



1. Who is Parliament Watch?

Parliament Watch is a collective of nine independent organisations working towards the advancement of social justice, the realisation of human rights, and strong constitutional democracy in South Africa. Collaborators include the Dullah Omar Institute, UWC (DOI); Equal Education Law Centre (EELC); Heinrich Boell Foundation (HBF); Livity Africa (LA); Parliamentary Monitoring Group (PMG); Public Service Accountability Monitor (PSAM); The Right to Know Campaign (R2K); Social Justice Coalition (SJC); and Women on Farms Project (WFP).



A diverse range of individuals from the participating organisations have participated in the project, some had extensive experience actively engaging with committees in the legislatures on both law reform and oversight while others had very little exposure to Parliament, if any.



2. Why did we undertake this project?

We consider the legislatures as central to our democracy and their duties to oversee effective service delivery and advance social justice and transformation in South Africa as crucial. At the foundation we believe that enhanced accountability and improved oversight can impact on the performance of government departments and ultimately service delivery.



While recent years have seen a welcomed increase in public attention to the debates and events in the National Assembly, the day-to-day work of committees generally falls outside of public scrutiny. Committees are the engine rooms in the legislatures tasked with the development of laws and performing critical oversight that interrogates the performance of the executive together with overseeing state spending.



By increasing claims on these institutions by civil society organisations we hope to increase public demands for accountable legislatures and elected representatives; increase knowledge of the work and processes of the legislatures, especially those dealing with oversight over service delivery and public spending.



3. What did we do?

During 2016 Parliament Watch monitors monitored 13 selected Parliamentary committees and two committees in the Eastern Cape Legislature and one in the Western Cape Provincial Parliament to assess their performance on the constitutional mandates for openness and accessibility, independence and holding the executive to account, and responsiveness to the public. The monitoring also served as a process by which our organisations sought to develop our strategies for stronger engagement with the legislatures.



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Due to the diversity of interests and approaches of monitors and organisations in Parliament Watch we have built our assessment of the performance of committees on specific issues or in relation to their general mandates through different lenses to develop a series of snapshots of our varied experiences.

As a result of our qualitative approach, we consider the range of monitors and organisations that participated and the consequent range of experiences of the legislatures on a number of different processes to form a strong and legitimate basis for conversation.

4. What did we find and what can we conclude from the monitoring?

There are a number of factors linked to South Africa's electoral system that have an impact on the functioning of the legislatures. The closed-list proportional representation system, while having positive impacts also carries a number of down sides. Most notably it negatively impacts on the responsiveness of elected representatives to the public, encouraging accountability to their political parties instead. It is also a disincentive to the independence of elected representatives. It is in this context that our legislatures are failing to adequately deliver on their constitutional mandates and the principle of separation of powers between the legislatures and executive is extremely blurred.

This blurring has resulted in weaker legislatures that tend to bend to the will of the executive and inadequately represent the public. Since the 2014 election the situation seems to have worsened and monitoring the performance of the legislatures is even more necessary.

4.2. Monitoring Committees

Committees in the legislatures are diverse and complex. In fact, it is almost impossible to assess the performance of a committee as a whole given that they are constituted of representatives from different political parties, which have different partisan positions and approaches to different issues. The assessment is also layered because within political parties, party members respond differently based on their designation, personality, ideology and approach. Lastly the nature of the issue or process at hand affects the way in which MPs and MPLs deal with the issue.

4.2.1. General performance

The appointment process that was undertaken by the Ad-hoc committee on the appointment of the Public Protector provides a good example of a strong working committee in which the majority of members had clearly prepared for the interviews and discussions and actively and meaningfully participated in the process and with a strong chairperson who implemented good chairing practices. The same is true of the high profile process with the committee appointed to undertake the inquiry into the SABC board. However these processes are unusual and it is not the norm for members from all parties to show such a good degree of preparation and engagement with issues in their day-to-day committee work.

Performance of committee chairpersons: 5/10

Committee chairpersons, by nature of their position, hold an obvious amount of power in committees, as a result much of our monitoring committees' performance focussed in on the chairs and demonstrated both positive and negative qualities in chairpersons. These ranged from chairpersons appearing to protect members of the executive from probing questions from committee members (usually but not always opposition party members) to chairpersons who ensured that there was follow up and robust engagement between committee members, promoting non-partisan approaches to discussions in the committees.

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Our monitoring resulted in a diversity of experiences of committee chairs who hold significant power in committees. We observed many who showed commitment to ensuring due process and a range of inputs from members, we observed some who were willing to challenge members of the executive. However Parliament Watch monitors witnessed numerous situations in which committee chairs were protective and or deferential towards members of the executive or where they blocked processes that could ensure accountability. Considering this range of factors Parliament Watch has assigned a score of 5/10 to the performance of committee chairpersons.

African National Congress MPs meaningful engagement in committees: 4/10

ANC MPs make up the majority of members of committees in the National Assembly, NCOP and Eastern Cape Legislature committees. There are numerous examples of ANC members engaging strongly and effectively in committee meetings, however, our observations across committees is that only a small proportion of ANC MPs play an active and meaningful role in the meeting. In most committees only between one or two ANC MPs besides the chairperson meaningfully engage in the discussions.

The active participation of the majority of ANC MPs in committees dealing with high profile issues (such as the accountability of the SABC board and the appointment of the Public Protector) is unusual and is a departure from the day-to-day low-profile work of committees.

PW monitors have noticed with interest the positive impact of shifts in internal party politics within the ANC that became more public in the last quarter of 2016. This seems to have resulted in a greater diversity of positions being voiced by different ANC MPs and increased critical engagement with members of the executive and thus greater potential for holding government officials to account, however the impacts of this shift, if any, remains to be seen.

For the ANC members who prepare and participate actively throughout meetings we assign a score of 8/10, for the majority of ANC committee members we assign a score of 1/10. Given that the effective ANC MPs are in the minority, we assign an overall score of 4/10 to ANC members for their meaningful participation in committees.

Opposition party MPs

In our monitoring, monitors focussed particularly on the performance of the Democratic Alliance (DA) and the Economic Freedom Fighters (EFF) in committees.

In our view, all vocal engagement from minority parties, in spite of the low potential for influence on final outcomes and decisions taken, can impact on the quality of oversight over departments and to bring issues to light that may otherwise remain hidden. As such even without weight, opposition can add value to the functioning of our democracy.

Democratic Alliance MPs meaningful engagement in committees: 6/10

Overall DA MPs, as is required by their role as the official opposition, appear to be well prepared for meetings and take a strong, active and engaged role in committees, often asking challenging questions of members of the executive. Our monitors observed however that DA MPs frequently take strong positions in committee meetings that seem designed to score political points, without committing themselves to follow up actions. Our view is that these MPs generally perform well in committees, adding value to the potential outcomes through increased deliberation and, while we recognise their own failures to be transparent, the

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DA MPs, through their opposition role contribute to increased transparency of the executive. For this reason we have assigned a score of 6/10 to DA MPs for their performance in committees.

Economic Freedom Fighters MPs meaningful engagement in committees: 4/10

In terms of our assessment of the EFF its important to note that the majority of EFF MPs in Parliament are new to working in the legislatures, in addition all minority parties in Parliament, including the EFF must divide a limited number of members across a wide range of committees. Understandably this would impact on those parties making choices regarding which committees and which issues they will focus on.

However Parliament Watch monitors strongly indicate that the EFF, a party that has made such an impact through its grand gestures in the Assembly since 2014, and in spite of their participation in committees engaging with more contentious issues that receive greater public attention, they are generally absent from committees and for the most part, not getting down to the day-to-day nuts and bolts of committee work.

Given the strong presence of the EFF in the Assembly but their low attendance at committee meetings, Parliament Watch members have high expectation of EFF members to fulfil their full range of tasks in the legislatures. On balance we have assigned a score of 4/10 to EFF MPs for their work in committees.

4.2.2. Openness and Access

Many monitors were struck by how accessible and welcoming the legislatures and many committees were, this is linked to the unusual Constitutional provisions requiring openness and public access to South Africa's legislatures. The positive impact of this is somewhat mitigated by the fact that they generally give poor advance notice of meetings, and meeting schedules change. These issues significantly undermine access. This has a pronounced impact in provincial legislatures.

In the absence of widely accessible mechanisms from the legislatures, Parliament Watch monitors' access to the legislatures was facilitated by the systems within the participating organisations that allowed access to and dissemination of the committee meeting schedules and direct communication with committee secretaries. The support role of actors outside the legislatures, such as PMG, is still critical to expand access. The absence of civil society organisations playing the role at provincial level that PMG plays in the national parliament, means that the work of committees in provincial legislatures is almost invisible to the public.

Accessibility of national Parliament: 5/10

On the issue of accessibility and openness, our constitutional provisions taken alone would result in a score of 8/10. However neither the national nor the provincial legislatures are sufficiently improving their practises to increase public access and openness. We thus score the National Parliament 5/10 on the general implementation of these obligations.

Accessibility of the Eastern Cape Provincial Legislature: 4/10

The Eastern Cape Provincial Legislature we score 4/10, recognising the positive impact of the efforts of support staff on increasing the access of civil society organisations to the legislature but also taking into account the general unavailability of information to the general public.

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Securitisation of Parliament: 1/10

The increased securitisation of parliament over the past two and a half years has been plainly demonstrated through the more frequent use of barbed wire outside the parliamentary precinct, by the increased police presence and by the more frequent use of police force to disperse public protest. In addition to these more threatening measures, the newly implemented access control processes to enter the national Parliament, significantly impact on access and contribute to a mood of suspicion.

We consider the recent increase in securitisation of national parliament highly concerning and score the national parliament 1/10 on this.

4.2.3. Responsiveness to the public and to public inputs into committees

We looked for instances in which committees responded to issues that were being raised in the public domain. Amongst others we monitored the responses of committees to the politically charged #FeesMustFall and the mismanagement of the SABC board. We have also monitored responses to other urgent issues affecting poor and marginalised people, including school infrastructure, inequitable police resourcing and women's inequality.

On both the #FeesMustFall and mismanagement of the SABC board issues we are of the opinion that committees did respond to public action, we recognise that in addition to public pressure other party political factors work to increase political will and responsiveness on issues. We do, however, find that the quality of the engagement and outcome of those responses is relatively weak, most markedly in relation to the #FeesMustFall.

Both the issue of police resourcing and the issue of school infrastructure are backed by comprehensive civil society and public campaigns. These campaigns include organisations approaching the legislatures to provide information and to contribute to their oversight role regarding the issues. On both issues we found the legislatures responses to be extremely weak.

Responsiveness to the public: 4/10

Bearing in mind the responsiveness to the major politically charged issues but also factoring in the failure of committees to address the range of urgent issues that affect poor and marginalised people which are receiving significant public attention, we allocating a score of 4/10 to the legislatures for the extent of their responsiveness to the public.

4.2.4. Independence and oversight over the executive

Overall, monitors reflect that the parliamentary committees appeared weaker than the members of the executive over which they should exert accountability. This is considered to be a consequence of the ANC majority in committees resulting in those members appearing to be deferential, sympathetic and protective towards members of the executive and of the opposition parties not having any final influence over the outcomes and decisions of committees.

Monitors did reflect that there were a number of occasions in which ANC members and committee chairpersons did attempt to exert their authority over ministers or senior departmental officials but were ignored or resisted by those members of the executive.

Linked to the question of the general performance of committees, is that, with some exceptions, committees generally fail to follow through with departments on their requests for further information, or on ensuring

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that their recommendations are implemented. This failure to follow through is evident across political parties.

Opposition parties were repeatedly observed making vociferous inputs, asking departments challenging questions and pushing for follow up on previous decisions. While these did not always have traction in the outcomes of meetings, there is a value to the process of deliberation in that it builds transparency, and the potential for accountability, regarding the performance of government departments.

The shifting internal politics within the ANC brought with it demonstrable improvements in the quality of authority of the legislatures over the executive at the end of 2016, however their impact is as yet uncertain and it remains to be seen if these shifts will persist into 2017.

Independence from the executive: 1/10

Overall monitors agreed that the norm in which partisan allegiance influences committees and committee chairpersons to be protective of the ANC has not changed significantly, for this reason we scored the legislatures 1/10 for their independence from the executive.

Oversight over departments: 4/10

The legislative framework for oversight as well as the development of the Sector Oversight Model are positive. Legislature's consistent efforts to strengthen this oversight is noted as is the gradually increasing capacity to do so. However over the past three years the processes have been increasingly shortened, affecting the potential quality of their outcomes and the potential for public engagement. Over the years there is a clear lack of follow through from most committees on the recommendations that they make to departments. As a result of these factors we score Parliament 4/10 for oversight.