



2016 and the state of South Africa's legislatures – what's next?

Background note

Parliament Watch is a collective of 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, Equal Education Law Centre, Heinrich Boell Foundation, Livity Africa, Parliamentary Monitoring Group, Public Service Accountability Monitor, The Right to Know Campaign, Social Justice Coalition, and Women on Farms Project. During 2016 these organisations have worked together to monitor Parliamentary committees and committees in the Eastern Cape Legislature to assess their performance on the Constitutional mandates for openness and accessibility, holding the executive to account, and responsiveness to the public.

On **07 February 2017**, in the days ahead of the opening of Parliament, we will be hosting an event, which aims to increase public scrutiny on legislatures through reflecting on their performance in 2016 and considering the prospects for stronger legislatures in 2017. The event will include presentation of and discussions on the findings of the Parliament Watch monitoring that was undertaken during 2016.

More broadly, we hope that the event will contribute to:

- Building civil society and public 'ownership' of National Parliament and Provincial Legislatures in order to increase claims on these institutions, which we consider as central to our democracy and as having a crucial role to promote effective service delivery and advance social justice and transformation in South Africa.
- Increasing the demand for accountable legislatures and elected representatives in their duties to uphold their Constitutional mandates to represent the public, to conduct their business in an open manner, to be accessible to the public, to exercise oversight over the performance of the executive and hold the executive to account.
- Increased knowledge of and 'popularising' the processes of the legislatures, in particular those pertaining to oversight over service delivery.
- An open a constructive dialogue between elected representatives and civil society.

The Programme

The conversation will be moderated by Angelo Fick, and the programme will include contributions from:

- Judith February, Institute for Security Studies (ISS)
- Lawson Naidoo, Council for the Advancement of the South African Constitution (CASAC)
- Karabo Rajuli, amaBhungane Centre for Investigative Journalism
- Dr Khoza, Member of Parliament, National Assembly
- Alison Tilley, Open Democracy Advice Centre (ODAC)
- Nomaceba Mbayo, Right to Know Campaign (R2K)

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- Zukiswa Kota, Public Service Accountability Monitor (PSAM)

Parliament Watch monitors from the Dullah Omar Institute; Equal Education Law Centre; Livity Africa; Public Service Accountability Monitor (PSAM); Right to Know Campaign (R2K); Social Justice Coalition (SJC) and Women on Farms Project will speak to their experiences and findings of monitoring the legislature in 2016.

By way of framing the conversation we are relying on a quote from the March 2016 judgement on the matter of the remedial powers of the Public Protector, the judgement described the role of Parliament thus:

“Similarly, the National Assembly, and by extension Parliament, is the embodiment of the centuries-old dreams and legitimate aspirations of all our people. It is the voice of all South Africans, especially the poor, the voiceless and the least-remembered. It is the watchdog of State resources, the enforcer of fiscal discipline and cost-effectiveness for the common good of all our people. It also bears the responsibility to play an oversight role over the Executive and State organs and ensure that constitutional and statutory obligations are properly executed. For this reason, it fulfils a pre-eminently unique role of holding the Executive accountable for the fulfilment of the promises made to the populace through the State of the Nation Address, budget speeches, policies, legislation and the Constitution, ... In sum, Parliament is the mouthpiece, the eyes and the service-delivery-ensuring machinery of the people. No doubt, it is an irreplaceable feature of good governance in South Africa.”

Yet, by most accounts, the legislatures have increasingly failed to deliver in these roles over the past decade, and these failings have been particularly marked over the past two and a half years. Indeed some of the abuses of power by the ruling party in Parliament have been so obscenely brazen, that no amount of insistence by the presiding officers or ANC MPs of the procedural correctness or lawfulness of those actions has duped the public. Even unsuccessful challenges to ruling party power in the legislatures have the potential to impact positively on the transparency, and ultimately, the accountability of the executive. Increasing pressure from diverse sectors outside, coupled with that from elected representatives from opposition parties within legislatures, has made gains and demonstrates the growing imperative to rethink and overhaul practices in Parliament and legislatures. The greater visibility of contestation within the ANC in the latter part of 2016, too is a positive sign for a strengthened institution with greater will to hold the executive to account. Taken together these developments have the potential to address the obstacles to meaningful and improved oversight and increase the public trust in these institutions of democracy.

Some of the events and processes that have recently played out in and around Parliament include:

- Increased police presence around the Parliamentary precinct including the use of barbed wire barricades as a pre-emptive measure.
- Increased use of police force in response to public protest outside Parliament, particularly notable regarding Fees Must Fall in 2015-2016.
- Increased security clearance processes at the visitor’s centre, further frustrating public access.
- Reports from media sources that a report (on expensive ‘benchmarking’ trips by senior members of Parliament’s administration to European Parliaments) includes recommendations that Parliament create it’s own press to avoid ‘interpretation’ by third parties, charge broadcasters for content, and consider establishing a Parliamentary protection service with powers to search and arrest, amongst others.

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- Absolving the President from complying with the remedial action of the Public Protector in relation to the upgrades to the President's Nkandla residence which culminated on the Constitutional Court judgement that was handed down in March 2016.
- The extended deadlock between Parliament's administration and Nehawu on deductions from salaries, salary increases, performance bonuses and State Security vetting of Parliamentary staff from 2015 through most of 2016.
- The delivery in September 2016 of the SCA judgment that found the jamming of the broadcast signal from Parliament early in 2015 was unconstitutional.
- The Energy Committee's failed attempt to close the meeting at which the department would brief it on the Nuclear programme in November 2016.
- The appointment process for the new Public Protector which was conducted in a relatively open manner with some measure of public participation, but which appears nonetheless to have resulted in the appointment of a Public Protector whose independence is questioned.
- Recent statements by the Standing Committee on Finance chair Yunus Carrim pushing back against the executive regarding the President's failure to assent to and sending back of the Financial Intelligence Centre bill due to his concerns that the provisions for searches without warrants are unconstitutional.
- The apparent turn-around of ANC MPs in the last months of the year in their approach to oversight over the public broadcaster and related structures.

These and many other moments and events both in committees and in the House provide different insights into the ever shifting landscape of alliances, political will, protections, and challenges towards more effective oversight and constructive engagement with the executive and public servants.

The event is based on the idea that increased public ownership of democratic institutions can contribute to the necessary political will, and that enhancing interactions between elected representatives and the public can increase the quality of deliberative democracy towards the goals of social justice and transformation.

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