

## Chapter 3

# **Budget oversight and poverty alleviation: opportunities and challenges**

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# 1. INTRODUCTION

Poverty and inequality are among the major challenges facing South African society, and the major thrust of policy in all spheres of government. In his 2002 state of the nation address, former president Thabo Mbeki reaffirmed government's commitment to poverty alleviation through concrete, time-specific programmes, and called on all organs of state to reflect on their role in promoting anti-poverty objectives. "Of decisive importance," Mbeki remarked, was the question of whether the legislature, executive and judiciary, as well as civil society, are effectively "helping to lift from the shoulders of our people the intolerable burden of poverty and underdevelopment" (Mbeki, 2002). The goals of combating poverty and inequality have underpinned successive government programmes of action and their pursuit is likely to be intensified under President Jacob Zuma's administration.

The Constitution confers justiciable socio-economic rights on all citizens, which must be progressively realised within available resource constraints. This has and will continue to play a major role in poverty alleviation. South Africa is also a signatory to a number of international commitments to eliminate poverty and inequality, including the Millennium Development Goals and conventions on the rights of women and children.

Internationally, there is a growing consensus that good governance can promote pro-poor distributive outcomes and reduce corruption (United Nations Development Programme, 1998). Budgets are particularly powerful instruments in socio-economic transformation, redirecting public resources to benefit the poor and other vulnerable groups, particularly in the provision of public services. Non-delivery, inefficiency, waste and corruption often have a disproportionately negative effect on these groups. Furthermore, there is a growing recognition of the role of legislatures and Parliament as key facilitators of effective, politically legitimate and sustainable poverty reduction strategies (Hlubi and Mandaville, 2004; ODI, 2007).

The budget process is unique in that it strives to integrate, in an over-arching framework, the governance choices of the whole of government and the individual policy choices of each sector in a concrete, regular and reliable way. Far from being merely a technical accounting process, it is inherently and intensely political. Without such a process, there can be no meaningful political debate on the appropriateness of choices proposed by government, possible alternatives, the responsibilities of decision-makers, or the coherence and integration of diverse policies supporting over-arching goals such as poverty alleviation.

The core functions of the legislature – legislation, representation and oversight – can be a vehicle for encouraging policy formulation, legislation and implementation aimed at poverty alleviation. Whether legislatures have the space, authority, capacity, incentive and inclination to do this depends on a range of factors. This chapter draws on international experience, and examines some of the major factors which have impinged on the effective fiscal oversight of legislatures and their ability

to help generate policy aimed at supporting the poor and other vulnerable groups in society.

## 2. THE LEGISLATURE AND FISCAL OVERSIGHT IN SOUTH AFRICA

The optimal role of legislatures in engaging with fiscal policy and the budget is the subject of fierce debate internationally, but most countries acknowledge that legislatures do have a fiscal oversight role in promoting the wise stewardship of public resources and efficient service delivery. However, the exact parameters of that role diverge across countries, as do the systems, procedures, governance structures and political culture in which that role is played.

In emerging democracies, in conditions where even the rule of law may be fragile, a key challenge is building an effective institutional identity for legislatures. In established democracies, legislatures grapple with redefining their traditional roles in the wake of far-reaching budget and broader public sector reform initiatives, which have profoundly changed the fiscal landscape in which they must operate. At the same time, organised civil society groups and informed citizens are exerting greater pressure on legislatures to be more exacting in discharging their oversight responsibilities.

### 2.1 HISTORICAL BACKGROUND

In apartheid South Africa, budgeting and the budget process were characterised by secrecy and lack of transparency, with negligible participation by Parliament or civil society. The criteria and rationale for the allocation of public funds were never explicitly articulated. During this period, the legislature was completely overshadowed by the executive. Parliament had no power to change the budget proposed by cabinet and its role was limited to that of a rubber stamp.

The budgeting system itself was *ad hoc* and incremental, with minimal forward planning or performance orientation. Budget documents were highly inaccessible and user-unfriendly, making it possible to exercise a degree of financial control over public funds spent but not over *how* these funds were spent – that is, whether they were spent effectively. The inherently secretive and unaccountable nature of the budget system was further entrenched by the obscuring of details of expenditure on certain clandestine items, such as the activities of the military, police and “sanctions-busting.”

Under apartheid, even the involvement of elected officials in the executive in budgeting was minimal. As described by Fubbs (2001), budgets were historically “driven by technicians and the administration, with little if any political interven-

tion and an implicit policy of producing documentation that made it impossible for the public to appreciate the purpose of expenditure and the achievements of objectives”.

After the transition to democracy in 1994, innovations including the medium-term expenditure framework (MTEF) and the minister’s committee on the budget were introduced,<sup>41</sup> among other things, to enhance political oversight of resource allocation. National and provincial MTEFs outline planned spending activities and revenue targets over a three-year horizon. This potentially gives Parliament, provincial legislatures and civil society a greater opportunity to engage with and influence the prioritisation of future spending. This is discussed in greater detail below.

## 2.2 THE SOUTH AFRICAN CONSTITUTION

Any attempt to explore the role of the legislature in the budget process in contemporary South Africa must take the Constitution as its point of departure.

### 2.2.1 LEGISLATURES AND SOCIO-ECONOMIC RIGHTS

The South African Constitution is unique in that the Bill of Rights, in Chapter 2, commits the state to the progressive realisation of a range of socio-economic rights, including housing, healthcare, education and social security, within available resources. The role of the state in fulfilling these rights is confirmed in section 7, and section 8 makes this obligation explicitly binding on the legislature, executive, judiciary and other organs of state. The legislature, as a crucial governance institution, is thus obliged to promote and fulfil these rights while carrying out the core functions of legislation, representation and oversight.

These rights are justiciable and can be legally enforced, and have already been tested in several high-profile Constitutional Court cases with public resource implications.<sup>42</sup> However, Murray and Nijzink also observe that the “protection of the Constitution and human rights” are “not the preserve of the courts”. The authors suggest, rather, that legislatures are “institutions that oversee the development and implementation of policy. They must be proactive in developing a democratic rights culture and must be central agents in the realisation of rights and the transformation of the country” (Murray and Nijzink, 2002:3).

### 2.2.2 FISCAL GOVERNANCE

Section 185 of the Constitution also envisages a public service that is development-orientated, responsive, accountable and transparent, and which actively engages the

public in policy-making processes. This applies to all three spheres of government.

Chapter 13 of the Constitution addresses issues of finance and the “fiscal constitution”, referring to the rules and principles by which budgetary decisions are made, implemented and accounted for. Chapter 13 further outlines the revenue-raising authority of the spheres of government, revenue-sharing and intergovernmental grants and borrowing powers. Schedules 4 and 5 deal with the concurrent and exclusive functions of sub-national governments, which determine their expenditure responsibilities.

Section 216 entrenches the principles of good fiscal governance, such as transparency and accountability in budget processes and effective financial management of budget implementation.<sup>43</sup> Section 188 also establishes the office of an independent Auditor-General, who must submit reports to the relevant national or provincial legislatures.

### 2.2.3 FISCAL OVERSIGHT

A number of different sections of the Constitution are also relevant to the task of fiscal oversight.

Section 55 outlines the powers of the National Assembly, including that of passing legislation. National budgets are classified as “money bills”, and while the National Assembly may pass such bills, it is explicitly prohibited from initiating or preparing them by section 55 (1)(b). Section 114 (1) imposes the same restriction on provincial legislatures.

Section 77 defines money bills as those that appropriate money; impose taxes, levies, duties or surcharges, or abolish, reduce or grant exemptions to these; and authorise direct charges against the National Revenue Fund. Section 77 (3) also establishes procedures for the consideration of money bills, and importantly, specifies that an “Act of Parliament must provide for a procedure to amend money bills before Parliament”. Again, an analogous definition for a provincial money bill is included in section 120.

However, no province has passed legislation allowing for budgetary amendments of this kind, nor, until 2009, was comparable legislation passed at national level. Murray and Nijzink suggest that this reflects the “delicate balance of power between the legislature and the executive that the legislation must capture and the big stakes that both the legislature and the executive must attach to the issue. Money bills – and particularly the bundle of bills that make up the annual budget – encapsulate government’s policy agenda in a more concrete way than any other pieces of legislation” (Murray and Nijzink, 2002: 97).

Thus, while the Constitution clearly intends a role for the legislature in amending budgets, its scope will be reflected in enabling legislation. The design of legislation that fleshes out the Constitution will be one of the few factors shaping the legis-

lature's role in the budget process. Other factors, discussed later, will certainly be influential in shaping its institutional development, but will be largely exogenous to the legislature.

There is also an important role for the National Council of Provinces (NCOP) in the intergovernmental budget process. Section 214 of the Constitution requires an Act of Parliament to provide for the equitable division of national revenue between the three spheres of government; the determination of each province's equitable share of national revenue; and any other allocations to the provinces, local government or municipalities.

Oversight of budget execution is located in Parliament's broader responsibility to monitor implementation of legislation and policy, also captured in sections 55 and 114. Corresponding with the duty imposed on provincial legislatures to hold the executive to account, the Constitution also emphasises the accountability of individual ministers and executive councils as a whole to the national Parliament.

Section 92 further outlines the accountability and responsibility of the deputy president, ministers and cabinet members, and specifies that the latter are accountable "collectively and individually to Parliament for the exercise of their powers and the performance of their functions". Section 133 outlines the comparable roles and responsibilities at provincial level.

Section 56 also allows the National Assembly and portfolio committees to call people to give evidence under oath or to produce documents, and to receive petitions, representations and submissions from interested parties or institutions. Similar provisions apply to provincial legislatures and committees in section 115.

In this way, the Constitution clarifies some dimensions of fiscal accountability, such as access to information and the requirement that ministers and executive councils explain their policies. However, some areas of fiscal oversight remain unclear, for instance in respect of amendatory accountability. This refers to the "duty inherent in the concept of accountability, to rectify or make good any shortcoming or mistake uncovered" (Corder et al., 1999).

Ministerial responsibility has several dimensions, to which escalating sanctions may be applied. These include informatory responsibility, or the obligation to keep Parliament informed of the operation of departments; explanatory responsibility, to explain and defend government policy to Parliament and the public; amendatory responsibility, requiring that mistakes made in good faith are admitted to Parliament and remedial measures proposed; and resignatory responsibility, requiring resignation for egregious ineptitude or corruption, disagreement with the cabinet or policy, bringing the ruling party or the cabinet into disrepute, and lying to Parliament (Sennay and Besdzick, 1999).

No constitutional provisions define the degree of responsibility of ministers and civil servants. The role of civil servants has been clarified in legislation, including the Public Finance Management Act of 1999 (PFMA) and management tools including performance contracts, but the extent of ministerial accountability remains largely unexplored. For example, section 63 of the PFMA requires ministers to stay within

their budgets, but no sanctions are attached, as they are to accounting officers, as this is presumed to be dealt with by an undefined political process.

### 2.3 LEGISLATIVE FRAMEWORKS FOR PUBLIC FINANCIAL AND PERFORMANCE MANAGEMENT

To give operational substance to the constitutional provisions discussed above, the PFMA initiated a move from an input-oriented expenditure control system to a more performance-orientated system that supports oversight of service delivery and spending. The PFMA set out to modernise public sector budgeting and financial management through regular financial reporting, sound internal expenditure controls, independent audit and supervision of control systems, improved accounting standards and training of financial managers, and greater emphasis on outputs and performance monitoring.

In 2003, the Municipal Finance Management Act (MFMA) extended budget reform to local government. It complemented existing legislation such as the Municipal Systems Act of 2000, which dealt with municipal planning (integrated development plans) and performance management systems.

Since 1994, the quality, timeliness and comprehensiveness of fiscal data have improved markedly. Data are regularly published in the annual national, provincial and local budget reviews, and are freely available on the National Treasury website. The introduction of the medium-term budget policy statement (MTBPS) from 1997 has improved debt and cash management strategies. It states government's aggregate revenue and expenditure intentions over the next three years and includes indicative figures on the division of revenue among provincial governments.

Multi-year budgeting, also used in the United Kingdom, had its genesis in the PFMA and was put into effect through the MTEF in 1998/99. It provides for three-year rolling budgets for the national and provincial governments in March, as well as underlying macro-economic projections. Since 1999, the budget has been tabled before the start of the financial year. A new budget and reporting format was introduced in 2004, aligned with the International Public Accounting Standards issued by the International Federation of Accountants, and based on a new standard chart of accounts (National Treasury, 2004: vii).

Other significant milestones in the evolution of intergovernmental fiscal relations include the creation of the Budget Council in 1996, which presides over the revenue-sharing process, and the establishment of formula-based revenue sharing recommended by the Financial and Fiscal Commission. The Intergovernmental Fiscal Relations Act of 1997 also introduced predictability and transparency in the intergovernmental budget process.

The annual Division of Revenue Bill formalises revenue-sharing across the three spheres of government, and provides three-year projections of both unconditional

equitable share grants and conditional grants to provinces and municipalities. The Intergovernmental Relations Framework Act of 2005 establishes the legislative framework for intergovernmental relations and the roles and functions of national, provincial and municipal intergovernmental forums, and stipulates the conduct relating to the implementation protocols and procedures for resolving intergovernmental disputes.

This legislative framework, along with the PFMA, gives Parliament and provincial legislatures timely and credible oversight tools. Before the PFMA took effect, credible in-year financial reporting was virtually non-existent, and there was no early warning system to detect in-year overspending or underspending. This clearly undermined effective oversight of budget execution. Furthermore, there was often a lag of up to two years before audited financial statements were available to the public accounts committees of Parliament and provincial legislatures. The PFMA requires that financial statements are produced no later than three months after the end of the financial year, and that they are audited no more than seven months after year-end.

The implementation of the PFMA initially focused on improving financial reporting and management systems and procedures, but this has gradually been expanded to include analysis in terms of efficiency and effectiveness, requiring non-financial information on service delivery. As well as tabling annual budgets in Parliament and the provincial legislatures, ministers and members of executive councils must table strategic plans and/or annual performance plans for scrutiny and approval. Linking output measures, framed in measurable objectives, to resource allocation is crucial in creating an orientation towards value for money. These plans and budgets lay the foundation for in-year monthly and quarterly financial reporting, as well as year-end annual reports and audited financial statements. Each of these instruments is crucial for effective oversight of budgetary execution.

Since 2003, the National Treasury has also engaged extensively with provincial government departments in instituting standardised five-year strategic plans, annual performance plans and quarterly performance reports that monitor service delivery progress and spending against plans. In May 2007, Treasury published its *Framework for Managing Programme Performance Information* which, among other things, clarified standards and definitions for performance information in support of the auditing of non-financial information.

This framework, with Statistics South Africa's South African Statistics Quality Assurance Framework, supports the Presidency's Government-Wide Monitoring and Evaluation Policy Framework, released in 2007. The latter addresses challenges to government effectiveness, envisaging monitoring and evaluation processes that assist the public sector in evaluating performance and achieving service delivery outcomes. Monitoring and evaluation aims to draw causal connections between the choice of policy priorities, resourcing, programmes designed to implement them, services actually delivered, and their impact on communities. Evaluations are also potentially important instruments of legislative oversight.

Performance information and monitoring and evaluation frameworks will ultimately enable the Auditor-General to audit non-financial information, assuring Parliament that the service delivery achievements reported by line departments can be verified. In the past, the Auditor-General focused on financial and compliance audits, and expressed an opinion on whether financial statements prepared by departments fairly reflect their financial position and activities. Internationally, public sector reforms have increasingly emphasised both financial and non-financial reporting to Parliaments and legislatures. National Treasury regulations now require that annual reports of national and provincial government departments include audited financial statements and statements of programme performance.

Section 20 (1)(c) of the Public Audit Act of 2004 requires the Auditor-General to express an opinion or conclusion on “reported information of the auditee against pre-determined objectives”, fulfilling a verification function and assuring Parliament of the accuracy of non-financial information. Rather than on outcome and impact data, the Auditor-General’s focus will, therefore, be on non-financial information included in annual reports for accountability purposes and output-related non-financial data, as these constitute the locus of accountability for accounting officers. A major focus will also be on departmental implementation of systems for managing performance information, and the implementation of robust internal controls to ensure their integrity.

Although it is easier to monitor and evaluate service delivery output data, it is important that Parliament and the legislatures continue focusing on the link between these outputs and the achievement of policy outcomes. This relationship is complex and influenced by many exogenous factors. But it is crucial that the assumptions, risks and causal relationships underlying policy and programme logic and proposed delivery mechanisms are made explicit at the stage of conceptualisation. Furthermore, at the execution stage, ongoing oversight can ensure that these risks are managed; that implementation is focused and goal-directed; and that the intended beneficiaries are reached. Legislative oversight of implementation can ensure that pro-poor and gender-sensitive policies are applied as intended, and that there is adequate consultation with low-income or vulnerable beneficiary groups in formulating and implementing policy, programmes or projects.

In conclusion, the constitutional perspective on oversight covers the entire scope of legislative activity, to ensure that laws are implemented in a way that realises their intention. In fiscal oversight in particular, the legislature’s role is not confined to the appropriation process, but includes ensuring congruency between the intentions and outcomes of budgets. Parliament and provincial legislatures were clearly envisaged as having both a prior and follow-up oversight role. Parliament’s role in the budget formulation process improves engagement with policy debates in respect of planned aggregate fiscal discipline, namely appropriate levels of taxation, total expenditure and levels of deficit and debt. It also enables Parliament and the legislatures to ensure that both cross-sector macro-prioritisation and micro-prioritisation support poverty eradication objectives. There are always, however, competing demands on limited

fiscal resources. Strong political involvement is needed to guide the technical allocation of public funds. The budgeting system should, therefore, accommodate an adequate interplay of technical and political role-players. The larger the disparity between available fiscal resources and the aggregate demand on the fiscus, the greater the need for political guidance in allocative decisions.

In a democracy, achieving allocative efficiency is the platform for enforcing political accountability. Interventions by Parliament to align public spending priorities with the needs and preferences of the poor makes for greater allocative efficiency.<sup>44</sup> Poor people in South Africa and elsewhere often have limited ability and resources to voice their needs and preferences. Through outreach programmes such as “Taking Parliament to the People”, Parliament and the legislatures, as representative bodies, can actively solicit the input of poor people and civil society organisations. This input should be channelled to the executive at the most appropriate points in the budget cycle.

To exercise oversight in support of poverty reduction, legislatures must ensure that initiatives to expand access to resources, opportunities and income-earning potential for the poor are budgeted and planned for and carried out, so that there is an impact on the intended beneficiaries. Amending the budget should be a last resort. The preferred alternative is for Parliament to act on the MTEF projections in outer years, as this encourages reprioritisation while minimising disruption at the tail-end of the budget process. In the amendments it proposes, Parliament should balance the need for accelerated quality delivery with the capacity of government institutions and the requirements of prudent stewardship of public resources and fiscal responsibility.

In exercising *ex post facto* oversight of service delivery and budgetary execution, Parliament can ensure that aggregate fiscal discipline is maintained in line with planned expenditure, revenue and deficit totals. Crucially, this means that there should be no deviation from planned budget totals or in respect of individual expenditure categories. For example, overspending on educational personnel could crowd out the provision of learner support materials to poor schools. Underspending of conditional grants is equally problematic, as it often means that government’s plans to improve services, or extend these to poor areas, are undermined.

Ongoing follow-up oversight also enables Parliament and the legislatures to create a disincentive for unproductive, fruitless and wasteful expenditure by public institutions. Portfolio committees can actively examine and monitor mechanisms of service delivery to ensure that they are effective, efficient and reach poor beneficiaries. Parliament, specifically through public accounts committees, can also play an important role in combating outright corruption and strengthening integrity systems in the private sector. However, to be effective, Parliament and legislatures must ensure that their own operations, and the conduct of individual parliamentarians, builds their credibility as champions of clean governance among voters.

### 3. OVERSIGHT MECHANISMS SUPPORTING POVERTY REDUCTION

As discussed above, the Constitution envisages a role for the legislature both in influencing the budget and exercising oversight to ensure the effectiveness, efficiency and economy of service delivery, and that public spending is translated into positive impacts on poor communities. This requires the political will to forge an institutional identity that transcends party politics. The executive must also acknowledge the importance of effective legislative oversight, especially in the context of a strong majority party and limited electoral contestation in the short term. A suitable legislative framework must be put in place, accompanied by the building of capacity to fulfil this function and the internal restructuring of the legislature.

Most importantly, a political culture must be developed which does not regard legislative oversight as a nuisance or an attempt to undermine the executive's ability to govern. Oversight should be seen as a constructive, critical process that enhances the alignment of the budget with human rights priorities and fosters targeted service delivery in favour of poor communities. Similarly, legislators should accept that constructive oversight is not a heresy against their party, but a constitutional duty and moral obligation to the poor electorate they represent.

Currently, national government and some provinces have strong treasuries and political leadership, which could exercise effective oversight of delivery. But as this may not hold true in future, it would be wise to diversify forms of oversight and craft a more robust institutional framework. Even treasuries are limited in what they can do about the shortcomings of line departments, as they are increasingly supposed to be "referees" that enforce the "rules" of the "budget game", rather than active players. Treasuries may compile departmental submissions for a budget document, but are often unable to comment publicly on what they contain.

Finally, such a framework should consider broader governance reforms required to mitigate disincentives for legislators who are responsible for fiscal oversight.

#### 3.1 FORMAL OVERSIGHT POWERS OVER BUDGET IMPLEMENTATION

The 1999 Report on Parliamentary Oversight and Accountability recommended that an Accountability Standards Act be passed to complement the PFMA by setting clear parameters in which committee members should operate (Corder et al., 1999). It would clarify issues of amendatory accountability, standards of administrative accountability, prescribed reporting standards and procedures on receipt of reports, as well as strengthen individual members and committees in performing these roles.

An important precondition for effective oversight is a common understanding of political, as opposed to managerial, accountability. A delicate balance has to be

struck between allowing public managers with increased decision-making power in increasingly complex administrative environments to hide behind ministers or to be paralysed by risk aversion, and preventing ministers from using director-generals as scapegoats.

The PFMA affords protection in principle, but this may not translate into protection in practice.<sup>45</sup> Interestingly, PFMA guidelines for accounting officers emphasise that ministers and Members of Executive Council (MECs) are responsible for outcomes, and accounting officers for outputs. However, the legislation itself does not mention outputs or outcomes at all: they appear only in the explanatory memorandum. The nature of ministerial accountability, therefore, remains unclear. The PFMA's regulations provide some additional clarity on the lines of political and managerial accountability, but the Act says far less than the MFMA on the subject of undue political interference. This could be rectified by amending the PFMA.

In recent years, Parliament has been more rigorous in scrutinising public spending and service delivery, as reflected in the media and committee reports, and this encouraging trend should be strengthened (Hartley, 2007; I-Net Bridget, 2008). For instance, Parliament has increasingly refused to allow junior officials to account for service delivery and value-for-money concerns. On occasions, strategic and operational plans, budgets, monthly financial reports and quarterly reports have been used to engage effectively with departments and other public sector institutions, although the quality of oversight varies from committee to committee.

The challenge facing Parliament is how to institutionalise a culture of effective, critical and constructive oversight. A number of decisions must be made at strategic level. For instance, what is the NCOP's oversight role, relative to that of the National Assembly? What specific contribution can the NCOP make in adding value to pro-poor monitoring? How does NCOP oversight differ from that of provincial legislatures? For example, the National Assembly and provincial legislatures could focus on the institutional accountability of departments and public sector institutions, while the NCOP could take a sector-based approach to accountability, with oversight cutting across all spheres of government and public entities. This would ensure the coordination of pro-poor policy, the alignment of fragmented budgets, the compatibility of approaches to service delivery approaches, and sector-wide monitoring and evaluation processes.

For example, if public transport and the built environment are regarded as a sector, the plans and budgets of all role-players could be scrutinised. Once strategic decisions have been made on the macro-oversight model for all legislative institutions, the roles and responsibilities of various role-players could be reviewed to ensure alignment. This could include, for example, the division of labour between the National Assembly's finance committee, the NCOP's select committee on finance, the joint budget committees, the standing committee on public accounts and sector committees.

### 3.2 POLITICAL CULTURE AND INCENTIVES

The informal rules and conventions surrounding institutions are probably more powerful than formal rules. An institution with a strong formal mandate may be weak in practice, while an informal body may be influential.<sup>46</sup> Even if the powers of the legislature in regard to the priorities, amendment and oversight of the budget are strengthened, changes in formal rules do not necessarily translate into changes in the behaviour and attitudes of members and officials.

A radical transformation in political culture is required. First, there must be a common understanding between the executive and the legislature on the latter's constitutionally mandated oversight role. In practice, legislatures have tended to define their oversight responsibility narrowly, confining it to generating legislation rather than implementation. Members and committees have also tended to be reactive in their oversight role. On the other hand, cabinet members and MECs may see legislative oversight as intrusive and as undermining their authority. While some MECs are dissatisfied with the superficial status quo, this attitude is by no means universal (Murray and Nizjink, 2002). Saki Macozoma has described the prevailing ethos of the National Assembly as follows:

... the executive and the bureaucracy have not yet fully embraced the new paradigm of effective parliamentary supervision that incorporates significant public participation. This disjuncture between what Parliament wants done and what the executive and the bureaucracy are willing to do has generated considerable tensions between certain portfolio committees and departments they are supposed to oversee. [Fortunately] in the majority of cases, such tensions have resulted in departments being forced to take on broad issues raised by the portfolio committee (Sennay and Besdzik, 1999).

It may be difficult to build an institutional identity that transcends party lines and is grounded in the Constitution, but this is crucial to effective oversight. If the legislature fails to ensure that budgets reflect the electorate's priorities in regard to spending on poverty alleviation, this may increase pressure on the judiciary to intervene and evaluate service delivery in terms of progressive realisation. Concerns have been raised that a court-initiated process of setting minimum standards for service delivery in individual cases could compromise policy coherence, because of trade-offs between competing priorities. As one commentator noted:

What if meeting the standards for socio-economic rights in the near term required punitively high levels of taxation or high levels of debt for our children to redeem? What if the standards were not set that high, but required only the resources equivalent to half the current subsidy to tertiary education and skills development? Making these decisions is inordinately complex and requires literally hundreds of officials working full-time preparing and evaluating budget

submissions. For a court to suggest that it has the wisdom to cut through these complexities and make decisions that would be in the best interest of the poor is, to say the least, an impressive leap of faith (Altbeker, 2002).

Ajam and Murray (2004) note that the judiciary has not sidestepped these issues, as shown by the Grootboom case, but has refrained from ordering the executive to reconsider public spending and from imposing a time-line for the prioritisation of socio-economic rights. They write:

The court seems to have accepted that in providing constitutional remedies, budget impacts are inevitable. However possible budgetary impacts should be a consequence of the courts' duty to enforce progressive realisation of socio-economic rights, rather than an end in itself, which would be an unjustifiable breach of the separation of powers. The court has also avoided quantifying the precise amounts needed to be re-deployed to remedy the deviation from non-compliance with the constitution (2004).

The Treatment Action Campaign's Constitutional Court case over access to anti-retroviral treatment for pregnant mothers could have been avoided, for example, if Parliament, through its influence, had been able to bring about a higher budgetary prioritisation of HIV/AIDS – a source of concern for many citizens.<sup>47</sup>

A review of South Africa's electoral system, which is based solely on proportional representation at the national and provincial levels, could provide an opportunity to achieve a better balance between the need for effective oversight and other crucial objectives, such as the representation of women. Legislators who win a constituency election are less beholden to a particular party and so have more incentive to exercise oversight. Besides introducing an element of constituency-based representation, legislatures will have to consider other ways of reducing disincentives for parliamentarians to engage in oversight activities.

### 3.3 CAPACITY

#### 3.3.1 INFORMATION

Supporting budget reform is one way of generating information about service delivery. For instance, section 35 of the PFMA requires the costing of legislation that has a financial impact on provinces. How many provincial NCOP delegations are mandated to request this information if it has not been provided? Committees should also demand strategic plans that are aligned with budget allocations, regular performance reports and annual reports. In-year monitoring, rather than oversight after the event, which is of limited value, can provide a means of proactive oversight and rapid remedial response.

Legislatures and committees should define their minimum information needs to avoid information overload. Performance-related information must be distributed across committees and not just in the finance committee.

Information provided by the executive may not support meaningful analysis of public expenditure, for example in relation to the impact on poverty. But unless the legislature has defined and articulated its needs – for example, which elements are required for oversight and at what level of aggregation and detail – it is difficult for the executive to respond.

The evaluation of programmes and reviews of efficiency can be an important tool for legislative oversight. However, it is highly unlikely a legislature will have sufficient time or resources to evaluate all major areas of executive activity. In these circumstances, it should focus on a limited number of high-priority projects that receive adequate planning, time and funding. To ensure that evaluations have an impact and a focus on poverty alleviation, leadership is required. To focus its efforts, the legislature needs clearly to frame a number of questions that will facilitate evaluation, and be aware of the resources required to answer these credibly. Parliament and legislatures can also assist by embedding systematic monitoring and evaluation in departments and other organs of state by holding them accountable for implementing the strategies required by the Government-Wide Monitory and Evaluation Policy Framework (Presidency, 2007).

Furthermore, the 2009 Money Amendment Procedure and Related Matters Act calls for the establishment of a parliamentary budget office, a potentially important instrument for ensuring that the unique information needs of legislatures are met. These encompass the analysis of the technical and policy components of fiscal decision-making and the political consequences, opportunities and risks that are expected. To be effective, the budget office should be appropriately resourced, and have access to necessary economic expertise and public finance management skills. Chapter 4 discusses these questions in more detail.

Legislatures should also try to enhance the capacity for policy analysis by seeking quality information, for example, from universities, civil society and chambers of business. For this, internet access is a prerequisite.

### 3.3.2 COMMITTEE STRUCTURES AND PROCEDURES

Internationally, committees tend to function well in technical areas, concentrating on policy implementation rather than development. They can establish whether programmes have indeed been delivered effectively, efficiently and economically. In South Africa, performance oversight varies across committees and provinces.

Committee reports are often not debated in plenary, because of perceptions that this will duplicate work already done in party caucuses and committees. As Murray and Nijzink point out:

Plenary decisions are not regarded as adding anything substantial because party positions are unlikely to change after decisions are already taken in the caucuses where members of the executive participate. However, unless members of the legislature start to claim recognition of their separate oversight responsibility and a degree of independence with regard to the findings of committee reports, debates in plenary will not fulfil the important role of developing a democratic culture of open discussion and appraisal of performance... MPs and MPLs themselves must recognise the importance of publicly explaining the positions they take and the work they do in committee meetings (2002: 96).

In Germany, opposition party members often co-chair important committees such as the budget committee (Krafchik and Wehner, 1998). This approach could promote increasingly active oversight, particularly in public accounts committees. Alternatively, increased recognition of the need for active oversight in the ruling party could bolster the political will to hold the executive to account.

As discussed above, the strategic direction of Parliament's institutional oversight may influence the relationship between the finance committee, the public accounts committee and sector portfolio committees. The division of labour may also be affected by the amount of information submitted to Parliament, and the need to process this quickly. With the increased auditing of non-financial performance information by the Auditor-General, it is important for sector committees to engage more intensively on annual reports. Similarly, the 2007 Government-Wide Monitory and Evaluation Policy Framework requires public institutions to link a monitoring and evaluation strategy to their strategic and operational plans. There is an argument for including this in the oversight responsibilities of sector portfolio committees.

### 3.3.3 INTERGOVERNMENTAL AND INTERSECTORAL CO-ORDINATION

If national and provincial governments are committed to poverty eradication, they must forge closer working relations with local governments. Committees can foster this in their oversight work. For example, if a provincial department proposes new infrastructure development, such as the building of schools or clinics, committees can ensure that this is related to municipal integrated development plans.

South Africa's complex intergovernmental fiscal structure, which spans three spheres of government, public entities and other organs of state, make evaluating impacts extremely complicated. A sectoral oversight approach is required to ensure that the service delivery outputs of organs of state achieve the desired policy outcomes. Here, portfolio, budget and public accounts committees need a clear division of labour and close coordination to ensure that plans and budgets are aligned, and that implementation is subject to effective oversight.

As noted earlier, Parliament and provincial legislatures should be closely coordinated. Provincial legislatures could, for example, focus on the accountability of provincial accounting officers and MECs, as well as on the collective achievement of desired outcomes relative to provincial growth and development strategies. The National Assembly could focus on the accountability of accounting officers in national department and ministers, as well as public entities. The NCOP could monitor intergovernmental allocations, as well as the outcomes in individual sectors – for example, health, education and social development – relative to the Bill of Rights, across all spheres of government and public entities.

### 3.3.4 TECHNICAL SKILLS

Murray and Nijzink (2002: 90) pointed out that in a legislative landscape study some years ago that few of the respondents knew that they had the power to demand the presence of a minister or MEC “when oversight processes uncovered bad practices”. Another example of the confusion about oversight powers and procedures lies in the area of political versus managerial accountability. As Murray and Nijzink note:

In many legislatures, it is the departmental accounting officer and other officials who the politicians seek to hold accountable, rather than the responsible Minister or MEC. This misunderstanding is widespread and undermines the ability of the legislature to ensure proper political accountability. It appears to stem from a misreading of the Public Finance Management Act 1 of 1999 (2002: 89).

Even when information on the performance of a department is available, parliamentary representatives may lack the technical skills for detailed analysis and interpretation. Parliamentarians need to be trained in the more technical aspects of fiscal oversight, and training should not be confined to members of the finance and public accounts committees. If parliamentarians find dealing with input-based budgets confusing, they are unlikely to find performance budgets easier to understand unless they receive the relevant training. Organisations such as the Association of Public Accounts Committees have engaged in some concerted, institutionalised capacity-building, but these initiatives should be broadened and regularised. The latest public sector reforms emphasise monitoring and evaluation as one of the next phases, and training will be required to ensure that committee members can interpret and analyse the findings of the monitoring and evaluation of departments and public sector institutions.

Parliament and the legislatures will also have to deepen the analytical skills of their researchers so that they can engage with the continuous and growing stream of service delivery and budget information they receive, and make sensible pro-poor recommendations. Again, the proposed parliamentary budget office could become a

cornerstone of effective legislative oversight, provided that it is able to attract and retain the requisite skills in budget and financial management analysis, intergovernmental fiscal relations, sector policy and implementation, quantitative methods and monitoring and evaluation. Parliament can also continue drawing on specialist institutions such as the Financial and Fiscal Commission.

## 4. CONCLUSION

Over time, the understanding and measurement of poverty have become more nuanced. Once seen as mainly the result of low income and a consequent lack of command over basic goods and services, definitions have increasingly expanded to include other aspects of living standards, such as health status, literacy and longevity. Most recently, appreciation of the reality of poverty has encompassed concerns about the volatility and risk of incomes, that are manifested in feelings of vulnerability. Poverty is not just “the state of having little, but also being vulnerable to lose the little one has” (Kanbur and Squire, 1999: 16). This is often associated with a lack of “voice” and political rights. With this multi-dimensional approach to poverty comes the realisation that a number of related and mutually reinforcing strategies are needed to combat it. These include the provision of basic services and infrastructure, redistribution through growth, and promoting participatory processes in all spheres of government.

Parliament and the provincial legislatures could play an important role in realising South Africa’s desire to eradicate poverty in all its forms, in achieving the vision of “a better life for all” within available resources, and in ensuring that policy is translated into service delivery which has a beneficial impact on marginalised communities. Oversight is crucial because, as Schick (2002) points out: “A legislature which rewards or ignores poor results will get poor results.” Systematic under-spending, revenue over-recoveries and budget surpluses clearly indicate that absolute fiscal constraints are not South Africa’s major challenge, in contrast with many other developing countries (Ajam and Aron, 2007). Our malaise lies in managerial and other forms of institutional weakness. The remedy lies in the realm of institutional and management development. Parliament and the legislatures can play a crucial role in ensuring that capacity is built for poverty reduction, infrastructure and other facilitators of economic growth.

A complex interplay of factors influences the development of legislatures. They tend to evolve over time rather than being consciously designed. As one analyst has noted:

The reality is that legislatures are not designed, with the important exception of their constitutional fundamentals. Instead, legislatures evolve organically as the many contending forces in society seek to change legislative powers, resources, internal structures and decision-making procedures (Meyers, 2000: 3).

Yet South Africa's Parliament and provincial legislatures have to make strategic choices that require stakeholders to transcend party politics in the interests of long-term institution-building, and think beyond the immediate circumstances. Legislative institutions need a vision of how to fulfil their constitutional mandates in a way that responds to current conditions, and should avoid allowing the status quo to predetermine their evolutionary path.

The challenges and intricacies are many, but if legislatures do not take the initiative at this point, they may be overtaken by external events, such as the increased use of the courts to enforce socio-economic rights. The status quo will become the default, gradually "cast in stone" as informal conventions of parliamentary impotence become entrenched. Their current capacity should not determine their long-term strategic role in fiscal oversight. However, it is crucial in rolling out a phased implementation plan to reach that destination.

The first requirement is the political will to create a legislative and executive culture of constructive fiscal oversight, and the associated enabling legislation. The creation of an institutional identity for Parliament and the legislatures is pivotal. This may also have to be fortified by other changes, such as adaptations of the electoral system, as well as capacity-building initiatives. Like all reforms, it will have to overcome internal inertia and avoid institutional backsliding. Failure to undertake it, however, will be a lost opportunity for good governance in the cause of pro-poor service delivery. For the legislatures, it may also precipitate a gradual descent into chaotic reactionary responses and eventual policy and popular irrelevance.

## REFERENCES

- Ajam, T. and Aron, J., "Fiscal Renaissance in a Democratic South Africa", *Journal of Africa Economies*, 23 August 2007, <http://jae.oxfordjournals.org>, doi: 10.1093/jae/ejm014
- Ajam, T. and C. Murray, "The Courts, Socio-economic Rights and Intergovernmental Fiscal Relations", paper presented at the Financial and Fiscal Commission 10th Anniversary Conference, "Consolidation for Equity", Cape Town, 12-14 August 2004.
- Altbeker, A., "Revisiting socio-economic rights", *Business Day*, 20 May 2002.
- Congress of South African Trade Unions (Cosatu), submission on the Money Bills Amendment Procedures Bill to the portfolio committee on finance, 22 October 1998. Available at: <http://www.cosatu.org.za/docs/budgetsbi.htm>.
- Corder, H; Jagwanth, S, and Soltau, F., Report on Parliamentary Oversight and Accountability, Faculty of Law, University of Cape Town, July 1999.
- Fubbs, J., "Towards effective fiscal oversight on performance budgeting to achieve results: a Gauteng perspective", paper presented for a conference on "Outcomes-based Governance: Assessing the Results", University of Stellenbosch, 12-14 September 2001.

- Hartley, W., "Justice slated again for underspending", *Business Day*, 8 March 2007.
- I-Net Bridge, "Govt departments under fire," 11 June 2008. Available at: [http://www.fin24.com/articles/default/display\\_article.aspx?ArticleId=1518-25-2338521](http://www.fin24.com/articles/default/display_article.aspx?ArticleId=1518-25-2338521).
- Kanbur, R. and Squire, L., *The Evolution of Thinking about Poverty*, Washington, DC: World Bank, .1999.
- Hubli, K.S. and A. P. Mandaville, "Parliaments and the PRSP Process", World Bank Institute, Washington, D.C., 2004. Available at: <http://siteresources.worldbank.org/WBI/Resources/wbi37231HubliMandavilleweb.pdf>.
- Krafchik, W. and S. Robinson, *The People's Budget and the Poor*, Cape Town, Idasa, 2004.
- Krafchik, W. and J. Wehner, "The role of Parliament in the budgetary process," *South African Journal of Economics* 66 (4) 1998: 512-31.
- Mbeki, T., State of the Nation Address by the President of South Africa to the Joint Sitting of the Houses of Parliament, Cape Town, 8 February 2002.
- Meyers, R., "Legislative budgeting in Mexico: aspirations and choices", paper prepared for the Conference on the Reform of the State: Budget and Public Spending, Mexico City, 27 January 2000.
- Murray, C. and L. Nijzink, "Building Representative Democracy: South Africa's legislatures and the Constitution", Parliamentary Support Programme, Cape Town, 2002.
- National Treasury, *Budget Review 2004*, Government Printers, Pretoria, 2004.
- Overseas Development Institute (ODI), "Parliaments and development: What shapes parliamentary performance and what can donors do to enhance it", ODI Briefing Paper, 2007. Available at: [http://www.odi.org.uk/publications/briefing/bp\\_april07\\_parliaments.pdf](http://www.odi.org.uk/publications/briefing/bp_april07_parliaments.pdf).
- Presidency, *Policy Framework for the Government-wide Monitoring and Evaluation System*, Government Printers, Pretoria, 2007.
- Schick, A., "Can National Legislatures Regain an Effective Voice in Budget Policy?" *OECD Journal on Budgeting* 1(3): 15-42, 2002.
- Sennay, C. and Besdzick, D., "Enhancing Oversight in South Africa's Provinces: Institutions and Concerns", *African Security Review*, 8(2) 1999.
- United Nations Development Programme (UNDP), "Human Rights, Governance and Sustainable Human Development", UNDP Policy Paper, New York, 1998.