

AG Bulletin 18: Notes from consultations with stakeholders; Project Bibliography

Printed in *New Agenda* 78, December 2020:

Kimi Makwetu
(1966 – 2020)

Auditor-General of South Africa from 2013 to 2020

We mourn the death of a committed public servant who served South Africa with unfailing integrity and did all he could to rescue this country from corruption and the abuse of public funds.

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Validation workshop 26 November

[Points from hand-written notes from the Validation workshop 26-Nov-2020, prepared for the team discussion on the Checks and Balances scheduled for 03 December – not a transcript, Bruce made a Zoom recording]

Philip Balie largely repeated aspects of the report with approval. He mentioned Covid-19, the need to empower committees on the 4th industrial revolution, rogue tenderpreneurs.

Political organisations should be more serious in appointing candidates and in screening them – even using the simplest verification structures – before election.

Lawson said the report hones in on the key issues but there is a need to really highlight points for emphasis.

Committees and the plenary operate in a formulaic manner. Committees consider issues, the submit reports to the National Assembly – and it goes no further! Committees have little authority to pursue the executive when they are unresponsive, but the plenary (the NA) HAS this power. Committee reports need to be stronger, they need to be more specific and provide issues where follow-up can be done. Committees must propose corrective actions and (critically) they must specify that the executive must report back on the issue to the NA. This process is already open for Parliament, but it is not adequately done at the moment.

Page 12: this shows Chairperson Dhlovu is unaware of the powers of Parliament to ensure there is remedial action by the executive (when specific issue are raised by Parliament.)

Issues of concern must be addressed to the executive by Parliament. Too often, the executive trivialise issues, they ignore them, or they assure the NA they know more than MPs.

Members are representatives of the people and the Executive must listen to them properly.

Need ways to empower individual MP's – training in ethics, training on the constitution and Parliament's legal duties and Parliaments POWERS to hold the executive to account; empower members in their key oversight powers 1) asking questions 2) operating in the committees.

It can help the party in Parliament if its MPs are more assertive.

Civil society organisations play a useful role when they question the suitability of people who the ANC put up for election to Parliament. [Hazel raised the important role of civil society organisations, this is true of course, but our focus is on trying to get Parliament to “act properly”. Civil society organisations, for all their expertise and focus, are not representatives of the people in the same way as Parliament with its elected representatives.]

The Constitution sets a very low bar for membership of the NA – need to trigger debate on this

Some changes being made to the electoral system (in the light of the court judgment) might allow room for debate (on criteria for public representatives – but this is largely a party matter)

The IFAA report is too diplomatic in its comments and criticism on Parliament's Oversight and Accountability (OVAC) model. (Quite apart from its weaknesses in following through on issues raised by the AG,) the OVAC needs a complete overhaul and review.

Hazel said the problems we have are linked to the flawed electoral system.

Zunaid said that Parliament would benefit if more MPs had a level of financial literacy, so they could read basic financial reports. This goes alongside awareness of ethical issues and of their independence.

Patrick said that in order for MPs to hold the executive to account, two things are needed:

First MPs must have access to tools for them to be more effective in what they do

Second MPs must (as individuals) have the ability to DO the work expected of them.

"You can't legislate morality. Training falls short here."

Don't set minimum academic standards for election to Parliament – this is a dangerous road (cf Uganda where you have to have a school certificate to be elected – if you are not shot by Museveni's thuggish police and army first)

A level of training is, however, needed to equip members to understand the purpose of financial reporting to Parliament. This conceptual understanding is lacking.

It is not only the AG, but all the Chapter 9 institutions that are there to help Parliament in its oversight functions. But reports of other Chapter 9 institutions are rarely debated in Parliament. Parliament does not make adequate use, for example, of the SA Human Rights Commission, with all its specialist expertise. The AG is a special case, as its role in Parliament is legislated.

Bruce said that international experiences could be useful to MPs – inter-party processes and bi-partisan discussions [can be fruitful]. [something about how intimidation and vote buying prevents inter-party contacts and bi-partisan initiatives].

The report of the ad hoc committee on the Chapter 9 institutions, which was issued in 2007 (Asmal report) has been passed down from one Parliament to the next. Proposals to rationalise the gender and human rights institutions have failed because the incumbent will be affected as there will be fewer jobs. So change has always been blocked.

Role of Parliament – what went wrong? How can we fix it?

Hope these recommendations of IFAA will come into the Zondo commission report.

Intra-party democracy is an issue that is slowly coming to the fore. Also the private funding of political parties – and the motivations recently made for more public funding of political parties – are relevant. Surely parties must meet basic standards for internal democracy if they receive outside funds? Surely we have the right to demand minimum internal democracy if political parties receive public funds?

Zunaid questioned if the political will is there. The existing institutional mechanisms [for internal democratic accountability] are inadequate.

Does there need to be a body "between" Parliament and the executive to ensure the executive are accountable? [The Corder report of 1999 recommends an Accountability Standards Act, here]

Civil society organisations, as important as they are, are not substitutes for the constitutional mandate of Parliament to oversee the executive action and hold the executive to account.

Lawson pointed out that we have a structure already in place between Parliament and the executive – this is the leader of government business in Parliament [Traditionally, this is the deputy president. In principle, this is where the IFAA could go next with this project.

From Parliament’s web site:¹

The President appoints the Leader of Government Business, in terms of section 91(4) of the Constitution ... The Leader of Government Business is responsible for:

1. The affairs of the national executive in Parliament
2. The programming of parliamentary business initiated by the national executive, within the time allocated for that purpose
3. Ensuring that cabinet members attend to their parliamentary responsibilities
4. Performing any other function provided for by the Joint Rules or a resolution of the National Assembly or the National Council of Provinces or resolutions adopted in both Houses.

Showers asked whether MPs engage effectively with their constituents. [This is an issue that is vague because we do not have constituencies nationally, but MPs receive money – a constituency allowance – some parties put this into their central kitty, others, like the ANC, allow members to keep the money, but they do not track how it is spent. There is no report back to Parliament on what MPs have done in their “constituencies” and what they have learnt.]

Jan said that matters are of a different intensity in the Netherlands, but it could be useful to share experiences. The embassy could help people to get involved. There is the Netherlands Institute for Multiparty Democracy (NIMD)² which could be involved in exchanges and engagements with South African parliamentarians. (The NIMD “assists political parties in new and emerging democracies... facilitating dialogue...[between] political parties in a country”.) How could we take this forward?

An effective communication strategy is needed for our report. The reports of the AG get enormous publicity. Everyone is shocked. There are headlines in the papers. And then all is forgotten.

Use publicity as a mobilising tool.

Although the invitations to the verification workshop had been widely circulated, there were not a lot of participants. Bruce will ask for responses to the draft report in writing.

This could include PMG, Cosatu and the Dullah Omar Institute – which have a focus on Parliament.

Zunaïd said we need to find a way to make MPs discuss the report so it percolates up.

Hazel thought it would be useful to give civil society a bigger role [in holding the executive to account] even if it lacks the full constitutional authority of Parliament.

¹ <https://www.parliament.gov.za/leader-of-government-business#:~:text=%20The%20Leader%20of%20Government%20Business%20is%20responsible,by%20the%20Joint%20Rules%20or%20a...%20More%20>; “...the Deputy President, who is the Leader of Government Business (in Parliament)” < <https://nationalgovernment.co.za/units/view/4/The-Presidency> >.

² <https://nimd.org>

Take-aways from the Checks and Balances project consultation on 31 July 2020

From: IFAA FORUM & EVENTS <studentandyouth@ifaaza.org>

Date: Friday, 07 August 2020 at 10:47

Subject: Take-aways from the IFAA Checks and Balances project consultation on 30 July 2020

Dear friends

Thank you for attending the meeting last week.

These are the main 'take-aways' from the meeting – very much in general and open to additions or advice.

Our next step is to produce a formal document which we will put out for validation to a wider group of stakeholders. Date not set as we have quite a bit of follow-up to do. [This phase of the project will be completed by December 2020].

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.
 - 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.)
 - 1.3. Look carefully at existing legislation, particularly the Money Bills Act, which contains powers Parliament has never used for holding the executive to account.

We have received several documents – from the Deputy Speaker and from others – since the meeting.

2. Include some international experience of how other Parliaments have confronted non-compliance by the executive with Parliamentary instructions? What sanctions have been applied elsewhere?
3. Refer to the question raised by Judge Zondo: where was Parliament when state capture was happening?
4. Consider ways in which non-compliance with AG recommendations by municipalities could be brought before Parliament. The inter-governmental co-operation framework legislation provides no avenue to enforce co-operative governance. Checks and balances here simply do not work.

Particular points

- a. Induction is important for new members but is must be promoted alongside continuity – parties need to return a good proportion on members to the next parliament to ensure that lessons are learned from experience and that Parliament has institutional memory amongst members.
- b. Members should not only rely on AG reports – they must go on the ground in their constituencies. Parliament must not hamper members by tying them to parliamentary meetings in Cape Town that in practice limit oversight efforts.
- c. The problems of timelines for committees are of longstanding and remain a valid concern.
- d. The *sub judice* rule is used (incorrectly) to limit Parliamentary oversight.
- e. There is no necessary limitation of independence implied in the expanded mandate of the AG.

We will develop recommendations for Parliament and for Members, as well as avenues for citizen and stakeholder participation to promote better understanding and implementation of the recommendations of the Auditor-General.

Regards,

C&B Team

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Events and Forums

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PARI

A follow-up interview with Tracy Ledger of PARI in August 2020 drew our attention to the disturbing and comprehensive reports of PARI on governance failures in local government and how these are reflected in Auditor-General Reports.

This research was “taken on board” but not pursued or developed given the IFAA project focus on Parliament.

Ledger, T. and Rampedi, M. (2019). *Mind the Gap: Section 139 Interventions in theory and in practice*. PARI Report. Public Affairs Research Institute. Johannesburg

This report was referenced in the *Mail & Guardian* by Athandiwe Saba on 13-Nov-20: “The system to save failed councils needs a significant overhaul”.

Also

Ledger, T. and Rampedi, M. (2020). *End of the Road: A critical review of the local government fiscal framework*. PARI Report. Public Affairs Research Institute. Johannesburg. 26 August. < <https://pari.org.za/end-of-the-road-a-critical-review-of-the-local-government-fiscal-framework/> >

[There is] a financial cul-de-sac that many of the local municipalities and districts have already reached across the whole country, with a few and limited exceptions

“In post-1994 South Africa, a central role for local government was envisaged in the new developmental state that would deliver the promised better life for all. Some 25 years later, local government has failed to be at the forefront of delivering transformative service delivery to all South Africans, and to contribute directly to meaningful and sustainable improvements in the standard of living. Many municipalities are in a state of financial distress, and universal access to affordable, quality services has not materialised....

... The annual local government audit reports prepared by the Auditor General of South Africa (AGSA) signal rising concern about the state of local government finances. For the 2017/18 financial year³ the AGSA made this observation:

There are increasing indicators of a collapse in local government finances – we assessed 76% of the municipalities to have a financial health status that was either concerning or requiring urgent intervention. Almost a third of the municipalities were in a particularly vulnerable financial position. AGSA 2019a, p9

SEE also the insightful PARI comments on irregular expenditure.

List of internal AG Project Bulletins

- AG Project Bulletin 18: 08 December 2020 [Notes from the Validation Workshop and Consultation with stakeholders; Project Bibliography]
- AG Project Bulletin 17: 19 October 2020 [Article for *New Agenda* 78 by Checks and Balances Team – “Parliament and the Auditor General: The accountability gap and what can be done about it”.] – *effectively, an interim report on the project*
- AG Project Bulletin 16: 11 September 2020 [Interview with Mr Alf Lees MP]
- 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 of Parliament on 06 August 2020]
- AG Project Bulletin 13: 07 July 2020 [Interview with the Auditor General: Mr Kimi Makwetu]
- 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 Mr Michael Acres]
- AG Project Bulletin 09: 16 April 2020 [Notes from a conversation with Mr 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. [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 the 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]

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The Constitution, 1996

Public Finance Management Act (PFMA), No. 1 of 1999 [as amended]

Public Audit Act (PAA), No. 25 of 2004 [as amended]

Companies Act No. 71 of 2008 [as amended]

Money Bills Amendment Procedure and Related Matters Act, No. 9 of 2009 [as amended]

International issues

Canadian Council of Legislative Auditors (CCOLA) website: <
<https://www.ccola.ca/ccola/en/about-ccola>>

Office of the Auditor General of Canada [note that each Canadian Province has its own AG and the federal AG's role is smaller than in SA]

The Canadian Audit and Accountability Foundation (CAAF) website: < <https://www.caaf-fcar.ca/en/>.> CAAF is a non-profit organization dedicated to promoting effective performance audit and government oversight.

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Research references on Auditing

[These sources provided a valuable reference point for the research, but were largely beside the main thrust of the project. The problems with auditing, and with performance measurement in general would be useful for a project with a different focus]

Qualifications for Auditors

Chartered Accountant CA(SA) from the South African Institute of Chartered Accountants (SAICA)

Registered Auditor (RA) from the Independent Regulatory Board for Auditors (IRBA)

Registered Government Auditor (RGA) from the Southern African Institute of Government Auditors (SAIGA)

Professional Accountant (SA) from the South African Institute of Professional Accountants (SAIPA)

Certified Information Systems Auditor (CISA) qualification from ISACA

Regulation of Auditors: Independent Regulatory Board for Auditors (IRBA) - formerly the Public Accountants' and Auditors' Board (PAAB)

IRBA does not have jurisdiction over the AGSA. The AGSA with its close to 4,000 staff, ranks with the 4 private sector auditing giants, some of whom are contracted to do audits for AGSA, or may independently audit State owned enterprises

Accounting firms

- PwC South Africa 5,000 people 19 offices
<https://www.pwc.co.za/en/careers/about-pwc.html>
- EY South Africa ? people 10 offices https://www.ey.com/en_za/global-executive
- KPMG South Africa ? people 4 offices
<https://home.kpmg/za/en/home/about/overview/history.html>
- Deloitte South Africa 4,197 people 10 offices
<https://www2.deloitte.com/za/en/pages/careers/articles/transformation.html>

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