIGHTS COMMISSION OF ENGLAND

The Equality and Human Rights Commission (EHRC) of England promotes and monitors equality, human rights and provides support for the Human Rights Act. The EHRC was set up in terms of the Equality Act of 2006 to establish an inclusive approach to promote equality and human rights. It also provides more effective support for discrimination legislation and tackles discrimination in relation to sex orientation, age and religion or belief.

The EHRC equality work covers England, Scotland and Wales. However, Scotland has its own Human Rights Commission. The EHRC replaced the Disability Rights Commission, the Equal Opportunities Commission (EOC) and the Commission for Racial Equality (CRE).

The Human Rights Act of 1998 (HRA) places a duty on all courts and tribunals in the United Kingdom (UK) to interpret the legislation as far as possible in a way that is compatible with the rights laid down in the European Convention on Human Rights (ECHR). The ECHR is an international agreement or treaty to protect human rights and fundamental freedoms in Europe, which was drafted in 1950 by the Council of Europe. All Council of Europe member states are party to the Convention. The HRA applies to all public bodies within the UK, including central government, local authorities, and bodies exercising public functions. However, it does not include Parliament when it is acting in its legislative capacity. Despite the fact that the Act states that it applies to public bodies, it has had an increasing influence on private litigation between individual citizens involving some academics, as in disputes between the state and citizens. Section 6(1) of the HRA defines courts and tribunals as public bodies, meaning their judgments must comply with human rights obligations, except in cases of declarations of incompatibility. Therefore, judges have a duty to act in compatibility with the European Convention on Human Rights even when an action is a private one between two citizens. Even though the Act's interpretative instruction to interpret legislation as compatible with conventional right, it applies only to statute and not to common law.

There is no constitutionally protected Bill of Rights or written constitution, but instead the basis of the relationship between state and citizen is constructed on a variety of statutory provisions and common law rules, which seek to confer on the citizen certain rights and liberties. For example, the protection of the right to life is primary, ensured by the criminal law (crimes of murder and manslaughter); Protection of the right to freedom of expression and conscience is encouraged and guaranteed by the parliamentary privilege for freedom of expression by Members of Parliament.

THE IMPACT OF THE HUMAN RIGHTS ACT OF 1998 ON POLICING IN ENGLAND AND WALES¹¹

The fundamental aim of the HRA is to protect and enhance citizens' rights and freedoms. However, it is argued that there is little or no indication to suggest that it has promoted a greater awareness and respect for human rights amongst police officers¹² (Bullock,

¹¹ *Bullock and Johnson 2011*

¹² *England, 2003.*

Johnson, 2011: Online). The HRA has become institutionalised by the police service into a series of bureaucratic processes that, although requiring conformity by officers, do not encourage active consideration of human rights issues. The HRA is not used to achieve a balance between rights and community interest, but becomes a framework for mandating police decision-making and protecting officers from criticism and blame.

Should the Human Rights Commission of South Africa adopt the inclusive approach, which is the model of British Equality and Human Rights Commission, encompassing the mandates, and play the roles of both Commission for Gender Equality, and Commission for the Protection of the Rights of Cultural, Religious and Linguistic Communities, there is no doubt that the costs of maintaining these institutions will be saved. But the question is this. Will the Human Rights Commission of South Africa be diligent and effective in performing the functions of these Institutions?

2.5 Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities

The Commission is established in terms of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities Act 19 of 2002. It aims to promote and develop peace, friendship, humanity, tolerance and national unity among and within cultural, religious and linguistic communities on the basis of equality, non-discrimination and free association.

The Constitution, by establishing this Commission, seeks to heal the divisions of the past and establish a non-racial and non-sexist society based on democratic values, social justice and fundamental human rights. It also seeks to promote equality, respect and protection of cultural, religious and linguistic communities. Furthermore, it promotes unity in our diversity.

FUNCTIONS OF COMMISSION

The Constitution outlines the basic functions of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, that are to promote respect for the rights of cultural, religious and linguistic communities. It also promotes and develops peace, friendship, humanity, tolerance and national unity among cultural, religious and linguistic communities on the basis of equality, non-discrimination and free association. In addition, it recommends the establishment or recognition, in accordance with national legislation, of a cultural or other council or councils for a community or communities in South Africa.

The additional powers and functions of the Commission are regulated by the National Legislation, which is necessary to achieve its fundamental responsibilities, including the power to monitor, investigate, research, educate, lobby, advise and report on issues concerning the rights of cultural, religious and linguistic communities.

The Commission, in fulfilling its constitutional task, plays a key role in assisting with the building of a truly united South African nation bound by a common loyalty to the country and its people.

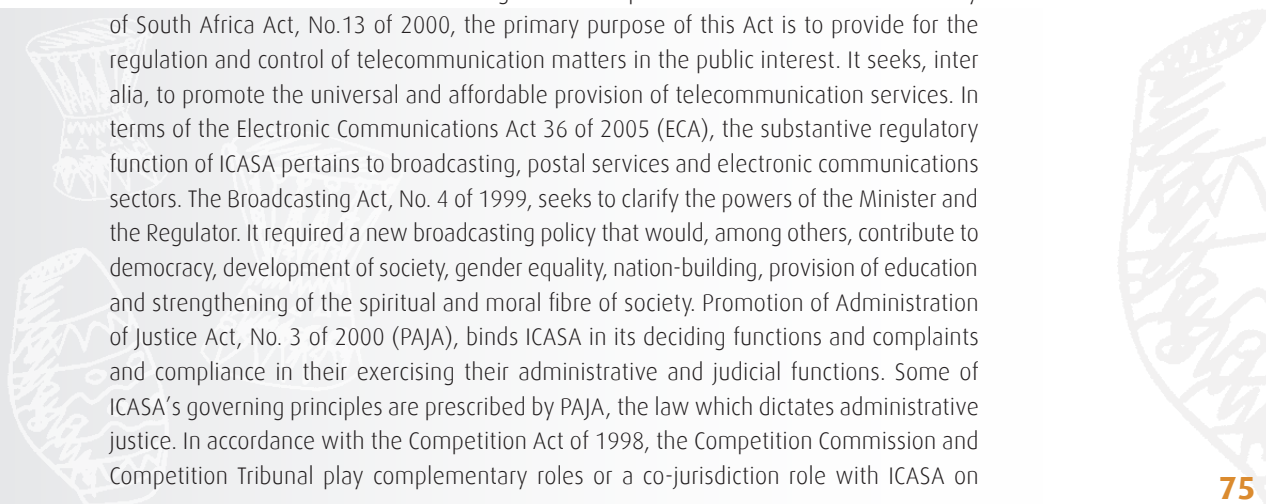


2.6 Independent Communications Authority of South Africa (ICASA)

The Independent Communications Authority of South Africa (ICASA) is an independent regulatory body of the South African government that was established in 2000 by the Independent Communications Authority of South Africa Act. The ICASA Amendment Act of 2006 includes the Postal Services, which was previously regulated by the Postal Authority. The membership of ICASA increased in 2006 from seven to nine to accommodate the new members from the dissolved Postal Authority body. ICASA is a licensing body, a regulator and a quasi judicial body because it licenses, regulates, adjudicates and issues sanctions. Section 34 of the Constitution gives powers to ICASA to adjudicate and issue sanctions as it prescribes that everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum. ICASA is also an organ of state bound by the Bill of Rights, which protects the right to equality, human dignity, life, freedom and security of the person, freedom of religion, belief and opinion, freedom of expression, etc. Section 8(1) of the Constitution regulates that the Bill of Rights applies to all law, and binds the Legislature, the Executive, the Judiciary and all organs of state. The responsibility of ICASA is aimed at the protection of democracy and ensuring free and open airwaves.

MANDATE OF ICASA

ICASA's mandate is to regulate electronic communications (broadcasting and telecommunications) and postal services in the public interest. It derives its mandate from several primary pieces of legislation and the subsequent amendment of the ICASA Act of 2000. The Constitution of the South Africa, Act 108 of 1996, the Constitution of South Africa, requires Parliament to establish an independent regulatory institution which is required to provide for the regulation of broadcasting in the public interest, and to ensure fairness and a diversity of views broadly representing South African society. Parliament amended the ICASA Act of 2000 to align postal services to ICASA's functions and added the regulation of electronic communications. According to the Independent Communications Authority of South Africa Act, No.13 of 2000, the primary purpose of this Act is to provide for the regulation and control of telecommunication matters in the public interest. It seeks, inter alia, to promote the universal and affordable provision of telecommunication services. In terms of the Electronic Communications Act 36 of 2005 (ECA), the substantive regulatory function of ICASA pertains to broadcasting, postal services and electronic communications sectors. The Broadcasting Act, No. 4 of 1999, seeks to clarify the powers of the Minister and the Regulator. It required a new broadcasting policy that would, among others, contribute to democracy, development of society, gender equality, nation-building, provision of education and strengthening of the spiritual and moral fibre of society. Promotion of Administration of Justice Act, No. 3 of 2000 (PAJA), binds ICASA in its deciding functions and complaints and compliance in their exercising their administrative and judicial functions. Some of ICASA's governing principles are prescribed by PAJA, the law which dictates administrative justice. In accordance with the Competition Act of 1998, the Competition Commission and Competition Tribunal play complementary roles or a co-jurisdiction role with ICASA on



competition matters within the electronic communications environment. The Competition Commission holds an ex post jurisdiction over competition-related matters. ICASA holds an ex ante and ex post jurisdiction over competition-related matters.

ICASA is also responsible for licensing broadcasters, signal distributors, providers of telecommunications services and postal services. It also makes regulations and imposes licence conditions. The Commission has the expertise to plan, assign, control, enforce and manage the frequency spectrum. It ensures international and regional co-operation and consults with the Ministry of Communications to give effect to the Electronic Communications Act of 2005, and decides on complaints.

ICASA would be of assistance to Parliament as it possesses technical and litigation expertise that helps to produce very important information and knowledge that Parliament may make full use of to facilitate proactive and effective oversight.

OFFICE OF COMMUNICATIONS (OFCOM) OF THE BRITISH

The Broadcasting Act of 1990 aimed to reform the entire structure of British Broadcasting and British Television. The Act abolished the Independent Broadcasting Authority (IBA) and replaced it with the Independent Television Commission (ITC) and Radio Authority and later both of them were replaced by the Office of Communications (Ofcom), which were both given the responsibility of regulating with very limited powers and did not have such strong powers as the IBA. The Communication Act of 2003 confers functions and powers of the Ofcom to make provisions about regulation of broadcasting, television and radio services. Ofcom regulates mergers involving newspaper and other media enterprises and in that connection amended the Enterprise Act of 2002. Furthermore, it regulates any function in relation to telephone numbers conferred on it by this law. Ofcom has the responsibility to institute and carry out criminal proceedings in England and Wales or Northern Ireland for an offence relating to a matter in relation to which it has functions and make payments (where no legal liability) to persons adversely affected by carrying out of any function of Ofcom. It establishes and maintains its separate offices in England, Wales, Scotland and Northern Ireland.

The Communication Act, No. c.21 of 2003, also outlines the general duties of Ofcom to further the interests of citizens in relation to communications matters. It advocates the interests of consumers in relevant markets, where appropriate, by promoting competition. Ofcom also regulates wireless telegraphy of the electro-magnetic spectrum for optimal use and the availability of a wide range of electronic communication services throughout the UK. It considers the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in such services. Furthermore Ofcom regulates the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public and all other persons from both:

- i. Unfair treatment in programmes included in such services; and
- i.ii. Unwarranted infringements of privacy resulting from activities carried out for the purposes of such services.

In performing its duties Ofcom must have regard in all cases for the principles under which regulatory activities should be transparent, accountable, proportionate, and consistent and target cases in which action is needed. In addition, any other principles appear to represent the best regulatory practice.

The Communication Act requires that Ofcom takes the responsibility for complying with the direction of the Secretary of State to provide him or her with information falling within its functions. In addition, the European Convention requires Ofcom to provide it with information for the purpose of enabling it to perform any of its functions in relation to electronic communications network, electronic communication services or associate facilities. The Parliament of England and other statutory bodies in Europe make full use of Ofcom as a body of knowledge to facilitate and enhance their proactive and effective oversight.

2.7 Commission for Gender Equality

The Constitution of South Africa provides that the objectives of the Commission for Gender Equality are to promote gender equality, and to advise and make recommendations to Parliament or any other Legislature with regard to any laws or proposed legislation which affects gender equality and the status of women.

FUNCTIONS OF THE COMMISSION FOR GENDER EQUALITY

Section 187 of the Constitution requires that the Commission for Gender Equality promotes respect for gender equality and the protection, development and attainment of gender equality, and has the power, as regulated by Commission on Gender Equality Act, No. 39 of 1996 (CGE Act), which is necessary to perform its functions, including the power to monitor, investigate, research, educate, lobby, advise and report on issues concerning gender equality. Additional powers and functions prescribed by the CGE Act are to monitor all organs of society to ensure that gender equality is safeguarded and promoted and assess all legislation from a gender perspective. It is also responsible for commissioned research and makes recommendations to Parliament and other authorities. The Commission educates and informs the public. It investigates complaints on gender-related issues and monitors South Africa's progress towards gender equality in relation to international norms.

The Commission for Gender Equality co-operates with other ISDs to promote human rights and democracy, including the South African Human Rights Commission and the Public Protector.

3. Conclusion

Whilst this study confirmed the role of ISDs in facilitating effective and proactive oversight, it suggests their continuous improvement. The ISDs need to be improved in terms of their independence and institutional and financial arrangements to enhance capacity. The independence of some of the ISDs is compromised as they are funded by the executive, with the exception of the Office of the AG, which is self-funded by charging the audited organisations audit fees.

The study also indicates that legislatures were not conducting effective and proactive oversight as they relied on annual reports and financial statements produced by the executive as the mechanism to oversee the executive. The information produced by the ISDs should always be credible because they are independent from the executive. Therefore, making full use of the ISDs by Legislatures would help to facilitate the proactive and effective oversight over the executive. In conclusion, the study highlights the key issues discussed herein and their implications for the role of ISDs and their relationship with Legislatures.

4. General Observations and Possible Solutions

This study recommends further work to improve the capacity, independence and institutional and financial arrangement of the ISDs and the relationship between legislatures and ISDs.

- There is a need to enhance the capacity of the Office of the AG to conduct performance audits. Enhancing the capacity of the Office of the AG will require a systematic review of resources, including personnel.
- Legislatures should establish mechanisms to ensure the systematic, comprehensive and efficient processing of performance audit reports that would be different from the regulatory audit reports that legislatures are familiar with. Therefore the capacity of legislators should be strengthened in order to deal with the performance audit reports.
- The Public Audit Act does not give the AG authority to make binding decisions in circumstances where the executive does not act on the recommendations contained in the audit reports. To some extent the AG must rely on the cooperation of government institutions to accept and act on recommendations contained in the audit reports. The AG should make special reports to legislatures in such circumstances, which may result in debate.
- The legislatures also cannot make binding decisions, and should they wish that action be taken on the basis of their resolutions, they must make such recommendations to the executive and then the executive is expected to implement them. Recommendations by their very nature are not formally binding. Therefore the legislatures should be empowered to enforce the implementation of their resolutions.
- There is no formal understanding between the ISDs that regulates their working relationship. The absence of a formal memorandum of understanding and mechanisms to track and monitor progress of the referred issues is a matter of concern. There should be a formal memorandum of understanding among the ISDs and mechanisms to track and monitor progress of issues referred to each other.
- The current budgetary arrangements of some of the ISDs, with the exception of the AG, compromise their independence. The budget of some of the ISDs is a separate item in the annual appropriation of the executive. Therefore the channel of budget information to the Ministerial Committee on Budget (MINCOMBUD), is through the respective Ministers and the ISDs are unable to influence the MINCOMBUD, nor can

they ask the Ministers do so on their behalf. Consideration should be given to the location of the budgets of the ISDs in the Budget Vote of Parliament in recognition of the fact that these institutions are accounting to Parliament (National Assembly). This arrangement excludes the AG's budget, which is not determined by the executive.

- The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities should be amalgamated with the SAHRC to establish a strengthened, highly organised and unitary body called the South African Commission on Human Rights and Equality. Therefore, it will be better equipped to deal with many challenges relating to promoting and protecting human rights.
- The ISDs in 1998 established the Committee of the voluntary body, the Forum of Independent Statutory Bodies (FISB) to liaise between the various constitutional and statutory bodies in order to foster common policies and practices and promote cooperation. However, this forum is not functional, and among the reasons advanced for the failure of this body is disparity of available resources, both human and material, that prevented some institutions from being able to collaborate. For the collaboration and cooperation of the ISDs this Forum should be revived.

Some of the above-mentioned recommendations include the recommendations of the Ad hoc Committee on the Review of Chapter 9 and Associated Institutions.



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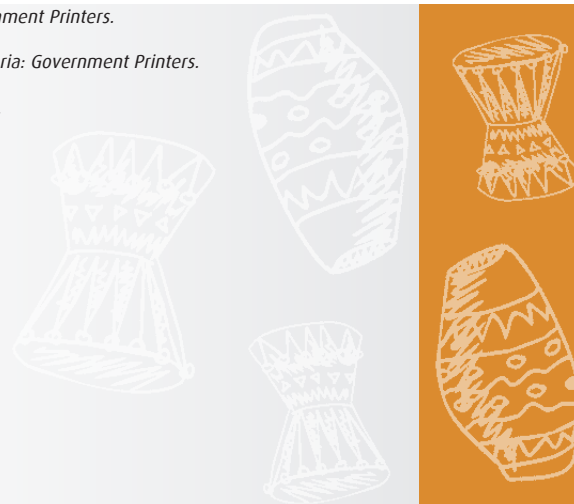
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7

The Independent Financial Scrutiny or Financial Oversight of the Budget by Legislatures - Perspectives of the South African Legislative Sector



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Abstract

The article follows an exploratory research approach to investigate the relationship between the “independent financial oversight” of the legislative arm and the “budget formulation” of the executive arm. The article is based on the doctrine of the separation of powers and further argues that the Constitution confers different but interdependent roles on the public sector budget processes. This is deduced from the constitutional prescripts of granting the Treasury control powers to a member of the executive arm, inter alia, it grants powers to appropriate or withdraw funds from the National Revenue Fund only to the legislative arm. It is argued that the budget processes in South Africa are dominated and influenced mostly by the executive arm.

The article reflects on Wehner’s budgetary powers index as an attempt to possibly assign measurable properties to the qualitative variable of “financial oversight power” of a legislature. The article further points out the advancement and further enhancement of the financial oversight role of the legislative arm in the newly enacted Money Bills Amendment Procedure and Related Matters Act. The article further calls on the legislative arm to swiftly implement this piece of legislation and make the necessary internal arrangements.

Keywords: budget, fiscal framework, financial scrutiny, legislature, medium-term budget policy statement, parliamentary budget offices

1. Introduction

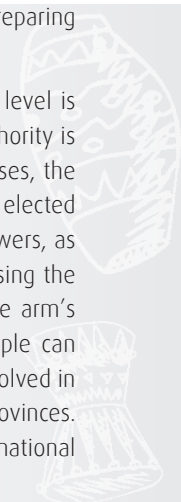
The fusion (or relationship) of the “independent” concept to the public sector budget processes originates from the doctrine of separation of powers between the three arms of government. According to Mojapelo (2013), the doctrine means that specific functions, duties and responsibilities are allocated to distinctive institutions with a defined means of competence and jurisdiction and that it is a separation of three main spheres of government, namely, legislative, executive and judiciary. The same author further states that, within the constitutional framework, the meaning of the terms “legislative”, “executive” and “judicial authority” are of importance:

- (a) Legislative authority – is the power to make, amend and repeal rules of law;
- (b) Executive authority – is the power to execute and enforce rules of law; and
- (c) Judicial authority – is the power, if there is a dispute, to determine what the law is and how it should be applied in the context of the dispute.

Labuschagne (2004) goes on to say that the fundamental value of the separation of powers lies in its constitutional checks and balances in government to ensure that state authority is constitutionally controlled and not exercised arbitrarily. The author cited before further arguing that this is achieved by a structural and functional separation of government’s authority into legislative, executive and judicial branches.

Likewise, section 40 that deals with the provisions of co-operative government in the Constitution of the Republic of South Africa (1996) (hereafter “Constitution”) contains an important democratic doctrine that is referred to by the likes of W.A. Robson as the separation of powers. This doctrine could be interpreted as saying that the power of the state is divided between three different but interdependent components or arms, namely the executive arm (Cabinet), the legislative arm (national Parliament and the nine provincial legislatures) and the judicial arm (courts of law). In the threefold separation of powers, the President is the head of state and of the national executive arm. He/she exercises executive authority together with the other members of the Cabinet, namely the Deputy President and Ministers. The executive arm is charged with the formulation of public policy such as the Medium-Term Budget Policy Statement (MTBPS), and preparing and initiating legislation which it submits to Parliament for approval.

Within the threefold separation of powers, the legislative authority at national level is vested in the Parliament of the RSA and, at provincial sphere, the legislative authority is vested in provincial legislatures. The Parliament of the RSA consists of two Houses, the National Assembly and the National Council of Provinces, whose members are elected by the people of South Africa. Each House has its own distinct functions and powers, as set out in the Constitution. The National Assembly (NA) is responsible for choosing the President, passing laws, conducting oversight over the actions of the executive arm’s programmes, and providing a platform where the representatives of the people can publicly debate state issues. The National Council of Provinces (NCOP) is also involved in the law-making process and provides a forum for debate on issues affecting the provinces. Its main focus is ensuring that provincial interests are taken into account in the national



sphere of government. In specific cases, local government representatives are also invited to participate in debates in the NCOP.

Section 216 of the Constitution (1996) confers the powers of treasury control through national legislation. National legislation, through the Public Finance Management Act (1999), among other things, assigns the responsibility of formulating a public sector budget to the Minister of Finance, who is a member of the Cabinet, whereas section 213 of the Constitution (1996) confers the powers to appropriate public funds to the legislative arm. The Constitution lays out this paradox by saying "There is a National Revenue Fund (NRF) (and a Provincial Revenue Fund (PRF) at provincial level), into which all money received by the national government must be paid and money may be withdrawn from the NRF (or PRF) only in terms of an appropriation by an Act of Parliament (or provincial Act) or as a direct charge against the NRF, when it is provided for in the Constitution or an Act of Parliament."

The South African Legislative Sector further interprets its oversight mandate in its Sector Oversight Model (SOM), where the "oversight" concept is expressed as the function that entails the informal and formal, watchful, strategic and structured scrutiny exercised by legislatures, including Parliament, in respect of the implementation of laws, the application of the Budget, and the strict observance of statutes and the Constitution (Speakers Forum of the South African Legislative Sector, 2011).

2. Problem Statement

According to Santiso (2004), the role of legislatures in public budgeting and public finance management has been largely overlooked in the first stage of economic reform. Folscher (2006) argues that an effective legislature is a necessary building block in a properly functioning public finance management system. Literature reviews find that a greater demand for strengthening the role of the legislature in the budget process has become evident worldwide. Folscher (2006) supports this assertion by stating that more than a quarter of countries have revised their constitutions over the last 15 years to give their parliaments more powers, and further argues that there are risks in allowing greater parliamentary activism, but that a greater risk is associated with marginalising the role of a parliament in the budgetary process.

3. Budget Processes and Independent Financial Oversight

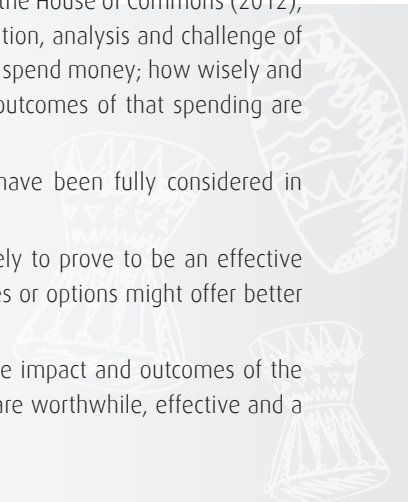
The formulation of public policy is traditionally an exclusive domain that has been dominantly influenced, it can be argued, by the executive arm. Lienert (2010) argues that when fiscal policies and Medium-Term Budget Policy Statement objectives are debated in Parliament, budget strategies and policies are "owned" more widely by public representatives. The same author as the one cited immediately before further argues that in order to promote good governance and fiscal transparency, the legislature's active engagement in the budget process is essential.

The budget phase processes follows the planning phase of the executive arm. This is evident where the President of the state pronounces on Apex Priorities, which are accompanied by outcomes during the State of the Nation Address (SONA) in Parliament. According to the Department of Performance Monitoring and Evaluation (2010), the South African government adopted 12 outcomes with a view to achieving measurable performance and holding individuals accountable for delivery. The President signed performance agreements with all Cabinet Ministers. In these performance agreements, Ministers were requested to establish and participate in Implementation Forums for each of the 12 outcomes.

The Medium-Term Budget Policy Statement (MTBPS) is tabled by the Minister of Finance to propose to Parliament a fiscal framework and fiscal strategy for the Budget of the next three financial years (National Treasury, 2012). The MTBPS is intended to be independently scrutinised, and the Constitution of the Republic of South Africa (1996) further states that money may be withdrawn from the National Revenue Fund only in terms of an appropriation by an Act of Parliament or as a direct charge against the National Revenue Fund, when it is provided for in the Constitution or an Act of Parliament. Section 6 of the Public Finance Management Act (1999) further assigns the function and powers of managing the Budget preparation and the control over the implementation of the annual national Budget, including any adjustments to the Budget, to the National Treasury. Section 27 of the Public Finance Management Act (1999) states that the Minister of Finance must table the annual Budget for a financial year in the National Assembly before the start of that financial year. Section 27(4) of the Public Finance Management Act (1999) further states when the annual Budget is introduced in the National Assembly or a provincial legislature, the accounting officer for each department must submit to Parliament or the provincial legislature, as may be appropriate, measurable objectives for each main division within the department's Vote.

It is argued that the tabling of the proposed Budget is a great opportunity for Parliament and legislatures to discharge their independent financial scrutiny and not just to accept and rubber-stamp this fiscal framework of the executive arm. To enable Parliament and legislatures to exercise their independent financial scrutiny, continuous in-year and ex-post financial oversight (or monitoring) is crucial. According to the House of Commons (2012), financial scrutiny is a broad term that covers the examination, analysis and challenge of the whole process of how and why decisions are taken to spend money; how wisely and effectively that money is spent; and how effective the outcomes of that spending are and include the following:

- How policy is determined and whether the costs have been fully considered in reaching decisions;
- Whether the delivery mechanisms proposed are likely to prove to be an effective use of public money or whether alternative strategies or options might offer better value or be more effective;
- Whether there are suitable ways of ensuring that the impact and outcomes of the spending are measured to determine whether they are worthwhile, effective and a good use of public funds; and



- In the light of the outcomes, whether spending should continue, or plans should be modified, funding diverted to other more effective routes or pressing priorities, or withdrawn altogether.

To provide measurable properties to the qualitative phenomenon of “financial oversight power” of a legislature, Wehner (2006) introduces the “budgetary powers index”, which reflects the extent to which a legislature has formal budgetary decision-making authority. The author cited above further states that the budgetary power index captures budget amendment rules, the nature of the revisionary budget, executive veto powers, budgetary bicameralism, and executive discretion to impound and reallocate funds during the budget execution. The OECD and the World Bank developed a dataset on the 2003 Survey of Budget Practices and Procedures, which covers three aspects, that is (1) the budgetary powers of the legislature, (2) legislative organisation, and (3) the legislature’s access to budgetary information (Wehner, 2005).

According to Wehner (2006) the “budgetary powers index” highlights three critical properties to determine whether a legislature has formal independent budgetary decision-making authority:

- a) An empowering piece of legislation that is critical to further strengthening of the budgetary powers of the legislature.
- b) Vital adequate institutional arrangements for independent specialised analytical research to support parliamentary committees in financial oversight.
- c) Access to budgetary information.

According to Lienert (2010), in the revised King Report III on Governance for South Africa 2009, which is in line with international thinking, the concept of “independent” is identified as one of the critical components of good governance and viewed as the mechanism to avoid or manage conflict. In regard to the judicial arm, judiciary independence is a concept which requires the judiciary and courts to not allow improper influence from the other. In effecting the independence concept, Parliament’s main roles are to review and debate the government’s draft ex ante budget (including its revenue estimates and its spending plans) and to authorize spending to implement the annual budget plan. Parliament also reviews budget execution and, in some countries, it formally approves and discharges the government after annual budget implementation.

4. Amendment of Money Bills and Parliamentary Budget Offices (PBOs)

Santiso (2004) argues that, globally, it is increasingly being recognised that parliaments have a critical role to play to strengthen economic governance, improve transparency in public finances and ensure government accountability, whereas in the past parliamentarians were not adequately exercising their constitutional power of oversight over budget formulation. According to Folscher (2006), Parliament is a vital organ of state, balancing the power of the executive and the judiciary in the exercise of authority, and stripping

it of meaningful power over the purse will detract from its ability to fulfil this role, and may undermine the establishment of developmental democracies.

Wehner (2005) argues that the United States (US) Congress has broad constitutional powers in financial matters, makes budgetary decisions through a complex system of specialised parliamentary committees in both houses, and has access to extensive analytical support in the Congressional Budget Office (CBO). Since its founding in 1974, the US CBO has produced independent analyses of budgetary and economic issues to support the Congressional budget process following the conflict between the legislative and executive branches, which reached a high point during the summer of 1974, when members objected to then-President Richard Nixon's threats to withhold Congressional appropriations for programmes that were inconsistent with his policies (a process known as impoundment) (Congressional Budget Office, 2013). The same author cited immediately before further states that this dispute led to the enactment of the Congressional Budget and Impoundment Control Act of 1974 in July of that year.

The OECD (2013) states that elsewhere there is a Canadian Parliamentary Budget Office (CPO) that was established in 2008 under the Federal Accountability Act in response to concerns around the credibility of government economic and fiscal forecasts, cost overruns in government programmes, and transparency issues. The same author cited immediately before further states that the CPO has a mandate to provide independent analysis to Parliament on the state of the nation's finances, the government's estimates and trends in the Canadian economy, and, upon request from a committee or parliamentarian, to estimate the financial cost of any proposal for matters over which Parliament has jurisdiction. According to OECD (2013), more recently established institutions include:

- Korea - National Assembly Budget Office (2003)
- Sweden - Fiscal Policy Council in Sweden (2007)
- Canada- Parliamentary Budget Office (2008)
- Hungary - Fiscal Council (2009) but effectively abolished as of 2011
- UK - Office for Budget Responsibility (2010)
- Australia -Parliamentary Budget Office (2011)
- Institutions planned for Greece, Ireland, and Portugal

Wehner (2005) argues that, by contrast, the UK Parliament has abdicated the right to financial initiative to the executive arm; they do not have a specialised budget committee, and do not have a parliamentary budget office (PBO) to provide analytical support. Section 77 of the Constitution of the Republic of South Africa (1996) makes a provision for money Bills when it states that 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 (d) authorises direct charges against the NRF. Section 77(3) of the Constitution of the Republic of South Africa (1996) states that the function or powers to approve the tabled annual budget are vested only in Parliament and provincial legislatures and an Act of Parliament must provide for a procedure to amend money Bills before Parliament. The passing of the Money Bills Amendment Procedure and Related Matters Act in South Africa has been viewed as long

overdue - approximately 13 calendar years - after the passing of the Constitution in 1999. Arguably, this piece of legislation is one of the critical instruments that will give effect to the financial oversight of the legislative arm.

The Money Bills Amendment Procedure and Related Matters Act (2009) prescribes for procedures of amending money Bills that are tabled before Parliament, and empowers Parliament with related institutional capacity and arrangements to support parliamentarians. Each House (i.e. the National Assembly and the National Council of Provinces) must establish a committee on finance and a committee on appropriations. The same author cited immediately before further states that the National Assembly, through its committees, must annually assess the performance of each national department with reference to medium-term estimates of expenditure, its strategic priorities and measurable objectives, prevailing strategic plans, expenditure reports, financial statements and annual reports, and reports of the Committee on Public Accounts relating to that particular department and any other information requested by or presented to a House of Parliament.

Further, committees of Parliament must annually submit Budgetary Review and Recommendation Reports (BRRR) for tabling in the National Assembly for each department. Section 5 of the Money Bills Amendment Procedure and Related Matters Act (2009) states that a BRRR must provide an assessment of the department's service delivery performance given available resources. Each BRRR must be submitted to the Minister and the member of Cabinet responsible for the (Budget) Vote to which the BRRR applies after its adoption by the National Assembly, and prior to the adoption of the Medium-Term Budget Policy Statement. Section 5 of the Money Bills Amendment Procedure and Related Matters Act (2009) also provides for the Parliamentary Budget Office (PBO), which seeks to provide independent, objective and professional advice and analysis to Parliament on matters related to the budget and other money Bills.

5. Conclusion and Recommendations

The study is an exploratory study providing valuable insight into the independent financial oversight powers of South Africa and uses the methodology of a literature search. More scientific research studies are lacking and required in the field of independent financial oversight of the legislative arm. Exploratory studies are meant to serve as springboards to more scientific enquiries and to advance the scientific debate in various fields of study.

It can be noted from the available literature, in respect of the required scientific research studies, that legislatures all over the world differ widely in the way in which they discharge their "legislative power of pursuit". Consequently, it proposed that the Parliament of the Republic of South Africa should fully exercise its independent financial oversight powers over money Bills and finalise the implementation of the Parliamentary Budget Office to provide independent, objective and professional advice and analysis as empowered by the enabling legislation of the Money Bills Amendment Procedure and Related Matters Act. Likewise, the provincial legislatures should follow suit with their financial oversight powers, as empowered by the Money Bills Amendment Procedure and Related Matters Act Schedule, on "norms and standards for provincial legislatures".

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8

Fiscal Management and Challenges for Democratic Developmental Legislatures: Perspectives and challenges for devising a sound fiscal management process for legislatures



AUTHOR

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Abstract

People have reason to bestow their democratic trust in legislatures that espouse and deliver on democratic developmental values. Legislatures are democratic governance raconteur advocating, leveraging and sustaining legislative intentions for incremental broad-based socio-economic development and the eventual promotion of the “common good” to the electorate. Sustainance of the concept of the “common good” is underpinned by the availability and sound management of state financial resources. The impeccability of sound macro deployment of state financial resources requires good financial co-operative, corporate governance and systems. This paper attempts to analyse current assumptions on:

- the role played by legislatures in national fiscal policy-framing and global economic challenges;
- legislative challenges for national and global fiscal policy confluence;
- framing epistemological perspectives on strengthening legislatures for sound fiscal management; and
- providing thought recommendations on how legislatures should morph to have a profound influence on effective national fiscal management.

Keywords: fiscal policy-making, domestic and global policy confluence, framing epistemological perspectives, effective fiscal management

1. Introduction

Democratic states and dispensations are characterised by the “of the people by the people” philosophy. In most democratic countries, this philosophy is embedded in constitutional provisions that obligate legislative institutions, legislators, the legislative bureaucrats and organisational systems to effectively harness institutional potential, craft and monitor informed legislation, and administer organisational systems to promote and develop the interest and welfare of the society in diaspora as well as to provide thought ethical leadership aimed at addressing dynamic developmental challenges.

Developmental challenges are global in nature and broadly impact on legislative executive decision-making, policy implementation and monitoring processes. For instance, some writers attribute the Financial Crisis on poor corporate and co-operative governance decision-making mechanisms. According to Wikipedia: Global Financial Crisis 2007 - 2012:

“...the crisis resulted in the threat of total collapse of large financial institutions and the bail-out of banks by national governments. The crisis further led to a decline in global economic activity and subsequently to a financial liquidity problem. It is argued that the crisis was triggered by the complex interplay of national governments’ policies. In the European Union, the United Kingdom introduced austerity measures, decreased expenditure and increased taxes without export growth to sustain foreign reserves”.

The above synopsis clearly depicts the role played by governments through legislation, policies and regulations that triggered the economic downturn of 2008. In the United States, a rather magnanimous financial approach was deployed by government when it encouraged home ownership through lending (thesis) with the intention of economic stimulation. Conversely, the policy of ownership through lending escalated to predatory unregulated lending (antithesis). Given the adverse economic conditions in both the United States and the United Kingdom, the questions that arise are whether the legislative arm of government was involved in the macro-economic decision-making processes; whether legislators sufficiently applied their minds on endorsing such economic policies; and whether the technocratic machinery of government institutions provided adequate leverage in the implementation of these decisions.

Framing of government financial legislation and policy implementation should always be construed as bringing about change in the lives of the people; to provide essential basic services; to address poverty, inequalities, unemployment and women’s and children’s issues. Government financial legislation and policy should create space for growth and prosperity. It therefore requires political, legislative and administrative will to fulfill developmental objectives for the realisation of a sound financial framework within a developmental state. Also, it becomes fundamentally imperative for legislatures to rigorously analyse and monitor financial policy formulation and implementation. A global political space should be created for legislatures to play a significant role in developing the lives of the people through financial management and monitoring.

In many countries, legislatures are perceived as “rubber-stamping” policies crafted by the executive and, with this view, they are gradually relegated to obsolete ciphers that are



incapable of innovating legislative influence on the executive through effective praxis of oversight and accountability. Legislators need to be pragmatists of the “better life for all” concept as they are in the vanguard for the promotion of human liberties. The party-politics and legislative-executive relations confluence should be managed for the realisation of a developing state. This would require migrating beyond the concept of institutionalized “political power centralism” to a more “collegial and co-operative” decision-making framework. The South African Co-operative Governance Framework attests to this notion. This inclination will ensure that the legislative arms of government are granted adequate powers to influence the fiscal policies within their environments. Governments need to develop a propensity for reaching an informed co-operative legislative-executive equilibrium in the global political economy and obliterate the notion that “some arms of government are increasingly becoming more equal than others”. Perhaps rethinking the philosophy of “the separation of powers” and translating it to mean “shared corporate and co-operative responsibilities” during legislative-executive budgetary discourse will assist in realising an effective legislative-executive relations equilibrium that is characterised by “value-for-money”-based legislation-framing, implementation and monitoring.

The role of legislatures in a developmental state should not be misconstrued as “obstructionist” to executive policy and, conversely, the attitude of the executive should not be perceived as usurping the responsibilities and functions of legislatures. These checks and balances are a clarion call to legislative institutions and legislators to embrace the “state of the mind development” – an emotional philosophy underpinned by political commitment on developing the lives of the people through the crafting of financial legislation aimed at addressing societal inequalities – which is an essential paradigm shift for the sustenance of the developmental state.

Global economic relations requires of nations to continuously reform their international financial architecture so that it mitigates the challenges of the 21st century. Therefore, rethinking and reconceptualising the traditional characteristics of legislatures is fundamental for positioning legislatures within the governance developmental framework, and empowering these institutions to meet the ever-changing political, social and economic environments.

According to Saiegh (2005:3), for us to be able to reconceptualise the role of legislatures in a developmental state, we need to respond to the key normative question: How good is our existing knowledge on how legislative institutions operate? Do we understand the roles of legislative institutions to be confined to the following core responsibilities: scrutinising policies framed by the executive; exercising oversight and accountability over the executive; and conducting public participation as a means to involve the electorate in policy-making processes. Notwithstanding the fundamental core functions of legislatures, the intellectual confinement of legislative responsibilities to core roles translates to a paralysis of legislative innovative thinking and alienation of effective legislative-executive fiscal management and, therefore, compels an epistemological migration to innovate complementary responsibilities to existing core legislative functions.

In reframing financial policy paradigms on the authority and supremacy of legislatures with the intention of empowerment, we need to be guided by the following questions:

- i) Do current governance frameworks grant adequate governing powers to legislatures to influence executive budgetary processes?
- ii) Do the political systems afford enough scope of authority to legislators and legislatures to hold different views on fiscal policy matters?
- iii) How effectively do legislatures perform law-making/oversight responsibilities in measuring whether “value-for-money” was achieved?
- iv) Do the legislative systems’ management, infrastructure and resources support the legislatures in their functions?
- v) Do Treasury and the Office of the Auditor-General give the necessary advisory support to legislators on financial matters?

These questions will assist in the quest to probe the nature of reality on financial governance within legislatures and to establish whether legislative-executive relations are progressive and transformative in a manner that will satisfy the realisation of growth in a developing state.

2. National Fiscal Policy-framing and the Global Economic Challenges

The global economic agenda is gradually changing. This is apparent from the Road Map of the G20 held in Washington on 15 November 2008 amid the Financial Crisis. The intention of the Road Map was to “stabilise and reform the financial markets to preserve an open global economy, to promote trade, provide credit and liquidity, and to restart economic growth and overcome recession”. This concept reaffirms the development principles agreed to at the 2002 Monterrey Conference on Financing for Development, which emphasised country ownership and mobilising all sources of financing for development. The question that arises is: What is the position of the legislatures in the process of mobilisation of financial resources for development? Traditionally, the role of determining and initiating national and provincial budgets is perceived as being the role of the executive. Financial legislation submitted by the executive would normally be adopted by a plenary of the House, without in-depth analysis. A shift in the centre of gravity of financial power should be contemplated to grant legislatures a bigger role and space in fiscal management processes. The global economic influence compels nations to free the world of pervasive economic dogmas presented for many years as absolute truths [Guido Mantega, Finance Minister - Brazil]. There is thus a paradigm shift in perceiving executive powers as a panacea in fiscal management and decision-making but allowing legislative operational space to ensure increased transparency and consistency in the fiscal management processes.

3. Legislative Challenges on National and Global Fiscal Policy Confluence

An ideal democratic developmental state is characterised by freedom in the mobilisation of ideas. In the global and modern world, ideologies are fundamental for creating stances and assumptions for sustenance of the common good. With the current decline of global



economic growth, inequalities, increasing youth unemployment, poverty and the AIDS pandemic, legislatures are primordial in charting policy frameworks aimed at addressing these challenges.

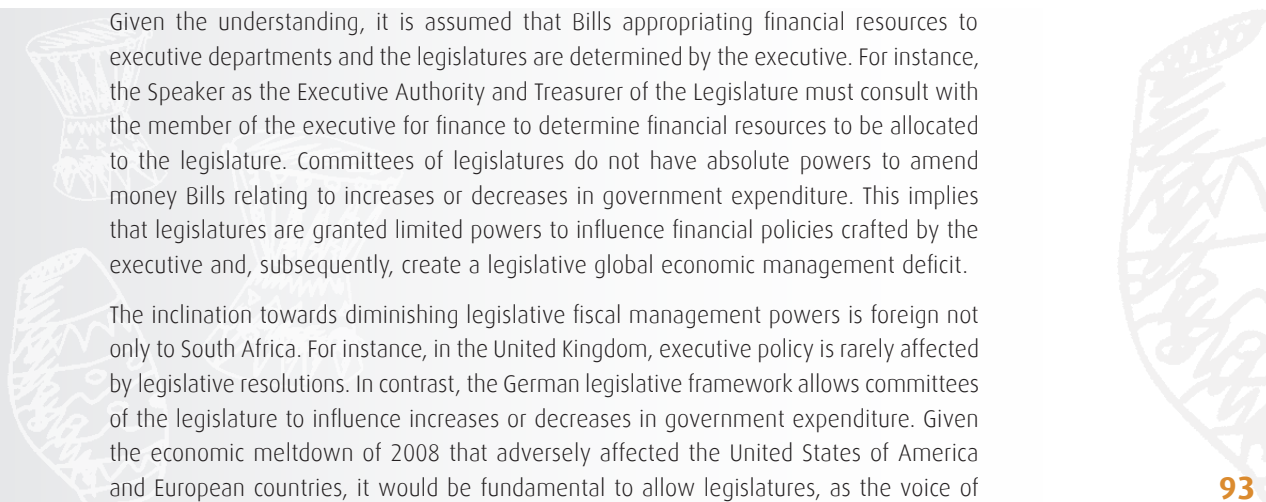
Inequalities are regarded as a threat to economic and social development. Unequal income distribution begets social inequalities. The executive arm of government is tasked to implement policies for effective service delivery to counter the effects of inequalities. This should be seen as an incremental effort aimed at ensuring the common good of the citizenry and fulfill provisions of the Millennium Development Goals. The realisation of global goals will be guided by concerted legislative-executive efforts. In the South African context, legislative-executive relations are informed by oversight and accountability and the role of legislatures is limited to overseeing the actions of the executive – of course, without any legislative penalties attached to non-performing executives. In this instance, the concept of “co-operative political management” should be deliberated on to determine whether enough political space is granted for legislatures in overseeing effective deployment of public funds by the executive. Also, are legislatures only tasked to oversee and hold the executive accountable without attaching penalties to non-performing executives? Are issues of non-performing executives dealt with through political resolutions? If so, do political resolutions recommend punitive measures against non-performing executives? In the event the political resolutions do not address non-performance and irregular management of state financial resources in a democratic state, it would imply that the legislative legitimacy and supremacy are undermined and thereby paralyse legislative intellectual growth.

According to Gumede, in his paper titled South Africa As A Developmental State In The Making – he notes:

“... although law is passed by Parliament in sittings of the two Houses, such as the National Assembly and the National Council of Provinces, it is only at Cabinet level and its committees and clusters where details of the draft law are examined. The national legislative authority in South Africa, however, is vested with Parliament.”

Given the understanding, it is assumed that Bills appropriating financial resources to executive departments and the legislatures are determined by the executive. For instance, the Speaker as the Executive Authority and Treasurer of the Legislature must consult with the member of the executive for finance to determine financial resources to be allocated to the legislature. Committees of legislatures do not have absolute powers to amend money Bills relating to increases or decreases in government expenditure. This implies that legislatures are granted limited powers to influence financial policies crafted by the executive and, subsequently, create a legislative global economic management deficit.

The inclination towards diminishing legislative fiscal management powers is foreign not only to South Africa. For instance, in the United Kingdom, executive policy is rarely affected by legislative resolutions. In contrast, the German legislative framework allows committees of the legislature to influence increases or decreases in government expenditure. Given the economic meltdown of 2008 that adversely affected the United States of America and European countries, it would be fundamental to allow legislatures, as the voice of



the people, to play a bigger role in determining global fiscal policy confluence, with the common objective of improving the lives of the people.

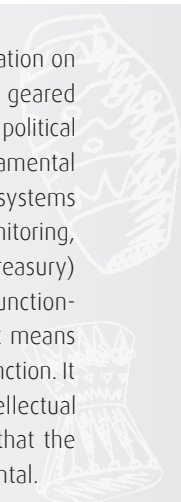
4. Framing Epistemological Perspectives - Strengthening Legislatures for Sound Fiscal Management

The eradication of ubiquitous poverty and inequalities is leveraged by sound policy-making, implementation and monitoring. Legislative-executive relations, as a conduit for policy-making, should be characterised by growth, political and financial stability. As Netshitenzhe (The Sunday Independent, August 19, 2012) notes, to bring down relative poverty (inequality) requires an activist state and commends South Africa for doing well in this regard by providing non-cash grants such as free basic electricity, no-fee schools and subsidised transport, and had spin-offs of reducing inequality by 40%. The implication of this is that the implementation of policy and legislation yielded positive results.

The recent adoption of the South African Legislative Sector Oversight Model is indicative of efforts made by the sector in trying to frame informed mechanisms in addressing challenges of inequality and poverty. It should be noted that the intentions of the oversight model are to ensure that appropriated public funds are employed in a manner that addresses the needs of the electorate. To strengthen and capacitate legislatures in fiscal policy-making processes, consideration needs to be given to the following concepts:

- Does the current political and governance framework grant enough and appropriate powers to legislatures?
- Are legislators adequately capacitated to probe and make input on executive policy?
- Are we able to assess and measure the influence of the party-line in legislative-executive decision-making processes?
- Is the number of legislators in legislatures adequate to effectively address the needs of the electorate (South African perspective)?

Creating a discourse around these concepts would need an epistemological migration on how legislatures function. It would compel an innovative legislative framework geared towards creating a bigger role for legislatures in fiscal management. An institutional political framework is supported by elements of administration. It would therefore be fundamental to sufficiently resource legislatures. A review of existing administrative legislative systems and policies in legislatures is necessary to leverage policy implementation and monitoring, and to sustain continuity. Government institutions (the Auditor-General and Treasury) supporting mechanisms of accountability by the legislatures should innovate function-congruent methodologies to ensure legislative performance-based outcomes. It means devising Treasury regulations and auditing templates congruent to the legislative function. It should be noted that legislatures are not providing tangible services but rather intellectual output on legislation-making, monitoring and implementation, thus indicating that the qualitative measurement of intellectual output and value realisation is fundamental.



The administrative foresight devised by the Secretaries' Association of the Legislatures of South Africa of integrating operational systems and the establishment of "the Legislative Institute" are positive intentions to ensure legislative intellectual growth. Capacitating the legislative human capital is necessary for legislative growth and the creation of communities of good legislative practice.

According to the South African National Development Plan, authored by the National Planning Commission, there is unevenness in state capacity, which leads to uneven performance in local, provincial and national government. It is indicated that this uneven performance results from the inter-play between a set of factors, including tensions in the political-administrative interface. A long-term strategic focus should be devised to enable the state machinery to counter these challenges; the legislative arm of government must be in the forefront in championing the mobilisation of ideas aimed at providing a better life for all.

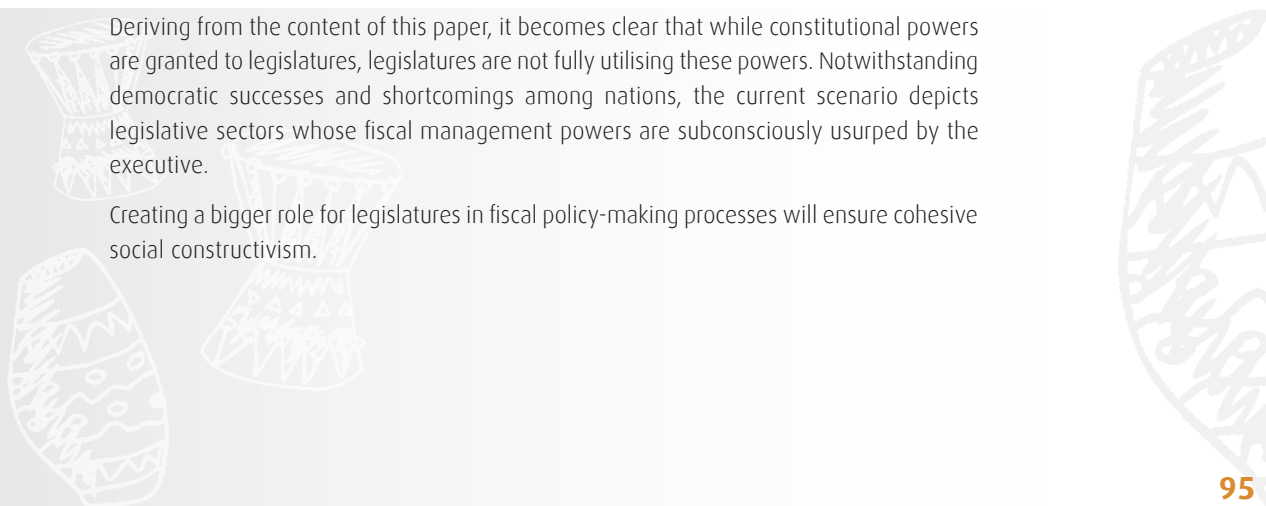
5. Conclusion

The global economic world poses a myriad of challenges to nations. Consequently nations are compelled to form relations in the quest for growth, stability and security. These relations are informed by the policy provisions of these nations. Global policy-making processes evolve around economic considerations and may positively or adversely affect the livelihood of the electorate, for instance the financial crisis and austerity measures, declining growth and unemployment.

Global and national legislation-making cannot be the sole responsibility of the executive, but the legislative arm should be afforded enough space to influence global and national legislation. Legislative-executive relations should be transformative to mitigate imminent global challenges and fulfill provisions of the MDG concepts. Cordial political management should enable legislators to effectively influence policies and conduct proper oversight over the executive – a dichotomy should be established between political discipline and legislative discipline, and the former should not stifle the latter.

Deriving from the content of this paper, it becomes clear that while constitutional powers are granted to legislatures, legislatures are not fully utilising these powers. Notwithstanding democratic successes and shortcomings among nations, the current scenario depicts legislative sectors whose fiscal management powers are subconsciously usurped by the executive.

Creating a bigger role for legislatures in fiscal policy-making processes will ensure cohesive social constructivism.



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9

An International Comparative Study of the Sources of Parliamentary Information and Support for Legislators

AUTHOR

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Abstract

The paper is divided into three sections. The first section is devoted to the analysis of the parliamentary libraries both as a source of parliamentary information and training, and how parliamentary libraries represent the common source of information that enable parliaments to perform their functions. The second section focused on parliamentary institutes that cover a focused range of topics that parliamentary libraries perform. In this section, attention is paid on how Parliamentary Institutes satisfy parliamentarians' need for information and training of members and staff. The third section provides tentative conclusions and policy suggestions on how parliaments could be strengthened to support democracy. The study reveals that the increase in resources of information and personnel has an influence in the Members' perception of their parliamentary roles, and important determinant of the future impact of the oversight activities of parliamentary committees. The study reveals that the need for parliamentary information and institutes in democratizing countries is even greater and more relevant than before in this current dispensation. There is a strong need for accurate, timely, complete and relevant parliamentary information in democratizing and developing countries. The study further suggests that the international community have a bigger role to play in ensuring that the legislative branches are strengthened in democratized countries to consolidate democracy and developing of anti-poverty strategies and programmes. The paper concludes by providing policy suggestions as to what could be done to make parliaments more informed and prepared to perform their tasks.

Keywords: *parliamentary information, information sources, parliamentary libraries, parliamentary institutes*

1. Introduction

Information is very important for the functioning of democratic legislatures. Legislatures, as Frantzich (1979: 255-280) noted more than two decades ago, need information to perform their representative, legislative and oversight functions. Writing about the US Congress, Frantzich in fact argued that “Congress needs four basic types of information to better perform its role. Congress as a whole and individual congressmen need information to coordinate and plan their work schedule and that of their staff. As decision making body, Congress needs to track legislative activity and record aggregate and individual voting behavior. Individual congressmen need to track constituent demands, improve their efficiency in dealing with them, and develop means for following up constituent interests in both the legislative and non-legislative realms. Congressmen in their legislative role need improved information for monitoring problems, developing solutions, predicting consequences, and facilitating influence strategies. In its role of overseeing the bureaucracy, Congress needs to monitor the success of ongoing programs and to identify areas of weakness”¹. And Frantzich further argued that Congress and congressmen “ideally, (...) ought to have information that is complete, accurate, timely, relevant and at times confidential”².

The need for information displayed by the U.S. Congress and Congressmen is in no way exceptional. The need for information is shared also by state legislatures within the US and in the national legislatures outside the US. To use Bradley’s words, “legislatures, (...), are faced with increasingly complex and technical issues. The widening scope of government and the closing circle of societal interconnectedness have made increased information demands on legislatures”³. This need for information for the proper functioning of a democratic legislature has long been understood in consolidated democracies and developed countries.

This point can be illustrated by the following examples. Summarizing the findings of Morgan’s Reinforcing Parliament⁴, Lees observed that “the evidence presented suggests that there may be a significant relationship between the amount of oversight-type activities conducted by legislatures (...) and the range of staff and other research and information sources, including finance, available to legislators and committees”⁵. Morgan’s view were shared by other scholars. Lees reported, in fact, that “other observers of specialist committees (Robinson, 1976) also believe that increases in resources of information and personnel, and changes in the perception of MPs are important determinants of the future impact of the scrutiny or oversight activities of such committees”⁶.

1 Stephen E. Frantzich, “Computerized Information Technology in the U.S. House of Representatives”, *op. Cit.*, pp. 256-257.

2 Stephen E. Frantzich, “Computerized Information Technology in the U.S. House of Representatives”, *op. Cit.*, p. 257.

3 Robert B. Bradley, “Motivations In Legislative Information Use”, *Legislative Studies Quarterly*, vol. V, n. 3, (August) 1980, pp. 393-406. The quote is taken from p. 393.

4 Janet Morgan, *Reinforcing Parliament. Services and Facilities for Members of Parliament: Some International Comparisons*, London, Political and Economic Planning, Broadsheet N. 562, 1976.

5 John D. Lees, “Legislatures and Oversight”, John D. Lees, “Legislatures and Oversight: A Review Article on a Neglected Area of Research”, *Legislative Studies Quarterly*, vol. 2, n. 2, (May) 1977, pp. 193-208. The quote is taken from p. 202.

6 John D. Lees, “Legislatures and Oversight”, *op. cit.*, p. 203. The reference to Robinson 1976 is a reference to Ann Robinson, “The Power of Select Committees of the House of Commons - A Three Dimensional Consideration”, a paper prepared for delivery at the annual meeting of the Political Studies Association, March 1976.

Having recognized the importance of information is the reason why, for example, “in 1963, the (French) assembly created a parliamentary and administrative information division (within the parliamentary library) for the purpose of collecting and synthesizing administrative and governmental information relating to particular questions. This was only the beginning of an effort which was not completed until 1970, when the office of research and documentation was created”⁷. Very similar developments occurred both in the German and in the British case⁸.

The need for parliamentary information is probably even greater in democratizing (and developing) countries, in which “substantive, policy-relevant information is often exclusively the province of the executive-the government”⁹. In these countries, the legislative branch needs free (of government influence) and reliable information to understand government choices, decisions and policies; to assess whether they are valuable or not and, if not, to criticize them and propose policy alternatives. Not surprisingly, legislatures’ inability to keep governments accountable for their actions, such as, for example, the drafting of the budget and the ensuing allocation of resources often reflects legislatures’ lack of independent – from executives’ control – information or their inability to process the available information. If the only information available to the legislature is provided by the executive branch or by one of its agencies, if there is no information available to the legislature, or if the legislature is unable to understand the available information, then the legislature cannot question in any substantive way the content of government choices, decisions and actions¹⁰.

Interestingly, the need for (accurate, complete, relevant and timely) parliamentary information in democratizing and developing countries has not received much attention in the scholarly literature¹¹. But this need has been recognized by international organizations, practitioners and donors¹².

The fact that the international community has become increasingly more sensitive to the importance of parliamentary information has a clear implication: if the international community is willing to help strengthen legislative branches in developing/democratizing countries - as legislatures may play an important role not only in the establishment/consolidation of democracy but also in developing anti-poverty strategies and programs- then the international community will have to significantly strengthen independent sources

7 Stanley Campbell and Jean Laporte, “The Staff of Parliamentary Assemblies in France”, *Legislative Studies Quarterly*, vol. IV, n. 4, (November) 1981, pp. 521-531. The quote is taken from p. 527.

8 On Germany see Werner Blichke, “Parliamentary Staff in the German Bundestag”, *Legislative Studies Quarterly*, vol. IV, n. 4, (November) 1981, pp. 533-558. On the British case, see Michael T. Ryle, “The Legislative Staff Of the British House of Commons”, *Legislative Studies Quarterly*, vol. IV, n. 4, (November) 1981, pp. 497-519. Updated information concerning the information resources available to German parliamentarians can be found in Thomas Saalfeld, “Professionalisation of Parliamentary Roles in Germany: An Aggregate-Level Analysis, 1949-94” in Wolfgang C. Mueller and Thomas Saalfeld (eds.), *Members of Parliament in Western Europe: Roles and Behavior*, London, Frank Cass, 1997, pp. 32-54.

9 Gerhard Loewenberg and Samuel C. Patterson, *Comparing Legislatures*, Boston, Little, Brown and Company, 1979, p. 164.

10 This point is well recognized in the literature. Loewenberg and Patterson noted, in this respect, that “the availability of sources of information independent of executive agencies improves the ability of the legislature to exert influence over the executive branch”, see Gerhard Loewenberg and Samuel C. Patterson, *Comparing Legislatures*, op. cit., p. 164.

11 One of the few studies in which the information resources of a developing country are discussed at some length is Gerhard Loewenberg and Samuel C. Patterson, *Comparing Legislatures*, op. cit., pp. 159-164.

12 We thank Scott Hubli for this insight.

of parliamentary information where they exist (contribute to their creation where they do not exist) and to help parliamentarians to develop the skills that are necessary to process said information. The purpose of the present paper is to discuss the existing sources of information, support and capacity building initiatives available to parliamentarians. The paper indicates that a combination of information, sufficient and capable support staff, as well as training should be made available to parliamentarians in order to improve their efficacy. The paper further provides some policy suggestions as to what solutions could be implemented to make parliaments more informed and more prepared to perform their tasks.

With these objectives in mind, the paper is divided in three sections. The first section is devoted to the analysis of the parliamentary libraries both as a source of parliamentary information and training for the parliamentarians. In this section, it is argued that parliamentary libraries represent the most common source of parliamentary information and that the range of tasks that they are able to perform is a function of the resources that they have. Building on this discussion it will be suggested that parliamentary libraries may be unable to provide the parliamentary information and the parliamentary training that legislators and parliamentarians need to perform their tasks effectively. The second section is devoted to parliamentary institutes that cover a narrower and more focused range of topics than parliamentary libraries. Specifically, in the second section, attention will be paid to how Parliamentary Institutes satisfy parliamentarians' need for information and training. In this section, it is argued that depending on collocation of parliamentary institutes, that is on whether they are part of the Parliament or not, two classes of institutes can be identified (internal, external). This paper also discusses whether parliamentary institutes provide information, training or both and how the services performed by parliamentary institutes relate to the institutes' collocation. In the third section, the paper will provide some tentative conclusions and some policy suggestions on how parliaments could be strengthened.

2. Parliamentary Libraries

The most common source of parliamentary information is represented by parliamentary Libraries¹³. Parliamentary libraries perform several functions (they are a home for books, they provide reference service by looking up for facts, sources and available bibliographic material, they make available copies of specific items, they provide clipping service of relevant articles in the press...) and, "nearly all legislatures have parliamentary libraries to assist them in obtaining and using information in their deliberations" (Robinson, 1998:815).

Yet, there is great variation in the extent to which parliamentary libraries can assist parliamentarians. "In some settings" Robinson noted "the library advertises the availability

¹³ *The fact that parliamentary libraries are the most common sources of information does not mean necessarily that they are the most frequently used sources of information and it also does not provide any clue as to how often they are used. And unfortunately the literature provides little evidence with regard to the utilization of libraries. The lack of information is due to the fact that this question has rarely been investigated and the fact that the few studies on the topic are not comparative in scope. Some data concerning the British case can be found in Gerhard Loewenberg and Samuel Patterson, Comparing Legislatures, op. cit., p. 163.*

of information on topics of interest and even take the initiative to provide photocopies of clippings of newspapers and other sources on topics of interest to members. In still others, the library provides a wide range of products and services that include answers to reference inquiries; creation of and access to legislative databases; research reports; materials describing and comparing current legislation proposals and their status in the legislative process; policy analysis studies that identify alternative courses of action for the legislature and the consequences if adopted; and seminars and training programs for legislators and staff” (Robinson, 1998: 816).

These inter-parliamentary differences mostly reflect differences in available resources such as the size of the collection, the number of yearly acquisitions, the number of periodicals, the number of newspapers, the size of the staff and the size of the research staff. This point can be illustrated by the following examples. The size of the library collection varies from 50 items in Burundi to 110 million items in the US Library of the Congress; the number of acquisitions varies from 10 in Tajikistan to 3.4 million in the USA; the number of periodicals available in the parliamentary library varies from 1 in Paraguay, Sudan and Yemen to 157000 in Japan; the number of newspapers varies from 1 in Saint Lucia and Tuvalu to 8000 in Japan, the size of the staff varies from 1 in Benin, Cyprus, Guatemala, Kiribati, Lesotho, Malta, Macedonia, Tajikistan, Turkmenistan, Uzbekistan, Vanuatu and Western Samoa to 767 in the USA. The data concerning the research staff are of particular interest because only 71 out of 163 parliamentary libraries included in our sample, provided evidence as to the size of their research staff. In all of the other cases, it is not – not always, at least – clear whether data were not reported because there was no research staff or because information was simply not provided¹⁴. With this in mind, there is great variation in the size of research staff in the 71 countries for which data are available. The size of research staff varies from 1 in Algeria, Barbados, Burundi, Cameroon, Commonwealth of Dominica, Iran, Jamaica, Micronesia, Mozambique, Namibia, Peru, Rwanda, Senegal, Sudan, Syria and Trinidad and Tobago to 444 in the US Library of the Congress.

Interestingly though, the distribution of parliamentary resources (collection, acquisitions, periodicals, newspapers, staff, research staff) is not random but it forms instead a relatively well defined pattern. Parliamentary libraries with large collections are also the libraries with the highest number of yearly acquisitions and with the largest research staff, while libraries with small collections also have a small number of yearly acquisitions and a small research staff. This conclusion is supported by the findings of the correlation analysis presented in Table 1: size of the collection, yearly acquisitions and the size of the research staff are almost perfectly and positively correlated.

14 With the term ‘research staff’, we refer to those employees who are actively engaged to perform research activities for parliamentarians and legislators. Hence, the research staff should not be confused with other types of staff such as the staff of individual legislators, the staff of committees, the staff of the party caucus (or of the party parliamentary group), and with the central staff of the lower. Comparative data on these various types of staff can be found in Gerhard Loewenberg and Samuel C. Patterson, *Comparing Legislatures*, op. cit., p.161. Loewenberg and Patterson also provide some evidence, based on the US Congress, as to the amount of research and information provided by these various types of staff. Specifically, “congressmen report that they do 30 percent of their legislative research themselves; the rest of their research is done by their own staff (45 percent), the Congressional Research Service (9 percent), the staff of the committees on which they serve (11 percent), or by department and agency staffs (3 percent)”. See Loewenberg and Patterson, *Comparing Legislatures*, op. cit., p. 162.

Table 1. Correlation Coefficients

	<i>Size of the collection</i>	<i>Yearly acquisitions</i>	<i>Periodicals</i>	<i>Newspapers</i>	<i>Staff</i>	<i>Research Staff</i>
<i>Size of collection</i>	1	.999	.476	.200	.496	.939
<i>Yearly acquisitions</i>		1	.495	.216	.498	.950
<i>Periodicals</i>			1	.865	.686	.664
<i>Newspapers</i>				1	.548	.385
<i>Staff</i>					1	.789
<i>Research Staff</i>						1

Source: The data were taken from the Database of the World Directory of Parliamentary Libraries, which can be found at the following website: www.bundestag.de/datbk/library/wd_e.html

The almost perfect linearity detected among the variables of interest has a clear substantive meaning beside the statistical one. First, if all the good things (the resources) go together, then the deficiencies that some parliamentary libraries may experience in some respects (e.g. size of the collection, number of yearly acquisitions, etc.) are not compensated by other characteristics (e.g. larger research staff) but are instead made even sharper by their absence. Second, if the more resourceful parliamentary libraries are generally those of the most democratic and developed countries with well established parliaments and conversely if the less resourceful parliamentary libraries are generally those of the democratizing/developing countries and, third, if it is in the democratizing/developing countries where parliaments need to have free and reliable information to keep the government in check, then two outcomes become immediately apparent. The first is that the gap between the resources available to the parliaments of the more democratic/developed countries and those available to the parliaments in the less democratic/developed countries instead of decreasing or stabilizing will increase. The second is that the lack of information may weaken the parliaments in democratizing/developing countries, prevent them from performing effectively their roles and prevent them from contributing to both the consolidation of democracy and the reduction of poverty.

These conclusions are predicated on the assumption that all that Parliaments need to perform their role effectively, to keep the executive power within its constitutionally defined limits, and to scrutinize (and possibly challenge) the policies initiated by the government is free and reliable information. Unfortunately, this is an unrealistic assumption for three reasons. First, because several parliamentary libraries in Africa and in Latin America (Guyana) are not effectively utilized by the MP's. Second, because several parliamentary libraries are not adequately sustained, in terms of staffing and acquisitions, over time. Third, because Parliaments and Parliamentarians, in several instances, have proved to be unable to process the available information because of the "lack of proper understanding by members of parliament of their role as law makers and overseers of government action"¹⁵. In other words, free (and reliable) information is necessary but not

sufficient condition for the effective functioning of Parliaments (and parliamentarians). Parliamentarians need to know how to use the information that they have and, when they do not, they need to be trained.

Not surprisingly, training is one of the activities that some parliamentary libraries perform. However, since parliamentary training is a complex activity and the complexity of the activities that a parliamentary library is able to perform reflects its resources, it is not too terribly surprising that most of the understaffed parliamentary libraries are actually unable to provide courses and seminars for the parliamentary members.

3. Parliamentary Institutes

In several cases, parliamentary institutes represent a solution for the information problems. In fact, they perform research and provide information independent of government influence and control. At the same time, they may also provide training for parliamentarians and prepare them to process the information that they receive.

There are three classes of parliamentary institutes. Some of them are internal in the sense that they are part of the Parliament, while others are external as they are not part of the Parliament. The Legislative Information Centre (LIC) in Bangladesh, the Parliamentary Institute in what was once Czechoslovakia and now is the Czech Republic, and the Bureau of Parliamentary Studies and Training (BPST) in India are all examples of internal parliamentary institutes. By contrast, the Parliamentary Centre in Canada, the Center for Legislative Development in the Philippines, the Foundation for the Development of Parliamentarism in Russia, and the Center for Legislative Development in the USA are examples of external parliamentary institutes. The King Prajadhipok's Institute is a good example of the third class of parliamentary institutes, that is the class of mixed institutes. The King Prajadhipok's Institute is in a class on its own because it displays features that are generally associated with internal parliamentary institutes as well as features that are usually associated with external parliamentary institutes. Specifically the KPI, which had originally created as a division of the Secretariat of the Thai House of Representatives, has been an independent and autonomous institute since the promulgation of the King Prajadhipok's Institute Act in September 1998. This is what the KPI has in common with the external parliamentary institutes. However, the KPI also differs from other external parliamentary institutes in two basic respects. First, the Chairman of the King's Prajadhipok's Institute Council is the President of the National Assembly and this establishes a formal link between the Institute and the Parliament. Second, the KPI's Secretary General has to submit an annual report to both the Council of the Institute and the National Assembly—which also formally links the Institute to the Parliament. The mixed nature of the KPI may prove to be highly beneficial for its effective and efficient functioning.

The collocation of the parliamentary institutes is of great importance per se and because of its implications. Parliamentary institutes are in fact confronted with the following dilemma. To perform their task adequately, parliamentary institutes need to be operationally autonomous. They need to be free of government control, of partisan influence and also of the influence of other institutional figures such as the Speaker of the House. Should

parliamentary institutes be influenced by the Speaker, by one of the parliamentary parties or by the government, they would not be able to gather and provide free and reliable information, nor would they be credible centers for the training of parliamentarians. Yet, in spite of their operational autonomy, parliamentary institutes need to be sufficiently attached to the parliamentary system. This second necessity is due to two different but related needs. The first is that parliamentary institutes need to be credible partners in the eyes of the individual parliamentarians and of the parliamentary parties. The second is that if parliamentary institutes are not sufficiently attached to the parliament, they might not be sufficiently sensitive to the needs arising from the parliamentary functioning and, thus, they might fail to provide timely information, training or both. Parliamentary institutes of the mixed type are in the position to provide the best solution to above mentioned dilemma: in so far as they are external, they are autonomous from any sort of unwanted influence, while to the extent to which they are linked to the parliament, they are able to be aware of and, hence, satisfy the Parliament's informational needs.

The co-location of parliamentary institutes is important for a different reason. External institutes such as the Russian and the Canadian parliamentary institutes have more freedom to innovate and initiate new approaches to contribute to the development of efficient parliamentary institutions. They are also in a better position to link parliaments and civil society organizations. In contrast to this, institutes organized within parliaments tend to be more innovation-averse. But there is of course the other side of the coin. Unlike external parliamentary institutes, the internal parliamentary institutes do not run the risk of ruffling some parliamentary feathers from time to time, since they are under the control of the Parliament, parliamentary parties can easily check whether the parliamentary institute is run in a non-partisan way or not and, if not, immediately intervene to eliminate the problem. Finally, given their institutional collocation, internal parliamentary institutes do not risk becoming the political arm of narrow, but well organized, interest groups. In other words, neither the internal nor the external parliamentary institutes are flawless. They both have merits and shortcomings. Institutional reformers should always pay some attention to the characteristics of the various types of parliamentary institute and select the one which is more consistent with the country characteristics.

Parliamentary institutes differ from each other not only because of their collocation in the political system, but also because of the functions that they perform. In fact, some of them do research and provide information (LIC in Bangladesh), others provide parliamentary training (BPST in India), and others provide both information and training (Center for Legislative Development in the Philippines, King Prajadhipok's Institute in Thailand and the Foundation for the Development of Parliamentarism in Russia). The data concerning the various parliamentary institutes for which information was available is presented in Table 2.

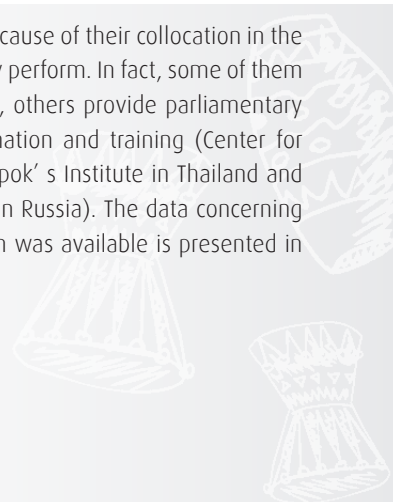


Table 2. Parliamentary Institutes and their Characteristics

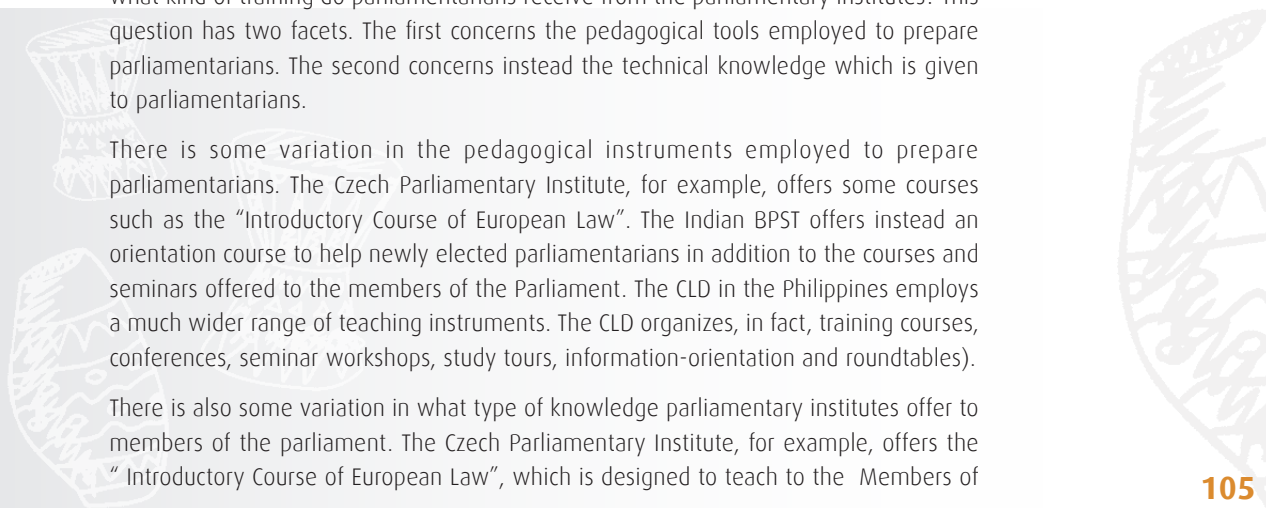
Country	External to Parliament	Research and information	Training
<i>Bagladesh: Legislative Information Centre</i>	No	Yes	No
<i>Canada: Parliamentary Centre</i>			
<i>Czech Republic: Parliamentary Institute</i>	No	Yes	Yes
<i>India: Bureau of Parliamentary Studies and Training</i>	No	No	Yes
<i>Philippines: Center for Legislative Development</i>	Yes	Yes	Yes
<i>Russia: Foundation for Development of Parliamentarism in Russia</i>	Yes	Yes	Yes
<i>South Africa – IDASA</i>	Yes	Yes	No
<i>Thailand: King Prajadhipok Institute</i>	Yes	Yes	Yes
<i>USA: Center for Legislative Development</i>	Yes	Yes	Yes

The Table 2 is fairly instructive as it shows that in contrast to internal parliamentary institutes, which provide information (LIC in Bangladesh), training (BPST in India) or both (Czech Parliamentary Institute), the external parliamentary institutes either provide information (IDASA in South Africa) or information and training (CLD in the Philippines, the CLD in the USA, the Foundation for the Development of Parliamentarism in Russia and the King Prajadhipok’s Institute in Thailand), but they do not only provide training to parliamentarians.

Parliamentary training is obviously a step in the right direction in all those instances in which the major obstacle that parliamentarians have to deal with to adequately perform their tasks is represented by their inability to process the available information. Yet, what kind of training do parliamentarians receive from the parliamentary institutes? This question has two facets. The first concerns the pedagogical tools employed to prepare parliamentarians. The second concerns instead the technical knowledge which is given to parliamentarians.

There is some variation in the pedagogical instruments employed to prepare parliamentarians. The Czech Parliamentary Institute, for example, offers some courses such as the “Introductory Course of European Law”. The Indian BPST offers instead an orientation course to help newly elected parliamentarians in addition to the courses and seminars offered to the members of the Parliament. The CLD in the Philippines employs a much wider range of teaching instruments. The CLD organizes, in fact, training courses, conferences, seminar workshops, study tours, information-orientation and roundtables).

There is also some variation in what type of knowledge parliamentary institutes offer to members of the parliament. The Czech Parliamentary Institute, for example, offers the “ Introductory Course of European Law”, which is designed to teach to the Members of



Parliament and parliamentary committees the basics of the European law. One of the objective of the course is to teach Legislators how to harmonize the legislation enacted at the national level with the principles and the laws of the European Union. On the other hand, parliamentary institutes such as the Indian BPST offer a much wider range of courses. The Indian BPST offers seminars on the drafting of Parliamentary questions, on the procedures to raise matters of public interest, on the preparation of the budget and budget papers, on the functioning of departmentally related standing committees and on how to use the computer.

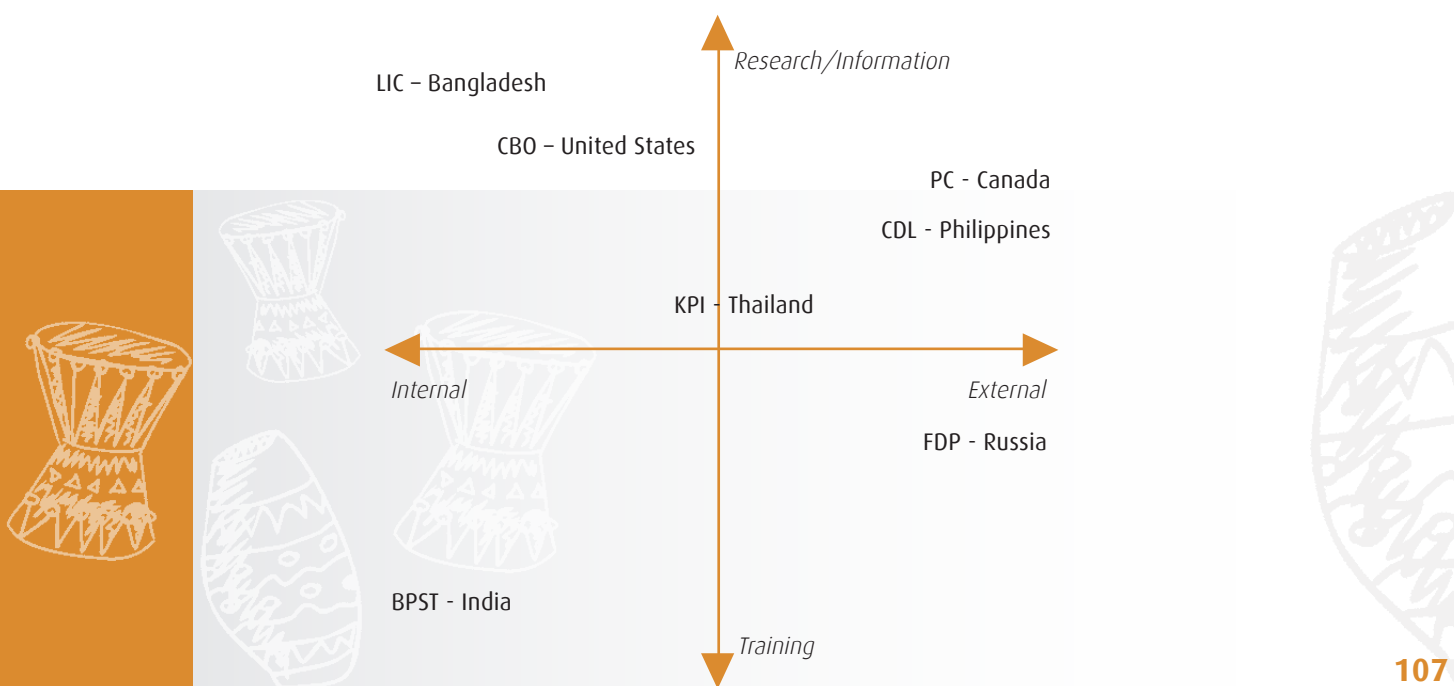
4. Conclusion and Recommendations

There are several, more or less obvious, conclusions can be drawn from what has been said so far. The first of which is that, if parliamentary control of the executive is of vital importance for the proper functioning of democratic institutions, and if parliaments need free and reliable information to control governments' actions and prevent corruption, malpractice and authoritarian drifts, then the provision of free and reliable information represents a valuable contribution to the consolidation of democracy. The second conclusion is that parliamentarians in newly democratized, democratizing or developing countries often need some training to be able to process the available information. With this in mind, alternative sources of information and training were identified and discussed in this paper. Attention was, in fact, paid to parliamentary libraries, parliamentary institutes, special parliamentary offices and international organizations. The third conclusion is that although alternative sources of parliamentary information and training were identified, these sources are complementary and not mutually exclusive. Parliaments and parliamentarians should probably be exposed to as much information as possible from as many sources as possible to properly exercise their parliamentary functions. Moreover, the existence of multiple sources of information is often indicative of whether and to what extent democracy is taking root. Not surprisingly, it is in the USA, arguably the most solidly democratic country in the world, where there are more sources of parliamentary information. This leads to our fourth conclusion, that is that if democracy and good governance practices are to be consolidated in democratizing and/or developing countries, the provision of parliamentary information (and training where necessary) is indispensable. And in order to provide parliamentary information it is necessary to institute specific sources of information keeping in mind that there are not perfect sources of information. For example, parliamentary libraries have proved to be extremely useful in established democracies (USA, Italy, etc.), while they have been less useful in those developing countries in which they are not adequately sustained in terms of resources or in which they are not utilized by the Parliamentarians. Similarly, Budget Offices have been extremely successful in established democracies (USA) but they have been considerably less successful in democratizing countries (Georgia). But neither parliamentary libraries nor parliamentary institutes and not even budget offices have always been positively evaluated.

The fact that there is no perfect informational source suggests some clear policy prescriptions:

1. Develop Domestic Sources of Information. International organizations can help establishing domestic sources of parliamentary information (and training) and they can also monitor their functioning, but it is vital that democratizing countries develop their own sources of parliamentary information (and training). Only domestic sources can, in fact, provide the timely and in-depth information that parliaments (and parliamentarians) require.
2. Promote Informational Pluralism. As it was previously anticipated, multiple sources of information may be beneficial to democracy. Parliamentarians' exposition to as much information as possible will improve their understanding of the problems at stake and possibly contribute to the identification of better solutions.
3. Promote Non-Partisan Sources of Information. However, it is important that at least some of the sources of parliamentary information (and training) provide technical, professional, non-partisan information. The provision of non-partisan information would increase the credibility of these institutions. Non-partisan institutions help politicians, parties and governments serve their state and citizens, instead of using the state to promote their own political objectives. The existence of credible institutions can also contribute to the neutralization of otherwise divisive issues. This is particularly valuable in ideologically polarized or ethnically divided countries.

Figure 1. A Typology of Parliamentary Institutes



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