

C

STATE ATTORNEY
DX 298 PRETORIA

78

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO:
32858/20

In the matter between :-

HELEN SUZMAN FOUNDATION

Applicant

and

THE SPEAKER OF THE NATIONAL ASSEMBLY

1st Respondent

**THE PRESIDENT OF THE REPUBLIC OF
SOUTH AFRICA**

2nd Respondent

**THE CABINET OF THE REPUBLIC OF
SOUTH AFRICA**

3rd Respondent

**CHAIRPERSON OF THE NATIONAL COUNCIL
OF PROVINCES**

4th Respondent

**THE MINISTER OF COOPERATIVE
GOVERNANCE AND TRADITIONAL AFFAIRS**

5th Respondent

FILING SHEET

**DOCUMENT: SECOND & THIRD AND FOURTH RESPONDENTS' ANSWERING
AFFIDAVIT**

DATED at PRETORIA this 14 day of AUGUST 2020.



ATTORNEY FOR 2,3TH RESPONDENTS
STATE ATTORNEY PRETORIA
SALU BUILDING
316 THABO SEHUME STREET
CNR THABO SEHUME (ANDRIES)
AND FRANCIS BAARD (SCHOEMAN)
STREETS
PRIVATE BAG X91
PRETORIA, 0001
Ref: 1634/2020/Z22
Tel: (012) 309 1578
Fax: (012) 309 1649/50
086 507 7007
E-mail: nagongqo@justice.gov.za
Enq: Ms N Qongqo

TO: THE REGISTRAR OF THE HIGH COURT
GAUTENG DIVISION
PRETORIA

**AND
TO:**

APPLICANT'S ATTORNEYS

WEBBER WENTZEL
90 RIVONIA ROAD, SANDTON
JOHANNESBURG
2196
P O BOX 61771, MARSHALLTOWN
JOHANNESBURG
Tel: 011 530 5867
Fax: 011 530 6867

E-mail: Vlad.movshovich@webberwentzel.com
Pooja.dela@webberwentzel.com
Dylan.cron@webberwentzel.com
Daniel.rafferty@webberwentzel.com
Matthew.kruger@webberwentzel.com
Jessica.dutoit@webberwentzel.com

Ref: V Movshovich / P Dela / D Cron / D Rafferty /
M Kruger / J du Toit
3041349

C/O HILLS INCORPORATED ATTORNEYS
OFFICE B313, 1ST FLOOR, PARKDEV BUILDING
BROOKLYN BRIDGE OFFICE PARK
570 FEHRSEN STREET
BROOKLYN
PRETORIA

Tel: 087 944 1800

Ref: A Engelbrecht

HILLS INCORPORATED

1st Floor Parkdev Building
Brooklyn Bridge Office Park
570 Fehrsen Street
Brooklyn Pretoria

DATE: 14.08.2020

TIME: 15:05

SIGN: H Merota W.O.P

RECEIVED COPY:

TIME:

DATE:

**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NO: 32858/20

In the matter between:-

HELEN SUZMAN FOUNDATION

Applicant

and

SPEAKER OF THE NATIONAL ASSEMBLY First Respondent

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA Second Respondent

THE CABINET OF THE REPUBLIC OF SOUTH AFRICA Third Respondent

CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES Fourth Respondent

MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS Fifth Respondent

SECOND, THIRD AND FIFTH RESPONDENTS' ANSWERING AFFIDAVIT

Table of Contents

INTRODUCTION	3
RELIEF SOUGHT IN RELATION TO PARLIAMENT	6
RELIEF SOUGHT IN RELATION TO THE PRESIDENT AND CABINET	8
RELIEF SOUGHT IN RELATION TO PARLIAMENT AND CABINET.....	9
THE DMA IS THE RESPONSE TO DISASTERS IN SOUTH AFRICA	11
PROCESS FOR CLASSIFICATION OF A DISASTER AND DECLARATION OF A STATE OF DISASTER.....	15
DECLARING A NATIONAL STATE OF DISASTER	18
PARLIAMENT HAS BEEN EXERCISING ITS OVERSIGHT FUNCTION	19
THE OVERSIGHT AND ACCOUNTABILITY MODEL.....	20
PARLIAMENT RULES AND PROCEDURES	21
MINISTER/NATIONAL DEPARTMENT OF HEALTH	24
MINISTER/DEPART OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS.....	25
MINISTER/DEPARTMENT OF HUMAN SETTLEMENTS, WATER AND SANITATION	27
MINISTER/HIGHER EDUCATION, SCIENCE AND TECHNOLOGY	27
MINISTER/DEPARTMENT OF EMPLOYMENT AND LABOUR	28
MINISTER/DEPARTMENT OF DEFENCE AND MILITARY VETERANS	31
MINISTER/DEPARTMENT OF SOCIAL DEVELOPMENT.....	32
NATIONAL TREASURY AND THE SOUTH AFRICAN REVENUE SERVICE	33
MINISTER/DEPARTMENT OF HOME AFFAIRS.....	33
DEPARTMENT OF SMALL BUSINESS DEVELOPMENT.....	34
MINISTER/DEPARTMENT OF BASIC EDUCATION.....	34
MINISTER/DEPARTMENT OF POLICE	34
MINISTER/DEPARTMENT OF JUSTICE AND CORRECTIONAL SERVICES	35
MINISTER/DEPARTMENT OF TRANSPORT	36
MINISTER/DEPARTMENT OF PUBLIC WORKS AND INFRASTRUCTURE.....	37
PROGRAMME COMMITTEE	38
DIRECT CONSULTATION BY THE PRESIDENT WITH POLITICAL PARTY LEADERS	38
CONCLUSION	39
SERIATIM RESPONSES.....	40

I, the undersigned

CASSIUS REGINALD LUBISI

do hereby make oath and state that:

1. I am the Director-General in the Presidency. I am also appointed as the Secretary of Cabinet. I am duly authorised to depose to this affidavit on behalf of the second, third and fifth respondents.
2. The facts contained herein are, unless the context indicates otherwise, within my personal knowledge and are, to the best of my knowledge and belief, both true and correct.
3. Where I make legal submissions in this affidavit, I do so on the advice of the President's legal representatives, which advice I accept as correct.
4. I have read the founding affidavit deposed to by Mr Francis Antonie ("Mr Antonie) on 23 July 2020 on behalf of the applicant, together with the annexures thereto. I hereby respond to the allegations set out in Mr Antonie's affidavit.

INTRODUCTION

5. The applicant seeks an order declaring that

5.1 Parliament has failed to fulfil its obligations under sections 42(3), 44(1), 55(1) and 68 of the Constitution, to consider, initiate and pass legislation that regulates the state's response to the threat

posed and the harm caused by SARS-CoV-2 and COVID-19 (together 'COVID-19');

5.2 The President as head of the National Executive, along with the Cabinet of the Republic of the Republic of South Africa, has failed to fulfil the obligation under section 85(2) of the Constitution to prepare and initiate legislation that regulates the state's response to the threat posed and the harm caused by COVID-19;

5.3 Parliament and Cabinet have failed to fulfil their obligations, under section 7(2) of the Constitution to respect, protect, promote and fulfil the rights in the Bill of Rights, insofar as their legislative and executive responses to COVID-19 is concerned;

6. Also directing that

6.1 Cabinet must, without delay, exercise its powers under section 85(2)(d) of the Constitution, for (sic) sake of preparing and initiating national legislation that has as its purpose the regulation of the state's response to the threat posed and the harm caused by COVID-19;

6.2 Parliament must, without delay, exercise its powers under section 55(1) and 68 of the Constitution, for the sake of passing legislation that has as its purpose the regulation of the state's response to the threat posed and the harm caused by COVID-19;

7. Declaring that the powers of the Minister of Cooperative Governance and Traditional Affairs under the Disaster Management Act, 2002, exercised pursuant to GN 313, 15 March 2020, will terminate simultaneously with the passage of the legislation referred to in paragraph (6, above);
8. Directing that any respondent that opposes the relief sought is ordered to pay the applicant's costs, including the costs of two counsel.
9. I am advised and state that the relief sought by the applicant herein is not only unprecedented, but is, for reasons set out hereunder, incompetent.
10. In its papers, the applicant does not assail the constitutionality of the DMA. Neither does it question the legitimacy or rationality of any of the decisions that were taken under the DMA to address the pandemic.
11. The above notwithstanding, the applicant seeks that the powers of the fifth respondent under the DMA exercised pursuant to GN 313, 15 March 2020, should terminate simultaneously with the passage of legislation to be prepared and initiated by Cabinet and passed by Parliament that has as its purpose the regulation of the state's response to the threat posed and the harm caused by COVID-19.
12. I submit that the DMA is the legislation that was prepared and initiated by Cabinet and passed by Parliament that had and has as its purpose

the regulation of the state's response to the threat posed and the harm caused by a national disaster such as COVID-19.

13. In the premises, I submit that the application by applicant is ill-conceived, is frivolous and otiose.
14. In the circumstances, I submit that, without further ado, this application stands to be dismissed with costs, including the costs occasioned by the employment of two counsel
15. If, and only if the above Honourable Court holds against me in the above submissions, then, and only then do I plead over hereinbelow.

Relief sought in relation to Parliament

16. In relation to Parliament, as stated above, the applicant seeks an order declaring that Parliament has failed to fulfil its obligations under sections 42(3); 44(1); 55(1) and 68 of the Constitution. The complaint is that Parliament failed to fulfil these obligations because of an election that it made to rely on the Disaster Management Act 57 of 2002 ("DMA"), rather than pass new law to deal with the COVID-19 pandemic.
17. On their plain reading, the provisions on which the applicant relies for its cause of action *vis á vis* Parliament do not *require* Parliament to do anything. Rather, they give the houses of Parliament, (the National Assembly and the National Council of Provinces), *authority*. I catalogue these below, in order to demonstrate their content in turn.

18. **Section 42(3)** proclaims that the National Assembly represents the people of South Africa. It also explains how it does this: *“by choosing the President, by providing a national forum for public consideration of issues, by passing legislation and by scrutinizing and overseeing executive action.”* This provision does not dictate the granular detail of *when* the National Assembly ought to legislate and on what specific matters it must legislate. That decision is appropriately left to the National Assembly itself.
19. **Section 44(1)** gives Parliament the power and authority to legislate, and confers on the National Assembly the power to assign its legislative powers. That is all it does. It makes no mention of when Parliament must make laws and what laws it should make.
20. **Section 55(1)** permits the National Assembly, when exercising its legislative power, to: (a) consider, pass, amend or reject any legislation before it; and (b) initiate or prepare legislation, except money Bills. It does not impose a positive obligation on the National Assembly.
21. **Section 68** is similarly permissive. It permits the National Council of Provinces (“NCOP”), when exercising its legislative power, to: (a) consider, pass, amend, propose amendments to or reject any legislation before it, in accordance with chapter 4 of the Constitution; and (b) initiate or prepare legislation falling within a functional area listed in Schedule 4 or other legislation referred to in section 76 (3). The NCOP is also precluded from initiating or preparing money Bills.

Relief sought in relation to the President and Cabinet

22. In relation to the President and Cabinet, the applicant seeks an order declaring that they have failed to “*fulfil the obligation (sic) under section 85(2) of the Constitution to prepare and initiate*” COVID-19 legislation. I submit that section 85(2) imposes no such obligation.
23. The starting point is an overview of section 85. That provision locates the executive authority of the Republic of South Africa in the President. He or she exercises such executive authority together with the other members of the Cabinet. They do so by performing the executive functions listed in sub-sections 85(2)(a) – (e). These are:
- (a) implementing national legislation except where the Constitution or an Act of Parliament provides otherwise;
 - (b) developing and implementing national policy;
 - (c) co-ordinating the functions of state departments and administrations
 - (d) preparing and initiating legislation; and
 - (e) performing any other executive function provided for in the Constitution or in national legislation.
24. Preparing and initiating legislation is one of five executive functions through which the President and Cabinet exercise executive authority.

This naturally means that the President, together with Cabinet, can elect any one or more of the other 4 options in appropriate circumstances. There is no allegation in the applicant's papers that the President and Cabinet have not selected any other option to exercise their executive authority to deal with the COVID-19 pandemic. In this instance, the President and Cabinet elected the implementation of the DMA, [ss (2)(a)], which in turn involved coordinating the functions of state departments and administrations [ss(2)(c)] and ss(2)e). The applicant does not challenge the legitimacy or rationality of that decision. It says as much in its founding affidavit.

25. Again, ss85(2) does not *require* the President and the Cabinet to do anything. It confers on them them executive authority and sets out the manner of its exercise. There is no requirement of when the President and Cabinet should act in terms of ss85(2)(d), and the applicant has not given any reason why reliance on ss85(2)(d) would have been most apposite. What it alleges is the converse – that it does not challenge the decision to implement the DMA. It is, in any event, a decision for the President and Cabinet to make, as long as it does not breach the Constitution and the law.

Relief sought in relation to Parliament and Cabinet

26. The applicant seeks an order declaring that Parliament and Cabinet have failed to "*respect, protect, promote and fulfil the rights in the Bill of Rights*" as required by section 7(2) of the Constitution.

27. However, the applicant does not set out:

- a. The rights in the Bill of Rights that have not been respected, protected, promoted and fulfilled as a result of the election to set in motion the DMA in response to COVID-19; and
- b. Why the responses to COVID-19, which are themselves not under attack, are insufficient protections of any rights.

28. Flowing from these declaratory orders, the applicant seeks a number of directory orders as against Parliament, the President and Cabinet. I am advised and submit that the applicant has not pointed to a provision in the law that imposes an obligation on Parliament, the President and/or Cabinet to legislate. For that reason, no basis has been established for this Court to grant the directory relief. Reference to empowering provisions does not assist the applicant.

29. The relief sought, if granted, would violate the separation of powers principle. It would require the Court to dictate that Parliament must legislate in relation to COVID-19, in circumstances where the choice made by Parliament to address this particular national disaster has not been demonstrated to fall short of the Constitution. There is nothing in the provisions relied on that state when Parliament must legislate and what specific legislation it should pass. Such decisions are left to Parliament in the exercise of its constitutionally conferred mandate.

30. I readily accept that there could arise an obligation on Parliament to legislate, where there is a clear lacuna in law. In this instance, Parliament would clearly have to legislate if the DMA or other legislation dealing with a national disaster such as COVID-19 were not in place.
31. Although the applicant does not seek to impugn it, the decision by Parliament, reflected in section 26(1) of the DMA, that the Executive is primarily responsible for the co-ordination and management of national disasters (such as that posed by the COVID-19 pandemic) is correct.
32. The Executive has the agility and means to respond with the requisite expedience, and also the expertise in conceptualising, implementing and managing a national disaster. For example, the Executive has and controls the institutional infrastructure (such as the police, the soldiers, ambulance services, and medical response services. More generally, I point to the resources that are contemplated in section 27(2)(a), (b), (d), (g), (h), (j) (k) and (l) of the DMA.

THE DMA IS THE RESPONSE TO DISASTERS IN SOUTH AFRICA

33. The floods that occurred in the Cape Flats in June 1994 and the emergence of the new democracy were the catalysts that led to the paradigm shift in South Africa in terms of protecting various communities against natural hazards and providing for a comprehensive approach to disaster management in South Africa.

34. The 1998 Green Paper, which highlighted the need for a holistic mechanism for the management of disasters in South Africa, was followed in 1999 by the White Paper on Disaster Management. Among other key objectives of the policy was the need to improve South Africa's ability to manage emergencies or disasters and their consequences in an efficient and effective manner.
35. The DMA was assented to by the President on 30 December 2002 and came into operation on 1 April 2004. Its preamble, which encapsulates its objective, is, among other things, *"to provide for an integrated and co-ordinated disaster management policy that focuses on preventing or reducing the risk of disasters, mitigating the severity of disaster, emergency preparedness, rapid and effective response to disasters and post disaster recovery and rehabilitation"*
36. The National Disaster Management Centre ("NDMC") was established by Section 8 of the DMA to coordinate the implementation of this policy. The objective of the NDMC is to:
- "promote an integrated and co-ordinated system of disaster management, with special emphasis on prevention and mitigation, by national, provincial and municipal organs of state, statutory functionaries, other role-players involved in disaster management and communities."*
37. The powers and duties of the NDMC are set out in section 15 of the DMA. It is specially required to have expertise *"in issues concerning disasters and disaster management"*.

38. The DMA requires the establishment of a disaster management centre in every Province and in every District and Metropolitan Municipality, to coordinate disaster management in its sphere of responsibility. In addition, staff of the various Centres consist of the Head of the Centre and suitably qualified persons.
39. The DMA was amended by the Disaster Management Amendment Act 16 of 2015, to add a provision [section 15(2)aA] permitting the NDMC *“in any event of a disaster, or a potential disaster, to call on the South African National Defence Force, South African Police Service and any other organ of state to assist the disaster management structures.”*
40. The primary responsibility for disaster management in South Africa rests with the government. In terms of section 41(l)(b) of the Constitution, all spheres of government are required to *“secure the well-being of the people of the Republic”*. Disaster management is listed as a functional area of concurrent national and provincial legislative competence in Part A of Schedule 4 of the Constitution, which means that both the national and provincial spheres of government are authorised to enact laws within this area and have powers and responsibilities in relation to disaster management. Local government is also empowered to deal with a number of functions which are closely related to disaster management under Part B of Schedules 4 and 5 of the Constitution, such as firefighting services. In addition, section 152(l)(d) of the Constitution requires local government to promote a safe and healthy environment. The DMA gives effect to these constitutional obligations,

as well as to the rights in the Bill of Rights. In addition, Chapter 5 the DMA also assigns disaster management to local government in line with section 156(1)(b) of the Constitution.

41. Both the DMA and the National Disaster Management Framework (“NDMF”), which was adopted in 2005, are the centrepiece legislation that govern the state’s response to disasters.

42. The aim of the DMA is to ensure a uniform and integrated approach to disaster management and disaster risk reduction in each and across all spheres of government involving all relevant stakeholders. In essence, the focus of the DMA is fourfold:
 - a. First: it establishes an elaborate institutional framework for disaster management, including the establishment of disaster management centres across the three spheres of government.

 - b. Secondly, it entrenches a detailed policy development and strategic planning framework for disaster management.

 - c. Thirdly, it provides for the classification and declaration of disasters; and

 - d. Finally, it deals provisionally with the funding of post-disaster recovery and rehabilitation.

43. The DMA defines “disaster management” as:



“a continuous and integrated multi-sectoral, multi-disciplinary process of planning and implementation of measures aimed at:

- (a) Preventing or reducing the risk of disasters;*
- (b) Mitigating the severity or consequences of disasters;*
- (c) Emergency preparedness;*
- (d) A rapid and effective response to disasters; and*
- (e) Post-disaster recovery and rehabilitation”. [My underlining].*

44. The DMA also makes provision for the establishment and functioning of Disaster Management Centres across all spheres of government, disaster management volunteers; and matters incidental thereto.

Process for Classification of a Disaster and Declaration of a State of Disaster

45. In terms of section 23(1) of the DMA, when a disastrous event occurs or threatens to occur, the NDMC must determine whether the event should be regarded as a disaster in terms of the DMA.
46. Once an occurrence meets the elements set out in the definition, it must be regarded as a disaster.
47. The classification of a disaster and the declaration of a state of disaster can only occur if the incident in question adheres to the characteristics of a disaster in the DMA. In practice, it is important to understand the relationship between the classification of a disaster, the declaration of a state of disaster and the procedure(s) to follow in the execution of these tasks.

48. The process to determine this, broadly entails four steps, each depending on the outcome of the previous step.
49. **Step 1** entails determining the nature of the occurrence. Analysis of section 2 of the DMA highlights that the DMA does not apply to an occurrence, even if it falls within the definition of a disaster specified by the DMA, to the extent that:
- (1) the occurrence can be dealt with effectively through other national legislation aimed at reducing the risk, and addressing the consequences, of occurrences of that nature, and
 - (2) identified by the Minister by notice in the Gazette.
50. In such circumstances, the process for the classification of a disaster and the declaration of a state of disaster are interrupted and the occurrence is dealt with through that other national legislation.
51. In the absence of national legislation, or where occurrences that fall within the definition of a disaster occur that cannot be dealt with effectively through other legislation, the DMA applies.
52. The process for the classification of a disaster and the declaration of a state of disaster is thus maintained and the sequence progresses to the next step.
53. **Step 2** entails an assessment to establish the magnitude and severity or potential magnitude and severity of the occurrence to determine if it is

disastrous. In this regard, the outcome of the assessment is evaluated against the definition of a disaster. Where an occurrence does not meet the elements set out in the definition of a disaster, the process for the classification of a disaster and the declaration of a state of disaster is interrupted as the incident is not a disaster and the occurrence is dealt with through existing other legislation.

54. Where an occurrence meets the elements set out in the definition, it is regarded as a disaster. The process for the classification of a disaster and the declaration of a state of disaster is thus maintained and the sequence progresses to the next step.

55. **Step 3** entails the classification of an occurrence as a local, provincial or national disaster in terms of section 23 of the DMA. The purpose of classifying a disaster is to:

- a. formally determine that a disaster exists;
- b. designate primary responsibility to a particular sphere of government for the coordination and management of the disaster;
- c. ensure that a sphere of government is accountable for the disaster; and
- d. enable organs of state in other spheres to assist the sphere having primary responsibility, to deal with the disaster or its consequences.

56. The Head of the National Centre, by virtue of the powers assigned by section 12 of the DMA, in terms of section 23(1)(b) of the DMA, is responsible to classify a disaster as a local, provincial or national disaster. Assigning primary responsibility to a particular sphere does not prohibit any other sphere of government from dealing with the effects of a disaster.
57. **Step 4** entails the declaration of a state of disaster and deals with those disasters where (1) the existing legislation and contingency arrangements are inadequate to effectively deal with a disaster, or (2) other special circumstances warrant the declaration of a state of disaster. In such instances, the executive may augment the existing legislation and contingency arrangements, using directives and/or Regulations.

Declaring a National State of Disaster

58. Section 26(2) of the DMA sets out how the national executive must deal with a national disaster. If a state of national disaster has been declared, the national executive must deal with it "*in terms of existing legislation and contingency arrangements as augmented by regulations or directions made or issued in terms of section 27 (2)*".
59. Section 27(1) of the DMA states that in the event of national government having primary responsibility for the coordination and management of a national disaster, the Minister may declare a national state of disaster where (a) the existing legislation and contingency arrangements are inadequate to

effectively deal with the disaster, or (b) other special circumstances warrant the declaration of a state of disaster. The decision of the Minister to declare a national state of disaster becomes effective once a Notice is published in the Government Gazette. Section 27(2) confers the power to make regulations and issue directions for purposes of various measures to deal with a disaster.

PARLIAMENT HAS BEEN EXERCISING ITS OVERSIGHT FUNCTION

60. Section 42(3) of the Constitution requires the National Assembly, as the representative of the people of South Africa, to (*inter alia*) scrutinize and oversee all action by the Executive. The Constitution does not define oversight, and nothing in law suggests that oversight in this context means that the National Assembly must have the power to “veto” the Executive.
61. There are corresponding obligations in the Constitution on the Executive to account to Parliament. These are set out in section 92.
62. Section 13(b) read with section 17(1) of Powers, Privileges and Immunities Act 4 of 2004 (“Powers, Privileges and Immunities Act”) renders it contempt of Parliament to defy Parliament.
63. There are also no limitations in the Constitution that prescribe when Parliament must exercise its supervisory powers and/or fulfil its obligations. Rather, Parliament has broad powers and obligations to do so.
64. Section 55(2) of the Constitution requires the National Assembly to put mechanisms in place in order to maintain oversight of the Executive’s exercise

of its powers, as well as oversight of any other organ of state. More directly, the National Assembly is required to:

“ . . . provide for mechanisms-

(a) to ensure that all executive organs of state in the national sphere of government are accountable to it; and

(b) to maintain oversight of-

(i) the exercise of national executive authority, including the implementation of legislation; and

(ii) any organ of state.”

65. In terms of section 57(1) of the Constitution, the National Assembly may:
- a. determine and control its internal arrangements, proceedings and procedures; and
 - b. make rules and orders concerning its business, with due regard to representative and participatory democracy, accountability, transparency and public involvement.
66. Among other things, section 57(2) of the Constitution requires these rules and orders to make provision for the establishment, composition, powers, functions, procedures and duration of its committees.

The Oversight and Accountability Model

67. In 2004, Parliament adopted the Oversight and Accountability Model. Its primary objective is to provide a framework for how Parliament conducts its oversight functions.

68. The Model defines oversight as *“a constitutionally mandated function of legislative organs of state to scrutinize and oversee executive action and any organ of state”*.

69. It goes on to explain that entailing both a formal and informal:-

“watchful, strategic and structured scrutiny exercised by legislatures in respect of the implementation of laws, the application of the budget, and the strict observance of statutes and the Constitution. In addition, and most importantly, it entails overseeing the effective management of government departments by individual members of Cabinet in pursuit of improved service delivery for the achievement of a better quality of life for all citizens.”

70. According to the Model, the most apposite mechanism for Parliament to conduct oversight of the various organs of state is through committees. It elaborates that:

“In conducting oversight, the committee would either request a briefing from the organ of state or visit the organ of state for fact-finding, depending on the purpose of the oversight. The committees would have to consider the appropriate means for conducting oversight to cover all organs of state”.

71. The Model served as a policy framework for the adoption of the rules of Parliament in their different iterations. I attach a copy of the Model as **“CRL1”**.

Parliament Rules and procedures

72. In step with section 55 of the Constitution, the National Assembly adopted *The Rules of the National Assembly* (“National Assembly Rules”), which apply to the National Assembly, as well as the *Rules of the National*

Council of Provinces (“NCOP Rules”), which apply to the NCOP adopted in terms of section 70 thereof.

73. Parliament has also adopted the *Joint Rules of Parliament* (“Joint Rules”) which find application when there are joint matters or business between Parliament and the NCOP.
74. These rules are voluminous and I therefore do not attach them to this affidavit. They can, however, be made available to the Court if required.
75. The National Assembly has also adopted, and exercises oversight over organs of state (including the Executive) through the *National Assembly Guide to Procedure: 2004*, which serves as a guide for members to understand the rules to the extent that it is consistent with subsequent amendments to the rules.
76. In addition to the existing oversight mechanism in the rules, the National Assembly and the NCOP adopted specific rules to facilitate virtual sittings to ensure that their business continues during the COVID-19 lockdown period. These rules are:
 - a. *Rule on Virtual Meetings in terms of National Assembly Rule 6 (Unforeseen Eventualities) - April 2020*; and
 - b. *Rules for Virtual Meetings and Sittings (NCOP) - April 2020*.

77. The latter sets of rules were adopted to ensure that the business of the NCOP and the National Assembly continues, even during the COVID-19 lockdown period.
78. The National Assembly Rules also provide for various other mechanisms of oversight. I do not wish to catalogue all of these rules here, but wish to highlight only a few. Chapter 10 provides in detail the rules for Cabinet members to appear before the National Assembly to answer members' questions. The questions may be for either oral and written reply. The replies may, likewise, be oral or written.
79. Rule 138 of the National Assembly Rules deals with questions to Ministers. It provides that:

"Questions for oral reply by Ministers must be dealt with in accordance with a clustered system of government portfolios, as determined by the Rules Committee from time to time and published in the ATC. . . The clusters rotate on a weekly basis, so that, subject to Sub rules (5) and (6), questions relating to each cluster are answered in succession in accordance with the agreed system."

80. Rule 141 provides for urgent questions. In terms of sub-rule 141(1), a member of Parliament may: -

"request the Speaker in writing to allow an urgent question for oral reply to be put to — (a) the relevant Minister at the next question session for Ministers in the House, regardless of whether that Minister falls within the ministerial cluster for that day; or (b) the President or the Deputy President on the next applicable question day."

81. Part 3 of Chapter 10 of the National Assembly Rules deals with written responses to questions. Rule 146(1) provides that:

“If the responsible Cabinet member has not replied in writing to a question within 10 working days of the day for which the question was set down for written reply or within the period of an extension approved by the Speaker in terms of Rule 145(5), and the member in whose name the question stands, or who takes charge of a question in terms of Rule 137(10), so requests, the Speaker must place the question on the Question Paper for oral reply.”

82. The rules that I refer to here are voluminous. I will therefore only make them available when requested to do so, for the Court’s convenience. They can otherwise be publicly obtained at: <https://pmg.org.za/page/rules-parliament-guide-procedure>.

83. The point here is this: Parliament elected to delegate to the Executive (through the DMA) the power to deal with national disasters. The applicant does not challenge that election. But electing to delegate that power to the Executive does not rid Parliament of its supervisory obligations under the Constitution.

84. As a matter of fact, Parliament did not go into a hiatus, as the applicant alleges. It has remained active and exercises its supervisory functions through the various committees that its rules provide for.

Minister/National Department of Health

85. On 10 April 2020, Dr Zwelini Mkhize, the Minister of Health, briefed the Portfolio Committee on Health and Social Services on COVID-19 related matters. I attach as “CRL2” a copy of his presentation to Parliament.

86. On 27 April 2020, Dr Mkhize briefed the Portfolio Committee on Health for the purpose of providing an update on COVID-19 on the following issues:

- a. health issues in general,
- b. the state of readiness of quarantine sites in provinces,
- c. shortage of personal protective equipment especially in Free State and the Eastern Cape Provinces, and
- d. those persons who have been allegedly placed in forced isolation.

87. A video recording of that meeting can be found at:
https://www.youtube.com/watch?v=Fg_2g4ltN2c.

Minister/Depart of Cooperative Governance and Traditional Affairs

88. On 14 April 2020, the Portfolio Committee on Cooperative Governance and Traditional Affairs (“COGTA”) addressed correspondence to the Minister of COGTA, requesting her to avail herself for a meeting to discuss the “unintended consequences of the disaster management regulations”. A copy of that correspondence is attached as “**CRL3**”.

89. The meeting was held virtually on 21 April 2020 [and is accessible at: https://www.youtube.com/watch?v=aWmc1j2V_B4]. I also attach as “**CRL4**”, a report by the Minister to that Committee at the meeting.

90. On 23 April 2020, COGTA submitted a written response to questions that were raised by the Portfolio Committee. A copy of that document is attached as "CRL5". On the same date, the Portfolio Committee on COGTA invited the Minister to avail herself again for a meeting to answer questions and account for the stimulus package to municipalities. That letter (attached as "CRL6") reads as follows:

"Pursuant to the President's announcement of a stimulus package that would also assist municipalities to maintain liquidity, the Committee would like to invite the Department of Cooperative Governance and the South African Local Government Association (SALGA) for a briefing, with a view to unpacking the details of this package including:

- *Whether it is sufficient to cover the deficit arising from depressed municipal revenue sources*
- *Addressing the delivery of basic services to households that can no longer afford to pay*
- *Other measures and interventions planned should the allocated R20 billion prove insufficient*
- *Any other relevant matter, in relation to the COVID 19 development, that affects municipal viability."*

91. I also attach as "CRL7" a report of the South African Local Government Association ("SALGA"), which was prepared for that meeting.

92. On 28 April 2020, there was a comprehensive briefing provided by SALGA to the Portfolio Committee on COGTA and the Select Committee on COGTA, Water and Sanitation and Human Settlements on matters regarding the consequences of COVID-19 response measures as they pertain to municipal governance.

93. A video recording of this meeting can be found at: <https://www.youtube.com/watch?v=D9X00vdPGI4>.

Minister/Department of Human Settlements, Water and Sanitation

94. On 21 April 2020, Ms Lindiwe Nonceba Sisulu, the Minister of Human Settlements, Water and Sanitation, briefed the Portfolio Committee on Human Settlements, Water and Sanitation, as well as the Select Committee on Cooperative Governance and Traditional Affairs, Water and Sanitation and Human Settlements on the following issues:

- a. the impact of COVID-19 on communities without access to continuous supply of piped, potable water;
- b. initiatives undertaken by the Department of Water and Sanitation to address water supply; and
- c. the extent to which COVID-19 initiatives would impact on already set targets within programmes and sub-programmes outlined in the 2020/2 Annual Performance Plans for the Department of Human Settlements, Water and Sanitation.

95. The meeting was held via a Zoom platform, and a video of it is accessible at: <https://www.youtube.com/watch?v=aWmc1j2V B4&t=9s>.

Minister/Higher Education, Science and Technology

96. On 21 April 2020, the Minister of Higher Education, Science and Technology, Dr Boginkosi Emmanuel Nzimande, briefed the Portfolio

Committee on Higher Education, Science & Technology and the Select Committee on Education and Technology, Sport, Arts and Culture on the following issues:

- a. plans to save the 2020 academic year of universities and technical and vocational education and training ("TVET colleges");
- b. update with respect to the situation of students that are accommodated at University residences; and
- c. work undertaken by the various science entities of the DSI contributing towards the curbing of the COVID-19 pandemic. The virtual meeting was held at 10h00 to 13h00.

97. I have not been able to find a recording of this meeting, but the fact of its occurrence is confirmed on Parliament's website at <https://www.parliament.gov.za/press-releases/committee-higher-education-hold-virtual-meeting-receive-briefing-minister-nzimande-plans-rescue-2020-academic-year-and-work-done-department-combating-spread-COVID-19>.

Minister/Department of Employment and Labour

98. On 22 April 2020, the Portfolio Committee on Employment and Labour sat jointly with the Select Committee on Trade and Industry, Economic Development, Small Business Development, Tourism, Employment and Labour. At that meeting:

“The Minister reaffirmed the commitment to this critical role of Parliament and the Committees that hold the Department, Executives and officials to account. The Department fully expects to receive criticism even from the opposition, since it is their role in democracy. People should know and understand that COVID-19 is quite a demon, intense and a unique phase of struggle in government, and for South African people.”

99. Mr Thembelani Nxesi, the Minister of Employment and Labour, provided an update to the Portfolio Committee on Employment and Labour, as well as the Select Committee on Trade and Industry, Economic Development, Small Business Development, Tourism, Employment and Labour on the Department’s plans to process UIF and Compensation Fund claims, as well as conducting inspections during the extended lockdown period.
100. At that meeting, detail was provided about the different programs that the Executive was putting in place in order to assist those that would be rendered most vulnerable by the lockdown measures, and the pandemic more broadly.
101. A recording of this meeting can be found at: <https://www.youtube.com/watch?v=BeRKFr1r6Zc>. The minute of that meeting is attached as “CRL8”. I also attach as “CRL9” a copy of the presentation that the Department made to the Portfolio Committee.

Minister/Department of Trade, Industry and Competition

102. On 1 May 2020, the Department of Trade, Industry and Competition (“dtic”) provided a response to the Joint Meeting of the Portfolio and Select Committees responsible for Trade, Industry and Competition. The briefing was by the Minister of dtic and it concerned the Government’s response to the potential negative impact of COVID-19 on the economy and the measures considered to mitigate against it.
103. On 19 May 2020, the Competition Commission briefed the Portfolio Committee on Trade and Industry and the Select Committee on Economic Development, Small Business Development, Tourism, Employment and Labour. The briefing concerned a number of issues which pivoted around the impact of COVID-19 on the economy.
104. On 19 May 2020, the National Consumer Commission also accounted to the same Portfolio Committee on, *inter alia*, the complaints that it had received, especially around excessive pricing.
105. On 28 May 2020, the dtic reported to the Portfolio Committee on the technical infrastructure entities’ contributions to Government’s COVID-19 response.
106. On 1 June 2020, the International Trade Administration Commission of South Africa (“ITAC”) reported to the Portfolio Committee on Trade and Industry and the Select Committee on Economic Development, Small Business Development, Tourism, Employment and Labour on its contribution to the Government’s response to COVID-19.

107. I do not wish to proliferate these papers by cataloging every single briefing by the dtic to the Portfolio Committee. The point is apparent that Parliament has been exercising oversight over the different organs that fall under the dtic umbrella.

Minister/Department of Defence and Military Veterans

108. On 22 April 2020, the Minister of Defence and Military Veterans, Ms Nosiviwe Noluthando Mapisa-Nqakula, briefed the Joint Committee on Defence on the following issues:

- a. the consideration of a letter from the President on the Employment of Members of the South African National Defence Force (“SANDF”) in support of the Department of International Relations and Cooperation (“DIRCO”) and the National Department of Health (“NDoH”) in facilitating the repatriation of South African Citizens from the Hubei Province (People’s Republic of China) that was affected by COVID-19,
- b. consideration of a letter from the President on the employment of members of the SANDF for service in cooperation with the South African Police Service (“SAPS”) in order to maintain law and order during the nationwide lockdown and control the border to combat the spread of COVID-19,

- c. consideration of a letter from the President on the extension of the employment of 200 SANDF personnel to deter and prevent piracy in the Mozambique Channel, and
- d. briefing on complaints by the Military Ombud regarding the alleged heavy-handed approach of members of the SANDF in enforcing the lockdown regulations.

109. On 23 April 2020, the Minister of Social Development, Minister Lindiwe Daphne Zulu, and the South African Social Security Agency (“SASSA”) briefed the Portfolio Committee on Social Development and the Select Committee on Health and Social Services on matters relating to the Department’s performance in responding to the COVID-19 pandemic as well as its financial report. The meeting was held virtually and a recording of it can be found at: https://www.youtube.com/watch?v=4bnsyomZ_C8&t=2s.

Minister/Department of Social Development

110. In June 2020, the Department of Social Development made a presentation to the Portfolio Committee on Social Development: -
- a. It gave an account of the payment of social grants during the June cycle of payments;
 - b. It provided an update on the implementation of the social grants top-ups from May to October 2020; and

- c. It provided an update on the progress of the COVID-19 SRD grant as at 3 June 2020.

National Treasury and the South African Revenue Service

111. On 22 April 2020, National Treasury and the South African Revenue Service (“SARS”) briefed the Portfolio Committee and the Select Committee on Finance on matters relating to the 2020 Draft Disaster Management Tax Relief Bill and the 2020 Draft Disaster Management Tax Relief Administration Bill.

Minister/Department of Home Affairs

112. On 28 April 2020, the Minister of Home Affairs, Dr Aaron Motsoaledi, briefed the Portfolio Committee on Home Affairs and the Select Committee on Security and Justice on the following issues:
 - a. the movement of refugees from the Cape Town Central Business District (CBD);
 - b. an update on service provision during the COVID-19 lockdown and the closure of the ports of entry during COVID-19, and
 - c. the alleged procurement of Beitbridge fence and logistics services for the removal of the Cape Town Refugees.

Department of Small Business Development

113. On 28 April 2020, the Department of Small Business Development briefed the Portfolio Committee on Small Business Development and the Select Committee on Trade and Industry, Economic Development, Small Business Development, Tourism, Employment and Labour in matters relating to the interventions for small enterprises during the lockdown period caused by the COVID-19 pandemic. I attach as “CRL10” the minute of this meeting. A video recording of it can be found at: <https://www.youtube.com/watch?v=xurLKe2ecdA>.

Minister/Department of Basic Education

114. On 29 April 2020, the Minister of Basic Education, Ms Matsie Angelina Motshekga, briefed the Portfolio Committee on Basic Education and the Select Committee on Education and Technology, Sport, Arts and Culture in relation to the impact and status of schooling during the COVID-19 Lockdown.

115. A video recording of this meeting can be found at: <https://www.youtube.com/watch?v=PgyIYpa1sag>.

Minister/Department of Police

116. On 29 April 2020, the Minister of Police, Mr Bhekokwakhe Hamilton Cele, briefed the Portfolio Committee on Police and the Select Committee on Security and Justice in relation to:

- a. a report by the Minister of Police on the National State of Disaster, and
- b. a report by the IPID on the National State of Disaster.

117. A video recording of this meeting can be found at:
<https://www.youtube.com/watch?v=HujS2-hErCs>.

Minister/Department of Justice and Correctional Services

118. On 29 April 2020, the Minister of Justice and Correctional Services, Mr Ronald Lamola, briefed the Portfolio Committee on Justice and Correctional Services and the Select Committee on Security and Justice in relation to measures taken by the Ministry of Justice and Correctional Services to deal with COVID-19. A recording of this meeting can be found at: <https://www.youtube.com/watch?v=lznaxskJBtY>.

119. On 1 May 2020, the Portfolio Committee on Justice and Correctional Services and the Select Committee on Justice invited Mr Lamola to a virtual meeting on 4 May 2020. This meeting was intended to be a continuation of discussions with the Ministry of Justice and Correctional Services on COVID-19 related matters. The meeting took place on 4 May 2020 as scheduled. The Committee expressed a number of concerns to him. These included:

- a. The procedure and process that would be followed to release offenders of non-violent crimes during the lockdown period as announced by the President.

- b. An assessment of the burden caused by the lockdown regulations on the criminal justice system and how these were contributing to case backblock.
- c. What special arrangements the Department had in place to cater to the needs of correctional centres in rural areas.

120. A copy of the minute of that meeting is attached as "CRL11".

Minister/Department of Transport

121. On 30 April 2020, the Minister of Transport, Mr Fikile April Mbalula, briefed the Portfolio Committee on Transport and the Select Committee on Transport, Public Service and Administration, Public Works and Infrastructure in relation to the implementation of COVID-19 regulations, including:

- a. the adherence to the regulations and implementation by the Department of Transport;
- b. statistics of vehicle movement from 26 March 2020 to date on all roads that have vehicle counting technology installed;
- c. assessing specific sectors of transportation of people involved in essential services;
- d. transportation of essential goods, petroleum products from refineries and storage facilities to service stations and goods from ports;

- e. figures of cross border road traffic with neighbouring countries;
- f. level of compliance in the maritime and aviation sector;
- g. transportation of mine workers under new regulations;
- h. health and safety standards on public transport; and
- i. plans for the phased introduction of transport that is not operational during the lockdown period, including the future of public transport (all modes) and mitigation measures to be put in place (such as adherence to social distancing and continued sanitizing of transport).

122. I attach as "CRL12" a letter from Parliament inviting the Minister of Transport to the above meeting. I also attach as "CRL13" the Department's presentation at the meeting.

123. A recording of this meeting can be found at:
<https://www.youtube.com/watch?v=YVI12EHcNXw>.

124. The Department also gave a further presentation to the Portfolio Committee regarding access to the relief fund, on 20 May 2020.

Minister/Department of Public Works and Infrastructure

125. On 4 May 2020, the Portfolio Committee on Public Works and Infrastructure sat jointly with the Select Committee on Transport, Public Service and Administration, Public Works and Infrastructure. At that meeting, the Portfolio

Committee asked extensive questions and was provided with detailed answers on an array of topics that related to the executive's response to COVID-19. A copy of that minute is attached as "CRL14".

Programme Committee

126. On 07 May 2020, the Programme Committee held a virtual meeting to discuss procedural issues arising from virtual meetings. The minutes of the proceedings are attached as annexure "CRL15".
127. On 14 May 2020, the Programme Committee held a virtual meeting to discuss the most appropriate technological platform for the conduct of its meetings. The minutes of the proceedings are attached as annexure "CRL16".
128. On 21 May 2020, the Programme Committee held a virtual meeting to discuss, amongst others the seat of Parliament during the national disaster. The minutes of the proceedings are attached as annexure "CRL17".

Direct consultation by the President with political party leaders

129. The President held consultations with the leaders of all the political parties represented in Parliament on four occasions since the declaration of the national disaster on 15 March 2020. These took place on 18 March 2020, 9 April 2020, 23 April 2020 and 20 May 2020.
130. On 23 April 2020 the President, the Minister of COGTA and the Minister of Trade, Industry and Competition provided a detailed briefing on the national

disaster, including risk-adjusted strategy. The President and Ministers stressed that the crisis was both a health and economic crisis.

Conclusion

131. Although the DMA does not explicitly make provision for Parliamentary oversight, that obligation is imposed on Parliament by the Constitution. Parliament has been exercising oversight in order to fulfil its constitutional obligation.
132. It is worth emphasising that the issues on which Parliament and its Committees are briefed by the Ministers and Departments are largely at the instance of Parliament and its Committees. Nowhere in the Rules and Procedures of Parliament are members of Parliament and Committees constrained from raising any issues or questions they deem appropriate, including questions of constitutionality and legality of either COVID-19 regulations or conduct of the Executive in respect of the implementation of the COVID-19 regulations.
133. It is noteworthy that none of the issues now raised in this application were at any stage raised during the deliberations of any of the Committees. I raise this to make the point that had this been the case, the relevant Committees would have debated these issues, considered amendments (to the DMA and Regulations), where appropriate, and advised the Executive accordingly. Most appropriately, the relevant Committee of Parliament would have been activated to consider introducing a Committee Bill or individual members of Parliament

could have introduced a Private Member's Bill to remedy any identified shortcomings in the regulatory framework.

SERIATIM RESPONSES

134. I turn now to respond to the applicant's founding affidavit *seriatim*. Allegations in the applicant's founding affidavit that I do not specifically traverse, or that are inconsistent with what I have set out above are denied as if specifically traversed.

AD PARA 1

135. The allegations made in this paragraph are noted. However, in this application the applicant is not defending the values that underpin constitutional democracy or promoting respect for human rights.

AD PARA 2

136. I deny that the allegations in the founding affidavit are all true and correct. I note the rest of the allegations herein.

AD PARA 3

137. I admit these allegations.

AD PARA 4

138. For the reasons set out above, I deny that the provisions on which the applicant relies support the relief that it seeks.

AD PARAS 5 – 7

139. As stated above, this is a misguided and frivolous application. I submit that it was therefore not surprising that the Constitutional Court dismissed the applicant's application for direct access for the reason that it was not in the interests of justice to grant it.

AD PARA 8

140. I note the contents of this paragraph with interest.

AD PARAS 9 – 12

141. These allegations are denied. It is specifically denied that Parliament and the Cabinet have failed to exercise their legislative and executive authority as alleged or at all.

142. The applicant pleads that by their non-exercise, Parliament has abandoned the powers vested in it by sections 44(1); 55(1); and 68 of the Constitution. In other words, by its failure to pass specific legislation that specially deals with the immediate to longer term consequences of COVID-19.

143. By this failure (the allegation continues), Parliament has jettisoned those rights that are cardinal to South Africa's constitutional democracy.

144. I deny that the state or parts thereof have failed to respond properly and appropriately to COVID-19.

145. I deny that Parliament has abandoned any of its powers, as alleged or at all.

146. I readily accept that the Constitution confers on Parliament legislative powers, but deny that there is, in these circumstances, a need for Parliament to adopt legislation dealing specially with the national disaster that the COVID-19 pandemic has presented.

AD PARA 13.

147. The allegations made in this paragraph are admitted, to the extent that they are an accurate depiction of what the Supreme Court of Appeal and the Constitutional Court have held in the cases referred to. However, I fail to see their relevance to this case.

AD PARAS 14 – 15

148. The allegations made in this paragraph are denied. As I have stated above, Cabinet elected to respond to the national disaster in terms of the DMA. The applicant does not challenge the legitimacy or rationality of this election. It equally does not challenge the constitutional validity of the DMA. The applicant seeks to impermissibly prescribe to Parliament to legislate in a particular manner.

AD PARA 16

149. The allegations made in this paragraph are denied. There is nothing in the DMA that supports the applicant's allegation here.

150. On the contrary, it is telling that section 27(5)(c) of the DMA permits the extension of the national state of disaster "*for one month at a time before it lapses in terms of paragraph (a) or the existing extension is due to expire.*"
151. Nothing in there, or in section 2 of the DMA (which deals with its application) says that the DMA was intended as a stop-gap during a disaster, until legislation is adopted. The DMA *is* the legislation when there is no other legislation. That is how Parliament intended it.
152. COVID-19 has thus far demonstrated that it is wholly unpredictable (because there is very little known about it) and the evolving nature of the pandemic requires a rapid response by the government.

AD PARA 17

153. I deny these allegations, for reasons that I have set out above. As I have set out, the Executive has not been exercising the power under the DMA without oversight by Parliament.

AD PARA 18

154. The applicant does not challenge Parliament's decision to adopt the DMA as the legislative response to national disasters, nor does it challenge the Minister's powers under section 27. There is nothing in the provisions on which the applicant relies that *requires* Parliament to legislate in these circumstances.

155. For these reasons, I deny the allegations in this paragraph.

AD PARAGRAPH 20

156. As stated above, in pursuing this application, the applicant is not pursuing its stated objectives. On the contrary, this application seeks, among other things, to violate the principle or doctrine of the separation of powers.

AD PARAS 27 – 29

157. The Minister considered the magnitude and severity of the COVID-19 outbreak and took into account the need to augment the alleged measures. With these qualifications, I admit the contents hereof..

AD PARA 30

158. In the light of the basis of this application, I do not know with what intention the applicant seeks to impugn the independence and professional integrity of the Head of the NDMC. No basis has been provided for these baseless and irrelevant allegations. I deny them.

AD PARAS 31 – 33

159. These allegations are admitted. I must reiterate that the applicant does not purport to challenge the provisions of the DMA.

AD PARA 34

160. These allegations are denied. The power, whatever its scope, that the Minister exercises is in terms of the DMA, and it is neither "staggering" nor "*unlimited*". The DMA is, however, not under attack.

AD PARA 35

161. I admit the contents of this paragraph to the extent that it is an accurate depiction of section 27(3) of the DMA. I, however, deny that the controls of the exercise of power in that provision are weak. If it is the applicant's case that these controls are weak, then it was open to the applicant to challenge the constitutional validity of section 27(3) of the DMA, which it has consciously and deliberately not done.

AD PARA 36

162. I admit the content of this paragraph to the extent that it is an accurate depiction of section 27(5) of the DMA.

AD PARA 37

163. I admit that for as long as there continues to be justification, the Minister will continue to be empowered to make regulations to best address the disaster and its evolving nature.

164. Safe as admitted here, the balance of the allegations made in this paragraph are denied.

AD PARA 38

165. Although I do not regard it as a very important “*carve out*” (caveat?), I admit the contents of this paragraph to the extent that it is an accurate depiction of section 2(1)(b) of the DMA.

AD PARA 39

166. These allegations are denied. The applicant seems to forget that the DMA, which is not impugned, is also an Act of Parliament. And there is nothing in it which stipulates that it operates only temporarily.

AD PARA 40

167. I admit that the Minister relied on the DMA, both in declaring a national state of disaster and in issuing the Regulations. And that in doing so, she duly consulted with other members of Cabinet. The applicant has provided nothing to suggest that she did not.

AD PARAS 41 – 42

168. These allegations are denied. I deny especially that the Regulations limited constitutional rights without justification. The applicant does not allege that they unlawfully limited constitutional rights.

AD PARA 43

169. I deny that the Executive’s power is being exercised through the National Coronavirus Command Council (“NCCC”). The NCCC is a Cabinet structure. The assertion which posits the NCCC as an entity

apart from Cabinet is false. The National Executive is exercising power through the National Executive.

170. I deny further that there is any basis in law for the NCCC to prepare and initiate legislation. There is no need for any other legislation dealing with COVID-19. The DMA *is* the legislation that regulates the response to COVID-19.

AD PARA 44

171. These allegations are denied. The proposition that the lockdown could be extended indefinitely is pure speculation. In any event, the power to extend emanates from the DMA. The applicant does not challenge any aspect of that legislation. Furthermore, every extension is based on sound scientific and other advice.

AD PARA 45

172. For reasons that I have already provided, I deny that there is anything in the DMA that requires regulations adopted under the DMA to have a sunset clause. The duration of the measures taken to deal with the disaster will be informed by the evolution and severity of COVID-19.

AD PARA 46

173. I deny that there is a constitutional obligation on Parliament to enact legislation that deals specially with COVID-19. Existing legislation adequately deals with national disasters, such as COVID-19.

AD PARAS 47 – 49

174. I deny that there has been any failure on the part of Parliament, in relation to the response to COVID-19.
175. The applicant has not pointed to any provision in law that *requires* Parliament to enact legislation that deals specially with COVID-19.
176. It is absurd to suggest that Parliament should be legislating in this instance. COVID-19 has itself proven to be a moving target, and a response to it requires an equal measure of agility. Parliamentary processes are by their nature not expedient and quick. That is why the legislature enacted the DMA.
177. In addition, an effective response to COVID-19 would have a bearing on money. And as the applicant is no doubt aware, there is a specific procedure governing the manner in which Money Bills are passed. The process takes time and would in turn be an irrational response to a disaster that is rapidly evolving.
178. It might be so that Parliament is not making law through the portfolio committee engagements. But the Constitution also requires the National Assembly to scrutinise the exercise of power by the Executive. So those portfolio committees serve that constitutionally prescribed function. The applicant underplays this obligation that the Constitution imposes on Parliament.

AD PARA 50



179. I admit that regulations have been promulgated to manage the pandemic. The said regulations were necessary to deal with the threat posed and the harm caused by COVID-19. The applicant does not dispute this fact. I deny that the fact that the regulations did not go through a parliamentary process prior to their promulgation justifies the relief that the applicant seeks.

AD PARAS 51

180. These allegations are denied.

AD PARAS 52 – 54

181. I admit these paragraphs, to the degree that they are an accurate representation of the quoted provisions of the Constitution.

AD PARAS 55 and 60

182. I admit that the authority to pass legislation lies with Parliament. In exercising that authority, Parliament enacted the DMA as the legislation through which it will respond to national disasters. Nothing in section 85 of the Constitution obliges the Executive to initiate further legislation in response to COVID-19.

AD PARAS 56 – 57

183. These allegations are admitted.

AD PARAS 58 – 59

184. It is correct that section 27 of the DMA gives the Minister a wide range of powers to adopt regulations that are appropriate in order to respond to a national disaster. If it is so that the applicant deems this to be an impermissible delegation, then it is perhaps appropriate for it to challenge the constitutional validity of that delegation. That is not the case that the applicant has brought to this Honourable Court.

AD PARAS 61 - 62

185. I deny that there has been any abdication, as alleged. I also deny the contentions and arguments of the applicant contained in paragraph 62.

AD PARA 63

186. For reasons set out in this affidavit, the allegations made in this paragraph are denied. Parliament elected to respond through the DMA, and that Act is not being challenged in these proceedings. Furthermore, as stated above, the powers of the Minister under the DMA are not *"untrammelled"*.

AD PARA 64

187. These allegations are denied. Nothing in the DMA gives it the kind of interpretation that the applicant wants to propose. Through the DMA, Parliament made its intention clear. And that intention does not accord with the meaning that the applicant seeks to ascribe to the DMA.

AD PARAS 65 – 66

188. I submit that each of the words in the definition is critical. Otherwise the rest of the allegations are admitted.

AD PARA 67

189. These allegations are denied.

190. Because there is very little known about it, the response to the pandemic has been changing – at the same pace as new information becomes available. The executive, as the DMA contemplates, is best placed to respond appropriately in the circumstances.

AD PARAS 68 – 70

191. These allegations are admitted. I will add to this that the evolving nature of the disaster can itself frustrate the making of legislation through the regular legislative and executive processes.

192. The process of introducing Bills to Parliament is lengthy and involved. Much of it is set out in the Cabinet Manual for the National Executive. For present purposes, it is sufficient that I attach only chapter 8 of that Manual (as annexure “CRL18”), which deals with the procedure that the Executive follows in introducing Bills to Parliament.

193. As for the measures being “*stop gap*”, I wish to state that the measures are meant to endure as long as they are necessary for the purpose of assisting and protecting the public; providing relief to the public;

protecting property; preventing or combatting disruption; or dealing with the destructive and other effects of the disaster, as provided in the DMA.

AD PARAS 71 – 72

194. These allegations are denied.

195. I have already explained that nothing in the DMA suggests that it was intended to be a temporary response to national disasters. In addition, the applicant has not provided any reason why, as a matter of policy, the DMA cannot be the whole framework in terms of which the government responds to a national disaster. The applicant readily admits that disasters (including pandemics) vary in magnitude and character; some change their course more quickly than others and require an ever-rapid response.

AD PARA 73

196. These allegations are denied.

197. If the applicant's true complaint is that the DMA is unlawful, then it must bring a frontal challenge thereto, which it has not done.

AD PARA 74

198. Save to deny that there is a duty on Parliament to adopt COVID-19 specific legislation, these allegations are admitted.

AD PARA 75

199. I deny the allegation that Parliament has remained supine throughout this state of national disaster, or that it has abandoned its legislative powers. I have said *ad nauseum* in this affidavit that the applicant has not pointed to a provision in the Constitution that obliges Parliament to adopt COVID-19 specific legislation.

AD PARA 76

200. These allegations are denied.

AD PARA 77

201. These allegations are denied. The legislation does exist. It is the DMA.

AD PARAS 78 – 79

202. These allegations are denied. I deny specially that the Constitutional Court's decision in *Glenister II* is applicable here. In *Glenister II*, the *ratio* turned on the absence of legislation that deals specially with corruption. Here, the DMA is the legislation that deals with disasters, including that presented by COVID-19.

AD PARAS 80

203. I admit that the State has a duty to give effect to the right of access to healthcare services. The State is giving effect to this obligation in its co-ordination and management of the response to the COVID-19 pandemic.

AD PARAS 81 – 82

204. These allegations are denied to the extent that the applicant merely lists some 16 rights that it alleges to have been limited. The applicant does not allege that the said rights have been violated. The applicant has accordingly not brought an “*infringement of constitutional rights*” challenge..

AD PARA 83

205. These allegations are denied.

AD PARA 84

206. These allegations are denied. I have noted above that *Glenister* finds no application to this case.

AD PARA 85

207. I dispute the relevance of these allegations, which I do not admit..

AD PARAS 86 – 88

208. These allegations are denied.

209. Whether legislation is required is a determination that Parliament makes. The applicant does not allege that the measures adopted are irrational or inadequate to deal with COVID-19. It deliberately does not engage in that exercise. Absent such a challenge, the presumption is that these measures are adequate responses to COVID-19.

AD PARA 89

210. These allegations are denied. There is nothing in section 2 that suggests that legislation must be enacted. To the contrary, it indicates that the DMA takes effect if either of the events in section 2(1)(b) are present. One of those is that there is no other legislation. In that case, the DMA applies.

AD PARA 90

211. These allegations are unclear and therefore denied.

AD PARA 91

212. It is difficult to fully understand what is being said here.

213. But if it is suggested that a disaster can only exist and be declared for purposes of the DMA if its definitional provisions are met, the allegations are admitted. Otherwise, they are denied.

AD PARA 92

214. I deny that this proposition applies where Parliament has *itself* elected to enact the DMA as the response mechanism.

215. The *dicta* that the applicant has populated its papers with are not disputed. What is disputed is the non-recognition by the applicant, of the fact that Cabinet has elected to activate the DMA, which was openly enacted by Parliament, and pursuant to the principles of democracy that the applicant regurgitates *ad nauseam* in its founding papers.

AD PARAS 93 – 96

216. I deny these allegations, for reasons already provided in this affidavit.

AD PARAS 110 – 120

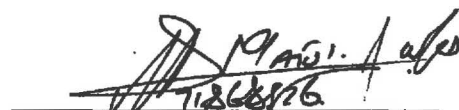
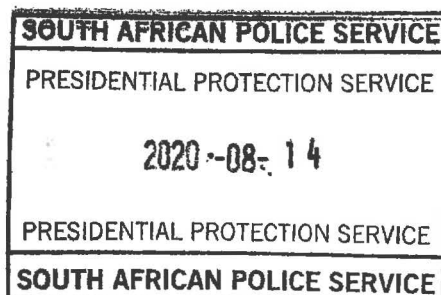
217. I deny that the applicant has provided the legal or factual basis to justify the relief that it seeks.

WHEREFORE I pray that the applicant's application be dismissed with costs, including the costs of two counsel..



DEPONENT

I HEREBY CERTIFY that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn before me at PRETORIA, on this the 14 day of August 2020, the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.



COMMISSIONER OF OATHS

"CRL1"



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

**OVERSIGHT
AND
ACCOUNTABILITY MODEL**

ASSERTING PARLIAMENT'S OVERSIGHT ROLE IN ENHANCING DEMOCRACY

A handwritten signature in black ink, appearing to be 'M. D. M.' or similar, located in the bottom right corner of the page.

M. D. M.

CONTENTS

Chapter 1: Introduction

- 1.1 Constitutional precepts guiding the vision and mission of Parliament
- 1.2 Constitutional requirement for mechanisms on oversight
- 1.3 Composition and mandates of Parliament
- 1.4 Mandates of focus groups

Chapter 2: The role of Parliament in relation to oversight and accountability as mandated by the Constitution

- 2.1 Defining oversight
- 2.2 Defining accountability
- 2.3 Constitutional provisions expressing powers and functions of Parliament on oversight and accountability

Chapter 3: Institutional characteristics of oversight and accountability and existing mechanisms utilised by Parliament

- 3.1 Current mechanisms for oversight and accountability
- 3.2 Tools for oversight and accountability

Chapter 4: New mechanisms for oversight and accountability

- 4.1 New mechanisms
- 4.2 Maximising current mechanisms
- 4.3 General recommendations

Chapter 5: Procedure for amending money bills

- 5.1 Terms of reference of Budget Focus Group
- 5.2 Recommendations

Chapter 6: Co-ordination amongst the spheres of government on oversight

- 6.1 Co-operative government
- 6.2 Values and principles guiding institutional oversight
- 6.3 Introducing the parliamentary oversight cycle as a guide for oversight processes

fr

M.1019.

Chapter 7: Increasing the capacity of committees and members

7.1 Training

7.2 Additional support

Chapter 8: Best Practice Guide

8.1 Best Practice Guide (BPG)

Chapter 9: *Projects Focus Group [Constitutional Landscape Governing Oversight]*

9.1 Introduction

9.2 Audit of bodies performing public functions

9.3 Constitutional landscaping

9.4 Review of the rules

Chapter 10: Conclusion

References

Annexures

K

19.10.19.

CHAPTER 1: INTRODUCTION

1.1 Constitutional precepts guiding the vision and mission of Parliament

Parliament's strategic vision is to build an effective people's Parliament that is responsive to the needs of the people, and that is driven by the ideal of realising a better quality of life for all the people of South Africa and its mission is to represent and act as a voice of the people in fulfilling Parliament's constitutional functions of passing laws and overseeing executive action.

Based on the vision and mission of Parliament and the constitutional requirements Parliament hereby develops mechanisms to guide its work on oversight in the form of an oversight model.

Historically, the 1994 elections ushered in a new democratic order in South Africa. The extraordinary participation by South Africans showed that we desired an end to the divisions of the past and a move towards establishing a society based on democratic values, social justice and fundamental human rights. The process of negotiations, which preceded the 1994 elections, resulted in the drafting of a new Constitution, as adopted on 8 May 1996 by the Constitutional Assembly.

The mandate of Parliament is achieved through passing legislation, overseeing government action, and facilitating public participation and international participation. The role of Parliament includes the promotion of the values of human dignity, equality, non-racialism, non-sexism, the supremacy of the Constitution, universal adult suffrage and a multi-party system of democratic government. It upholds our citizens' political rights, the basic values and principles governing public administration, and oversees the implementation of constitutional imperatives.

Much of Parliament's focus in the first decade of democracy was on ensuring the transformation of South Africa's legislative landscape, in line with the country's first democratic Constitution, Act 108 of 1996. In this process, Parliament's oversight function received less attention, and was compounded further by the reality that the Constitution deals with Parliament's legislative authority in more detail compared to its oversight role.

In giving credence to its increasingly important oversight role, Parliament's new strategic vision, namely to build an effective people's Parliament "... that is driven by the ideal of realising a better quality of life for all the people of South Africa", underpinned the manner in which the organisation began engaging on the need to institutionalise public participation as an integral part of its oversight function. The motivation for political delegations to undertake the management of the legislative and oversight programme of Parliament demands capacity, competence and collective action.

1.2 Constitutional requirement for mechanisms on oversight

Against this backdrop, and in the context of sections 42(3) and 55(2)(b) of the Constitution, as well as

19, 1919.

various provisions that imply oversight functions of the National Council of Provinces, Parliament through the Joint Rules Committee established a Task Team on Oversight and Accountability comprising members of both Houses of Parliament, which studied the mandates relating to oversight emanating from the Constitution. The task team established three focus groups, that of, the Projects Focus Group, the Budget and the Committees. The objective was to develop an oversight model for Parliament in line with the Constitution and Parliament's new strategic vision, together with the realignment of resources to fulfil its mandate with greater efficiency.

The model's primary objective is to provide the framework that describes how Parliament conducts oversight. It seeks to improve existing tools of parliamentary oversight, streamline components of the new oversight model with existing components, and enhance Parliament's capacity to fulfil its oversight function in line with Parliament's new strategic direction.

Furthermore, the rationale for the Oversight and Accountability Model was to scrutinise existing practices and/or mechanisms used as a prototype, something to be measured or standardised, and thereafter interrogate and offer alternatives that could be utilised in the future. An oversight and accountability model must therefore comprise the most important, features, which include -

- the values and principles by which Parliament conducts oversight;
- the mechanism or framework to conduct oversight; and
- the processes and resources required for conducting oversight.

The model is not dogmatic and will adapt from time to time depending on the context and circumstances.

1.3 Composition and mandates of Parliament

Parliament consists of two Houses, namely the National Assembly (NA) and the National Council of Provinces (NCOP).

Section 42(3) of the Constitution provides that the National Assembly is elected to represent the people and to ensure government by the people under the Constitution. It does this by choosing the president, by providing a national forum for public consideration of issues, by passing legislation and by scrutinising and overseeing executive action. The Assembly is further required in terms of section 55(2) to provide mechanisms to ensure that all executive organs of state in the national sphere of government are accountable to it; and to maintain oversight of the exercise of national executive authority, including the implementation of legislation, and any organ of state.

The National Council of Provinces represents the provinces to ensure that the provincial interests are taken into account in the national sphere of government as stated in section 42(4) of the Constitution. The Council does this mainly by participating in the national legislative process and by providing a national forum for public consideration of issues affecting the provinces. The Council's role is to exercise oversight over the national aspects of provincial and local government. It contributes to

effective government by ensuring that provincial and local concerns are recognised in national policy making and that provincial, local and national governments work together effectively.

In addition, Parliament -

- facilitates public participation, involvement and transparency;
- facilitates co-operative government;
- facilitates international participation; and
- represents the interests of the people.

Based on these mandates, the Constitution further requires Parliament to develop mechanisms for oversight.

1.4 Mandates of focus groups

1.4.1 Projects Focus Group [Constitutional Landscape Governing Oversight]

The terms of reference of this group were to -

- conduct constitutional landscaping;
- conduct an audit of bodies performing public functions;
- analyse the oversight role of institutions supporting democracy; and
- review rules on oversight.

1.4.2 Committees Focus Group

The terms of reference of this group were to -

- draft the best practice guide in respect of oversight practices of committees;
- draft guidelines for portfolio and select committees to allow for joint planning and oversight work;
- draft guidelines on joint planning on protocols for structured communication between the two Houses of Parliament;
- draft recommendations for capacity development of committees; and
- draft recommendations on appropriate record-keeping systems and monitoring mechanisms in the Committee Section.

1.4.3 Budget Focus Group

The terms of reference of this group were to -

- develop procedure for the amendment of money bills; and
- draft legislation on the amendment of money bills.

17.10.17

CHAPTER 2: THE ROLE OF PARLIAMENT IN RELATION TO OVERSIGHT AND ACCOUNTABILITY AS MANDATED BY THE CONSTITUTION

2.1 Defining oversight

The conventional Westminster view on oversight, as inherited by many former British colonies, is often rather adversarial and in some instances oversight is professed to be the purview of opposition politicians and not the legislature as an institution. The emphasis is placed on the oversight role of legislatures, especially as it relates to ensuring government compliance with approved public spending. The task team adopted the following definition of oversight:

In the South African context, oversight is a constitutionally mandated function of legislative organs of state to scrutinise and oversee executive action and any organ of state.

It follows that oversight entails the informal and formal, watchful, strategic and structured scrutiny exercised by legislatures in respect of the implementation of laws, the application of the budget, and the strict observance of statutes and the Constitution. In addition, and most importantly, it entails overseeing the effective management of government departments by individual members of Cabinet in pursuit of improved service delivery for the achievement of a better quality of life for all citizens.

In terms of the provisions of the Constitution and the Joint Rules, Parliament has power to conduct oversight of all organs of state, including those at provincial and local government level.

The appropriate mechanism for Parliament to conduct oversight of these organs of state would be through parliamentary committees. In conducting oversight, the committee would either request a briefing from the organ of state or visit the organ of state for fact-finding, depending on the purpose of the oversight. The committees would have to consider the appropriate means for conducting oversight to cover all organs of state.

One of the most important aspects of the oversight function is the consideration by committees of annual reports of organs of state and the Auditor-General's reports.

2.1.1 Functions of oversight

The concept of oversight contains many aspects which include political, administrative, financial, ethical, legal and strategic elements. The functions of oversight are:

- To detect and prevent abuse, arbitrary behaviour or illegal and unconstitutional conduct on the part of the government and public agencies. At the core of this function is the protection of the rights and liberties of citizens.
- To hold the government to account in respect of how the taxpayers' money is used. It detects waste within the machinery of government and public agencies. Thus it can

[Handwritten signature]
M. D. D.

improve the efficiency, economy and effectiveness of government operations.

- To ensure that policies announced by government and authorised by Parliament are actually delivered. This function includes monitoring the achievement of goals set by legislation and the government's own programmes.
- To improve the transparency of government operations and enhance public trust in the government, which is itself a condition of effective policy delivery.

2.2 Defining accountability

Accountability can be broadly defined as -

a social relationship where an actor (an individual or an agency) feels an obligation to explain and justify his or her conduct to some significant other (the accountability forum, accountee, specific person or agency).

Ghutto. S

Accountability is the hallmark of modern democratic governance. Democracy remains clichéd if those in power cannot be held accountable in public for their acts or omissions, for their decisions, their expenditure or policies. Historically, the concept of accountability was closely linked to accounting in the financial sense. It has however moved far beyond its origins and has become a symbol of good governance both in the public and private sectors. Accountability refers to institutionalised practices of giving account of how assigned responsibilities are carried out.

2.2.1 Functions of accountability

The functions of accountability include the following:

- To enhance the integrity of public governance in order to safeguard government against corruption, nepotism, abuse of power and other forms of inappropriate behaviour.
- As an institutional arrangement, to effect democratic control.
- To improve performance, which will foster institutional learning and service delivery.
- In regard to transparency, responsiveness and answerability, to assure public confidence in government and bridge the gap between the governed and the government and ensure public confidence in government.
- To enable the public to judge the performance of the government by the government giving account in public.

Notwithstanding the fact that section 55 of the Constitution enables the National Assembly to maintain oversight over all organs of state and section 92 which enables Parliament to hold the Cabinet

accountable operationally, organs of state at national level and Ministers and their departments are generally held to account by Parliament. At national level, there is direct accountability to Parliament by national departments, national public entities and national bodies such as commissions.

The National Assembly does however have the right to call organs of state at provincial and local level to account, but does not do so operationally unless there are issues of public importance, national interest and shared competencies. Accountability to Parliament by organs of state at provincial and local level must be conducted through observance of the Intergovernmental Framework Relations Act and the principles of co-operative government.

When national departments account to Parliament by means which include the submission of reports, for example annual reports etc, Parliament needs to be informed of the complete picture of the performance of the functions reported on. The consideration of the annual report of the department alone may not give the complete picture of the performance of the functions. This is so because national departments have public entities that are agencies of implementation of their functions, and their activities may not be reported in the annual report of the national department.

The annual reports of organs of state that report to national departments must be considered when evaluating the annual report of the national department for Parliament to have a complete picture of the performance of the functions reported on.

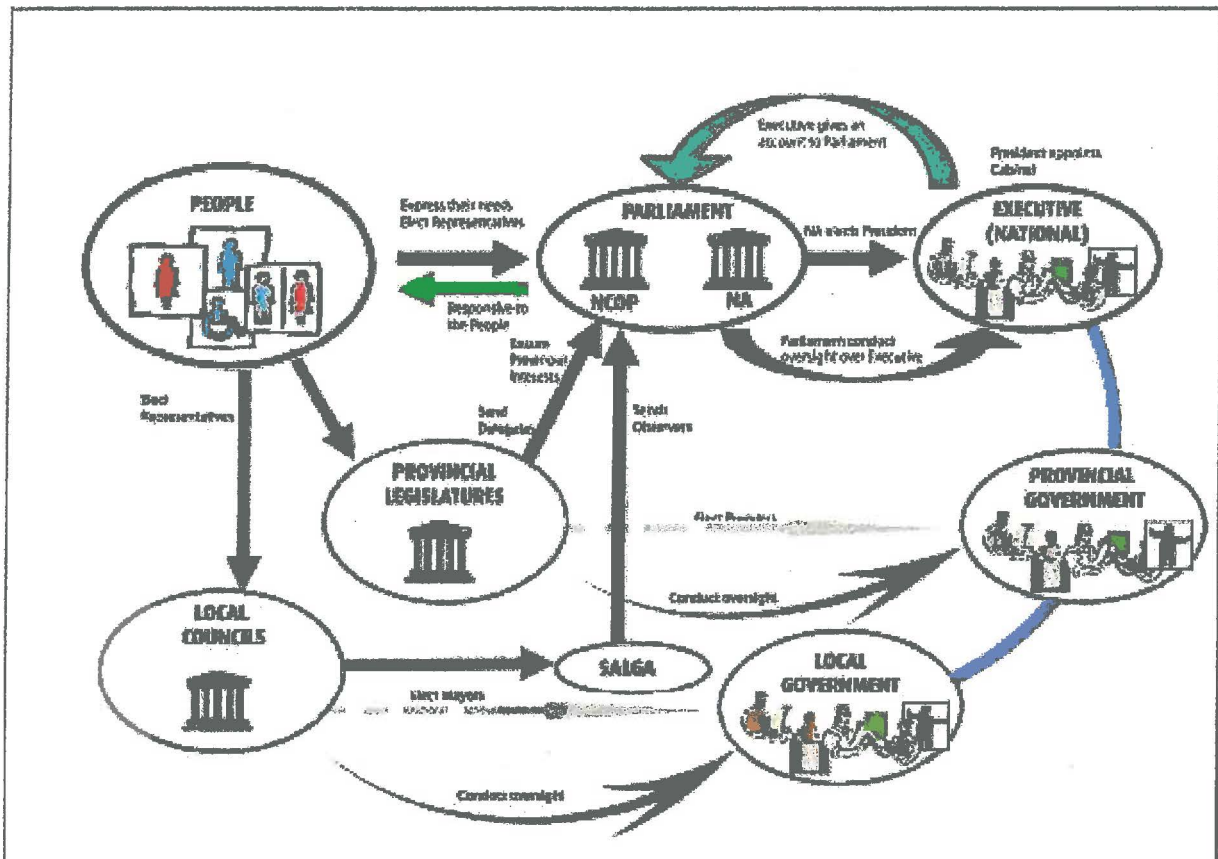
If further accountability is required, committees could use the power provided in the Constitution to access information even from public bodies that are at provincial or local government level in order that the committee has complete information and details on the public function reported on. Where a parliamentary committee is reviewing the performance of a national organ of state, the committee must ensure that the performance of its other entities, ie subsidiaries of the main organ of state, is included in the report to Parliament. If this is not included in the report, Parliament should in terms of sections 56(b) and 69(b) of the Constitution require of the entity to report to it so that Parliament has the complete picture.

In conducting oversight and accountability, the principles of co-operative government and intergovernmental relations must be taken into consideration, including the separation of powers and the need for all spheres of government and all organs of state to exercise their powers and perform their functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere.

The illustration (Figure 1) below depicts the linkages in creating efficiency and ensuring co-ordination on co-operative government which ultimately lead to oversight and accountability at national, provincial and local levels of government.


M. DAT.

Figure 1



Handwritten signature
M. K. M.

2.3 Constitutional provisions expressing powers and functions of Parliament on oversight and accountability

The relevant constitutional provisions that refer directly and indirectly to oversight and accountability are the following:

Section 41(2)	An Act of Parliament must establish or provide for structures and institutions to promote and facilitate intergovernmental relations and must provide for appropriate mechanisms and procedures to facilitate settlement of inter-governmental disputes.
Section 42(3) & (4)	(3) The National Assembly is elected to represent the people and to ensure government by the people under the Constitution. It does this by choosing the President, by providing a national forum for public consideration of issues, by passing legislation and by scrutinising and overseeing executive action. (4) The National Council of Provinces represents the provinces to ensure that provincial interests are taken into account in the national sphere of government. It does this mainly by participating in the national legislative process and by providing a national forum for public consideration of issues affecting provinces.
Section 55(2)	The National Assembly must provide for mechanisms – (a) to ensure that all executive organs of state in the national sphere of government are accountable to it; and (b) to maintain oversight of - (i) the exercise of national executive authority, including the implementation of legislation; and (ii) any organ of state.
Section 56	The National Assembly or any of its committees may - (a) summon any person to appear before it to give evidence on oath or affirmation, or to produce documents; (b) require any person or institution to report to it; (c) compel, in terms of national legislation or the rules and orders, any person or institution to comply with a summons or requirement in terms of paragraph (a) or (b); and (d) receive petitions, representations or submissions from any interested persons or institutions.


M. K. M. 1

Section 66(2)	The National Council of Provinces may require a Cabinet member, a Deputy Minister or an official in the national executive or a provincial executive to attend a meeting of the Council or a committee of the Council.
Section 67	Not more than 10 part-time representatives designated by organised local government representing the different categories of municipalities may participate in the proceedings of the National Council of Provinces when necessary, but may not vote.
Section 69	<p>The National Council of Provinces or any of its committees may –</p> <p>(a) summon any person to appear before it to give evidence on oath or affirmation, or to produce documents;</p> <p>(b) require any person or institution to report to it;</p> <p>(c) compel, in terms of national legislation or the rules and orders, any person or institution to comply with a summons or requirement in terms of paragraph (a) or (b); and</p> <p>(d) receive petitions, representations or submissions from any interested persons or institutions.</p>
Section 70(1)	<p>The National Council of Provinces may –</p> <p>(a) determine and control its internal arrangements, proceedings and procedures; and</p> <p>(b) make rules and orders concerning its business, with due regard to representative and participatory democracy, accountability, transparency and public involvement.</p>
Section 89	<p>(1) The National Assembly, by a resolution adopted with a supporting vote of at least two thirds of its members, may remove the President from office only on the grounds of –</p> <p>(a) a serious violation of the Constitution or the law;</p> <p>(b) serious misconduct; or</p> <p>(c) inability to perform the functions of office.</p> <p>(2) Anyone who has been removed from the office of President in terms of subsection (1)(a) or (b) may not receive any benefits of that office, and may not serve in any public office.</p>

M. K. M.

Section 92	<p>(2) Members of the Cabinet are accountable collectively and individually to Parliament for the exercise of their powers and the performance of their functions.</p> <p>(3) Members of the Cabinet must ... provide Parliament with full and regular reports concerning matters under their control.</p>
Section 93(2)	Deputy Ministers ... are accountable to Parliament for the exercise of their powers and the performance of their functions.
Section 100(2)	<p>If the national executive intervenes in a province by assuming responsibility for the relevant obligation which that province cannot or does not fulfil, the national executive must submit a written notice of the intervention to the National Council of Provinces within 14 days after the intervention began. The intervention must end if the Council disapproves the intervention within 180 days after the intervention began or by the end of that period has not approved the intervention. The Council must, while the intervention continues, review the intervention regularly and may make any appropriate recommendations to the national executive.</p>
Section 102	<p>(1) If the National Assembly, by a vote supported by a majority of its members, passes a motion of no confidence in the Cabinet excluding the President, the President must reconstitute the Cabinet.</p> <p>(2) If the National Assembly, by a vote supported by a majority of its members, passes a motion of no confidence in the President, the President and the other members of the Cabinet and any Deputy Ministers must resign.</p>
Section 114(2)	<p>A provincial legislature must provide for mechanisms –</p> <p>(a) to ensure that all provincial executive organs of state in the province are accountable to it; and</p> <p>(b) to maintain oversight of -</p> <p>(i) the exercise of provincial executive authority in the province, including the implementation of legislation; and</p> <p>(ii) any provincial organ of state.</p>

K
M. 179.

Section 125(4)	Any dispute concerning the administrative capacity of a province in regard to any function must be referred to the National Council of Provinces for resolution within 30 days of the date of the referral to the Council.
Section 133 (2) & (3)	<p>(2) Members of the Executive Council of a province are accountable collectively and individually to the provincial legislature for the exercise of their powers and the performance of their functions.</p> <p>(3) Members of the Executive Council of a province must provide the provincial legislature with full and regular reports concerning matters under their control.</p>
Section 139(2)	<p>If a provincial executive intervenes in a municipality which cannot or does not fulfil an executive obligation by assuming responsibility for the relevant obligation in that municipality, the provincial executive must submit a written notice of the intervention to the Cabinet member responsible for local government affairs and the relevant provincial legislature and the National Council of Provinces within 14 days after the intervention began.</p> <p>The intervention must end if the Cabinet member responsible for local government affairs disapproves the intervention within 28 days after the intervention began or by the end of that period has not approved the intervention, or if the Council disapproves the intervention within 180 days after the intervention began or by the end of that period has not approved the intervention. The Council must, while the intervention continues, review the intervention regularly and may make any appropriate recommendations to the provincial executive.</p>
Section 139(3)	When the relevant provincial executive intervenes in a municipality which cannot or does not fulfil an executive obligation by dissolving the Municipal Council, the provincial executive must immediately submit a written notice of the dissolution to the Cabinet member responsible for local government affairs and the relevant provincial legislature and the National Council of Provinces. The dissolution takes effect 14 days from the date of receipt of the notice by the Council unless set aside by that Cabinet member or the Council before the expiry of those 14 days.

[Handwritten signature]
17.12.19.

Section 139(6)	If a provincial executive intervenes in a municipality in terms of subsection (4) or (5), it must submit a written notice of the intervention to – (a) the Cabinet member responsible for local government affairs; and (b) the relevant provincial legislature and the National Council of Provinces within seven days after the intervention began.
Section 146(6)	A law made in terms of an Act of Parliament or a provincial Act can prevail only if that law has been approved by the National Council of Provinces.
Section 154(1)	The national government and provincial governments, by legislative and other measures, must support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions.
Section 155(6)	Each provincial government must establish municipalities in its province in a manner consistent with the applicable national legislation and, by legislative or other measures, must – (a) provide for the monitoring and support of local government in the province; and (b) promote the development of local government capacity to enable municipalities to perform their functions and manage their own affairs.
Section 155(7)	The national government, subject to section 44, and the provincial governments have the legislative and executive authority to see to the effective performance by municipalities of their functions in respect of matters listed in Schedules 4 and 5, by regulating the exercise by municipalities of their executive authority.
Section 194(1)	The Public Protector, the Auditor-General or a member of a Commission established by this Chapter may be removed from office only on – (a) the ground of misconduct, incapacity or incompetence; (b) a finding to that effect by a committee of the National Assembly; and (c) the adoption by the Assembly of a resolution calling for that person's removal from office.


M. 1019.

Section 199(8)	To give effect to the principles of transparency and accountability, multi-party parliamentary committees must have oversight of all security services in a manner determined by national legislation or the rules and orders of Parliament.
Section 201(3) & (4)	<p>(3) When the defence force is employed in co-operation with the police service; in defence of the Republic or in fulfilment of an international obligation, the President must inform Parliament promptly and in appropriate detail.</p> <p>(4) If Parliament does not sit during the first seven days after the defence force is employed as envisaged in subsection (2), the President must provide the required information to the appropriate oversight committee.</p>
Section 203	<p>(1) The President as head of the national executive may declare a state of national defence, and must inform Parliament promptly and in appropriate detail of -</p> <p>(a) the reasons for the declaration;</p> <p>(b) any place where the defence force is being employed; and</p> <p>(c) the number of people involved.</p> <p>(2) If Parliament is not sitting when a state of national defence is declared, the President must summon Parliament to an extraordinary sitting within seven days of the declaration.</p> <p>(3) A declaration of a state of national defence lapses unless it is approved by Parliament within seven days of the declaration.</p>
Section 206(9)	A provincial legislature may require the provincial commissioner of the province to appear before it or any of its committees to answer questions.
Section 210	<p>National legislation must regulate the objects, powers and functions of the intelligence services, including any intelligence division of the defence force or police service, and must provide for -</p> <p>(a) the co-ordination of all intelligence services; and</p> <p>(b) civilian monitoring of the activities of those services by an inspector appointed by the President, as head of the national executive, and approved by a resolution adopted by the National Assembly with a supporting vote of at least two thirds of its members.</p>


M.1919.

Section 216(3) & (4)	(3) A decision to stop the transfer of funds due to a province may be enforced immediately, but will lapse retrospectively unless Parliament approves it. (4) Parliament may renew a decision to stop the transfer of funds for no more than 120 days at a time.
Section 231(2), (3) & (4)	(2) An international agreement binds the Republic only after it has been approved by resolution in both the National Assembly and the National Council of Provinces, unless it is an agreement referred to in subsection (3). (3) An international agreement of a technical, administrative or executive nature, or an agreement which does not require either ratification or accession, entered into by the national executive, binds the Republic without approval by the National Assembly and the National Council of Provinces, but must be tabled in the Assembly and the Council within a reasonable time. (4) Any international agreement becomes law in the Republic when it is enacted into law by national legislation; but a self-executing provision of an agreement that has been approved by Parliament is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament.

In the context of the constitutionally mandated provisions of accountability and oversight as listed above, the chapters below detail the existing processes undertaken by the South African Parliament to fulfil its constitutional oversight and accountability obligations. The focus is also placed on the gaps in current rules pertaining to oversight, and some mechanisms are recommended to address these challenges.

CHAPTER 3: INSTITUTIONAL CHARACTERISTICS OF OVERSIGHT AND ACCOUNTABILITY AND EXISTING MECHANISMS UTILISED BY PARLIAMENT

3.1 Current mechanisms for oversight and accountability

Parliament has established mechanisms to fulfil its oversight and accountability mandates in terms of the Constitution and under the rules established by the two Houses, individually and jointly. Committees can interact with civil society organisations, organised business, experts and professional bodies as a way of enhancing accountability and can call Ministers and departmental heads to account on any issue relating to any matter over which they are effecting accountability within the ambit of the provisions of sections 56 and 69 of the Constitution and legislation. Current practices and oversight mechanisms include the committees of Parliament (with their associated practices) and plenary processes as listed below.


M. DM.

3.1.1 Practices of committees to effect oversight and accountability

The mandates of the committees are provided for in the rules of each House and the Joint Rules. Committees offer a setting which facilitates detailed scrutiny of legislation, oversight of government activities and interaction with the public and external factors. Consideration of committee reports is necessary because committees work as intermediary bodies between interest groups and government and are an entry point for citizens to the work of Parliament. In addition, the work of committees include study visits that entail physical inspections, conversing with people, assessing the impact of delivery and developing reports for adoption by committees which contain recommendations for the Houses to consider. In exercising oversight, committees often obtain first-hand knowledge from people engaged in the direct implementation of specific programmes and/or who are directly responsible for service delivery. In order to evaluate the work of government from a broader perspective, committees may invite experts from outside government to provide background knowledge and analysis on relevant issues.

Reports and mandates of committees

Parliamentary committees are established as instruments of the Houses in terms of the Constitution, legislation, the Joint Rules, Rules of the NCOP, Rules of the NA, and resolutions of the Houses to facilitate oversight and the monitoring of the Executive, and for this purpose they are provided with procedural, administrative and logistical support - they are regarded as the engine rooms of Parliament.

Parliamentary committees have various tools of oversight as listed above, including departmental briefing sessions, annual and departmental budget analyses, calls for submissions and petitions from the public, the consideration of strategic plans and annual reports, and public hearings.


Whilst committees have established ways of conducting their oversight functions, their business generally runs parallel to government's political cycle, unless there are specific "ad hoc" oversight functions that are required. In programming their oversight activities, they would thus act in a responsive/reactive manner.

A committee conducts its business on behalf of the House and must therefore report back to the House on matters referred to it for consideration and report. A committee may also report on any other matter within the scope of its mandate that it considers necessary in terms of NA Rule 137(2) and NCOP Rule 102(2).

When a committee reports its recommendations to the House for formal consideration and the House adopts the Committee report, it gives the recommendations the force of a formal House resolution pursuant to its constitutional function of conducting oversight. The House then also monitors executive compliance with these recommendations.

The following types of committee reports are presented to the House:

1. Legislation (in terms of sections 74, 75, 76 or 77 of the Constitution);
2. Study tours;
3. Oversight activities of committees, including responses to annual reports and financial


M.1012,

statements of departments;

4. International agreements;
5. Private members' legislative proposals;
6. Budget votes;
7. Petitions;
8. Statutory provisions (for example the filling of vacancies in a statutory body);
9. Annual reports of committee activities and performance against their strategic plans;
10. Any matter referred to committees for consideration and report in terms of NA Rule 137 and NCOP Rule 102.

Once a report has been adopted by the House, the Speaker communicates the recommendations of the House to the relevant Minister and copies the relevant House Chairperson, portfolio committee Chairperson and Director-General. The Speaker also requests the Minister to direct his or her responses to the Speaker for formal tabling.

The Secretary to Parliament communicates with the Director-General in the Presidency on all resolutions.

Portfolio committees of the NA and select committees of the NCOP

The mandate of oversight resides with the NA and the NCOP and through their respective rules, the NA establishes portfolio committees and the NCOP establishes select committees. Portfolio committees mirror portfolios in government whilst select committees mirror the clusters in government. Due to the fact that committees conduct their business on behalf of their respective Houses, they report to the relevant House individually and separately on matters referred to them to ensure that each House may make any decisions it deems necessary.

Joint committees

Joint committees are committees that are established in terms of the Joint Rules and have similar powers to portfolio committees and select committees, except that they have specific mandates relating to transversal issues, such as women, children, youth and disability.

Ad hoc committees

When necessary, Parliament establishes ad hoc committees to assist in its investigation of transversal issues.

Joint standing committees

Parliament, in accordance with the Constitution, legislation and the rules, can establish standing committees. Two joint standing committees currently exist in Parliament through legislation, namely the Joint Standing Committee on Intelligence and the Joint Standing Committee on Defence.


17.12.14

Specialised committees

The NA Rules and the Public Audit Act (No 25 of 2004) establish the Committee on the Auditor-General with a mandate to maintain oversight over the Auditor-General and perform functions in terms of the Public Audit Act. The Joint Committee on Ethics and Members' Interests is established by the Joint Rules (Rule 121) to implement the Code of Conduct for Assembly and permanent Council members and develop standards of ethical conduct for Assembly and Council members. The Committee on Public Accounts is established by the NA Rules (Rule 204) and is tasked with considering financial statements of all executive organs of state and constitutional institutions, any audit reports issued on those statements as well as any reports issued by the Auditor-General on the affairs of any executive organ of state or other public bodies or any other financial statements or reports referred to the committee in terms of the rules.

3.1.2 Plenary processes for effecting oversight and accountability

Budget Votes

Budget votes occur when the Minister of Finance announces the budget projections for the next financial year, as well as the budget votes of each Minister (department). In the Budget the Minister of Finance sets out how much money the government will spend in the following year. Parliament must approve the Budget. Subsequent to the presentation of the Budget by the Minister of Finance, each parliamentary committee has hearings with the government department over which that committee exercises oversight and can also check whether the department kept the promises of the previous year and spent taxpayers' money properly. The budget votes are debated in the National Assembly and the National Council of Provinces once committees have finished discussing the different budget votes.

Questions

Section 92 of the Constitution stipulates that members of the Cabinet are accountable collectively and individually to Parliament for the exercise of their powers and the performance of their functions. The procedure of putting questions to the Executive is one of the ways in which Parliament holds the Executive to account. Questions can be put for oral or written reply to the President, the Deputy President and the Cabinet Ministers on matters for which they are responsible. Question time affords members of Parliament the opportunity to question members of the Executive on service delivery, policy and other executive action on behalf of both their political parties and the electorate.

Members' statements

This is the process whereby members of Parliament are afforded the opportunity to make statements on any matter in the House.

Statements by Cabinet members


17/10/19.

Ministers may make factual or policy statements in relation to government policy, executive action and other similar matters of which the Assembly should be informed. The Minister asks the Speaker for the opportunity to make such a statement, which should not be longer than 20 minutes.

Notices of motion

Motions are one of the mechanisms available to members of all political parties which can be used to help fulfil their oversight responsibilities in Parliament by bringing issues to Parliament for debate. Notice must be given of a motion unless it is by way of an amendment to a draft resolution, raising a point of order or a question of privilege, the postponement or discharge of or giving precedence to an order for the day, referring a bill to a committee, the proposal of a draft resolution on the report of a committee immediately after a debate on the report has been concluded, or in regard to which notice is dispensed with by the unanimous concurrence of all the members present. Notice must be given of every motion since in principle the House must be informed in advance of any substantive motion so that members and parties have time to prepare to debate it. Notices of motion are therefore a vital tool which can be used by members to bring matters of political importance before Parliament for debate or a decision.

Motions without notice

Motions which require notice may be moved without notice provided no single member present objects. It is therefore common practice for parties to be consulted before the House meets when seeking to move a motion without notice, and to inform the presiding officer of the intention to do so. Motions without notice are moved when the presiding officer calls for any formal motions, usually near the beginning of the day's sitting. This medium allows for consultation between parties to obtain consensus on issues that must be brought to the attention of the House.

Plenary debates

Plenary debates are a further means to bring important information to the attention of the Executive regarding specific government programmes and legislation required to improve service delivery. In plenary debates, certain mechanisms for conducting oversight are used. These include question time, the consideration of committee reports, showcasing, scrutinising and debating the implementation of policy and budget votes, members' statements and questions by members of Parliament, which draw the attention of the Executive to the concerns of members' constituents.

3.1.3 Use of activities and reports from state institutions supporting constitutional democracy to enhance Parliament's oversight functions

These institutions have particular mandates as provided for in the Constitution and by way of additional Acts of Parliament that prescribe their functions and powers. The institutions are independent and subject


K. M. M.

only to the Constitution and the law, and they must be impartial and must exercise their powers and perform their functions without fear, favour or prejudice. In terms of section 181(3) of the Constitution other organs of state, through legislative measures, have to assist and protect the aforementioned institutions to ensure their independence, impartiality, dignity and effectiveness.

In terms of section 181(5) these institutions are accountable to the National Assembly and must report on their activities and the performance of their functions to the Assembly at least once a year.

The institutions are:

- The Auditor-General (AG);
- The Commission for Gender Equality (CGE);
- The Public Protector (PP);
- The Electoral Commission (EC);
- The South African Human Rights Commission (SAHRC); and
- The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL Rights Commission).

The task team considered the views and concerns raised by state institutions supporting constitutional democracy during the interviews and in their submissions. Weaknesses were identified in the current parliamentary mechanisms. However, concomitant to the work conducted by the task team, Parliament established the Ad Hoc Committee on the Review of Chapter 9 and Associated Institutions. The committee's mandate was broader than that of the task team and as a result it was agreed that direction would be obtained from the outcomes of that process.

It is recommended that Parliament develop clear mechanisms to enable the reporting by state institutions supporting constitutional democracy on their activities and the performance of their functions as prescribed in the Constitution and related Acts of Parliament.

The second recommendation is for Parliament to put in place processes in order to allow the reports to be referred to committees for consideration, oversight, and reporting back on issues to plenary sessions.

3.1.4 Other statutory institutions supporting democracy

Financial and Fiscal Commission (FFC)

The FFC is an advisory body and has a mandate to make recommendations on financial and fiscal matters to Parliament, the provincial legislatures, and any other institutions of government when necessary. The FFC is separate from government and is therefore able to perform impartial checks and balances between the three levels of government. It facilitates co-operative government on intergovernmental fiscal matters. At least 10 months before the start of each financial year, the Commission must submit recommendations for that financial year to both Houses of Parliament and the provincial legislatures, with particular regard to:

M. 1917.

- An equitable division of revenue raised nationally, amongst the national, provincial and local spheres of government;
- The determination of the equitable share of each province when revenue is divided between the nine provinces; and
- Any other allocations to provinces, local government or municipalities from the national government's share of that revenue, and any conditions on which those allocations should be made.

National Youth Commission (NYC)

The National Youth Commission is a statutory body of government established through the National Youth Commission Act, No 19 of 1996. The Commission consists of five full-time members, five part-time members and nine commissioners, nominated by Premiers of each province and appointed at national level. The National Youth Policy has been designed to address the major needs, challenges and opportunities of young men and women.

Pan South African Language Board (Pansalb)

The purpose of the Pan South African Language Board is to promote multilingualism in South Africa by:

- creating the conditions for the development and equal use of all official languages;
- fostering respect for and encouraging the use of other languages in the country; and
- encouraging the best use of the country's linguistic resources to enable South Africans to free themselves from all forms of linguistic discrimination, domination and division, and to enable them to exercise appropriate linguistic choices for their own well-being, as well as for national development.

Public Service Commission (PSC)

The PSC derives its mandate from sections 195 and 196 of the Constitution. The PSC is tasked and empowered, amongst others, to investigate, monitor and evaluate the organisation and administration of the public service. This mandate also entails the evaluation of achievements, or lack thereof, of government programmes. The PSC also has an obligation to promote measures that will ensure effective and efficient performance within the public service and to promote basic values and principles of public administration, as set out in the Constitution, throughout the public service.

Independent Communications Authority of South Africa (Icasa)

The Independent Communications Authority of South Africa derives its mandate from several statutes: The Independent Communications Authority of South Africa Act of 2005, the Independent Broadcasting Authority Act, the Broadcasting Act and the South African Telecommunications

M.1010

Regulatory Authority Act and the Icasa Amendment Act. The Electronic Communications Act substantially amended the IBA Act of 1993 and the Broadcasting Act of 1999. The Authority regulates the telecommunications and broadcasting industries in the public interest. Its key functions are to:

- make regulations and policies that govern broadcasting and telecommunications;
- issue licences to providers of telecommunications services and broadcasters;
- monitor the environment and enforce compliance with rules, regulations and policies;
- hear and decide on disputes and complaints brought by industry or members of the public against licensees
- plan, control and manage the frequency spectrum; and
- protect consumers from unfair business practices, poor quality services and harmful or inferior products.

Organs of state

An "organ of state" is defined in section 239 of the Constitution as --

- (a) any department of state or administration in the national, provincial or local sphere of government; or
- (b) any other functionary or institution --
 - (i) exercising a power or performing a function in terms of the Constitution or a provincial constitution; or
 - (ii) exercising a public power or performing a public function in terms of any legislation, but does not include a court or a judicial officer

Section 239 divides organs of state essentially into two categories. The first category is descriptive in terms of which organs of state are defined as any department of state or administration in the national, provincial or local sphere of government. This category is, we believe, self defining. For example, in its interpretation of this first category, the Corder Report (1999: 13) included bodies represented in Cabinet as comprising "national executive authority", where accountability is vested at the political level via the doctrine of ministerial responsibility (section 92(2)). The terms "any department of state or administration" can further be traced to the Public Service Act (No 103 of 1994), which refers specifically to national and provincial "departments", and other departments. Finally, the inclusion of the term "local" in this category in section 239 must also logically include municipalities, as these constitute administrative bodies operating in the local sphere of government.

The second category in section 239 is subdivided, and focuses on the conduct or activity of the organ of state and on the empowering provisions. These two subcategories are:

- section 239(b)(i): any other functionary or institution exercising a power or performing a function in terms of the Constitution or any provincial constitution; and
- section 239(b)(ii): any other functionary or institution exercising a public power or performing a public function in terms of any legislation, but does not include a court or a judicial officer.

If the institution or functionary is exercising a power or performing a function in terms of the Constitution or a provincial constitution, then it is an organ of state. The nature of the power exercised or the function performed is irrelevant. In this category, the source of the power is the determining criterion.

All organs of state in the national sphere of government must account to the National Assembly and they do this mainly by way of the submission of annual reports. As per section 55(2)(b)(ii), the Assembly has power to conduct oversight over all organs of state.

There is an increasing number of listed organs of state, of which only national organs of state are required to submit their annual reports to Parliament as part of their accountability to Parliament, based on sections 55(2)(a) and 69(b) of the Constitution in that the executive organs of state in the national sphere of government account to Parliament.

Other public bodies and institutions listed as national organs of state include institutions such as universities and business units or subsidiaries of other national organs of state. These institutions do not have to table their annual reports in Parliament because their activities are reported on in the annual reports of the main public entities they belong to. For example, Intersite Property Management Services (Pty) Ltd is a subsidiary of the SA Rail Commuter Corporation Ltd and should be reported on in the annual report of the SA Rail Commuter Corporation Ltd.

Information in relation to public bodies as commissioned from the Human Sciences Research Council (HSRC) Report will be used as the main source to establish which institutions are required to report to Parliament. In this regard, Parliament will know which institutions are supposed to table annual reports as required by the Public Finance Management Act and related legislation.

It is important when departments or public entities at national level account to Parliament through the National Assembly and when provinces report to the National Council of Provinces that both Houses are informed of the complete scope of the function that the department or public entity is reporting on.

It is therefore recommended that the performance of these other public bodies and institutions be included in the reports to Parliament. If not, Parliament can, in terms of sections 56(b) and 69(b) of the Constitution, require of the entity to report to it in order that Parliament has the complete picture of the function reported on. In this regard, the mandate of the National Assembly by virtue of section 55(2)(b)(ii) entitles it to exercise oversight over all organs of state. A list of all organs of state, public bodies and institutions are

attached hereto for reference purposes to assist portfolio and select committees to identify which institutions are required to report and be accountable to them.

3.2 Tools for oversight and accountability

Currently South Africa has designed the following tools in relation to oversight and accountability. For ease of reference, these tools have been split into four categories: Category 1 lists tools of established legislation and long-term plans; Category 2 contains tools relating to annual, monthly and weekly activities; Category 3 lists financial instruments; and Category 4 relates to issues arising from institutions supporting constitutional democracy.

Category 1:

- Constitution of the Republic
- Legislation
- Government Programme of Action [5-year plan].

Category 2:

- State-of-the-Nation Address
- Questions (written and oral)
 - President
 - Deputy President
 - Ministers
- Members' statements
- Ministerial statements
- Debates in the House
- Matters from constituency work
- Private member's bills
- Individual member's oversight
- Committee reports on legislation and oversight activities
- Committee reports on international agreements
- Departmental strategic plans
- Departmental current and past annual performance plans
- Annual reports (including annual financial statements, statements on programme performance and human resource information)
- Performance contracts
- Departmental compliance with parliamentary committee recommendations.

Category 3:

- Budget Speech
 - Estimates of National Expenditure (ENE)

K
M.1019.

- Division of Revenue Bill
- Estimates of National Revenue
- Budget Review
- Ministers' budget vote speeches
- Departmental budget votes
- Treasury Regulations relating to strategic planning
- Reports of the Auditor-General (including performance reports)
- Treasury reports (monthly and quarterly reports)
- Audit Reports (Scopa)
- Medium-Term Budget Policy Statement (MTBPS)
- Adjusted Estimates of National Expenditure
- Intergovernmental Fiscal Relations report
- Public Finance Management Act (PFMA)
 - Financial statements (monthly financial reports and quarterly performance reports)
 - Statistics South Africa reports.

Category 4:

- Reports on investigated matters of relevance by institutions supporting constitutional democracy (ISDs) and other statutory institutions supporting democracy for consideration by Parliament.

CHAPTER 4: NEW MECHANISMS FOR OVERSIGHT AND ACCOUNTABILITY

4.1 New mechanisms

The previous sections outlined the current parliamentary oversight and accountability mechanisms and practices. The sections below highlight potential mechanisms to further strengthen oversight and accountability:

4.1.1 Institutional mechanisms

Notwithstanding the existing rules on conferral, it is proposed that where committees are clustered for oversight and other legislative work, they should be able to report jointly on matters that are transversal and for the House to adopt such a cluster report.

Reports and matters arising from the same delegations representing Parliament at organisations, such as the Commonwealth Parliamentary Association, Inter-Parliamentary Union, Pan African Parliament, SADC Parliamentary Forum, Africa Caribbean and Pacific-European Union Joint Parliamentary Assembly and others, should also be tabled and be programmed for consideration by the relevant committees and, where necessary, should be debated in the relevant Houses.


M. J. M.

It is recommended that the rules be amended to facilitate the referral of matters arising from reports of international bodies to which Parliament is affiliated to committees for consideration, where necessary, and for debate in the relevant Houses.

It is recommended that sectoral parliaments such as the Women's Parliament, Youth Parliament, People's Assembly and other such assemblies should be formally recognised in the rules and that provision be made for their procedures, powers and functions and for the formalisation of recommendations to be submitted to the relevant committees, where necessary, and to the relevant Houses for consideration.

Parliament currently attends to special petitions through the Committee on Private Members' Legislative Proposals and Special Petitions. However general petitions, representations and submissions as specified in sections 56 and 69 of the Constitution are not adequately addressed through institutionalised mechanisms.

Sections 56 and 69 require Parliament or its committees to accept petitions, representations or submissions from any interested persons or institutions.

It is therefore recommended that mechanisms be put in place to facilitate the processing, referral and guidance on attending to petitions, representations and submissions. Best practices have already been established in various provinces, including the establishment of petitions offices and in some instances budget committees to assist those offices. The effectiveness of these offices can be investigated by Parliament in the process of developing mechanisms.

It is proposed that rules be amended and developed to accommodate Sub-Plenary Sessions of the National Assembly which will purport to provide an extended avenue for the debate and consideration of issues referred to it by the House which are of national concern. It is further proposed that resolutions reached and issues arising from these sessions be tabled in the House for final consideration. It is recommended that consideration be afforded to the development of mediums for deliberation, engagement and debates on broader and complex issues in traditional South African channels which include Lekgotleng, Inkundleni and Bosberaad. This will lead to a move away from the Westminster system and place greater impetus on the transformation of Parliament in the South African context.

4.1.2 Joint Parliamentary Oversight and Government Assurance Committee

In identifying mechanisms for Parliament to effect its oversight role, a gap was identified which necessitated that consideration be given to the establishment of a Joint Parliamentary Oversight and Government Assurance Committee. The committee should have some powers governing the work and function of committees of Parliament.

Its main purpose and mandate will be to consider and deal with broader, transversal and cross-cutting issues. It will furthermore pursue all assurances, undertakings and commitments given by Ministers on the

K
M.D.D.

floor of the House(s) and the extent to which these assurances etc have been fulfilled.

The Inter-Parliamentary Union presented a study which was a compendium of parliamentary practice as it applies to oversight. It elaborated on a broad range of tools that parliaments have at their disposal or may want to develop. It acknowledged that parliaments can establish a general oversight committee which co-ordinates the oversight work of other permanent committees. An oversight committee can recommend that other permanent committees investigate specific problems that it has identified. Other permanent committees can also bring matters before the general oversight committee.

It is recommended that the rules be developed to accommodate and furthermore express the functions, powers and objectives of the proposed committee. The recommended committee will be one of the subcommittees of the Joint Rules Committee chaired jointly by designated House Chairpersons and its membership will be based on the issues before it within the cluster or multi-cluster group of portfolio and select committees, and therefore it will have a rotational membership. Secretarial support will be provided by the Oversight Advisory Section and the Table staff of both Houses.

4.1.3 Treaties, Conventions and Protocols - Compliance including oversight on development aid

An international agreement binds the Republic only after it has been approved by resolution in both Houses, unless it is an agreement of a technical, administrative or executive nature, or an agreement which does not require either ratification or accession, in which case the agreement must be tabled in the Houses within a reasonable time.

The recommendation is that Parliament ought to be robust and proactive in the negotiations that are conducted relating to international agreements prior to the signing of these agreements, as well as in relation to oversight on allocations per programme and expenditure from overseas development aid (ODA) extended to the Republic. A mechanism needs to be established to ensure that Parliament engages with the stakeholders involved in the negotiation teams.

It is further recommended that there ought to be a mechanism to oversee compliance with international agreements and that this matter should form part of the programme of Parliament for effecting oversight and accountability. Rule 306 of the NA Rules stipulates when the Assembly's approval is sought for an international agreement in terms of section 231(2) of the Constitution, the agreement must be submitted to the Speaker with an explanatory memorandum. The NCOP rules do not stipulate that the agreement should be submitted to the NCOP with an explanatory memorandum in the instance where matters of provincial interests are addressed in the agreement.

It is recommended that when a matter of provincial interest is addressed in the agreement, the NCOP should be provided with the agreement and an explanatory memorandum and further that the rules of the NA and the NCOP be developed to enable the presentation of reports to Parliament by the Executive prior to their presentation to international bodies to enable Parliament to assess the compliance aspects in

M. B. A. 9.

the reports.

4.1.4 Oversight Advisory Section

In developing the oversight model, the need was identified for support services relating to the monitoring and tracking of issues between Parliament and the Executive, and on all other related matters within Parliament's broader mandate. An Oversight and Advisory Section ought to be created in response to the need identified. Its main functions will be to provide advice, technical support, co-ordination, and tracking and monitoring mechanisms on issues arising from oversight and accountability activities of members of Parliament and the committees to which they belong. 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 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 MPs raised flowing from constituency work;
- Assisting with tracking, monitoring and following up issues raised through the Parliamentary Democracy Offices;
- 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 institutions supporting constitutional democracy to advise the Houses on 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 the Houses; and
- Monitoring and analysing debates, discussions and comments made by the public and participants in the sectoral parliaments with a view to advising the Houses on issues for consideration.

In the establishment of the Oversight and Advisory Section, the following subdivisions can be created:

- Financial Scrutiny Unit, which will develop systems for the scrutiny of 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 how it plans to 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.

Kr
NRM.

This will assist the committees responsible for Finance and the 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 will address decisions in the House(s) and at committee level, as well as issues from emanating from the floor of the House(s) and from committee reports that get tabled in the House(s).
- Advisory Unit, which will identify issues from sectoral parliaments, other assemblies, international bodies and compliance with international protocols, treaties and conventions as well as petitions.

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

4.1.5 Reserve Bank

The South African Reserve Bank Act (No 90 of 1989) regulates the South African Reserve Bank. Section 37 of the Act requires the Minister of Finance in the case of non-compliance by the Bank with the Act or any regulation under the Act to give notice to the board of directors of the Bank of non-compliance and the requirement of compliance within a specified time. In the event that the non-compliance is sustained, the Minister can apply to a division of the High Court to compel compliance. Whilst section 224 (2) of the Constitution stipulates that the Reserve Bank is independent, as an organ of state, it is accountable to Parliament in terms of sections 55 and 69. The exercise of its powers and functions and conditions attached to it must be determined by an Act of Parliament in accordance with section 225. In this regard, it is recommended that the Reserve Bank Act of 1989 should be reviewed and revised for purposes of aligning the act with the Constitution in order that Parliament may exercise oversight over it

4.1.6 Issues from constituency work

In the course of their constituency debates, issues of concern to the public are brought to the attention of members of Parliament. These issues, once introduced in Parliament, can be formally channelled through the parliamentary processes for executive responses.

4.1.7 Appointments to institutions supporting constitutional democracy and other specialised institutions which fall under the mandate of Parliament

The procedural aspects of appointments to Chapter 9 institutions and specialised institutions are assigned to committees. After considering the matter, the committees report their recommendations to Parliament for a decision. The weakness is the lack of co-ordination in handling these very important appointments, and therefore mechanisms in the rules are needed to assist Parliament to give effect to this important mandate.

It is recommended that an ad hoc committee be set up to receive and hear the presentation on the Audit

kr
M.10/19.

of Statutes and make recommendations that it deems necessary to the presiding officers for consideration.

4.1.8 Public participation

The need to have public participation is required in section 42 of the Constitution. The task team considered the matter of how the public can engage through involvement and participation in parliamentary processes. Amidst the research conducted by the task team and the recent Constitutional Court cases on public participation, the task team identified that the need for public participation and involvement cannot merely be addressed in a chapter of the model but ought to be included in a separate model on public participation, which will be interlinked with the Oversight and Accountability Model. Research, ideas and best practice will be provided to the necessary process that will be established for the development of the model.

4.1.9 Sanctioning non-compliance by the Executive

It is recommended that Parliament develop rules to assist it further in sanctioning Cabinet members for non-compliance after all established existing avenues and protocols have been exhausted, for example naming the Cabinet member by the Speaker of the National Assembly or the Chairperson of the Council based on a full explanation.

4.2 Maximising current mechanisms

4.2.1 Reporting by committees to the Houses

A mechanism for evaluating annual reports from government departments does exist. This is one of the procedures through which Ministers are held to account. Ministers, as the executive authority in terms of section 65 of the Public Finance Management Act (PFMA) have to table annual reports of departments and public entities for which they are responsible within six months after the end of the financial year (30 September). The Speaker' immediately refers all annual reports to the relevant portfolio committee and the Committee on Public Accounts for consideration and report. Late submission requires a written explanation by the Minister providing reasons for the delay. The Committee on Public Accounts reviews the audited financial statements and the audit reports of the Auditor-General and indicates to the relevant portfolio committee which specific issues they should be aware of with regard to oversight. The committee has to evaluate thoroughly the technical quality and the performance information presented in the annual report.

Members should have a clear understanding of the portfolio over which they are conducting oversight and what it is they want to achieve (improve service delivery). There are different phases which lead up to the final reporting, namely:

- *Oversight preparation phase:*

This starts six to eight weeks prior to 30 September each year. Members need to have access to and interrogate documents which include current and previous annual reports for comparison purposes,

K
MIRAR

strategic plans and Estimates of National Expenditure of related years, State-of-the-Nation Address, Budget Speech, budget vote speeches, division of revenue information and related policy documents, quarterly performance reports, previous oversight reports and House resolutions.

- **Oversight hearing phase:**

Ideally during the last two weeks of October each year, public hearings are conducted to gain clarity/input into the areas that should be addressed in the annual report.

- *Oversight report-writing phase:*

A report for each of the entities reviewed must be tabled in the House (by the second week in November). The report should contain comments with regard to compliance, spending patterns, a general information section in the annual report, reported performance, key issues of the previous year and recommendations.

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.

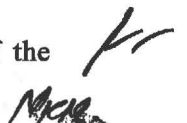
It is recommended that the current system be improved in the following manner:

- Where a response is required, the House resolution with its date of adoption must be appended to the Order Paper until such response has been received. The Minister's formal response must be addressed to the Speaker or Chairperson of the Council.
- If no response is received within a reasonable time or within the period specified by the House resolution, the House Chairperson should notify the Speaker or Chairperson, who should then write to the Minister requesting compliance within 14 days or a written explanation of the delay.
- In the event of sustained non-compliance by the Minister, a written complaint by the Speaker or Chairperson may be sent to the Leader of Government Business, and in exceptional circumstances the Minister may be called to account in the House (e.g. during question time).
- Quarterly reports and an annual report on resolutions (by category) and compliance with outcomes should be made available to the Houses. These reports could be used to feed information into the tracking and monitoring mechanism.

This process does not preclude the committee from monitoring executive compliance as part of its continuous oversight function.

4.2.2 Debates initiated by Presiding Officers

NCOP Rule 84 and NA Rule 103 respectively enable members to request the Chairperson of the



Council and the Speaker in writing to allow a matter of public importance to be discussed in the individual Houses. It is recommended that the rules must be expanded to enable the Speaker and the Chairperson of the NCOP to initiate debates in the Houses.

4.2.3 Developing specialisation for certain parliamentary committees

The committee system in South Africa has drawn much guidance from the Westminster system, as has other jurisdictions. However, many jurisdictions have tapered the Westminster approach to accommodate variations in the structure of committees based on their specific needs and the need for specialisation. The need for fundamental change in the current manner in which committees exercise oversight is necessitated by the fact that South Africa has pioneered mandatory oversight by Parliament through the Constitution.

The Inter-Parliamentary Union is of the view that the existence of specialised committees adds value to parliamentary work because these committees can work simultaneously to address problems from different angles.

Parliament should consider strongly resourcing, capacitating and developing the specialisation of committees that are dealing with broad issues that cut across departments and ministries in all spheres as this has an impact on society and the nurturing of our democratic objectives. This consideration is motivated by the type, quantity and duration of work, complexity of issues and the need for the development of specialisation as is the case in other parliaments in the world.

The programming of Parliament should prioritise reports for tabling which arise from the work done and conducted by these committees on all areas of their focus for consideration and decision-making within the ambit of enhancing oversight. These committees ought to be given the right to consider and initiate debate on some of the issues they find to be of national consideration, as identified in the process of their oversight work. Furthermore, these committees must provide annual reports which must be published in the Announcements, Tablings and Committee Reports document as well as tabled in Parliament to allow other committees to identify issues that will help them in enhancing oversight and effecting accountability.

It is highly recommended that Parliament prioritise the development of criteria to identify on an ongoing basis which committees qualify for strengthened resourcing, capacity and development based on the broadness of their mandates.

4.2.4 Appointment of ad hoc committees

The current system in Parliament of appointing ad hoc committees to investigate a matter of public interest is effective. However, we need to ensure that issues of public interest, as they arise and are made known to Parliament, are investigated through the appointment of ad hoc committees. This will enhance Parliament's role on oversight and ensure compliance with the Constitution where we are becoming responsive to the needs of the people as outlined in the vision and mission statement of Parliament. In addition, Parliament

K
19/10/11

ought, when it deems it necessary, to be proactive in appointing ad hoc committees to address issues of public interest.

4.2.5 Accountability and oversight in relation to the Executive

NA Rule 117 and NCOP Rule 249 provide for the Executive to reply to a question for written reply within 10 working days of the day for which the question was set down for written reply. Should the Executive fail to do so, the question may, upon request of the member of Parliament in whose name the question stands, be put to the Cabinet member in the House for oral reply on the relevant question day. NA Rule 115(3) provides that a question for oral reply may not stand over more than once. This is generally assumed to be a period of 14 days. It is still a moot point as to what happens to a question standing over more than once as there are such instances, and no sanctions in this regard exist.

There is a constitutional obligation on the Executive to account to Parliament (section 92(2) and (3) of the Constitution). In March 2003, the NA Rules Committee decided that the Speaker should write to Cabinet members and the Leader of Government Business with regard to members of the Cabinet not complying with their constitutional obligations as there is no compulsion on a member of the Cabinet to respond to a question other than the option of members' statements, motions or a request for a debate on errant members of the Cabinet.

It is recommended that NA Rule 117 and NCOP Rule 249, which provide a timeframe for the Executive to respond to a question for oral reply, be amended to extend the timeframe for a response to 21 days.

Notwithstanding the right of Parliament to pass a motion of no confidence in the President or in the Cabinet excluding the President (Section 102 of Constitution) and the existing mechanisms for holding the Executive to account, it is recommended that Parliament utilise the Joint Parliamentary Oversight and Government Assurance Committee to implement effective measures to ensure compliance by the Executive in the event that all existing avenues of eliciting a response from the Executive have been exhausted.

4.2.6 Individual member oversight

Amidst the multifaceted and multidimensional work of members of Parliament lies the role of members to effect individual oversight. This role is currently performed through questions, members' statements, motions without notice, notices of motion, motions on the Order Paper, debates in the Houses, member-initiated debates, constituency work, interventions made by members, private members' legislative proposals and the processing of bills.

Political parties have constituency offices from which the public can obtain information on new Bills or discuss issues of concern with members of Parliament. Each party represented in Parliament is allocated funds to develop its own method of constituent outreach. Each member of Parliament is assigned by their political party to perform constituency work. Notwithstanding this, members are not precluded from performing work in other constituencies. Constituency work affords members the greatest opportunity to conduct individual oversight. It constitutes the closest level of interaction between members

K
NRM

and the public, and provides the best platform from which members can familiarise themselves with the issues confronting their constituents. Through this interaction, a member may address matters of local, provincial and national concern. However, it is important that, in exercising their oversight role, members take care not to encroach on the jurisdiction of provincial and local political representatives but rather adhere to the principles of co-operative government.

Interventions made by individual members is one of the more effective forms of individual oversight as it empowers members to interact directly with departments and other organs of state at national, provincial and local government level. Members have a duty to alert Parliament to any issue of concern identified during such oversight interventions.

In practice, departments establish structures to process concerns raised by members of Parliament, such as departmental parliamentary liaison officers. These liaison officers are accountable to the Director: Ministerial Services within each department. Their key function is to facilitate communication between the ministry, the department and members of Parliament. Concerns raised by members are referred to senior officials within departments, with the veiled threat that should the department not respond in a satisfactory manner, the matter will be brought to the House formally at the risk of great embarrassment to the department, and ultimately the Minister. If the member's informal communication with a department does not yield satisfactory results, he or she has discretion to communicate formally with the relevant Minister to provide him or her with the opportunity to rectify the matter before placing it formally before the House. The observance of this protocol allows for the services not to be disrupted. It is recommended that in the interests of ensuring greater communication on issues arising from members' individual oversight work ministries develop guidelines for members' interaction and engagement with Ministers on issues of public concern.

4.3 General recommendations

- Parliament should strengthen and develop its current rules to accommodate new and old mechanisms as proposed in this model in order to enhance its oversight role.
- In the event that the new mechanisms above are agreed to, the rules need to be realigned to accommodate the new mechanisms.
- It is recommended that the Joint Rules be amended to refer to "Persons with Disabilities" instead of "Disabled Persons".

CHAPTER 5: PROCEDURE FOR AMENDING MONEY BILLS

5.1 Terms of reference of Budget Focus Group

The Budget Focus Group was mandated to develop procedure for amending money bills and to draft legislation to amend money bills. These mandates have been completed.

MM

The classification criteria guiding the above terms focused on the following:

- The role of Parliament in amending money bills. This is against the backdrop in which the introduction of money bills is the sole responsibility of the Minister of Finance. The Executive plays a major role in the budgetary process, but the point of concern is that in terms of section 77(3) of the Constitution, an Act of Parliament must provide for a procedure to amend money bills before Parliament. The mandate from the Joint Rules Committee to the Budget Processes Focus Group was to develop a draft bill providing for a procedure to amend money bills.

The findings of the focus group took cognisance of -

- presentations by National Treasury;
- reports of Ms A Folscher; and
- an analysis of the budget cycle.

5.2 Recommendations

The bill in draft format, as submitted, must be tabled in Parliament and referred to the appropriate committee and must follow the normal parliamentary process.

CHAPTER 6: CO-ORDINATION AMONGST THE SPHERES OF GOVERNMENT ON OVERSIGHT

6.1 Co-operative government

The three spheres of government must conduct their oversight and legislative work with due regard to Chapter 3 of the Constitution, the Intergovernmental Relations Framework (IGRF) and other relevant legislation to achieve the objectives of co-operative government and the separation of powers.

The NA, NCOP, provincial legislatures and municipal councils each conduct their functions with reference to co-operative government as required in the Constitution and the Intergovernmental Relations Framework Act (No 13 of 2005). There are however frequent misunderstandings in relation to the parameters of oversight conducted by the NA, NCOP, provincial legislatures and municipal councils due to the unco-ordinated way in which all these bodies carry out their functions. This chapter provides clarity on the role of each of these functional bodies found in the Constitution and legislation. Much debate is still required on mechanisms/protocols to facilitate greater co-operation and co-ordination between the three spheres of government.

The Constitution requires co-operative government between the three spheres of government. In this regard, the parliamentary oversight process, as it relates to interactions with the people and the government, must seek to adhere to the values of co-operative government.



National, provincial and local spheres of government must seek to promote the objectives of the Intergovernmental Relations Framework Act, which include coherent government, the effective provision of services, monitoring the implementation of policy and legislation and the realisation of national priorities. They must therefore take into account the circumstances, material interests and budgets of other governments and organs of state in other governments when exercising their statutory powers or performing their statutory functions. In addition, there must be consultations with other organs of state in accordance with formal procedures emanating from applicable legislation and accepted conventions as agreed with organs of state or alternatively consulting in the most suitable manner. Actions must also be co-ordinated when implementing policy or legislation affecting the material interests of other spheres of government.

6.2 Values and principles guiding institutional oversight

This model's primary objective is to provide a framework that describes how Parliament conducts oversight. It seeks to improve existing tools of parliamentary oversight, streamline components of the new oversight model with existing components and enhance Parliament's capacity to fulfil its oversight function in line with Parliament's new strategic direction.

An oversight model must therefore consist of three elements as indicated in Figure 3 below:

- The values and principles by which Parliament conducts oversight;
- The mechanism or framework to conduct oversight; and
- The processes and resources required for conducting oversight.

Constitutionally, the NA and the NCOP have the prerogative to design their own internal arrangements, proceedings and procedures in terms of sections 57 and 70 of the Constitution. To this end, the Constitution explicitly states that in making rules and orders concerning its business both Houses are compelled to take into account representative and participatory democracy, accountability, transparency and public involvement. In addition to these values, section 195(1) also stipulates basic values and principles governing public administration in every sphere of government. Added to the abovementioned values are a high standard of professional ethics, the efficient, economic and effective use of resources, development-orientatedness, impartiality, fairness, equity, and responsiveness. These values are captured and summarised in Parliament's strategy that was adopted by both Houses in March 2005, as follows:

- **Constitutionality:** Democratic values (of human dignity, equality & freedom), social justice and fundamental human rights;
- **People-centredness:** Respect, integrity and service delivery;
- **Co-operative government:** Co-operating with other spheres of government; and
- **Good governance:** Accountability and transparency, value for money, customer focus and service quality.


N.R.M.

6.3 Introducing the parliamentary oversight cycle as a guide for oversight processes

Parliamentary processes to ensure that institutional mechanisms are effectively undertaken are prescribed within the parliamentary oversight cycle. The parliamentary oversight cycle takes into cognisance the Medium-Term Expenditure Framework cycle of the Executive, the Medium-Term Budget Policy Statement, the Division of Revenue Act, the annual Appropriation Bill and legislation raising revenue.

Annual reports, reports from the Auditor-General, resolutions of the Committee on Public Accounts, committee reports, quarterly and monthly reports of National Treasury are considered amidst the cycle and performance by the Executive is measured by a comparison between these and the Medium -erm Budget Policy Statement, the Division of Revenue Act, the Appropriation Bill, and legislation raising revenue. Ministers are accountable for the policy that underlies their budgets whereas accounting officers account for expending the budget.

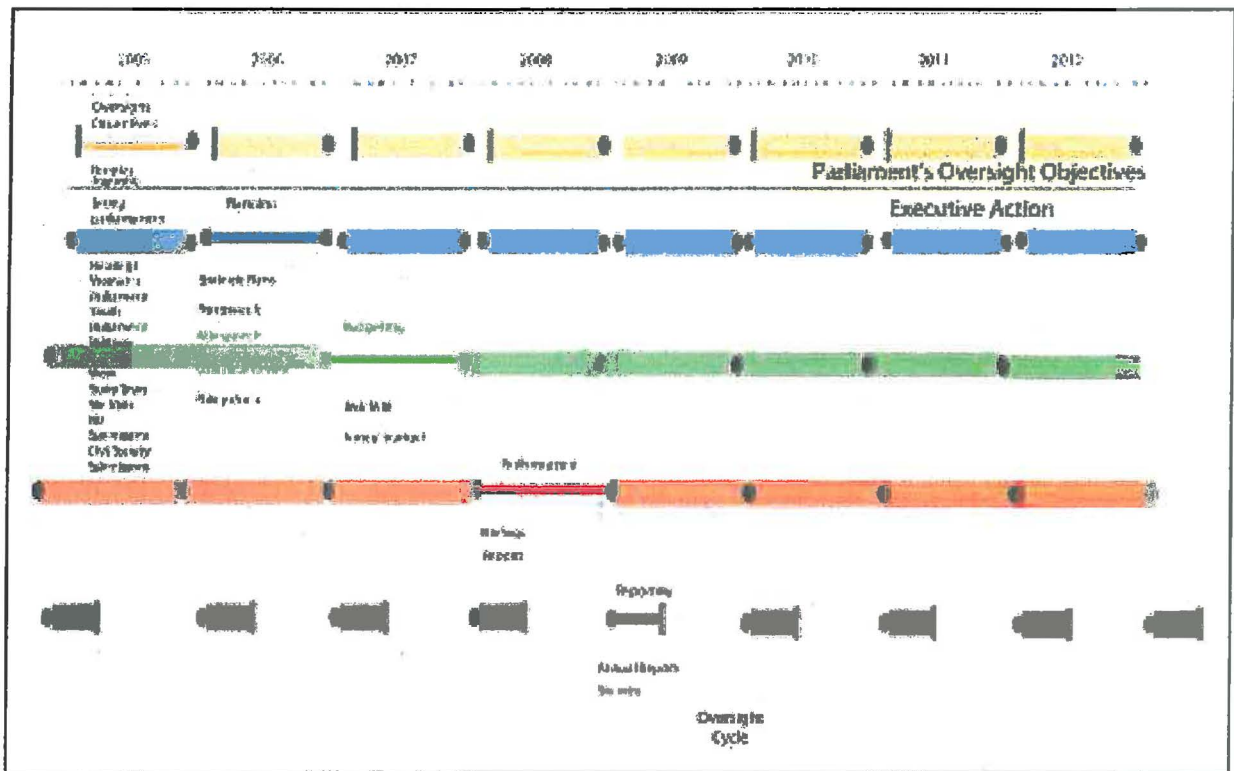
Figure 2 below illustrates the oversight cycle on an annual basis:

Month	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec
Petitions												
Constituency Work												
Study Tours & Site Visits												
ESD Submissions												
Civil Society submissions												
Strat Plans												
Departmental Briefings												
Pres Speech												
Ministerial speeches												
• media briefing												
• budget speeches												
Ministerial statements												
MTBPS												
Legislation /Policy Assessment of Impact of Legislation												
Youth Parliament												
Women's Parliament												
People's Assembly												
Annual Reports												

The oversight cycle requires Parliament to take a long-term view of oversight in order to ensure effective oversight of sustainable delivery. The parliamentary oversight cycle provides a means through which Parliament can monitor government delivery in terms of long-term commitments, rather than focusing exclusively on annual commitments, annual planning and performance assessments. The cycle thus provides for continuity in Parliament's oversight activities from year to year.

Handwritten signature
N.K.M.A.

Figure 3



17.10.19

CHAPTER 7: INCREASING THE CAPACITY OF COMMITTEES AND MEMBERS

The best practices in the world are such that members of parliament are adequately supported by institutions to enable them to perform their mandates. In some instances, it includes a dedicated secretary and researcher in addition to that which is offered to the committees to which they belong. Committees in some parliaments also have dedicated rooms and they can meet as often and as long as possible, which translates into better performance in the execution of their mandates. Therefore it is being proposed that Parliament should in its lifetime progressively consider strongly achieving on this world standard depending on the availability of space and the expansion programme of Parliament's infrastructure.

7.1 Training

Training should take place based on the Constitution, rules and relevant practices in Parliament as well as the public representative role of members to conduct oversight and pass legislation.

Training should be split in terms of the oversight mandates and making laws. The personal development of members should be dealt with internally in accordance with the individual member's interests.

Other areas of training include formal academic programmes, as well as informal training programmes such as seminars and conferences. Members' training should incorporate the following core competencies: Affirming the understanding of the Constitution

- Affirming the understanding of all statutes and laws
- Procedural training
- Speed reading
- Computer literacy
- Use and application of the Best Practice Guide
- Use and application of the Oversight and Accountability Model
- Budget analysis
- Speech writing
- Public speaking and debating skills

K
M.P.R.

- Policy analysis and engagement
- General knowledge of current news and historical issues (domestic and global)
- Methods of work
- Standard operating procedures
- The separation of powers doctrine
- Legislative processes
- Rules of Parliament
- Protocol skills and ethics
- Commitment to work ethic and obligations
- Skills on developing petitions to assist the public
- Conforming to ethical standards expected from citizens.

7.2. Additional support

Members ought to have additional support that they can access or utilise in the course of their work in the form of:

- Content/subject advisers for each committee;
- Dedicated researchers for each committee;
- A panel of experts;
- Tertiary institutions;
- Research institutions;
- Civil society;
- Increased capacity for public hearings;
- Increased utilisation of facilities and resources, for instance, libraries, the internet and referencing facilities.

Support staff to committees should be trained and capacitated on the following:

- The Constitution and the law making process;
- Areas of specialisation;
- Reporting and minute-taking skills;
- General proficiency of language use;
- Communication skills;
- Good behavioural skills;
- General discipline;


MICK.

- Parliamentary protocol, skills and basic ethical standards.

CHAPTER 8: BEST PRACTICE GUIDE

8.1 Best Practice Guide (BPG)

The purpose of the BPG is to capture in a single document the best practices that have emanated from the work conducted by committees since the advent of democracy to allow for user-friendly access to and guidelines for committees.

The BPG will include aspects on scrutinising government's financial management and parliamentary scrutiny of the same in the planning cycle, budget cycle, estimates cycle, reporting cycle, efficiency programme, the private finance initiative and initiatives with an impact on financial management and financial scrutiny, including capability reviews, financial management reviews, regulatory impact assessments and all government's accounts.

CHAPTER 9: *PROJECTS FOCUS GROUP [CONSTITUTIONAL LANDSCAPE GOVERNING OVERSIGHT]*

9.1 Introduction

The Projects Focus Group had several mandates elaborated on in Chapter 1 above. The mandates and outcomes of the specific projects are discussed below.

The group, without explicitly stating its classification criteria, placed its primary focus, as noted aptly by Tiscornia, on:

- The object and aims of the system: In law, models are built around complex activities (precedents searching, contraposition of arguments, decision-making, legislative planning, etc), or models are built around the products of these activities, such as legal documents (statutes, judicial decisions, administrative, etc); and
- The method, that is textual modes based on linguistic aspects, the deductive models of legal knowledge and reasoning.

The source documents supporting an understanding of accountability and oversight utilised by this group comprised the following:

- Constitution of the Republic of South Africa;
- Primary and secondary documentation to define oversight and accountability; and
- Rules of (the South African) Parliament.


MAM.

9.2 Audit of bodies performing public functions

The objectives of this audit were to -

- determine the "scope" of the oversight and accountability role of the National Assembly (*in particular*), and to present Parliament with an electronic database that captures relevant information; and
- capture information on relevant fields including full identification (i.e. contact details of bodies), bodies exercising powers and performing functions in terms of section 239 of the Constitution, bodies receiving state funding, the legal relationship of bodies to Parliament and the government, as well as line function departments responsible for bodies.

This project has been completed and the final report is attached hereto.

9.3 Constitutional landscaping

Parliament, through the Joint Rules Committee, was required to compile a document landscaping the constitutional provisions dealing with the interrelated themes of oversight, accountability, transparency and responsiveness, and outline international trends.

The Corder Report and the ad hoc Joint Subcommittee on Oversight and Accountability's final report map out and landscape, to a great extent, some of the constitutional provisions relating to the interrelated themes of oversight, accountability, transparency and responsiveness. The NA Table published an Audit of Statutes, 2004: Guide to Parliament's obligations under the Constitution and legislation, which maps out statutes mandating oversight. The landscaping document therefore provides a perspective on these provisions, without repeating the mapping exercise. This perspective can be discussed and refined for use pursuant to Parliament's constitutional functions relating to the interrelated themes of oversight, accountability, transparency and responsiveness.

This project has been completed and the final report is attached hereto.

9.4 Review of the rules

The model is proposing definite proposals on the rules that need to be established and amended to effect change in order for the model to find its expression within the rules of the NA, the NCOP and the Joint Rules.

It is recommended that a review of rules be conducted subsequent to the adoption of the model. It is proposed that the Joint Subcommittee on Review of the Joint Rules must attend to the review of the rules once the model is adopted.

CHAPTER 10: CONCLUSION

The true test of democracy is considered the extent to which Parliament can ensure that government remains accountable to the people by maintaining oversight of government's actions. Whether Parliament is indeed


MIA.

successful in effectively holding the Executive accountable will ultimately depend on the extent to which committees and individual members of Parliament actively exercise their oversight role.

Whilst an appropriate legal framework and adequate resources constitute critical elements for effective parliamentary oversight and accountability, it is equally important that individual members, as well as members of the Executive, understand the rationale for accountable government and the purpose it serves. Effective oversight requires the political will on the part of the individual members of Parliament to utilise the oversight mechanisms and the array of tools at their disposal optimally.

Conceptual models are by definition simplified, ideal-type frameworks. This document and the accompanying proposed model strive to present a framework within which Parliament's oversight role can be structured, so as to enhance Parliament's oversight capacity, as well as bring current practices in line with Parliament's strategic path. This model will be a process that can enrich itself by adapting to a situation that permeates from one parliament to another.

Two critical factors for ensuring the success of this model is, firstly, the need to integrate Parliament's public participation function within its overall oversight mechanism and, secondly, to provide the appropriate capacity, especially human resources, to committees and members for its execution. It is vital that all public participation processes become inputs to the work of appropriate committees.

Detailed oversight practices aligned with this framework are captured in the Best Practice Guide on oversight currently being finalised. However, given the complex nature of Parliament's activities and the dynamic environment in which it operates, we wish to echo the sentiments of the ad hoc Joint Subcommittee on Oversight and Accountability that Parliament should adopt a policy requiring each new parliament to assess and review its oversight capabilities, including its oversight model, at least once during its five-year lifespan.

In order to implement the proposed model decisions are required on the following aspects:

- The immediate need to increase the research (and content specialist) capacity of committees, which is currently underway.
- The implementation of systems to capture and manage information within committees.
- The development of a public participation model to ensure that inputs received through public participation activities are channelled to appropriate committees.
- Changes in parliamentary policy/rules to accommodate the creation of an Oversight Advisory Section with recommended terms of reference.
- Continuous capacity development of members of Parliament and support staff to committees in terms of information and communications technology, budgeting practices and other skills required to enhance their oversight capacity.
- Offices of members of Parliament should also be afforded additional human resources and upgraded in terms of technology capacity.
- Training of staff in line with the Best Practice Guide.


MKM.

- The adoption of a procedure for executive compliance.
- Dedicated committee rooms need to be considered when Parliament expands its infrastructure.
- Parliament can at a later stage consider the development of further legislation relating to oversight, which will include other committees that are currently regulated by the rules in relation to oversight as is the case with the Joint Standing Committee on Intelligence and the Joint Standing Committee on Defence.

fr
M. 10/17

References

List of sources consulted

- National Assembly Table. (2004) *Audit of Statutes*.
- National Council of Provinces. (2005) *NCOP Members' Handbook*.
- *ISD interviews report*.
- Jenkins, F S. (2005) *Constitutional landscape of the constitutional provisions dealing with the interrelated themes of oversight, accountability, transparency and responsiveness in respect of Parliament's functions (Draft 1)*.
- Nhleko, N. (2005) *Oversight and Accountability: Statement of Definition*.
- Committee work structure proposal.
- HSRC. (2005) *Audit of public funded bodies (Draft 2)*.
- Constitutional Experts Interview Report.
- National Treasury. (2005) *Guidelines for Legislative Oversight through Annual Reports*.
- Development Bank of Southern Africa, www.dbsa.org
- Gauteng Provincial Legislature (GPL). (2002) *Programme Evaluation and Budget Analysis: An Oversight Paradigm for the Gauteng Legislature p 77*.
- Tools for Parliamentary Oversight. (2007) *A comparative study of 88 national parliaments*.
- Information Services Section, Research Unit, Parliament of South Africa (2006). *The Strategic Imperatives for South Africa as set out in the 2006 State of the Nation Address: An Oversight Tool for Members and Committees of Parliament, Cape Town, Parliament of South Africa*.
- Duitlwileng B. (2005) Trends and tendencies in the South African public management and administration in the post 1994 period, unpublished paper, University of the Western Cape.
- Gutto S et al. (2007) Study commissioned by Parliament, *A study on enhancing the status, role, image and positioning of the Parliament of the Republic of South Africa*.
- Constitution of the Republic of South Africa, Act 108 of 1996.
- Joint Rules of Parliament.
- Rules of the National Assembly.
- Rules of the National Council of Provinces.
- <http://www.parliament.gov.za>
- Parliament's submission to the Independent Commission for the Remuneration of Public Office-Bearers. (2006), *Proposals on a Comprehensive Structure for the Remuneration of Parliamentary Public Office-Bearers*.
- Tiscornia D. (2000) *The Meaning of Model in Handling Legal Information*.

Assistance in the drafting and input was obtained from the Hon Mr K O Bapela, MP; the Hon Mr G Q M Doidge, MP; the Hon Mr N M Nene (MP), the Hon Mr T S Setona, MP; Mr M B Coetzee (Deputy Secretary to Parliament); Mr M K Mansura (Secretary to the National Assembly); Mr P Lebeko (Clerk of

17.10.19.

the Papers); task team members and Managing for Excellence (Pty) Ltd.

ANNEXURES

1. Audit of bodies performing public functions (see www.parliament.gov.za)
2. Constitutional landscaping (see www.parliament.gov.za)


M.K.M.