

AG Bulletin 15.

30 July 2020 Consultation follow-up 1

[follow-up 2 is incorporated in AG Bulletin 18]

<p>Note on CASAC, OVAC and Corder – existing recommendations towards improving accountability</p>
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One of the “take aways” from the consultation on 30 July was that the Checks and Balances research team should note where its draft recommendations (circulated in AG Bulletin 12.) have already been covered in previous reports to Parliament or in existing resource materials.

NOT LOCATED: **Induction materials for new members** where the Deputy Speaker referred to six modules developed by the Speakers’ Forum. (Even if these are excellent, however, the fact is that induction has not been effective).

This Bulletin 15 (which could be much more detailed) – covers:

- **Council for the Advancement of the South African Constitution (CASAC) July 2020 submission to the Zondo Enquiry** (This was confidential at the time the Bulletin was finalised, but I could not find any *new* matters or new observations in this useful overview) [The submission was publicly released by CASAC on 12 August: <http://casac.org.za/judicial-commission-of-inquiry-into-state-capture-corruption-and-fraud-in-the-public-sector-including-organs-of-state/>]
- **Corder report on Parliamentary accountability** from 1999
- **Parliament’s “Oversight and Accountability Model”** (from 2008, still ‘current’)

A specific direction (from Lawson Naidoo of CASAC) was to review the recommendations presented to Parliament in 1999 in: Corder, H., Jagwanth, S., Soltau, F. (1999) *Report on Parliamentary Oversight and Accountability*. July. Cape Town: Parliament.

In particular, there is merit in considering “Accountability Standards legislation” so members and committees are held to account for effective oversight.

The research team had sight of a (then confidential) submission from CASAC to the Zondo Commission, which makes a detailed argument on the merits of the “Corder Report” and quotes from it at length.

In addition, the Checks and Balances research needs to consider a strange undated document (from about 2008) which still heads the list of reference documents on Parliament’s “Oversight” web page: <https://www.parliament.gov.za/oversight>. [It has been removed now, following another of Parliament’s regular, frustrating revisions of its website architecture. A copy is available from the IFAA Research Team.]

Entitled “*Oversight and Accountability Model*” (OVAC), it is long and complex. It is, however, not a completed, functioning model for oversight as it includes recommendations. For example:

“It is recommended that a system for tracking resolutions until the matter has been dealt with or an adequate response has been received must be instituted.”

One would expect a “model” to stipulate the mechanisms that committees should use for tracking resolutions – as this is identified (correctly) as a critical aspect for accountability.

The “Oversight and Accountability Model” (henceforward the OVAC model) was compiled by Parliamentarians during the 3rd Parliament, assisted by officials and a Cape Town-based firm of consultants, Managing for Excellence (Pty) Ltd. Its recommendations were never put into effect systematically.

Conclusion on the review of the 3 documents

For the last 20 years Parliament has received a mountain of carefully considered recommendations on how to deal with problems experienced in its role of scrutinising executive action and holding the executive to account.

These recommendations, most frequently, have come from studies commissioned by Parliament itself (or by the Speaker). In some cases Parliament has ‘adopted’ findings and recommendations – but then failed to follow through with implementation. Parliament has been further guided by clear judgments of the Constitutional Court.

The key message from the Court is that it is Parliament’s responsibility to decide on its own rules and procedures in order to fulfil its Constitutional obligations. The Court will point out where Parliament is failing in this regard (most notoriously in the Nkandla matter) – but it will not step in to tell Parliament how to do its work. That is Parliament’s own job – but civil society can certainly lobby and agitate to try and influence Parliament.

This opens up a space for the Checks and Balances project.

The widespread failures of accounting officers across the public sector have been regularly and scrupulously reported to Parliament by the Auditor-General.

Parliament has been unsuccessful in holding the executive to account for the long term, repeated, mismanagement of public funds. In addition, individuals who fail as accounting officers in one institution are often re-appointed to positions of trust and authority in other institutions.

Lip service is paid to “consequence management” by the executive and by senior managers in the public service and state-owned enterprises.

The failure of the leaders of the public service to follow the finance management laws put in place by Parliament is nothing short of extra-ordinary.

Ben Turok insisted that the Checks and Balances project should not be based on anecdotes and examples. We have followed this guidance – relying on the clear reports of the AG to provide all the required evidence. But whose socks to not explode on reading this example?

On 7 August 2020, the journalist Des Erasmus reported on how the AG has repeatedly called out the KZN Department of Health “for its shoddy asset management, weak procurement controls and dismal record keeping.”¹ Between 2009/2010 and 2018/2019, the department incurred irregular expenditure totalling R45.06-billion. He comments:

In any “normal” company such fiscal and operational negligence, particularly if it contributed to the premature death of others, would have resulted in the most severe sanctions, or at the very least have been career-ending.

Yet, the previous Head of Department from 2010 to 2015, Dr Sibongile Zungu, is now an adviser to national Minister of Health Zweli Mkhize and is also leading the Covid-19 response in the Eastern Cape.²

Des Erasmus’ searing reports stated that the 2018/2019 municipal audit outcomes “found that in total, 98% of KwaZulu-Natal’s municipalities did not comply with crucial governance legislation.”

Ms Ntombifuthi Mhlongo, the AG’s business executive responsible for KwaZulu-Natal was quoted as saying in a virtual briefing on 13 August 2020 that: “The key message for the province was that there has been little change in results since the past auditor-general report, largely due to accountability and key control lapses.”³

This evidence is from the current month!

The Checks and Balances project has not found any new interventions.

Its role will be to highlight the options and advice (long) available to Parliament to intervene – and to provide a possible agenda for civil society and stakeholder pressure on Parliament and its elected members.

¹ After R45bn in irregular expenditure over 10 years, KZN health department ill prepared for Covid-19 storm. *Daily Maverick*. 07 August 2020 – (Erasmus 2020b)

² See Erasmus (2020a) “Sibongile Zungu: Allegations of corruption follow new head of Eastern Cape’s Covid-19 task team”. *Daily Maverick*. 22 July.

³ ‘Mhlongo said there was “little change in outcomes”, that accountability was “not being adequately practised and enforced by leadership”, and that there was a “failure of key controls” ‘ Erasmus (2020c)

CASAC submission to the Zondo Enquiry

(This was confidential when we got it, but I could not find any new matters or new observations in this useful overview. We can use everything here, referring, if required, to earlier sources.)

The CASAC document, unsurprisingly, has a legal/constitutional bias and is heavy reading. It cites laws, rules and judgments. The recommendations are sound – and so familiar!

This contents list has comments on the recommendations:

INTRODUCTION

CONSTITUTIONAL AND LEGISLATIVE PROVISIONS ON OVERSIGHT BY THE NATIONAL ASSEMBLY

THE NATIONAL ASSEMBLY RULES WHICH GIVE EFFECT TO OVERSIGHT

Rules relating to proceedings in the National Assembly

Rules relating to committees of the National Assembly

PARLIAMENT'S POLICY ON OVERSIGHT AND ACCOUNTABILITY

JURISPRUDENCE OF THE CONSTITUTIONAL COURT ON CORRUPTION AND THE ASSEMBLY'S OVERSIGHT ROLE IN THIS RESPECT

ANALYSIS OF LACK OF OVERSIGHT - 2014 UNTIL JUNE 2017

The Role of Speaker of the National Assembly

ANALYSIS OF COURT JUDGMENTS ON THE NARROWING OF SPACE IN THE ASSEMBLY

ELECTORAL REFORM

THE CORDER REPORT (see below)

RECOMMENDATIONS

1 Electoral Reform

CASAC welcomes the electoral reform process in present motion, but is correctly sceptical that “a new electoral model will enhance the accountability of MPs”. As Tracy Ledger said in the Consultation, direct election of councillors in local government has had no effect at all.

2 Sections 47(3)(c) and 106(3)(c) of the Constitution

The Constitution should be amended to allow for a free mandate for members of the NA to vote as their judgement dictates without consequences if they don't vote with their party.

3 Appointments to Key Institutions

Parliament should allow for effective public participation and Parliamentary oversight mechanisms for specified classes of appointments to public office. – Not directly relevant as this already applies for the AG.

4 Impartiality of the Speaker of the National Assembly

No problem – the Speaker should not be like the Chair of a party! - but this will not make much of a difference.

5 Appointment of Chairpersons of Parliamentary Committees

Committee chairpersons should be appointed from among parties represented in the NA, according to a proportional formula.

THIS SHOULD BE A C&B RECOMMENDATION. It flows from interviews with Mr Hlengwa and Mr van Schalkwyk. SCOPA is very effective, with a non-majority party chair and a collegial style of work (with some historical blips!). The quality of the chair is a very important factor in committee effectiveness.⁴ As the ANC majority contracts over time the ‘pool’ of possible chairs gets smaller and smaller. The majority party still has the majority in the Committee and can prevail in any vote, including a vote to eject the chair. This will require an amendment to the NA Rules. *BUT Alf Lees MP cautioned – can you image what the EFF would do with committees it chaired?*

6 Performance Contracts for Cabinet Ministers

No problem – but the President has the right to discharge errant Ministers anyway.

7 Oversight and Accountability

Following the 1999 “Corder Report”, Parliament should consider legislation (an Accountability Standards Act) to provide a mandatory, legal basis for committees to hold the executive to account.

This is complementary or alternative to the idea that emerged from interviews of an “Accountability Court” – See AG Bulletin 06. *THIS SHOULD BE A C&B RECOMMENDATION – NOT sure on review. The problem is not that Parliament lacks sufficient legal and moral guidance. The problem is that Parliamentarians do not implement the guidelines and recommendations. Additional rules and guidelines won’t help by themselves. They will give the impression that the problems are being sorted, when the will just be a new element marking the downward spiral!*

The additional CASAC/Corder proposal for an “Accountability and Independence of Constitutional Institutions Act” to strengthen the framework for Chapter Nine institutions is fine, but it won’t add to the effectiveness of the AG, which already has 2 committees to “to ensure that recommendations and remedial action are implemented.”

8 Dedicated Anti-Corruption Agency

⁴ Also see PMG (2019) *A Note to the Sixth Parliament: The critical role of Committee Chairperson*

This is not *directly* relevant to the AG project. It is repeating a 2011 CASAC recommendation – a dedicated, independent and multi-function anticorruption agency should be established as a means of both deterring and combating corruption which has flourished in the face of weak accountability mechanisms. CASAC advocated this in a report entitled “*Corruption – Towards a Comprehensive Societal Response*” . CASAC proposed the adoption of a “single-agency” model – to create a dedicated independent anti-corruption agency, mandated to combat corruption by following a three-pronged strategy of

- (1) enforcement (including investigation and referral for prosecution);
- (2) prevention; and
- (3) education.

Such an institution, if properly funded and well-staffed, would enable decisive and effective action to be taken. It is “necessary to make a decisive break from our existing institutions, and to establish a new, clearly independent entity, which can take on the task of anti-corruption functions in a holistic and targeted manner.”

Such an agency would provide an additional disincentive to lazy accounting officers.

CONCLUSION

“131. The current system of checks and balances enshrined in the Constitution has proven to be inadequate in preventing the abuse of power by public representatives and officials. “

Agreed! This was Ben’s foundation position for the AG project.

Corder Report 1999

CASAC says “It is trite that the oversight framework in Parliament has failed to expose and hold those responsible for state capture and corruption to account. The tools at Parliament’s disposal therefore need to be strengthened.”

This ties in directly with the aim of the Checks and Balances project to identify what has gone wrong and propose improvements.

As summarised by CASAC, the Corder Report recommends an ***Accountability Standards Act*** that would serve the following purposes:

- i. partially to fulfil the NA’s constitutional obligations for establishing accountability mechanisms;
- ii. to set the broad framework and minimum requirements for accountability; and
- iii. to provide an authoritative and mandatory framework within which committee members can perform their oversight task.

Its primary advantage would be to provide a legislative basis for holding members of the executive accountable, given the reluctance by MPs from the majority party to stand up to their political seniors. This is compounded by the present electoral system in which MPs are beholden to their party hierarchies.

The Corder Report refers to what it calls ‘Amendatory Accountability’. It states that the “Act should oblige (the) executive and organs of state to answer and submit to scrutiny, as well as imposing on them an obligation to redress grievances. This means that remedial action should be authorised for exposed errors, defects of policy or maladministration. This form of amendatory accountability is essential to an effective system of reporting.”

It goes on to say “where those in political office have made themselves guilty of corruption or financial misconduct, responsibility should be legislated, just as it is in the case of civil servants. In terms of the Public Finance Management Act offences by accounting officers (Heads of Departments or CEOs of institutions) are punishable either by a fine or imprisonment.”

Corder highlights the need to clarify the accountability lines between senior civil servants and Ministers, so that there exists a continuum of accountability to Parliament. This would eliminate things falling between the cracks as responsibility is shifted between directors- general and Ministers, with neither being held accountable.

Corder moots the idea of establishing a specialised agency (Comptroller or National Audit Office) to conduct programme evaluation audits to determine whether a project has delivered the outcomes and objectives that were set. Such an agency would make available its assessments to Parliament to capacitate its oversight role. Parliament does not at present have the capacity to process complex reports itself.⁵

⁵ Check this, but I think Parliament has the right under the Public Audit Act to ask the AG to do this work. Corder’s work was done 5 years before the PAA was enacted. We need to compare the PAA with

The Accountability Standards Act proposed by Corder has obvious linkages to the “**Accountability Court**” discussed in *AG Bulletin 06*. Our interviewee said that Brazil (and some other countries, including Mozambique and Portugal) use the court system to ensure that recommendations of its “supreme audit institution” (SAI) – the Auditor-General – are implemented.

This could be achieved in South Africa through an “Accountability Court” – a juridical, not an auditing authority, headed by a senior justice, like Judge Zondo.

If an Accountability Court were created, it could consider cases on the mismanagement of public finances by accounting officers or the executive referred by the Public Service Commission, the Public Protector, the National Treasury, or by Parliament itself – if the executive fail to act on reports adopted by the House.

The AG cannot solve the problem of getting its recommendations implemented. The function of the AG is to audit and report. Oversight is a separate responsibility. An Accountability Court should be designed to act on issues rapidly. One of the significant problems with our systems in South Africa is the very long time taken by our processes at present. People lose trust in the process because of the time taken. We have first world standards in our institutions and complex rules which don’t accommodate the needs of poor people and deprived communities for speedy action.

An Accountability Court could use a rapid action model to get results in three months. The Accountability Court would have its own audit capabilities – to interpret the evidence already gathered by the AG – and legal capability to present the case to the judge for swift action.

The Accountability Court would not be limited to the public sector. Private sector firms (such as Steinhoff, Tongaat Hulett, and their auditors) could also be subjects of investigation.

The fate of the Corder Report

CASAC says:

“... Parliament’s [OVAC] Model does not reference the Corder Report and it is not known whether this Report was ever formally considered or adopted by the National Assembly or its Rules Committee.”

The IFAA research resolved this mystery:

The Corder report was considered by the NA, through several committees. It was explicitly referenced as the founding impulse for the OVAC model adopted (in principle) by a meeting of the Joint Rules Committee on 19 March 2008. The Corder report was again invoked 8

the Corder recommendations before “using” them. Corder acknowledges that some of the problems he identifies for the Chapter 9 institutions do not apply in the case of the AG.

years later when the NA amended its Rules. The then Speaker misleadingly represented these changes as being the implementation of the Corder – and other – reports.⁶

These were the bizarre words of Speaker Mbete on 26 May 2016:

After 21 years, we can now say that we have been able to do a comprehensive review [of the NA Rules] and this is a milestone we should all be proud of. As we know, hon members, over the years we have commissioned different studies on parliamentary processes to assist ourselves to understand deeper the processes that are involved in our work. This was to demonstrate our willingness to be persuaded. We had a study in 1999 on oversight by Professor Corder, this contributed to the development of the oversight model of Parliament which we have today. The oversight model⁷, the report of the independent panel assessment of Parliament⁸ and an in depth study of the legislative process⁹ have all been taken into account in this review [of the Rules].¹⁰

This statement hides and illustrates how Parliament often deals with the best reports that it receives – even when commissioned by Parliament itself (as with the Corder Report)

- First, Parliament delays
- Next Parliament sends it to a committee
- Then the committee has discussions and an entirely new ‘summary’ is compiled.
- Another long delay.
- Then Parliament adopts some measures that is says is derived from the first report, even if it isn’t.

This was the fate of the carefully considered recommendations of Corder et al in 1999. It took fully seventeen years to get through these stages! (There were actually more stages than this)

When I was working in Parliament [on a side-project evaluating committee effectiveness¹¹] I followed the Corder trail, until it eventually disappeared into nothingness:

The Corder Report was completed in 1999, at the end of the FIRST Parliament.

The Ad Hoc Joint SubCommittee on Oversight and Accountability (AHJCOA) was appointed in the SECOND Parliament to process the Corder Report. Its final report was completed in

⁶ One of the three Corder recommendations was “amendment to the Rules of the NA and the NCOP for regulation of reporting to parliamentary committees”.

⁷ Parliament (n.d.) – about 2008

⁸ Parliament of South Africa (2009). This was chaired by Pregs Govender, with support provided by the OVAC model consultants, Managing for Excellence (Pty) Ltd.

⁹ Probably a reference to POSA (2011) *Audit of Statutes 2010 Guide to Parliament’s obligations under the Constitution and legislation* 3rd Edition, March 2011, pp.532 (one of the most irrelevant and useless documents ever produced by Parliament.)

¹⁰ From Hansard 26 May 2016 Page: 79 of 231

<https://www.parliament.gov.za/storage/app/media/Docs/hansard/70a6b5ea-46cf-4652-afa9-bdd9b60de343.pdf>. The new, revised Rules became effective in 2016. See Parliament (2016).

¹¹ Nicol (2017).

2002: “Accountability, Oversight and the Constitutional Imperative: The Role of the National Assembly”¹²

A Task Team of the Joint Rules Committee was established in November 2004 at the start of the THIRD Parliament.¹³

As one of the AHJCOA recommendations, Adv Frankie Jenkins (a senior legal advisor in Parliament), working through the Joint Rules Committee, finalised a draft document in 2005.

- Jenkins, F. S. (2005) *Draft I Constitutional landscape of the constitutional provisions dealing with the interrelated themes of oversight, accountability, transparency and responsiveness in respect of Parliament’s functions*. Cape Town: Parliament

This is no longer on Parliament’s website [But we have a copy!]. As I recall, one of the reports concluded **against** the proposed “Accountability Standards Act”. The outcomes of all the committee discussions were battered into a document of the THIRD Parliament (This long and rambling document was developed with the assistance of Parliament’s consultants, Managing for Excellence (Pty) Ltd. and presented as a final report that was adopted unanimously in March 2008)

- PMG (2008) Oversight and Accountability Final Report by Parliamentary Task Team. Report on a meeting of the Joint Rules Committee. 19 March. Available at: <https://pmg.org.za/committee-meeting/8968/>.

“By way of background, [Mr Kopeng Bapela, Co-Chairperson: Task Team on Oversight and Accountability Model] recalled that this process began in 1999 when Parliament commissioned Prof Hugh Corder, from the University of Cape Town Law Faculty, to research its oversight capacity. His report was delivered to this [Joint Rules] Committee, upon which an ad hoc committee was established to consider the recommendations in the report. The Task Team was then set up in November 2004. It conducted extensive research to identify the model to be developed, and routinely briefed the [Joint Rules] Committee on its progress over the years.”¹⁴

The Corder report had presented three sets of recommendations:

- a. legislation in the form of an Accountability Standards Act and an Accountability and Independence of Constitutional Institutions Act;
- b. amendment to the Rules of the NA and the NCOP for regulation of reporting to parliamentary committees; and
- c. the establishment in Parliament of a Standing Committee on Constitutional Institutions

¹² Jenkins (2005) - Final Report of the Ad Hoc Joint SubCommittee on Oversight and Accountability (2002) - NOT SEEN

¹³ Mr Kopeng Bapela, Co-Chairperson: Task Team on Oversight and Accountability Model at the Joint Rules Committee meeting on 19 March 2008.

¹⁴ <https://pmg.org.za/committee-meeting/8968/>

The proposals for legislation were not taken forward. The proposals on Constitutional Institutions were also not pursued, although these issues were again considered in the “Asmal Report” of 2007 on the Chapter 9 institutions. (The recommendations here are now under consideration by the leaders of Parliament and the “ISD Unit” in the Office of the Speaker – see the details in AG Bulletin 14.) The Rules were amended (in several steps over the next 17 years), but I have not traced which of the amendments originated with the Corder report.

The main thrust of the Corder recommendations – on accountability – remain unimplemented today. But there have been so many developments in Parliament, and with the courts, since 1999, that a simple re-heating of the Corder recommendations is not appropriate.

Corder is now an example of how Parliament digests less welcome recommendations!

Parliament’s “Oversight and Accountability Model” (from 2008, still ‘current’)

The 2008 OVAC model - was still on Parliament’s website at:

- Parliament (n.d. 2008) *Oversight and Accountability Model: asserting Parliament's oversight role in enhancing democracy*. Available at: <https://www.parliament.gov.za/oversight> >. [This address did not work in October 2020]

The document is 48 pages long and includes much that is good and worthy. But it is not a ‘working model’ – it set out many recommendations that still needed consideration, including the review of the Rules. In the last 12 years, it has obviously been overtaken by events. But, once the Checks and Balances project has finalised its own recommendations, it is likely that many elements will be found in the OVAC model. Parliament will be able to say that these “new” recommendations are already covered by current policy documents.

This is the problem uncovered by the challenge (at the consultation on 30 July 2020) for the C&B team to review its draft proposals in the light of existing documents.

Parliament can appear to have already taken the proposals “on board”. What is the point of making recommendations which Parliament has already adopted?

As an example, consider this extract from the OVAC model:

4.1.4 Oversight advisory section

In developing the oversight model, the need was identified for **support services relating to monitoring and tracking of issues between Parliament and the Executive**, and on all other related matters within Parliament’s broader mandate. An Oversight Section ought to be created in response to the need identified. Its main functions will be **to provide advice, technical support, and co-ordination, tracking of issues, as well as monitoring mechanisms for issues arising from accountability and oversight activities of Members of Parliament and the**

Committees that they belong to. The work of this section should also include the **archiving of relevant information to facilitate the retention of institutional memory.**

The foreseen objectives of the Oversight Advisory Section (OAS) encompass the following:

- Providing **information and advisory support** to Parliamentary oversight activities as an information management section.
- Tracking and monitoring **Executive compliance** in respect of **issues, that individual MP s raised** flowing from constituency work.
- Assisting with tracking, monitoring, and following up issues raised through the **PDOs**.
- Ensuring a more co-ordinated, integrated and holistic approach to Parliamentary oversight.
- Assisting with co-ordinating all oversight-related information gathered through Parliament's **Public Participation** activities.
- Analysing substantive **reports by ISDs¹⁵** to advise Houses of issues for referral to committees for consideration and report.
- Assisting with monitoring and tracking **Executive compliance with House resolutions**.
- Assisting with **monitoring and tracking of government assurances and commitments** that emanate from the floor of Houses.
- **Monitoring and analysing debates, discussions and comments** made by public and participants in the sectoral parliaments with a view to advise the Houses on issues for consideration.

In the establishment of the OAS, the following subdivisions can be created:

□ **Financial Scrutiny unit** which will develop systems of scrutiny on finances, for instance:

- the planning cycle which will include aspects on performance and expenditure targets for departments and spending reviews.
- the budget cycle which will include aspects of how government makes its assessment on the state of the economy and plans how it will raise revenue the following year
- the estimates cycle which is the process by which departments' resources and cash for the year is approved; and
- the reporting cycle which involves the reporting by departments through reports.

This will assist the committees on Finances and Portfolio Committees to enhance their oversight activities and tracking of issues that are addressed in monthly reports to Parliament and those that would have been raised by the Committee on Public Accounts.

- **Tracking and monitoring unit** which would address decisions in the House/s and at Committee level as well as issues from floor of the House/s and **Committee reports that get tabled in the House/s**
- **Advisory unit** will identify issues from Sectoral Parliaments, People's Assembly, other assemblies, International Bodies and compliance on international protocols, treaties and conventions as well as local Petitions.

It is therefore recommended that **Parliament must speedily establish this section with full resources, capacity and personnel** in order to efficient fulfilment of the objectives of oversight and accountability.

This is from 2008 and the THIRD Parliament, which also left as a legacy an independent panel report that advised Parliament to take on board the *2008 Oversight and Accountability Model*:

- Parliament of the Republic of South Africa (POSA) (2009) *Report of the independent panel assessment of Parliament*. 13 January.

The FOURTH Parliament, from 2009, did ***nothing*** on this.

¹⁵ Institutions Supporting Democracy – these are the Chapter 9 institutions, which include the Auditor-General

The FIFTH Parliament, from 2014, reviewed the Rules (as mentioned above). During this time, the now disgraced former Secretary to Parliament, Gengezi Mgidlana, arranged a seminar for Parliamentary staff in 2016 as if the 2008 document was the current OVAC model (with consciousness of the Lamosa case – where the incompetent official in charge of the NCOP had neglected to allow for public participation – and no reference at all to the more important Nkandla case, which touched at the heart of Parliament’s constitutional responsibilities. Lamosa was about poor administrative advice from the Parliamentary officials – led by that arrogant, ignorant Advocate what’s his name).

The FIFTH Parliament left as its legacy the 600 page “High Level Panel” report.

And so the cycles repeat themselves!

Note prepared by Martin Nicol mnicol@web.net 082 554 9880 18 August 2020,
reviewed in December 2020

References

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Parliament (n.d. c. 2008) “*Oversight and Accountability Model: Asserting Parliament's oversight role in enhancing democracy*” Available at: <<https://www.parliament.gov.za/storage/app/media/oversight-reports/ovac-model.pdf> > [Accessed 09-Aug-20]

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PMG (2019) *A Note to the Sixth Parliament: The critical role of Committee Chairperson*. Blog 18 June. Available at: <https://pmg.org.za/blog/CommitteeChairperson>> [Accessed 15-Aug-20]

This note and the other AG Project Bulletins are for internal IFAA use in assembling themes and perspectives for the planned Checks and Balances project report for stakeholder verification. They are not intended for any other use.

List of internal AG Project Bulletins

- AG Project Bulletin 15. 18 August 2020 [Consultation follow-up: Note on CASAC, OVAC and Corder – existing recommendations towards improving accountability]
- AG Project Bulletin 14. 09 August 2020 [Analysis of documents sent in by the Deputy Speaker on 06 August 2020]
- AG Project Bulletin 13. 07 July 2020 [Interview with Auditor General: Mr Kimi Makwetu] *DRAFT awaiting comments*
- AG Project Bulletin 12. 26 June 2020 – revised 8 July – finalised 17 July [Checks, in theory – balances, not really: What the devil do we do? IFAA brief for a consultative meeting with informed colleagues – mainly from civil society on 30 July 2020].
- AG Project Bulletin 11. 02 June 2020 [Interview with Mr Jan van Schalkwyk, AGSA]
- AG Project Bulletin 10. 30 April 2020 [Notes from a conversation with Michael Acres]
- AG Project Bulletin 09. 16 April 2020 [Notes from a conversation with Murray Michel]
- AG Project Bulletin 08. 07 April 2020. [Parliament is an unlikely champion of the Auditor General]
- AG Project Bulletin 07. 19 March 2020. [MN Reflection on Parliament’s lack of effective response to the intimidation of AG staff in Nelson Mandela Bay in November 2019 and on 18 March 2020 *City*

- Press article by Kimi Makwetu: How SA can rid itself of wasteful, fruitless, unauthorised and irregular expenditure]*
- AG Project Bulletin 06. 29 March 2020 [Interview with Mr Wessel Pretorius, champion of the independence of Auditors General, 17 March 2020].
- AG Project Bulletin 05. 16 March 2020 [Notes from our Interview with Mr Mkhuleko Hlengwa MP, Chairperson of the Select Committee on Public Accounts (SCOPA)]
- AG Project Bulletin 04. 13 March 2020 [Reflection on AGSA 100 year legacy book]
- AG Project Bulletin 03. 10 February 2020 [Reflection on SCOPA's efforts to have former Prasa board members declared delinquent]
- AG Project Bulletin 02. 12 November 2019/ [Draft discussion paper - Auditor General project: Improving governance in South Africa: What checks and balances are missing?]
- AG Project Bulletin 01. 31 October 2019/ [list of the relevant legislation related to the role of the Auditor General w r t reporting to Parliament; example of the information on AGSA reports on departments that is summarised by Parliament for the information of SCOPA]

Scratch Notes on the documents.

Note says: **(IGNORE – delete in future)**

CASAC (2020) *Why the National Assembly failed to exercise effective oversight in respect of State Capture*. Submission by the Council for the Advancement of the South African Constitution to the Judicial Commission of Inquiry into State Capture, Corruption and Fraud in the Public Sector, including Organs of State. 14 July.

[The file here is a converted copy of the .pdf submission to allow for IFAA notes]

Document details:

MacBook Pro /Users/martinnicol/6172 CASAC submission to Zondo.docx

Date Created: 03 August 2020 // Last updated: 2020/08/03 14:23:00

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

See MacBook Pro /Users/martinnicol/6172 Corder Report on Parliamentary Oversight and Accountability 1999.docx

Jenkins, F. S. (2005) *Draft I Constitutional landscape of the constitutional provisions dealing with the interrelated themes of oversight, accountability, transparency and responsiveness in respect of Parliament's functions*. Cape Town: Parliament

See MacBook Pro /Users/martinnicol/6172 Corder Report on Parliamentary Oversight and Accountability 1999.docx

Parliament (n.d. c. 2008) "Oversight and Accountability Model" Available at: <<https://www.parliament.gov.za/storage/app/media/oversight-reports/ovac-model.pdf>> [Accessed 09-Aug-20]

Now saved again as 6172 OVAC Model.pdf

It is recommended that a system for tracking resolutions until the matter has been dealt with or an adequate response has been received must be instituted.

A need to strengthen Parliament's mechanisms for evaluating annual reports was identified as it is a critical mechanism through which Ministers are held to account and is dealt with in 3.1.1 above. However there is a need to improve on mechanisms that would ensure that there is reporting on responses by the Executive on resolutions adopted by Parliament.

Cites:

IPU (2007) *Tools for parliamentary oversight : a comparative study of 88 national parliaments* / written and edited by Hironori Yamamoto. 82 pages. Geneva : Inter-Parliamentary Union, Available at: <<http://archive.ipu.org/PDF/publications/oversight08-e.pdf>>

saved as 6172 OVAC 88 parliaments 2007.pdf

The study is based on responses to a questionnaire sent out jointly by the IPU and the World Bank Institute (WBI) in 2001 to all the parliaments of the world.

The OVAC model of 2008 was compiled by: **Managing for Excellence (Pty) Ltd.**
<http://www.managingforexcellence.com/work.html>

Parliamentary Task Team on Oversight and Accountability

In the development of an Oversight Model for Parliament, **M E** assisted the Task Team on Oversight and Accountability, with the research and drafting of this document. Two **M E** Senior Researchers were extensively involved in the process, as well as three of our researchers. The drafting involved an extensive consultative process including detailed interviews with the Constitutional Negotiators involved in the drafting of the South African Constitution. Over a period spanning two years from 2005 – 2007 the Oversight Model received input from various structures within Parliament, including the Members of the National Assembly and the National Council of Provinces, the Chief Whips Forum, Secretariats of both Houses, and Party Causes. {sic}

These people also did the

Independent Panel for the Assessment of Parliament

In 2007 **M E** was appointed to provide research services to an Independent Panel for the Assessment of Parliament. The work of the Panel emanated out of the African Peer Review Mechanism review of South Africa. In order to provide a more detailed assessment of the degree to which Parliament is fulfilling its constitutional mandate, an independent panel was appointed to conduct a review of Parliament. The panel was chaired by noted gender activist and former Member of Parliament Pregs Govender. The work of the panel was completed in December 2008 and the final report of the panel was submitted to Parliament in January 2009.

[The panel, if I recall, recommended that the Oversight Model be adopted!]

8.1.1 Take away from the consultation on 30 July:

Deepening the research

1. The research team should check where its draft recommendations have already been covered in previous reports to Parliament / existing resource materials.
 - 1.1. Induction materials for new members exist already. See the six modules developed by the Speakers' Forum. NOT FOUND YET
 - 1.2. Review the recommendations presented to Parliament in 1999 in: Corder, H., Jagwanth, S., Soltau, F. (1999) *Report on Parliamentary Oversight and Accountability*. July. Cape Town: Parliament. (Accountability Standards legislation so members and committees are held to account for effective oversight.) HERE