

https://dspace.org/

Legislative Committees and Deliberative Democracy: the Committee System of the South African Parliament with Specific Reference to the Standing Committee on Public Accounts (SCOPA).

Obiyo, Robert Egwim

2007-03-02T11:26:11Z
http://hdl.handle.net/10539/2197

Downloaded from a DSpace repository. https://dspace.org/

4. The South African Parliamentary Committee System: the First Five Years

Any assessment of a country's credit rating (trustworthiness) takes the existence and operation of its accountability institutions (the PAC and the audit institution) into account (Commonwealth Parliamentary Association 2001, 21)

…Parliament's most important committee in the area of oversight and scrutiny is undoubtedly the Public Accounts Committee (AR Donahoe, QC, in DG McGee, QC, 2002, ix)

…effective oversight equals constant pressure (Association of Public Accounts Committees in South Africa 2003, 78)

The *Sarafina 2* case which, in 1996, created a furore and sent sparks flying in the South African media and Parliament concerning the Minister of Health and her responsibility for the alleged mismanagement of R14 247 600 00 (fourteen million two hundred and forty-seven thousand six hundred Rand) of public money, is a textbook case of a fledgling committee system's dogged pursuit of executive accountability to parliament. In 1995, Nkosazana Zuma, Minister of Health, conceived the idea of an HIV/AIDS awareness play entitled *Sarafina 2.* She shared the idea with some senior officials of her department and on this basis they subsequently discussed the feasibility of such a play with the CEO of Committed Artists Theatre Company, Mbongeni Ngema, in June 1995. The Minister indicated, in the meeting with Ngema, that the play would be expected to tour the whole of South Africa, especially the rural areas. Ngema lauded the idea and gave an off-the-cuff cost estimate of about R800 000 00 (eight hundred thousand Rand) for the staging of the play which Minister Zuma had in mind. The Department of Health, acting as a representative of the Government of the Republic of South Africa, had entered into three contracts with European Commission, acting as a representative of the European Union. The third of these contracts, titled: "National HIV/AIDS programme – South Africa" which is the contract relevant to the matter under discussion, was signed

by the Minister of Health and the European Commission on 28 December 1994. Minister Zuma, having considered the matter together with the Director, HIV/AIDS and STD Programme, Department of Health, Quaraisha A Abdool Karim, decided that this play should form part of the activities surrounding the World Aids Day of 1 December 1995. After that the Minister "left it to the Director-General of the Department of Health, Olive Shisana, and Quaraisha Abdool Karim, to work out what was necessary for the play to materialize" (Public Protector 1996 3.3). [1]

Albert Hugo Badenhorst, Chief Director, Departmental Support Services, Department of Health, was instructed by Shisana to investigate and establish what methods and procedures were to be followed to produce the play. Because European Union funding, as well as money from departmental funding, were both sources for the AIDS programme, Badenhorst was specifically tasked to determine whether government money or donor funds were to be expended on the play, and to establish the procedures to be used where government funds were expended, as well as where donor money was utilised - bearing in mind that the Minister wanted the opening of the AIDS awareness play to be staged on the World Aids Day, 1 December 1995 (PP 1996 3.4, 6.1.2, 10.3). The Chief Director, Departmental Support Services, on the advice of the State Tender Board, informed Shisana that the instructions and procedures contained in the relevant contract should be followed if they were to utilise donor funds (PP 1996 3.4, 5.2.1). Although the Department of Health decided to use donor funds from the EU to fund the play, based on the advice to Badenhorst and Shisana by the Director, Finance Management Services, Department of Health, D Vorster, that "donor fund is not state money," (PP 1996 4.3.6, 5.2.2, 9.1),[2] the person(s) who made the decision and at what stage the decision was

[1] The Public Protector made two special reports to Parliament on the *Sarafina 2* saga, *viz Special Report Number 1* of 20 May 1996 (PP 1996) and *Special Report Number 2* of 11 September 1996 (PP 2 996). Our account of the *Sarafina 2* HIV/AIDS musical is drawn from the reports of the Public Protector and (his findings of the facts) we take to be authoritative (which interpretations are largely ours, though).

[2] A cursory look at the flow of funds (including donor funds) defines what state money is and immediately makes apparent that D Vorter's advice to the effect that donor funds are not state money was wrong and grossly misleading. But can the Department be saved from blame on the anomalies that occurred around the production of *Sarafina* 2 even on the suggestion that their actions were in line with the opinion they obtained from the State Tender Board? We don't think so, for, at the time of going to tender on *Sarafina 2* in July/August 1995 the structures and procedures for dealing with donor funding were already in place. When it became apparent that large amounts of money were to be made available to South Africa by foreign donor countries for the new government's Reconstruction and Development Programme (RDP), the International Development Co-operation Committee (IDCC) was created by a Cabinet decision on 24

taken, were not clear. However, it was the responsibility of the programme manager(s) to decide by what means the play should have been funded, in this case QA Abdool Karim in conjunction with the Chief Director, National Programmes, Department of Health, GJ Mtshal (PP 1996 6.1.3, 10.2).

Suffice it to say that AH Badenhorst went on to carry out the decision of Minister Zuma and Director-General Shisana with respect to the implementation of the idea of the play. In response to the advice contained in a memorandum by the Director, Financial Management Services of the Department of Health, D Vorster, dated 4 August 1995, the AIDS Directorate issued a limited invitation of only three tenders rather than the normal open tender system.[3] Two tenders were returned while the third party could not prepare

---

September 1994. It was tasked to ensure that all development assistance are utilised in the best interests of the country. Its members are the Departments of Finance, Foreign Affairs, State Expenditure, Trade and Industry, Office of the President (RDP Office) Central Economic Services, and the Reserve Bank. Paragraph 4 of Annexure A of the IDCC entitled *The Co-ordination and Management of Foreign Official Development Assistance to the South African Government Institutions: Guidelines and Functions* set out its guidelines for dealing with donor funds and was given to all Departments on 4 April 1995. In conjunction with the IDCC, the RDP Office came into being in November 1994. Sections 2, 3, 4 of the Reconstruction and Development Programme Fund Act 7 of 1994 made it clear that all donor funds must be deposited into the RDP Fund, from which money is transferred into the State Revenue Fund and from which it is released through an appropriation Act. Section 185(2) of the Interim Constitution states that "No money shall be withdrawn from the National Revenue Fund, except under appropriation made by an Act of Parliament in accordance with this Constitution…" In other words, all money deposited into the State Revenue Fund must be voted before it can be expended. Hence, it is not possible for a donor to give money directly to a Department. In terms of Section 1(1)(a)(b) of the Exchequer Act 66 of 1975, "State money" means "all revenues; and all other moneys whatever received or held by an accounting officer for or on account of the state." This means that the money paid into the RDP Fund and the National Revenue Fund fall within the jurisdiction of the Exchequer Act and the Treasury Instruments in terms of Section 39 of the Exchequer Act. Treasury Instrument X1.2 laid down procedures on *Gifts to the State* wherein, *inter alia* the approval of the Treasury is required in terms of section 31(1)(q) of the Exchequer Act, 1975 (Act No 66 of 1975) "before any gift to the state, whether in cash or in kind, is accepted (and) submissions by departments to the Treasury shall state the purpose of and the conditions under which a gift is offered." Gifts that have been so approved "but which shall not (for stated reasons) be paid into Revenue shall be dealt with as determined in conjunction with the Treasury." A gift whose purpose is not apparent "shall be submitted to Treasury for a ruling by the minister of the Exchequer in terms of section 37 of the Exchequer Act, 1975." The Department of Health neither contacted Treasury for approval nor the Department of State Expenditure for clarity on whether or not donor funds were state money. The information on the correct position and correct procedure was therefore available and the failure of the Department to make enquiries and ask for clarifications in this regard amounts to negligence (PP 1996 5.5.1).

[3] The State Tender Board procedures were not followed because of the Department's (wrong and misleading) view that the EU donation was not state money. Had the State Tender Board procedures been followed or had the Department invited more than three tenders - as contained in

and present its tender within 24 hours as the department requested from him specifically (PP 1996 3.5, 4.3.6, 4.3.7, 5.2.2, 10.3). A comparative schedule of the two tenders received was drawn up by the Provisioning Administration Section and sent to the Director, HIV/AIDS Programme who evaluated the tenders and recommended that the Committed Artists Theatre Company be awarded the tender; this recommendation was accepted and signed by the Chief Director, National Programmes, Department of Health GJ Mtshali. These two officials recommended the acceptance of a tender of over R14 million (fourteen million Rand) - regardless of a ceiling of R5 million (five million Rand) pegged on the play and the failure, on the part of the Department, to notify the EU as required in terms of their agreement about the material deviations from the contract (PP 1996 6.4.1-3, 10.4-1). The Departmental Tender Committee, on Badenhorst's instruction, considered the two tenders on 8 August 1995, and notwithstanding the Board's reservations on the Committed Artists Theatre Company's tender of R14 247 600 (fourteen million two hundred and forty-seven thousand six hundred Rand), Chief Director Badenhorst signed a contract with the Committed Artist Theatre Company on 10 August 1995, having instructed the Assistant Director, Provisioning Administration, Department of Health, GM Labuschagne to issue a cheque of R3 million (three million Rand) in favour of the Committed Artists Theatre Company on 8 August 1995, (just) the day on which the Departmental Tender Committee considered, but did not conclude, the tender process (PP 1996 3.5-6, 6.4.5, 6.4.9, 10.5-6).[4] Thus, Badenhorst entered into a

---

the spirit and the letter of Article 5 of Annexure IV of the contract (General Conditions) between the EU and the Department of Health - (rather than the Department dealing or had there been an open tender on its own who the three tenders would be) and which decision process is not known), "other able contractors would have tendered and the Department could have secured a better deal after having a broad view of what was available in the artistic market. An open tender would also have ensured some saving financially on the grounds that the choice of the Department would not have been restricted to the two tenders they received."

[4] The Department of Health invited tenders from Windybrow Centre for the Arts, Johannesburg, Opera Africa, Durban and Committed Artists Theatre Company. The last two companies returned their tenders while the first did not on the grounds that they could not present their tenders within the 24 hours they were given to return their tenders by the Department – a condition which did not apply to Opera Africa and Committed Artists Theatre Company. The Departmental Tender Committee as well as some senior official of the Department including the Director-General and the Director, HIV/AIDS and STD programme had problems with Committed Artists Theatre Company's tender, *viz* its tender 1) contained infrastructure costs and 2) amounted to over fourteen million Rand *vis-à-vis* Opera Africa's tender of six hundred thousand Rand in view of the expectation that there would be a ceiling of five million Rand expenditure on the *Sarafina 2* musical (PP 1996 3.5-7, 6.4.5, 6.4.9, 7.5.1-4 9.2, 10.9). In the light of these, the Tender Committee could neither approve Committed Artists Theatre Company's tender nor evaluate the tender further, and thus held the matter in abeyance to date. Further, when the Department sought to divert five million Rand from the six million eight hundred and fifty nine thousand Rand mass

contract with Committed Artists Theatre Company on behalf the Department of Health without the approval of either the Departmental Tender Committee or the authority of the Director-General, who is the Accounting Officer of the Department (PP 1996 6.4.10, 6.5, 10.5, 10.13, 10.19).

The play was staged on the World Aids Day, 1 December 1995, and in attendance were, *inter alios* the Minister of Health and the Ambassador of the European Union. The Minister of Health, the Director, HIV/AIDS and STD programme and other members of the Department had also previously attended some rehearsals of the play and suggested ways of improving its content. The World Aids Day performance of the *Sarafina 2* awareness play stirred up a debate in the print and broadcast media on several issues concerning the project (PP 1996 3.10).[5] It suffices to say that the Public Protector's scope of investigation focused on the alleged irregularities regarding tender procedures followed in the award of the contract to the Committed Artists Theatre Company (PP 1996 3.10, 3.11) and the issue of ministerial and/or departmental responsibility. The Public Protector found mainly that tender procedures were *not* followed in the contract

---

communication budget line and nine million two hundred and forty-seven thousand Rand from the fourteen million four hundred and eighty-nine thousand Rand life skills programme targeted at the youth, in order to finance the *Sarafina 2* play, it clearly implied a significant modification of the nature of the project in the contract and/or a significant alteration of its financing structure, it was therefore surprising that the Department failed or omitted to write to the EU requesting (as required in Article II of Annexure IV of their contract) authorisation of the deviation envisaged at the conception of the *Sarafina 2* play. In addition, the State Tender Board delegated its power to Departments to enable them invite tenders up to a maximum of seventy-five thousand Rand. In terms of this arrangement, the Department could, on its own, accept the lowest tender but had to refer the matter to the Board where the lowest tender is passed over (PP 1996 4.3.9, 5.3.15). The Department again did not adhere to this condition and therefore in their actions acted outside the clear terms of both their contract with the EU and the stipulated conditions of the State Tender Board, which resulted in an unauthorised expenditure that just about tripled the five million Rand figure originally understood to be the ceiling for the play.

[5] The furious debate around *Sarafina 2* played itself out between early 1996 and 1997. The real political drama which lasted for almost twelve months began with the meeting of the Portfolio Committee on Health of 28 February 1996 with the Minister of Health and some of her departmental officials to explain and justify the Health Department's "grant" of R14 million (fourteen million Rand) to playwright Ngema for his "hideously expensive, of little artistic merit, anti-AIDS play, *Sarafina 2"* (*Sunday Times*, 25 January 1996). Incessant calls, subsequently, for the resignation of the Minister of Health, from a mixed membership of the opposition parties in Parliament and the public, due to the alleged misuse of public funds, cover-ups and lies to Parliament regarding the *Sarafina 2* issue, culminating in the Democratic Party's (DP) request of the Public Protector to investigate the matter who, accordingly, probed and duly made two authoritative special reports to Parliament on the *Sarafina 2* play, namely, *Special Report Number 1* of 20 May 1996 and *Special Report Number 2* of 11 September 1996.

entered into between the Department of Health and the Committed Artists Theatre Company: *inter alia* the laid down procedures as to how donor funds (i.e., EU funds) were to be used were not followed, and standing Treasury Instructions and the Exchequer Act 66 of 1975 were either flouted or ignored (PP 1996 5.3.6, 5.3.7, 5.3.9); State Tender Board Instructions as well as an internal departmental agreement on the cost of the *Sarafina 2* HIV/AIDS musical were ignored (PP 1996 5.4.2, 6.2.5); the contract with the EU regarding the use of donor funds was flouted (PP 6.2.3, 10.13); Chief Director Badenhorst entered into a contract with the Committed Artists Theatre Company with the authorisation of neither the Departmental Tender Committee nor the Director-General (PP 1996 6.4.10); the contract between the Department of Health and Committed Artists Theatre Company was not well drafted due to a combination of a lack of experience in the legal section of the Department of Health, too much haste and a failure to submit the contract for necessary screening by the State-Attorneys as required in Treasury Instructions X12.2 (PP 1996 7.2.8, 10.7). Departmental public statements to the effect that the two tenders were considered by the Departmental Tender Committee implying that the winning tender had been approved by the Committee (PP 1996 7.6.6) and that the Department Finance Section of the Department of Health had scrutinised each item on the tenderer's budget (PP 1996 7.6.7) were misleading and "simply not true." The impression that the EU was funding the play, created by the Department, "was also not true" (PP 1996 4.4.2, 7.7.6) and the meeting of the Portfolio Committee on Health of 28 February 1996 was misled (PP 1996 7.7.7); Minister Zuma was neither involved in the tender process, nor the recommendation of which tender should be awarded the *Sarafina 2* project. Although there was no evidence that Zuma influenced any official in this regard (PP 1996 6.3.7), the Public Protector made recommendations for improvement in the financial capacity and efficiency specifically - and management generally - of the Department of Health, as well as broad recommendations to improve the financial capacity and operational tools of all departments of government and civil service to effectively deal with international assistance – a recent phenomenon for the South African executive (PP 1996 11).[6]

As evident from the discussion above, the British tradition, for historical reasons, is quite normative in South Africa's new democracy. "Accountability, responsiveness, openness,"

[6] For a comprehensive summary of the findings and recommendations of the Public Protector, see Albert Venter, *The Ethics of Ministerial Responsibility to Parliament*, in JS Wessel and JC Pauw *Reflective Public Administration* 1999, 255-7; *Special Report No 1 of the Public Protector* 1996, 19-23.

individual ministerial accountability to a people's Parliament and an obligation to provide Parliament "with full and regular reports," much more importantly, are democratic values on which the new South Africa is founded (Constitution s 1(d), 92). Hence, the outrage expressed in the media and Parliament in the aftermath of the appearance of Minister Zuma, Director-General Shisana and other officials of the Department of Health before the Portfolio Committee on Health on 28 February 1996 to say what had happened and justify the expenditure of over R14 million (fourteen million Rand) on an HIVAIDS awareness play. This resulted in the probe of the Public Protector which indicates that the *Sarafina 2* issue could be a test of whether the Minister of Health should a) vicariously be responsible for serious omissions and actions by senior officials of her Department b) inform and explain to Parliament what was done and not done in her Department c) accept serious mistakes and promise to speedily put proper measures in place d) resign on the basis of the findings of the Public Protector and other evidence.[7] These issues are discussed in what follows.

The relationship between the executive and Parliament established by the 1996 Constitution is based on the British and SA constitutional traditions. The 1996 constitutional provision that the minister, as the political head of a state department, is accountable to Parliament builds on the consensus existing in the literature on English constitutional practice that "the minister alone is in some sense responsible for the performance of an administrative department" and this is "the principle around which the relationship between elected representatives and non-elected bureaucrats has been defined" (A Venter 1999, Judge 1993, 135). On one view, among others, in the literature on ministerial responsibility, a minister faces censure and could be expected to resign if he or she, or a civil servant in his or her department, has made a serious error of judgment in the execution of departmental policy. Parliament is, with the exception of the role of the Director-General, only indirectly linked with bureaucrats through the minister who controls the civil service, administers and manages the department, exercises discipline, and boosts morale. He or she takes credit in Parliament for successes and accepts blame

[7] The scope of work of the Protector (PP 1996 3.10-11) was basically to inquire into procedures, generally, followed in the award of contract to the Committed Artists Theatre Company and the justification of the play relative to its price. It was outside the realm of the investigation of the Protector to look into what informed the "inaccuracies," he found. These were contained, most specifically, in the Minister's answers to a question posed to her by the Portfolio Committee on Health on 28 February 1996, regarding the extent of the knowledge of the EU, *via* the Department of Health, about the conceptualisation and funding of the *Sarafina 2* musical, wherein Parliament was misled (PP 1996 4.4.2, 7.6.6, 7.7.10, 10.12).

for failures (Woodhouse 1994, 32).[8] Ministers of the Westminster governments have had

[8] The observation has been made earlier to the effect that ministers have in recent times resorted to answering for their own actions and have not readily accepted vicarious responsibility for the errors of their civil servants. This interpretation of the doctrine of ministerial responsibility requires that a) ministers protect officials who have either carried out explicit orders of the ministers and/or acted properly in accordance with policy laid down by ministers b) ministers acknowledge the mistakes and accept responsibility although not personally involved, and promise to make amends in the department without exposing officials (who make mistakes or cause delay on unimportant issues of policy) to public criticism and where claims to individual rights are not seriously involved c) there is no obligation on minister to endorse what he believes to be wrong or to defend what are clearly shown to be errors of officials although ministers remain constitutionally responsible to parliament for what has occurred what has gone wrong where officials take actions of which ministers disapprove and have no prior knowledge. But is Parliament able to discover the details of what happened in order to determine into which category a particular case falls? Ministers have interest in implying that cases where they might be held responsible are in reality instances where officials are to blame. Ministers can and do offload responsibility on to their officials who cannot, constitutionally, speak out in public. This classic interpretation of ministerial responsibility was spelt out to show that ministers were not vicariously responsible for the actions of their officials in cases where they were not personally involved or had not been informed. However, the categories, according to Vernon Bogdanor, left open the opposite danger, that civil servants would be held vicariously responsible for the failings of their ministers. The literature on ministerial responsibility in the Westminster Parliament suggests that only exceptional circumstances have led to resignation as a consequence of parliamentary criticism of departmental administration and mainly as a result of ministers loss of popularity and respect in their parliamentary caucuses, rather than ministerial and departmental failures (see SE Finer 1956, 377-396; A Birch 1980, 200; R Pyper 1991, 200-10; G Marshall 1989, 129, 131). But cases of serious policy failures that have not normally led to the resignation of the political heads of corresponding departments cannot be the quintessence of accountability, transparency and good governance central to the principle of ministerial responsibility, as it was conceived in Victorian times. It can only be the exception rather than the rule in the literature of ministerial responsibility. Hence R Pyper's conclusion that individual ministerial responsibility is "a complex affair" in which ministerial departures depend on political circumstances; equally important is Graham Mather's caution to the effect that ministerial responsibility for the departmental acts is not "defined away to almost nothing" (Graham Mather, in V Bogdanor 1997, 76). Almost all parliamentarians in parliamentary democracies agree on the convention, with respect to the "critical morality of the constitution," that minister should be both vicariously and individually responsible, and are expected to resign in the event of serious personal or official delinquency. Geoffrey Marshall (1984) provides an underlying normative structure governing the principle of ministerial responsibility, which he terms the "morality of the constitution." The "critical morality of the constitution," which, for Marshall, is the "rules that political actors ought to feel obliged by," is part of ministerial responsibility, in Britain (G Marshall 1984, 12). By "current constitutional practice," Marshall refers to existent practice, i.e., the constitution is "what the ministers do." At a time in the nineteenth century, A Venter concurs with D Judge, the critical morality (ought) and the positive morality (current practice) coincided in Britain. At this time ministers readily accepted both personal and vicarious responsibility for the actions of their departments and resigned with ease (D Judge 1993, 138-9). However, the two principles split with the emergence of modern party system in which ministerial responsibility became a constitutional and textbook doctrine, while current practices were diluted. It was only at this juncture that controversies arose as to whether ministerial responsibility is a fiction or reality (see

to resign their portfolios as a consequence of parliamentary criticism of departmental administration (see SE Finer 1956; R Pyper 1991, 254; A Doig 1993; D Woodhouse 1994; V Bogdanor 1997). In April 1982, Argentina invaded the Falklands in an abortive attempt to resolve the long-running dispute between Britain and Argentina over the sovereignty of the Falkland Islands. The invasion resulted in the resignation of the Foreign Secretary, Lord Peter Carrington, and two junior Foreign Office ministers, Richard Luce, whose responsibilities included South America, and Humphrey Atkins. Although he was disliked by the Conservative backbenches and criticised for neither predicting nor preventing the invasion, there was however neither a concerted call, nor campaign, for Carrington's resignation. The degree to which the attitude of the Commons was a factor in Carrington's resignation, Woodhouse says, is hard to measure (D Woodhouse 1994, 92). Carrington found the attack upon the Foreign Office unacceptable and decided to resign voluntarily. Parliament did not pass a vote of censure or indicate that it would do so should Carrington's resignation not be forthcoming. Even the Franks Committee, which investigated the matter, found no blame, attaching to any individual minister and in fact exonerated the Foreign Office ministers. Nonetheless, Lord Carrington declared, in a letter to *The Times* (22 February 1996), "The assessment made by the Foreign Office of the likelihood of an Argentinian invasion of the Falklands was wrong and I, as Foreign Secretary, properly took responsibility and resigned."

Richard Luce, in his resignation speech in the Commons, shared Carrington's view: "it is an insult to Ministers of all Governments, of whatever colour or complexion, to suggest that officials carry responsibility for policy decisions. Ministers do, and that strikes at the heart of our parliamentary system." Three ministers took responsibility for the policy of the Foreign Office, and, by implication, its successes and failures. Lord Carrington's resignation was an acknowledgment of a failure in his responsibility to have tested the judgments of his officials as to the likelihood of an invasion and to have taken precautionary measures to ward it off. It was an acceptance of ineptness and/or incompetence in that he did not apprise himself of information that he ought to have, and, to restore confidence in the Foreign Office and the government, he resigned. By resigning Carrington was accepting responsibility, in accordance with ministerial responsibility, for the actions of himself, his department, and hence for the misjudgments that occurred. In a

---

C Turnip 1989, A Venter 1999). These controversies, however, do not take away the strongly felt belief in the mother Parliaments that individual ministerial responsibility, where the minister readily accepts either personal or vicarious responsibility for the administration of his or her department, is a touchstone against which ministers are to be judged.

sense, Carrington's resignation was "honourable" in that he took responsibility for his department's shortcomings and protected his civil servants, instead of blaming them (D Woodhouse 1994, 105). Carrington's resignation was announced by the Foreign Office and not by Number Ten Downing Street; this was because in spite of the Prime Minister's tireless efforts to dissuade him Carrington was determined to leave office (*The Times* 6 April 1982).

The Public Protector found a general inefficiency and lack of capacity - palpable *ineptness* - in the Department of Health, but, more specifically, in its legal and financial administration. It is not in doubt that the administration of the Department is, *in part,* the duty of the Director-General, as the Accounting Officer, and regarding the implementation of the *Sarafina 2* play, Shisana long ago apologised to Parliament for the unauthorized expenditure and the waste of such a huge sum of public funds on the play. The Director-General's regrets, however, could not substitute for Minister Zuma's responsibility for the efficient management of her Department. Being in charge, to paraphrase Ian Bancroft quoted earlier, she is responsible, and accountable to Parliament, for the effectiveness of her Department's policy and the efficient and economical use of the resources allocated to it. Part of that responsibility is, C Murray and H Corder concur, ensuring that her Department has the systems, procedures, organisation and *staffing* necessary to promote efficient management. "In that," K Rajoo MP (IFP) observes, "the Minister of Health fell short" (Hansard (SA) 5 June 1996 col. 2279).

Minister Zuma, in her response to Parliament on the Protector's Report on *Sarafina 2*, accepted the criticism of the weaknesses in the Department of Health's tender procedures and his recommendation to restructure the Departmental Tender Committee (Hansard (SA), 5 June 1996, cols. 2267-2270). The Minister reconstituted the Department's Tender Committee and ensured that the officials serving in this committee have the necessary training, expertise and authority. She accepted the weaknesses in the finance management of the Department and subsequently appointed a Finance Manager, Bill Bradshaw, a certified general accountant to review all the financial systems in the department and to set up a new financial management system. Minister Zuma acknowledged the concerns of the Public Protector about the legal section of the Department and accepted the recommendation that before contracts are signed, after being drafted by the legal section of the Department of Health, they should be referred to the State Attorney for vetting in line with State Treasury Instructions. She regretted the Department's misunderstanding of the European Union procedures and secured the assurance of the EU to the effect that its

commitment to support the transformation of health services in South Africa has not wavered. She accepted that there were problems with the financial controls of the Committed Artists and she told Parliament that appropriate steps to prevent these mistakes from reoccurring have been taken. In so doing, the Minister acknowledged errors that emanated from the deficiencies in her Department and misjudgments or faulty judgments that, were her Department soundly managed, would have been averted or brought to her attention. The Protector also shared this view,

> The procedures that were followed by the Department were completely flawed and defective. Whilst it became clear during the evidence presented before us that there was urgency to having to present the play by 1 December 1995, the officials proceeded with such indecent haste that they seemed to have completely thrown the rules overboard. This was totally against rules. What they should have done was to follow the proper procedures and if they realised that by doing so they could not meet the deadline, they should have brought this to the attention of the Minister (PP 1996 6.5.1).

Minister Zuma was rightly criticised for the grave errors that followed the execution of the *Sarafina 2* play, as such errors were results of political ineptness (if not negligence) on her part. The Minister agrees with the Public Protector's concern about the general lack of capacity in the Department of Health. A Venter agrees with the Public Protector that it would be reasonable for the Minister to sacrifice her Portfolio on account of the clear ineptness in the departmental administration (A Venter 1999, 258). Whether or not Minister Zuma would resign her portfolio depended therefore on whether she accepted responsibility for departmental failure in respect of *Sarafina 2*, in which she was involved. Would she as a result of public outrage reinforced by the press over what was seen as a failure by her Ministry recognize as a constitutional obligation resignation from the office of Health Minister? According to the Public Protector, the conceptualisation of the play itself was a commendable act on the part of the Minister and the Department of Health, but the mismanagement that followed in its implementation cannot be justified even on the basis of the threat of the scourge of AIDS to South Africa. Without admitting any fault on her part, would Minister Zuma consider that the convention of ministerial responsibility required her acceptance of responsibility for her department and that under the circumstances the only way in which this responsibility could be properly fulfilled was through her resignation?

The Protector found that public statements by the Department of Health concerning European Union Funds caused ripples as far afield as the European Parliament as they were potentially detrimental and do disservice not only to those issuing them and the Government of South Africa, but also, and most importantly, to the people of South Africa (PP 1996 4.5.4-5). In this regard, he recommended that the Department, and, indeed, government officials generally, should be circumspect in issuing statements which could have a detrimental effect on South Africa's international relations, and more particularly, that could have an adverse impact on the economy of the country (PP 1996 11.7). Would Minister Zuma either share this view with the Protector, or feel the grave wastage and misuse of public funds in the execution of the *Sarafina 2* musical to be an affront to the honour and dignity of the Ministry of Health, and that only by resigning could she restore the confidence of foreign donors in the Ministry and the Government? Would she consider resignation as the "honourable" thing to do and thereby take responsibility for her Department's misdemeanour as well as protect her civil servants? Would she set a precedence for the existence of a rule requiring a Minister who is personally culpable of misjudgment or negligence to offer her resignation? Whether or not a minister takes vicarious responsibility for the misjudgments of her department has not always depended on the views of the President or the Prime Minister (see D Woodhouse 1994). In her reply to Carrington's resignation letter, the Prime Minster wrote: "I did my utmost through Saturday and Sunday to dissuade you from this course…" (*The Times* 6 April 1982).

The powerful survival instinct of the President, Cabinet, and ANC-in-Government, is very easily translated into the attitudes of the majority party's backbenchers (see *supra* for a discussion of the hold of parties over democracy). The ANC has maintained party discipline among its members in Parliament. ANC whips have become stronger and more effectively organised and they whip members into line to the extent that MPs have been likened to mere "voting fodders" (R Calland 1999). A chasm exists between the small clique of ANC MPs in each committee who actively participate in debates, and the rest who remain conspicuously quiet only to toe the party line in times of voting. Calland observed a considerable public disquiet about the silence of ANC MPs at the meeting of the Portfolio Committee on Health with Minister Zuma on 28 February 1996. ANC MPs remained palpably uncomfortable while the meeting lasted, as they could not express their independent views having been whipped into line so that they would "not rock the boat but remain loyal to their minister" (Calland 1996, 36). It took much effort by the Portfolio Committee on Health, Opposition in Parliament and the dogged persistence of

the Press, as well as the Protector's thorough probe of - and recommendations on - *Sarafina 2*, to propel Minister Zuma to set her Department in order and introduce the staff necessary for the efficient management and economical utilisation of the resources allocated to the Department, as well as put procedures in place by which she, and ministers of Health after her, would be kept properly informed of the Department's administration (PP 1996, Hansard (SA), 5 June 1996, cols. 2267-70).[9]

Critical to ministerial accountability is, in Scott's view, the willingness of a minister to inform and explain to Parliament, and the public, to the fullest possible extent, the policy of her Department; more importantly, ministerial accountability demands the acknowledgment of "the facts, what has happened, what has been done in government on behalf of the public. If, and to the extent that, the account given by a minister to Parliament," Scott declared in his report, "whether in answering parliamentary questions, or in a debate, or to a select committee, withholds information on the matter under review, it is not a full account and the obligation to account for what has happened, or for what is being done, has *prima facie* not been discharged. Without the provision of full information it is not possible for Parliament, or, for that matter, the public, to hold the executive fully to account" (see Ch 1 *supra*). In this respect, a very close reading of the content of the Protector's Report is crucial. An exchange in the hearings of the Portfolio Committee on Health between Minister Zuma and the Committee reads:

The Committee: "Dr Zuma, maybe I should just begin by the EU funding. There had been reports in the newspapers that in the contract there is no budget line for *Sarafina 2?"*

Dr. Zuma: "That is true. In the contract signed between me and the EU in January there was no *Sarafina 2*. The idea of a play called *Sarafina 2* had not been decided at that

[9] As the analyses of the cases of incompetence, grave ineptness, and gross negligence that resulted in the misuse of public funds in the implementation of the *Sarafina 2* HIV/AIDS awareness play by the Department of Health show, the integrity of the Protector's Reports on this matter and its laudable achievement in strengthening the principle of ministerial accountability responsibility and the culture of a functioning democracy cannot be overemphasised. The independent mindedness of the leadership of the Portfolio Committee on Health at the time is invaluable. Importantly, the thesis recognises that it was partly the attitude of the leadership of the ANC-in-Government at the time that made the Protector's Reports on *Sarafina 2* possible. This was a good sign for a fledgling democracy especially when compared to the rest of Africa, South of the Sahara.

point, but as soon as that was decided the EU was ***informed****"* (in PP 1996 4.4.2, my emphasis).

Attention needs to be paid to the word *informed;* the Minister refers to Reports on HIV/AIDS project by the Department to the EU in Brussels in August and October 1995 respectively. These Reports, the Protector says, merely announced the existence of *Sarafina 2* but did not contain any detail in that respect, nor did they contain any financial budget concerning *Sarafina 2*. These Reports, he continues, were clearly not couched in the terms envisaged in Article II, Annex IV of the "National HIV/AIDS – South Africa" contract (signed by the Minister of Health on behalf of the Government of South Africa and the European Commission on behalf of the EU on 28 December 1994), entitled "Provision of information to the Commission," and according to which:

"The Contractor shall inform the Commission as soon as possible of delay or any difficulty which might jeopardise compliance with the planned timetable and/or implementation of the project;

As well as any changes made in executing the project covered by the Agreement. Where such changes entail a significant modification of the nature of the project and/or a significant alteration of the financing structure, the contractor shall, in writing, request the Commission's prior written consent. In such circumstances appropriate observations shall, in principle, be included in the interim and/or final report;

And any additional information on the progress of the project that is requested by the Commission" (in PP 1996 4.3.8).

Whereas Director-General Shisana and Director Abdool-Karim expected that there was a ceiling of R5 million (five million Rand) on the play, the Department of Health entered into a contract with Committed Artists Theatre Company, on 10 August 1995, for an amount in excess of R14 000 000 00 (fourteen million Rand) (PP 1996 3.7, 6.2.5). In this regard, the Department sought to divert R5 000 000 00 (five million Rand) from the R6 859 000 00 (six million eight hundred and fifty-nine thousand Rand) mass communication budget line and R9 247 000 00 (nine million two hundred and forty-

seven thousand Rand) from the R14 489 000 00 (fourteen million four hundred and eighty-nine thousand Rand) life skills programme targeted for the youth, in order to finance the *Sarafina 2* AIDS project (PP 1996 4.3.9). There was neither a budget line for *Sarafina 2* nor any amount allocated for that purpose in the contractual agreement between Minister Zuma and the European Commission (PP 1996 4.4.1, 9.2). It was expected, in terms of the spirit and the letter of their agreement, that the Department would have written to the EU for authorisation of the deviation which was envisaged at the conception of the *Sarafina 2* Aids musical in the first instance, as well as when a significant modification of the nature of the project and/or a significant alteration of the financing structure contained in the contract was contemplated by the Department (PP 1996 4.3.9). These were not done. Quite surprisingly, the Department did not consider such a departure to be a significant modification of the nature and the financing structure of the project as contained in the contract between the Department and the EU. The Department, in the words of the Protector, therefore, acted, not only outside the clear terms of the contract (and this resulted in an unauthorised expenditure, which just about tripled the figure originally understood to be the ceiling for the play) but also acted negligently. Accordingly, the matter of unauthorised expenditure on *Sarafina 2* was to be resolved only *ex post facto* by SCOPA, or the Cabinet (PP 1996 4.3.9, 5.3.16, 10.13).

Now, the abovementioned Reports of August and October 1995 on the HIV/AIDS project presented to the EU by the Department of Health are the only communication between the EU and the Department with respect to the aforementioned Article II of Annex IV of the South African National HIV/AIDS contract. This requires of the Department a written consent from the Commission should the Department contemplate a significant alteration of the financing structure and/or a significant modification of the nature of the project contained in the contract, as was in fact envisaged when the *Sarafina 2* musical was conceptualised. In her answer to the question by the Portfolio Committee on Health about the extent to which the EU was made aware by the Department that the Union's money was being used to fund the *Sarafina 2* play, Minister Zuma made use of the word *informed*, implying that the EU knew of the funding of the *Sarafina 2* play, and that the Union should have known that their money was being used to finance the play which was barely mentioned in passing in the relevant Reports (Hansard (SA), 27 March 1996, col. 839). How could the EU have known from these Reports that its money was being used to finance the *Sarafina 2* Aids musical? According to the Protector, until the opening of the *Sarafina 2* play on World Aids Day of 1 December 1995 in Durban, neither the EU in Brussels, nor its Commission in South Africa, had heard mention of the over R14 000

000 00 (fourteen million Rand) budget for the play (PP 1996 4.4.1). Should the EU have also inferred from the Reports what the budget for the play was? And, what about Parliament and the public for whose consumption the Minister's answer was proffered? With what information did the Minister leave the Parliament and public? An MP's riposte was:

> Had we believed every word of the honourable the Minister…said, we would have been in no doubt that the European Union had always known about the Department's plans to stage an elaborate and expensive Aids educational musical, and had in fact endorsed it from the beginning…In fact, the Portfolio Committee was misled…Where does this leave the Minister? There was not one person present from either the Portfolio Committee or the Press who did not leave that meeting in the belief that the honourable the Minister had said that the EU had not only funded the musical, but had also endorsed it from the beginning. It is in the honourable the Minister's interest, if she is to clear her tarnished name and tarred reputation, that her evidence to the Portfolio Committee is tested against that of the actual facts that the EU has advanced. However, it is far more important in the interest of establishing the concept of ministerial responsibility to Parliament that (an) *ad hoc* committee meets and reports to Parliament. I urge that this happens (Hansard (SA) 27 March 1996, cols. 837-40).

A minister's explanation to parliamentary question satisfies the principle of ministerial accountability, Scott insists, only when it does not lead a *reasonable* listener to a false conclusion (Ch 1 *supra* spelt out the role of the "reasonable person" in deciding the threshold of acceptability). Minister Zuma's explanation to the question by the Assembly Committee on Health failed to satisfy the reasonableness of not only the EU and Parliament but also the Public. In the words of the Public Protector, "the problem with the Department's Reports" with which Minister Zuma *informed* her audiences about the *Sarafina 2* HIV/AIDS awareness play "in this context is that they did *not* specify that *Sarafina 2* had been conceptualised and funded as part of the European Union's project, hence the denial of any knowledge of the play by Ambassador Owen Fouere as being part of that project. Indeed, the European Union would appear to have taken the mention of *Sarafina 2* as just part of the expansion of the larger HIV/AIDS project of the Department of Health. This understanding of the European Union was reasonable in the circumstances because no reference was made to the terms referred to in Article II of the agreement. Indeed, this whole saga and debate has been characterised by a series of misunderstandings, accusations and counter accusations which could have been easily avoided had the Department adhered to the stipulations contained in the Article of the

agreement, and obtained prior approval for the play" (PP 1996 4.4.1). As a corollary to not knowingly misleading Parliament, a minister is required to be as open as possible in her answers and explanations to parliamentary questions.

As Richard Scott powerfully puts it, "if ministers are to be excused blame and personal criticism on the bases of the absence of personal knowledge or involvement, the corollary ought to be an acceptance of the obligation to be forthcoming with information about the incident in question. Otherwise Parliament will not be in a position to judge whether the absence of personal knowledge and involvement is fairly claimed, or to judge on whom responsibility for what has occurred ought to be placed" (*The Scott Report* 1996, K8.16). In this regard, commentators agree, the Minister of Health "had not been sufficiently forthcoming" in her answer to the question put to her by the Portfolio Committee on Health with respect to the knowledge of the EU about the conception and funding of *Sarafina 2*. To any reasonable listener, the Minister implied that the Department informed the EU not only about the conceptualisation of the play, but more controversially, about the Department's use of the Union's money to fund the play as part of the European Union project, and that is just not true. It suffices to state the obvious at this point – it is critical for the principle of ministerial responsibility that a minister must be as open and forthcoming as possible with Parliament, as the Minister must not knowingly mislead it (i.e., tell Parliament an untruth intentionally), for the minister who misleads Parliament must "carry the can, and resign." In the words of A Venter, "the Minister's (Minister Zuma's) initial insistence that the EU knew about the funding of the play was not true." Hence, he concludes, "there is…publicly available evidence of the Minister *knowingly* having misled Parliament or the public…" The Public Protector, it must be remembered, did not make any finding as to whether or not the Minister knowingly misled the public, Parliament and, for that matter, the President, because it was not within the scope of the Protector's assigned tasks to investigate whether the Minister was culpable of this (see A Venter 1999, 260; Hansard (SA), 5 June 1996, cols. 2275, 842, 844; PP 1996 3.10-13).

The Protector found "certain inaccuracies" in the evidence by the Department before the Portfolio Committee on Health (PP 1996 10.12) but makes no findings as to whether these were intentionally misleading for the reason referred to above. Yet, the Minister's answer could neither have been derived from her Department's two press releases dated 30 January 1996 and 12 February 1996 - analysed in the Public Protector's *Special Report 1* of 1996 (PP 1996 7.6-9) - nor answers to questions which her Department prepared for the meeting of the Portfolio Committee on Health of 28 February 1996, the

transcript of which was also analysed in the Protector's Report (PP 1996 7.7-9). A perusal of these Public Statements reveals no allusion to any other medium by which the EU could have been informed of the conception of the *Sarafina 2* Aids musical and its funding (other than the aforesaid Department's Reports of August and October 1996 to the EU in Brussels).[10] These Reports were, however, issued (eight and ten months respectively) *after* the contract for the *Sarafina 2* play was entered into rather than before the signing of the contract as required, nor "as soon as the idea of a play was decided," in the words of the honourable Minister (PP 1996 4.4-4, 10.10-11).

The Parliamentary debate of 27 March 1996 on the appointment of a parliamentary committee to determine whether or not the Minister *deliberately* misled Parliament was blocked by a vote in the House of 182 against 76 in one of the rare cases where the ANC deployed its majority to steamroll the will of the minority in the first Parliament of the new democracy. And, until such a time when this task is undertaken by a committee of Parliament, whether or not the Minister resigns her Portfolio is a function of her integrity and judgment. The one all-important question, *viz* did you the honourable the Minster of Health intentionally mislead the People's Parliament and the public (national and international) on 28 February 1996? can, only, then, be settled in the minds of reasonable listeners on the bases of publicly available evidence.

The rallying around the Minister by the President, the Cabinet and the ANC backbenches reflected the party partisanship at work in Parliament. The whips of the majority party become increasingly effective, organising ("whipping") MPs into line and MPs become less independent in expressing their views on contentious matters, even issues of

[10] For the records, while the Protector's Report read: "…it is disconcerting that the Minister said that she asked AH Badenhorst several times after the furor started over the play, whether procedures were followed, and he said that procedures were followed" (PP 1996 7.7.14), the Protector found that "the failure of the Chief Director (GJ Mtshali) and the Director (QA Abdool Karim) of the HIV/AIDS programme to notify the EU as required in terms of the agreement about material deviations from the agreement constitutes a serious omission" (PP 1996 10.4-1). It follows, therefore, that, had the Minister asked Badenhorst rather than either QA Abdool Karim or GJ Mtshali, or both, "whether procedures were followed" to ascertain whether or not the EU was properly informed about the conceptualization and funding of the *Sarafina 2* Aids musical, then, the Minister was, again, incompetent: she knew not which official(s) had which responsibility. It was not the responsibility of Chief Director Badenhorst to have informed the EU about the play. Throughout the Protector's Reports, these were the only references made as to the sources – overt or covert – by which information could have been acquired and disseminated with respect to the knowledge of the EU about the *Sarafina 2* Aids musical, other than *via* the August and October Reports to the EU by the Department.

conscience like proper financial management and control, itself the quintessence of transparent open and accountable governance. Under these conditions the opinion of the President easily captures the view of the Cabinet, which becomes translated into the attitude of the ruling party's backbenchers, who ideally, ought to counter it. Politics has become adversarial in SA where the ANC-in-Government is, in practice, if not constitutionally, pitted against the opposition parties rather than against the Parliament. In addition, Parliament is organised on the basis of the list system strand of proportional representative electoral system that distances MPs from constituencies as it ties them to the political parties on whose list they get elected. It makes no sense in democratic terms if the President does not recognise as an embarrassment, and dismiss, an errant minister, especially given that the alternation of government amongst political parties, in light of the dominant nature of the ANC, is very unlikely. Incumbents of the ANC-in-Government seem so secure of their re-election that they clearly do not lose any sleep about it. They certainly do not fulfill their constitutional requirements with respect to ensuring accountability and transparent governance. In the aftermath of the apartheid regime, the masses of South Africa seem more fixated on the ANC and its surnames - the Tambos, the Sisulus, the Mandelas, the Mbekis – because of its association with the dismantling of apartheid, than they are interested in the party's *actual* policies or the behaviour of the individual membership of the ANC-in-Government.

But, should the Minister of Health have resigned in constitutional terms? A Venter insists that there must be some distinct indication of personal culpability on the part of the Minister, either in her capacity as the political head of the Department or her personal role, to justify her resignation (A Venter 1999). "It would be indefensible to support a Minister who was guilty of serious misconduct. If a Minister is guilty of corruption, her head must roll. If a Minister is guilty of gross dereliction of duty, of gross negligence," a constitutional law expert and senior Cabinet member of the ANC-in-Government tells us, "his (her) head should roll. If a Minister is guilty of a cover-up," he continues, "then, her head should roll. In democratic countries," he enlightens us, "Ministers resign or are dismissed for reasons of serious corruption, misconduct, negligence or dereliction of duty" (Hansard (SA) 5 June 1996, cols. 2288, 2291). Now, on 10 August 1995 AH Badenhorst signed, on behalf of the Department, a contract with Committed Artist Theatre Company, a company which clearly neither complied with the relevant specifications, nor had the necessary infrastructure, for an amount in excess of R14 000 000 00 (fourteen million Rand). This was contrary to the understanding of the Director-General, and the Director, HIV/AIDS and STD programme, because it exceeded the

ceiling of R5 000 000 00 (five million Rand); it was without the official recommendation of the Department Tender Committee and without the necessary authority being given by the Director-General, the Accounting Officer of the Department. This perturbed the Department and, as a consequence, the Director-General, as well as the Director, HIV/AIDS and STD programme, on 18 August 1995 - just eight days after the contract was signed – wrote letters to the Minister expressing the concern of the Department regarding its contract with the Committed Artists Theatre Company (see PP 1996 3.7, 6.4.10, 6.2.5, 7.5.1, 7.5.5, 9.2, 10.9; Hansard (SA) 5 June 1996, cols. 2274, 2276). A careful study of the Protector's Reports of 1996 on *Sarafina 2* - an HIV/AIDS play conceptualised by the Minister herself – shows that the Minister may have neglected these concerns expressed by her Department. The Minister should have intervened at the very point she was properly alerted of an incipient debacle in the execution of her initial idea, and ensured that it was instead soundly carried out, so that, in the end, its inherent value could become self-evident through its substantive outcomes.

If Minister Zuma did apprise herself of the information available to her on the flawed implementation of the *Sarafina 2* play, then, she has either vacillated so long in not promptly instituting an investigation by the Public Protector (who has powers of legally enforceable subpoena) that reasonable suspicion of a cover-up is warranted – only a tenuous line exists between vacillation and cover-up in a highly charged furious public debate such as that over the wastage of a huge amount of public funds; or, she has erred in being determined to protect the grave misconduct of her senior civil servants, who acted *solely* as independent moral agents and did not allow the public interest to override their individual consciences when making use of the power at their discretion, in spite of being officials, and thus holders of public trust. If she does the latter she will also be guilty of a cover-up, obliging her, conventionally and constitutionally, to resign. This observation is made apropos of an earlier distinction drawn between the culpability of a Minister for not promptly taking action to provide timely redress, and ensuring that mistakes do not recur where a wrong was brought to her knowledge, on the one hand, and the naming and blaming of culpable civil servants whose decisions "of which the Minister knows nothing or could be expected to know nothing," on the other. Clearly, the Minister of Health resolutely refused to apprise herself of information made available to her by her senior Directors, and of which she ought to have apprised herself.

That a minister apprises herself of information she ought to apprise herself of is neither "ministerial accountability unlimited" nor the expectation of the impossible, that "the

Minister have first-hand knowledge of all that goes on in the department." It doesn't, in any way, "devalue this currency" of ministerial responsibility; rather it highlights her dereliction of duty and negligence, and this is *a fortiori* constitutionally punishable by resignation.[11] Again, this observation is made bearing in mind A Tomkins's warnings about the known fact that although Ministers have a great deal of first-hand knowledge of their Department's works as a result of being over-involved in the daily affairs of their junior officials, they nevertheless encourage the perception that they know nothing other than matters of high policy, and do not descend to the level of day to day operational

[11] In addition to the i) dishonest criminal conduct of Albert Hugo Badenhorst and Johnny Angelo in presenting their DG with a fraudulent document entitled "Explanatory note on acceptance of the tender of Committed Artists," with which both men deceived and misled their DG into believing that the Departmental Tender Committee had truly recommended the acceptance of the Committed Artists' tender which was *de facto* false (PP 1996 7.7.12, 7.7.13-7, 10.18) and ii) the deliberate lie and deceitful threat of D Vorster to two officials of the Department the reason for which cannot easily be determined (PP 1996 6.4.12, 10.17), the opinion is expressed that the Minister of Health was negligent in having not apprised herself of and promptly acted on the information availed her by her senior Directors. Should the Minister's negligence in having not apprised herself of information she ought to have apprised herself of is excused so as to justify not making "ministerial responsibility unlimited," or not devaluing its currency, then, the Chief Director, National Programmes, Department of Health, D Mtshali can as well be excused. D Mtshali could not consider the deviation envisaged at the conceptualisation of *Sarafina 2* as well as the clearly significant modifications made by the Department of Health both in order to finance the *Sarafina 2* musical - to be a significant modification of the project. It was on the bases of this interpretation that D Mtshali in conjunction with QA Abdool Karim failed to notify the EU contrary to the letters and spirit of the contract between the Department and the EU apropos of material deviations from the agreement and consequent upon which these two officials were found guilty of negligence (PP 1996 4.3.9, 10.4.2). Both he and QA Abdool may argue that the changes in the nature of the project and financing structure of their contract with the EU were, in Richard Scott's words, "a justifiable use of the flexibility believed to be inherent in the guidelines." And, this, the Chief Director, National Programmes may have implied when he insists that no modifications were made in the contract even in the face of glaring changes. Then, only, would we have arrived at a ministry, of the sort the constitutional law expert, then, Minister of Water Affairs and Forestry, conceives, wherein "ministerial responsibility cannot be unlimited," (see Hansard (SA) 5 June 1996, col. 2291). At any rate, the legal eminence stopped short of enlightening us about the responsibility of the Minister for the Department he conceives of *vis-à-vis* the putting into place of systems, mechanisms, *staffs* and procedures in place to ensure proper management and the efficient utilisation of resources. Until then, we cannot but agree with scholars of ministerial responsibility, not excluding our own Christina Murray (2002, 89) and Hugh Corder (1999, 15) that this duty falls within the ambits of the responsibility of the Minister. A reasonable interpretation of the Public Protector's Report in this regard is that there was simply *no* administration in the Department of Health of Minister Zuma at the time it was poised to implement a project of over R14 000 000 00 (fourteen million Rand) well over 2 per cent of her Department's R700 000 000 00 (seven hundred million Rand) annual budget. Though 2 per cent, Aristotle's warning should be heeded, "in particular to guard against the insignificant breach (for) illegality creeps in unobserved (as) it is like small items of expenditure which when oft-repeated make away with a man's fortune," brings the essence of precaution closer to mind.

issues. While we are careful about either making ministerial responsibility unlimited or devaluing its currency, serious caution must as well be exercised with respect to the opposite danger, in which the formula of ministerial responsibility is too narrowly drawn and the hurdle of ministerial responsibility is set too low; the result is that the principle of ministerial accountability is too easily satisfied or ministerial responsibility for departmental acts is diminished almost to a vanishing point (if not to nothing). This view is expressed apropos of a foundation for the newfound democracy in South Africa. What foundation is being laid? What precedent is set apropos transparency, openness, responsibility and clean government? What is being gazetted in the Reference Books for the future representatives and leaders of the South African state? Quite obviously, it is not the rule of ministerial responsibility that a minister in charge of a department always gets herself involved in "all the detailed and often technical tender procedures" of her Department; in fact, it is the exception that she does. On the other hand, it is the expectation of the public that a Minister, at exceptional crisis points in the course of the work of the Department, gets involved in the details of policy of her Department. Such exceptional circumstances reasonably include those where the Minister has been alerted in writing that danger looms and is imminent in the execution of a departmental policy that was originally her brainchild. At no other time, in our opinion, should there be any occasion when the Minister gets involved in the details of the work of her Department. But what can reasonably be envisaged as more critical for the Minister's involvement in the details of departmental policy than when her most senior Directors calls her to duty? After all, the Minister is a trained and experienced manager of personnel, material and money - in the words of her eminent jurist colleague: "Dr Zuma is a fine, principled Minister who has shown courage and vision in relation to the health system" (see Minister AK Asmal, in Hansard (SA), 5 June 1996, col. 2291).

Many parliamentarians suggest that the Minister of Health knew more on matters concerning *Sarafina 2* than she was prepared to admit, and, on the specifics, one MP elaborates:

> On 28 February the Minister for Health and her Director-General appeared before the Portfolio Committee on Health to explain her Department's involvement in *Sarafina 2* and to answer questions put to them by that committee. What followed was a tangled web of half-truths and untruths, which were designed to do nothing more than deliberately to mislead members of the committee, the press present at that meeting and the wider public *via* the media (Hansard (SA), 27 March 1996, col. 837).

And, another MP proposes

We believe that there is clearly sufficient evidence to warrant at least a suspicion – I must say by now it is much more than a suspicion – that the Minister might have been entirely truthful when she appeared before the parliamentary committee. Parliament as an institution is harmed when the public perception exists that the executive can simply ignore or mislead Parliament. Parliament is supposed to be the primary watchdog of our new-found democracy (Hansard (SA), 27 March 1996, cols. 843-4).

According to yet another

What was stated on 28 February 1996 in the Portfolio Committee on Health by the Minister as factual information was subsequently changed by the Minister when she addressed other forums and the media. It is on this basis that we now have a situation in which there is proof that she misled the Portfolio Committee (Hansard (SA), 27 March 1996, col. 845).

And, so, it still remains to be asked of the People's Parliament of our fledgling democracy in its formative years: What precedent has been set? And, who is to blame - the gladiators or the spectators? Both are accomplices to the crime; however, culpability cannot be equally distributed as the guilt of the ANC-in-Government, in rallying around a palpably errant colleague, outweighs that of the Opposition-in-Parliament's reasonably warranted reaction.

In sum, the Minister of Health may not have been guilty of "gross dereliction of duty" or "gross negligence" of the sort her colleague talks about. But, conscious of Aristotle's call for precautions to be taken to defend one's Constitution, most particularly against the "insignificant, unobserved breach," the *immediate post-apartheid* South African public should take heed and defend their new Constitution. Minister Zuma may not have been charged with any *explicit* or *palpable* cover-up, but the Minister of Health may nonetheless have clearly, within the bounds of (limited) ministerial responsibility, been guilty to a degree that warrants her resignation in constitutional terms.

The political will and determination shown by the Portfolio Committee on Welfare, chaired by Cas Saloojee MP (ANC), in doggedly challenging and successfully changing

the ANC-in-Government's policy on the Child Support Grant (CSG) in 1997, was a demonstration of the latitude of possibility available to a Committee of Parliament apropos its constitutional oversight role over the executive; this was a landmark achievement for Parliament during its first five years.

The pre-1994 South Africa implemented social security measures – state support for a) the elderly b) people with disabilities c) child and family care and d) social relief - for the support of poor people whose scope and levels of benefits were racially discriminatory. All South Africans in the pre-1994 South Africa were eligible for the State Maintenance Grant (SMG) – the main grant in the field of child and family care – but for a variety of reasons African women were largely excluded from access (Lund Committee Report 1996, 5). In post-1994 South Africa, all South African women (inclusive of Africans) are eligible for this means-tested grant. Mothers resort to the state security system when they are neither able to provide for themselves nor get support from the fathers of their children. Social security benefits for elderly people, people with disabilities and for families, are relatively well targeted for households in poverty, at rural areas and women and, according to Lund, growing research demonstrates the vital role the existing social security benefits play in poverty alleviation (Lund Committee Report 1996, 7). About R1 200 000 000 00 (one billion two hundred million Rand) was spent on State Maintenance Grants in 1995, while it would cost between five and twenty billion annually were all women eligible for the grant to get it (Lund Committee Report 1996, 5). The future affordability of the State Maintenance Grant concerned the nascent ANC government, which was reorienting itself towards developmental social welfare and programmes of reconstruction and development, with, at the same time, a commitment to reducing the fiscal deficit and promoting economic growth. In this way it hopes, over time, to reduce the number of South Africans relying on social security as the main means of support; hence, the establishment of the Lund Committee on Child and Family Support in February 1996 to look into the problem. Lund was tasked to report its findings and a) make recommendations on a critical appraisal of the existing system of state support to children and families b) to investigate the possibility of increasing parental financial support through the private maintenance system c) to explore alternative options regarding social security for children and families, as well as other anti-poverty, economic empowerment and capacity-building strategies and d) to consider the development of approaches for the effective targeting of programmes for children and families (Lund Committee Report 1996, 6).

The achievement of racial equity in the State Maintenance Grants within the budgetary constraints of government's growth, employment and redistribution macro economic policy (GEAR) was the chief concern of the Lund Committee. It proposed the integration of the financial responsibility of parents with the introduction of a child support benefit in which the latter would be financed by the phasing out of the existing State Maintenance Grant over a five-year period. With government's commitment to reducing its fiscal deficit and to promoting economic growth (as spelt out in GEAR) in mind, the Committee saw as "highly unlikely that government expenditure on family and child grants will be increased to the levels required to ensure equal accesses to all race groups to grants at the existing levels and under present eligibility conditions."[12] Constrained by time it completed its work within six months, the Committee saw itself as "a technical rather than consultative" committee, as it could not engage in a consultative process (The Lund Committee Report, 1996, 6, 104). Its main recommendations are a) parental financial responsibility, particularly of fathers, for children, should be promoted through the reform of the private maintenance system b) a flat-rate child support benefit which will be financed by a phasing out over a five year period of the existing parent allowance portion of the State Maintenance Grant should be introduced c) this should be paid to the primary care-giver of all children who qualify, using a simple means test – asking a simple question of the care-giver as to whether his/her income is above Rx, and, if a partner is present in the household, whether that person has a regular income such as to make the combined income more than twice Rx d) child support benefits should be payable from birth for a limited number of years, with the number of years as a cost containment mechanism[13] e) that the level of the grant should be derived from the Household Subsistence Level for food and clothing for children and f) the proper registration of the child must be ensured, as well as the obligation of the care-giver to

[12] Until 2000, the family and child support grant included the SMG made almost exclusively to whites, coloured, and Indians and consisted of a minimum parent allowance of R430 and a child allowance of R135 per child under 19 years for up to two children. A single parent – single mothers including widows, divorcees, and those never married - who did not receive private maintenance and whose income was below a certain minimum, qualified for the SMG. 203 263 children and 1466 430 parents were receiving the grant in mid-1995 (*The Star* 28 April 1997, Liebenberg 1998). The SMG was phased out between April 1998 and April 2001 and the child support grant introduced to replace it (Van der Berg 1999, 20).

[13] With child development needs and the need for fiscal responsibility in mind, the Committee's consensus preferred option was 0-9 years of age, this, being the age in which majority of children would be inside the school system where other programmes and forms of support could come into play. But, with the projected costs *vis-à-vis* government's budgetary constraints imposed by GEAR, the Committee unwillingly confronted the choice of cutting back the number of years (or forgoing the benefit altogether).

participate in certain critical health-related programmes concerning the child in his/her care, most particularly, growth monitoring and full immunisation of the child are a condition for the receipt, and continuation of the award.

Trumped and hemmed in by government's fiscal constraints, the Committee weighed different approaches in its bid to arrive at a minimum age of eligibility for the benefit and considered possibilities for the extension of eligibility to higher age cohorts. These include a) the inclusive approach 0-16 or 18: the age limit for the State Maintenance Grant, in pre-1994 South Africa, was 18, extended to 21 if the child continues into tertiary education. Under the new regulations, this is 18, or, up to 21 if the child is still completing secondary school, as a high number of South Africans only complete secondary school education in their 20s b) the South African early childhood development approach 0-9: many South African children living in poor households and environments do not start at the prescribed age of 6, but commonly start at 7 or 8 or even 9 years of age c) the pre-school years approach 0-6: the logic behind support up to these years is one of nurturing, access to health care, and adequate nutrition. More so, support should be provided to the point where the child comes in contact with another institution – say, primary school - as possible vehicle for alternative forms of support including nutrition schemes and preventive health services d) the minimum approach 0-4: the argument here is that the first four years of a child's life is critically important in terms of consistent nurturing, attention to health problems, and adequate nutrition.

The Committee set two levels of the benefit, *viz* a) R70 monthly, based approximately on the Household Subsistence Level for children and b) R125 monthly, then the existing level of the child allowance portion of the State Maintenance Grant. It set three ages of eligibility a) 0-4 years b) 0-6 years and c) 0-9 years. The Committee also set three budgetary amounts, *viz* a) R1.2 billion: the approximate amount then spent on the State Maintenance Grant b) R1.5 billion: an approximate mid-point for comparative purposes and c) R2 billion: assuming that more money could be allocated or that other sources of funding could be forthcoming. The choice of a particular combination of age cohorts and monthly level of benefit within an annual budgetary amount determines the percentage of children targeted (to receive the benefit).

Table 4.0: Percentages of children who would be reached using varying age cohorts, monthly levels of benefit, and annual budgetary requirements (ages in 1997/98)

Age cohorts and benefit levels:	R1.2b	R1.5b	R2b
0-4, R70	24%	29%	39%
0-4, R125	13%	16%	22%
0-6, R70	17%	22%	29%
0-6, R125	10%	12%	16%
0-9, R70	13%	16%	21%
0-9, R125	7%	9%	12%

Source:
Report of the Lund Committee on Child and Family Support, August 1996, 88-9; www.polity.org.za

As we have seen, the Lund Committee did not find time to involve civil society in its deliberations. In the same way, the Minister of Welfare, Geraldine Fraser-Moleketi, agued that consulting the Portfolio Committee on Welfare before the Lund's recommendations went to the Cabinet for approval was "unnecessary." The Minister announced government's choice of adopting a R75 flat rate monthly benefit per child within the age cohort of 0-6 years, targeting 30% of poor children which would amount to three million children by 2003, at an estimated cost of two billion seven hundred million - a reduction on the existing R135 per child between the ages 0-18 (see *The Star* 28 April 1997, *Mail & Guardian* 25 Aril 1997, Calland 1999, Cassiem and Streek 2001). The prospect of this crucial and far-reaching policy being implemented without the involvement of either civil society or Assembly Committee on Welfare outraged both the Committee and civil society. In response, the Committee held public hearings on the matter in Cape Town, Pietersburg and Umtata consecutively. Midway through the hearings, at which she was in attendance, Minister Fraser-Moleketi issued a press statement saying, "There is no turning back. The child support benefit will become a reality," and that "correct parliamentary procedures have been followed." But parliamentary processes were disregarded, and this shows the Minister's ignorance of the role of Parliament, or contempt for it, or a tendency towards a closed and centralised form of executive decision-making, which is against the letter and spirit of the Constitution.

Swayed by the impressive submissions of the range of civil society organizations, which not only proved the incorrectness of government figures but, importantly, demonstrated

how policy could be improved upon with specific civil society counter-proposals, Mary Turok, MP (ANC) said, "We are persuaded by them. There was a strong feeling on the Committee that R75 was an insult" (*The Star* 28 April 1997, *Mail & Guardian* 25 April 1997, Calland 1999). Challenging the Minister's choice, the Committee set out 3 alternative options of which it *unanimously* chose the R135 monthly award per child within the age cohort of 0-9 years of age, with 80% of poor children receiving the benefit. This was contrary to the option put forward by the Minister.[14] As it became known that the Department of Welfare had already printed leaflets setting out the details of the new benefit - before the parliamentary hearings had taken place – anger built up in the Committee and Essop Pahad was compelled to broker a deal between Geraldine Fraser-Moleketi and the Minister of Finance in which the latter agreed and increased the benefit to R100 per child between 0-6 years of age.[15] This was a landmark achievement of a fledging committee system. Here a committee rigorously questioned bills - the true test of a democratic parliament. Whether this positive precedent turns out to be a "blip or a defining moment" for the new democratic People's Parliament remains to be determined. The Portfolio Committees on Health and Welfare were not the only committees of Parliament to adopt a tough line on the Executive during the first Parliament. SCOPA is one Committee of Parliament, which, by its very special nature, is designed to subject members of the Executive and senior Government officials to close scrutiny on issues of

[14] In addition to instituting public hearings on the issue of the child support benefit, the Assembly Committee on Welfare published a report denouncing government's policy, and recommended alternative options substantially different from the choice of government, in which regard, the view of the ANC welfare study group comprising ANC MPs of the Committee is crucial. They were independently minded having been reasonably influenced by public opposition to Minister Fraser-Moleketi's stance from both within civil society and within a number of key constituencies in the ANC, COSATU, some ANC branches and even some cabinet ministers opposed to the reduction of the grant to R75. The matter became an issue of wider significance within the ANC caucus where it was felt that Minister Fraser-Moleketi's high-handedness, impolite and stubbornness apropos the child maintenance benefit confirmed the suspicion of some members that the benefit was brought down to R75 just because it was to be offered to black children. The sour taste this feeling created amongst members left them no option than that of confronting the issue head-on.

[15] Against the backdrop of this mobilization by both civil society and MPs, it wasn't a surprise that when the CSG was finally introduced in April 1998, R110 was paid per child under 7 years of age, and government, since then, has progressively increased the amount upward. Effective from April 2003, the CSG moved up by 14 per cent to R160 a month while government promised extending the means-tested child support grant to children in need up to their fourteenth birthday, thus, raising the total number of social assistance beneficiaries to more than eight million by 2005. Government set aside R1.1 billion, R3.4 billion and R6.4 billion over the next three years to phase in the extension of the grant. This means that seven- and 8-year olds qualified for grants by April 2003 while 9- and ten-year olds will quality in April 2004, and eleven- to 13-year olds the following year (*Budget Speech* of the Minister of Finance, TA Manuel, 2003, 17).

proper financial management, accountability and good governance. The unique nature of SCOPA, its structure, role and resources, is discussed *infra*.

4.1 SCOPA and Parliamentary Oversight of Government Spending

Strong (effective) parliamentary oversight, scrutiny – perhaps, the quintessence of combating corrupt practices and promoting clean, good (and honest) government - hinge on an active committee system within Parliament, where members, going beneath the surface, penetrate the administration of government and submit government expenditure to precise scrutiny and ensure real accountability through the (unhindered) direct interaction of elected legislators and the civil service. The oldest and the most well-established parliamentary committee, the Public Accounts Committee (PAC),[16] is, for the purposes of oversight and scrutiny by Parliament of the Executive, arguably, the most important (see JD Lees and M Shaw 1979; G Drewry 1985; M Ryle and PG Richards 1988; LD Longley and RH Davidson 1998; Commonwealth Parliamentary Association (CPA) 2001; J Wehner 2002; DG McGee 2002). This traditionally heightened status of the PAC over other committees in legislatures is underscored by the continued existence of the Ways and Means in the House of Representatives in the United States and the PAC in the House of Commons in Britain (and both enjoy considerable respect) since their creation in 1795 and 1861 respectively. This points to the long recognised unique importance, as the legislative apex for parliamentary oversight and scrutiny, of the PAC.

The PAC, a parliamentary organizational form that ensures government accounts for its policies and actions and its management and use of public resources, requires information vital to the proper assessment of governance and performance issues it is aimed at investigating – this is the essence of its existence – and, this (audit) information is traditionally provided by an independent body, a court or the Auditor-General (CPA 2001, 17; J Wehner 2002, 3).[17] The audit institution ensures proper accountability by

[16] All over the world the Public Accounts Committee is known by a number of variants of the title. The SA variant of the name is the Standing Committee on Public Accounts (SCOPA).

[17] It appears the audit function dates back to the fourteenth century France and Britain but whereas Napoleon 1 brought the *Cour des Comptes* (Court of Audit) into existence only in 1801

government for the use of public resources through the provision of extensive independent audit reporting on which, the PAC, in order to be effective is dependent. In almost all countries the PAC is the chief audience of the Auditor-General and a cordial relationship is maintained between the two. The symbiosis existing between these two institutions can be summed up by saying that while the effectiveness of the PAC largely depends on the high quality of audit reports, only a PAC with teeth ensures that government departments take audit outcomes seriously. The Auditor-General and the PAC are so inextricably tied together in a relationship that any serious look at the former invariably results in a study of the latter. Anything else would result in an inadequate notion of parliamentary accountability in regard to the use public sector resources. The PAC and the audit institutions are, together, vital components of democratic accountability.[18]

As structures that operate to limit the exercise of governmental powers, caution must be taken to guarantee the independence of the PAC and Auditor-General. In this regard, proper care is to be exercised in "the method of appointment, tenure, career expectations, method of removal, funding and legal immunities attaching to the office," as these are essential measures in the overall assessment of the degree of independence of the

---

reference to the Auditor of the Exchequer in Britain was made as early as in 1314. Henceforth Francophone countries based their legal tradition on the "court model" whereas Anglophone countries adopted the "office model" in which an auditor-general reports to parliament (J Wehner 2002, 3). While J Wehner prefers the term "audit institution" to refer to either an auditor-general or audit court we have, herein, used these titles - audit institution and auditor-general - interchangeably.

[18] Democracy inherently entails accountability for the exercise of governmental power. In other words, universally, the shared interest in promoting democracy is imbued with limitations on the exercise of political powers through the citizenry's ability to participate in government. The construction of appropriate systems that permit decisions to be taken in the context that promotes probity and productivity, *inter alia* is part of accountability. No one body can be a repository of accountability. In fact, the whole system of government – executive, legislature and judiciary – is part of the accountability structures within a state likewise other institutions of civil society, including the media and voluntary organizations. Within Parliament, putting aside committees for the moment, such mechanisms as questions, urgent debates, the estimate process, scrutiny of delegated legislation, private members' motions, adjournment debates, etc are all part of the same system by which government is called upon to explain actions it has taken and to require it to defend and justify its policies (CPA 2001, 15). Accountability is not just designed to catch out its subject in an illegal practice. Importantly, accountability is about *cautiously* instilling or reinforcing an ethos of legal compliance and efficient practice, which works by *prudently* motivating people in ways that are beyond their direct control to engage in desired conduct (CPA 2001, 16). An unduly rigorous approach to scrutiny will efface the ultimate goal of accountability - that of promoting good governance.

Auditor-General.[19] Alongside these are questions of funding and resources for the Auditor-General's office. Paper guarantees do not guarantee the independence of the Auditor-General. The practical operation of the Auditor-General - the degree of freedom he or she has over the duty performed - says more about independence than does any set of formal rules that amounts to very little where insufficient resources hamper the performance of the job. Local circumstances and conventions, in this regard, are fundamental in the establishment of independence (CPA 2001). It is suggested that the Auditor-General be, by statute, made an officer of parliament. Regardless of formal rules on the independence of the Auditor-General, the importance of formally establishing that this officer is neither part of the executive arm of government nor the government auditor must be stressed. Unlike other civil servants, the Auditor-General should be both responsible and accountable to Parliament and clearly seen as being located in the Legislative arm of government.[20] Issues relating to the composition of the PAC, whether its Chair is drawn from the government or the opposition ranks, its terms of reference (particularly whether or not it has a policy remit), the openness of hearings, the frequency of meetings (including the *quality* of audit information provided by the Auditor-General) are factors that determined its effectiveness as a check on the exercise of executive power (CPA 2001, 18; DG McGee 2002, 12-13). Understandably, the PAC, like other committees, cannot be totally independent of the parent body which appointed it and to which it reports. Hence, what is needed of a PAC is political effectiveness rather than independence in a formal sense. Again, an effective PAC able to work on a non-partisan basis in its own right requires the availability of adequate resources.

The Auditor-General's relationship with Parliament has found its principal form of expression in the Auditor-General's relationship with the PAC, even when the Auditor-General may be an officer of Parliament. First, it was because the PAC had to follow-up on the reports of the Comptroller and Auditor-General that, in the middle of the nineteenth century, it was established by the British House of Commons. Second, the

[19] In this regard independence will mean independence from the entity that the Auditor-General audits, which normally is government departments and government agencies over which the officer has authority to scrutinize. He or she must not be affected by political and public concerns, which could influence the distribution of his or her audit resources. Strong PAC's influence on the Auditor-General's work programme as well as the Auditor-General's close relationship with the PAC, are quite compatible with the independence of the Auditor-General.

[20] In the United Kingdom, the Comptroller and Auditor-General (C&AG) is, by statute, an officer of the House of Commons and all of the National Audit Office's (NAO) main work is presented to Parliament by Order of the House of Commons.

work done by the PAC has more in common with that of the Auditor-General than the work of other committees of Parliament. But the relationship between the Auditor-General and the PAC has been less than uniform, as it has evolved differently in different jurisdictions (CPA 2001, 33; DG McGee 2002, 31). As the Report of the Commonwealth Parliamentary Association's Study Group on Public Accounts Committees points out, "something of a continuum (can be observed) from no apparent contact at all between the Auditors-General and the PACs, to a relationship almost exclusively reciprocal between the Auditor-General and the PAC, with the Auditor-General reporting solely to the PAC and the PAC relying exclusively on the Auditor-General's report as a source for its inquiries." But conventionally, the Auditor-General's links with Parliament passes through the PAC which the Auditor-General provides with materials that form the basis of its work of inquiry, assists in carrying out that inquiry, and in turn receives suggestions from the PAC (and other members of parliament, or the public) as to his or her work programme.[21]

It is correct to say that PAC work primarily depends on, and is, in the main, guided by, the work of the Auditor-General. But the PAC is not merely a parliamentary mirror of the Auditor-General. It is proper, even in jurisdictions where very close correspondence between the work of the two entities exists, for the PAC to be able to pursue matters of interest to its members, *regardless* of whether or not those maters are contained in an Auditor-General's report. That acknowledged, it must quickly be stressed that although independent in their respective spheres, the Auditor-General and the PAC function more effectively when their work is coordinated in a manner so that one mutually reinforces the other (CPA 2001, 55; DG McGee 2002, 57).

[21] While an auditor general has complete discretion as to his work programmes (freedom to choose what, when and how to audit), taking account of PAC preferences (for audit and performance reviews) and suggestions in framing those programmes, is acceptable as long as such influence does not compromise his independence and effectiveness. That PACs have some input into forward audit programmes by reviewing the Auditor-General's proposed programme is the ideal arrangement and compatible with the independence of the Auditor-General. And because the PAC is a derivation of the Auditor-General and not an investigative body in it own right, the PAC is, logically, required to ensure the independence of and to support and strengthen the effectiveness of the office of the Auditor-General. In short, the WE Gladstone's reforms in Britain that led to the creation of the Comptroller and Auditor-General and the consequent establishment of the first PAC (a prototype of almost all PACs worldwide) were part and parcel of the historically reinforced independence of the two institutions (see CPA 2001; J Wehner 2002; DG McGee 2002).

The Standing Orders or Rules of Parliament applicable to all other committees of Parliament also apply to the PAC with particular exemptions and additions, sometimes supplemented with specific mandates, approved working practices, or terms of reference. PAC's terms of reference can be *narrow,* as when it concentrates on financial probity and regularity alone, or *broad* as when it is conceived in performance audit terms, with the Committee charged, in addition, with examining the effectiveness of programmes in achieving their objectives (CPA 2001, 53; DG McGee 2002, 55). Generally the PAC (a permanent piece of Parliament's financial machinery for an independent oversight of the appropriations it has authorized) on Parliament's behalf holds government (and the public service) to account by examining the public accounts, the Auditor-General's reports and matters relating to the effective and efficient use of public funds and resources.

The PAC is a multi-subject committee. Its remit is as wide as the extent of the public sector, as it is specifically appointed to scrutinize the activities of government *as a whole,* rather than restricted to any particular sphere(s). Like the PAC, departmentally-related committees exercise an oversight role over government that can extend into financial reporting on grounds that the Auditor-General's reports do, at times, interest them and fall within their remits as well. But the PAC differs from *all* other committees because it, unlike departmentally-related committees, is subject to rules and conventions restraining it from questioning the rationale of policy that informs public spending. It is mandated, rather, to ensure that government only spends in compliance with Parliament's stated intentions and expected standards, and, also, that value for money is obtained.[22] As Erskine May puts it,

> The Committee does not seek to concern itself with policy; its interest is in whether policy is carried out efficiently, effectively and economically. Its main functions are to see that public moneys are applied for the purposes prescribed by Parliament, that extravagance and waste are minimized and that sound financial practices are encouraged in estimating and contracting, and in administration, generally (Erskine May 1983, 728).

[22] Cf. Legislative Assembly of Saskatchewan (1992): In the mandate of the PAC of Saskatchewan Province, Canada, are *inter alia* that the PAC is not fundamentally concerned with matters of policy. It does not call into question the rationale of government programmes, but rather the economy and efficiency of their administration. Although the PAC hopes to have a continuing influence on the quality of administrative processes, its prime orientation is after-the-facts, or post-audit, to understand, assess and correct (through recommendations in its reports to Parliament) inadequacies, and issues that the Committee and the Auditor-General have raised. The resulting "non-policy" orientation of the Committee should enable the development of a non-partisan spirit within the Committee in order to get at problems and seek solutions to them.

But it is difficult, in practice, strictly to separate public financial management - a judgment of expenditure and receipts, as represented in public accounts, against key benchmarks such as probity and regularity - from the underlying policy behind a programme. Hence the PAC may examine policies with major economic implications in the course of its work. The increased interest by audit institutions and subsequently, Parliament, in recent times, in the depth and frequency of "value for money audits" has strengthened PAC reports in questioning and challenging government policy choices, notably, regarding issues of effectiveness.[23] But because accountability exists only to promote good governance, not being an end in itself, PAC members must (i.e., if they examine those policies with broad economic implications) bring fairness, understanding and thoughtfulness to bear on the matters under scrutiny before them, in other words, they should avoid pursuing *empty* rigorous accountability to the detriment of good governance. It is suggested that the PAC must, at all times, strive to respect the policy/administration divide in its remit while being guided by the principle that government ought to be apprised of the consequences of not examining policy; this, as DG McGee points out, is to confine its inquiries, probes, to circumstances in which not ministers but officials of departments, are witnesses before the Committee. The PAC

[23] The content of the work of the PAC depends largely on the reports of the audit institution. Whereas the traditional focus of public sector management has been on compliance, the past three decades has witnessed a reorientation of auditors' reports to a more performance-oriented outlook (Blöndal, JR 2001, 60; J Wehner, 2002, 8). Hence, the PAC engages closely in this "value for money" process to ensure that the information generated is useful and relevant to its work. This requires some (higher) level of reasonableness amongst PAC members to ensure that the efficacy of the Committee's process (rooted in its non-partisan approach to issues) is not ruined by non-deliberative (or party political) disagreements. It is suggested that sectoral committees, given their specialist policy remits - defense, health, foreign affairs etc – would be better able to handle inquiries which were subject of audit institution's reports on which policy issues figure prominently and hence pose problems for the PAC process. This will ease pressure on the PAC's time, buttress the work of the Committee and, arguably, inject subject relevant expertise into parliamentary audit process, which the PAC may lack at present. It might imbue departmentally-related committees with closer knowledge of the audit outcomes apropos their respective portfolios, especially when they also participate in the approval of proposed expenditures and *ex ante* scrutiny. Scrutiny is enhanced as audit reports get more attention than the PAC, by itself, can give them. We have left out the discussion on the potential dangers of involving subject (policy) specialist committees in scrutinizing audit reports, for, we agree with Antonine Campell that "following appropriate and rigorous audit standards and auditing against clear criteria that are accepted by the auditees, counterbalance the perception that (an involvement of sectoral committees in the review of audit reports would result in) a loss of objectivity." J Wehner's idea that a definite answer is yet to be advanced (see White *et al*, 1999, 134-7) to the fears entertained in broadening the number of committees in scrutinizing audit reports.

could avoid delving into policy issues if it pragmatically concentrates on matters in which departmental officials, rather than ministers, are respondents.[24] PACs which avoid policy judgments, and whose witnesses are limited to departmental officials, have higher consensus on their reports than those that do not. And were the PAC to make policy judgments, themselves always highly contentious, this would bring the committee into conflict with ministers, making it extremely hard for the committee to arrive at consensus in respect of those judgments. However, whereas, on the whole, the PAC is ill suited to examine matters of policy the committee must criticise any policy tending towards observable failure with undesirable outcomes. And, while the committee should not suggest alternative policy it must, as a matter of public audit, point government to the consequences of an apparently tendentious or wasteful policy.

The PAC is the first amongst equals of all legislative committees. It has been in existence since the mid nineteenth century, occupies a pre-eminent status over other committees in legislatures, and has commanded considerable respect as the legislative apex for financial oversight and scrutiny (J Wehner 2002, 3; David G McGee 2002, 59). McGee described it both as "Parliament's pre-eminent committee," and "a miniature Parliament." In categorising the standing committees in the US Congress, Donald R Matthews (1960, 154) distinguishes between "top," "interest," "pork," and "duty," committees and classifies the House of Representatives' Ways and Means Committee as a "top" committee.[25] While Matthews observes 'a fierce competition for places on the "top" committees and a general acceptance by freshmen congressmen that they are unlikely to be assigned to such committees,' David G McGee 'considered service on "Parliament's pre-eminent committee" (the PAC) to be a matter of prestige.'

---

[24] The imperative of accountability and oversight by Parliament over the executive as, for example, in s 55(2) and 92(2) of SA Constitution must however be minded. SCOPA, most often, restricts its hearings to matters in which accounting officers or department heads are its respondents, because these officials, being more closely involved in the management of the department, are more able to give the background information needed for the committee's report. It is in no way a shift of ultimate responsibility for the department from the Minister to the accounting officer, who is responsible to the Minister for the management of the department. In fact, SCOPA invites the political head of department to its meeting or hearing where the committee is unable to resolve a matter with the accounting officer. Requests for an accounting officer to appear before SCOPA are addressed to the relevant Minister. It is the Minister who responds to recommendations of Parliament usually by means of a reply formally tabled in Parliament (APAC 2003, 21-2, 36-7).

[25] While there may be no exact equivalent of the PAC in the US Congress, the jurisdiction of the PAC has more in common with the US House of Representatives' Ways and Means Committee's remit than those of other committees.

Like other committees in almost all Parliaments in the world, government and opposition membership of the PAC is usually proportionate to party membership in Parliament. Varying in size between 17 (largest) and six (smallest) the average membership of the PAC is 11.[26] According to DG McGee, the PAC is not the first love of many members today who are more policy-oriented and seek membership of the appropriate departmentally-related committee, rather than the PAC which deals with accountability and whose general remit is not likely to allow members often to indulge their subject interests. Members see few political rewards from their work in the PAC, especially when the PAC in question adheres to strong conventions of eschewing policy and of striving for unanimity because in a competitive environment such as that of Parliament, membership of the PAC does not readily enhance one's reputation with party colleagues. Membership of the PAC may not, David G McGee concludes, be a good career path to choose, especially for government members who may feel inhibited in their PAC work and defensive about its outcomes.[27] Acting with political restraint and mindful of not letting the conventions of the PAC break down, opposition members will, arguably, better perform investigative work and go further in fathoming out the relevant facts. Efforts must be made to associate senior opposition figures with the Committee's work, and both government and opposition should participate in PAC work for it to be seen to be constructively managing members from different parties. To make membership of the PAC career-enhancing it is suggested that Parliaments regard the PACs as their pre-eminent committee and continually reinforce this impression *via* parliamentary procedures. It is also suggested that a salary higher than those of the Chairpersons of other committees be payable to the Chairperson of the PAC (see Commonwealth Parliamentary Association, 2001, David G McGee 2002).

---

[26] See Results of Questionnaire (on Public Accounts Committees) in the Report of the Study Group on Public Accounts Committees of the Commonwealth Parliamentary Association (2001). J Wehner presents a summary of this survey in table 1 of his "Best Practices of Public Accounts Committees – Contributing paper for the Handbook for Public Accounts Committees commissioned by the Association of Public Accounts Committees (APAC) in South Africa" (working draft dated 10 October 2002).

[27] That the reward for the work in PAC is marginal is, arguably, subjective, for, there is an intrinsic value in the work of selfless public servants. And, if the PAC is a prestigious committee of Parliament, then, logically, prestige must come with an association with it. More over, membership of the PAC is a solid foundation in investigative work and broadens members' knowledge about the seemingly impenetrable machinery of government – a wealth of wisdom from which members profit both in their subsequent parliamentary duties and work after retiring from Parliament.

It is an established tradition across the world that the Chairperson of the PAC is chosen from amongst the ranks of the opposition members of the Committee. The result of the recent survey already referred to by the Commonwealth Parliamentary Association indicates that 67 per cent of PACs adhere to the principle of choosing their Chairpersons from amongst members of the opposition. That the PAC is the sole exception to the practice of government members chairing committees, again, demonstrates the non-partisan tradition underlying the work of the Committee, the recognition of the unique role of the Committee for democracy and, hopefully, the acceptance by government of Parliament's willingness to promote transparency through independent scrutiny.[28] In the majority of Parliaments, the PAC elects, as is the case in most other committees, its own chairpersons, following the familiar procedures for the election of committee chairpersons generally (DG McGee, 2002, 65). And even with a government majority on the Committee, the chairperson is chosen, following the principle, from the opposition.

The chairperson of the PAC must have the capacity to ensure a smooth and an effective operation of the Committee. She sets the Committee's agenda in consultation with other members of the Committee and the Auditor-General. Consultation with the Auditor-General enables the PAC to know the Auditor-General's work programme so that it makes adequate preparation ahead of time. She must herself be seen to act independently of party pressures and she, in this way, steers the Committee clear of party political divisions in order for members to comply with the conventions and practices of fostering the requisite culture of consensus (or unanimity) in the PAC which the Committee needs in order to operate properly.[29] Whether drawn from the government or opposition ranks, as David G McGee argues, it is important that the Chairperson of the PAC possess the personal qualities needed to achieve its objectives, *inter alia* the advancement of the collective interest of the PAC while continuously striving to maintain harmony amongst its membership.

It is worthless to merely establish any committee of Parliament without the required resources to enable it properly perform its traditional role. Parliamentary committees

---

[28] For equally respectable arguments against the general practice of providing opposition chairs for the PAC, see David G McGee (2002, 66).

[29] The Committee requires consensus, let us say, over the need to adopt rigorous methods of scrutiny and assessment. As has been argued *supra*, this will ideally result in consensus decisions, but even if it does not, the Committee's unanimous support for *deliberative decision-making* will enhance the democratic quality of its decisions. At the same time, the specific focus of PACs (on public accounts), while not guaranteeing consensus, facilitates it.

need to be sufficiently well funded, staffed and equipped, most especially with computer facilities so as to fulfill their respective roles. Over and above all other committees of Parliament, ensuring that the management of the PAC is adequately resourced needs to be given priority, to enable it do its technical audit work. The PAC needs, as the technical committee of Parliament, adequate resources relevant to its unique functions of certifying that a) figures in the public accounts are properly stated b) taxpayers' money was spent in accordance with the stated intention of Parliament c) payments and receipts accord with relevant legislation and regulation (White *et al* 1999, 61-74) and d) that government, in the implementation of policy, has spent "less, well and wisely" in bringing about desired results and outcomes.

To sufficiently resource its committees, Parliament has to arrange for ways and means of deciding its own funding rather than relying on the executive for funds. Parliament must decide how to overcome the numerical imbalance of legislative to executive staff. Longley suggests that Parliaments may have to create a counter-bureaucracy – particularly committees' subcommittees[30] and their staffs (LD Longley and RH Davidson 1998, 228-9). Until legislatures across the globe begin to have a relatively free hand, like the US Congress, to acquire the financial resources needed to operate a committee-driven counter-bureaucracy, the extent of the thoroughness, strength and thus impact of their committees' reports will continue to be largely decided by the executive on whom they depend for supplies (and whose actions and inactions legislatures supposedly oversee and scrutinize). By virtue of the fact that committees hold government in check – exposing and helping to excise misguided policies, incompetence, and dishonesty - it is not expected that the executive will usually arm committees to watch over it in ways it is most uncomfortable with. Similarly, a distinctly executive-minded leadership of Parliament will not allow committee work to interfere with the interests of the executive -

[30] There is need to enhance the capacity of the PAC to enable it to process its work as quickly as possible. The difficulty that individual members have in finding time to attend to the workload of the PAC has necessitated, where the constituent rules permit, a division of labour within the Committee. The general practice is the creation of subcommittees based either on subject areas such as defense, health, foreign affairs in which case they are used as standing committees, or *ad hoc* committees formed to consider specific issues as they arise and which cease to exist once they make their report on the matter to parent committee. A second option is the rapporteur-oriented system in which, as in the German *Bundestag,* each member is appointed to scrutinise the remarks on a specific entity in an audit report (J Wehner 2001, 2002). But whichever option is preferred, their deliberations and conclusions must receive the discussion and approval of the mother PAC (David G McGee 2002, 73-4). In some parliaments, the PAC, like all other committees, form agenda subcommittee that draws up a work programme for the parent PAC, which it later considers for adoption.

the funds international agencies inject into parliamentary committees to ensure an independent parliament and/or effective committee system are beside the point. This has serious consequences for the oversight work of committees, especially in parliamentary democracies, where parties exert strong control over committees, which are thus not free to develop a life of their own and contribute effectively to the outputs of parliament.

Vis-à-vis other parliamentary committees, the PAC has opportunities for an increased logistical and technical backup. Depending on the resources of the Auditor-General's office, the PAC is assisted by the Auditor-General's staff, which follows the PAC's work on a continuous basis. Officials of the Treasury have the expertise to accompany and support the work of the PAC, where such staffs do not have an official interest in the deliberations and investigations of the committee. DG McGee (2002, 86) recommends, subject to the availability of funding, secondments of experts from oversees or from another parliament as an alternative way of providing capacity and helping to build capacity in the future, as local staff will learn the skills that the secondees have to impart. The international community, according to DG McGee, has an interest in an effective PAC,[31] and ensuring that PACs are adequately resourced to do the job expected of them. This international practice is an avenue for PACs to explore. Universities and other organisations housing seasoned experts in auditing and audit-related works, say, banks and auditing firms, may have significant assistance to render in specific areas of PACs work.

A very strong convention exists in many Parliaments that PAC decisions be reached unanimously, although most countries' PACs reports record minority views where decisions were arrived at by votes on party lines. Whereas unanimity of decisions is, according to DG McGee (2002, 71), too exacting a standard and is not insisted upon by most Parliaments, striving for consensus decisions underlines the non-partisan approach to financial oversight and fosters a spirit of teamwork in which each member's view is considered of critical and equal importance (J Wehner 2001, 11). The PAC has, sometimes, had to delay reports while seeking consensus on matters to give more weight and add to the impact of reports than when they are merely party political documents.

[31] See David G McGee (2002, 15-9) for such global imperatives propelling the international community towards ensuring an effective PACs.

The PAC, for reasons dealt with above – technicality of work, consensual decision procedure, and avoidance of matters of policy – has most often worked away from the glare of publicity. A recent study of PACs notes a strong view that the PAC works best away from the attentions of the media but at the same time an increasing tendency for PACs to sit in public to hear evidence from the departments under scrutiny (CPA 2001, 67-8). In their "Results of Questionnaire on PACs," 55 per cent of 70 branches of the Commonwealth Parliamentary Association surveyed show that PAC hearings are open to the media and the general public (Commonwealth Parliamentary Association 2001, 89). As the public demands, more media attention and greater openness is expected of the PAC work – hearings and proceedings, sessions - than obtain at present. Generally the PAC sessions and proceedings should be open to the media and general public, excepting those very rare cases where grave damage to the national interest may be caused.

To emphasise its non-policy orientation, the PAC confines itself to hearings – which are the chief mechanism by which officials answer to it – from officials of departments, agencies or other relevant bodies, after the receipt of a report from the audit institution. A planned PAC programme is one scheduled in consultation with the audit institution so that the latter's release of reports is synchronised with PAC hearings.[32] Though the PAC considers the advice of the Auditor-General, it is not constrained in its choice of which areas of the auditor's report to further investigate. In a summary of the Australian case, IC Harris says

> The ability to consider and report on any circumstances connected with reports of the Auditor-General or with the financial accounts and statements of Commonwealth agencies is one of the main sources of the Committee's authority – it gives the Committee the capacity to initiate its own references and, to a large extent, to determine its own work priorities. This power is unique among parliamentary committees and gives the Committee a significant degree of independence from the executive arm of government (IC Harris 2001, 613).

In the majority of Parliaments, the Chairperson assisted by the Committee's clerk drafts the committee's report. The draft report is debated in PAC sessions in which any

[32] On what the PAC requires of both committee members and witnesses in a quality hearing, see J Wehner 2002, 13; Joint Committee of Public Accounts and Audit, Parliament of Australia, (2001b): *Notes for Witnesses at Hearings.*

proposed change is accepted or rejected. There is no requirement in most legislatures that the PAC adopts its reports unanimously, but, as stated *supra*, most committees delay reports until consensus is achieved. Whereas almost all Parliaments publish the reports of the PAC, barely a majority debate the Committee's reports, and do so often in the form of an annual debate in which the focus is on a selection of reports that deal with more serious financial control issues, and give most cause for concern (CPA 2001, 74-5, 88, 90). But does not the work of the PAC actually constitute a vital segment of the accountability price that governments must pay for being in office? Is not the PAC work really of such critical importance in safeguarding the trustworthiness, respect and confidence of a nation's public sector performance to warrant at least an annual debate on its work? Although governments naturally give legislative priority to their own parliamentary programmes, they should also find some legislative time for debates on the PAC's reports in acknowledgement of Parliament's democratic responsibility and in the public interest of the country.[33]

On the basis of the findings of its inquiry, the PAC makes recommendations in its reports to government and because this latter manages the resources of the public sector it is obliged to deal with the problems revealed by a PAC investigation. As is the requirement of most Parliaments, government formally responds to PAC reports within a specified period of time, usually between two and 6 months. Government's reply to PAC is sometimes referred to as the Treasury Minute or the Executive Minute. On the whole, a high acceptance rate of PAC recommendations by governments is recorded (CPA 2001, 73). Where it rejects[34] a PAC recommendation government offers explanations, which the PAC may accept or else it repeats the probe and issues another report - either the same as the first or modified.

The recommendations of the PAC, as well as the assurances of government, are toothless if government fails to make good its promises and *religiously* implement such recommendations of the committee. Most countries, on discovery that government

[33] This is a serious defect in the process whereby the People reflects on how its Government is interpreting and implementing its will. PAC reports do contribute to the formation of the popular will, but they would do so to an even greater extent, were Parliament to focus on PAC reports and recommendations.

[34] Rather than pursue the issue again with a further investigation, where the PAC is unsatisfied with government's response to its recommendations, in Botswana, the committee has an option to refer the matter to the Ombudsman Commission or the Public Protector for follow-up (CPA 2001, 74).

responses are in themselves inadequate for ensuring that the PAC's recommendations are acted upon, have had to institute a formal tracking mechanism to follow-up on and enforce compliance by government with committee recommendations. While some parliaments set up special committees for this purpose, many countries rely on the audit institution to monitor, contemporaneously, recommendations in that office's reports and those in the PAC reports. The tracking institution, at a later time, say, two years from the initial audit report as in the case of the German Federal Court of Audit, systematically examines the extent to which relevant departments have implemented those recommendations of the PAC adopted by Parliament (J Wehner 2001, 57-78, 2002, 15). Departments that have not complied fully with Parliament's adopted recommendations have had to face cuts or reprimands during their budget hearings.

The South African variant of the PAC is the Standing Committee on Public Accounts (SCOPA). The mandate of SCOPA is to ensure proper financial management standards in the public sector. This is given expression in s 55(2) of the Constitution according to which

"The Assembly must provide for mechanisms –

(a) to ensure that all executive organs of state in the national sphere of government are accountable to it; and

(b) to maintain oversight of -

(i) the exercise of national executive authority, including the implementation of legislation; and

(ii) any organ of state."

By way of interpretation, s 55(2) requires the Assembly to institute mechanisms – most probably, committees and procedures for passing legislations – firstly to ensure accountability of all executive organs of state in the national sphere of government and, secondly to oversee the exercise of national executive authority and *all* organs of state. Whereas mechanisms for accountability are required for those organs of state which are executive and operate in the national sphere, other organs of state and the general exercise of national executive authority must also be subject to oversight, i.e., must be

overseen. The (b) part of s 55(2) marks out the basic oversight responsibilities of the Assembly - that of monitoring the implementation of policy. It suggests that the oversight of the bodies referred to in this section can be left flexible, varying according to circumstances. Part (b) of s 55(2) is worded, specifically to allow the Assembly take into account the desirability and feasibility of holding *all* organs of state accountable (Hugh Corder 1999). In other words, SCOPA does not only oversee those institutions audited by the Auditor-General but also, unlike some other PACs, *all* entities in receipt of public money or authorised to receive money for public purpose (Association of Public Accounts Committees (APAC) 2003).[35]

Under the *Rules of the Assembly* 206

"(1) SCOPA –

(a) must consider –

(i) the financial statements of all executive organs of state and constitutional institutions when those statements are submitted to Parliament;

(ii) any audit reports issued on those statements;

(iii) any reports issued by the Auditor-General on the affairs of any executive organ of state, constitutional institution or other public body; and

(iv) any other financial statements or reports referred to the Committee in terms of these Rules;

(b) may report on any of those financial statements or reports to the Assembly;

[35] Cf. Peter Burnell's observation *vis-à-vis* the Zambian case where the work of the PAC focuses on the accounts for sums granted by the National Assembly and the relevant Auditor-General's report, but excludes local government finance. Financial scrutiny of local government councils is assigned to the Committee on Local Governance, Housing and Chief's Affairs, which devotes its reports to the audited accounts of councils, as tabled by the Minister of Local Government and Housing, and the Auditor-General's annual reports on the accounts of councils. The Committee reviews the accounts of local authorities and considers Action Taken Reports by the government on previous reports of the Committee. The division of labour between the two committees, according to Burnell, helps the PAC to focus on its primary financial oversight obligations relating to central government. A similar arrangement, according to Burnell, exists in Tanzania (P Burnell 2001, 34-64).

(c) may initiate any investigation in its area of competence; and

(d) must perform any other functions, tasks or duties assigned to it in terms of the Constitution, legislation, these Rules, the Joint Rules or resolutions of the Assembly, including functions, tasks and duties concerning parliamentary financial oversight or supervision of executive organs of state, constitutional institutions or other public bodies.

(2) The Speaker must refer the financial statements and reports mentioned in paragraph (a)(i), (ii) and (iii) to the Committee when they are submitted to Parliament irrespective of whether they are also referred to another committee."

Consequent upon constitutional s 55(2) and Assembly Rule 206 above, SCOPA has a duty to, as part of its mandate, "assist the legislatures in ensuring that public sector institutions:

- remain within budgets and spend according to the purposes determined by legislatures;
- are held accountable if they do not comply with the law and regulations concerning their financial management;
- provide value for money in the services provided to the public and the state; and
- develop and implement the necessary financial management capability and good governance practices" (APAC 2003, 3).

In holding government accountable for its spending of tax payers' money and for its stewardship over public assets, SCOPA reviews, examines, and evaluates the financial and administrative activities of government departments and agencies under their aegis. SCOPA, like other committees of Parliament, has the power of summons derived from s 56 of the Constitution and Assembly Rules 138.[36]

[36] The Powers and Privileges of Parliament Act (PPPA), the Public Finance Management Act (PFMA) and the Public Service Act (PSA) all impact on the powers of SCOPA. The first outlines the procedures by which the power of forcing witnesses to appear before a committee is enforced, while the second and the third show the required reporting system of government departments

Whereas the Constitution s 56 requires, should circumstance warrant, "the Assembly or any of its committees to:

(a) summon any person to appear before it to give evidence on oath or affirmation, or to produce document;

(b) require any person or institution to report to it;

(c) compel, in terms of national legislation or the rules and orders, any person or institution to comply with a summons or requirement in terms of (a) or (b); and

(d) receive petitions, representations or submissions from any interested persons or institutions."

Assembly Rules 138 provides that a committee, pursuant to its duties, "may

(a) summon any person to appear before it to give evidence on oath or affirmation, or to produce documents;

(b) receive petitions, representations or submissions from interested persons or institutions;

(c) conduct hearings;

(d) permit oral evidence on petitions, representations, submissions and any other matter before the committee;

(e) determine its own procedure;

(f) meet at a venue determine by it, which may be a venue beyond the seat of Parliament;

(g) meet on any day and at any time;

(h) exercise any other powers assigned to it by the Constitution, legislation, the other provisions of the Rules or resolutions of the Assembly."

---

and public entities accountable to them. In prescribing regular and comprehensive financial reporting these acts provide SCOPA with a framework within which to do its work.

The powers of SCOPA set out in the Constitution and Assembly Rules notwithstanding, the Committee's decision is not binding on the Parliament.[37] SCOPA only makes recommendations to Parliament on matters on which it expects action to be taken; if approved, these then become Parliament's recommendations, which government must implement. Assembly Rules 137 requires a committee, not excluding SCOPA, to report to the Assembly on every matter referred to it if and when a) the Assembly is to decide the matter b) the Committee has taken a decision on the matter, whether or not the Assembly is to decide the matter as contemplated in paragraph (a); or c) the Committee is unable to decide a matter referred to it for a report and d) a committee must report to the Assembly on all other decisions taken by it, except those decisions concerning its internal business. While a recommendation of SCOPA that has been adopted by a resolution of Parliament does not normally bind the executive, the norm is that such recommendation receives implementation from government (otherwise the executive must within 60 days explain in a responding report its reasons to reject the recommendation).

The post-1994 SCOPA works in tandem with the Auditor-General and they rely heavily on each other for the success and effectiveness of their work.[38] The shift by auditors towards focusing on the probity and value for money with which public fund is spent, away from their traditional focus on regularity and propriety in the expenditure and receipt of public accounts, makes additional demands on SCOPA, and its equivalent watchdog committees all over the world. SCOPA and Parliament must *now* ensure that government spends less, well and wisely to achieve its desired results and outcomes. In terms of the Constitution s 188:

"(1) The Auditor-General must audit and report on the accounts, financial statements and financial management of -

(a) all national and provincial state departments and administrations;

---

[37] The Constitution s 55(2) together with Assembly Rule 206 determine the mandate of committees of Parliament while s 56 and Rule 138 spell out committees' powers, our reading of which is quite different from that of the Association of Public Accounts Committees (see APAC 2003, 34).

[38] APAC emphasised the tenuous line that exists between the roles of the two institutions: whereas the Auditor-General reports (traditionally) on whether the financial statements of departments fairly represent their financial position and whether their transactions comply with the law, SCOPA has the (wider) role of overseeing whether public money was used responsibly and productively.

(b) all municipalities; and

(c) any other institution or accounting entity required by national or provincial legislation to be audited by the Auditor-General.

(2) In addition to the duties prescribed in section 188 (1), and subject to any legislation, the Auditor-General may audit and report on the accounts, financial statements and financial management of –

(a) any institution funded from the National Revenue Fund or any Provincial Revenue Fund or by a municipality; or

(b) any institution that is authorised in terms of any law to receive money for a public purpose.

(3) The Auditor-General must submit audit reports to any legislature that has a direct interest in the audit, and to any other authority prescribed by national legislation. All reports must be made public.

(4) The Auditor-General has the additional powers and functions prescribed by national legislation."

The Auditor-General provides SCOPA with its crucially important independent external audits on the financial statements, records, transactions, operations (performance and value for money studies) of institutions, specifically government departments and public entities, that fall within the committee's oversight remit (APAC 2003, 43, 46). Each year SCOPA handles between 160 and two hundred audit reports emanating from the office of the Auditor-General (Linda Ensor, in *Business Day* 3 November 2000, Gavin Woods *SCOPA's Intended Arms Deal Investigation – the Interventionist Causes of its Failure* January 2002). The Auditor-General's reports on the financial statements of state departments and agencies are crucial inputs into - and constitute the major work of - SCOPA in ensuring government's accountability for a) the public money it spends b) its stewardship of public resources and c) the value for money of the programmes it implements.

When the Speaker refers an independently verified report from the Auditor-General on the financial management in a department or government body, concerning possible material irregularities or problems to SCOPA, this latter investigates the matter. Beginning with an invitation to the Auditor-General's office to present the report to it,

SCOPA may conduct a hearing before which the department's or entity's accounting officer will be asked to appear, and answer for the problem in his or her department and the mechanisms they have devised as a solution. Where the Committee is not satisfied with the information given by the accounting officer or departmental officials, it may involve the relevant Minister in the hearing, or meeting, or require a specific response (APAC 2003, 21-2, 36-7). Whatever decision SCOPA makes in response to the audit report and recommendations for the rectification of irregularities in spending or financial management, would be, as APAC points out, informed by discussions with the relevant accounting officer and assistance from the office of the Auditor-General. The recommendations in the Committee's report for Parliament's approval may contain what issues it expects the department or public agency to correct (and, perhaps, a reporting time frame for the executive), but government ultimately decides on the ways and means of solving its problem. Once such recommendations are adopted by a resolution of Parliament, they become the recommendations of Parliament, and the affected parties are given 60 days within which to reply to the findings in the report and to remedy the problem; hence a structured system is put in place to follow-up (on the Auditor-General's reports) on matters of financial irregularity within departments and state bodies.

SCOPA is composed of 17 permanent members - 10 from government and seven from opposition party members - to reflect, as in other committees, almost the same proportions as the parties' seats in Parliament.[39] SCOPA, since 1994, has maintained the long-established convention, in the majority of Parliaments the world over, of choosing its chairperson from the opposition. Following the normal procedures for the appointment of committee chairpersons generally (see Assembly Rule 129(1) applicable to committees generally), SCOPA elects one of its (opposition) members as chairperson of the committee. Chairpersons of SCOPA since its inauguration in 1994, *viz* Ken Andrews (DP) May 1994 – July 1999, Gavin Woods (IFP) July 1999 – March 2002, Vincent Smith (ANC) Pro tem) 5 March 2002 – 24 April 2002, Francois Beukman (New NP) April 2002 – October 2005, Themba Godi (PAC) October 2005 to date. Whereas the practice of choosing the Committee's Chairperson from amongst the opposition ranks underlies the non-partisanship of the work of SCOPA and, perhaps, the acceptance by government of

[39] SCOPA has a total membership 28 – seventeen permanent members and 11 alternates (SCOPA Attendance Register, May 2003). Assembly Rule 127 provides that committees of Parliament appoint, should the need arise, alternates for one or more specific members of a committee. An alternate acts as member when the member for which the alternate was appointed is absent; or has vacated office, until the vacancy is filled.

Parliament's willingness to promote transparency through independent scrutiny, the reputation of the Chairperson, her character, and her capacity diligently and pragmatically to enforce the duties of the office effectively, is, importantly, a part of that (Parliament's) willingness. S/he is a neutral facilitator of the Committee's proceedings, encouraging objectivity in decision-making and managing instances of political point-scoring by remaining as objective as possible at all times.

SCOPA divides up its work amongst its members in order to manage its workload and time as effectively as possible. The Committee combines the subcommittee and rapporteur-based systems. It has two permanent subcommittees on a) Security and Economics and a) Social Services and Governance and, in the event of a heavier workload, assigns responsibility for specific parts of an audit report to individual members. SCOPA has also had *ad hoc* subcommittees to address particular issues when they arise and which cease to exist as subcommittees once they make their reports to the full committee.[40] In all cases, however, their conclusions and reports receive adoption by a resolution of the entire SCOPA to become the latter's reports to Parliament.

The frequency of SCOPA meetings is a function of the need to give due and adequate consideration to the 200 audit-reports, annually, from the Auditor-General and, at the same time initiate its own investigations going beyond the Auditor-General's reports in respect of the financial accounts and statements of State agencies. This is in line with the Committee's broader role of ensuring responsible, productive and efficient use of public resources and proper accountability by government to Parliament for the use made of public money. SCOPA meets twice a week, on Tuesdays and Wednesdays. It also meets for a week during the mid-year (July) recess for hearings (not less than eight), and concentrates on major departments (in view of the constraints of time).

SCOPA has an established formal method of work according to which work is conducted in an agreed procedure that ensures standard practices and provides continuity. The volume of work at the disposal of SCOPA at all times makes it imperative for the Committee to prioritize its work, with priority given to the qualified reports of the Auditor-General and unauthorized expenditures of departments, agencies, bodies, of government. At the same time, the Committee can give priority to a less serious problem,

[40] My indebtedness to Cobus Botes, (Senior) Manager, Parliamentary Affairs, Auditor-General's Office and Gurshwyn Dixon, Committee Secretary, SCOPA, for clarifying this point.

which has persisted over time. SCOPA writes to and requests responses from departments, agencies, bodies, with minor problems. Through its Chairperson, SCOPA ensures a healthy communication with each institution on which a report has been written. With the advent of the PFMA, SCOPA developed a quite systematic approach of visiting, on a 2-year cycle, departments, agencies and bodies to ensure their adequate implementation of the Act and the recommendations of the Committee (where applicable). SCOPA relies on the administration, but also on the Auditor-General's office, for sorting out reports with more serious problems or urgent issues from those with less serious problems. SCOPA is, in this respect, partially guided by the Auditor-General on whom the Committee relies to determine which reports are priority issues and which the Committee will then discuss.

Although accounting officers, Ministers, senior departmental officials and the Auditor-General have, over time, appeared before SCOPA's hearings the Committee's main witness is usually a department's accounting officer who is responsible for the department's day-to-day financial management. The relevant Minister is involved in SCOPA's process when the accounting officer or departmental officials cannot report satisfactory progress in resolving serious and/or persistent problems in the department.[41] It is standard practice, in the majority of Parliaments, following the conclusion of hearings, that the Chairperson, assisted by the Committee's clerk and/or research staff, drafts the Committee's report which is then debated in the Committee session in which amendments are suggested, accepted or rejected. However, the Auditor-General's office plays a major role in SCOPA's reports; at present, the Auditor-General drafts the Committee's reports and SCOPA only makes consultations.[42] It is advised that SCOPA

[41] Overall, non-transferable, accountability for a department ultimately always lies with the Minister, whom SCOPA keeps informed of its work in relation to the department. In recognition of his final responsibility for a department, SCOPA should, on a continuous basis, inform the Minister of all of its interaction with departmental officials.

[42] This is not universal practice. While the Auditor-General has a specific role in the corporate government structure, Parliament/SCOPA's oversight function is a different and independent role and this must be given expression and seen to have been so expressed in all reports by SCOPA. This has a heavy bearing on the willingness of Parliament to call the Executive to account and give evidence for its stewardship of public money, expressed through the allocation of adequate resources to SCOPA. First, this will instill the needed confidence in members of the Committee about their capability to write its own unaided reports. Second, it will enable SCOPA to decide and, as resolved on every issue before it, write reports which reflect the independent opinion of the Committee on such matters. This was made more pertinent by the JIT Report on Government's arms packages purchases, which has been variously seen as apparently Executive-minded and tainted. It is stressed that SCOPA's 14th Report of 2000 to Parliament was a special

adopts what is standard practice of Parliaments the world over. Although SCOPA is not formally required to adopt its reports unanimously it has found it useful to hold back reports until consensus has been established.[43] In this way, the post-1994 SCOPA became a harmonious group with a strong interest in the proper accountability to Parliament of government, and this enabled it to exercise its oversight role over public expenditure effectively. Members of Parliament within SCOPA worked, as Judith February observes, across party political lines, to ensure that matters of irregularity in the sphere of public expenditure were dealt with thoroughly and professionally. SCOPA continues to interact with senior government officials who appear before it to answer for the problems in their departments.

During SA's first five-year Parliament, SCOPA performed a "watchdog" role *vis-à-vis* government. It succeeded in handling, in a consensual – yet determined – manner, several very controversial issues involving senior members of government and government officials. The issues dealt with by SCOPA in this way during this period include a) the Operation Coast Chemical and Biological Programme (Project B) which was inherited from the pre-1994 regime and involved the irregular and excessive payment of R18-million by the SANDF to debtors after the termination of Project B and the emergence, in Parliament, in 1996, of details of an associated multimillion scam; b) the serious irregularities and unauthorized expenditure of R10 468 202 30 in respect of the execution of the *Sarafina 2* AIDS musical during 1995/6 in the Department of Health; c) the unauthorized travel and subsistence expenditure of R112 960 in respect of an unauthorized visit to Ghana in 1994 by former Deputy Minister of Arts, Culture, Science and Technology, WN Mandela; d) the unauthorized expenditure of R6 938 444, the widespread abuse of credit cards amounting to R310 813 and misappropriation of Independent Broadcasting Corporation funds by the Chairmen, Councillors and senior

---

report written by the Chairperson in consultations with members of the Committee. It was a unique Report out of SCOPA's own internal investigation, not those of the Auditor-General, who was, at the time, not accessible to process the avalanche of documents, in respect of the SDP process, at the disposal of SCOPA.

[43] A recent survey by a study group on PACs of the Commonwealth Parliamentary Association that covered 70 branches, shows that consensus is not a formal requirement for the adoption of reports in 67 per cent of the Commonwealth PACs surveyed but committees delay reports in order to establish consensus (Commonwealth Parliamentary Association 2001, 88; J Wehner 2002, 11 & 21; APAC 2003, 80). Events immediately after SCOPA's 14th Report of 2000 on Government's defence equipment purchases cast a blight on the previously nonpartisan, consensus-seeking decision procedure of SCOPA. In fact, commentaries conclude, "the future of SCOPA will hold the key to the future of Parliament as an institution and of the scope for good and accountable government in South Africa."

management in the Independent Broadcasting Authority (IBA); e) the unauthorized expenditure of R 918 400 incurred by the former CEO and accounting officer of Government Communication and Information System (GCIS), Solomon Kotane, with the award of the contract to print Government's 1997 mid-term report to Quality Press (linked to his wife), whose bid was the most expensive of three bidders; f) irregularities and mismanagement by the Commissioner of Correctional Services, K Sithole, and certain senior officials in the Department of Correctional Services. It only took SCOPA's recommendation to the relevant Executing Authority, in respect of the K Sithole issue, *viz* "…we thus believe there is *prima facie* evidence to suggest that the Commissioner should not hold office in the Public Service," for the accounting officer, just four days after the resolution, to be out of a job. Members of SCOPA were in unanimity, and this "suggests that accountability to Parliament was alive and well, as never before in SA," during the first Parliament of SA democratic history. It was a period in Parliament when, according to members of the Committee themselves, "public representatives across all parties determined to eradicate inappropriate use of public money," (see Gavin Woods MP (IFP), Andrew Feinstein MP (ANC), Louis Luyt MP (FA), Gerhard Koornhof MP (UDM), Brian Bell MP (DP), Pierre Rabie MP (NNP), in *Business Day* 11 November 1999). This determination, as things happened, did not last. The second Parliament had hardly commenced, when SCOPA's dogged oversight role over the Executive's expenditure of public funds took a dramatic nosedive during the controversy, which emerged over the Strategic Defence Procurement Packages (the Arms Deal).