OVERSIGHT – A CRITICAL ROLE FOR COMMITTEES

Parliamentary committees play a leading role in scrutinizing South Africa’s executive, checking both in committee rooms in Cape Town and on the ground across the country to determine if the government is delivering on its policies, say the senior Members in each House responsible for committees.

Mr Cedric Frolick, MP, and Mr R.J. Tau, MP, in Cape Town.
Mr Frolick is the House Chairperson for Committees and Oversight in the National Assembly and Mr Tau is the House Chairperson for Committees and Institutional Support in the National Council of Provinces. An African National Congress MP since 1999, Mr Frolick was a Whip and is a former teacher. Mr Tau first joined the NCOP in 2004. He is a former civil servant and senior ANC education official.

The South African Parliament operates on the fundamental conviction that the true test of democracy is the extent to which it can ensure that the government remains answerable to the people. This requires consistent oversight (or monitoring) of government actions to ensure that the government meets the targets it sets itself.

The South African constitution declares that Parliament has the power to conduct oversight of all organs of state, including those at provincial and local government level. Parliament is therefore able to ensure that service delivery takes place so that all citizens can live a better quality of life. The need for oversight is clear:

- To detect and prevent abuse,
- To prevent illegal and unconstitutional conduct on the part of the government,
- To protect the rights and liberties of citizens,
- To hold the government accountable for how taxpayers’ money is spent and
- To make government operations more transparent and increase public trust in the government.

There are many different oversight mechanisms, for example the budget. By publicly announcing his or her budget projections for the next financial year the Minister of Finance – and each government department – can be held accountable for the way taxpayers’ money is spent. Another effective way in which Parliament holds the government to account is its weekly sessions in which questions are addressed directly to the President, the Deputy-President and cabinet Ministers.

Constituency work affords Parliament the greatest opportunity to conduct individual oversight because it provides the closest form of interaction between Members and the public. Members have a
duty to alert Parliament to any issues identified during such oversight interventions.

**Oversight in committee**

However, it is parliamentary committees that are one of South Africa’s most powerful mechanisms to ensure that the government is accountable at all times. Ultimately, committees conduct oversight over the executive. In brief, committees scrutinize legislation, oversee government action and interact with the public.

Parliament relies on committees, referring all sorts of matters to them for consideration. Committees, for their part, are an integral part of the work of Parliament, and report back to the House on all issues referred to them, even simple requests for information. One of the most important aspects of their oversight function is committee consideration of annual reports of organs of state, including the reports of the Auditor-General. If necessary, a committee can request a briefing from the organ of state or hold a fact-finding visit.

Committees have to inform Parliament of any decisions they have reached — or if they have not been able to reach a decision.

Finally, to ensure credible oversight and accountability, one parliamentary rule requires that committees report to the Assembly on their activities every year.

The more than 50 committees established by the constitution to facilitate oversight and monitor the government are known as the “engines” of Parliament for good reason. They also hold public hearings where civil society can make presentations or submissions. Over and above that they do not confine their work to the official Chambers, but frequently travel to remote rural communities on oversight visits where they consult not only the local leadership but also ordinary citizens.

Committees have the following tasks on an oversight visit:

- Identify any problems within the area of oversight;
- Investigate the identified problems;
- Establish what needs to be done.
to resolve these problems at a policy level,
• Report back to Parliament to clearly identify the problems and demonstrate the method of investigation used to gather the relevant evidence and
• Recommend in their reports what they think the House should do.

Committees at work
Multiparty committees conduct regular oversight visits in all nine South African provinces. Their role was summed up succinctly by the Chairperson of the Select Committee on Security and Constitutional Development, Mr Tjhet Mofokeng, MP, at the conclusion of week-long public hearings held by his committee late in 2012 to hear citizens’ views on a particularly controversial piece of legislation, the Traditional Courts Bill:

“As the committee, we have listened carefully to all the participants who made their voices heard at the hearings and noted their divergent views. We listened impartially to all sides without making conclusive remarks. The committee will meet at a later stage to further deliberate on the consolidated reports from all inputs in order to make an informed decision on the next step.”

That next step is to submit the report for consideration or even merely for information. The House can respond to the report in a number of ways, including “noting,” “adopting,” “amending” or “referring the report back” to the committee or any other committee for further consideration. If a committee report is tabled “for consideration” it means that the report requires a decision of the House and this may lead to a full-scale parliamentary debate ending in a motion put to the House.

What the committee aims for is for the House to adopt its report because the report then has the force of a formal Assembly resolution. The Speaker will engage the executive authority to communicate recommendations adopted by it and the House also monitors executive compliance with the recommendations. When a response is received by the executive, it is reported back to that committee.

In practice, a committee report is therefore a powerful mechanism that, if processed by the House, can give effective expression to the Assembly’s oversight responsibilities, which in turn strengthens the role and status of committees themselves.

Committee reports and recommendations are first scanned to ensure that recommendations comply with the constitution and adhere to the principles of the “separation of powers,” respect other spheres of government and the accountability of the executive to the National Assembly. Recommendations adopted by the House are then directed to the relevant government Minister, who is expected to respond back to the House. The Minister submits his/her response to the Speaker, who tables the response and refers it to the relevant committee. This also facilitates monitoring of executive compliance.

A Committee report should provide the House with enough information to enable it to decide whether it wishes to adopt the recommendations. Committees therefore have extensive powers to:
• Confer with other parliamentary committees,
• Call any entity or person to provide evidence,
• Determine their own procedure and
• Request House Chairpersons responsible for committees to co-ordinate meetings amongst committees.

Spanning both Houses
South Africa’s two Chambers each have their own committees. The Portfolio Committees serve the main House, the National Assembly, while Select Committees conduct oversight for the second Chamber, the National Council of Provinces.

There are also joint committees established by the Constitution or an act of Parliament, for example the Joint Standing Committee on Defence and the Joint Standing Committee on Intelligence.

Either Chamber may appoint a temporary or ad hoc committee for specific investigations. One such example was the National Council of Provinces Ad Hoc Committee on the Protection of State Information Bill. This was particularly significant as this Bill was controversial and generated vigorous citizen opposition, with the result that it went through 120 amendments in the National Assembly before it was passed.

The next step was to refer it to the National Council of Provinces, which established the ad hoc committee comprising 15 MPs. Ten were from the ruling African National Congress, two from the official opposition Democratic Alliance and one each from minority parties, the Congress of the People, the Independent Democrats and the Inkatha Freedom Party. The NCOP’s ad hoc committee immediately drew up a plan to take the Bill on a roadshow to the nine provinces to test public opinion.

The committee was divided into teams in order to cover more ground, and public hearings were held simultaneously in different venues. The leader of one delegation, Ms Nosipho Ntwanambi, MP, summed up the purpose of the committee’s consultation process at one such public hearing. Following a brief synopsis of the Bill which was translated into two additional local indigenous languages, she said the following:

“We need the public to tell us exactly how they view the Bill so that when we go back to Parliament to deliberate we do not misrepresent the people. As we deliberate in Parliament, we want to amplify the people’s views. It is people’s right to disagree with whatever they feel they disagree with and we can’t expect people to agree with us on everything.

But it’s important that if they criticize us, they do so in a constructive way.”

Getting to grips with real issues
In a country where bread-and-butter issues are the concern of most people, especially in remote rural areas, citizens nevertheless regularly demonstrate their determination to engage with government on decision-making and delivery.

A tiny fishing community in the Western Cape used the occasion of a visit by the Portfolio Committee on Agriculture, Forestry and Fisheries in 2011 to report a practice known as “fronting” in which black workers are listed as shareholders without their knowledge to meet quotas for black empowerment.

“I imagine my surprise,” said one veteran fisherman who had lived all his life below the breadline, “when I discovered that I was a shareholder of a registered company that makes money and yet I got nothing from its returns. I was told that the white members of the company could not get registration without black members, so they used ‘black’ names.”

In another part of the country, Chief Lawrence Baleni of the
Mabandla community announced that the red tape involved in obtaining land tenure is one of the major challenges impeding economic development in his area.

Addressing the Portfolio Committee on Economic Development, he said: “The community is running a potentially viable project; the challenge is that we cannot expand. Banks and funding institutions are unable to grant us funding because we do not have land tenure,” said the Chief of this community in rural southern KwaZulu-Natal.

The committee had visited the Mabandla forestry project to find out if the parastatal Industrial Development Corporation was providing it with the requisite support. Committee Members were pleased with the potential economic spinoffs of this project and vowed to seek ways in which the project could be further assisted.

The serious violence in South Africa was the subject of the briefing to Parliament’s Portfolio Committee on Police by the Minister of Police when he spoke on the Dangerous Weapons Bill.

“This is key legislation, especially in a country where people carry dangerous weapons in protests,” said Minister Nthathi Mthethwa, MP. He conceded that the country is currently grappling with violent crimes and one of the contributing factors is dangerous weapons.

Chairperson of the Committee Ms Annelize van Wyk, MP, took the opportunity to publicly declare that while it was important to pass the legislation, the department needed to do an implementation and roll-out plan and present it to the committee before the Bill was adopted.

Checking programme delivery on the ground
Most committee meetings in the parliamentary precinct are confined to three days of the week to allow Members to keep up with their other duties. Nevertheless, the daily “Z list” which provides Parliament and the public with a week’s programme of committee meetings always runs to more than 10 pages.

For example, in a single week last year the Portfolio Committee on Correctional Services visited Gauteng and KwaZulu-Natal to inspect conditions in jails and treatment of offenders. In addition, it considered progress made in the construction of improved prisons.

Simultaneously, the Portfolio Committee on Public Works visited Limpopo to assess the progress made in the implementation of the second phase of the Expanded Public Works Programme. The committee also investigated the Government Immovable Asset Register to make sure that government’s immovable assets in the province were properly registered and accounted for.

Meanwhile the Portfolio Committee on Sports and Recreation was on an oversight visit to the Eastern Cape, KwaZulu-Natal and Gauteng to assess the state of sports facilities that had been built as part of the 2010 FIFA Soccer World Cup Legacy Programme. The visit focused on access, maintenance, security and mass participation of communities in sports activities using these facilities.

These are examples of typical committee oversight visits; they do not include all the committee meetings and hearings that take place each week.

In such ways, oversight as a guiding principle has become embedded in South Africa’s political culture. Oversight is concerned with the daily bread-and-butter activities that engage Parliament, and this is demonstrated in multiple small but significant ways; every day Parliament’s committees are at work – either within Parliament’s precinct at committee meetings to hear submissions or somewhere in South Africa on oversight inspections.