



## **Overview of Fourth Parliament of South Africa 2009-2014**

2014 marks the twentieth year of democracy, and the end of the Fourth Parliament in South Africa. This overview highlights aspects of the work done by Parliament between 2009 and 2014. This is not intended to be a comprehensive analysis, but a broad sweep over some of the matters that occupied Parliament, consideration of whether it achieved selected objectives, and will offer some suggestions on the likely strategy of the incoming Fifth Parliament after the elections.

The main focus of the First and Second Parliament was to change apartheid legacy through the passing of hundreds of laws at rapid pace. During the Third Parliament there was more emphasis on broadening oversight and public participation. National Assembly Speaker Mr Max Sisulu, speaking at the combined 2009/10 budget vote for the new Fourth Parliament, said that the Fourth Parliament would focus on building on the legacy issues.

### **To what extent were legacy issues addressed?**

Not everything that is raised in one Parliament will necessarily be an ongoing matter to be pursued by the next. However, there were some matters that were said to warrant attention, but have not yet received it fully. Numerous issues were raised in the [Report of the Independent Panel Assessment](#) into the Second Parliament, which was presented to the Third Parliament on 13 January 2009. The Office for Institutions Supporting Democracy has been set up, although it is not without challenges. The Financial Management of Parliament Act, and the setting up of a Budget Office did eventually happen, and there were attempts to deal with the public participation framework, although it has now been deferred to the Fifth Parliament. However, Parliament has not really substantially improved its minuting of meetings, or a timely publication of Hansard (currently six months or more delay), nor dealt fully with the Code of Conduct and suggested constitutional amendments. Parliament has not yet considered alternatives to the electoral system (and in fact did not support a private member's bill that sought to do what the Independent Panel suggested about this). Gender tracking, monitoring international obligations, improvements to constituency work, improving quality of reports, and tracking executive responses have been only partly addressed. The Panel, several committees and the [Oversight Task Team](#) (in March 2008) said full assessments on the impact of legislation should be considered, yet only the Portfolio Committee on Trade and Industry appeared to have done that to date. During the unveiling of Nelson Mandela's bust in April 2014, the Speaker announced that Parliament will review the impact of legislation it has passed on ordinary people. This review would be interactive and the views of a wide range of South Africans will be engaged through various discussion forums.

More debate, and a decision, is still needed on the recommendations formulated in the Third Parliament of the ad hoc committee considering the position of the Chapter 9 institutions. Several pieces of legislation that directly affect vulnerable individuals – including legislation on sex workers, civil unions and Muslim marriages, updating of succession laws, and firm statements of both policy and laws around traditional leaders and their powers – remain unfinalised, with this Parliament perhaps not being stringent enough in insisting that they be presented by departments. Constitutional amendments highlighted as urgent by the Panel in Chapter 2 of its Report, still need to be monitored.

#### **Fourth Parliament policy imperatives**

The Fourth Parliament came into being just after the global financial crisis, which prompted the Speaker to note that individuals and the nation needed to think and act with “innovation and foresight” and with the “resolve to exercise greater responsibility in the use of financial and other resources”. Citing a call by the President for a robust and engaging Parliament, the Speaker urged the Fourth Parliament to assert its “rightful role as a key institution of democracy”, that would hold government accountable, ensure more effective and efficient service delivery for social and economic upliftment of citizens, and itself be accountable to all South Africans in ensuring that their needs were addressed. Later he added that Parliament could be activist and seize the opportunity to define a new role for itself in social mobilisation, to realise development goals and contribute to nation building. He also suggested that Parliament was ideally placed to lead the national dialogue on issues of national concern, because MPs can offer a diversity of experience, culture and views.

The Fourth Parliament’s policy imperatives for 2009-2014 differed little, except perhaps in emphasis, from those in the Third Parliament. They were set out as:

- strengthening the oversight function
- increasing public participation
- strengthening cooperative governance
- widening the role of Parliament in international relations
- building an effective, efficient and powerful institution of democracy.

Legislation was not mentioned as a priority. The Third Parliament passed 235 bills and the Fourth only 136, but many of the Fourth Parliament’s matters were lengthy, controversial, hotly debated, and a “rash” of legislation was finalised in the last few months, to criticism that much of it could be seen as an election ploy, without substantial time being given to proper deliberations. Have these policy imperatives been realised?

In order to get an overview of Parliament’s performance, it may be useful to look at these imperatives in more detail. It is, however, submitted that the policy of “building an effective, efficient and powerful institution of democracy” encompasses, in particular, points around oversight and public participation as well.

#### **> Widening the role of Parliament in international relations**

In his speech on the budget vote of Parliament for 2009/10, the Speaker suggested that the impact of this Parliament in building democracy *both* nationally and internationally must be considered, including whether Parliament meaningfully represented the view of the public on international matters. Its intervention could take various forms.

Firstly, Parliament should try to strengthen regional and international institutions, to help advance regional cooperation and consolidate the position of African countries on international issues. South Africa became a member of BRICS during this Parliament, and hosted a meeting of Trade Ministers ahead of the Fifth BRICS summit in 2013. The Department of Trade and Industry is exploring BRICS partnerships to support Africa’s development agenda and has worked on developing the Trade and Investment Cooperation Framework. Its commitment to participation was reaffirmed in every budget speech. In 2013, the Speaker noted that development challenges were becoming far more complex and cross-cutting, and said South Africa continued to call for major international institutions, such as the Bretton Woods Institutes, to be more representative, transparent and accountable.

Secondly, Parliament must continue to work with international parliamentary bodies such as the Inter-Parliamentary Union (IPU) to build closer and more effective relationships between the United Nations

and parliaments, in line with a call at the Millennium Conference of Presiding Officers for Parliaments and MPs to “assume increased responsibility in international relations, play a more active role at the national, regional and global levels, and generally reinforce parliamentary diplomacy”.

Parliament has been working with regional and continental parliamentary bodies, such as the SADC Parliamentary Forum and the Pan-African Parliament, hosted in Midrand for the last few years. It has apparently been trying to ensure that they get the political, material, financial and human resources to carry out their mandate. Although the South African Parliament continues to support the Pan African Parliament (PAP), with officials giving assistance in strategic and financial planning and management, information from the PAP is scanty and outdated and its administration is apparently still poor. Azapo at one stage expressed concern that although funding for sectoral parliaments had increased, reporting on their activities was lax. The South African Parliament also participates in programmes of the SADC Parliamentary Forum, including election observer and monitoring missions, although their adequacy has also been questioned. It has offered training in election monitoring for MPs in the SADC region, and has seconded a staff member specialising in gender policy and implementation to the SADC Parliamentary Forum, although cynics might suggest that gender mainstreaming has not yet been achieved by the South African Parliament.

Parliament successfully hosted the [Commonwealth Parliamentary Conference](#) in 2013.

The Third Parliament had already suggested that Parliament should take a more active role in the formation of international agreements and treaties. The Speaker repeated this call. However, several portfolio committees, in their legacy reports, have commented that this does not happen and have reiterated that instead of Parliament merely being required to ratify agreements (often presented years after signature), constant consultation is needed between Parliament and the Executive prior to and during negotiations on international agreements, including updates on when agreements finally come into force. Even the Portfolio Committee on International Relations does not appear to get consistent notification of agreements being considered. Section 231(1) of the Constitution says that negotiation and signing of all international agreements is an Executive responsibility, and that certain agreements of a “technical, administrative and executive nature” (those with no extra budgetary or financial implications) do not need approval, but must be tabled within a reasonable time. The Speaker conceded that this is an important aspect of oversight that had not received sufficient attention.

The Portfolio Committee on Agriculture, Forestry and Fisheries raised another point on international relations in its Legacy Report, repeating concerns of the Third Parliament that there was still a tendency for officials, even if they were not directly negotiating agreements, to notify the national department of their visits, leading to duplication and even inconsistency. The Portfolio Committee on Women, Children and People with Disabilities, during 2012 and 2013, raised concerns about the number of foreign conferences attended by departmental officials, at huge cost, and noted that reports on the conferences were not always conveyed back to Parliament. The Financial and Fiscal Commission suggested that real value-add *to citizens* of the extensive and expensive participation at international conferences by departments must be carefully assessed. The Oversight Task Team recommended that Parliament must monitor allocations and expenditure from overseas development aid given to South Africa. It seems that better policy and more stringent oversight by Parliament on all these points is needed.

The Oversight Task Team also suggested that a firm mechanism to oversee government compliance with international commitments and obligations must be entrenched in Parliament’s programme. Part-way through the Fourth Parliament many of the country reports required of South Africa had still not been prepared, and although combined country reports were finally lodged, there was insufficient time for Parliament to hold full public hearings on them, although it did engage with a few groups. It was said that Parliament needed to assess how international agreements impacted on domestic priorities, which in turn would require committees handling treaties with cross-cutting elements to confer. However, on the positive side, the Portfolio Committee on Women, Children and People with Disabilities commended the Speaker for his initiatives to call for departmental reports on child matters, after the relevant Report on the Rights of the Child was prepared.

The Speaker also suggested, in an address to the Inter-Parliamentary Union (IPU), that parliaments, as agents of change and progress, must use their legislative, oversight and budgetary responsibilities to strive for the Millennium Development Goals. These goals received quite substantial focus in this

Parliament, and it is hoped that the impetus will continue. In addition to focusing on social development issues, the Speaker highlighted that Parliament should be pushing for trade and economic reform because the architecture of the current international finance and trade systems remained “unequal and unjust”.

Another aspect of international relations is Parliament’s interaction with others on global issues. The Speaker’s Forum holds consultative seminars with provincial governments, and other countries, and in March 2013 Parliament also hosted a successful International Consultative Seminar, between South African and European Union legislatures, to share perspectives and best practices and build upon partnerships. The hosting in Durban of the COP17 Conference of Parties was significant, as were the subsequent parliamentary seminars to foster understanding of sustainable development issues.

In 2011, the Speaker outlined that the International Relations section of Parliament had been elevated to a division, and more staff were recruited. He was concerned that the Parliamentary Group on International Relations (PGIR), which was supposed to advise Parliament on international affairs, was not carrying out its duties properly, largely because of poor attendance of meetings and the failure to form a quorum. This seems to require more stringent oversight.

It is difficult to assess the exact contribution of the Portfolio Committee on International Relations. This Portfolio Committee seems mostly to hear factual briefings on particular political situations, (with a fairly narrow focus) but does not really interrogate government policies or their implementation. Its meetings are open to the public, but it rarely holds public hearings as such, or deals with legislation. It has, for instance, not held joint meetings with the Portfolio Committee on Defence about South African involvement into missions on the Continent, despite criticism from MPs that it is difficult to obtain answers on this.

#### **> Strengthening cooperative governance**

The Speakers’ Forum, comprising the Presiding Officers of the National Parliament and all Speakers from the provincial legislatures, strives to promote coherence, cooperation and interdependence between national and provincial legislative levels. It meets quarterly to give guidance on core mandates of governance, financial management and members’ interests. It thus fulfils an important function, although perhaps not enough prominence is given to its work.

During 2010, the portfolios of the House Chairpersons of the NCOP were expanded, to create a new portfolio on cooperative governance and intergovernmental relations, which was intended to discuss with provinces how performance could be improved, and to develop protocols on relationships between different spheres of government and organs of state. Improving cooperative governance is also one of the Millennium Development Goals.

The Portfolio Committee on Energy’s legacy report expressed the view that cooperative government had not been “fully activated” as a strategic goal, although it commented that there were visible working relations with South African Local Government Association (SALGA). On the other hand, the Select Committee on Appropriations has frequently questioned whether SALGA is achieving as much as it could, and whether it is using every opportunity to participate in the NCOP.

Committees in the Fourth Parliament repeated prior concerns that national, provincial and local departments still fail to align their activities, acting “in silos”. However, in the broadest sense of the word, Parliament tends to do the same. Although joint meetings between the NA and NCOP are possible, they are rarely held, other than by the four Standing and Select Committees dealing with finance and appropriations. A joint sitting of the NA and NCOP was held in June 2013, in the lead up to the passing of the Restitution of Land Rights Amendment Bill, but this may have been prompted by the very tight time limits. The excuse of logistical problems is proffered, but it is notable that many formally constituted joint committees do manage to meet quite effectively and frequently. The Joint Task Team on the Legislative Process in Parliament ([the Legislative Task Team](#)), in a report tabled on 25 October 2013, suggested that houses should synchronise public participation hearings on bills, to avoid duplication, and it is suggested that the same could usefully be applied to broad-based briefings on, for instance, government spending, audit performance or even annual reports, so that committees could then have sufficient time in their individual meetings for questions. Committees

could also make more use of the opportunity to call in more than one department where there are cross-cutting issues, or disputes on responsibilities (such as grants, leases, or infrastructure problems). The Portfolio Committee on Agriculture specifically wants the Fifth Parliament to question Land Bank, which does not report to this committee, because it finances the agricultural sector, and there have been questions raised, but not answered, in the Fourth Parliament, about the relationship between mining and water licences.

The NCOP, which straddles all three spheres of government, and is thus central to inter-governmental relations, oversaw two interventions in terms of section 100 of the Constitution, into provincial departments in distress, and 32 in terms of section 139, which empowers provincial legislatures to intervene in a municipality. The Select Committee on Finance complained in 2013 that the same problems were raised continually throughout the Fourth Parliament. It was concerned that the limited success in municipal interventions was due to the fact that interventions were made only when the situation was already dire, and wondered why the Department of Cooperative Governance (overseen by another portfolio committee) was not addressing the real problems. Conflicting interpretations of section 139(1) were problematic, yet no amendments were forthcoming yet. NCOP Chairperson Mr Mninwa Mahlangu also said in 2013 that Parliament needed to strengthen its implementation of section 154(1) of the Constitution, to require national and provincial governments to support and strengthen municipalities.

Another difficulty around interpretation of provincial and national mandates came to the fore in 2013, when the tagging of several bills by the Joint Tagging Mechanism was called in question. The Legislative Task Team said that the main problem lay in interpretation of Schedule 4 functional areas and interpretation on concurrent provincial and national competence, and that amendments to the Joint Rules, alternatively a Constitutional amendment, would be required.

#### **> Building an efficient, effective and powerful institution of democracy**

Enhancing the efficiency of Parliament as an institution was one of the issues raised in the Independent Panel Report on the working of the second Parliament. The Speaker, in his 2009/10 Parliamentary budget speech, alluded to the “ambitious and unenviable task” of addressing the need for adequate infrastructure and space in Parliament’s buildings, in order to facilitate more public participation, to be tackled by the multi-party Parliamentary Oversight Authority. Two years later, it was noted that the Department of Public Works had demolished buildings on two sites to make way for new offices and committee rooms, which hopefully may be completed in the Fifth Parliament. The Speaker also mentioned, but did not expand on, the need to modernise Parliament to adapt to new needs and realities. It is true that some venues are user-friendly and well-equipped, but equally unfortunate that in other venues, even those supposedly refurbished, the most basic tasks, such as installing functioning electrical sockets or microphones or effective obvious repairs to equipment, remain undone. Several venues are without microphones, have unsuitable furniture that allows for no movement, or flimsy partitions that are not sound-proof.

The Speaker announced the launch of the *Parliament of South Africa* app in October 2013 which introduced an electronic system to simplify and ensure consistency in the process of drafting, and allow for amendments to bills to be made available to MPs and the public “in real time”. It is hoped that this will be updated more effectively than the Parliament website, which by mid-April 2014, still did not reflect bills passed in March.

Positive moves during this Parliament to improve efficiency must also be acknowledged. The Independent Panel’s recommendation to establish an Office of Institutions Supporting Democracy has finally been implemented, and hopefully its current challenges in funding and access to the right structures will be addressed. Chapter 9 institutions, whilst appreciating this initiative, have however still commented that Parliament itself must give more substantial and serious consideration to their reports, and have called for recommendations from the Third Parliament’s ad hoc committee to be fully considered.

In 2011 the Speaker announced that the functions of the legislation and oversight division, as well as language services, were to be re-organised, to give more dedicated support to committees. Although there were delays in appointments, there has been budget allocated. The Legislative Task Team in 2013, urged again that sufficient capacity must be given to the languages unit.

Another recommendation from the Independent Panel Assessment was the establishment of the Parliamentary Budget Office (enumerated in more detail later). Mr Mohammed Jahed was appointed as the director in June 2013. This Office has given only a few briefings to Parliament, and will initially be focusing on providing objective research, advice and technical support to the Standing Committees on Finance and Appropriations, although the Act envisages this being extended to other committees also.

The Financial Management of Parliament Act, passed in the Third Parliament, is also significant for the functioning of Parliament, as it sets out responsibilities for the executive authority, accounting officer, and all officials who have delegated authority to manage finances in Parliament. Further Amendments to the Financial Management of Parliament Act were passed in 2014, to allow the executive authority to be part of the oversight committee, provided that there would not be any conflict of interest. Notification has to be given to the executive authority and to the oversight mechanism of any unauthorised, irregular, fruitless and wasteful expenditure. The executive authority is required by clause 7 of the amendment Bill to investigate promptly any allegation of financial misconduct.

The Speaker emphasised in his 2009/10 budget speech that greater fiscal responsibilities and accountability would be enforced during the Fourth Parliament, called upon Parliament to make transparent, efficient and effective use of the budget, and requested MPs to be “responsible and frugal” in their request for resources.

Has this call been heeded? There was recently an outcry over a proposal that MPs be entitled to free flights after their retirement, and the Minister of Finance has repeatedly made calls for better and less extravagant use of public funding. However, Ministers, and also MPs – because they can – feel entitled to use unnecessarily expensive rental cars or accommodation, whilst at the same time calling others to account. The Ministerial Handbook has been criticised for lack of clarity, some of it does not emphasise “frugality”, and this Parliament has not emulated the example of Malawi, where there has been severe constraint placed on ministerial spending. Furthermore, when interrogating departments, committees are not consistent – some have questioned why glossy, full colour annual reports are not tabled, whilst others question the costs when they are. Some insist that full management teams and boards attend Parliament, whilst others criticise the size of delegations. Several officials, after a brief flirtation with flying economy class, admitted to reverting to business class as soon as Parliament was no longer focusing on this point. There is little doubt that one of the biggest expenses to Parliament is the cost of flying government officials to appear before it. One NCOP MP asserted, quite correctly, during the latest national budget hearings, that video-conferencing would make perfect sense, but raised more than a few eyebrows when he noted that Provincial Treasury in his province had expressed its opposition to being party to such a conference!

A potential problem to the efficiency of Parliament was raised in the Rules Committee recently, when the Chairperson noted that although the Joint Standing Committee on Intelligence was obliged to report annually to Parliament, it had in fact not done so between 2004 and 2013, because, as a matter of practice, it would allow the President and Executive to approve the reports before they were presented to Parliament to ensure that the report would not jeopardise national security. Delays in this process led to Parliament not being kept informed. It was decided that in future this committee should give an ultimatum by which the report must be submitted to Parliament.

In his 2012/13 budget speech, the Speaker said Parliament had established a committee to work on concrete proposals for how it would reduce its carbon footprint, which should link to curbing unnecessary expenditure and enhancing use of electronic resources. He also highlighted improvements to the Parliament library during 2013, to make more content available digitally to MPs, and urged MPs to make use of this resource, saying that “there simply are no more excuses” for them not having information.

The Speaker’s first budget speech for the Fourth Parliament noted that the total allocation to the Third Parliament had represented less than 1% of the annual national budget. This has been raised proportionately in the Fourth Parliament – by 2013 Parliament was receiving over 2%, at R1.87 billion. Parliament spent 94% of its budget in the 2009/10 financial year, although the Speaker was critical of underspending by the committees – the “engine rooms” of Parliament - in their first year, due to too much focus on planning rather than substantial work, as well as delays in the filling research and language unit posts. This did improve in the later years.

Although Parliament managed to obtain unqualified audit reports, matters of emphasis were raised in 2010/11 relating to the basis of accounting used, and expenditure management. The Presiding Officers were quick to implement programmes to improve the financial management, and these resulted in the 115 audit findings in that year being reduced to under 10 in the following year. Parliament is consistently working on improving its financial control systems and overall financial management.

The financial statements of Parliament are subject to audit, and are reported in Parliament's Annual Report. The multi-party Budget Forum interrogates the budget but all that is generally reported in the ATC is that it has recommended adoption of the budget, in terms of the Financial Management of Parliament Act. Questions have been asked in the past whether it is correct in principle that MPs should be able to essentially approve their own financing.

The Speaker, amplifying on the policy imperative of "an effective and efficient institution" in 2011, said that he regarded this as including "good governance, a high standard of professional ethics, and efficient use of scarce resources." MPs in the Fourth Parliament, when questioned on their actions or parliamentary spending, invariably echoed every other previous Parliament by pointing to the useful truth that they might not be doing anything that the rules or policies do not allow. However, the question can be asked if this pursues both the letter and the spirit of "efficient use of scarce resources", and whether it sits well with the Speaker's call for an "activist" Parliament? Do the relatively large amounts voted to Parliament for catering or car hire add more value to its already well-paid MPs than they would if put instead to scholar feeding or transport?

It was said in 2010 that most Committees had embarked on strategic planning processes, although the Select Committee on Appropriations pointed out that some, including its own, never actually formally adopted the strategic plans, and that although the planning was done in January or February, no budget was allocated until April, which created an immediate mismatch. The Select Committee on Security and Constitutional Development complained in its legacy report that continual changes to the parliamentary programme often disrupted its planned oversight visits, and recommended that consistent programmes be drawn and followed.

Many committees made suggestions in their Legacy Reports about how committee functioning could be improved. The Portfolio Committee on Water and Environmental Affairs suggested that Parliament should take a thematic approach. In order to measure the impact of programmes, policy, legislation and implementation, Parliament should look at broad concepts such as macro-economics and social policy, democratisation and social policy, health care, global and local dynamics, and gender and social policy. Following up on cooperative governance, this Committee also suggested that there should be joint engagement on drafting programmes around these themes, with areas of overlap identified. In the Fourth Parliament, only the Portfolio Committees on Energy and Women, Children and People with Disabilities, adopted a thematic approach. This concept may be workable for some, but might perhaps not be useful for those facing a heavy legislative programme. Others identified several broad themes in their own areas, for the next Parliament to take forward. The Portfolio Committee on Basic Education suggested the need to "systematise Committee business processes, such as develop and implement a Management Information System (MIS)" – a call first made several years back.

The Portfolio Committees on Communications and on Basic Education, amongst others, complained that the "one size fits all" budgetary allocations to committees fail to take account the disparate work done by those committees, and the specifics of the sectors, whilst others also complained about finances not being made available for study tours. The Oversight Task Team already recommended in 2008, in line with Inter-Parliamentary Union suggestions, that Parliament should make special allocations to develop specialisation of committees dealing with cross-cutting issues. Study tours are of undoubted benefit to Parliament, provided the topics are well-chosen and reports are tabled.

The Select Committee on Security and Constitutional Development and the Portfolio Committee on Environmental Affairs complained that they simply did not have the resources or time to take full briefings from all the departments and entities that they oversaw, and hoped that there would be a re-think about the allocation of work, to allow for meaningful oversight. Committees spend much time taking briefings, which often repeat written information in presentation documents, leaving insufficient time for questions and response to these questions. Despite complaints about late filing of briefing documents, only a few committees, including those on Higher Education, on Women, Children and

People with Disabilities, Transport, and the Select Committee on Land and Environmental Affairs, have actually dismissed departments for not supplying their briefing documents well in time, prior to meetings, so that MPs can prepare.

The budget allocation for oversight trips by committees was increased in 2011, by around 11%, in recognition of the importance of such visits. Not all committees manage to conduct the same number of visits, depending on their sector and other programme priorities. Some have carried out vigorous and extensive oversight visits to various areas, even splitting into sub-committees. Others with heavy legislative programmes rarely manage to undertake formal oversight visits, although individual members do visit institutions in their constituencies. Detailed oversight reports can provide a powerful back-up to later interrogation of departments.

In general, fewer committees have complained about lack of support in the Fourth Parliament than in the Third. Almost all committees are staffed with a committee assistant, committee secretary, researcher and content advisor, although perhaps the latter roles need to be clarified as it appears there is some duplication. As with any other large institution, the individuals assigned, the strength of the Chairperson, and the oversight provided by the Committee Section will all impact on efficiency.

The effectiveness of an institution can be looked at from a number of angles, bearing in mind that efficiency and effectiveness do not always go hand-in-hand. Effectiveness can be examined in the context of the institution as a whole, its plenary sessions, the work of committees, the performance of MPs individually and collectively, and linked structures, such as constituency offices.

#### *Effectiveness of the institution in complying with policies*

The institution of Parliament, via the political parties, seems to be doing generally quite well in complying with gender representation of MPs, with 44.8% women members of the NA, and 34% women in the NCOP, as at 1 February 2014, according to figures from the International Parliamentary Unit. There was an anomaly in 2012/13, when the Select Committee for Security and Constitutional Development did not have a single female Member, despite being seized with the Traditional Courts Bill which impacted heavily on women. It is clear that a lot has been done to provide support and improve access for disabled MPs represented in the legislature. At the time of writing, we were not able to establish how many disabled people are employed by Parliament and if it has met the 2% target set for the public service.

Parliament was urged, by the Chairperson of the Standing Committee on Public Accounts, Mr Themba Godi, to set a good example for departments that it oversees, by reducing its use of consultants, which was attributed to unfilled vacancies (another matter on which departments are questioned), by filling its vacancies speedily and effectively, and being mindful of requirements to pay all its own service providers within 30 days.

#### *Effective processes in plenaries*

The Speaker made some strong remarks about proceedings in the National Assembly House, in his budget speech on 11 June 2013. In the previous year there had been a number of challenges to the rulings of Presiding Officers, not only in the House itself, but also by way of court applications.

In the matter of *Lekota v The Speaker*, the COPE leader challenged the Deputy Speaker for asking him to leave a sitting of the House after he had refused to apologise for accusing President Jacob Zuma of violating his oath of office by not protecting the rights of artist Brett Murray and City Press editor Ferial Haffajee. In that matter, the Court ruled that the task of controlling debates should be left to the presiding officers, unless there had been clear evidence of a constitutional irregularity.

The case of *Mazibuko v The Speaker* arose from the request from eight opposition parties that a motion of no confidence be debated by Parliament against the President, citing a number of specific issues, including mounting disrespect for the Constitution and the judiciary, and the "uncontrollable and rising tide" of corruption in the public service. The ANC majority in Parliament initially opposed any debate, saying that the motion was "frivolous". The opposition then sought an urgent order in the Western Cape High Court that the motion be debated before Parliament rose. The ANC then conceded that it was possible to do so, but disputed that the matter was urgent. The Western Cape High Court agreed that any party should have the right to table and deal with motions of no



confidence, but asserted that the Court had no power to grant a *mandamus* as requested, because a lacuna in the Rules meant that the Speaker did not have the power to do as the opposition requested. The High Court felt that the power to decide whether Parliament had failed to fulfil a constitutional obligation was vested with the Constitutional Court. The Constitutional Court, on appeal, confirmed that it was not possible to issue the *mandamus* against the Speaker, and also agreed with the High Court that there was no mechanism in the current Parliamentary Rules to deal with a deadlock caused by lack of consensus or by a majority decision that refused to entertain a motion of no confidence. The (then) ANC Chief Whip asserted that the rules were adequate, and said that if there was no political agreement to schedule a motion of no confidence, that must be the end of the matter. The Court disagreed, saying that this implied that the decision to schedule a motion and the time for its debate were both “within the gift of (usually) the majority party”, and agreed with the High Court that the constitutional entitlement to move a motion no confidence could not be left to “the whim” of the majority or minority in any committee. The Court ruled that to the extent that the Rules failed to protect or advance the rights of applicants in relation to scheduling, debating and voting on a motion of no confidence, they were inconsistent with section 102(2) of the Constitution and invalid. The Court had asked for a report on progress in amending the Rules, but commented that the reasons set out there for failure to reach agreement on the draft rules was “somewhat obscure” but not surprising, and it was improbable that the lacuna would be corrected. The Rules regulating the business of the Programme Committee were declared invalid, with that declaration being suspended for six months to allow the NA to remedy the defect. The Speaker urged MPs to use the ongoing review of the Parliamentary Rules to address the shortcomings. The process has not been finalised in the Fourth Parliament, although it has gone quite far, and will need to continue in the Fifth Parliament.

It is, however, also notable that questionable moves by Parliament itself were not brought up. In 2013, the Select Committee on Justice and Constitutional Development would not take provincial mandates on the Traditional Courts Bill, but insisted upon “further consultation”, when it became apparent that this Bill would not be supported by the majority of provinces. Whilst some committees were quite insistent that once a Bill was before Parliament, it was not the function of any department to comment or suggest insertions, it was apparently, particularly during the process of the NCOP’s ad hoc Committee on the Protection of State Information Bill, that the Ministry of State Security questioned the consensus already reached by parties on some issues.

#### *Effective and relevant debates in the House*

The Speaker stressed, during an address to the Inter-Parliamentary Union in 2011, that Parliaments had to remain relevant. Whilst this did not imply that every topic raised in the media had to be debated, Parliament should discuss subjects of immediate import. In the 2012/13 budget speech, he announced that he had decided to allow Parliament time for debates on issues of national importance (as recommended by the Independent Panel Assessment). Parties agreed to re-introduce a rotation system to allow them to cite issues that should be debated. In a positive move, the Speaker decided that the speaking time of smaller parties was also increased from one to three minutes, to afford more time for meaningful contribution by MPs.

During the Fourth Parliament, there were 21 such debates, proposed by a range of the parties and covering issues as diverse as the safety and security of women and children, a ministerial briefing on the current status of HIV/AIDS and tuberculosis, the use of the South African Air Force base Waterkloof by the Gupta family, the centenary of the 1913 Natives Land Act, the deaths following initiation ceremonies, and the relevance of the National Key Points Act in a democratic South Africa.

A recent decision of the NA Programme Committee (which is supposed to operate by consensus) appears to be diametrically at odds with the claim of more transparency in debate, when it refused requests to permit a debate on the Financial Services Laws Amendment Bill at the end of October 2013, despite the fact that an opposition party’s views had not been noted in the Committee Report. Opposition parties expressed a fear that this might establish a precedent where the majority party would be able actually to stifle debate on legislation in the House.

Despite the fact that the parliamentary media coverage quotes time spent in plenary sessions, this is not necessarily an indicator of effectiveness, and the standard of debate, perhaps more relevant, is still criticised as remaining relatively poor

### *Committees in the Fourth Parliament*

Several new committees were set up in the Fourth Parliament, to exercise oversight over the new or restructured departments, including the Portfolio and Select Committees on Women, Children and People with Disabilities, and on Economic Development. The committees dealing with agriculture, education, water, environmental affairs, tourism, minerals and energy were reconfigured and their oversight portfolios altered, in line with changes in departments' structures. The Multi-Party Women's Caucus re-commenced sitting in 2011. New Standing and Select Committees on Finance and Appropriations were created, pursuant to the new Money Bills Amendment Procedure and Related Matters Act, with the Standing Committee on Finance also assuming an oversight function over the Department of Performance Monitoring and Evaluation and the National Youth Development Agency. Finally, very late, but at last complying with a recommendation from the Independent Panel Assessment (which itself had referred to a 2002 proposal), the Interim Joint Committee on Scrutiny of Delegated Legislation was established, by resolution of both houses of Parliament in June and September 2011. However, its structure is not yet in line with the recommendation of the Independent Panel Assessment and the Committee itself has called for finalisation of its constitutional mandate and any necessary Rules amendments.

Meetings of the Joint Standing Committee on Intelligence remain routinely closed; it is not known whether consideration is given, at each meeting, to whether closure to the public is "reasonable and justifiable to do so in an open and democratic society" (Section 59 of the Constitution), depending on what precisely is to be discussed.

As a result of the court application brought by IFP MP Dr Mario Oriani-Ambrosini, in October 2012, the Committee on Private Members' Legislative Proposals and Special Petitions lost its function of considering private members' bills, and has not functioned since 10 October 2012. Private Members' bills are now referred by the Speaker directly to portfolio committees.

Several ad hoc committees were convened during the Fourth Parliament, with the last being the ad hoc committee to consider the Public Protector's report into Nkandla upgrades. It met only twice before a majority decision was taken to end it and ask that the Fifth Parliament "consider the matters", with no specific findings or recommendations.

One committee that has not been formed, despite ongoing requests from the IFP, is an oversight committee over the Presidency. IFP leader Prince Mangosuthu Buthelezi makes the point that the Presidency's budget is presented without MPs really having the opportunity to interrogate where, how, and what amounts are spent. Attempts by the opposition to introduce tighter accountability and control over the appointment processes of the President (stressing that this does not mean "the current President"), and regulation of his/her family interests, by way of private members' bills, were defeated in this Parliament.

The Oversight Task Team, supported by an IPU study into best practice in other jurisdictions, recommended the establishment of a Joint Parliamentary Oversight and Government Assurance Committee, with a primary mandate to deal with transversal issues, to pursue and monitor implementation of any assurances, undertakings or commitments given by Ministers in the House. One of the main weaknesses with the Arms Deal investigation was that it was split over multiple committees. This has also not been established.

### *Budget oversight: Money Bills Amendment Procedure and Related Matters Act*

Section 77 of the Constitution gives powers to Parliament to amend money bills, and in order to give effect to this, the Money Bills Amendment Procedure and Related Matters Act was promulgated in April 2009. The Speaker noted that this new Act could lay the foundations for an "activist Parliament", because Parliament was empowered now to make adjustments to allocations of specific programmes or overall national departments' budgets. He said the need for close consultation and interaction implied a further refinement of the relationship between Parliament's representative and legislative function, and the Executive's service delivery obligations.

Public hearings on the budget are now held by the Standing and Select Committees on Finance and Appropriations, in joint sessions, although the time frames are (deliberately) quite tight. These committees report to the Houses, which then debate and adopt the fiscal framework, as opposed to it

merely being tabled. Since 2010, portfolio committees have also been required to prepare Budgetary Review and Recommendation Reports (BRRRs), which should be critical to the engagement on the budget for the following year, as the Minister of Finance must respond to recommendations in those Reports when tabling the following budget.

Challenges identified with the time frames for the Budgetary Review and Recommendation Reports perhaps limited the usefulness of this procedure when it was first implemented in 2010 and there was initially very little input for change to the Appropriations Committee, although it was recognised that changes would need to be quite specifically motivated. Amendments to time frames were then proposed and implemented. Committees are submitting the reports as required. The Parliamentary Budget Office, which is supposed to provide expert technical analysis and information about fiscal matters to MPs to enable them to carry out their new roles under the Money Bills Act, was set up only in June 2013, has given only a couple of briefings, and its precise terms of reference and working relationships with committees are yet to be settled. Ms Tania Ajam, an economist with the Financial and Fiscal Commission, said, during an address to the People's Power, People's Parliament [Conference](#) that the usefulness of this mechanism was proscribed because parliamentary committees were still too reliant on information given by departments rather than independent sources, and such reports only described, rather than analysed, the allocations, without measuring their effect. The team working on the oversight and accountability model had also suggested that public input must be obtained and fed into committees. Some have called upon commentators to contribute to budget discussions, but others not, and it will be interesting to track to what extent committees will use their new powers to amend budgets, although some have requested larger allocations for Chapter 9 institutions or entities. The Portfolio Committee on Energy, in its Legacy Report, expressed the

opinion that the budget review process had not yet been optimised, but did not expand on this.

The Speaker said that training on the Act had been a focus as early as 2011, yet the Select Committee on Finance, in its Legacy Report of March 2014, emphasised that more training was still required to develop capacity for MPs and staff to exercise their tasks effectively, and particularly to enhance MPs' understanding of budget processes and legislative frameworks. This suggestion was obviously based on an identification of shortcomings, but Parliament spends large amounts of time and money on induction courses, training and repeats of that training prior to every Budgetary Review and Recommendation process, and both the Auditor-General and Financial and Fiscal Commission give clear and extensive presentations on budget processes. Perhaps there is a need to test whether MPs are effectively assimilating the training. It is hoped that the National School of Government as anticipated in the Public Administration Management Bill, may address the shortcomings.

Another challenge identified by some committees was the failure of departments to heed the recommendations made by them. However, it is surely up to such committees, if they are to be truly effective, to develop effective mechanisms to track, either through specific questions or better time management, the compliance of departments and ministers.

The Speaker also correctly identified that the budget is a tool to achieving the country's goals and the scrutiny of budgets and spending should not be relegated to a once-off activity, but should be an ongoing exercise. Despite this, many committees still do not insist upon presentation of quarterly reports, despite the Auditor-General's assertion that presentation and interrogation of quarterly reports can isolate and permit correction of errors at an early stage. In October 2012, the Standing Committee on Finance expressed its concern that it was expected to comment on the Mid-Term Budget Policy Statement and consider adjustments to allocations before getting the second-quarter spending reports, and said this must be revised for the future.

The Auditor-General South Africa (AGSA) and National and Provincial Treasury have shown a much stronger presence in Parliament over the last few years, offering clear briefings and advice to committees. It is apparent that AGSA is building much stronger visibility and regular interaction with departments. Most departments, as identified by National Treasury and the Research Unit in Parliament, still reflect similar – often repeated – audit findings in their annual reports, such as failure to report against predetermined objectives, non-compliance with laws and regulations, and internal control, financial management and leadership deficiencies. Only by strict and effective oversight will Parliament be on the road to becoming truly effective.

## > Strengthening the oversight function

The question may be asked: what does “effective oversight” entail? In 2009, the Third Parliament had already identified gaps in oversight capacity, and adopted an Oversight and Accountability Model. The Fourth Parliament was asked to develop a framework and processes for its implementation. One of the priorities was to set up processes to improve oversight, performance and functioning of committees, including dedicated capacity for enhanced content support, and skills development programmes for MPs. A former Secretary of Parliament led this process. An oversight unit was formally established in 2011/12, and the [Oversight and Accountability Model](#) was formally launched in book form, together with a procedural guide handbook for committees, early in that year. The NCOP introduced Oversight Week, specifically to follow up on matters emanating from the ‘Taking Parliament to the People’ and Provincial Week programmes.

The Speaker stressed, both in his first Budget Speech of 2009/10 and in his 2011 address to the Inter-Parliamentary Union, that the willingness of an Executive to subject itself to the oversight of Parliament could be seen as confirmation that Parliament gave democratic integrity to actions and decisions of the Executive. The main reason for parliamentary oversight was not to try to find faults, but rather to focus on proactively examining and seeking solutions to ensure that the Bill of rights and most important development commitments would be reflected in policies and national budgets.

Such “willingness” on the part of the executive is the first problem. A few examples in the Fourth Parliament come to mind. The (then) Chief Whip of the ANC asserted in March 2010 that the ruling party gave uncompromising support to the concept of the executive accounting to all parliamentary committees “including SCOPA”, yet later accused SCOPA (after the Minister of Defence was called to appear before it, precisely because departmental officials were not providing answers) of wanting to “parade and embarrass Ministers”, whose primary responsibilities were to “run the country” rather than subject themselves to oversight. There was in this instance essentially a misunderstanding on timing between the Minister and SCOPA, but the defensive attitude displayed when she was requested to appear did not resonate well as “uncompromising support” for Parliament’s role. The same Minister also refused access to reports that the Portfolio Committee maintained were necessary for deliberating on the Defence Amendment Bill. The Speaker ended up reprimanding that committee and the Committee Chairperson was soon dismissed.

The Oversight and Accountability Model stressed that it was vital for both committees and individual MPs to actively exercise their oversight role, with the latter to understand the rationale behind accountability of government, and the political will to use existing mechanisms and tools effectively. However, many MPs seem to display undue deference to ministers who hold a higher political rank, instead of actively asserting Parliament’s upper hand in the passing of legislation and accountability. The [publication](#) “Building Representative Democracy” (by Christina and Lia Nijzink, University of Cape Town 2002 – referred to as “the UCT report”) says that many legislatures following the Westminster tradition have often proved weak in ensuring that government does remain accountable between elections, as the majority of the legislature tend to interpret their role as simply sustaining government and supporting its initiatives. Loyalty to the ruling party – and maintaining their position on the party lists, which several have freely admitted - detracts from holding government strictly to account. Even worse, the current system for all parties does not allow MPs to vote according to conscience, meaning that even those with the highest ethical standards may not be able to force the same in others. ANC MPs were threatened with disciplinary action for their unwillingness to vote in favour of the highly-disputed Protection of State Information Bill.

The Model suggested that a specific procedure should be adopted for executive compliance. It was further recommended that Parliament develop the legislation relating to oversight, to encompass committees such as the Joint Standing Committee on Intelligence, with suggestions being made later also on the Joint Standing Committee on Defence, which are currently regulated by the rules, and which routinely hold closed meetings, apparently not considering in each case whether this is, as the Constitution requires, “justifiable and reasonable in an open and democratic society”, particularly one that claims to be promoting transparency.

Stressing that at the core of the oversight function was *the protection of rights and liberties of citizens*, the Task Team went further to note that matters that Parliament should be detecting and preventing included abuse, arbitrary behaviour or illegal conduct by government and public agencies, holding government to account, particularly for waste, ensuring that policies were implemented and service

delivery takes place, improving transparency of government operations and enhancing public trust. Integrity of public governance should be enhanced in order to safeguard government against corruption, nepotism, abuse of power and other inappropriate behaviour, and the public should be placed in a position to be able to judge the performance of government. It is submitted that the effectiveness of the Fourth Parliament in achieving democracy may well be judged on whether these high ideals have been realised in the many controversial deals and bills during the Fourth Parliament.

#### *Oversight through Written and Oral Questions to the Executive*

MPs' Questions to Ministers is an important aspect of oversight. The most obvious immediate benefit is promoting transparency and public trust, quite apart from what the content of the reply reveals. However, both the Speaker of the NA and Chairperson of the NCOP described them as a "challenge", because of the sub-standard quality of questions and replies, non-availability of ministers to respond to matters raised during Members' statements, and the length of time taken to reply. The Speaker wrote to several ministers in 2012 reminding them of their constitutional obligations, achieving only a marginal improvement, and then specifically asked the Rules Committee to consider how the rules might be amended to improve the process. The Leader of Government Business was also asked to address the backlog of outstanding questions. Written questions and answers are published, amongst others, on the Parliament website. If the Executive fails to respond to a written question it may be put again for oral reply on the relevant question day, and accessing these replies is problematic while Hansard remains so out of date. (In May 2014, Hansard after 12 September 2013 was still not available). Furthermore, there are no sanctions in rule 115 for a question standing over more than once, despite the recommendation by the Oversight Task Team for an amendment.

The UCT report suggests that there should be a specific focus on how far government has come in implementing human and constitutional rights, with questions being specifically directed to these rights not only at the most obvious levels (such as when questioning gender policies, for instance), but also in relation to commercial developments, hosting of conferences, or developing trade relations, to assess how these may feed into the overall culture of championing human rights and overall transformation policy.

#### *Oversight during committee meetings*

Portfolio and Select Committees obviously play a crucial role in oversight of policy, administrative, financial, ethical, legal and strategic activities. The Portfolio Committees are empowered to "monitor, investigate, enquire into and make recommendations" (on) "the legislative programme, budget, rationalisation, restructuring, functioning, organisation, structure, staff and policies of (any) organ of state". The Task Team on the Oversight Model took this a little further, saying that oversight entailed "the informal and formal, watchful, strategic and structured scrutiny" also of how individual members of Cabinet were managing service delivery to ensure a better quality of life for all citizens. Echoing the concerns of the Speaker, the authors of the 2002 UCT report said that resistance by the executive, who perceived scrutiny to be an undermining of executive authority rather than promotion of transparency and democracy, could hinder Parliamentary work. In the Fourth Parliament, the Ministers of Agriculture, a former Minister of Defence, and of Basic Education have been particularly defensive to committee scrutiny and comment.

Committees in the Fourth Parliament seemed to be more focused on certain areas of performance by departments, perhaps prompted by National Treasury or the Auditor-General. Instead of looking only to the correlation between planning and achievements, committees started to question relevance of targets, and whether these achieved the right emphasis - for instance, in SAPS, whether it was important to emphasise numbers of arrests, rather than careful detective investigations leading to correct arrests and successful prosecutions. They asked that numbers be further quantified by whether real service delivery – such as water running out of pipes, or toilets connected – was achieved. Committees also questioned whether payment of bonuses to officials was justified by exceptional performance, the quality of spending, and use of consultants. Some committees, as mentioned earlier, took quarterly reports whilst others have yet to do so.

The public does not always distinguish clearly between what government achieves, and what Parliament does. The Rules are sufficiently broad to give committees ample scope for stringent oversight, including the power to subpoena, which has not been used in the Fourth Parliament. However, how stringently this is exercised varies. Even as late as 2012, some committees were not

questioning statements that underperformance in the new or reconfigured departments was due to them being “newly established”, irrespective of the fact that their management was not new to the public service, and was paid to implement immediately. Less than three years down the line, more than one entity was already undergoing “turnaround” which seemed to belie any effective service delivery at all. On the other hand, other portfolio committees, including new ones, did immediately hold their reporting departments strictly to account.

The UCT report referred to earlier also said that perhaps there was over-emphasis on the law and policy-making stage, at the expense of an analysis of the successes of implementation, making many committees reactive rather than proactive. Committees are not supposed to micro-manage departments, and the fact that they take historic reports determines their activities to a large extent.

Accounting officers, having been appointed by the executive, are not directly accountable to the legislature, although they must obviously not attempt to mislead. Parliament may scrutinise how an accounting officer has performed, but relies on the executive to enforce any remedial action, and may demand an explanation from a minister failing to follow its recommendation. There have been relatively few instances in the Fourth Parliament when committees made specific recommendations on “the functioning (or) staff of organs of state”. The Portfolio Committee on Communications called in both the Director General and then-Minister to clarify inconsistent statements about a performance agreement. The Portfolio Committee on Police, interrogating one entity on its 2011/12 annual report, established significant spending on three staff members for “events management” although no events took place in that year, and spending of R47 000 on a call centre that fielded 26 calls, yet the same management team was still in place two years later. The Portfolio Committee on Agriculture, Forestry and Fisheries locked horns with its Minister and a former Director General on several occasions, and has asked that details of the removal of the former Director General be made known. The Portfolio Committee on Arts and Culture made recommendations, which the Minister followed, on the dismissal of an official from the SA Heritage Resources Agency and the dissolution of the dysfunctional Pan South African Language Board council. Although there has been more than 30% turnover of Directors-General, with five fired over the last 20 years, it has not been possible to check how many were actually dismissed at the instance of Parliament. More frequently, Parliament tends to merely warn officials that sanctions may be imposed under the Public Finance Management Act.

The lack of consequences and effective, speedy and consistent disciplinary mechanisms within departments was commented upon by many committees, and was one of the reasons for the Department of Public Service and Administration’s proposal that all disciplinary cases should be moved to a separate disciplinary unit. The Legacy Report of the Portfolio Committee on Public Service and Administration is not entirely clear, because it refers both to “this committee” and to “Parliament”, but says that the Public Service and Administration Minister and Director General should introduce a “consequences management” strategy to deal with non-compliance, and that amendment of regulations is needed to discipline directors-general appointed by the President. Both the SIU and Auditor-General urged Parliament repeatedly to call ministers to account when irregularities were uncovered in their departments. The Standing Committee on Public Accounts, throughout the Fourth Parliament, has complained that defaulting officials are seldom held liable for non-compliance, and often move unchallenged from post to post within the public service. Recently, the Minister for Women, Children and People with Disabilities highlighted that she was unable, without liaising with an MEC, to sanction a former Director General implicated in corrupt practices, who had moved to a provincial department.

National Treasury estimated that in 2011, the extent of corruption and mismanagement in the public service, involving money that should be used for service delivery, could be 20% of the annual procurement budget, or about R25 billion a year. The Special Investigating Unit (SIU), in the 2010/11 year, uncovered 306 matters, worth R2.4 billion, where officials awarded contracts to private entities in which they had a financial interest. Corruption in the public service is reported to be on the increase. The SIU stressed that although South Africa had good rules, regulations and policies in place, the culture of impunity would spread quickly where strict consequences were not imposed, and was critical of the reluctance to take stern disciplinary action. Public submissions on the Public Administration Management Bill (which sparked controversy due to perceptions that public comment was not afforded sufficient weight before the Bill was adopted within a very short timeframe) pointed to an inability within the public service (and, by implication, lack of enforcement by Parliament) to carry out investigations into corruption fast and efficiently, in national and provincial spheres.

However, it must be noted that Parliament did take decisive disciplinary action against its own former Secretary of the NA, and Chief Financial Officer, who were both dismissed in 2012, whilst a dispute with the former Secretary to the NCOP ended in an out-of-court settlement.

*Who guards the guards? Does Parliament effectively oversee its own MPs?*

The Joint Committee on Ethics and Members' Interests hosted a [one-day seminar](#) on ethics in public life in 2013, taking input from various experts. This was intended to spark more debate on identified weaknesses in the current systems, what could undermine accountability, and how institutions could work together to entrench ethical conduct across the whole public sector. MPs thought that there were probably adequate laws to punish transgressors (although submissions made at public hearings on the Public Administration and Management Bill questioned whether there were adequate laws to protect whistleblowers) but the main difficulty is that they are not enforced and no consequences are seen. There was general agreement that where consequences did not follow, people were not motivated to look more carefully at their behaviour. The same must surely apply to MPs.

NA House Chairperson Mr Cedric Frolick expressed the view that it was "almost inevitable" that MPs would at some stage be prevailed upon by unethical individuals to engage in questionable conduct. He said the Code of Conduct for MPs should focus more on setting guidelines for correct behaviour rather than on punishment. However, Mr Terence Nombembe, at that stage Auditor-General, asserted that there should be consequences for transgressors, and in order to inculcate integrity, leaders must demonstrate a clear and correct path. The Public Service Commission suggested a code based on values, instilling a consistent culture of ethics through continual and stringent training. It seems contradictory that the provision allowing MPs to hold office despite being convicted of certain criminal offences (whilst understandable in the very specific circumstances of 1994) is still extant, 20 years later.

What happens when MPs themselves fail to comply with their duty to hold errant executive members to account, or, even worse, are guilty of unprofessional conduct themselves? The Auditor-General made a clear distinction between corruption and poor performance, but the Public Protector expressed the opinion that some forms of incorrect and persistent practice – for instance where there was negligence or sheer disregard - could also be seen as unethical. The Oversight Task Team recommended that Parliament must develop rules to assist it further in sanctioning Cabinet members for non-compliance, after all established existing avenues and protocols had been exhausted. However, rules would not help unless Parliament was punctilious about using such rules to be a truly effective and ethical institution.

Despite repeated mouthings about ensuring the highest ethical standards, it is most unfortunate that both executive members and MPs who have been implicated immediately adopt a defensive stance, and are perceived to try to "shut down" investigations. MPs did not appear to find anything wrong with continuing to hold offices of trust despite their admitted involvement in Travelgate fraudulent claims. The probe into the Arms Deal, which the Independent Panel Review urged should be meticulously followed up, seems doomed never to be finalised, with SCOPA's powers being diminished. Questions raised on issues such as how many planes were delivered under this deal were immediately labelled as classified information. During the Fourth Parliament, only one former Minister, Dina Pule, was given a rather minimal sanction by Parliament, further diluted by Parliamentary Members lauding her for her "bravery" in making an apology. Former Minister of Co-operative Governance Sicelo Shiceka was fingered for alleged abuse of public office and wasteful spending, but no disciplinary steps were taken. Some Ministers were dismissed, by the President (only the President can dismiss ministers and deputy ministers), including the former Minister of Public Works, after a damning report from the Public Protector on corruption in her department. However, others who, by all objective standards failed to supervise their departments, effectively remained in power, including the Minister of Agriculture, Forestry and Fisheries after her public spat questioning the oversight authority of portfolio committees.

Quite apart from the failure to set stern examples, the vast amounts of public money which Parliament has not questioned being allocated for defence of already highly-paid executive officials accused of criminal or unethical behaviour does not augur well for prevention of "corruption, nepotism, abuse of power and other inappropriate behaviour", let alone for ensuring that resources are used "frugally", particularly when it is simply reported later (as with Jackie Selebi) that the money is irrecoverable.

Parliament furthermore does not enhance public confidence in the system when it challenges the integrity (as distinct from the spending) of the very bodies that it has set up to enforce the Constitution and democracy. The current Public Protector has been lambasted by individual MPs on several occasions, most recently in the ad hoc Committee to consider the President's submission in response to her report on Nkandla, when a ruling party MP asserted that the timing of the submission of the report on 19 March 2014 (ignoring the fact that it could have been submitted nine months earlier, had the President not delayed in giving answers) appeared to be "politically motivated". No such assertions were made with the previous Public Protector, in a previous Parliament, despite the Court later finding that his investigations into the *Oilgate* matter was "so scant as not to be an investigation at all". Parliament has been perceived as not giving sufficient emphasis and fostering enough public understanding that it is vital for all institutions to respect the Chapter 9 institutions and functions, to ensure their "independence, impartiality, dignity and effectiveness". One example reported upon was the failure of two Parliamentary committees to take a strong line when the Public Protector was subjected to personal threats of arrest by SAPS.

The Fourth Parliament has arguably not been stringent enough in other cases also. Despite calls by the public and opposition parties, it did not take swift and decisive action against bodies that, whilst using large amounts of public funding, failed to perform. Examples have included SABC, whose Chairperson was not requested by Parliament (despite request from the opposition parties) to explain her public assertions that the SABC should have been entitled to edit a damning report on its skills, before it was submitted to Parliament. SAA, despite getting a "final" bail-out in the last Parliament, received yet more backing from the Fourth Parliament. The Independent Communications Authority of South Africa (ICASA) has been struggling for years with governance issues, yet only now has a thorough review commenced.

Has Parliament really yet achieved public trust in government, safeguarding it against "corruption, nepotism, abuse of power and other inappropriate behaviour"? One group of investigative journalists suggests that it has not, and that, instead of holding the executive to account, there is a "new war between openness and accountability on the one hand, and secrecy, cloaked in the garb of security, on the other".

Whilst it is not within the scope of this paper to look in depth at the performance of every committee, a few examples where committee approaches have differed can be given.

The Portfolio Committee on Police, under two very competent Chairpersons, was more than robust in its preparation for and interrogation of some issues. There were times when its MPs across the parties disagreed, but some astounding facts were uncovered by an unrelenting barrage of questions from the different parties in relation to certain leases for police buildings arranged by the Department of Public Works (DPW), whilst not nearly such a strong line was taken by DPW's own oversight committee. It also took a strong stance in questioning Commissioner Bheki Cele, although it was suggested that this was done only when it was already known that he was to be removed.

The Portfolio Committee on Human Settlements, also under a strong and active Chair, took a very firm stance on oversight of performance, and spending of national and provincial departments, honing in on several examples of fiscal dumping, and called in provincial departments and even municipalities to explain matters where complaints had been laid. During the finalisation of the Rental Housing Amendment Bill, departmental officials were told that they may not leave Cape Town until they had completed the drafting to the satisfaction of the Members. Other committees, however, have merely commented almost in passing on their dissatisfaction with departmental drafts. This Committee also called in the Department to explain what steps it had taken to implement the recommendations contained in the Committee's oversight tour reports.

The Portfolio Committees on Agriculture, Forestry and Fisheries and on Defence have both permitted written answers to questions. The former has followed up on these in separate meetings where the answers have been presented and interrogated, but in the latter committee, opposition members have complained that they never see the answers, if they are indeed presented, let alone get the chance to follow up.



The Standing and Select Committee on Appropriations conducted valuable ongoing and extensive oversight on spending across sectors, financial year quarters and provinces, with a particular focus on grant spending. Although the Standing Committee on Public Accounts' work is retrospective in the sense that it examines past, not current issues, it has, through consistent and objective lines of questioning, identified several problematic areas to be addressed by other committees. Other committees did not insist upon quarterly reports, so that by the time problems were seen, matters were at quite a serious state. Only in the last few months did the Portfolio Committee on Women, Children and People with Disabilities really get to grips with problems in the department it oversees.

### *Performance of MPs*

Although there is no doubt that strong chairing of committees contributes to their effectiveness, the diligence of individual MPs is also vital to the success of both committees and Parliament as a whole. Their performance can be considered in terms of ethics, demeanour, attendance, constituency work, increasing knowledge and training, and their commitment to the electorate.

The Speaker expressed concern about inappropriate conduct of MPs a few occasions in the Fourth Parliament. In 2012 he commented that "the mood of the House has strayed quite far from the flexibility, accommodation and balance that ideally ought to exist", urged that freedom of speech by Members must "be contained within the bounds of civility", and cautioned that instances of unbecoming conduct would be taken up with the party Whips. The Parliamentary sub-committee dealing with the review of the NA Rules, later reiterated that Rule 63 states that no person may use "offensive or unbecoming language" towards or about other office bearers. MPs accepted that whilst political criticism or challenges to work performance were not intrinsically offensive, it was another matter when they made uncalled-for remarks about others' appearance or personal life. The standard of debate is certainly not helped by such tendencies. It will be interesting to see what wording is finally adopted.

The Speaker said that Member attendance had been problematic since the First Parliament, which displayed "unacceptable lack of discipline". In 2011 he urged Party Whips to address this, repeating his suggestion that a formal attendance policy had to be finalised, because the House could not be effective if its business was delayed by lack of a quorum, quite apart from the message this sent out to the public. In the following year, he noted that the multi-party Joint Whips Forum was still processing the policy for referral to the Joint Rules Committee, and that it should be finalised by end of July 2012. In 2013, he alluded to the fact that the Parliamentary Group on International Relations was not carrying out its duties effectively, due largely to poor attendance of scheduled meetings, and similar problems were cited by the Constitutional Review Committee.

Some Joint and ad hoc Committees, particularly those comprised of chairpersons of other committees, complain of difficulties in scheduling meetings, yet the experience in others suggests that these difficulties are not insurmountable. The Committee on Private Members and Special Petitions eventually decided that the only way to quorate was to meet at 08:00, NCOP committees sharing the same committee members meet to arrange their programming each term, and the new Interim Committee on Delegated Legislation has operated extremely effectively to date through ensuring that all members receive documents well in advance, that chairpersons of committees whose regulations are being discussed are present, and by the proactive stance of both chairpersons, who not only round up members themselves after House sittings, but ensure that the meetings are comprehensive yet succinct with no waste of time.

The attendance policy was finally presented to the [Joint Rules Committee](#) for acceptance on 5 March 2014. An MP absent for 15 or more consecutive sitting days in either house, without leave, will lose his or her seat. An absence from three consecutive meetings of a committee, unless sanctioned by the party, may be fined R1 000 for each day of absence, and sanctions may be imposed by the NCOP for unauthorised absence during a three-line whip.

Members' attendance until now has been captured manually, with political parties asked to verify the attendance records, but since apologies are not routinely announced, this did not allow the public to know if members had tendered apologies, or whether they attended the full meeting. A study done by the Institute of Security Studies in 2013 for the first time identified these points. As expected, smaller opposition parties with few members serving on several committees were unable to attend all meetings consistently, yet a surprising number of ANC members, despite the fact that they may serve

on one committee only, failed to attend. In future, a biometric, electronic attendance system is apparently to be introduced for plenary sessions. Due to constant requests by PMG, Parliament has undertaken to place this information on its website which it started to do in December 2013. However, as the attendance records require party approval, the attendance records are dated (more than eight months old). Committee attendance has not been made public yet.

MPs' individual performance within their constituencies has also not, until very recently, been tracked. Although MPs are supposed to spend 25% of the parliamentary programme time at these offices, only some parties, and not Parliament, provided information on where the offices were located. Attendance by MPs, and the effectiveness of their work there was not, however, monitored, despite the fact that constituency offices are, according to the Speaker, "the frontline of contact with the public..., the barometer by which we can measure real change." In his 2012/13 speech he asked that MPs use the constituency periods and offices more effectively and creatively. However, in the absence of reports, it is difficult to assess whether these offices are fulfilling their primary function of informing the people and hearing their concerns.

The Inter-Parliamentary Union held a conference during 2011 on e-parliaments. Technological solutions exist to link MPs with their constituencies, but it is recognised that, at the moment, this may not be feasible in South Africa, where universal ICT access does not apply. However, some innovative approaches have been adopted. The Portfolio Committee on Water and Environmental Affairs reported (in its Legacy Report) that it had set aside specific time at committee meetings to air constituency issues and call upon departments to respond, and recommended that Parliament should create space across all committee programmes for similar trends.

MPs' training, preparation and access to expertise may also influence how effectively they can pass information on to others, as well as participate in committee structures. MPs have vast amounts of information to assimilate and, particularly in the Select Committees, they have commented that Parliament's internal briefing sessions, as well as introductory sessions by departments on legislation, and time allowed for debate, are all too short. Several committees in their legacy reports highlighted the need for more training on legislative processing as well as on budgets. Parliament has provided training on Governance and Leadership, through a UNISA course, to 175 members of the provincial legislatures and National Parliament, and 225 national and provincial MPs completed an Advanced Certificate in Governance and Leadership at Wits University. The South African and Indian Parliaments are the only two Parliaments that encourage and support their Members to undertake formal tertiary studies. However, perhaps Members' comments do highlight a need for more practical day-to-day training.

The accountability of individual MPs to the voters cannot be separated from the present electoral system of proportional representation. This, on the one hand, promotes the stronger presence of opposition parties in Parliament. On the other hand, because voters vote for the party, and not the individual, they cannot easily hold individual MPs to account. Recently, in the ad hoc Committee to consider the President's responses to the Public Protector on the Nkandla upgrades, an ANC MP, in answer to an opposition party criticism that "your minds are exercised for you by Luthuli House", confirmed unapologetically that "I am here not to represent any (person or) my relative, but I am elected on a party list, and that is where I get my mandate". There was no answer proffered to the opposition's next point that surely his primary responsibility followed his oath of office to uphold the constitution (which covers both holding the executive to account, and representing the public). Essentially, the public has no recourse if MPs support narrow party agendas in between election times, particularly if their concerns to constituency offices are not effectively taken up.

There have been numerous suggestions to change the electoral system. An electoral task team was set up to produce a report in 2003, but even before it began its work, its chairperson admitted that the ruling party had absolutely no intention of changing the system. The Report of the Independent Panel Assessment made various suggestions on likely systems. In the Fourth Parliament, a private members' bill that closely mirrored those was, not surprisingly (since every private members' bill has faced a similar fate), not supported. Whilst the current electoral system pertains, it can be argued that the will of the people is not being consistently considered and that MPs are therefore not in fact fulfilling their role as ongoing public representatives.

## Legislation and policy

As mentioned at the outset, legislation was not stated specifically as one of the priorities of the Fourth Parliament. Notwithstanding this, a total of 136 bills have been passed during the Fourth Term, with over 39 of those being introduced to Parliament at a very late stage in 2013 or early 2014, despite Parliament rising in March 2014. An analysis of this, and the possible implications has been [reported](#) on the People's Assembly website which noted that the average time for bills to be passed by Parliament was 266 calendar days (based on bills introduced in 2012 and 2013). However, for bills introduced after 1 October 2013, the average time decreased to 96 days. It remains to be seen whether the experience with the Companies Act in the Third Parliament, which was also passed in haste but immediately required extensive amendments at leisure, will be repeated.

Several pieces of legislation presented during this Parliament were the subject of considerable controversy and extensive debate; perhaps the most hotly contested (and the one attracting the most protest outside Parliament) was the Protection of State Information Bill, which was passed by the NA in 2011, and by the NCOP at the end of 2012, with amendments. It was returned by the President to the NA for reconsideration of certain anomalies of incorrect spelling and citations, in 2013. The majority vote finally corrected wording, after extensive debate that included a lengthy session on the formulation of a minority report. It has not yet, despite several rumours, been signed into law by the President. Opposition parties have threatened to challenge the Bill in the Constitutional Court if it is signed into law.

The Intellectual Property Laws Amendment Bill was also referred back to Parliament in September 2012, after reservations had been addressed to the President on its constitutionality and whether it should have been referred to the National House of Traditional Leaders. In the course of obtaining an opinion on this point there were also doubts expressed on the tagging, which led to the Portfolio and Select Committees on Trade and Industry reconsidering the Bill in 2013. A Private Members' Bill that sought to introduce a different, *sui generis* system to cover commercialisation and protection of indigenous knowledge was rejected.

Over 20 private members' bills were introduced and debated during the Fourth Parliament. In the last 20 years, 117 private legislative proposals have been presented, of which only 17 were approved. Fifteen, all of which were proposed by majority party MPs, resulted in new Acts being passed. Of these, seven related to technical changes in university founding legislation, five were technical repeals of old legislation that set up churches and the Bible Society, which were anachronistic in modern times and one merely changed the name of the "Council" to the "House" of Traditional Leaders. Substantive changes were made in the Correctional Services Amendment Act 14 of 1996, which related to detention of young persons, and the Alienation of Land Amendment Act 103 of 1998, which conferred rights on prospective purchasers to revoke offers to purchase in certain circumstances. (Principles outlined in the Private Members Indigenous Knowledge Amendment Bill were later taken up in the Fourth Parliament by an executive bill, and the Private Members SAPS Amendment Bill B61-1998 was not passed).

During the Fourth Parliament, none of the private members' bills was accepted by the majority. IFP Member Mario Oriani-Ambrosini successfully challenged the rules providing that the Speaker's permission had to be obtained before members could submit proposals, and for such matters to be considered by a special committee. However, it was then stated that such proposals should still pass the "motion of desirability" test. Regrettably there is a strong perception that any private members' bill is routinely rejected, despite reflecting recommendations from advisory bodies such as the Independent Panel (changes to electoral laws), academics (intellectual property regime), or matters identified by luminaries from the majority party (SIU and NPA Amendment Bills). We will expand on this point later. The Portfolio Committee on Justice and Constitutional Development, in its Legacy Report, suggested that the whole procedure will need to be reviewed by the Rules Committee.

A few bills were not proceeded with despite having been quite extensively debated. The Traditional Courts Bill was reintroduced into the Fourth Parliament, firstly in the NA, then the NCOP. There were a number of complaints being voiced that women were actively excluded from some of the public hearings in the provinces. As previously noted, the Select Committee initially did not accept mandates that indicated overwhelming rejection of the Bill, but instead ordered more public hearings, before finally the NCOP rejected the Bill in February 2014 – presumably also due to the strong resistance from social justice organisations and grassroots organisations. It remains to be seen whether the

executive re-introduces the bill in the Fifth Parliament. The Independent System and Market Operator Bill was passed by the Committee in March 2013, but withdrawn later by the Executive before being approved in the NA. The Rental Housing Amendment Bill, to the annoyance of the Committee, was withdrawn by the Executive without informing the Committee, but re-introduced in a revised form and eventually was passed in 2014. Bills not finalised because they were to be referred for further hearings or deliberations would have lapsed.

A brief scan through the range of bills passed in this Parliament notes that several seek to protect or address the rights of vulnerable groups – although the extent to which the bills do so and the extent to which they are being properly implemented have been called into question by commentators. These include the Intellectual Property Amendment Bill, four Labour Law bills, the National Credit Amendment Act, the Restitution of Land Rights Amendment Act, the Protection of Personal Information Act, the Protection from Harassment Act, the Prevention and Combating of Torture Bill, the Prevention and Combating of Trafficking in Persons Bill, and the Women Empowerment and Gender Equality Bill. The Child Justice and Children's Acts, although passed in the Third Parliament, came into effect in 2010, setting up registers for child protection, although Parliament has not been satisfied with reports of implementation committees. Some commentators noted that while fine ideals were set out in several pieces of legislation, they were not necessarily backed up with the necessary budget (which leads back to how effective the budgetary oversight process is), and that ideals were being supported rather than definitive and sufficient state support being given to institutions – largely non-government organisations – who were actually providing services to the vulnerable.

Pieces of legislation aimed at improving institutional functioning, some of which had been in the pipeline for years, included the Constitution 17th Amendment Bill and the Superior Courts Bill, the Determination of Remuneration of Members of Constitutional Institutions Laws Amendment Bill, preliminary amendments to the State Attorney Amendment Bill, the Public Administration Management Bill (severely criticised as passed without sufficient time allocated for debate), the Road Accident Benefit Scheme (which has not been finalised) and the Property Valuation Amendment Bill.

A raft of legislation in the environmental field was passed, with one of the bills being split into different parts. There were concerns whether the environmental processes was closely enough respected in the Minerals and Petroleum Resources Development Amendment Bill and the Infrastructure Development Bill.

Other pieces of legislation that attracted quite a lot of public interest during the public hearings and debates included the State Liability Amendment Bill, passed in 2011, and refugee and immigration legislation passed in May 2011. The founding acts for the Civilian Secretariat for Police Service the new Independent Police Investigative Directorate, the Military Ombud and the Community Schemes Ombud Services were passed in 2011. The National Health Amendment Bill paved the way for a new National Health Insurance Scheme, although it was accepted that there would have to be quite extensive pilot studies done. The South African Language Bill and the setting up of the South African Language Practitioners Council, later on, attracted quite a bit of interest. The Criminal Law Forensic Procedures Amendment Bill, dealing with the DNA legislation, was passed, and amendments were made (and disputed again) to the South African Police Service Amendment Act. Professional associations have been served by the Geomatics Profession Bill, the Veterinary and Para-Veterinary Professions Amendment Bill, the South African Language Practitioners Council Bill and the Legal Practice Bill. Property matters have been dealt with under the Property Valuation Bill, Restitution of Land Rights Amendment Bill and Spatial Planning and Land Use Management Bill. Although the Gas Amendment legislation was due to be deliberated, neither it nor the Independent System and Market Operator Bill were passed. The Employment Tax Incentive Bill attracted quite substantial public comment. The Women Empowerment and Gender Equality Bill, Public Administration Management Bill and Minerals and Petroleum Resources Development Amendment Bill were hastily passed in the last weeks of Parliament in 2014. The Small Sector Fisher policy, reflected in amendments to the Marine Living Resources Amendment Bill, was the subject of exhaustive public hearings and contestation, and its implementation almost immediately ran into problems (giving one instance where a departmental official seen to be responsible was relieved of his portfolio, although not at the behest of Parliament).

### *Policies*

Although not carrying the status of legislation, but of policy, the National Development Plan has arguably been the most significant overarching document adopted during the Fourth Parliament,

articulating as it does the long-term development plans, identifying nine most pressing challenges that can be seen as a framework to guide Parliament's programme, and emphasising the need for stable regulation, building of manufacturing, suppliers and downstream industries, beneficiation and encouragement of rural and local community development.

Other policy that cross-cut and intersected with the work of parliamentary committees included the introduction, by the Department of Performance Monitoring and Evaluation, of performance assessments and the self-evaluation system, which should help Parliament to assess how policies and programmes were performing, and what areas that needed to change. In 2013 it was reported that although 44% of departments complied with basic legal prescripts, only 13% were actually using the evaluations to inform improvements. It seems that this should inform Parliament's plans to substantially improve oversight.

### *Constitutional amendments*

Legislation that has not been dealt with by the Fourth Parliament includes a number of proposals that have been to the Constitutional Review Committee, which raises questions around Parliament's capacity to deal with these specific proposals, the effectiveness of its public dialogue and participation, and effectiveness of the Committee, which hardly ever achieved a quorum. The establishment of this particular Committee was intended to facilitate later discussion on matters that could not be agreed upon when the Constitution was being drafted. It is mandated to review the Constitution at least once a year, and citizens are invited to make submissions for amendments to the Constitution. It determines whether public submissions firstly, are proposals for constitutional amendments, and whether they appear to be warranted (similar, it is submitted, to motions of desirability) but it does not proceed to deal with any Constitution amendment bills. A Report on a workshop held to debate its mandate was published in [ATC 82-2013](#). It was suggested that the substantive, rather than formal changes, should be "sparingly exercised", in view of the complex and inter-locking nature of the Constitutional provisions. The Fourth Parliament did not reach a conclusion on whether this Committee should be addressing sunset clauses, whether it should approve the principles behind any Constitutional Amendment Bills introduced, and whether it should proactively consider whether there was a need for review, which might be better handled, if approved, through an amendment to the Joint Rules rather than to section 74 of the Constitution.

The majority of the submissions made to this Committee each year do not in fact set out or identify potential constitutional amendments. Any points of importance raised are referred on to relevant portfolio committees. The [Legacy](#) Report of this Committee does, disturbingly, reveal that the Committee has not finalised but is still "focusing" on the submission to deal with the conflicting designation of Sepedi as an official language, between the Parliament-approved and official (Presidential-signed) versions of the Constitution. This no doubt does raise sensitive issues, which was why the Committee held public hearings in Limpopo, yet the question can be raised whether it is really reasonable for the Fourth Parliament to be "deliberating" and still awaiting briefings from those responsible for drafting and translation. Another call for recognition of sign language as a twelfth official language, mooted in 2007, has also not been resolved. On submissions proposed in 2011, the Committee says it is "soliciting guidance from political parties represented in the Committee". The 2012 proposals that could not immediately be dismissed are still outstanding and there have not even been briefings on those submitted in 2013. It has merely devolved the responsibility of doing effective follow up of issues over the last five years to the Fifth Parliament, which seems something of an indictment on the effectiveness of a committee which has the potential to set a prime example for public participation.

### *Quality of legislation*

Despite the fact that legislation was not stated as one of the priorities initially, the Speaker, in his 2012/13 Parliament budget vote speech, raised concerns about the quality of legislation that was being passed in Parliament. The Independent Panel Assessment had already highlighted the need to boost Parliament's capacity for drafting and amending legislation. The Speaker noted a trend of more legislation being returned to the National Assembly for correction, either by the courts, when it had been found unconstitutional, or section 75 legislation that was returned for correction by the NCOP. He made the point that as legislation became more technical, different capacity and support was needed, but also pointed out that the poor quality of legislation could arise from inadequate scrutiny. If this is so, it will be interesting to track how much of the legislation passed at very short notice at the

end of the Fourth Parliament will be returned by the President or the court. In regard to the NCOP, this House has consistently emphasised in the Fourth Parliament that it is not prepared to be a mere “rubber stamp” of legislation, although it may have taken a more passive approach in previous parliaments. It could be suggested, on the one hand, that perhaps more detailed briefings on why the Bill appeared before the NCOP with certain wording would be useful, to explain the thinking of the NA and to prevent NCOP members from going through exactly the same arguments again, but on the other it could be argued that a totally fresh approach is better. Sometimes, the reason for the NCOP returning legislation is merely a difference of opinion, rather than anything wrong. For instance, with the Legal Practice Bill, the NCOP suggested that the standard wording of penalty clauses used for years (“is guilty of an offence”) could be seen as unconstitutional because it reverses the onus of proof. The NA simply did not agree with that, but was prepared to concede the point to get the legislation passed, but wants it fully debated in the Fifth Parliament.

The Speaker cited four matters in support of his contention. The first was the upholding by the Constitutional Court of a Western Cape High Court decision in *National Credit Regulator v Opperman*, which declared section 89(5)(c) of the National Credit Act to be unconstitutional. However, this Act was dated back to 2005, and when it was passed there were / were not concerns about its constitutionality. The President’s referral back to the NA of the Intellectual Property Act was the result of an objection lodged by the IFP, but these concerns had already been raised and debated by Parliament, and exactly the same conclusions on constitutionality were reached by the NA again – rightly or wrongly. The President’s concerns on the Protection of State Information Bill were somewhat vaguely stated, although admittedly there were several inconsistent citations, but this was another Bill that was rapidly pushed through before the Committee’s time expired. It remains to be seen whether this Bill will stand up to constitutional challenge if the opposition parties proceed to do so; the majority in Parliament maintained strongly that there was nothing wrong with the Bill despite several counter-suggestions by the minority parties. Finally, the Speaker raised concerns on the judgment of the Cape High Court in *Director of Public Prosecutions, Western Cape v Prins*, which held that because 29 sexual acts listed in the Criminal Law (Sexual Offences) Act had not specifically been qualified with a penalty clause, sentencing could not follow. This was perhaps not the best example of “poor quality of legislation”, because this judgment went directly against interpretation by other high courts and also was overturned on appeal. This piece of legislation had been extensively debated in the previous Parliament. In fact, it is also to the credit of Parliament that in this particular instance, the Portfolio Committee on Justice and Constitutional Development immediately consulted with the National Prosecuting Authority and victim groups, and managed to pass a Committee bill amending the Act beyond doubt within a matter of days. Since then, however, sections 15 and 16 of the same Act have been declared invalid and Parliament must amend them to correct the defects within 18 months.

The Speaker did not mention that some sections of the Communal Land Rights Act (CLaRA) were declared unconstitutional in 2010, but Parliament failed to rectify the situation within the time frame given by the Constitutional Court by making amendments to that Act, instead claiming that the Spatial Planning and Land Use Management Bill was a partial “replacement”. Parliament similarly was unable to correct defects to the Road Accident Fund Act within the set timeframe, although this was condoned. An appeal is pending (to be heard in May 2014) on the constitutionality of the SAPS Amendment Act again, which the Court had already ordered Parliament to change in 2011. He also did not specifically mention two successful challenges to the Parliamentary Rules!

The Speaker did concede, taking this point further during a book launch address in 2013, that whilst it was important for Parliament to ensure that the laws it passes are constitutional, the fact that courts may scrutinise those laws when they are challenged created a healthy tension that was a good sign of a maturing democracy.

There are mixed views on the point of Parliament’s role in debating constitutionality. In a meeting of the [Rules Committee](#) some MPs expressed that it was not Parliament’s function to debate the constitutionality of rules, but others disagreed, saying that whilst Parliament could not take a final decision, that debate had to be held, and that Parliament would be “making itself irrelevant” if it did not at the least hold debates on issues in the public space, and that neither the Parliamentary Rules nor conventions should be allowed to block debate.

The Speaker also pointed out that there is an “abundance” of willing and able stakeholders, including academia, research institutions, special interests groups and civil society on whom Parliament may

draw for independent resources of specialised knowledge and information, and urged Parliament to make full use of their input. Very few committees have gone so far as to invite non-MPs on to drafting teams, although this was done for the Child Justice, SAPS Amendment and Directorate for Priority Crimes Investigation Bills in the Third Parliament. Academics gave substantial input but did not sit to draft the Intellectual Property Laws Amendment Bill in this Parliament. Former MPs did serve on the Rules sub-Committee. However, it is also concerning when some MPs, referred to examples of international best practice, insist that it is not necessary for South Africa to even consider such examples, but should set its own trends. This statement has merit, but when applied from a position of strength, and if the Speaker is correct, Parliament is not there yet.

Positive developments in the Fourth Parliament include increased training (and recognition that still more is required) arranged by the Speakers' Forum, and the introduction of a Legislative Oversight Model piloted in the three Parliamentary Democracy Offices that were established in Limpopo, North West and Northern Cape (although this have not gone further). The establishment of the Interim Committee to scrutinise and monitor delegated legislation is very useful, and it has suggested that a discussion document be prepared to guide all committees dealing with bills containing delegation provisions. In general, older legislation may not require regulations even to be tabled in Parliament before coming into operation, although more committees are insisting that regulations must be brought before, and in several cases approved by Parliament, before coming into effect. Specific scrutiny criteria are applied to delegated legislation brought before this committee, including whether it imposes levies, taxes or duties not authorised through a money bill, whether it complies with procedural aspects, whether it impinges on the jurisdiction of the courts, whether it seeks to be retrospective in nature, whether it amounts to substantive legislation, whether it has been properly drafted, and whether there is any interference with personal rights and liberties. This Committee has been very careful to enunciate its powers to recommend to the House, but since the Chairpersons of Portfolio Committees overseeing the primary legislation attend the meetings, they also engage in deliberations of what their own committees may need to do to correct any inconsistencies.

The growth of the Constitutional and Legal Services Office is another important development, although the Legislative Task Team has been only cautiously optimistic on this point. It acknowledged the concerns that MPs currently relied too heavily on the State and departmental law advisers, over whom Parliament has no control and who, given their close relationships with the executive, might not always be impartial, but on the other hand pointed out that scarce and specialist skills were required for legislative drafting, and highlighted the risks of duplication if too many drafters were involved. It further questioned the financial implications if parliamentary drafters could not be usefully employed throughout all terms. However, it is submitted that this Office may be able to help Parliament to pay far more serious attention and debate to concerns raised about the constitutionality of legislation.

This Legislative Task Team said that a division of State Law Advisory Services in KwaZulu-Natal had compiled a "preliminary consultation draft" of the KwaZulu-Natal Legislative Services Agency Bill, looking to establish "a professional, transversal and independent shared services agency in the public service" for drafting, allowing for better standardisation and pooling of talent. The Task Team strongly recommended that Parliament too should discuss the establishment of a central legislative drafting office, serving both the Executive and Parliament. It remains to be seen whether the electronic system allowing for "real time" amendments to bills to be seen will be developed, as it has in other parliaments.

The Legislative Task Team also highlighted some aspects of the Rules that were currently not helping the legislative process. Joint Rule 159 requires a draft of a proposed bill, or at least a summary of the objectives, to be sent to the Speaker, who can then alert committees, but this apparently does not work so well in practice, and the Task Team recommends more engagement between executive and Parliament prior to a bill's introduction. This could alleviate some of the timing problems apparent in late 2013 and early 2014. Joint Rule 220(1) requires a bill to be introduced in one official language (for practical purposes this is invariably English), which forms the text for parliamentary purposes. Although a translation into another language should be available three days before the bill is put to the house – and may be the version signed by the President - it does not at this stage have to be a translation incorporating all revisions effected by the committee, raising precisely the kind of problems that the Constitutional Review Committee faces with inconsistencies between the "Parliamentary" and "Presidential" versions of bills. During 2013 the Preamble of the printed Prevention and Combating of Torture Bill was different to the one agreed to by the relevant portfolio committee, which was

potentially serious. The Task Team recommended changes to the rule, as well as retention of official texts and translations in the Parliament Archive and website.

The Legislative Task Team has also isolated concerns by the public that Parliament should deal properly with bills, and without undue haste. It was strongly critical of the practice in some committees to approve a bill “with amendments” that were not before the committee in writing, instead of waiting to approve the final version, which confirms the Speaker’s point about inadequate attention being paid to accuracy. Contrary to the view expressed by some committees in 2013, that motions of desirability were required for private members’ bills (in practice, used to block every one) and should be applied across the board, the Task Team actually asserted that motions of desirability served no purpose and should be scrapped. The Task Team also recommended that the public participation process should be quite separate from the deliberative stage, echoing concerns of an opposition member when a portfolio committee in one meeting went directly from taking submissions, to then immediately approving the Public Administration Management Bill, without debating whether amendments proposed in those submissions were warranted. Other proposals related to tagging and possible amendments to Joint Rule 160 and amendments (perhaps including a constitutional amendment) to deal with mixed section 75/76 bills.

Finally, the Legislative Task Team proposed that Parliament and the executive should compile a legislation handbook, setting out all the principles, processes and practices involved in making legislation. This would be useful, in view of many Members’ questions, even at the end of the Fourth Parliament, what procedure should be adopted, whether committee reports should contain minority views (at least two were returned by the House for failing to express these properly), and even whether the majority was entitled to re-word minority statements.

### **> Increasing public participation**

Section 42 of the Constitution says that Parliament must pay attention to representative and participatory democracy and public involvement, and that both Houses must provide a national forum for public consideration of issues, by passing legislation (in which public involvement must be included) and by oversight. During the 2011 local government elections, Parliament emphasised “Celebrating the legacy of freedom through strengthening links to the public”.

The idea of a Public Participation Framework has been mooted throughout the Fourth Parliament, emanating from a model suggested by the Speaker’s Forum. In 2010 the Speaker said that Parliament recognised that public engagement needed to extend beyond engagement with civil society organisations, to even the remotest areas of the country. A project team started work on the framework in 2011, and apparently “thousands” of submissions were given in response to the multi-media campaign. In 2012, the IPU Global Parliament Report (a peer review of IPU member parliaments) described South Africa’s established practices on public participation, openness and transparency as “exemplary”, but the Speaker emphasised that, like all others, this Parliament must continually evolve to respond to changing desires for information and influence, better accountability and responsiveness on the part of parliaments, and better service delivery to meet the public need. He urged that concrete proposals be formulated on the framework. However, late in 2013, the Task Team dealing with the matter reported that the draft still awaited comment from the various political parties and would have to stand over to the Fifth Parliament.

Parliament introduced a Legislative Oversight model in 2012, which has been piloted (but not well publicised) in three Parliamentary Democracy Offices, in Limpopo, North West and Northern Cape. It also runs the “Taking Parliament to the People” campaign, although this is a combination of engaging with people in specific areas and co-operative governance, bringing together national, provincial and local government. The NCOP made changes to this programme during the Fourth Parliament to try to make it more effective and week-long provincial weeks were held in the latter part of 2013. However, the Select Committee on Security and Constitutional Development commented, in its [Legacy Report](#), that this programme was in fact “a challenge” and took away from the oversight programme of the Committee, whilst other MPs in meetings have commented that it cuts into committee time.

The Legislative Task team recommended that sectoral parliaments (such as the Women’s Parliament, Youth Parliament, People’s Assembly and others) should be formally recognised in the rules, with their recommendations being submitted to the committees and the House. AZAPO suggested to the



Speaker that more sectoral parliaments be introduced – a Workers’ Parliament and a Sectoral Parliament for People Living with Disabilities. Perhaps the model needs further refinement.

It further suggested that Parliament must re-look at its rules and procedures for public participation and said that whatever policy is adopted, it must be consistently applied.

The Courts have recognised that Parliament’s “public involvement” is facilitated in various ways, including roadshows, regional workshops, radio and TV and online methods, and some parliamentary committees have been debating whether traditional methods of publication, such as the Government Gazette, are accessible.

It is submitted that Parliament still falls short of expectation in general communication about work plans or minutes of meetings, let alone proceedings published in Hansard, on its website. Two portfolio committees have taken commendable and innovative approaches to further the expression of public views. The Portfolio Committee on Environmental Affairs has given formal space on its programme for MPs to raise constituency concerns - although in fairness, many MPs often do raise concerns by addressing letters to their committee chairpersons on an ad hoc basis. The Portfolio Committee on Energy has held a number of “public engagements” on various topics, inviting a range of stakeholders from several sectors to engage in discussions around departmental presentations on broad themes, as well as introduce further topics for debate. This has been done in recognition of the fact that public hearings on bills are too limited in their scope.

Parliament has been quite punctilious about seeking views on pending legislation and holding public hearings since the Constitutional Court ruling in the Doctors for Life case (perhaps even sometimes where not strictly necessary, for the Legislative Task Team reiterated that public participation efforts must be “reasonable in the circumstances” and that Parliament was not obliged to hold public hearings on every bill). However in almost every public hearing, somebody has pointed out that the timeframes given for comment were inadequate for preparation of full submissions, a point conceded by the Task Team. More seriously, there were complaints that during the public hearings on the Traditional Courts Bill, women were actively excluded from some public hearings.

The views expressed by the public obviously cannot be binding on Parliament, but it does seem incongruous that even when extensive changes are made, more input is not sought. The Protection of State Information Bill was virtually re-written. The Minerals and Petroleum Resources Development Bill changed the entitlement of the state to claim participation rights *without any limitation*, on the eve before its adoption, without seeking further input. Furthermore, because such changes are not publicised on Parliament’s website within a reasonable time, anyone wanting to keep updated has to rely on independent sources for information.

The Speaker said that public involvement must go further than merely allowing access to Parliament and giving people the opportunity to express a view. He stressed that public participation “is not about one big push at a certain time and place, but a continuous system of engagement which needs to be constantly refreshed and renewed”. He went further to say that public views must actually find expression in the parliamentary programme and lead to concrete action.

#### *How meaningful is public participation?*

Is “public participation” really meaningful and does it indeed lead to “concrete action”? Some committees appear to give little more than perfunctory consideration to the merit and content of submissions, including alternative drafting suggestions, although to their credit others have actively called for written suggestions on revisions, and have debated them fully and seriously.

The Third Parliament faced the embarrassment of two committee chairpersons admitting that the ruling party’s decision in the previous year to disband the Scorpions was “final”, even before the bill proposing that, had been tabled in Parliament. Much political backtracking was needed to try to convince the public that its subsequent petitions and submissions were being taken seriously, but it was not surprising that the matter was indeed a done deal. There have been accusations, but not admissions, that similar principles applied to some legislation introduced in the Fourth Parliament, as well as to the decision to “shut down” the ad hoc Committee to consider the President’s response to the Public Protector’s report on upgrades at Nkandla. Whilst there was certainly very little time to deal

with the matter in full, it is submitted that much firmer proposals could have been made rather than simply “referring” the matter to the Fifth Parliament.

Whether the debates on issues of national importance are wide-ranging enough is a moot point. Many social justice organisations and several individuals had to resort to Constitutional Court action to put public matters on the table. General petitions to Parliament must be supported by an MP, a reasonable enough requirement, but the process is not as user friendly as elsewhere, and e-petitions have not yet been introduced. The Fourth Parliament, through its portfolio committees, did consider petitions, including one from older persons and one on genetically-modified maize. The two committees dealing with special petitions have continued to be very slow in finalising their work.

The Speaker fails to address one burning question – can participation ever be truly meaningful, given that the current electoral system offers no guarantee that “the will of the people” is actually being expressed, now, on issues not even mooted at the time that they cast their votes? Furthermore, would the public even support that same MP who now claims to represent them, no matter how he or she has been performing in the last few years? Even if the constituency system works perfectly in theory, it will always be stymied in practice by the fact that the party position trumps individual accountability, and no MP is permitted to exercise individual discretion and vote contrary to the party position. Referenda have never been allowed, relying still on the excuse that the democracy has not evolved enough. Certainly, public participation happens. Whether it amounts to meaningful expression of the views of individual members of the public is another matter.

### **> Building a powerful institution of democracy**

“Democracy” includes concepts of government by the people, thus opportunities for public participation, a society free from artificial distinctions, tolerance of a wide range of views, and promoting social reform that will achieve greater equality. Several people have attempted definitions and made some suggestions of what it might entail. It is submitted that “building democracy” must be an offshoot of all the other policy imperatives of the Fourth Parliament. Public participation is a vital component of “government by the people”. International relations and cooperative governance promote other input, and build the broader society both inside and outside the country. Oversight, which can only be enhanced through efficiency and effectiveness of the institution of Parliament, will ensure that delivery of services will help individuals and society achieve equality and personal freedom. “Building democracy” combines elements of objective actions with a subjective assessment of their effect.

The Fourth Parliament took many steps to pursue democratic ideals, not least the passing of legislation such as the Broad Based Black Economic Empowerment Amendment Bill, the Restitution of Land Rights Amendment Bill, the Women Empowerment and Gender Equality Bill, and approving policies to broaden the basis for social grants. However, the point has been raised that the Fourth Parliament did not do enough to assess the impact of legislation, and the Speaker has announced that this will be taken up in the Fifth Parliament.

It has been suggested that a very important consideration of whether democracy is really being built is whether the allocation of budget to promote it, is correct. Although the Fourth Parliament was given the ability to amend allocations, it was cautious in doing so, and in all fairness it must be admitted that it was apparently told, by Treasury, when seeking more money for the Chapter 9 institutions, “You can ask, but where do we get the money?” When a country has a finite budget, and faces competing tasks of staying competitive within the global sphere and addressing specific legacy challenges, it does face enormous questions and few answers.

Particular examples can, however, be given to illustrate the point. The Speaker, in his 2012/13 budget, said that an urgent and pressing issue was the condition of children in the country, and referred to the United Nations Children’s Fund report, comparing the situation of children from wealthier and poorer backgrounds. The Speaker said that Parliament should “make a big difference to their lives”. However, has Parliament, whilst recognising the sensitivities behind the issues, really addressed the causes or proposed legislative or practical solutions that will vastly reduce deaths from initiations, child abuse, children on the streets, or the under-spending highlighted by the Financial and Fiscal Commission on the Children’s Rights and Responsibilities Programme in the Department of

Women Children and People with Disabilities? Another issue that has continued to be of huge concern is abuse of women, again despite the existence of this department and two committees. It is known that funding to NGOs and NPOs that provide child and women services has dropped, with international donors no longer willing to fund statutory services, resulting in the closure of many organisations that actually picked up this task. However, Parliament has not strongly challenged the proliferation of less efficient and more expensive state structures, many of whom are either duplicating the work of others or are at odds with each other – such as the Commission for Gender Equality and the Department of Women, Children and People with Disabilities. It should have been abundantly clear to Parliament that the intersectoral services provided to try to address domestic violence and child diversion were not working, for the evidence was placed before it, year after year. The South African Parliament did not even attend the IPU Conference in Tanzania in December 2012, on overcoming gaps between legislation and enforcement in relation to violence against women. Has Parliament put this on the table as an issue of “national importance”? Is there more it could have done as an “activist” Parliament to find completely new solutions instead of bemoaning the fact that the old ones merely limp along?

This takes us back to earlier consideration of whether the Fourth Parliament was strong enough, firstly, in ensuring that anyone wasting public money is brought to book (and, hopefully, required to repay it). It would be interesting if Parliament, instead of hearing lengthy speeches from Ministers on allocations for particular programmes, could focus on what programmes were *not* being run, and whether it was not possible to make some fairly drastic adjustments, particularly in line with the Minister of Finance’s call for more effective spending on necessities rather than niceties, to release more funding. Parliament would need to decide how far it could go without impinging upon operations of departments or entities in this regard.

Adequacy of funding to fulfil their mandate is perhaps even more important for the Chapter 9 institutions, which also fulfil an oversight function, although they can only make recommendations to Parliament. In addition to getting sufficient funding, the Chapter 9 bodies must be assisted to maintain their institutional independence – by Parliament itself sending out strong messages about the importance of their work. This implies equally not attacking their integrity, and insisting that all organs of state respect the constitutional requirements for their independence – a point touched on earlier in regard to the Public Protector, the institution that, because of the nature of its work, finds itself at odds with government more than the others.

An interesting point on the role of Parliament vis-à-vis the constitutional institutions was raised during this Parliament. The Chapter 9 institutions report to different portfolio committees, and the scope of their work, as well as the style of the committees’ oversight, determines the kinds of questions that Parliament puts to them, with some pursuing a more robust line of questioning than others. The Portfolio Committee on Justice and Constitutional Development, by way of questions posed by all parties, took the Public Protector to task on certain investigations conducted during the 2012 year. MPs maintained that this was well within Parliament’s mandate, according to their reading of section 181 of the Constitution, as Parliament was not interfering with her operational independence, but was questioning whether public funding was well used. The Public Protector took a different view, maintaining that the discretion on what to investigate lay with her office alone. It was agreed that more dialogue was needed, perhaps inviting international input also. At a later workshop in 2013 (whose timing regrettably did not allow for full attendance by committee chairpersons), the Public Protector suggested that it might be useful to have a completely separate method of overseeing the Chapter 9s. The Oversight Task Team had previously suggested that Parliament must develop clear mechanisms to enable them to report on their activities.

Further to this, the Task Team on the Oversight Model recommended that views and concerns raised by all the institutions supporting democracy around weakness in the system must be carefully considered. Several repeated their concerns that the Fourth Parliament still was not giving sufficient attention to their reports and recommendations. The Oversight Task Team had recommended that reports should be specifically referred to committees for consideration, and reporting back on issues raised to plenary sessions. It is submitted that since many of the reports are based on substantial investigations at grassroots level, this would further the kind of public participation the Speaker had referred to that would actually see concrete results in the parliamentary programme.

There are other institutions that, whilst not having the status of the Chapter 9 bodies, are supposed to enjoy operational independence – such as the Judicial Inspectorate of Correctional Services, the

Police Secretariat, the Defence Secretariat, the Office of the Military Ombud, and the newly-created Office of the Chief Justice. All of them, however, during the Fourth Parliament, received their budgets via allocations to departments in the Fourth Parliament – something which may have seemed contrary to their autonomy. It is accepted that the position must change, and it is hoped that the next Parliament pursues the granting of separate votes to them with the necessary vigour. Both the Judicial Inspectorate and the Office of the Military Ombud have proposed that further changes are necessary to make their processes more transparent and effective also, a point addressed in legacy reports.

Civil society structures are constantly seeking increased opportunities to contribute to and participate in the building of democracy, including socio-economic development. However, the African Peer Review Mechanism suggests that they are still under-developed and their effectiveness needs to be enhanced – even more reason for Parliament to try to increase its own transparency and efforts for democracy throughout society.

### **> Nation building and cohesiveness**

The Speaker commented that the President's call for an activist Parliament could be seen as an opportunity for the Fourth Parliament to define a new role for itself in social mobilisation to realise development goals, and to contribute to nation building. "Nation building" is rather a nebulous concept, and is generally seen as promoted by the Department of Arts and Culture, through attempts such as focusing on the national identity, building public pride, and promoting a more cohesive attitude.

The Speaker may have used it in the sense of focusing on building the developmental state and working on the goals of the National Development Plan, for in 2013, he expanded that Parliament's contribution to social cohesion and nation building was by providing platforms for debates of national importance, ensuring that progressive realisation of economic and social rights is measurable, and that targets and standards are in place. However, he then also said that Parliament must ensure that access to justice is improved so that rights are enforceable and "work optimally" to the benefits of all the people.

One of the first problems is that in the Fourth Parliament, there appears to be still a perception that "party", "state" and "nation" may mean the same thing, not dispelled by many MPs making statements such as "Parliament will / will not allow" when referring to the views held by their parties, with opposing parties then having to clarify for the public that their party may not hold the same views. In a recent ad hoc committee, one ANC member actually made an admission that he did not regard himself as being in Parliament to represent "any individual" but only his party, and readily admitted that he took his mandate from the party.

It is suggested that Parliament's attempts to engage in nation building may be served by better coverage, including more awareness of what Parliament is and what it does, on the national TV channels, more public statements by Parliament, not parties, on issues without politicising them (for instance, more focused decisions on sanitation needs, without focusing on which political party controls a municipality), stimulating more debate on the impact of the legislation it passes, and more specific awareness-building of the important role that opposition parties play in any democracy.

Xenophobia remains a major challenge in South Africa (and many other African countries) as emphasised in the recent African Peer Review Mechanism Report. It may be accepted that very relevant questions and comments on residential numbers arise from practical considerations of how numbers impact upon delivery of sanitation, water and housing, or budget for institutions providing medical, education or social services. Parliamentarians from all parties have sometimes worded their concerns in an unfortunate way by bringing in issues of nationality, particularly in the labour context. Parliament should be careful to emphasise to the public, if a reference to nationality is relevant, that the increase in numbers is, firstly, not due alone to influx of foreigners (who in fact comprise only around 4% of the South African population) but also to stress the realities that many are vulnerable people forced to flee from gross human rights abuses, that they may contribute to a cross-cultural "rainbow nation", that many are taxpayers, and that their presence alone is not displacing locals from working.

It does not help when even the Fourth Parliament itself has not evolved to the point where differences

are universally seen as a sound foundation for nation building. The fine examples of reasoned and respectful attitudes by individuals across all parties are regrettably severely diminished when others – as rightly censured by the Speaker - resort to [name-calling](#).

Taking the point of setting good examples further, it would be useful if Parliament could also promote more of a culture for debate, particularly amongst scholars, on important developmental and social issues. Whilst it does provide some educational resources on its website, those offered by other parliaments in the EU are infinitely more challenging.

## **Conclusion**

The National Planning Commission's first diagnostic report, tabled in June 2011 placed particular emphasis on political accountability and parliamentary oversight as strong markers of a democratic order. On the one hand, political leadership should acknowledge and support the legislature's constitutional mandate to hold government to account. On the other hand, the legislature itself should also ensure that it pursues its own oversight mandate with rigour and integrity, so that a healthy tension is created between the two arms of government.

The Speaker asserted that, "Parliaments are the central institutions of democracy that represent the hopes and aspirations of the people.. (and) parliamentarians are therefore the bridge between the electorate and government....Parliament as a key institution of democracy does not only hold government accountable, but is itself also accountable to the people. The warning of UN Secretary Ban Ki Moon to the Millennium Summit in 2000, "We must make sure that promises made become promises kept. The consequences of doing otherwise are profound" resonates equally well today.

Shortly before the close of the Fourth Parliament, the Speaker announced that over the next twelve months, interactive debates will take place on the successes and failures of the Fourth Parliament, and questions will be asked how the future Parliament can ensure delivery on the expectations of the people. It is only hoped that the debates and their answers – however uncomfortably they may resonate – will result in action.

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