

**PARLIAMENTARY OVERSIGHT OF FINANCE AND THE BUDGETARY
PROCESS**

**THE REPORT OF A COMMONWEALTH PARLIAMENTARY ASSOCIATION
WORKSHOP, NAIROBI,
KENYA, 10TH -14TH DECEMBER, 2001**

INTRODUCTION

1. It has been argued that the principle behind legislative oversight of Executive activity is to ensure that public policy is administered in accordance with the legislative intent. According to this principle, the legislative function does not cease with the passage of a bill. It is, therefore, only by monitoring the implementation process that members of the Legislature uncover any defects and act to correct misinterpretation or maladministration. In this sense the concept of oversight exists as an essential corollary to the law making process.
2. Legislative oversight of the Executive has been a contentious matter since the earliest days of the United Kingdom (U.K.) House of Commons in the late 14th century. In the case of the oversight of finance and the budgetary process, the crucial question is in which organ of the state should the oversight role be vested?
3. Taking into consideration the well documented development of the U.K. Parliament, the one aspect of governing which tilted the balance of power with respect to the question posed above was the financial needs of the Sovereign. As the Head of State's financial needs increased, so was the need to raise levels of taxation which eventually led to Parliament demanding the right to oversee the activities on which the taxpayer's money was spent.
4. The importance of legislative oversight as a tool in monitoring government activities was underscored when Woodrow Wilson, President of the United States of America wrote in 1885:

"There is some scandal and discomfort, but infinite advantage, in having every affair of administration subjected to the test of constant examination on the part of the assembly which represents the nation ... Quite as important as legislation is the vigilant of administration." ¹
5. While the principle of legislative oversight largely remains as espoused by the 14th Century House of Commons and reinforced by the Wilsonian political philosophy, its application in modern days demands that there must be a set of objectives or standards against which it can be assessed and measured. If this is not done, then Parliament's oversight role is unclear because there are no identifiable criteria by which to judge the reporting bodies - given the new politico-economic order where many governmental functions are being hived off to agencies outside ministerial control.
6. In this regard, the future of parliamentary oversight must be guaranteed by the functions that national constitutions assign to each organ of government to perform, with Parliaments ensuring then that the provisions governing

¹ Woodrow Wilson quoted in EGPA Study Group on "Legislative Oversight" (Glasgow Caledonian University, Glasgow [UK], 2000:1)

Appropriation Bills are properly enforced and that preventive policies are put in place to mitigate against fraud, waste and abuse of public funds.

7. This report is intended to highlight some of the pertinent issues discussed and recommendations made by Parliamentarians, Auditors-General and representatives of international organisations and civil society at a three day Workshop on Parliamentary Oversight of Finance and the Budgetary Process, organised by the CPA and the World Bank Institute.

OVERSIGHT BY THE LEGISLATURE: THE CONCEPT

8. The Workshop traced the origin of the concept of oversight by the Legislature as arising from the remarkable transformation of the U.K. Parliament from being a mere consultative forum, summoned for business and under procedures regulated by the Sovereign, to a level where they could ask the Crown to account for the monies collected from the people in form of taxes. It was noted that this rose from the financial needs of the Monarch. As the stature and authority of Parliament grew, it devised processes by which to transact the business at its disposal as a way of ensuring effective oversight. The processes devised have over the years undergone modification aimed at equipping Parliaments sufficiently to exercise effective oversight of the Executive. The modification has produced processes varying in degrees of application and effectiveness. Yet those processes remain a means by which legislative oversight can be attained and ensured.
9. It was noted therefore that in recent times no taxes could be passed without enacting of tax laws and Appropriation Bills by Parliaments. The passing of such Bills is also dependent on the legislature having satisfied itself of the appropriate use of funds through the Auditor General's Report to the Public Accounts Committee (PAC) of the House. That is, the use of public funds must be explained and those who hold power in their use and application remain accountable to Parliament, the people's representatives.
10. The concept of oversight, notwithstanding the problems in its implementation, was considered by the Workshop to be an essential function of the Legislature. However, to ensure maximum compliance to legislative authorization of changes in the levels of public taxation, constitution of the consolidated fund, sanction of allocations and withdrawals from the fund to meet demands for public services and purposes and to ensure adherence to authority in expenditure, the Workshop recognized the need to use extra parliamentary bodies such as the media in highlighting non-compliance as might be shown in the Auditor-General's Reports.

OVERSIGHT BY THE LEGISLATURE: FRAMEWORK, CAPACITY AND MECHANISMS

11. It was acknowledged that the framework for effective parliamentary scrutiny must take into account two important issues. First, the establishment of specific oversight mechanisms to effectively hold the Executive to account for their activities. Second the need for a bi-partisan approach in Parliament when overseeing Executive activities. It was felt that this would assist the capacity of the Legislature to fulfil its oversight function.
12. There was consensus that the oversight mechanisms chosen must seek to address the inter-play of the inalienable rights of the governing party to be able and be seen to govern; while at the same time the Members of opposition parties must be able to ventilate, criticize and put across alternative positions and policies within the modus operandi of the set mechanisms.
13. In addition, the Workshop recognized the problems faced in making oversight mechanisms fully operational such as the perennial rivalry pitting the legislature against the Executive organ of the state in jostling for the imprimatur as the representative or voice and custodian of the public good. In effect, the Workshop explored ways to overcome obstacles in the quest for a truly participatory Parliament especially for Members of the opposition parties in the House aimed at having a minimum commonly accepted standard for specific oversight mechanisms which would pass the public's approbation test.
14. There was overwhelming support for the view that much of the publicly held criticism of Parliament's weaknesses in the oversight of the Executive can be ameliorated by oversight mechanisms such as the Public Accounts Committee and setting up of Budget Acts, Budget Committees, Budget Department and the repeal of hitherto constitutional constraints forbidding Parliaments from either increasing or reducing allocations contained in a budget before Parliament.
15. On the subject of the budgetary cycle and the budgetary process and their implications for oversight, a constant point of reference was the recognition that budgets detail government's policy priorities within the context of fiscal pressures and economic forecasts. It was also noted that in the Commonwealth, budgets underscore the interplay between the Executive and the legislature in providing the public with:
 - (a) information on the Appropriation Bills;
 - (b) reports on accounting, financial control and government performance;
 - (c) coherent laws and regulations that govern financial transactions; and
 - (d) comprehensive reports on public audit and legislative scrutiny.
16. Since budgets are accompanied by different or standard statements which highlight the Executive policy focus, the Workshop felt that there was need to

- improve institutional capability; that is the willingness and ability of Parliament, committees and public auditors to carry out their respective functions by being provided with sufficient resources, training and access to expertise that they may require in the budgetary cycle and budgetary process.
17. Participants agreed with the Kenyan Vice-President, H.E. Professor George Saitoti, M.P. who, when officially opening the Workshop, stressed the importance of capacity building as Parliaments are the only institutions which are constitutionally mandated to debate budgets taking into account the interests of all national groups and strata in a country.
 18. Budgets taking into account the interests of national groups were underscored in the discussions on gender responsive budget initiatives from New South Wales and Queensland (Australia). Gender Budget statements in New South Wales and Queensland rose from the realization that there was severe under-representation of women in decision-making positions and consequently in the budgetary process which culminated in the allocation of fewer resources for women. In Jamaica, it was noted that the Government had taken steps to improve its delivery of development programmes by the implementation of a financial management improvement project under Programme Budgeting. An important component of these kind of budgets is that they provide information as to expected revenue and expenditure policies in advance which is meant to assist in forward planning both by the government, business groups and the community.
 19. The Workshop considered State Budget Statements as useful in highlighting how a budget can affect the economic and social opportunities of a particular group's in society such as women. Although they are not impartial documents, they were considered necessary for any government wishing to take a county forward by addressing the concerns and needs of any specific interest group.
 20. It was felt that to ensure effectiveness of innovations in the budgetary cycle and the budgetary process, obstacles which limited the Legislature from fulfilling its oversight role ought to be removed. Such barriers and limitations were stated as being commonly found in:

Finance Committees

- Members of the Committee invariably approve each line of the item proposed by the Executive in the draft budget, while debate in committee is often limited as government members are intolerant of discussing issues and are short on points of clarification.

Performance Budgeting

- Currently, performance budgeting does not involve the submission of specific and measurable performance measures, subject to quarterly and half-yearly reviews, which are presented by the Minister for Finance.

Parliamentary Review of the Budget

- Members are not given longer periods to review the estimates of expenditure as the budget unfolds.

Audit Reports

- While the Constitution gives the Auditor-General powers to review expenditure in all government ministries and organisations receiving public funds, resources to allow for the review of government expenditure in many areas are not made available to the Auditor-General. Some organisations such as public or parastatal bodies continue receiving government funding long after their economic life span had expired. In the end they become mere conduits of corruption to by pass established procedures laid down by government.
21. The Workshop noted that the Jamaican Government had agreed to establish an Appropriation Committee whose work is to examine issues related to the budget. Consequently, two new laws were passed aimed at tightening public utilities. These are, the Public Bodies Act which makes all agencies subject to the Ministry of Finance guidelines and the Anti-Corruption Act which widens the number of civil servants required to declare their assets and subject to monitoring by the Anti Corruption Commission.
 22. There was consensus that the preparation of budgets entails an alliance between parliamentarians and the people for whom budgetary plans, expenses incurred by the Government after the passing of the Appropriation Bills are made and spent, respectively. This accountability for funds is headed usually by a constitutionally created office of the Auditor-General.

THE RELATIONSHIP BETWEEN PARLIAMENT AND THE AUDITOR-GENERAL

23. From the onset, the Workshop acknowledged that invariably, the relationship between the Auditor-General and Parliament emanates from the Constitution. It was agreed that the relationship between the two should be balanced so that their roles and independence remain clearly defined and separate. In pursuance of their independent roles, it was agreed that the role of the Auditor-General is to assist Parliament to ensure that there is proper use of public resources by auditing government and those quasi-government institutions which receive public funding. The provision of fair and impartial audit reports and information to Parliament through the Public Accounts Committee and the presence of the

Auditor-General during its deliberations on the audited accounts of the republic and any other bodies which received public funding are important measures necessary to assure the taxpayer that there exists a body to investigate accountability on behalf of Parliament. In turn, a close working relationship between the Auditor-General and Parliament enhances public confidence that resources are used with due regard to the efficient and effective running of the economy.

24. The Workshop held the view that in order to sustain this confidence and uphold the highest audit standards possible, there must be sound constitutional arrangements based on the principles of accountability, good governance and independent public auditing. The requirements for proper accountability should be based on:
 - a sound system of reporting information to Parliament. The report must be timely, otherwise it undermines the principles of accounting;
 - the effectiveness of the institutions under audit;
 - the effective coverage of audit matters before the House; and
 - an effective Parliament with sound moral conduct, ethics and commitment to accountability.

25. Although audit offices provide assurance to Parliament and the public through their audit reports, the execution and implementation of any recommendations from Parliament is a common problem. Matters which should have been long dealt with often reappear in future audit reports. To maintain the competence of its audits and the reputation of the Audit Office, the Workshop was of the view that audit offices should be separated from the general civil service through enabling legislation by Parliament. Such legislation or an Auditor-General's Act should provide the audit office with a range of powers to obtain information that allows it to properly discharge its duties. It was further seen as proper that audit offices themselves must be subject to auditing by the highest professional audit body available in order to be accountable for its use of public funds.

26. In reaffirming the point that the audit office should specially be created and the Auditor-General appointed by an Act of Parliament, the Workshop also considered the value and necessity of an independent audit office as being a building block to ensure trust and confidence amongst the concerned parties. For this reason, there must be constant flow of information between the Auditor-General and Parliament in order to emphasize the two entities' roles and functions as complimentary and not competitive. The Workshop, therefore, concluded that these offices must be independent and not part and parcel of the Public Service;

and nothing should be done to dilute their authority. Their tenure of office must be made secure through appropriate parliamentary legislation.

COMMITTEES AS OVERSIGHT MECHANISMS

27. In the Commonwealth, Committees are used to refer to the formation or constitution of a group of Members of Parliament who are specially named to address a specified mandate whose terms of reference and remit are spelt out.²

A Committee is expected to operate according to the procedure of a particular Parliament; such a committee is distinct from the Committee of the Whole House and any extra-parliamentary bodies including party causes or inter and intra party formations. It was noted that successive Parliaments have found committees a flexible means of accomplishing a wide variety of different purposes. Committees may be given different powers to meet different circumstances. They may be created ad-hoc to meet a particular requirement or be reappointed from session to session or from Parliament to Parliament to carry out a more continuous function.

28. The idea that it should be in part through committees that the House should play an active part in informed criticism and scrutiny of the aims and actions of the executive is one which is central to any parliamentary committee system. The related problem of adapting that system to meet this need is one which each Parliament has always to solve afresh as the nature and scope of the executive's activity varies. What is true, however, is that Committees are part and parcel of the operational mechanisms devised by Parliaments over the years to enable them discharge their expanding role and increasing functions of oversight with efficiency and effectiveness.
29. It was acknowledged that each of the operational mechanisms devised by Parliament has specific suitability and advantages in the handling of the specific function. The crucial point in deciding on a particular approach and form of mechanism has to do with the view that, that kind of mechanism would satisfactorily discharge the stated function. Such perceived satisfactory ability should not be an end in itself. It has often transpired that parliament may never quite realise its intentions without marching reciprocity from the Executive. For instance, a mechanism such as the Question Time, which would facilitate the exposure of certain flaws in the operations of governing would not achieve the expected goal, where Ministers are not forthcoming and decide to withhold vital information. Further still, where Ministers avoid giving answers adequately, Question Time could turn into a merry-go-round or a circus. Yet the filed question could in the end assist a Minister improve the performance of the department(s) under his control.

² Erskine May: Parliamentary Practice (21st Edition) (London, Butterworths, 1989)

30. The reluctance of the Executive to co-operate and open up even in areas that would not cause political damage is why Parliaments should be equipped with Committees as oversight mechanisms. Committees are relatively easier and cheaper to keep working during recess and/or prorogation than the House. Committees which have particularly proven useful are those which are small; can continue working during recess and prorogation; and are comprised of Members with the relevant specialist knowledge, and training. Further, there was consensus that Committees are an important oversight mechanism in providing timely deterrence to lapses in the governing process - for example the activities of Civil Servants are kept under constant critical and public scrutiny.
31. The Workshop recommended that notwithstanding the attributes, advantages and suitability of Committees in assisting Parliaments to enforce accountability, they should not be made to operate in isolation from other mechanisms. For example, the Auditor-General, though independent and outside the control and direction of any entity, is an important stakeholder to interact with. But Parliament as a whole should remain focused on the need to demand that government's respond to the issues they raise on behalf of the people. It is therefore important to ensure that Parliament's oversight mechanisms, such as the PAC, are not subordinated to government or to interest groups and other advocacy groups in civil society.
32. The workshop agreed that corruption was international in scope and did not respect national boundaries. The establishment of inter-parliamentary organizations and networks, such as the African Parliamentary Network Against Corruption (APNAC), was felt necessary to strengthen oversight and tackle international corruption. It was agreed that oversight mechanisms should examine the prevailing economic programmes to ensure that they provide economic and social value to the people and that Parliaments should demand value for money audits to keep the executive focused on developmental policies and programmes. Care should be taken when defining what constitutes corruption and good governance, taking account of the cultural diversities prevalent in different countries.
33. Experiences in tackling corruption varied greatly among the participants. The Ugandan experience of ensuring accountability and the prevention of corruption through the use of parliamentary committees, such as the Public Investment Committee (PIC), PAC, and a Ministry of Ethics and Integrity, and an enabling environment for a vibrant media ready to pick up issues of accountability, corruption and highlight them for public information and education was considered good practice.
34. It was concluded that parliamentary committees are essential tools to enforce accountability and Members of Parliament as representatives of the people must fight without fear or favour in their Committee meetings for a strong public financial accountability culture necessary to develop capabilities for legislative oversight. There was also general agreement that the Executive organ of

Government, having accepted the establishment of Committees, should show respect to the work of parliamentary committees by implementing their recommendations. Where they fail to do so they should give genuine reasons for their failure.

THE FUTURE OF PARLIAMENTARY OVERSIGHT - RECOMMENDATIONS FOR STRENGTHENING OVERSIGHT.

35. The workshop, realising the need for the proper functioning of a democratic system of government and against the backdrop of poverty and lack of accountability, proper resource creation, mobilisation, distribution and prudent management of these, acknowledged that effective and efficient parliamentary oversight of the finance and budgetary process can ensure accountability. In this regard, there was support for the view that the watchdog role constitutions assign to Parliaments cannot be surrendered to any other organ of government.
36. The Workshop recalled that the CPA's Strategic Plan for the period 1999 - 2002 included, as a core objective, the need to further the ability of members to move towards strengthening parliamentary oversight by using locally devised mechanisms as those used in the budgetary processes. Since parliamentarians have different backgrounds, the workshop recommended training and supporting Members to ensure that they acquire knowledge on budgets and budgetary processes. It was agreed that such training should be undertaken by Parliaments themselves. However, given the intricacies involved in formulating and debating the budget, it was considered vital for such training to be mounted in collaboration with specialised international organizations such as the World Bank Institute and the International Monetary Fund.
37. It was noted once again that in New South Wales and Queensland, a budgetary system had been established to highlight the gender effects of government spending and the need for even economic growth. As women usually constitute over 50 per cent of the population, the workshop considered that a Women's Budget Statement deserved the support of Legislatures across the Commonwealth.
38. Other suggested efforts geared at ensuring the future of parliamentary oversight included support for the view that the relationship between Parliaments and the Auditor General should be maintained pursuant to Acts of Parliament under which they are created and appointed. In South Africa, the relationship was considered as a partnership based on mutual and reciprocal functions notwithstanding the fact that the Legislature is 'first among equals' in this arrangement. In Canada and the United Kingdom, the independence of the Auditor-General's Office is secured by it being statutorily independent - it cannot be subject to direction by the Government or the organizations it audits. In Uganda, the constitutional provisions for the separation of powers has brought about forensic audits giving the audit office a range of powers to obtain information that allows it to properly discharge its duties including the power of

attorney. In Kenya and Tanzania the audit office is free to report what they see the need for, and when and how to do this.

39. Taking into account the different mechanisms available for ensuring accountability, the Workshop highly recommended the system of committees. The question whether the Chair of the Public Accounts Committee should be held by a member from the ruling or opposition parties was resolved largely in favour of the opposition. In Seychelles, one major concern is that unless the opposition in committees were supported by outside stakeholders, including, for example, the international financial institutions, in their pry on government activities, an impression might be given of the government being overboard just because its members hardly raise issues of accountability in committee meetings. In Uganda, for example, the World Bank has held discussions with parliamentary committees as well as with officials in government. The discussions are intended to give the Bank first hand information on the views and concerns of the parliamentarians particularly those from the opposition on parliamentary oversight of finance and the budgetary process.
40. There was full support for Parliaments to be open to the media and the civil society as a fundamental way of ensuring effective parliamentary oversight. It was noted that parliamentary reports in New Zealand are open to the media and that recommendations of the Public Accounts Committee in Jamaica have widely been circulated leading to the successful prosecution of individuals. In Canada, the media had been instrumental in bringing to the attention of the public allegations of corruption which the government was obliged to investigate; the public exposure of corruption and waste allows stakeholders to demand action and explanations on the part of the Government or executing authority.
41. With this in mind, the Workshop noted that the World Bank and other bilateral and multilateral lending institutions looked to political will in curbing corruption as incentive for aid. This notwithstanding, it was agreed that there was some merit in the concern by Thailand that the creation of new conditionalities for aid could be used to force all types of economic reforms which could have negative social-political impacts, to the chagrin of civil society and human rights groups.
42. While legislatures differ in terms of size, facilities and in their procedures and practice in the oversight of finance and the budgetary process, they are driven by common principles. The underlying principle is that Parliaments have a constitutional mandate to scrutinise government spending and it is in the realisation of this constitutional mandate that the future of parliamentary oversight lies.

CONCLUSION

43. To answer the question of follow up action on what should be done to ensure accountability, the Workshop made the following suggestions as to the way forward:

- Legislation should be the basis of Accountability through the Appropriation Bill enacted by Parliament. The formulation and presentation of the budget is essentially the function of the Executive. But the Legislature is the Public Forum in which the Government seeks approval for their expenditure through the Budget debate. The Legislature is an Institution of Accountability, not of Financial Management, which is the function of the Executive.
- The responsiveness and attitude of the government to accountability and oversight will largely determine whether transparency is to be achieved. It is a question of political will on both sides, and the recognition of the principle of separation of powers. For this to succeed budget committees must be involved at various stages of the budget process, and should regularly report to the House. In some Parliaments, this function is undertaken by the Appropriation Committee which, like the Budget Committee, keeps track of the entire Government spending as it progresses during the year. It would be a good idea to instigate a comparative study of those budget and appropriation committees in existence to evaluate their effectiveness.
- The Government on its part should provide readable and understandable financial documents to Parliament and to Parliamentary Committees in particular so that Members are able to scrutinise the Executive. Sufficient time should be made available in Parliament for oversight functions while departmental officials must explain their estimates to Members.
- The reports of the Auditor General are essential to achieve effective oversight of the budgetary process. The role of an Auditor-General should be that of an independent external auditor of the activities of the Executive as determined by legislation on behalf of Parliament as the representative body of the people.
- The independence of the Auditor General was considered as the most important attribute and must be seen in his appointment, tenure, removal from office and mandate being constitutionalised.

- Specific legislation for independent audits should also be put in place to provide for amongst others the establishment of an independent office to assist the Auditor-General to execute their mandate;
- Furthermore, the Auditor-General should be mandated to apply recognized professional standards and practices;
- In their submission of audit reports, it is important that Auditor Generals do so timely but without compromising either the content or quality of these whether they relate to annual or special reports.
- The right of citizens to participate in the functioning of government is a fundamental principle and eventual requirements of democracy. Civil society and the media should therefore be encouraged to become actively involved in ensuring the accountability of government. Their roles should be recognised and further enhanced through appropriate modalities and mechanisms.
- Tackling abuse and lack of accountability extends beyond the role of media and other civil society components and require consideration of broader economic, social, cultural and historical dimensions for which broader strategies may have to be devised as appropriate to a particular situation. It was felt that strengthening the roles of Public Account Committees and the Auditor-General would be better achieved where they co-exist with civil society. For this to be accomplished, adequate public access to information must be ensured through effective freedom of information, legislation, and the appointment of Information Commissioners need to be taken into consideration in all democratic societies.
- The principle of oversight is not exclusive to certain Parliaments but must be exercised by all the Legislatures regardless of their geographical or demographical size.

The Workshop recommended the following areas for action in taking legislative oversight forward:

- (a) The oversight functions are vested in the Legislature as a fundamental principle of the separation of powers and on account of Parliament being an institution of the people's representatives. It was, however, noted that in many cases Parliaments face the burden of expectations from the people since as supreme bodies they are assumed to possess all the powers necessary to meet their needs. Parliaments should therefore, be urged to ensure oversight of government activity in accordance with their mandate.

- (b) Although concerns were raised about the framework, capacity and mechanisms of oversight in legislatures, it was clear that in many Parliaments, despite often wide ranging reforms in strengthening legislative oversight of the Executive, it is still considered that Parliament's role is essentially one of passing legislation. Therefore, lack of Executive support for materials, funds needed in Parliament's functional oversight restricts full legislative scrutiny of government's activities. Stakeholders must be sensitised to know that oversight goes beyond legislation and includes checking government activity.
- (c) As part of their accountability requirements, Parliaments should seek independent assurance that government ministries and all public sector organizations are operating and accounting for their performance in accordance with Parliament's intentions. The office of a constitutionally established Auditor-General is essential in this regard.
- (d) In order to correct the barriers which work against ensuring accountability, the CPA Secretariat should enhance the interface between Parliaments by distributing written literature across Commonwealth Parliaments on various procedures and mechanisms of strengthening oversight.
- (e) The Committee system assumes great importance since Parliament in its corporate nature cannot have complete oversight over government and all its activities. In their oversight of finance, the committees rely on the Auditor-General's output. To make both effective, Parliaments should ensure that Committee reforms are simultaneously pursued with appropriate legislation for independent Auditor-General's Offices.

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