

Did we waste R1.2-billion?

Or can Zondo return SA to where we were headed in 1994?

By Moira Levy

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IFAA has joined the growing number of civil society organisations that are mobilising around the need for parliamentary and electoral reform. The consensus appears to be in favour of a mixed constituency and proportional representation system and MOIRA LEVY argues it is time for those elected to Parliament to be directly answerable to the people who voted for them instead of the political parties that selected them.

The main recommendations of the Zondo Commission on Parliament offer a way out of the political maze in which we are currently lost. Post-Zondo South Africa faces the challenge of responding appropriately and timeously to the myriad of clear, constructive – and eminently doable – recommendations found throughout the six volumes of the report.

Of particular interest to the Institute for African Alternatives (IFAA) are the 16 recommendations listed on the very last three pages of the almost 5,500-page

report. They spell out what Parliament itself needs to do to address Zondo's scathing finding that it was the national legislature, and more particularly its Committee system, that allowed the scourge of state capture to unfold (RSA, 2022. See also Doyle, M. *et al*, 2022:2).

It is in this context that IFAA is launching a new project called "In Defence of Constitutional Democracy: Parliament as the Cornerstone of Public Participation", or what IFAA prefers to call DECODE. This will focus on Parliament and how the Members can fulfil their cardinal – and constitutional – duty to exercise oversight over the Executive branch of government, including organs of state and state-owned enterprises.

Of our three branches of government – the Executive, the Judiciary and the Legislature – the last has shown itself to be the weakest pillar of our democracy. A total of 27% of people have no trust or little trust in Parliament, down from 65% in 2005 and 50% in 2010. Clearly, something needs fixing.

IFAA first responded to this need in 2019 when it ran a research project on why the checks and balances provided in the Constitution cannot curb the unauthorised, irregular, and "fruitless and wasteful" expenditure by government departments revealed in the reports of the Auditor-General (AG).

IFAA's founder and then Director, Professor Ben Turok, initiated the

"Checks and Balances Project" only weeks before he passed away in December 2019. He said: "the people's money is being squandered by the Executive, and Parliament is complicit in this". *Checks and Balances: The Auditor-General Project Report* was released in 2020. It concluded that "Parliament provides scrutiny and oversight of executive action, but has failed on accountability. Accountability is the fault-line. (IFAA *et al.*, 2020:7).

It quoted a Member of Parliament saying, "When I went to Parliament in 1994, we had the A team. Now we have the Z team" (IFAA *et al.*, 2020:10).

The report asserts, "The Checks and Balances Project identifies the weakness of character of our parliamentarians as the main reason why Parliament remains the least powerful of our three branches of government" (IFAA *et al.*, 2020:8). It directed the debate back to the political parties urging them to prioritise the quality and character of the members they put on their party lists to fill seats in Parliament.

It added: "Some will say the problem lies in the electoral system, where nominees for seats in Parliament are not elected by an inclusive democratic process, but are chosen by parties' murky internal processes. The electoral system has no way to exclude many 'bad apples' who parties choose to represent them" (IFAA *et al.*, 2020:8).

To develop a better oversight model

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the research suggested Committees need to develop a “framework” so they are better able to do their oversight work in a planned way and can be held accountable to it properly. They need “proper systems” for following up on their questions and resolutions.

“Committees must propose corrective actions and (critically) they must specify that the Executive must report back on the issue to the National Assembly. This process is already open for Parliament, but it is not adequately done at present (IFAA *et al.*, 2020:19).

As we will see later, this thinking is reflected in the recommendations of the Zondo Commission.

DECODING ZONDO

IFAA’s In Defence of Constitutional Democracy initiative will comprise a series of engagements which will aim to address the need for our democratic Parliament to meet its mandate as stipulated in the Constitution.

These will comprise a roundtable discussion between MPs, parliamentary advisory/support staff and civil society stakeholders on Parliament’s role in conducting oversight effectively and in good faith. In addition, civil society workshops, specifically targeting youth, will address what citizens may and/or should demand of their elected representatives.

The reflections on parliamentary oversight and the needs and demands of voters will culminate in a public conference, to be held in Cape Town later



Source: Wikimedia Commons

in 2023. It is proposed that a Citizens’ Charter to drive public participation in Parliament and reform of the electoral process will be developed, possibly for adoption at the conference.

The project aims to build understanding of and commitment to the constitutionally determined role of MPs. The chief goal will be to contribute to the current efforts by civil society to educate and mobilise citizens around what can and must be expected from elected representatives. The hoped for outcomes include:

- a plan of action for civil society organisations to engage their representatives and Parliament;
- a strategy to involve grassroots stakeholders in the parliamentary public consultation process;
- a deeper understanding and appreciation by young voters of the democratic process and their role within it, including a revised understanding of their responsibility as voters; and
- a change in attitude from generalised apathy to

recognition of the vote as a tool of empowerment.

It is sincerely hoped that this will help contribute to a renewal of trust and confidence in Parliament within the broader public; help build public interest in the need for and process of revising the electoral system to incorporate a form of constituency-based representation; and support the widespread growth of the existing civil society movement for public participation and mobilisation around citizens’ demands for effective people-centred, representative democracy.

IFAA intends to consult broadly among current stakeholders before embarking on this engagement and hopes to take its place alongside the esteemed civil society organisations that are already doing excellent work in this field.

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for parliamentarians to revise their collective understanding of what it means to work within a democratic framework that places voters' demands above those of the party. It also addresses the need for civil society to effectively demand accountability from democratically elected representatives.

DECODE takes its cue from Zondo and civil society

Pretty much all of the findings in the IFAA Checks and Balances report of 2020 found traction in Zondo's effective "message to Parliament". Zondo highlighted the urgent need for parliamentary Committees to follow up on their resolutions for remedial action by the Executive: "One of the primary practical problems to which various witnesses drew attention was the absence of any parliamentary system to 'track and monitor' implementation or non-implementation by the executive of undertakings given by the executive or of corrective action proposed in reports adopted by Parliament" (RSA, 2022:429).

Zondo cites evidence of late submission of reports by government departments, tardy or non-attendance by Ministers and others who have been called before Portfolio Committees and other such instances of poor



performance by the Executive. Zondo considered such omissions so critical to Committees effectively playing their oversight role that he asked in the report if there was a need for Parliament to consider "whether there is a need to legislate to address these issues" (RSA, 2022:445).

Such recommendations have given IFAA, and many others, cause for hope; the Zondo Commission has opened a window of opportunity for change which must not be ignored.

It is widely known that this has happened in this past, repeatedly. Take the Van Zyl Slabbert report of 2003, the 2006 Parliament Report of then MP Pregs Govender, the Report of the Independent Panel Assessment of Parliament in 2009 and the 2017 Kgalema Motlanthe High Level Commission.

The 2009 Panel identified numerous problems that detract from oversight effectiveness in the national legislature, including that the party list electoral system provides a disincentive to individual members of the majority party "to robustly hold the Executive to account" because of the unconditional power of political parties to remove any member from Parliament.

The consensus among these all of these, and the civil society voices that are now being heard appear to be in favour of a mixed constituency and proportional representation (PR) list

system. The fundamental problem with the PR system introduced in 1994 is that members of Parliament are not chosen directly by the people, who can then hold them accountable for decisions they make and the oversight they conduct. Those who are elected to represent the people, in national, provincial and local legislatures, should be directly answerable to the people who voted for them instead of the political parties that selected them.

Chief Justice Zondo said much the same, repeatedly asserting that political parties have far too much power and influence over their MPs. The Zondo report recommends that Parliament should consider whether it should "enact legislation which protects Members of Parliament from losing their party membership (and therefore their seats in Parliament) merely for exercising their oversight duties reasonably and in good faith" (RSA, 2022:464).

Also of great interest is Zondo's recommendation number 1292.2, which suggests that Parliament needs to consider whether the electoral system should be amended to allow for a constituency-based electoral system, which would not replace the existing proportional representation, but which would strengthen Parliament's ability to hold the Executive accountable (RSA, 2022:463).



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The recent surge by civil society organisations for electoral reform of this kind gained momentum in the ongoing protests against the poorly framed 2022 Electoral Amendment Bill which was speedily passed by the National Assembly (NA) in October and sent back to the NA with proposed changes by the National Council of Provinces (NCOP). At the time this journal was published the deadline for the signing of the Bill has been extended to 28 February 2023 to allow for more public participation.

The Bill was in response to a 2020 Constitutional Court ruling in the case of *New Nation Movement NPC and Others v President of the Republic and Others* that declared the current PR party list system unconstitutional as it does not allow for individuals or independent candidates to stand for election at a national or provincial level. The Constitution enshrines the right of every citizen to stand for elected office, which includes the right of independent candidates to contest elections on an equal footing with candidates from political parties.

WE NEED ACCESSIBLE, PARTICIPATIVE DEMOCRACY

IFAA has endorsed the view of the Rivonia Circle, the Ahmed Kathrada

Foundation, Defend our Democracy and others who warned that the Bill as it stands is seriously flawed. Their joint submission to the NCOP in advance of its vote on the Bill stated, “Our current electoral system no longer meets the needs of ordinary people who wish to be more directly involved in our still fledgling democracy”.

The concern about the Bill in its present form is that it discriminates against independent candidates. For example, the Electoral Amendment Bill requires independent candidates to have around 8,000 signatures in order to stand for election while political parties need only 1,000 signatures. This is one of the concerns expressed by the NCOP in its proposed changes to the Bill. In terms of the Bill, votes for independent candidates beyond the requisite ceiling will be reallocated to political parties as will all votes for any seats vacated by independent MPs for any reason.

This will clearly strengthen party dominance in Parliament and gives parties the upper hand over independent candidates. And it appears that the ruling majority party stands to gain the most if this Bill becomes law.

The Bill makes a mockery of the Constitutional Court ruling to open the way for fair and equal participation by independent candidates, which could allow for the direct election of some parliamentary representatives.

The National Assembly passed the Electoral Amendment Bill by 232 votes to 98, despite the campaign by national civil society organisations denouncing it as a sham and a missed opportunity for much-needed electoral reform.

It is worth returning to the Constitution itself, which is very clear on the role of Parliament. Section 42(3) reads: “The National Assembly is elected to represent the people and to ensure government by the people under the Constitution. It does this by choosing the President, by providing a national forum for public consideration of issues, by passing legislation and by

scrutinizing and overseeing executive action” (emphasis added). Section 55(2) adds the concept of accountability to that of oversight: “The National Assembly must provide for mechanisms, a. to ensure that all executive organs of state in the national sphere of government are accountable to it; and b. to maintain oversight of i. the exercise of the national executive authority, including the implementation of legislation; and ii. any organ of state.”

We need simple, understandable rules for voting and elections – the more complex the process, the more citizens’ disinterest in it will grow. This will place even greater pressure on South Africa’s hard-won democracy, which is already at risk, largely due to lack of capacity and political will within the state, as well as massive corruption in many spheres of governance. The Zondo Commission clearly exposed this. The National Prosecuting Authority (NPA) has responded to the Zondo report by getting on with the job with which it was mandated; we are at last seeing prominent figures in the dock and their loot being tied up in frozen pensions and iced bank accounts, hopefully to be returned in due course to the people of South Africa.

Now it’s the turn of civil society to push on with what the Chief Justice and his team started and what the courts are following up.

REFERENCES

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