

MPS ARE KICKING THE CAN  
DOWN THE ROAD:  
OUTA 2022 REPORT ON  
PARLIAMENTARY OVERSIGHT IN  
SOUTH AFRICA

# ADVOCACY BRIEF: PARLIAMENTARY OVERSIGHT REPORT

## **Purpose:**

The purpose of this Advocacy Brief is to provide a succinct overview of the 2021-2022 Report on Parliamentary Oversight in South Africa as presented by OUTA.

## **Background:**

This is the fourth report in OUTA's annual series of reports on the Oversight of Parliament. Each of our previous reports was strongly critical of the failure by Parliamentarians to hold the Executive to account. Despite government's claimed opposition to the erosion of state institutions due to state capture, this report finds no significant improvement in accountability by Parliament.

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# INTRODUCTION

This is the fourth report in OUTA's annual series of reports on the **Oversight of Parliament**. OUTA's 2022 Parliamentary Oversight Report is available [here](#).

Each of our previous reports was strongly critical of the failure by Parliamentarians to hold the Executive to account. Despite government's claimed opposition to the erosion of state institutions due to state capture, this report finds no significant improvement in accountability by Parliament.

OUTA's 2019 report is [here](#).

OUTA's 2020 report is [here](#).

OUTA's 2021 report is [here](#).

Our parliamentary team assessed the work of 10 parliamentary portfolio committees over the year from July 2021 to June 2022. We found a Parliament mired in the aftermath of state capture, unable or unwilling to hold the Executive to account, continuing to regard public participation as a tick-box exercise, resisting the responsibility of implementing electoral reform to serve party interests.

This is a Parliament which continues to resist the change required to strengthen democracy and combat state capture. This is a Parliament which is kicking the can down the road, hoping to postpone the inevitable.

Parliament and our Members of Parliament have been central to allowing state capture to go unchecked. Despite public criticism, including the strongly critical final report of the State Capture Commission, too many parliamentarians continue to fail to hold the Executive to account, keep members sullied by state capture in senior positions, choose party over public interest, and resist electoral reform in defence of the majority party.

The Executive – the ministers in the Cabinet – retains ministers who are deeply compromised and sometimes blatantly acting contrary to South Africa's interests or are simply incompetent. We need fair and firm oversight of the Executive, the departments and state entities which report to them, to defend the public interest.

The report answers five critical questions:

- What are MPs supposed to do?
- What evidence is there that MPs do their jobs?
- Why doesn't Parliament do what it is supposed to do?
- Why don't MPs do what they are supposed to do?
- What should we expect from our MPs and Parliament?



# KEY FINDINGS

We assessed the work of 10 portfolio committees, the committees run by MPs of the National Assembly, using key documents from those committees.

We found that:

- MPs receive significant time out of Parliament specifically for constituency work – that is, connecting with the public – but there is still insufficient evidence of this work being undertaken;
- Some ministers still dodge attendance at committee meetings;
- Committees still obtain most of their oversight information from the very departments they watch over;
- Public participation remains a tick-box exercise;
- Where committees identify problems in departments and recommend solutions they are often ignored;
- Parliament approves departmental budgets year after year despite flagrant financial mismanagement;
- Committees too often make a noise but then rubber-stamp executive decisions.



*I will be faithful to the Republic of South Africa, and will obey, respect and uphold the Constitution and all other law of the Republic; and I solemnly promise to perform my functions as a member of the National Assembly / permanent delegate to the National Council of Provinces / member of the legislature of the province of ... to the best of my ability."*

MP Oath to Office, The Constitution, Schedule 2, Section 4



# KEY RECOMMENDATIONS

Since our last report, the State Capture Commission has issued its final report. During November 2020, OUTA had submitted an affidavit to the Commission detailing how Parliament had failed to take action to prevent state capture, and subsequently gave oral testimony on this.

The Commission's final report included damning findings against Parliament and its failure to oppose state capture. Although the final volume of this report was released on 22 June, Parliament has made no attempt to address the issues raised in the report, instead apparently meekly waiting for the President to tell Parliament what he intends to do, if anything.

We expect more of our parliamentarians. For the fourth year in a row, our report finds that Parliament is a failed institution.

The following recommendations are made in the 2022 report:

1. Tell us how you will comply: We want ministers to provide implementation reports
2. All ministers should promote accountability
3. Insist on timeous reporting
4. Use minority reports
5. Track those missing answers
6. Appoint opposition MPs as chairs of PCs
7. Activate OVAC
8. Review ministers' performance agreements
9. Where's the consequence management?
10. Listen to the public
11. Hold public hearings for BRRRs
12. Improve access for those with limited resources
13. Implement the Zondo recommendations
14. The public should get involved

This year, we want to warn that if our democracy is to survive, we need ethical, hard-working parliamentarians, who stand up against corruption and work in the public interest. We do not have enough of them.



The current physical state of Parliament (picture: OUTA)



# THE ROLE OF PARLIAMENT

Parliament has a distinct role to play and then MPs themselves have a role to play, including opposition MPs. Parliament plays an oversight role of the Executive. It is done for the following reasons:

- To detect and prevent abuse;
- To prevent illegal and unconstitutional conduct on the part of the government;
- To protect the rights and liberties of citizens;
- To hold the government answerable for how taxpayers' money is spent; and,
- To make government operations more transparent and increase public trust in the government.

Parliament uses public participation methods to engage with the public during National Assembly in-session periods as well as during the constituency leave periods.

Every citizen has the right to comment on and engage in public participation activities on matters influencing their rights and livelihoods.

## CRITICAL QUESTIONS

### WHAT ARE MPS SUPPOSED TO DO?

Members of Parliament are distributed across parliamentary committees which should ensure the Constitution is upheld. Portfolio Committees provide oversight, observe and implement legislation, apply and ensure adherence to departmental budgets, engages with the public and scrutinises government activities. Failure to attend to their obligations, is a failure in their oath to South Africa.

### WHAT EVIDENCE IS THERE THAT MPS DO THEIR JOBS?

There are several factors to consider: meeting attendance by MPs and ministers, constituency periods, public engagement, public participation opportunities, using the Auditor-General of South Africa's reports, Budgetary Review and Recommendation Reports (BRRRs), and their follow-through in the Annual Performance Plans (APP), ministers' performance agreements and reactive oversight. MPs can also measure government performance against local and international policies and frameworks.

# MONTHLY REPORT

month of December



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# CRITICAL QUESTIONS

## WHY DOESN'T PARLIAMENT DO WHAT IT IS SUPPOSED TO DO?

In OUTA's view, there is a need to address some of the structural issues that undermine the ability of MPs to perform their function. These include the career paths of MPs, their affiliations, salaries and status. Secrecy is a major concern. Not all meetings and their minutes are made public, not all meetings are livestreamed, and many meetings are scheduled - and cancelled - at short notice. Not all MPs act according to Parliament's Ethical Code of Conduct and the penalties for transgression are usually a slap on the wrist. There seems to be a general lack in political will as was found in the Zondo Commission reports.

## WHY DON'T MPS DO WHAT THEY ARE SUPPOSED TO DO?

There are a number of tools that MPs can use but appear to lack the political will to do so. MPs could use their BRRRs and the failure of departments to address the shortcomings in the APPs or other meetings. MPs do have the power to summons any person they feel they need to appear before the committee to provide an explanation on any oversight matter. MPs can consult with civil society. MPs can ask probing questions in committee work, but this needs MPs to be prepared with critiques of government's actions. MPs can postpone meetings and demand answers. Opposition parties need to make use of minority reports as well as questions in the House to gain information that is not forthcoming from the Executive. MPs can request action from the Speaker.

## WHAT SHOULD WE EXPECT FROM OUR MPS AND PARLIAMENT?

Open Parliament to meaningful dialogues with civil society. Institute public hearings prior to the BRRR process to prepare MPs for oversight and to influence the departmental annual plans for the following year. Implement a hybrid version of meetings where MPs meet in person and the public can attend in person or virtually. Immediately publish research reports prepared by the parliamentary research section. Publish parliamentary committee minutes on the parliamentary website to enable greater transparency in Parliament's workings. Reduce budgets of non-performing entities, particularly those with a history of financial mismanagement. Chairpersons should be monitored for their ability to hold the Executive to account.



## KEY TAKE-AWAYS

- OUTA assumes that politicians should be active citizens, engaged with the broader society and that they should not only be open to hearing and considering the views of the public at election times, but that they should actively seek out input from their public throughout their parliamentary term.
- OUTA also assumes that MPs should uphold the highest moral code and act with integrity in their role of representing the people.
- OUTA also assumes that in their role of overseeing the executive, MPs should ensure that they always act in the public interest. When they are elected to office, our political representatives swear an oath or an affirmation to uphold the Constitution.

## KEY CHALLENGES

- South Africa has limited public funds available and MPs must function to ensure that public spending is in the public interest and that monies are not wasted.
- Some actions are needed to address the issue of the ruling party having too much power and therefore able to prevent effective oversight of their party ministers. Such actions would lead to a much needed political will to hold the Cabinet accountable.
- Other actions need to focus on the need to shift the balance of power amongst different political parties, while some actions are needed to strengthen the institution of Parliament itself to serve democracy.
- Each of our previous reports was strongly critical of the failure by parliamentarians to hold the Executive to account. Despite government's claimed opposition to the erosion of state institutions due to state capture, this report finds no significant improvement in accountability by Parliament.

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*OUTA sees this report as part of strengthening our parliamentary democracy in order to fulfill the rights enshrined in the Constitution and looks forward to engaging further with Parliament. Parliament is a necessary cornerstone of our democracy, and it is only through constructive engagement that civil society can urge and demand accountability from our government.*

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# WAY FORWARD



**Successive parliaments mean that new MPs arrive and need to be inducted into their role. OUTA believes that such induction could be strengthened:**

- The research and committee section must provide MPs with lists of stakeholders whom they know are active in this portfolio area;
- MPs must be encouraged to use the oversight tools that they have at their disposal and be educated as to the most effective manner to use those tools;
- MPs must be encouraged to seek independent sources of information and not to rely on the very departments they oversee for information; and
- MPs need to ensure that committees that focus on financial management of Parliament and on ethical behaviour of MPs must be given priority, in order to ensure that MPs are engaging with their constituencies effectively and efficiently and that those MPs that are guilty of misconduct and unethical behaviours receive swift and appropriate consequences.

At this time, OUTA believes that such actions would help to restore faith in the institution of Parliament.





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