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The Role and Importance of Parliamentary Oversight: Concepts, Ideas, Practice

André du Pisani (Professor Emeritus, UNAM)

'Democracy is the worst system devised by wit of man, except for all others'.

Winston Churchill

'The current Africanist discourse on civil society resembles an earlier discourse on socialism. It is more programmatic than analytical, more ideological than historical.'

Mahmood Mamdani *Citizen and Subject Contemporary Africa and the Legacy of Late Colonialism (1996:13).*

'Force without judgment, collapses under its own weight'

Horace, ODES, 3,4,65

LEARNING OBJECTIVES
<ul style="list-style-type: none">• To clarify the concept of Parliamentary Oversight, with due consideration of legal (constitutional) provisions, history and parliamentary practice.• To emphasize the arterial importance of parliamentary oversight within the wider framework of governance and the political system.• To discuss the genesis and evolution of parliamentary oversight.• To suggest how parliamentary oversight can be strengthened in the context of the Namibian Parliament.

1] Parliamentary Oversight as a concept

The traditional preoccupation with Constitutional Law in the study of institutional politics, political society and the state has tended to limit the discussion of parliaments or assemblies, mostly to procedural matters, giving less consideration to the wider relationship such institutions have with the total political system and with civil society.

While the law-making function is undoubtedly important in many political systems, it needs to be remembered that historically, assemblies have emerged from the executive's need for

advisory bodies. In the case of the British and a few other mostly West European parliaments, parliament later provided one means, among others, of limiting the power of the executive.

More recently, while the legislative or law-making (rule making) function of parliament has retained some of its political importance, it is not *intrinsically* more important than a number of other functions, chief among these:

- Public representation – a symbolic representation of the will of the people.
- Executive oversight especially where the Executive and the Legislature are to a degree fused and co-located as in the case of Namibia.
- Governance.
- Reducing the opportunity for malfeasance, mostly on the part of the Executive and the Public Service.
- Providing a fulcrum for non-partisan national debate on matters of material and ethical concern to citizens – thus, building a national consensus on what constitutes the public or common good. In this sense, the Namibian Parliament would be a *Transformative* as opposed to an 'Arena' Parliament, characterized by weak oversight. As a transformative institution, parliament needs to be strategically aligned with National Development plans.
- From the perspective of democratic theory and practice and the doctrine of the separation of powers, parliaments provide a natural and vital political link between those that govern and those that are governed.
- Given the popular legitimacy that underlies parliament (as the proverbial 'house of the people'), parliament is key in the construction of social cohesion, and for the management and consolidation of democracy. It is in this context, that parliamentary rules and procedures have an important place, not forgetting that parliaments 'are mirrors of the state, party system, and political culture' (Salih, 2005:3).

From this brief introduction on the concept of 'parliamentary oversight' it is clear that parliaments are products of history, party systems, electoral politics, political culture, ideas and ideology. Their institutional architecture, too, differs – some are unicameral, while others are bicameral with strong- or relatively-weak systems of bicameralism.

But, what then is **parliamentary oversight**?

Parliamentary oversight is an institutionalized practice and institutional culture, and depending on the legal and institutional architecture of a particular parliament, the process of such oversight can take different forms, such as:

Why does Parliamentary Oversight matter?

In its different forms, parliamentary oversight is inextricably linked to *democratic governance*. Democratic governance is concerned with holding the balance between national economic and social goals and between individual and communal goals and interests. Given its leadership and representative functions and roles, Parliament serves as the fulcrum for debates on precisely these matters. In this sense, Parliament is not only a historic, but also a social construct.

As was said before, Parliamentary Oversight strengthens every pillar of democratic governance. These are:

- Accountability – a *moral principle* that should apply to every elected representative irrespective of race, class, gender, religious belief, region, party affiliation.
- Efficiency and effectiveness. Efficiency is essentially about utilizing resources and means in sustainable ways that would contribute towards meeting purposes, accomplishing targets, while effectiveness is about registering measurable impacts and is thus outcome-based.
- Responsibility.
- Transparency (or openness), and
- Recognition of the rights and freedoms of citizens – inclusive of the right to differ peacefully from others.

As a key string in the bow of democratic governance, the Namibian Constitution, especially in terms of the provisions of Article 95 sub-articles (a) – (l) **‘Promotion of the Welfare of the People’** invests a particularly important responsibility on Parliament and Members of Parliament (MPs). This Article is the first principle of several other principles of State Policy. It starts with the words:

‘The State shall actively promote and maintain the welfare of the people by adopting, inter alia, policies aimed at the following:

- (a) Enactment of legislation to ensure equality of opportunity for women, to enable them to participate fully in all spheres of Namibian society; in particular, the Government shall ensure the implementation of the principle of non-discrimination in remuneration of men and women; further, the Government shall seek , through appropriate legislation, to promote maternity and related benefits for women;
- (b) Enactment of legislation to ensure that the health and strength of the workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter vocations unsuited to their age and strength;

1. Parliamentary oversight is usually made more effective through the work of parliamentary committees these can be ad hoc, portfolio-based and standing-and/or/more permanent in nature. Oversight comes in the form of advice, based on deliberations, on their specialized legislative field over an entire legislative period. Portfolio/Standing/Permanent committees provide for *greater continuity* of the legislative process and facilitate the development of members' expertise.
2. Ad Hoc committees can be appointed with a specific and somewhat narrower mandate, such as to deal with a particular bill or issue. In Namibia, these are called 'Select Committees' and by-and-large they are meant to serve the same narrower purpose. (Committee Rules of the National Assembly, Paragraph 5, 1-3).
3. Often there is provision for Joint Committees, as well as for the legislature to function as a 'Committee of the Whole House' (Committee Rules of the National Assembly).
4. Parliamentary oversight through Committees is in part procedural, for it facilitates public hearings, provides for summons and requires such committees to keep a record of their work and to report back to Parliament not later than 30 days after the conduct of their business. (Committee Rules of the National Assembly).
5. Parliamentary oversight, however, strengthens every pillar of sound *democratic governance*, and if properly executed also allows for minority opinions, individual views, objections, alternative views and voices. It is not only key to sound Parliamentary democracy, but to democracy itself.
6. Parliamentary oversight enables interfaces between political society (of which parliament is a part), civil society and the society at large. Sound, robust parliamentary oversight will be augmented by extra-parliamentary oversight bodies within civil society and political society such as the Office of the Ombudsman, the Anti-Corruption Commission, NAMFISA, the Legal Assistance Centre (LAC), the Institute for Public Policy (IPPR) and the Bank of Namibia (BON).
7. Parliaments hold the power of the purse and maintain oversight and ensure the functioning of the doctrine of ministerial accountability – these functions are constitutionally mandated (Constitution of Namibia, Articles 44-ff).
8. Committee mandates generally come from one or more of three sources:
 - Standing Orders and Rules of Parliament;
 - Specific Laws;
 - The Constitution itself (Chapter VII, Articles 44-ff).
9. Parliamentary oversight is also exercised by debates and parliamentary questions to the governing party (mostly to the Executive).

- (c) Active encouragement of the formation of independent trade unions to protect workers' rights and interests, and to promote sound labour relations and fair employment practices;

Article 95 also deals with senior citizens (f), the unemployed, the incapacitated, and the disadvantaged (g), a legal system that promotes justice on the basis of equal opportunity (h) and the maintenance of sustainable ecosystems and biological diversity (l).

Taken together, these provisions invest a collective moral, political and social responsibility on all Members of Parliament (MPs), irrespective of their party-political affiliation.

Genesis and Evolution of Parliamentary Oversight – different typologies of oversight

Historically, Parliamentary Oversight evolved initially to act as a balance on the executive and to ensure an acceptable level of public resources through budgeting, the setting of priorities for public spending and agreed patterns of resource allocation and control.

More recently, Parliamentary Oversight has become indispensable, mostly through committees, for the consideration of policy issues, for scrutinizing the work, performance and expenditure of government, and to examine proposals for primary and secondary legislation.

Select committees operate largely by an investigative process, informed by sound and current research, while legislative committees operate mainly by debate.

The work of Standing Committees is characterized by three key features. These are:

- (a) Complexity – Parliamentarians must consider not only a variety of policy-related institutions and issues, for example in the case of the Security System, the armed forces, police, border controls, intelligence activities, defence budgeting, procurement, arms control and so forth. Increasingly, such matters have a regional and an international dimension.
- (b) Transparency – in all cases, a minimum standard of transparency has to be ensured. This is not self-evident, for the security system, for example, is traditionally less transparent than other governmental activities, due to the need to protect information vital to national security.
- (c) Involvement of the executive – members of the executive typically play a very important role in certain policy domains such as defence and security, international relations and finance.

Given the structure of the Namibian Parliament, all three of these features are of equal importance and this makes it important to ensure a proper division of labour, optimal

composition and invest requisite policy capacity within all Standing Committees. A point to which this paper will return.

Typology of Parliamentary Oversight (An Ideal-type typology)
<ul style="list-style-type: none"> • Extensive/effective oversight: extensive consultations, participation, sound and regular committee review, active committee participation, well-resourced committee infrastructure, sound legislative capacity, active involvement of extra-parliamentary agencies (where appropriate). • Limited oversight: consultations are taking place, but are not extensive, limited incorporation of ideas generated in and outside of committees, weak committee review, limited legislative/policy capacity within committees, limited resources for committees/parliamentary work, weak political will. • Little, sporadic or no oversight: no legislative consultation and input, executive dominance of law making, inactive (dormant) committee system, untrained committee members giving an executive policy-formulation/rule-making advantage.

Keeping in mind that the above typology is an ideal type, very few parliaments meet all criteria; the question remains: Where is the Namibian Parliament in all of this?

Strengthening Parliamentary Oversight – a practical guide

Strong parliamentary committees and well-versed MPs are essential if there is to be effective parliamentary oversight and influence in the law-making process. To ensure that the committees can play their role, three key requirements must be met. These are:

- **Authority:** For a committee to enjoy the necessary authority, its prerogatives in the field of policy must be clearly delineated in Rules and Orders. Ideally, there must also be legislation securing committee members' access to the information necessary for the work of the committee.
- **Ability:** Committees must be provided with adequate resources, such as support staff, budget, research capacity, information and internal and external expertise. Moreover, committee appointments should be given to those MPs with the appropriate education, experience, and knowledge. To this end, MPs should be provided with the necessary training and instruction. It is also important to *preserve knowledge and experience*. This can be facilitated by members serving throughout their legislative careers, though there is a risk that members become too closely affiliated with a particular portfolio to properly oversee its activities.
- **The diversity of background of members:** Members should ideally come from backgrounds that reflect the political, cultural, and social diversity of the country. It may also be useful for more than one committee to be chaired by a member of the official opposition or any other opposition party represented in parliament.

- **Attitude:** Committees rely on members of parliament being willing to hold government accountable and being prepared to work for the common good, notwithstanding partisan politics. In some cases, committees have to meet in private so as to avoid media pressure and other outside influences. The leadership shown by the chairperson of a committee can be decisive for its performance.

How committees organize themselves internally and how they divide the work amongst themselves, also matter a great deal. Candidates are usually nominated by parties represented in parliament, and every attempt should be made to actualize the principle of proportionality, inclusive of gender. Ideally, members should be chosen because of their special knowledge of the mandate covered by the committee. Committee membership should be for the duration of the legislative term (5-years).

Support staff prepares and organizes committee meetings, maintain contact with government and officials, collect information and data, help interpret government information and maintain links with relevant civil society agencies, among these, the print and electronic media. It is essential to resource committees adequately and to build capacity through training and in-situ visits to regions, development programmes and public facilities.

Conclusions

Parliamentary Oversight is of arterial importance to democratic governance, transparency and accountability. Effective Parliamentary Oversight requires various conditions to be in place these are material, human and attitudinal. The role of parliamentary committees in ensuring oversight can hardly be over-emphasized. Thus, special attention should be given to establishing and maintaining a robust system of parliamentary committees. The normative corset within which parliament should work is that of actively deliberating on and promoting the common good.

Notes

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