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The Role and Functions of Parliament and Mandate of Committees

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LCC/Front Bench Retreat

Wild Geese Lodge

Harare

OVERALL OBJECTIVE:

To provide a forum for members of the Executive (Ministers, Deputy Ministers and Secretaries) and members of Parliament to develop mutual appreciation of the role and functions of Parliament including the mandate of its Committees and Ministerial obligations to Parliament

SPECIFIC OBJECTIVE:

To outline how committees of Parliament execute its oversight function and their mandate

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1.0 Introduction

Zimbabwe is a constitutional democracy. The three pillars of State, *viz* the Executive, the Judiciary and the Legislature, therefore, derive their existence, mandate and authority from the Constitution. For the proper functioning of the State, these pillars have complementary and coordinate roles in line with the principle of separation of powers. It is in this context that this paper describes the role and function of Parliament, specifically its oversight function and the mandate of Parliamentary Committees.

1.1 Composition of Parliament

In terms of Section 32 of the Constitution, the Legislature consists of the President and Parliament. Section 33 of the Constitution states that Parliament shall consist of two Houses, namely, the Senate and the House of Assembly.

1.2 Mandate of Parliament

The mandate of Parliament is derived from section 50 of the Constitution, which states: *“Parliament may make laws for the peace, order and good government of Zimbabwe”*. This provision gives Parliament its Legislative, Oversight and Representative functions covering any and all areas of Executive operation. Consequently, this gives Parliament the mandate to strengthen governance systems by calling the Executive to account for the manner it determines and executes public policy and programmes. The oversight role is conferred on Parliament and codified by Senate Standing Order 149(2) and House of Assembly Standing Order 159(2).

2.0 Role and Functions of Parliament

The role of Parliament was aptly described by the Parliamentary Reform Committee (PRC), which stated in its Foundation Report that *“the role of Parliament is to legislate, to scrutinize the policies and activities of the Executive, to hold the Executive to account for its actions and to act as a forum for democratic participation by all members of society”*. Embodied in this statement are the roles recognized in most legislatures the world over, and these are:

- a) Legislative;
- b) Executive oversight;
- c) Representation; and
- d) A Forum for Public Debate.

It is also worth noting that Section 49 of the Constitution empowers Parliament to enact legislation to determine and regulate the privileges, immunities and powers of Parliament. Accordingly, Parliament enacted the *Privileges, Immunities and Powers of Parliament Act* [Chapter 2.08] (hereinafter referred to as the Act).

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Parliamentary privilege refers to a special right enjoyed by Parliament as a body, members as individuals as well as witnesses who appear before Parliament. That this privilege is part of our law in Zimbabwe is not in dispute as section 4 of the Privileges, Immunities and Powers of Parliament Act Chapter 2.08 provides that:

'The privileges immunities and powers of Parliament and members and officers of Parliament shall be part of the general and public law and it shall not be necessary to plead them but they shall be judicially noticed in all courts'

In addition to this, Parliament derives its powers from Standing Orders that are made in terms of section 57 of the Constitution. In the case of *Biti and Another v the Minister of Justice, Legal and Parliamentary Affairs*,¹ the Supreme Court drew attention to the fact that Schedule 4(1)(3) of the Constitution gives Standing Orders the status of law. In light of the above, the objective of this paper is to outline the functions and powers of Parliament, with a particular emphasis on how Parliament, through its committees, exercises its oversight function.

2.1 Legislative

Parliament performs its legislative role by passing Bills that are subject to assent by the Head of State in terms of Section 51 of the Constitution. Any Bill, except a "Money Bill", can be introduced in either House. Money Bills can only be introduced in the House of Assembly but must be considered by both Houses.

2.1 Executive Oversight

Oversight -the review, monitoring, and supervision of operations and activities- takes a variety of forms and utilizes various techniques. These range from specialized investigations by select committees to annual appropriations hearings. Oversight is supported by a variety of authorities. The Constitution, public law, and chamber and committee rules- and it is an integral part of the system of checks and balances between the Legislature and the Executive.²

Kaiser (2006) observed that oversight, as an outgrowth of the system of checks and balances, ideally serves a number of overlapping objectives and purposes:

- Improve the efficiency, economy, and effectiveness of governmental operations;
- Evaluate programs and performance
- Detect and prevent poor administration, waste, abuse, arbitrary and capricious behavior, or illegal and unconstitutional conduct;
- Protect civil liberties and constitutional rights;

¹ 2002(1)ZLR 177(S)

² Frederick M. Kaiser, Congressional Oversight, Order Code 97-936 GOV,

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- Inform the general public and ensure that executive policies reflect public interest;
- Gather information to develop new legislative proposals or amend existing statutes;
- Ensure administrative compliance with legislative intent;
- Prevent executive encroachment on legislative authority and prerogatives

Parliament performs Executive Oversight by scrutinizing government policies, programmes, and expenditure plans. This is done, among other things, by making inputs into, approving and monitoring the national budget. Parliament, through its system of House of Assembly Portfolio and the recently established Senate Thematic Committees, monitors all government policies and programmes to ensure efficient use of national resources. In addition, individual members can raise questions or move motions that relate to government policies and programmes.

In a constitutional democracy such as Zimbabwe, the Executive is accountable to Parliament as a body elected to represent the people. It is Parliament's duty to deliberate on and pass laws, to scrutinize government programmes and expenditure and to make the Executive accountable. However, Parliament must not seek to govern because that is the duty of the Executive. The President and Cabinet are responsible for Government Administration; the execution of public policy and programmes usually articulated through Parliament. This relationship between Legislature and the Executive, therefore, calls on the Executive to consult Parliament and be open about its plans and programmes.

3.0 Historical Evolution of the Committee System

The Committee system in the Parliament of Zimbabwe has been evolving since independence. At independence in 1980 to 1989, the Parliament of Zimbabwe operated with one Estimates Committee, which was divided into sub-committees in order to carry out Parliament's oversight on more ministries. These Sub-Committees examined the use of public funds. They dealt with items of expenditure in government ministries that incurred wasteful or unnecessary expenditure. Their function was to make ministries accountable for funds allocated from the fiscus and to ensure that funds were used for their intended purpose. Each sub-committee considered the work of two government departments or Ministries per session. This was considered inadequate, as some ministries were never scrutinised during the life of a Parliament. From 1990 to 2000, the Committee System evolved into what were referred to as Departmental Committees. These were divided into four clusters with all ministries and government departments falling under one of the four clusters namely, Service, Security, Technical and Financial and Economic Development Committees. Their terms of reference remained the same as those of the Estimates Committee. It was envisaged that the four Departmental

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Committees would increase substantially the number of ministries scrutinized in the life of a Parliament. However, with time this system proved inadequate as these Committees could not effectively monitor all the ministries.

The Parliamentary Reform Committee (PRC) in its Foundation Report (May 1998), observed that Parliament as a collective body cannot effectively carry out the Executive oversight function. The Parliamentary Reform Committee, therefore, recommended that the unicameral Parliament delegates this function to a well coordinated Portfolio Committee system which is better positioned to effectively carry out this function. It argued that a functioning committee system could make public resource allocations and policy making more transparent and open. Portfolio Committees provide an avenue for citizens and civic organizations to contribute to the policy making and analysis process, through written submissions or by participating in public hearings. The terms of reference of Portfolio Committees are provided for in House of Assembly S.O.159. These investigative committees can be divided into Pre-Audit Committees (19 Portfolio Committees) and a Post Audit Committee (Public Accounts Committee). The 19 Portfolio Committees are named after the government departments they shadow. There are six Thematic Committees in the Senate. These cover broad areas as opposed to Portfolio Committees.

With effect from the beginning of the First Session of the Seventh Parliament, Parliament moved away from the Joint Portfolio Committees adopted in 2005. Thematic and Portfolio Committees were established for the Senate and House of Assembly respectively. Thematic Committees are a creation of reforms to respond to the reintroduction of the bicameral system and as part of efforts to create separate identities for the two Houses in line with the practice of other bicameral jurisdictions. Thematic Committees, like the House of Assembly Portfolio Committees, provide the Senate with an opportunity to consider issues in depth and allow more members to participate in debate before the House. It was envisaged that most of the work of the Senate would thus be done in the Thematic Committees.

Committees are an important vehicle through which Parliament more effectively carries out its legislative, representation and oversight functions. Their reports are tabled and debated in the respective Houses.

Parliament plays an oversight role mainly through its Portfolio and Thematic Committees. These Committees are mandated to monitor, investigate, inquire into and make recommendations relating to any aspect of the legislative programme, budget, policy or any other matter it may consider relevant. With regard to financial oversight **Section 102** of the Constitution specifically provides that no moneys may be withdrawn from the Consolidated Revenue Fund without the authority of Parliament. In terms of

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section 103, the Minister responsible for finance is obliged to lay before Parliament the national budget for approval at least once a year. In exercising the oversight function, Parliamentary Committees monitor the administration of ministries in general as well as parastatals to ensure that they implement government policies.

3.1 The terms of reference for Committees of Parliament

The terms of reference for Parliamentary Committees are derived from Parliamentary Standing Orders. More specifically, Standing Order 159 states that;

Subject to these Standing Orders, a portfolio committee shall-

- a) *Consider and deal with all bills and statutory instruments or other matters which are referred to it by or under a resolution of the House or by the Speaker;*
- b) *Consider or deal with an appropriation or money bill or any aspect of an appropriation or money bill referred to it by these Standing Orders or by or under resolution of this House; and*
- c) *Monitor, investigate, enquire into and make recommendations relating to any aspect of the legislative programme, budget, policy or any other matter it may consider relevant to the government department falling within the category of affairs assigned to it, and may for that purpose consult and liaise with such department;*
- d) *Consider or deal with all international treaties, conventions and agreements relevant to it, which are from time to time negotiated, entered into or agreed upon*

Furthermore, Parliament, through the Public Accounts Committee, conducts a post audit scrutiny of funds appropriated for public expenditure in ministries and parastatals to ensure that the funds are spent for intended purposes.

The PAC works closely with the Comptroller and Auditor General (C&AG), one of the oversight institutions in Zimbabwe, in executing executive oversight³. The C&AG reports on accounts of statutory bodies that are laid before Parliament by the Minister responsible in terms of Part IV, Section 17 of the Audit and Exchequer Act [Chapter...]. Paragraph 2 of the same section further empowers the C&AG to transmit to the Speaker of the House of Assembly such report in the event that the minister responsible fails to lay it before Parliament⁴.

The C&AG and the Accountant General are *ex-officio* members of the PAC who provide technical advice to that committee.

³ The other one is the Ombudsman.

⁴ NB: The provision is yet to be amended in line with a bicameral system. Currently the provision makes reference to the Speaker of Parliament, who is now referred to as the Speaker of the House of Assembly.

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3.2 The Parliamentary Legal Committee

The appointment, composition and functions of the Parliamentary Legal Committee are provided for by Sections 40A and 40B of the Constitution. The Parliamentary Legal Committee is a Constitutional watchdog whose task is to examine every Bill other than a Constitutional Bill and report to Parliament whether the Bill contains any provisions, which, if enacted, would violate the Bill of Rights, or any provision of the Constitution. The Committee also examines every amendment to a Bill that has been proposed by either House. It also examines all the statutory instruments published in the Government Gazette.

The Parliamentary Legal Committee is made up of members from both Houses. The Committee is appointed by the Standing Rules and Orders Committee in terms of Section 40A of the Constitution. It consists of members, other than members of the Cabinet, ministers or provincial governors, not being less than three in number. It is also a requirement of the Constitution that the majority of the members of the committee should be legally qualified. The reports of the committee are submitted to and considered by the House in which the Bill is introduced or the amendment under consideration is made.

3.4 Effectiveness of the Committee System

The effectiveness of Committees in exercising the Executive oversight function depends partly on the powers accorded them by the Standing Orders. S. O. 159 of the House of Assembly provides for powers of Select Committees and parts (a, b) of the same Standing Order state that Select Committees have the power *'to summon any person to appear before it to give evidence on oath or affirmation and to produce any documents required by it'*. These powers can be exercised on a Vice President, the Prime Minister, Deputy Prime Minister, Ministers (and Governors) whose portfolio is covered by the committees. Standing Orders further provide that failure to appear before a select committee to give evidence is deemed to be in contempt of Parliament.

The Ministry of Finance (MOF) appreciates the role played by Portfolio Committees in the re-engineered budget process. The MOF realizes that the role of Parliament is to strengthen the Executive function and that there is a need to share with MPs, who are now more empowered because of the relationship between the MOF and Committees of Parliament. Further to this, ministries appreciate the Quarterly Budget Reviews as they have created an avenue for sharing challenges and experiences collectively and to discuss ways to improve implementation of government programs ensuring effective use of resources appropriated by Parliament. The MOF is, indeed, taking on board recommendations from Parliament. Evidence of this is the recent enactment of the Public Finance Management Bill which institutionalizes the budget review process developed as part of parliamentary reforms.

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3.5 The Budget Process

In May 1998, the PRC recommended the setting up of the Budget Committee whose mandate was to *'participate in the formulation of the national budget, scrutiny of the preliminary draft budget from the Executive and continuous monitoring of budget implementation'*. In the same vein it also recommended the establishment of the Public Accounts Committee to carry out post audit scrutiny and value for money audits. The adoption of the PRC recommendations has resulted in the Budget Committee performing a coordinator role in the Budget Review Process, which can be broadly divided into two parts;

a) Pre-Budget Process

- Formulation/crafting of the national budget

b) Post Budget Process

- Debate, amendments and approval of the national budget by Parliament
- Monitoring implementation of the national budget

Pre-Budget Process: Formulation of the National Budget

Section 103 (1) of the Constitution of Zimbabwe authorizes the Minister to lay, before the House of Assembly, estimates of revenue and expenditure of Zimbabwe for that financial year, before or not later than thirty days after the start of each financial year. Therefore, it is the role of the Executive to formulate and table the national budget before the House of Assembly.

However, prior to the tabling of the revenue and expenditure estimates by the Minister of Finance, the Budget Review Process provides for Ministries or government departments to consult Parliament, through its Portfolio Committees, civic society organizations and the public during the process of budget bids formulation. Thus, draft budget bids and priorities for the next budget are discussed with Portfolio Committees and other interested stakeholders before they are submitted to Treasury. This usually takes place within the first quarter of each year.

3.6 Post Budget Process

The budget is usually presented before the House of Assembly in November or early December of each year⁵. After the presentation of the budget, Portfolio Committees invite government officials, interested stakeholders and members of the public to discuss the estimates of expenditure. The purpose of these meetings is to scrutinize the proposed estimates against the priorities agreed in the pre-budget process. It also gives an opportunity for sector ministries to reprioritize and receive recommendations to

⁵ Note that the estimates of revenue and expenditure are presented in the House of Assembly in accordance with Section 103 of the Constitution of Zimbabwe.

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virement funds.⁶ Further, the meetings empower Members of Parliament to make meaningful contributions during budget debate in the Houses.

Since not all MPs have the capacity to understand the budget and other technical issues, Parliament adopted the recommendation of the Parliamentary Reform Committee, which stated that committees should be able to supplement in house research capacity by engaging “*the skills of specialist advisers to assist with particular legal, financial and technical enquiries*” Barring resource constraints, most if not all committees engage specialist advisers to assist in analyzing the implications of the budget on the operations of government departments and in the preparation of reports⁷. This is in addition to the administrative support services of Committee Clerks and a researcher attached to each Committee, who both assist the Committees in drafting reports for presentation in the House of Parliament.

3.7 Budget Debate in Parliament

Budget debate in Parliament is divided into two parts: General Debate and Debate in the Committee of Supply.

3.8 General Debate

During general debate, the Budget Committee leads debate by presenting its report on the overall budget, mainly focusing on the broad fiscal and monetary measures proposed in the budget. Soon after the presentation by the Chairperson of the Budget Committee, other Portfolio Committee Chairpersons contribute to debate by presenting their respective sector reports. Other Members may also contribute to debate during this stage.

3.9 Committee of Supply

In the House of Assembly, debate and approval of each Vote is done in the Committee of Supply. During this stage, Portfolio Committees have an opportunity to debate, in detail, their sector allocations. Recommendations to virement funds from one budget item to another may be proposed and debated. Thus each Vote is passed, with or without amendment. When the Committee of Supply passes all the Vote allocations, the Chairperson of the Committee of Supply will report the proceedings to the Speaker, who puts the report for adoption before the House⁸. Upon the adoption of the report, the Minister of Finance introduces the Appropriation Bill to give effect to the report of the Committee of Supply. At the conclusion of all the processes, the House of Assembly transmits the budget to the Senate that, in turn, debates and may only make

⁶ Parliament can only move funds from one budget item to another but cannot increase the overall size of the budget.

⁷ However, in the 6th Parliament Portfolio Committees were assisted by Parliament researchers and Committee Clerks. This is a result of the on job training done in the fifth Parliament.

⁸ This is known as the Report Stage

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recommendations for consideration⁹. The Constitution and Standing Orders provide for the transmitting of messages between the House of Assembly and the Senate.

3.10 Monitoring Implementation of the Budget

Portfolio Committees exercise Executive oversight in various ways, one of which is through their contribution in the budget formulation and implementation. The Budget Review Process's major objective is to promote meaningful participation by Parliament, civic society organizations and the general public in the budget formulation and implementation process. This followed widespread concerns that the role of Parliament had been relegated to that of rubber-stamping the national budget formulated by the Executive.

Apart from contributing to the formulation of the national budget, Portfolio Committees also monitor budget implementation by government departments on a quarterly basis. This enables Parliament and its Portfolio Committees to enforce Executive accountability on the use of public funds and implementation of public programmes.

Government Ministries prepare quarterly budget reports and submit them to the respective Portfolio Committees for scrutiny. The committees, with the assistance of in-house and outside experts, carry out a thorough analysis of the quarterly budget performance reports before calling the government officials for a discussion of the performance during the quarter.

4.0 Conclusion: Coordination Issues

Parliament and the Executive have equal and coordinate roles. The principle of separation of powers as embodied in our Constitution clearly shows that the Executive makes decisions for the State and that Parliament can call the Executive to account for its actions. There should be no confrontation between the two but the relationship requires a coordinated approach.

The then Department for Policy Implementation in the President's Office was put in place after the realization that there is a gap between Planning and Implementation. It was, therefore, the responsibility of the Department for Policy Implementation to carry out a gap analysis by reviewing at work plans, available resources and an assessment of the achievements made at the end of each period.

It is important to find ways through which Parliament and the Department for Policy Implementation can complement each other in addressing the gap between Planning and Implementation. It is Parliament's view that the Department for Policy Implementation can participate in some of Parliament's activities. One such activity is

⁹ Paragraph 2 and 3 to Schedule 4 of the Constitution provides for procedure and resolution of disagreements over a proposed Bill between the Senate and House of Assembly.

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the annual retreat of the Liaison and Coordination Committee (LCC), a forum for all Chairpersons of Committees. Issues affecting Portfolio Committees in discharging their mandate are usually discussed at such a meetings. Therefore, the Minister and the Principal Director for the Department for Policy Implementation can participate at such a meeting by sharing experiences with the LCC and suggesting what should be done.

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