PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

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Theme: Accountability in Public Expenditure through effective Parliamentary Fiscal Oversight.

- ***Topic: "Tools for effective budget and financial oversight: Parliament existing procedures and practices for effective financial oversight – the case of the Appropriations Committee"***

1 Introduction

After the first democratic elections in 1994, the South African Parliament was faced with the challenge of creating a legislative landscape in line with the values and principles enshrined in the Constitution. In order to achieve this feat much effort was placed on scrapping apartheid laws such as Exchequer Act of 1975 and enacting new laws befitting our Constitutional democracy namely Public Finance Management Act and Municipal Finance Management Act and many other democratic legislative frameworks. This was done to democratise and properly regulate South African public finances. This paper provides some insightful information on how the Select Committee on Appropriations conduct its budget and fiscal oversight over the provincial and municipal executives, particularly around conditional grant allocations. It also provides some insights on Constitutional imperatives as part of the broader tools for parliamentarians to effectively effect their powers over the work of the executive, key support instruments and stakeholders as part of the tools to enhance budget and fiscal oversight.

2 Some Constitutional Imperatives as broader oversight tools for parliamentarians

In the South African context, oversight and accountability are constitutionally mandated functions of legislatures to scrutinise and oversee executive action and any organ of state.

Oversight entails the informal and formal, watchful, strategic and structured scrutiny exercised by legislatures, including Parliament, in respect of the implementation of laws, the application of the budget, and the strict observance of statutes and the Constitution.

In addition, and most importantly, it entails overseeing the effective management of government departments by individual members of the relevant executive authority in pursuit of improved service delivery for the achievement of a better quality of life for all people.

The obligation to allocate resources and spend resources according to plans is underpinned by the South African Constitution, particularly the Bill of Rights where it suggests that everyone has a right to adequate housing, healthcare, food, water social security and education.

Further, the Constitution is very clear on section 26 (2) where it points out that "the state should take reasonable legislative and other measures within its available resources, to achieve the progressive realisation of these rights"[1].

The Chapter 4 of the South African Constitution (referred to as the Constitution) in Section 55 (2) requires that Parliament and provincial legislatures establish mechanisms for oversight and accountability for the Executive[2]. This process is aimed at making sure that the Executive members are held responsible for the implementation of government legislations and policies.

This oversight process does not preclude the safeguarding the usage of state resources. This means that Parliament including provincial legislatures have a responsibility to ensure that government departments comply with the legal prescripts in pursuit of ensuring expenditure is always on track.

Black, Calitz, Steenkamp 2008:p86, pointed out that the implementation of these Constitutional rights are subject to budget constraints and limited resources[3]. This means that although expenditure on public goods can be a constitutional entitlement but the government has a responsibility to exercise expenditure control measures to ensure the effective use of state resources. It is therefore, important for these measures to be properly implemented once enacted to ensure these help to safe guard the usage of resources.

3 Some Budget Context and the struggle for the Power to the "Purse"

- ❑ The national Budget, traditionally tabled in the last week of February, has three main components that must be approved or amended by Parliament in the following order: the fiscal framework,

[1] South African Constitution, 1996
[2] Ibid
[3] Black, Calitz, Steenkamp, 2008

the Division of Revenue Bill (DoRB) and the Appropriations Bill. The appropriations committees are responsible for the DoRB and Appropriations Bill.

- The fiscal framework determines the total expenditure, revenue and borrowing of national government. So what economists normally refer to as 'fiscal policy' – the role government plays in the economy through taxation and spending – is determined by, and reflected in, the fiscal framework.
- The Division of Revenue Bill (DoRB) is the key piece of national budget legislation for provinces, as it determines – in accordance with s214 of the Constitution – the distribution of total government expenditure across the three spheres (national, provincial and local)[4].
- The Money Bills Act (s9) states that the DoRB cannot be considered before the fiscal framework has been passed and that Parliament must pass it within 35 days of the fiscal framework being adopted. Although it had been proposed that the Act be amended to allow concurrent consideration of the DoRB and the fiscal framework, this is not reflected in the final

3.1 Division of Revenue Bill Process (S76 Bill): Appropriations Committees

The key process that links provincial and national public finances and associated legislative oversight pertains to the Division of Revenue Bill. Because the DoRB proposes how state revenue is split across the three spheres – national, provincial and local – it cannot simply be left to the national government and legislature to determine. Although s77(3) of the Constitution states that all money Bills should be treated in terms of s75, s77(1d) excludes the Division of Revenue Bill which is therefore 'tagged' as an s76 Bill.

The division of revenue across the spheres of government must satisfy a number of criteria, outlined in s214(2) of the Constitution. The standardised approach to meeting those requirements has been through the development and use of an 'equitable share formula', which in turn relies on official estimates of relevant variables – such as population and school enrolment – at the provincial level. In determining this formula, National Treasury must

[4] Muller.S (2018) – Publication updated in 2019.

consult provincial governments, the Financial and Fiscal Commission (FFC) and organised local government which now takes the form of the South African Local Government Association (SALGA).

The initial legislative process for the Division of Revenue is as follows. First, the national Executive tables the Division of Revenue Bill in Parliament as part of the national Budget. As per the Money Bills Act, this Bill is considered by the committee on appropriations in the National Assembly (the Standing Committee on Appropriations). Once the committee reports to the NA and the House adopts the report and approves the Bill, it is referred to the National Council of Provinces (NCoP) and its appropriations committee (the Select Committee on Appropriations).

As per the Mandating Procedures of Provinces Act (52 of 2008), the Select Committee on Appropriations must in its deliberations on the Bill consider the negotiating mandates submitted by provincial legislatures. This, then, is the opportunity for provincial legislatures to raise concerns about the total allocation, or structure of the allocation, to provinces for the current fiscal year as proposed in the DoRB. The National Treasury then responds to those concerns.

After that, the provincial delegates report back to their respective provincial legislatures, which must then decide voting mandates. Those voting mandates inform the votes in favour of, or against, the DoRB in the meeting of the Selection Committee on Appropriations – after which the committee adopts an appropriate report.

In practice, with the same political party holding the majority in the national legislature and across the majority of provincial legislatures (eight of nine), similar political dynamics come into play as described earlier in relation to other aspects of national money Bills. Specifically, it has never been the case that the majority of provincial legislatures have voted against a DoRB – indeed, we are unaware of any case where even one provincial legislature with the same majority party as the national one has voted against a DoRB.

3.2 Appropriation Bill Process (S77 Bill): Appropriation Committees

Finally, the Appropriations Bill is the last Bill to be processed by the Appropriations Committees to determines the allocation of the national share of government expenditure across national departments. The Bill follows almost similar process as the DoRB, which first get passed by the National Assembly and get referred to the NCOP, however the Bill differs as it is referred to it as section 77 Bill, which appropriates monies from the National Revenue Funds (NRF) for the national government expenditure. Parliament has 4 months (s10(7)) in order to approve or amend this Bill.

The main reason for the much longer time allocated to the Appropriations Bill, is that oversight requires each portfolio committee to consider the proposed 'Vote' in detail. For example, the Portfolio Committee on Health will consider the detailed, proposed allocations to health at the national level. In the event that any committee proposes changes, those will need to be coordinated with another committee or committees: with both the fiscal framework and division of revenue already approved, the total amount of national government expenditure is then fixed and any increase in allocation to one Vote requires a decrease in an allocation to another. In principle, what this means is that for up to four months of the year national government departments are operating without a finally-approved Budget. This situation is catered for under s29 of the Public Finance Management Act, which allows spending of up to 45 per cent of the previous year's Budget in the first four (4) months of the financial year. These provisions carry over to provinces provided appropriate provincial legislation, in the form of a 'Direct Charges Act' or equivalent, has been passed.

In fact, the provisions of s29 of the PFMA are crucial in the context of legislative authority: if the legislature simply rejects the proposed Budget, s29 nevertheless allows government to continue functioning. The caveat is that the government cannot spend more in total than the previous year, which would mean a real reduction in government expenditure proportional to the level of inflation in that year.

- ❑ Budget is the most important policy instrument to fulfil the constitutional imperatives:
  - ✓ "*If programmes are not budgeted for, chances are, it's rhetoric*"

- ✓ *Budgeting is a political exercise that starts with political choices about priorities and ends with political choices about which programs and projects get funded.*
- ✓ *Objectives of the budget include: achieving fiscal sustainability, allocative efficiency, value for money and service delivery.*

- ❑ Through effective budgetary and fiscal oversight, Parliaments can eliminate poverty, inequality & unemployment and ensure adequate implementation of the National Development Plan (NDP).

"*The Budget is not just about numbers and statistics; the budget is about the people" Trevor Manuel- former Minister of Finance*

4 What are the Budget Phases in the South Africa context?

- *The budget follows the four-phases in a cyclical process:*

Table 1: South African Budget Process

1. Drafting phase – *this is purely executive process, which exclude parliament, however, it may use indirect influence. This process involves various executive structures such as Medium Term Expenditure Committee (MTEC) (officials), Ministers of Budget Committee (Mincombud), Budget Council, Budget Forum, Cabinet and extended Cabinet.*	***2. Legislative phase –*** *Money Bills being tabled in Parliament for consideration and approval, amendment or even rejection* ***(ex – ante****). These include Appropriation Bill, Division of Revenue Bill and Fiscal Framework and Tax proposals.*
3. In Year Monitoring phase – *once approved, the executive implement the budget and Parliament monitor expenditure and performance information quarterly, biannually or annually through its Finance, Appropriation and other sector committees. Parliament also forms collaborative work with key strategic stakeholders and other organisations.*	***4. Auditing and Evaluation phase –*** *Once the financial comes to an end, expenditure and performance is audited and evaluated based on approved strategic and Annual Performance Plans for the year. This include in-depth analysis and oversight by SCOPA (ex – post).*

5 Tools for effective budget and financial oversight by the Appropriation Committees

5.1 **There is Money Bills Amendment Procedure and Related Matters Act No. 09 of 2009**, which establishes and sets out the mandates of the four Committees including the Select Committee on Appropriations as follows[5];

- spending issues;

[5] Money Bills Amendment and Related Matters Act, 2009

- amendments to the Division of Revenue Bill, the Appropriation Bill,
- Supplementary Appropriations Bills and the Adjustment Appropriations Bill;
- recommendations of the Financial and Fiscal Commission, including those
- referred to in the Intergovernmental Fiscal Relations Act, 1997 (Act No. 97 of
- 1997);
- reports on actual expenditure published by the National Treasury; and
- any other related matter set out in this Act.

5.2 Legislative Sector Oversight Model as a Cornerstone for Oversight Function

The Model serves to reinforce the existing principles of oversight and accountability utilised by the Appropriation Committees. Current practices and oversight mechanisms used by the Committee articulated by the Oversight Model include: -

- Interactions with civil society organisations, organised business, experts and professional bodies, Parliamentary Budget Office, Salga, Ministers, MECs and Departmental Heads;
- Facilitate detailed scrutiny of budget legislations (Appropriation and Division of Revenue Bill), oversight of executive activities and interaction with the public;
- Consideration of committee oversight reports is necessary since committee works as intermediary body between interest groups and executive, and are an entry point for citizens to the work of Parliament;
- Undertake study tour and project site visits that entail physical inspections where government expenditure has occurred, conversing with people, assessing the impact of service delivery and developing reports for adoption by committees which contain recommendations for the Houses to consider.

5.3 **Public Finance Management Act and Municipal Finance Management Act as instruments for budget oversight** - The Committee uses section 32 and 71 report of the Public Finance and Municipal Finance Management Act to track conditional grant expenditure – these reports are fundamental for the Select Committee on Appropriation to identify weaknesses and challenges around government conditional grant expenditure post the adoption of the Division of Revenue and Appropriation Bill every year.

5.4 **Additional materials to improve budget oversight** - Despite, Section 32 and 71 reports, which are used as a criterion to identify poor expenditure, Auditor General', PBO, PSC, FFC reports and many other independent research materials are also used as additional material to strengthen Committee oversight;

5.5 **Identifying Poor Expenditure** - After identifying provincial departments and municipalities with weak expenditure trends based on what was allocated, these are invited to come and explain their challenges which impact on expenditure and they must also present their remedial actions. The Committee thereafter, compiles a report with recommendations to be implemented by the affected executive.

5.6 **Committee Recommendation Tracking** – The Committee adopted recommendation tracking mechanism, which assist the Committee to be able to track the implementation and get specific responses from the executive regarding its recommendations.

5.7 **Committee Collaborative Approach** – the Committee also use collaborative work with other appropriation and finance committees to enhance oversight impact, however, this is dependent on both Committee programmes being aligned. This is encouraged especially because the Appropriation Committee focuses on conditional grant expenditure and sector committee mainly focuses on policy. Collaborative approach makes more impact as it provides some synergic oversight effort and also addresses inconsistency element on information received from the executive.

5.8 **Committee capacity building as an ongoing process** – this is done through inductions and workshops with key stakeholders of the Committee during the strategic planning session.

5.9 **Parliamentary Budget Office** which is established by the Money Bills Act also provide support to the Committee before and post budget tabling.

5.10 **Financial and Fiscal Commission**, which submit recommendations for the division of revenue for the following financial year is also critical for the Committee.

5.11 **South African Local Government Association (Salga),** represent all the views of the local government sphere during the Division of Revenue Bill process;

5.12 **Public Participation and Submissions by Key Stakeholders**- The Committee ensures public participation and adherence to the six (6) weeks cycle during the budget process to allow provinces to conduct public participation process, although this timeframe has not been adequate for provinces.

Table 2: Key Committee support structures and instruments

a. What are the key legal instruments for the budget?	b. What are the key institutional frameworks that supports the Committee work?
○ Constitution of RSA - Sections, 42, 43, 44, 60 – 72, 76, - 213, 214 & 215 ○ Money Bills Act (No 13 of 2018) ○ Oversight & Accountability Model ○ Joint Rules and NCOP Rules,	○ Parliamentary Committees ○ PBO ○ Research Unit ○ Committee Section ○ Legal Section ○ Communication Unit

c. What are the key partners or external stakeholders?	d. What are the key operational instruments?
○ AGSA, ○ FFC & SALGA ○ HSRC, ○ PSC ○ CSO (eg. Equal Education) ○ Labour (COSATU & SAFTU) ○ Business Community ○ Academia, ○ Media ○ General public	○ Constitution of RSA ○ NDP & MTSF ○ PFMA &MFMA ○ IGFR Act ○ PFMA Section 32 & 71 Reports ○ SONA ○ BUDGET DOCUMENTS ○ Annual Reports, ○ Strategic Plans ○ APPs ○ SDG's

5.13 **NB**: **How Does the Appropriation Committees Implement these Oversight Tools**?

Every beginning of a new term, the Committee adopts a 5-year strategic plan together with an annual performance plan (APP) to guide its mandate and annual programme for the next five years and this can only be reviewed annually through annual performance plans. This process is guided by a number of critical documents and these include:

- Committee Legacy Report emanating from the term that had just ended;
- Parliament Strategic Plan for the new term;
- Parliament Policy priorities for new term;
- Outcomes of the NCOP Strategic Planning Session;
- State of the Nation Address (SONA); and
- Medium Term Strategic Framework (MTSF) for the new term.

6. Some Committee Observations and Challenges:

6.1 While it is understood that it is in the nature of the NCOP, which consists of fewer members, the sharing of Committee membership with other portfolios remains a challenge for the Committee to fully implement its programme as it is required to accommodate those other committees to also discharge their responsibilities using the same membership;

6.2 It is a common knowledge and worldwide phenomenon that the executive arm of state always has more capacity and resources at their disposal than legislative arm and that remains a challenge for committees to strengthen and conduct effective oversight, and this also hampers the possibility for budget amendments by the legislatures;

6.3 Lack of responses by the executive on follow correspondences regarding the progress made in implementing Committee recommendations also remains a challenge as the Committee cannot fully assess its oversight impact; a recommendation tracking mechanism was developed and adopted by the Committee and support staff provides the updated report on a timely basis;

6.4 Large volumes of information or presentations being submitted by the executive arm of state on the day of the meeting or even night before the meeting remains a challenge, this impacts on the level of preparation by Committee members and weakens the engagement between the Committee and the department; the Committee has since introduced strict timeframes for submission of presentations by the executive;

6.5 Information asymmetry remains a challenge – the gap often exists between the information submitted by the executive and the information required by the Committee for effective oversight purposes; a research document is provided to Committee members prior the meeting takes place;

6.6 An inability and the difficulty to obtain non-financial or performance information in order to link it to the financial information and fully assess and make sense of the budget spent versus performance targets achieved; the Committee developed and adopted a reporting template with a view to guide the reports being submitted to the Committee;

6.7 Whilst there has been good collaborative work achieved amongst the appropriations and finance committees but Collaborating with other sector committees remain a challenge and this can be attributed to the clashing of committee programmes or even House programmes and this calls for a better political and administrative planning by both Houses;

6.8 Inadequate time for the Committee and provincial finance committees to be able to process the Money Bills within six (6) weeks cycle; the Committee has made numerous recommendations to the executive to improve the timing in which budgets are tabled in order to allow all role players to participate in the process without undue pressure;

6.9 The scheduling of the NCOP Taking Parliament to the People, which coincide with the Medium Term Budget Policy Statement (MTBPS); the Committee normally submits its MTBPS programme to the NCOP way before the Taking Parliament to the People programme is adopted for the NCOP to consider the MTBPS in its planning.

7. **Recommended Areas of Oversight going forward**:

7.1 Cost escalations on infrastructure projects and ensure projects are implemented according to project scope to eliminate unnecessary deviations, which leads to fruitless and wastage of budgets;

7.2 Ensure that all budget leakages are addressed in the financial management system of government departments, especially given the decline in government revenue collection and poor economic performance;

7.3 **In line with Section 38 (f) of the Public Finance Management Act** – ensure all Payment of suppliers or service providers are made within 30 days of receipt of invoices to ensure uninterrupted growth and development for small and medium enterprises and also to protect jobs created by such businesses;

7.4 The lack of expenditure on conditional grants including Municipal Infrastructure Grant (MIG) and many other infrastructure grants at provincial and local government levels needs to be closely monitored at all levels;

7.5 Whether the Audit Improvement Plans are being compiled and implemented as part of corrective measures to improve expenditure and performance by the executive;

7.6 Alignment between strategic management planning and monitoring and evaluation programmes; and ensure that Heads of departments are using M&E reports and results to take corrective actions to improve departmental plans and performance;

7.7 Alignment between budget allocation and projected performance targets, and monitor the alignment between resources spent and ultimately achieved performance targets;

7.8 Ensure that the Departmental Strategic Plans and APPs are well scrutinized and will allow for better oversight and also are indeed in line with the SMART principle;

7.9 Ensure funded and critical vacancies are filled in line with government policy position on curbing the escalating wage bill;

7.10 Ensure the existence of governance and accountability structures and frameworks in the departments – whether the recommendations of such structures are being implemented by the Heads of departments and the check list below can be used to check if these things exist in the departments during oversight:

GOVERNANCE AND ACCOUNTABUILITY	
Service Delivery Improvement Plan	*Complied/ non compliance*
Management Structure	*Complied/ non compliance*
Audit Committee	*Complied/ non compliance*
Professional Ethics Policy	*Complied/ non compliance*

Fraud Prevention Strategy or Framework	*Complied/ non compliance*
Internal Audit Unit	*Complied/ non compliance*
Risk Management Strategy or Framework	*Complied/ non compliance*
Corp gov. ICT systems	*Complied/ non compliance*
PAJA policies	*Complied/ non compliance*

7.11 Ensure adequate supply chain management systems and proper financial management are in place, the check list below can be used as a measure to check whether such systems exist.

FINANCIAL AND SUPPLY CHAIN MANAGEMENT	
Demand management plans	*Complied/ non compliance*
Acquisition management plans	*Complied/ non compliance*
System for Payment of Suppliers within 30 days	*Complied/ non compliance*
Unauthorised expenditure (prevention measures)	*Complied/ non compliance*

8. Sources

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