



Parliament, where to now?

By Moira Levy

One year after the work of the Zondo commission came to an end, Parliament's report card for recommended action is full of gaps.

Parliament finally began its formal and substantial processing of the Zondo Report on state capture five months after the final report had been published. It waited for the President to submit his own Implementation Plan, dealing with the commission's recommendations regarding the Executive, which took us almost to the end of 2022.

In fact, most of the work that Parliament has done to date to address the recommendations that Chief Justice Raymond Zondo set was undertaken during the second parliamentary term (18 April to 15 June 2023).

This emerges in a [research report](#) by the Parliamentary Monitoring Group (PMG) commissioned by the [Institute for African Alternatives](#) (IFAA) as part of its Defending our Constitutional Democracy (Decode) project. The report written by PMG researcher Sabelo Ndlovu was delivered at a Decode workshop held on the eve of the one-year anniversary of the handover by Zondo of the final volumes of his hefty report to President Cyril Ramaphosa.

The general consensus that emerged at the workshop, appropriately titled "Parliament, where to now", was: very little indeed.

Ndlovu explained Parliament's two-pronged strategy which distinguished between the Zondo recommendations that dealt with Parliament's failure to carry out its oversight and accountability duties, and those directed at the Executive, which were addressed in the President's implementation plan.

In November 2022, a [31-page Implementation Plan](#) was presented by the Rules Committee which determined that the recommendations would be forwarded to the appropriate parliamentary committees: the Rules



Committees of both Houses and the Joint Rules Committee would play a leading role in processing the bulk of the recommendations pertaining to Parliament; proposed constitutional changes would be referred to the Joint Constitutional Review Committee; MPs implicated in the Commission's Report were to be investigated by the Joint Committee on Ethics and Members' Interests for possible contraventions of the code of ethical conduct in light of revelations at the Zondo Inquiry; and 15 committees were identified to oversee the implementation of the President's Plan for the Executive.

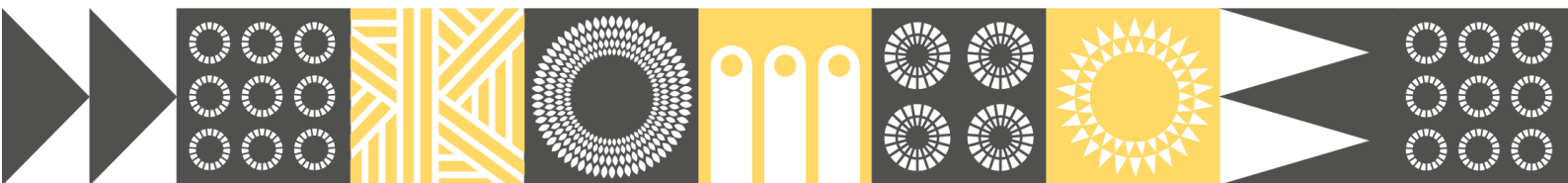
The National Assembly Rules Committee also decided that designated committees would have six months to finish processing the recommendations or, at the very least, to provide a preliminary report.

Unsurprisingly, two-thirds of the PMG's report focused on the efforts of the NA Rules Committee, whose Subcommittee on Review of Assembly Rules met on 21 and 25 April and reported back to its mother body, which later endorsed its decisions.

It was mandated to deal with five areas of concern that Zondo dwelt on in his report: the need for a dedicated oversight committee for the Presidency; the need for means to improve Executive performance in relation to the committees; the question of whether the appointment of MPs from opposition parties as committee chairpersons would strengthen parliamentary oversight; the need for a single mechanism for tracking and monitoring Executive performance; and possible amendments to Parliament's rules regarding parliamentary appointments.

Presenting his research to the Decode conference, Ndlovu concluded that overall it appeared that the implementation of the Zondo recommendations had so far been a tick-box exercise and in some respects it had been a missed opportunity.

On the question of an oversight committee for the Presidency, a matter that long preceded the Zondo Inquiry, the Ndlovu's reports says: "While Parliament has a toolkit of oversight mechanisms, parliamentary committees are the primary platform for robust oversight. This is lacking when holding the Presidency accountable. This is essentially the rationale behind this particular Zondo recommendation."



The report refers to a research paper by the Parliamentary Budget Office (PBO) commissioned by Parliament to address this issue and noted there is evidence “that the structures of the current Parliament oversight mechanisms may be insufficiently robust to achieve adequate monitoring of the executive by Parliament”.

It cites the Budget Office’s view that a Committee on the Presidency could become an essential part of South Africa’s system of checks and balances which could enable Parliament and the wider public to hold ‘Vote 1’ (the Presidency) accountable. However, the Budget Office’s report was non-committal, concluding simply that Parliament should strengthen its oversight over the Presidency but that further research would be beneficial. It is now known that a study tour is being planned for nine MPs to visit the UK and other countries to look at best practices elsewhere. Although the PMG report does not say so, this may be an effort by Parliament to kick the can further down the road.

The NA Rules Committee did not take kindly to the Commission’s recommendation that Parliament consider amending its rules to address defective performance and unsatisfactory ministerial attendance at committee meetings. At its 25 April meeting it pointed out that the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act (2004) already made it an offence for anyone to refuse to appear before or give evidence to a Committee, or to willingly mislead Parliament – that would be considered contempt of Parliament.

“Parliament seemingly suggests that the institution already has mechanisms in place to deal with non-attendance of the Executive and matters of inadequate reporting,” the PMG report states.

The report suggests that this issue is “layered” and should be dealt with on a “case-by-case” basis as Executive failings are not experienced across the board and in the same way by all Committees. “A review of the PMG website will show that there is a disparity in ministerial attendance between committees. This is largely due to the nature of their portfolio (with some being demanding and having many difficult issues) and even the relationship between the executive authority and the committee,” it notes.



The report goes on to say that the onus rests on the individual committees themselves: “It essentially comes down to each committee clearly developing its own procedures and standards for dealing with problems of ministerial attendance at meetings, as these committees have the power and independence to set their individual standards of what will be tolerated and what will not.”

The NA Rules Committee also pushed back strongly against Zondo’s recommendation that members of opposition parties should be appointed as chairs of committees to strengthen parliamentary oversight. Its MPs (mostly from the ruling party) accusing the State Capture Commission of overreach and said this could only apply if there were coalition agreements in Parliament.

According to Ndlovu, “Many witnesses during the Inquiry also attested that the role played by the chairpersons of portfolio committees is influential in determining the extent to which committees succeed or fail in their oversight mandate” and that “the tone of committees is set by their chairs.

“Chairs of committees rarely demonstrate independence and impartiality in executing their duties and have been seen to hide behind parliamentary protocol through rigid interpretations of parliamentary procedure which ignore or miss the spirit of oversight institutions that limit active debate, scrutiny, and public participation”.

Ndlovu agreed that appointing chairs from other parties would not guarantee that oversight would be strengthened, but suggested there were “nuanced and creative ways” to implement this, for example having opposition members chair some meetings, parts of a meeting or even some subcommittee meetings.

Various witnesses who appeared before the Commission drew attention to the absence of a standard parliamentary system to “track and monitor” the implementation or non-implementation of Committee recommendations, which become House resolutions after being passed in the respective Chambers. This also goes back to long before the Zondo Commission.



The PMG report endorses the need for parliamentary follow-up, which it called “oversight in action”. “Parliamentary committees, very broadly speaking, do good work producing detailed reports with considered recommendations related to various engagements with the Executive such as meetings and oversight visits ... This work is rendered useless if the recommendations are not followed up. Parliament and committees cannot depend on the goodwill of the Executive to respond – this simply must be enforced on the part of the institution. This ought to be a basic part of Parliament’s oversight architecture.”

The Zondo Commission’s recommendations for a constituency-based electoral system and the direct election of the President was delegated to the Portfolio Committee on Home Affairs and the Select Committee on Security and Justice. With the Joint Rules Committee, they were also given the task of responding to Zondo’s recommendation to consider whether it would be desirable to enact legislation to protect MPs from losing their party membership (and therefore their seats in Parliament) merely for exercising their oversight duties reasonably and in good faith.

PMG reports that the Portfolio Committee on Home Affairs said in its most recent quarterly update published on 9 June that such recommendations would be referred to the Electoral Reform Consultation Panel, which has still to be established by the controversial Electoral Amendment Act.

AsNdlovu pointed out, the recommendation for electoral reform to provide for some form of constituency-based representation has been made repeatedly in the past – by the Van Zyl Slabbert Commission in the early 2000s, former President Kgalema Motlanthe’s High-Level Panel on the Assessment of Key Legislation more recently, and other earlier Commissions of Inquiry.

According to the State Capture Commission, the Joint Standing Committee on Intelligence’s (JSCI’s) failure to carry out its oversight duties meant, “Parliament has, at least to some extent, contributed towards state capture, because its failure to do its job meant that acts of state capture and corruption were allowed to spread and deepen”. The Commission recommended that the outgoing JSCI be required to report



to Parliament as comprehensively as possible on its work during the preceding term. However, this could present a challenge; PMG's report points out that the JSCI, which meets behind closed doors, has failed to meet the annual deadline for its report to Parliament since 2017.

Ndlovu concluded Parliament's performance on oversight and accountability since the Zondo Commission has been mixed at best. He pointed to the disappointing decision by Parliament to reject an independent panel's report on the Phala Phala case but also to, for example, the legislature's rigorous approach to the Thabo Bester matter.

Ndlovu agreed there have been instances of improved oversight, but Parliament still fails when it comes to the "big things," which "overshadows the good work being done" on routine matters.

"While tools for oversight are important, ultimately, political will to fully use such tools despite the inherent obstacles is paramount ... Usually, however, oversight involves mundane work that provides very little of the public profile important to politicians concerned with retaining their seats. Moreover, for members of the majority party, it may involve asking their colleagues in government awkward questions. These and other political disincentives to conducting oversight need to be acknowledged."

So what then would be the incentive to conduct effective oversight? Ndlovu concluded that the main incentive must be the recognition that oversight is a critical part of a democratic society committed to effective government and transformation, and adds civil society needs to be a "vigilant and vocal voice in supporting effective oversight".