PROJECT REPORT

Main Author: Antonio Hercules | **Second Author**: Isobel Frye

PRAXIS,
A SPII PILOT

OCCASIONAL PAPER - January 2019

A civil society pilot reflective action in expanding spaces for participation and engagement between civil society, political parties and institutional spaces to advance alternatives[1] in South Africa to better realise the socio-economic rights in the Constitution.

---

1   Pro-poor social, economic and political alternatives.

CONTENTS:

BACKGROUND AND INTRODUCTION:

The Praxis Project sought to better understand the workings of *spaces for participation and engagement between civil society, political parties, public institutions to test ways to expand these in subsequent actions, with the aim of advancing pro-poor social, economic and policy alternatives in South Africa*. SPII is a not for profit research organisation. Our theory of change is built on an assumption that access to more and better information by decision-makers will lead to optimal policy development and implementation to meet the principles informing- and the rights contained – in the Constitution of South Africa.

Central to our research has been the establishment and updating of policy and budget analysis and the development of rights-enjoyment indicators of the line departments contingent to the socio-economic rights (SERs) in the Constitution. Oversight improves delivery, but oversight requires inputs. We became increasingly aware as we continued to conduct our research of how few sources of independent information exists apart from the executive's own administrative data. As we had the data, we were intrigued by the question of what the response would be of members of the legislative to independent data which would provide oversight tools to enable them better to engage with reports and to interrogate the planning and the expenditure of government line departments.

A pilot connotes a learning or testing for feedback towards a better practice of a larger endeavor. This pilot, as the name of the project suggests, was to seek knowledge through doing, for better future engagement.

In essence what we found was a great willingness from all concerned for more and better engagement. There was also however a high level of ignorance about the daily challenges and resource level facing various stakeholders: CSOs have funded programmes and projects and generally don't have sufficient spare capacity to tailor-make studies for the legislature at the drop of a hat. In the same vein, the legislatures' timetables are very full and set, well in advance. These two realities suggest that medium to long term planning between these key stakeholders will be essential for real value to be achieved in future collaboration.

SPII is keen to continue to explore such possible modalities as we seek to extend the learning beyond this current pilot.
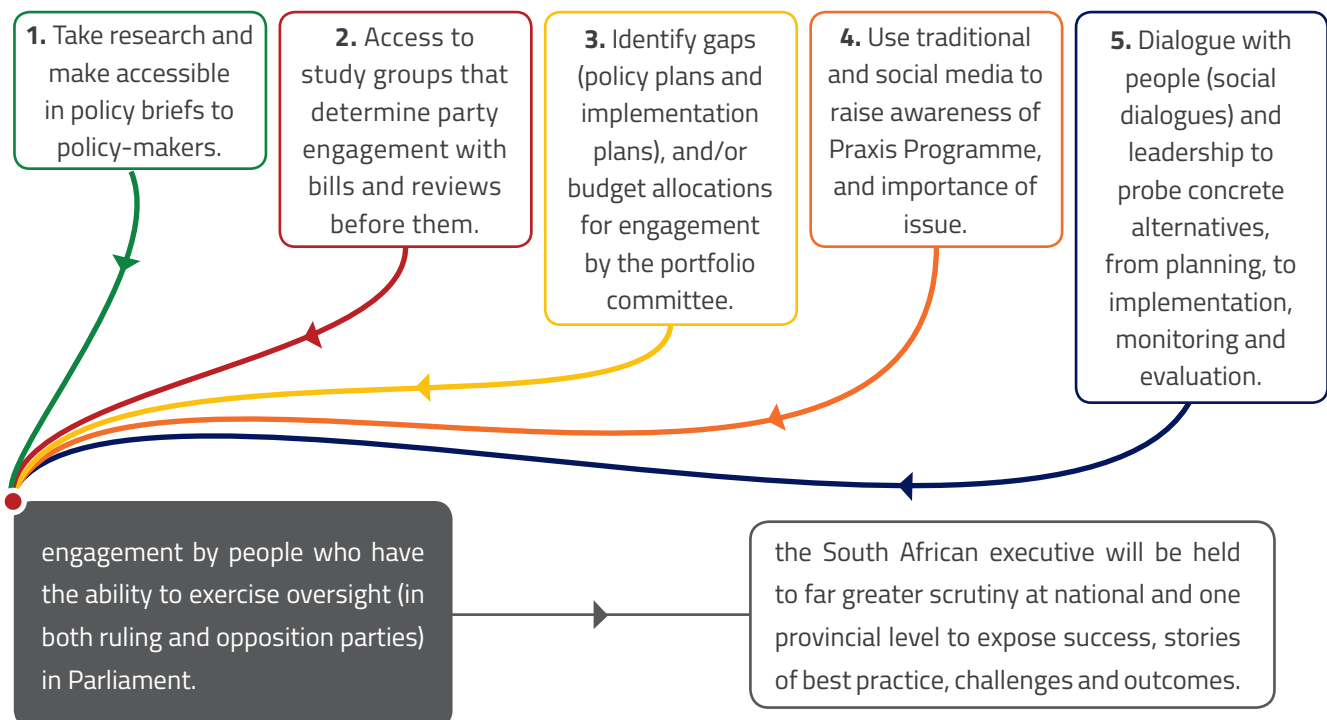

Figure 1. Praxis - programme basic concept

1. Take research and make accessible in policy briefs to policy-makers.

2. Access to study groups that determine party engagement with bills and reviews before them.

3. Identify gaps (policy plans and implementation plans), and/or budget allocations for engagement by the portfolio committee.

4. Use traditional and social media to raise awareness of Praxis Programme, and importance of issue.

5. Dialogue with people (social dialogues) and leadership to probe concrete alternatives, from planning, to implementation, monitoring and evaluation.

engagement by people who have the ability to exercise oversight (in both ruling and opposition parties) in Parliament.

the South African executive will be held to far greater scrutiny at national and one provincial level to expose success, stories of best practice, challenges and outcomes.

We tested this through a mixed method approach as set out below:

1. ACTIVITY	2. ACTIVITY	3. ACTIVITY	4. ACTIVITY	5. ACTIVITY
Make research accessible in policy briefs to policy-makers,	Work towards access to study groups that determine party engagement with legislation, Bills and reviews before them,	Identify gaps (policy plans and implementation plans), and/or budget allocations for engagement by portfolio committees,	Use traditional and social media to… **raise awareness of the issue/project,**	Dialogue with people (social dialogues) and leadership to **probe concrete alternatives, from planning, to implementation, monitoring and evaluation.**

MAIN LEARNINGS FROM THE PILOT:

1. Feedback from respondents broadly resonates with- and confirms- available literature on oversight and participation in South Africa.

2. In particular, there is a need for parliamentary oversight to be strengthened, and parliamentarians are open and supportive of continued relationship with SPII on broad socio-economic areas.

3. Effective oversight is dependent on:

    a. Political factors, linked to general political environment, and also those specific to the governing party.

    b. The availability of information required for effective oversight is critical. Such information must be accessible, and packaged appropriately for the modern MP.

    c. The capacity of Parliament to exercise its oversight functions is an important factor. The research and related support capacity is critical in this regard.

    d. Individual attributes/characteristics of MPs is important. Civil society organisations must taken this into account for lobbying/advocacy.

    e. Active and adequately resourced civil society organisations must take advantage of Parliament's obligation to enable public participation. The specific parliamentary oversight tools that will be engaged must be selected carefully. (see annex)

4. There is a need for progressive CSOs to be supported to continue to participate in legislative oversight tools being used. CSO capacity has shrunk, and public participation is dominated by professional organisations.

5. There is a need for clear civil society strategies and approaches to be refined and adapted in- and through- ongoing dialogue and engagement with parliamentarians. Parliamentary oversight model(s) should be examined carefully and understood.

6. There is a current opportunity for SPII to collaborate with Parliament RSA and Gauteng Legislature. This window of opportunity must be used, through development of a clear agenda for action, focused on specific oversight tools, specific sectors and issues of collaboration, and access to MPs needs to be strategic, taking into account extremely busy schedules.

RESEARCH METHODOLOGY:

The pilot used both qualitative research and a subsequent desk- top literature review. The fieldwork phase of the project engaged with stakeholders in the legislative sector, central Government (the Executive), and civil society organisations active in oversight-related programming.

A desk-top review was undertaken of available literature relevant to the main topic of oversight and participation in South Africa.

THE MAIN RESEARCH QUESTIONS WERE:

1. What are current views on civil society engagement?

2. What opportunities exist for cooperation and/or partnership between legislators, government officials and civil society organisations to strengthen oversight processes in order to improve Executive accountability? And what are the specific modalities for such cooperation and/or partnership that might be entailed?

3. What are the specific approaches and activities that are likely to lead to greater effectiveness of civil society in terms of their engagement with parliamentarians and government officials?

LIMITATIONS OF THE STUDY:

The limitations of the study were:
1. access to parliamentarians/legislators,
2. late start of researcher in terms of appointment, and
3. timing of data-collection with other simultaneous events.

CONTEXTUAL LITERATURE REVIEW:

In terms of base critical intellectual work on the bourgeois state, and the place of public participation in parliamentary oversight, Karl Marx himself held very specific views on democracy, participation, voting and equality. Marx's own views on democracy shows he shares more in common with classical political philosophers, notably Plato, Aristotle and Hegel, on the subject of politics and democracy. Marx's views on democracy call into serious question the (revisionist) Marxist assumptions that democracy represents the political epiphenomenon of a specific economic system and, consequently, constitutes no more than a set of practices or procedures to translate economics into juridical-political terms. In addition, Marx, following Hegel, accuses advocates of participatory democracy (democracy's reformist critics) of radical individualism for assuming that participation entails the participation of each and every individual rather than participation by the community as a whole through representatives. Marx defends democracy on the basis of firstly, that democracy is "the essence" of the political. Democracy is understood as a unique expression of the political that constitutes a complex set of ideas, values, and institutional arrangements that represents more than a set of legal forms or procedures, realizing "the essence of every state".[2]

South Africa's unique history, as a process of democratic change, the ideals and aspirations of the many millions of the black majority of the country embedded in the formulation of the new Constitution (1996), and subsequent official documents, are together, therefore, important as the "political" that is being referred to. In effect, it provides a context for making sense of civil society participation in oversight.

Marx makes the explicit argument that democracy does not require the participation of all members of society as individuals in the decision-making process, and that debate over the relative merits of direct or representative democracy should not the main concern. This idea is also important, because civil society organisations are sometimes questioned in terms of the "constituency" they represent, when their voice(s) sit uncomfortably with parts of the Executive.

Third, Marx argues that political participation relies on political voting, which is considered as "...the immediate, the direct, the existing and not simply imagined relation of civil society to the political state". The unity of the social and the political is symbolized by universal suffrage that brings down the dualism of civil society and the state.[3]

The question of representative versus participatory democracy is not fundamental in Marx's view, according to Springboard (1984:542-543). The population (people) are an integral part of the democratic state, "then it is obvious that their social existence is already their participation in it, and by this virtue of the fact of membership of the state." The ideas of political participation by "all" or "not all" is based on the abstract separation of civil society and the state, which presumes the political to be represented by single political acts performed by individuals, focusing exclusively on the legislature as the locus of popular participation. In other words, "the significance of the legislature

2   Springboard P (1984) Karl Marx on Democracy, Participation, Voting, and Equality in POLITICAL THEORY Vol12(4)(1984: 537-556)
3   Springboard P (1984:542)

is not to be construed narrowly in terms of its representation of individuals and their interests, but rather as an articulation of the political will of the community as such." (p.544) Springboard (1984:550-551) argues that Marx's perspective on notions of freedom and equality was that they could only be realized in the money system of capitalism, and are related to bourgeois society as a whole. Marx deems democracy to be the unique expression of the political, on the one hand, and yet it denigrates freedom and equality on the other, which were valued as inseparable from the very concept of democracy.

A key insight from Marx's thinking on democracy, public participation and parliament, is that democratic politics is fundamental, but that freedom and equality is limited in terms of the constraints of the nature of the state, and society. In other words, South Africa's poverty, inequality, structural economic features, it's racial and gender characteristics together set the parameters for what freedoms and equality are possible for communities and individuals.

Vision of Parliament in South Africa as institution:

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.*[4] Oversight is, therefore, one of two critical constitutional functions.

It is important to note too, that "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."[5]

Parliament as an institution must be viewed contextually within the confines of the political landscape. There is clear recognition of this, that "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."[6]

As Parliament moved from a focus on law-making to drive transformation (itself also part of that process), it began to focus on "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."[7] Parliament produced its first Oversight and Accountability Model in 2009, comprised of: the values and

---

4   Parliament RSA (2009:4)
5   Ibid
6   Ibid
7   Ibid

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

In terms of the mandates of Parliament, 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 scrutinizing 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.[8] 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 cooperative 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.

Parliamentary Concept 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.[9] The concept is elaborated: 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. 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.

8   Ibid, p.5
9   Parliament RSA (2009:6)

Concept of Oversight in Literature:

Oversight comprises of the "supervision of policies and programs ratified by the executive".[10] Oversight happens subsequent to the enacting of legislation.[11] Oversight consists of scrutinizing the correctness and efficiency of policies and programmes implemented. Malepane (2016) argues that these support the long held view that Parliament is a reactive institution because its function transpires after an event has taken place. But oversight also involves the supervision of government's plans before their implementation by government and any organs of state.[12] Oversight can be conducted *ex ante* (before and during programme implementation) as well as *ex post* (after implementation), and that Parliament is mostly criticised for being reactive rather than proactive. Oversight is viewed as a vehicle to hold the executive accountable for service delivery/programme implementation, and to ensure that spending is in line with these plans.[13] Oversight is meant to have an effect on the "behaviour by legislators and their staffs, individually or collectively, which results in an impact, intended or not".[14] Oversight should ensure that the policies of government represent the needs of the people, and should benefit all citizens.[15] Officially, the concept of oversight is defined as "the proactive interaction initiated by a legislature with the executive and administrative organ that encourages compliance with the constitutional obligation on the executive and administration to ensure delivery on agreed-to objectives for achievement of government priorities".[16] This definition captures both *ex-ante* and *ex-post* events, and highlights the significance of parliamentary oversight which is a constitutional obligation.[17]

Value of Oversight:

Parliamentary oversight is good for the proper functioning of a democratic system of government[18], and to ensure that government improves its programmes and Parliaments enactment of legislation[19]. This is significant to safeguard the constitutional obligation of the separation of powers[20], aimed at maintaining transparency and accountability. These could include: to improve the efficiency, economy and effectiveness of government operations; evaluate programmes and performance; investigate and prevent poor administration, waste, abuse, arbitrary and illegal and unconstitutional conduct; protect civil liberties and constitutional rights; inform the general public and ensure that executive policies reflect public interests; gather information to develop new legislative proposals or amend existing statutes; and ensure administrative compliance on legislative authority and prerogatives.[21] Malepane (2016:138) is very clear about the significance of oversight in holding the executive to account for its actions or inactions. "These facets among others stress the obligation of Parliament to uphold and

10   Schick (1976) cited in Pelizzo, Stapenhurst and Olson (2006:8)
11   Johnson and Nakamura (1999:4)
12   Maffio (2002), Pelizzo et al. (2006:8) quoted in Malepane (2016)
13   Madue (2013:39) quoted in Malepane (2016:137)
14   Lees (1977:193) quoted in Malepane (2016:137)
15   Yamamoto (2007:9) quoted in Malepane (2016)
16   Parliament RSA (2012) Oversight and Accountability (2012:4)
17   Malepane (2016:137)
18   West & Cooper (1989); Pelizzo & Stapenhurst (2006); Shenga (2007); Madue (2012) quoted in Malepane (2016:137)
19   West and Cooper (1989) cited in Pelizzo et al., (2006:8), and quoted in Malepane (2016:138)
20   Nijzink and Piombo (2004:3) quoted in Malebane (2016:138)
21   Simmonds (2002:3) and Zvoma (2010:3) quoted in Malepane (2016:138)

defend the Constitution. This is essential and it underscores the significance of the existence of a democratic Parliament. In performing its constitutional mandate, the relations between Parliament and the executive is fundamental."[22]

Parliament's Performance:

Parliament has been unable to effectively hold the executive accountable[23]. Reasons for this includes: inadequate resources and weak institutional capacity which leads to the dependence of the legislative branch on the executive[24], despite section 55(2) of the Constitution (1996) which establishes Parliament's mandate. There are differing views theoretically to account for this. One view is that the relationship between the legislative and executive branch in the parliamentary form of government creates ambiguity with regard to the separation of powers as the members of the executive are also MPs. This is supported by the argument that "the Westminster-inspired systems of government that are prevalent in most countries of Southern Africa tend to compromise the principle of separation of powers. Under these systems, ministers are most often drawn from MPs, which, ironically, should oversee their performance".[25]

The nature of the political systems and the nature of political parties are provided as possible reasons for the dominance of the executive and marginalisation of Parliament[26]. As a result, "This places Parliament in a difficult situation… that in the process were Parliament endeavours to perform its oversight function, the executive fights to dominate it."[27] Is the problem the Constitution (1996)?

Parliamentary Oversight Tools and Capacity:

Oversight tools identified as utilised in various countries include but are not limited to Committee Hearing; Hearing in plenary sitting, Questions, Question time, Commission of enquiry and Ombudsman (Public Protector in the case of South Africa).[28] South Africa has 5 out of 7 available tools[29] but it is noted that their use depends on factors including the information to conduct oversight and powers allocated to the legislative branch of government".[30] For example, although questions time remains important wherein MPs are afforded the opportunity to raise questions, it has vast weaknesses such as irrelevant responses.[31] But in addition to this, the executive utilises fewer time replying to questions, and more time making lengthy speeches. Committees have a primary role in parliamentary democracy and the functioning of Parliament, but committees are representative in partisan composition.[32] In other words, it has been dominated by the governing party, and in turn reduced to be a dominant party system. "Thus, the ad hoc Committee which dealt with the contested issue of Nkandla was dominated by the ANC and in-turn partisanship prevailed."[33]

22   Ibid. p.137
23   Shenga (2007); Musavengana (2012); Malapane (2015) referenced in Malepane (2016:138-139)
24   Rapoo (2004:5) quoted in Malepane (2016:139)
25   Musavengana (2012:2) quoted in Malepane (2016:139)
26   Hudson & Wren (2007:4) quoted in Malepane (2016:139)
27   Salih (2005:252) quoted in Malepane (2016:139)
28   Pelizzo & Stapenhurst (2002); Simmonds (2002); Rapoo (2004); Yamamoto (2007) regarding World Bank Institute and Inter-Parliamentary Union survey of 82 countries in early 2000s
29   Malepane (2016:140)
30   Ibid p.140
31   Payne (2009:2) referenced in Malepane (2016:40)
32   Nijzink and Piombo (2004:6), Ahmed (2011:11) referenced in Malepane (2016:140-141)
33   Malepane (2016:141)

The role of opposition parties is important, and plays a pivotal role at points, although it is noted that this applies to some parliamentary tools of oversight than others. For example, opposition parties are dominant during question time, and ask more questions than the governing party.[34] Question time presents an opportunity to opposition MPs to challenge the executive over policy or personal conduct. In addition, it is the only time the opposition can force government to address issues it would rather ignore.[35] The opposition is able to set the agenda for large part of the proceedings in question time, something it rarely is able to achieve with other parliamentary tools. The Nkandla debacle remains a good example of the opposition's persistence to get answers from the executive.[36]

Information is vital for effective oversight; this entails Parliament possessing knowledgeable staff and members. Moreover, internal research offices are important assets.[37] Generally, the staff compliment supports committees of Parliament, and include Researchers, Content Advisers, Legal Advisers and Information Officers amongst others.[38]

Conclusion:

First, while oversight is a constitutional mandate of Parliament, it is faced with various challenges. The challenges are many, including political opposition, partisanship, political competition and power contestation between the executive and Parliament, generating an opportunity for the executive to operate with less effective responsibility and accountability.[39] Legislative systems and political environment contributes to the outcome of inadequate oversight being exercised. For example, the PR system makes it easier to recall an MP. In addition, while Parliament attempts to hold the executive accountable, the executive utilizes its relative power to influence policy. Parliament has occupied its law-making responsibility, and it creates most of the bills. But, It has reduced Parliament in its main mandate to merely rubber stamping as most bills are prepared and drafted by the executive, and presented to Parliament for approval.

Second, it is noted that oversight is dependent on the individual determination of MPs to remain true to the mandate of legislatures. The general environment for parliamentary oversight often generates situations where legislators have to make choices to exercise their duties either in the interests of the electorate at large or their narrower political responsibilities. The manner in which oversight has been exercised in the fourth and fifth parliaments suggests that political pressure outweighs institutional obligations. Malepane (2016) argues that this is due to the nature of the parliamentary form of government which results in protective relationships between Parliament's majority and the executive.

Third, capacity is fundamental for effective oversight. There is a need to strengthen Parliament in building its own capacity to undertaken effective oversight. This includes the capacity to generate its own independent information.[40]

34   Proksch and Slapin (2010:68) referenced in Malepane (2016:141)
35   Saalfeld (2011:272), Salmond (2004:77) quoted in Malepane (2016:141)
36   Malepane
37   Simmonds (2002:6) quoted in Malepane (2016:141)
38   Parliament RSA (2009)
39   Malepane (2016:145)
40   Malepane (2016:146)

FINDINGS OF THE PROJECT:

ENGAGEMENT WITH PARLIAMENTARIANS

In early September 2018, engagement with heads of a large number of portfolio committees in the National Assembly (Parliament) identified the following key issues from the perspective of legislators involved in exercising oversight:

1. There are gaps in current policy management processes, specifically with regard to planning, implementation plans, budget allocations, and delivery models.

   Views were expressed by parliamentarians on a number of issues, based on their experience of engagement with government departments during the course of exercising oversight responsibilities in parliamentary committees, but also during debates in the National Assembly. Arguments were put forward that there were weaknesses in the way in which departmental planning occurs for policy delivery in general terms. References were made to Annual Performance Plans (APPs), the adequacy of selected performance indicators used and correlations with associated budgets and delivery models. Sometimes lower targets were set for delivery ("gaming") in order to make them achievable and for departments to ultimately receive clean audits by the AGSA. Parliamentarians needed specialist sectoral knowledge to understand the full extent of given policy challenges for delivery in specific sectors, for example, basic education. Departments sometimes used inappropriate technical indicators to account and report on delivery.

2. Quality of performance and policy reports by the Executive to Oversight structures.

   The quality of quarterly performance reports and annual reports by the Executive was also raised. Reports often contained gaps or reflected "missing issues" which received no attention. Performance data would often reflect relatively good policy delivery, but the description of progress in specific areas would often not correspond with the political assessment of parliamentarians of the current state of affairs "on the ground" in communities across the country. Officials would often present a story of slow but solid progress in meeting the political priorities and specific delivery milestones that the governing party had set out in the five-year Medium-Term Strategic Framework, Annual State of the Nation presidential address and other platforms. Parliamentarians held the view that sometimes the actual challenges experienced by the sections of the population were not being addressed tangibly by Government, and only received attention once community protests brought attention and stimulated a response from officials. This led to a sense of increasing discomfort experienced by parliamentarians regarding the credibility of departmental performance reports and assessments of policy performance. A sense of confusion about the DBE's performance reports and their credibility was raised as an example.

3. **Underlying systems and technology capacity of Government**

Sometimes the systems and technological capacity of Government led to a sense of slow and cumbersome reporting on critical issues that politicians sometimes wanted quick answers on. Information about given issues was sometimes unavailable, requiring time to gather data, analyse it, before an assessment could be offered, with proposals for clear actions to be undertaken. These processes would took a long time, and political pressures sometimes did not allow for quick responses. Sometimes there was a feeling that the Executive "misrepresented" departmental performance in their reports to oversight structures. Departments also constantly complained about inadequate budgets, yet constantly under-spent which suggested weak systems and technological capacity to manage allocated budgets.

Besides that, the research capacity of Parliament was limited, and could not adequately respond to the need for performance information on key policy issues at all times.

4. **Issues in making sense of policy outcomes being achieved**

Parliamentarians struggled to balance their "on the ground" assessments of Government performance in delivering on policy priorities in communities with the outcomes assessments linked to departmental performance reports, submitted by national departments and centre-of-government institutions. Policy delivery assessments relied on quality performance data that was meant to be provided on time (quarterly), and for accurate policy analysis and interpretation of this data in order to make sense of Government's progress in meeting the desired outcomes set out in long term planning (Planning Commission), and the medium-term MTSF and the short-term targets contained in Annual Plans. Government departmental reports would often contain relatively positive outcomes assessments, whereas politicians would often feel that substantial progress was not being made.

5. **Involvement of stakeholders in partnerships to improve on-the-ground policy measurement and accountability**

Parliamentarians raised the hope and need for partnerships with progressive civil society organisations to help with their data and information needs in the exercise of policy oversight. The idea of partnership on a sector-by-sector basis depending on available resources and professional capacity was raised. Support is needed on: assessments of the impact of specific policies, the implementation of policies, the budget and engagement with Annual Reports. The political pressures of deep-seated poverty in addition to government service delivery, and the challenge of free education in higher education were also raised as important opportunities for collaboration between civil society organisations and parliamentary study groups/ committees. There was a lot of work "in silos" by parliamentarians in their specific sectors, for example, the education sector, but help was need to integrate and make sense of the difference current budget allocations were making to address sectoral challenges, and for the country as a whole.

The education research undertaken by SPII received special mention, and was appreciated for its contribution to the work of the education study group, and pointing to where the State needs to improve.

Ideas were also raised about how accountability by the Executive could possibly be improved. The involvement of constituency offices to include additional situational information on the ground was raised as an idea, that could be explored and assessed. Was this possible? Other areas/issues of potential collaboration: wealth tax, skills transfer programme, an audit of current research capacity, policy assessments, budget training, assessment of departmental plans. In general terms (country level), why legislation has not produced what has been intended in policy ambition, and exploring annual variation of departmental budgets (based on evidence) through Money Bills. The need for further engagement and discussion with SPII was palpably expressed by Deputy Speaker Lechesa, and generally agreed to by parliamentarians.

6. **New batch of legislators arriving:**

Expert (research) technical sessions to support oversight. The general mandate of Parliament to involve and include civil society organisations was raised, and the importance of the work of research think-tanks for the institutional Mission. The need for critical information regarding performance data, policy priorities and performance was identified. Major opportunity for research, technical sessions, training and general policy dialogue to strengthen the oversight function by parliamentary structures.

CURRENT ENGAGEMENT OF CIVIL SOCIETY ORGANISATIONS?

The main views expressed by the sample of respondents on current engagement by civil society organisations of legislators and the Executive were:

1. In the previous presidential term: CSOs "gave up trying to engage". In the previous presidential term, oversight over the Executive was not particularly effective, and sometimes even negligent. Many CSOs dropped away from directing attention and energy to engage parliamentary oversight structures because the view was that legislators colluded with those executive/senior managers in government departments to protect the interests of the governing party. The view on the policy orientation of the majority party was that it had deviated markedly from its original vision and mission which had previously had the general support of many in the country.

The current system of political governance in South Africa is in crisis, not because the system is inherently flawed, (although it can be strengthened in places) but because of flagrant non-compliance with the spirit, ethos and edicts of the Constitution, and country legal frameworks and key bodies of legislation. The crisis of accountability is caused by leaders who are not accountable to their constituencies, and to the people of South Africa in general.

> **"IN THE ZUMA YEARS, OVERSIGHT DIED. THIS IS A NEW SPRING. OPPORTUNITY, AND A NEW ATTITUDE EMERGING TO OVERSIGHT. CSOS SHOULD JUMP IN AND CLAIM THAT SPACE!"**

2. Members of Parliament (MPs) have inadequate capacity/time to exercise oversight optimally.

Interesting views were expressed that MPs had undergone a measure of change during the post-Apartheid governance period. Previously MPs might have committed more time in the policy process to the intellectual work demanded by effective policy assessment. Over time this may have changed and reached the current point of observation that parliamentarians now have less capacity to exercise oversight optimally, and that their information needs may also have changed to the use of byte-sized information in order to formulate quicker assessments and conclusions about policy-related matters and delivery. The need is, therefore, for larger assessments of performance data to be assessed, and written up into more concise information chunks that can quickly be consumed, and acted upon. Specific help on the specific questions for parliamentary sessions was also needed. This represents an opportunity for CSOs.

3. Politics constrains oversight function or role. Dominant party uses its majority to block and frustrate oversight.

The view was that politics interfered with the very function of political oversight over the Executive, as the majority party acted to "block and frustrate" effective oversight. In other words, many parliamentarians worked together with Government leaders

> **"MPS DON'T DO THEIR HOMEWORK... DON'T READ LONG REPORTS. INFORMATION MUST BE TABULATED... FORMULATED... IN ORDER FOR IT TO BE USED. OR FACE-TO-FACE PRESENTATIONS. THEY DON'T LIKE TO READ. LIKE TO BE TOLD WHICH QUESTIONS TO ASK."**

to protect the political interests of the governing party, leading to a national situation where the refocusing and abuse of state resources was tolerated against the national interest. In this environment of weakened government accountability, officials were able to act in contravention of laws and policies or exhibit poor performance, without significant consequences that might have arisen if oversight was more effective.

4. Underfunded parliamentary and legislative research.

The view was expressed that parliamentary research used to support oversight over Government was underfunded, and that as a consequence there was inadequate research capacity in place for analysis of the performance data supplied by government departments. The outcome was inadequate policy-related information that is currently being made available to parliamentarians, even though research staff are working very hard to respond to their information needs.

5. Parliament also weak in terms of follow-up. (Review of the last 5 years underway).

There was an admission by parliamentarians confirmed by CSO respondents that Parliament itself, has been relatively weak in terms of the follow-up on issues raised in oversight committees. The effect has been that actions decided upon have not always been carried through, leading to the general dilution of oversight effectiveness.

6. **Unevenness of Oversight Execution.**

It was noted that on a sector by sector basis, the execution of oversight was unevenly exercised – in some cases effective oversight, and in others very little. Some government departments (Ministers) fail to arrive to account as per committee schedule, in breach of their legal responsibilities. There are also problems with the written responses by departmental in terms of their quality, and relative timeliness. A special parliamentary committee has established to deal with this, but CSOs need to be vigilant and push hard for the Executive to meet their reporting/accountability obligations. The hand of allied parliamentarians who could work closely with CSOs could be strengthen in this way, and contribute to improved accountability.

7. **Who is civil society? Who do CSOs represent?**

There was good reflective discussion on who civil society is comprised of, and which constituencies CSOs represent. The general view was that civil society in general included all groupings outside of the State. There was no clear view on the nature of CSO constituencies, but it was clear that in many cases, there was no direct accountability of CSOs to any specific constituency in communities.

The view was raised that sometimes the usual subjects appeared to dominate the spaces that are currently available for commentary and analysis of public policy, and that these are generally white, middle-class, well-educated and resourced.

There was an opinion expressed by some officials that CSOs were anti-transformation and elitist in some cases, and that there was little or no room for collaboration with these specific organisations.

8. **Contribution of Civil Society.**

An important observation was raised about the contribution of CSOs: In some cases, there was a pressure contribution by CSOs... Historically for example, the Treatment Action Campaign in health and human rights. Reproductive Rights Alliance (RRA) on the right to choose. The Total Shutdown Movement... which forced a focus on gender-based violence (GBV). Section 27 and Equal Education in education (toilets, textbooks, learner transport). The Right to Know (DPP interview). Also OUTA (eTolls). CASAC (Abrahams NPA). These examples were of higher level public advocacy CSOs, but there were also local pressure groups, such as Abahlahli baseMjondolo (shack-dwellers), Social Justice Coalition (Khayelitsha Mshengu Toilets), and community resistance against mining companies in the Eastern Cape.

These actions as examples illustrate the contribution of progressive civil society to raise public awareness, including those responsible for oversight of critical government institutions (example social sector), and how their research and advocacy has been used to strengthen public dialogue about policy delivery, and on occasion even resulted in policy change.

9. **Cooperative research.**

Other examples were mentioned of a different approach by a category of civil society organisations that is more cooperative in terms of its orientation to engagement with the Executive and also Parliament. These organisations partner with the State, and are often contracted as service providers to undertake important public policy research, often used in policy oversight.

Examples are the Centre for Education Policy Development, the Joint Education Trust, the Children's Institute, etc.

OPPORTUNITIES AND MODALITIES FOR ENGAGEMENT BY CIVIL SOCIETY ORGANISATIONS?

The main views expressed by the sample of respondents on opportunities and modalities for engagement by civil society organisations of legislators and the Executive were:

1. CSOs could and should be **engaging portfolio committees** to present research. Support is available from organisations like Parliamentary Monitoring Group, who have a large number of contacts in legislative structures. Resources are also available: for example, committee recommended reports, "legacy reports" (5th Parliament), records of committee meetings, online resources, etc. There is a recognition that access to institutional information is sometimes access challenging.

2. Specific **sectoral information** is available. In the budget space, *Vuleka Mali* portal, which is a collaboration between the National Treasury Open Budget Initiative and CSOs. Also, local government, https://municipalmoney.gov.za. PMG. Planning documents, Annual Reports and Annual Performance Plans.

3. There is a recognition that Parliament has the **obligation to engage CSOs**, but this has not necessarily opened up access to oversight structures for engagement by CSOs, particularly in the previous presidential term.

4. **Sector experts** (Equal Education, Section 27, university-based units such as PLAAS) have high profile. Grassroots -based organisations have lower profile, but have special insights into issues. This represents an opportunity to link professional organisations with community-based organisations.

5. Civil Society Organisations are **now weaker**, and have **lower capacity** compared with previous years.

Participation in Parliament has been taken over by professional research organisations. This is an intimidating space, especially for community-based organisations. There is clearly a need to build the capacity of CSOs.

6. **New Members of Parliament.**

   MPs have to be inducted from scratch every new term, and have to re-learn the lessons and experience of oversight that were acquired by previous generations of MPs who exit the political system. The turnover rate is something like 60% turnover in the past.

7. **Public participation in Parliament.**

   Motlanthe report - Parliament is currently examining the recommendations regarding: public participation. CSOs should also study the report and examine issues raised.

8. **Verification of government performance information.**

   The credibility of Executive performance reporting has been problematised. There are major opportunities for independent progressive public policy research to strengthen the oversight function of parliamentary structures. There are opportunities to work more closely with allied officials in the Executive - these should be identified and explored by CSOs.

9. **Performance auditing of the Executive is improving.**

   The Auditor General of South Africa (AGSA) is responsible for this, but that's at the end of a financial year. Sector indicators can be included (for specific programmes), then these would be automatically audited. CSOs could explore this, and advocate for their inclusion within sector-based parliamentary oversight structures.

HOW TO IMPROVE ENGAGEMENT EFFECTIVENESS BY CIVIL SOCIETY ORGANISATIONS?

The main views expressed by the sample of respondents for how to improve modes of engagement by civil society organisations of legislators and the Executive were:

1. CSO Engagement is typically focused on budget, legislation, policy.

2. **Research.** Possible actions: Ask for committee information. Research on the ground. Present research to portfolio committee members. Lobby. Constructive engagement. Can institutionalize some issues, and for example, insist that committees deal with them. Monitoring of local programmes?

3. **Lobbying and Advocacy:** Participate in national/provincial policy dialogue. Make participation meaningful. Advocate.

4. **Pressure:** Marches in support of policies, and/or against.

5. **Cooperative and oppositional litigation.** Partnering with the State on specific legal cases. In other moments, litigate against the State.

6. **Relationships with legislators, committees, departments**, but also social movements. Identify and build relationships with allies within. Keep alive (present), through consistent exchanges and dialogue, formal and informal. A question was posed about why there were not more platforms with government institutions that allowed civil society organisations to engage in dialogue with officials?

7. **Use of Media.** Visibility is important: small inserts in Mail & Guardian may achieve more than a single workshop on occasion. Must use carefully – policy dialogue is difficult using the media.

8. **"CSOs must be more activist** in orientation – understand their constituency. Reference was made to the fact that researchers "no longer write books... more executive summaries... knowledge management in a busy world".

The history of individual Members of Parliament was also important. CSOs need to understand who they are engaging, and be strategic in how they approach and conduct conversation with identified MPs. This has a marked effect on the outcome of such engagements.

...."KNOW YOUR LOBBY TARGETS".

9. A view from some officials in government departments is that CSOs undermine an elected Government. Many CSOs are viewed as "close to people", "but some have an agenda to undermine the State".

At a higher level there is NEDLAC, for business, labour, civil society to engage in public dialogue, but at a lower local level, there is nothing like that. There is a question about how councilors, and municipalities are currently engaging with communities, and possible opportunities for CSOs to develop local level means of oversight of local delivery.

SOCIAL DIALOGUE, 06 DECEMBER 2018 :

A Social Dialogue took place in December 2018, bringing together parliamentarians, CSO activists, and researchers. The research project findings and conclusions were presented, received very positive interest and feedback from participants. There was a general commitment to take the work forward, and for continued involvement by participants in the work of the project.

MAIN POINTS DISCUSSED IN THE SOCIAL DIALOGUE:

1. The experience of Executive oversight, base Constitutional values, Motlanthe High Level Panel Report, the closing off of Committee Meetings, and the conclusion that we have a "schizophrenic" Parliament. This reflects the unevenness referred to earlier in this report.

2. Protests, participation in portfolio committees, the standing committees, the contribution of the PMG in terms of information, relationships with Provincial Legislatures.

3. The need for budget information disaggregation – opportunity for CSOs. Information is not being shared equitably. CSOs must become more serious about participation, to support the drive to expand participation in Parliament. No mechanisms for participation in Provincial Legislatures.

4. Need for research (opportunity) about public participation: what is known? What is participation? Real versus discursive participation. Green Paper process. Include international research on this subject. Is participation delaying development?

FEEDBACK ON RESEARCH:

5. Agreement with deficiencies identified in the research on oversight.

6. Also, agreement with constraints of political governance discussed.

7. In terms of the Constituency System: real opportunity for greater accountability of political representation.

8. In NEDLAC, how do we evaluate public participation on socio-economic issues? Also, to what extent can we trust the political process?

9. Need for theorization of civil society.

10. Presentations referred to: research by SPII, panellists on Parliament and Oversight, Gauteng Legislature on Public Education.

CONCLUSION AND RECOMMENDATIONS:

The long-term impact of expanding the spaces available for engagement between CSOs, political parties and public institutions holds potential big gains, and there are many practical

There is a background of degradation of the State (referred to in Social Dialogue) and general weakening of accountability of Government, and the collapse of effective oversight over the last decade. There is also the story of the two main political projects (at least) within the governing party, and the emergence of the Unity Project, and the New Dawn. This presents a moment of reflection, and lots of opportunities for CSO progressives to make a contribution to strengthening democratic governance, and oversight in particular. And of course of CSOs themselves.

By expanding opportunities and spaces for engagement between civil society, political leaders and public institutions, it is, therefore, likely that political leaders and Government in general will have to account to a greater extent than has been the current practice over the last two decades.

The specific outcome that Praxis seeks to contribute is greater scrutiny of Government (the executive) at national level (Parliament and the NCOP), and one province (Gauteng). This project has identified the major issue relating to oversight, and how civil society can contribute to addressing it. An ongoing well-thought-out and detailed programme intervention based on the issues as outlined in this report should be extended beyond this pilot. The duration should be a period of some years in order to be effective. It is clear that this is a complex problem, that has to be addressed, and require determination, clarity of strategy and sustainable resourcing.

Figure 2. Praxis - Problem Identification (from Inception Report)
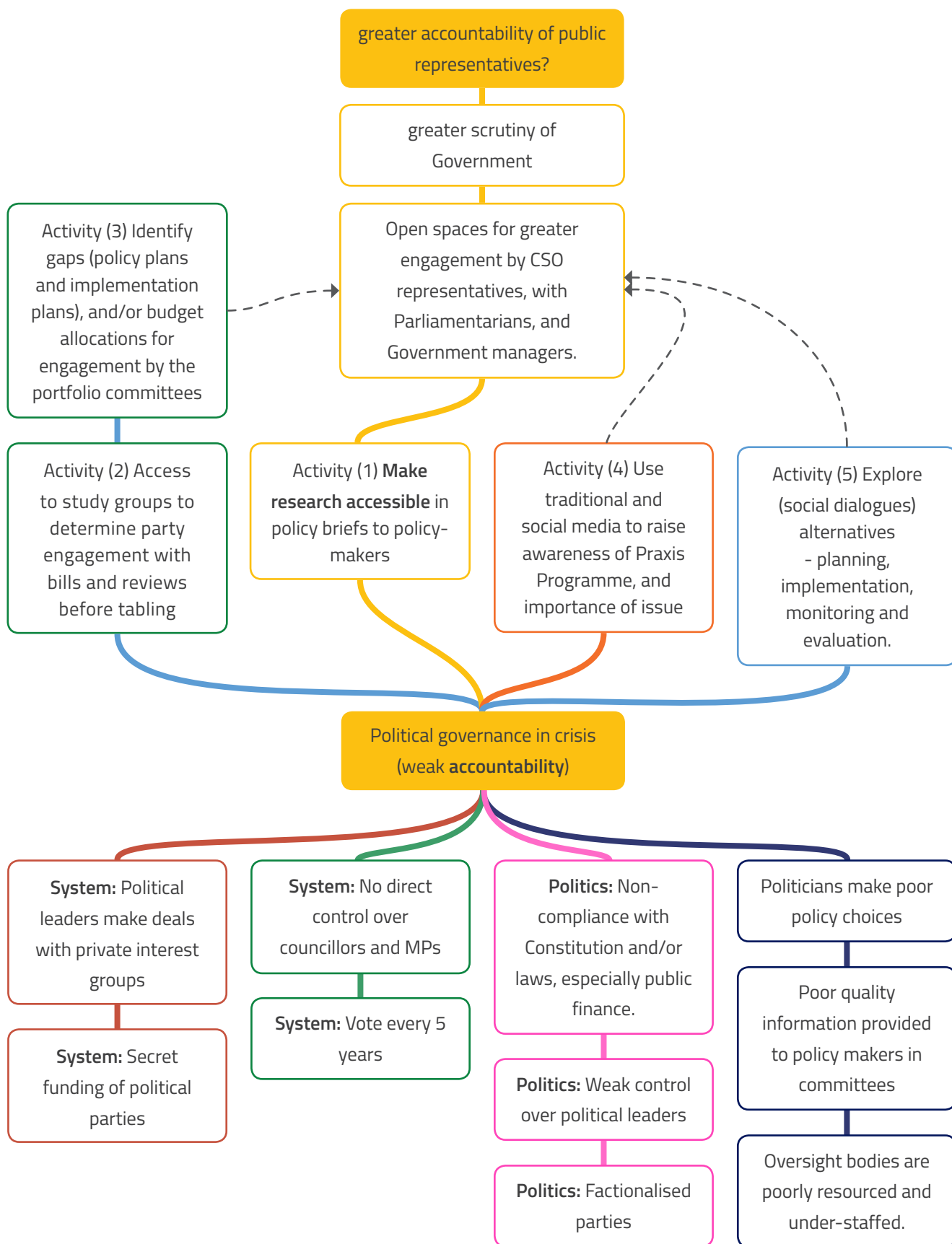
In conclusion, conceptually... Praxis has (1) identified a clearer idea of the problem, (2) identified views from key individual stakeholders, (3) established clearly how spaces can be opened for greater engagement with Parliamentarians and Government managers, (4) identified strategic options to explore further in the public sector, specifically with regard to planning, monitoring and evaluation.

REFERENCES AND ANNEX:

1. Malepane A (2016) Holding The Executive Accountable: Parliament As The Beacon Of Hope To The People. In: Journal of Public Administration and Development Alternatives Vol. 1 No.1 July 2016

2. https://www.marxists.org/glossary/index.htm

3. Springboard P (1984) Karl Marx on Democracy, Participation, Voting, and Equality in POLITICAL THEORY Vol12(4)1984 pp537-556

4. Parliament RSA (2009) Oversight and Accountability Model. Parliament RSA: Cape Town. Sourced from: http://www.parliament.gov.za

5. South African Legislative Sector (2012) Oversight and Accountability. SALS: Cape Town. Sourced from http://www.parliament.gov.za

6. Bond, P (2011) What is Radical, in Neoliberal-Nationalist South Africa? In: Review of Radical Political Economics XX(X) 1–7. Sage: London.

ANNEX: INFORMATION ON OVERSIGHT FROM SALS OVERSIGHT AND ACCOUNTABILITY MODEL

[41]**Vision of Parliament RSA as institution:** 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.*[42] Oversight is, therefore, one of two critical constitutional functions.

It is important to note too, that

"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."[43]

Parliament as institution, must be viewed contextually within the confines of the political landscape. There is clear recognition of this, that "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."[44]

As Parliament moved from a focus on law-making to drive transformation (itself also part of that process), it began to focus on "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

---

41   This section if reproduced from: Parliament RSA (2009) Oversight and Accountability Model. Parliament RSA: Cape Town. Sourced from: http://www.parliament.gov.za
42   Parliament RSA (2009:4)
43   Ibid
44   Ibid

demands capacity, competence and collective action."[45]

Parliament produced its first Oversight and Accountability Model in 2009, comprised of 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.

In terms of the mandates of Parliament, 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 scrutinizing 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.[46] 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 cooperative 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.

Parliamentary Concept 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.[47]

The concept is elaborated: 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. 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,

---

45   Ibid
46   Ibid, p.5
47   Parliament RSA (2009:6)

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.

FUNCTIONS OF OVERSIGHT:

- 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 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.

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.

Mechanisms of oversight and accountability:
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.[48] Current practices and oversight mechanisms include the committees of Parliament (with their associated practices) and plenary processes.

Committees effect oversight and accountability:
The mandates of the committees are provided for in the rules of each House and the Joint Rules.

---

48   Parliament RSA (2009:17)

Committees provide 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.

Page 18. 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. Committee 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.

- **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.

- **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.

PLENARY PROCESSES FOR EFFECTING OVERSIGHT AND ACCOUNTABILITY[49]:

- **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.

- **Member's 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:** 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

---

49   Parliament RSA (2009:20-21)

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.

Use of activities and reports from state institutions supporting constitutional democracy to enhance Parliament's oversight functions[50]: 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 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).

---

50   Ibid, p.22

OTHER STATUTORY INSTITUTIONS SUPPORTING DEMOCRACY[51]:

- Financial and Fiscal Commission (FFC)[52]
- National Youth Commission (NYC)[53]
- Pan South African Language Board (Pansalb)[54]
- Public Service Commission (PSC)[55]
- Independent Communications Authority of South Africa (Icasa)[56]

ORGANS OF STATE[57]:

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.

---

51   Ibid, p.22-24
52   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 per-form 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: (1) An equitable division of revenue raised nationally, amongst the national, provincial and local spheres of government; (2) The determination of the equitable share of each province when revenue is divided between the nine provinces; and (3) 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.
53   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.
54   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.
55   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.
56   The Independent Communications Authority of South Africa derives its mandate from several statutes: The Independent Communica-tions Authority of South Africa Act of 2005, the Independent Broadcasting Authority Act, the Broadcasting Act and the South African Telecommunications 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.
57   For legal definitions of organs of state in South Africa, see: Parliament RSA (2009:24-25)

TOOLS FOR OVERSIGHT AND ACCOUNTABILITY:

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) to the 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) o Performance contracts; Departmental compliance with parliamentary committee recommendations.

- **Category 3:** Budget Speech: Estimates of National Expenditure (ENE), 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; and 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.

- **Other[58]:** institutional mechanisms for reporting on matters that are transversal and allow for the House to adopt a cluster report. Reports and matters arising from the same delegations representing Parliament at regional 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. Further, the referral of matters arising from reports of international bodies to which Parliament is affiliated to committees. And, sectoral parliaments such as the Women's Parliament, Youth Parliament, People's Assembly and other such assemblies, amongst other mechanisms.

- Joint Parliamentary Oversight[59].
- Treaties, Conventions and Protocols[60].

---

58   Ibid, p.28-29
59   Ibid, p.29
60   Ibid, p.29

SPII

**STUDIES IN POVERTY AND
INEQUALITY INSTITUTE**

*Building up knowledge
to break down Poverty*

Studies in Poverty and Inequality Institute (SPII)

31 Quinn Street, Newtown
Johannesburg
South Africa
2000

Phone: + 27 11 833 0161
Fax: + 27 11 832 3085
www.spii.org.za

For a complete list of SPII's partners, please visit www.spii.org.za