FINANCIAL INDEPENDENCE AS A MEANS TOWARDS EFFECTIVE OVERSIGHT

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INTRODUCTION

The Constitutional division of powers between the three arms of the state is the base for striving towards a strong and an independent parliament. Independent parliaments are strong and effective in discharging their constitutional duties. They are able to define their oversight and lawmaking agenda independent of other arms of the state. However, this is done in the interest of advancing the broader governance agenda.

At least in theory this “independence” implies parliament’s unfettered control over its financial and other related resources. It must be said, at the outset, that most parliaments lack complete administrative and financial control. As such, this has contributed towards an ineffectual parliament that is incapable of exercising effective oversight over the executive. The implications of these are that electorates will not be well served if parliaments do not have sufficient resources to carry out their constitutionally mandated functions.

The implicit thesis of this brief is that the process whereby parliament is subject to the same process as government departments is inconsistent with its status as an independent arm of the state. In this regard, there are useful models which parliaments can draw from, where parliaments exercise full autonomy over their financial allocations.

For purposes of clarity it is important to state that the Ugandan Parliament has an Act empowering it to administer itself by setting its own budget, The Administration of
Parliament Act, 1997, (APA) (Kasfir, N. & Twebaze, S. 2005). An Act of this nature ensures that Parliament enjoys greater autonomy from the executive and thus can be true to its mandate of oversight.

This issue has been debated robustly over time; different scholars sharing their ideas on how best should parliaments assume their constitutionally entrenched independence. Thus the paper aims to highlight practical challenges faced by parliament in assuming its autonomy, focus being on the financial autonomy. The paper lastly provides recommendations on how these challenges may be overcome in order to ensure parliamentary effectiveness.
PARLIAMENTARY AUTONOMY AND FINANCIAL INDEPENDENCE

The bedrock of parliamentary autonomy hinges on financial independence. Autonomy in this context is simply defined as non-dependence and non-subordination of Parliaments in relation to the Executive (Couderc, 1998:4). This non-dependence and non-subordination as stated above is in terms of unfettered control over financial and other related resources. Therefore, according to the Latimer House principles this means that “parliaments should have equitable access to resources”. As such, parliaments by Constitutional arrangements are supposed to have enough financial muscle to carry out their legislative mandate, including exercising power over the budget. This is consistent with the Latimer principles that state that “parliament should have control of and authority to determine and secure their budgetary requirements unconstrained by the Executive, save for budgetary constraints dictated by national circumstances”. In fact, this suggests that parliaments should assert their role as a separate arm of government, this includes the fact that they should be independent from the executive in the way they organise themselves, control over their own timetable and the ability to recall themselves outside normal session if circumstances so require (Ahumah, 2013:6).
In practice however this is not the case, firstly, the executive tends to determine how much is allocated to the parliament. Moreover the budget allocated to the parliaments is not sufficient; this consequently affects effective functioning of the Legislatures.

Beethhem (2007:10) notes that parliamentary autonomy is one area where the constitutional difference between presidential and parliamentary systems is more clearly marked. In the former, the typical challenge may be to achieve effective cooperation between legislature and executive; in the latter the challenge is rather to achieve a more robust organizational independence or autonomy.

Theoretically, the principle of the sovereignty of legislatures is the same in all countries. However, the challenge is to make this principle increasingly effective in practice (Beethhem, 2007:7). He further notes that implementing the principle of autonomy in practice involves a number of different aspects, including:

- parliamentary responsibility for its own staffing;
- control over its own budget;
- organisation of its own business.

With all these essential features underpinning the autonomy of parliament, they will be able to operate efficiently and to exercise effective oversight over a range of policy issues affecting people.
BUDGETARY CONTROL IN THE CONTEXT OF PARLIAMENTARY POWER

It is appropriate to reiterate that budgetary control includes aspects such as, sufficient budget, powers or independence to utilize the budget; and freedom from executive interference in the budget utilization.

Thus, issues of power are worth confronting here. Anderson (2009:27) notes that ‘power’ has many different meanings, but two are particularly relevant here. The first is power as a capacity, this means having the relevant legal rights, financial, human and organizational resources to carry out necessary tasks. The second is power as relational, this means having sufficient power and independence in relation to the executive to oversee it effectively. Parliaments have to strike a balance between cooperation with, and oversight over, an elected executive. In practice however undue executive dominance prevails, whether through lack of parliamentary capacity or unwillingness on the part of parliaments to exercise the powers they have.

All the evidence, points to a wide gap in resources and facilities available to parliaments between developed and developing countries.

A well-resourced parliament, such as is typical in developed economies, must have the following:
sufficient expert staff to provide impartial support to members across parliament’s whole range of work;

- a comprehensive library and information service;

- office facilities for individual members, with their own secretarial and research support;

- dedicated facilities for the main opposition party or parties (Couderc, 1998: 3).

In most developing countries, including South Africa, these facilities are insufficient and patchy, due to lack of resources and staff with the appropriate expertise. As already, alluded to above, where parliaments lack capacity through limited resources, this inevitably affects the balance of power with the executive (Posner, 2007:3). Parliament’s oversight work becomes less rigorous; members become dependent upon the expertise of government staff whose first allegiance is to the executive; governments may simply bypass parliament altogether in the development of policy and legislation. Perry (2013:4) argues that if parliament is consequently seen to be less relevant by the public, or its role is not understood, this may in turn affect its capacity to claim additional resources from a restricted national budget.

Couderc (1998:6) propose strategies for compensating for these limitations of resources have been developed by a number of parliaments. These include:
- more effective training for members themselves, with encouragement to greater specialization;
- more extensive and systematic use of experts in different fields from civil society and academia, to support the work of parliamentary committees and groups;
- the development of internship programmes to supplement scarce parliamentary resources;
- the development of on-line facilities to enhance the research and information capacity of parliaments, including library provision.

Capacity-building programmes for parliamentarians and support staff is one area where external assistance can make a considerable impact in emerging democracies (Yusilkagit & van Thiel, 2008:4).
FINANCIAL INDEPENDENCE AND OVERSIGHT: CASE OF THE GAUTENG PROVINCIAL LEGISLATURE

As the paper has alluded to above, financial autonomy is an essential ingredient to officious Oversight. With respect to the Gauteng Provincial Legislature, while the same challenges are being experienced of an over powerful Executive and limited financial autonomy, there have been notable innovations to address these, thereby improving the level of financial autonomy and indeed enhancing Oversight, for this is the key mandate of any Legislature.

One of the Key Mandates in any parliament, whether National, Provincial or Local is that of Oversight and oversight is best conducted through objectivity and independence without fear, favour or prejudice.

Freedom from an over powerful Executive

A major stride in this regard by the GPL is the movement away from an over-dominant Executive. The past two decades have seen national parliaments in Africa redefining themselves to free against the executive’s domination. Assisted by parliamentary bodies such as the IPU, the Commonwealth Parliamentary Association, and the European Parliament, African parliamentarians have vigorously worked to become as independent as possible, often establishing Parliamentary Commissions to administer their affairs. Over the
same period, other major world institutions such as the World Bank, UNDP and other agencies have changed from working exclusively with the executive to facilitating parliaments.

**Legislation to ensure financial autonomy**

The Gauteng case is not different and has experienced a situation where as the Provincial Parliament; it had to be at the mercy of the Executive when requesting budgets for the delivery of its programmes.

The Legislature has addressed this in a number of ways, the most notable of which is the promulgation of the Financial Management of Gauteng Legislature Act (FAMLA) which allows it to take control of its own finances and not be dependent on the Executive in this regard.

**Establishment of House Portfolio and Standing Committees**

When conducting the daily business of the Legislature, the House comprising a collective of Members of Provincial Legislature (MPL) is divided into Portfolio Committees. Each of these Committees is attached to a Department in the Provincial Government, and has a duty to enhance the Department’s ability to deliver services through advisory, monitoring and oversight.
The Legislature also has Standing Committees, which deal with diverse issues (other than Provincial Government Departments). These Committees consider Bills and other matters referred to them by the Speaker or the House.

There are also Ad Hoc Committees, which work with various experts to handle emerging matters that require specialized expertise.

Collectively, MPLs consider Bills placed before them by the Provincial Executive, which comprises the Premier of Gauteng and the Members of the Executive Council (MECs).

Oversight through implementation of the Sector Oversight Model

The recently launched Sector Oversight Model encourages deep and intense Financial, Budget and Programme Oversight through an Outcomes based approach. The Gauteng Provincial Legislature was the champion and primary contributor to this model and has now moved towards customization and implementation.

This is achieved through a Framework, launched with the SOM, of standardized planning, budgeting and reporting format and process for House Committees to conduct their oversight over the Executive in the form of the Committees Oversight and Accountability Framework (COVAC). The framework is based on a set of “Focus Areas” which are the areas of political and strategic importance that are to be focused on by all Executive Departments. One of these Focus Areas is specific for financial / budgetary oversight and
goes into deep analyses to ensure financial oversight and accountability over the Executive from the GPL.

This allows better analysis of Executive Performance, linkage of performance with government priorities and also allows the GPL to identify problem areas for immediate intervention – all this to ensure enhanced service delivery to the Citizens. It has been designed to give effect and practical implementation to the GPL Programme Evaluation and Budget Analysis Methodology (PEBA).

Establishment of Budget Office

The Legislature is in the process of establishing a Legislature Budget Office (PBO) to mimic the Parliamentary Budget Office established by National Government. The PBO continues to place the South African parliament as the legislative authority vested with oversight of national government, at the forefront of excellence in public financial and budgetary oversight on par with other leading parliaments and legislatures of the world.

Staff from the GPL had been sent to National parliament to learn more about the PBO so as to allow for a proper implementation in the GPL.

The establishment of the parliamentary budget office will allow MPLs to exercise proper oversight on the budget as well as it would build capacity for MPs on budgetary and economic issues. It would help the MPLs to get to grips with the process of the budget. On
average, internationally, parliamentarians lacked technical and analytical capacity on the budget process but South Africa aims to be fully transparent in this regard.

Main functions of the PBO will include:

- Providing economic forecasts that originate independently of the executive branch, interrogating underlying assumptions and attendant risk
- Making baseline estimates of revenues laws, as well as debt and structural deficit projections
- Examination in detail
- Presentation of various options for the budget including spending increases, tax cuts and increases, and suggested implications of broad policy choices
- Scrutinizing proposals for new programmes and costing of new legislation, as well as policy briefs for the new programmes
- Monitoring and evaluation, Oversight and Accountability
- Long term financial sustainability analyses
- Analyses of cost of regulations e.g. to the private sector
- Capacity building of Legislative Financial Oversight
Developing Capacity

In the case of the GPL, it is committed to enhancing capacity and this is done through the “PALAMA” which provides specialized training for public sector institutions and customized areas, one of which is financial management and accountability. The training also caters for parliamentary information and training needs. Such forms of external assistance, however, should not be regarded as a substitute for adequate resourcing on an ongoing basis from the budget.

Independent Secretariat

Moreover, to effectively carry out its functions within the framework of the separation of powers it is essential that Parliament should have an independent Secretariat as is the case at the GPL. The Secretariat has the underlying objective of ensuring the concept of executive and administrative accountability to Parliament.

Ongoing cooperation with the Executive

Lastly, it should be noted that parliamentary autonomy does not preclude cooperation with the executive. This cooperation is critical for effective functioning of the government of the day.
CONCLUSION

Sufficient independence is still lacking in legislatures, independence in terms of three components which are sufficient budget, powers or independence to utilize the budget and the freedom from outside interference in to utilize the budget. If all the three components are available, then we can consider that financial independence is available. This would therefore assist the legislature to deliver on its core mandate of law making, oversight, and public participation in order to meet the aspirations of the people.

However, the deliberations and more specifically the innovations on financial autonomy and enhanced oversight as described herein-above will prove to be useful in moving towards the desired autonomy and indeed enhanced Oversight for Parliaments the globe over.
REFERENCES


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