

AG Project Bulletin 05.

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Notes from our Interview with Mr Mkhuleko Hlengwa MP, Chairperson of the Select Committee on Public Accounts (SCOPA) on 16 March 2020

- The Auditor General's powers have been broadened, allowing for the identification of material irregularities, referring errant parties to the appropriate investigative authorities and issuing certificates of debt, but it's too early to judge the efficacy of these new powers;
- Portfolio committees need to stop viewing themselves as extensions of the executive;
- Portfolio committees are insufficiently supported and capacitated with proper research;
- It goes to the heart of the electoral system. Members tend to place the party mandate above the needs or wishes of the electorate;
- At plenaries, the house discusses and debates committee reports in a very cosmetic manner;
- SCOPA has risen above party polarisation and works in close consultation with the Auditor General;
- Quarter-to-quarter reporting does not have "any bite".;
- Two radical shifts are needed a) Individuals need to be capacitated and b) Portfolio committees must be empowered;
- Technical Skills and research is sorely required;
- There are resource shortages across the board;
- Government is "executive heavy";
- Political Parties need to list knowledgeable people as representatives. There is a mismatch between people and expertise as therefore committees and expertise;
- Parliamentary scheduling is poor. Committees meet from 9am to 1pm and thereafter the house plenary. SCOPA meets at night;
- SCOPA is "seen to be working" and also "seen to be a committee that rises above party politics";
- Hlengwa names PRASA as a recent SCOPA success: the dissolution of its board and the declaration of delinquent directors; SCOPA's "boots on the ground" approach to fixing ESKOM with site visits to Medupi, etc.;
- Scheduling and Spatial planning seriously limits the committees' ability to meet;
- Endless unnecessary and theatrical plenary sessions;

- “Political Party Interphase” rather than “Political Party Interference” is required;
- Parliament is a toxic work environment where political parties push hard lines to their employees;
- Hlengwa praises the outlook of the new speaker of Parliament Thandi Modise as a “breathe of fresh air”; She is focused on parliament taking its rightful place as an independent arm of the state;
- The previous speaker had a detached view of parliament’s role, but a radical shift is underway , especially with regard to the Speaker’s role;
- Portfolio Committee’s are handicapped by a lack of research and expertise to their approach is to rubberstamp;
- The Money Bills Act needs review, Timelines and scheduling are impractical;
- Non-elected officials of Parliament have too much power and have a subtle disregard for members needs, for example when manipulating the appointments process;
- There is a need for a review of where authority lies in parliament;
- Committee secretaries have a great degree of power influence proceedings;
- SCOPA has built up a degree of independence and camaraderie amongst its members that rises above party political differences;
- This is not necessarily because it is traditionally headed by a non-ruling party chair. Different PC chairs have different strategic priorities. It is not to be assumed that opposition parties will be any more ethical and effective;
- Most of the PCs are very rigid and don’t easily adapt to changing conditions;
- Hlengwa recommends that we look at the new Speaker’s Strategic Plan.

Interview with Mr Hlengwa, SCOPA, 05 March – Note by Martin

It's up to Parliament to hold the Executive to account, said Mr Mkhuleko Hlengwa MP, Chairperson of the Select Committee on Public Accounts (SCOPA). Parliament has the power in the Constitution. It does not need new laws – but it does need altered ways of working, that give powers to Members that have been taken away by political parties and by the administration of Parliament.

Strange to say, even in a political environment that is so toxic, there are positive signs. Mr Hlengwa was optimistic, despite the evidence that the recommendations of Auditor General are often not applied by the executive – or effectively promoted by Parliament in its oversight of state spending.

Committees are the “engine room” of Parliament. Committees are where government and AG reports are considered and deliberated upon. Some committees – one being SCOPA – work in a very effective manner. There is a tradition of non-partisanship which is obviously in place. Mr Hlengwa is a member from the Inkatha Freedom Party, not the ruling African National Congress. He is the only non-ANC committee chair, it being a Parliamentary tradition that the committee dealing with reports on public expenditure is chaired by an opposition member. If you attend a SCOPA meeting, you will not be able to guess who is representing which political party. (Except of course for the EFF who dress in their red overalls!) The Committee works together to interrogate the AG's findings and recommendations. Their serious intent is demonstrated by the fact that SCOPA meets twice a week – compared with the once weekly meetings of most portfolio committees. SCOPA regularly has evening meetings because time in the week is absorbed by the afternoon sessions in the House. It has had to fight for this time with the House Chair of Committees. Committees, if they are determined and set their mind to it, can find time to do their work effectively. Committees have to consider numerous, long and complex reports –they cannot do this work diligently if they have limited meeting time, and the long, often meaningless, debates in the House can take committees away from what is their real work.

The new speaker (Hon Thandi Modise) is a person of huge experience, having served as a premier and as a former chair of the National Council of Provinces (NCOP). Mr Hlengwa said that the new speaker came as a breath of fresh air when she said that Members must assert Parliament's authority. She said that Parliament must take its place as part of the checks and balances between the three arms of government. The previous speaker, in Mr Hlengwa's view, had a completely different approach.¹ She protected the executive from Parliamentary enquiry, rather than acting for Parliament, as the first member amongst equals, which is who the speaker is. Of course, she was also not neutral, being the chairperson of her political party.

On the issue of the Auditor-General – the AG has now an expanded mandate to hold individual officials personally responsible for debts identified during the audit process, where recommended corrective actions were not implemented. Time will tell if this new

¹ Cf. Claudi Mailovich: PROFILE: Mkhuleko Hlengwa's plan to tackle the rot . *Business Day* 04 July 2019 'Hlengwa believes it is necessary to reflect on "the complicity" of former National Assembly speaker Baleka Mbete, who "aided and abetted the culture of non-accountability". Mbete was seen as Zuma's protector-in-chief. Hlengwa sees new speaker Thandi Modise as a breath of fresh air.'

provision has its intended effect – of incentivising accounting officers (such as Directors General heads of SOEs) to properly implement the AG’s recommendations and report on progress.

Mr Hlengwa also mentioned the recent determination of SCOPA to find a way for Parliament to intervene to declare the previous directors of the Passenger Rail Agency of South Africa “delinquent” in terms of the Companies Act. This would prevent these people from holding any other directorships. This is a way that Parliament can ensure there are consequences when directors appointed to the boards of state-owned companies fail in their responsibilities.

Parliament has the power to hold the executive to account, some committees really seek to do this—but there are problems that hamper the effective function of Parliament in the context of “check and balances”.

Mr Hlengwa was enthusiastic as well as straightforward and plain spoken, about his work and that of Parliament. One could divide his concerns into two categories – “systemic” and “incidental”.

“Systemic” problems

The systemic problems stem from our political system and the way that Members are beholden to their political party for their positions. For members of the ruling party, it is the executive who are the senior leaders in the party and it requires selfless political will for these members to hold these leaders to account. [There are examples of excellent, dedicated chairs of committees in the 5th Parliament who did not return in the 6th Parliament!].

The consequence is that Parliament – and committees – exhibit strong “rubber-stamp” tendencies. Our electoral system makes it hard for members to vote with their conscience – something that political parties very rarely allow.

Committee members often lack the basic skills that can make a Member effective. Some do learn over time, but parties do not always send the most appropriate people to Parliament. On top of this, the party leadership don’t always match a members skills and experience with the committees they are appointed to. There is an example of a member who has twenty years of recent experience in local government as a councillor. In Parliament, she was not sent to the portfolio committee for local government, but to the committee for basic education – while she had not been an educator since the early 1990’s!

Another systemic issue that hampers Parliament in acting as a check and balance on the executive is, ironically, legislation passed by Parliament itself – in particular the Public Finance Management Act, the Money Bills Act – [and also the Financial Management of Parliament Act, 2009 – as amended from 2015].² This legislation needs to be re-looked at because it imposes unworkable timelines on committees and on Parliament. For example, the Money Bills Act requires Parliament to have considered and reported on all the annual reports of national departments and all their entities and all the State owned Enterprises

² To this can be added the Rules of Parliament, set by Parliament’s own Rules Committee and incorporating all sorts of bureaucratic inflexibilities.

within less than four weeks after receiving the voluminous documents. Similar inflexibilities prevent Committees from properly interrogating Annual Performance Plans and budgets, which take effect from 1 April each year – after being tabled only in the previous month. Committees are obliged to rubber-stamp executive reports and proposals without adequate oversight because of short time lines that Parliament itself has set.

The Financial Management of Parliament Act is used by the Administration of Parliament to deny committees research staff, refuse oversight visits and delay urgent investigations.

These legislative issues are not necessarily “systemic” in the sense that they could be changed – given the political will of Parliament – but they set the framework in which Parliament presently functions.

Political will is also required to address the associated “incidental” category of issues that hamper Parliament’s ability to act as a check and balance on the executive. The difference here is that they are unintended or unnecessary consequences of Parliament’s structure and present way of work.

“Incidental” problems

Parliament’s administration has, over time, been allowed to usurp powers that should belong to Members.

- The Administration of Parliament employs close to two thousand people in a rigid and hierarchical bureaucracy. As a bureaucracy it is tardy and uncooperative. For example, one of the key requirements for a committee to function effectively is a dedicated staff, including Parliamentary researchers who can assemble and interpret reports to allow the committee to do its work. The researcher for SCOPA accepted appointment to another position in Parliament. Despite the fact that there was a budget to pay a researcher, the human resources division of Parliament failed to fill the position.
- The secretaries to committees are appointed by the Parliamentary administration. These are people with enormous responsibilities and great power. In exercising this power, they follow the dictates of the administration. [There is a complex overlap here with the Chair of Committees who has many decision-making powers]
- Committees and chairs are not allowed to participate at all in deciding who Parliament recruits as committee support staff.
- Parliament refuses committees meeting times and venues, making it impossible often to give full consideration to oversight issues.
- Parliament refuses transport requests for committee oversight visits. (It was vital for SCOPA to visit the problematic Eskom Medupi and Khusile power station construction sites).
- Committee secretaries (on instruction from the Administration) manipulate committee agendas, effectively taking time away from what the committee itself would see as its own priorities.

- The time of Members is very badly used. Parliament – and this does involve all the parties – schedule long, useless, time-wasting plenary house sittings every afternoon. The house sittings are poorly managed from a time perspective, and this mindless activity steals time from Parliament’s committee work – its real oversight responsibility. The full afternoon plenary sessions of the House mean that most committees can meet from 9am to noon on one day a week (only 3 days are available for meetings as members have constituency responsibilities as well). Parliament lacks the venues to accommodate more meetings in this restricted time.

For all the above reasons, there is not enough effort given by Parliament to scrutinise executive action and to deal with substantive issues in the long, complex reports tabled by the executive.

General comments

Portfolio Committees need to stop seeing themselves as extensions of the Executive. The problems that SCOPA sees would not happen if PCs were effective. It is a design flaw of Parliament that Committees are not given the full strategic support they need in the form of research. It all goes back to the electoral system. [Mr Hlengwa referred to an article he wrote for the Sunday Times on the problem of Members being accountable to their party, rather than to the people who elected them. I have not found this article.] The party mandate rules. So PC’s *praise* Ministers – they don’t *probe* them. The biggest challenge in committees holding the executive to account is that there is no real separation between the executive and the political party that has a majority in the legislature. The environment is so highly politicised that Parliament can’t do what it is supposed to.

PCs must interrogate the AG’s recommendations. The AG drills down into the findings with SCOPA. The theatrics of the house are normal politicking. The work must be done in the PCs – and this work is not happening. The PCs have no bite on quarter to quarter reporting. They do not determine whether departments stick to their annual performance plans (APPs).

The two key issues for Parliament are to have a **focus on members** so they can do their jobs, and for PCs to be able to **enforce their independence**. Playing fields are not even. Parliament is under-capacitated compared with the executive, which has all the resources. Parliament and the judiciary (including the National Prosecuting Authority) are under-resourced [in their tasks of scrutiny of executive action and holding the executive to account.]

Within committees there are frequently mismatches between members’ capacity and experience and the needs of the particular PC. Members may be diligent in attending meetings, but they are not able to understand the fine details. Parties should not just put on their list people who are popular. They need to list capable people who are *au fait* with the content [covered by a committee], who understand government and the issues.

The scheduling of Parliament is badly managed: PCs meet from nine in the morning then Members have to rush to the House. You can’t interrogate reports properly on three to four hours only. That is why SCOPA meets twice a week and now at night if needed. If the endless plenary sittings were limited, the business of the house would not eat into the time needed by committees to fulfil their role as the engine of Parliament.

SCOPA is effective from an optics perspective – it is seen to ask hard questions and to rise above political issues. But it finds it hard to make formal resolutions that bite and [take accountability] the whole nine yards. Effectiveness is hard to measure. SCOPA may berate the executive³ but it is hard to get consequences. SCOPA did ensure that the PRASA board was dissolved, and it is now trying to extend itself to declare PRASA's previous board delinquent directors.⁴

SCOPA is *en route*, it is a hard-working committee that is doing more than other committees, but it is not there yet.

Political parties need to *interface* with their deployees in Parliament, but not *interfere*. There must be lee-way for members to vote [according to the evidence] or Parliament becomes a rubber-stamp, which is very dangerous.

The political environment is so toxic. Constituency-based push-back is needed

Is the BRRR an example of a rubber-stamp?

It goes to bad scheduling of the BRRR process and poor planning in Parliament which does not give adequate space for priorities. The BRRRs are often inconsistent with reality as PCs lack both time and expertise. Officials of Parliament have too much power. They take decisions [which properly belong to Members and committees.] There is a subtle disregard for Members in the attitude of Parliament [ie the administration]. It takes months for a committee researcher to be replaced, even when the budget is approved for the post. Timelines for the BRRR are ridiculous and the legislation needs to be reviewed. Lots is left to the administration. As Committee chair Mr Hlengwa needs to have the authority to call meetings – but he does not have it. Committee Secretaries want to tell politicians what to do.

Committees have to assert themselves and chairs need to assert themselves. This is a very key problem.

³ Scopa berates 'unfit' Eskom board for 'showing them middle finger' *Citizen* 19-Feb-20 "You can't come to parliament and we bail you out, then, when you have to account, you show us the middle finger," said Scopa chairperson Mkhuleko Hlengwa.... the standing committee of public accounts (Scopa) gave a verbal lashing to Eskom's board this week. Yesterday, Scopa chairperson Mkhuleko Hlengwa did not mince his words when he berated the power utility's board for not showing up to a planned meeting to update parliament on its turnaround strategy. Hlengwa concluded his response to the board's no-show by calling it unfit.

'You have failed': SCOPA chair lashes out at Eskom task team under Dlamini-Zuma *Fin24*. 4-Mar-20 "Chair of Parliament's Standing Committee on Public Accounts Mkhuleko Hlengwa lashed out at the inter-ministerial task team which was tasked to address the municipal debt owed to Eskom.

The inter-ministerial task team, chaired by Minister of Cooperative Governance and Traditional Affairs Nkosazana Dlamini-Zuma, was established in 2016 to seek a solution to the outstanding debt, which only swelled to more than R26 billion since the establishment of the task team.

A visibly annoyed Hlengwa told Dlamini-Zuma that instead of finding a solution that helps municipalities pay what they owe Eskom, the task team has focussed on issues such as disputed debt from national departments, including public works and parliament itself.

"The IMTT failed, because the debt escalated under their watch. No one wants to discuss debt but would rather discuss the merits of policy approaches."

⁴ MPs aim to have former Prasa board members declared delinquent. B. Phakathi, *Business Day*. 05-Feb-20

SCOPA is different. It has built up a professional capacity amongst members – and across parties. Members can disagree, without being disagreeable.

Parliament must be more flexible. It has to work in real time, so it has to allow change.

Mr Hlengwa said he would be happy to assist with the project on checks and balances. He suggested that interviews could be held with:

- The speaker Hon Thandi Modise
- Hon Lechesa Tsenoli (for a historical perspective on the role of the speaker in Parliament)
- Mr Xaso, secretary to the National Assembly
- The Chief Whips of the parties – ANC. Mazzone, Singh, Shivambu
- James Selfe of the DA who has been in Parliament since 1994, also Kenneth Meshoe
- Themba Godi was SCOPA chair for 14 years Members from provincial legislatures who also have SCOPAs, but that in KZN meets only once per term! (see both worlds)
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- Gavin Woods
- The former AG, Terence Nombembe.