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## Parliamentary Oversight for Government Accountability

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# **Parliamentary Oversight for Government Accountability**

**Edited by Riccardo Pelizzo, Rick Stapenhurst and David Olson**

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# **Parliamentary Oversight for Government Accountability**

*Edited by Riccardo Pelizzo, Rick Stapenhurst and David Olson*

World Bank Institute

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## Foreword

As part of its Governance program, the Poverty Reduction and Economic Reform Division of the World Bank Institute (WBIPR) has sought to strengthen parliamentary oversight, with the goal of promoting enhanced government accountability and transparency. The four papers presented here are part of an ongoing series on legislative oversight issues.

In the first paper Riccardo Pelizzo and Rick Stapenhurst examine the link between democracy and oversight. They argue that a parliament's oversight potential, measured by the number of oversight tools available to a parliament in a given country, affects the probability that that country is formally democratic or liberal democratic. Their argument is supported by statistical analysis of a 49-country sample that indicates that the probability that a country is formally democratic (and to a lesser extent liberal democratic) increases as the number of oversight tools increases.

A second paper, also by Riccardo Pelizzo and Rick Stapenhurst, looks more closely at a specific oversight tool – the Public Accounts Committee (PAC) in national and sub-national parliaments throughout the Commonwealth. Using a survey of 33 PAC Chairs, the paper examines how PACs can contribute to effective oversight of government accounts and the conditions which promote a PACs good functioning and success.

Chen Friedberg examines parliamentary oversight in the Israeli Parliament, the Knesset, through the lens of two committees, the State Control Committee and the Education and Culture Committee, during the 7<sup>th</sup>, 10<sup>th</sup> and 13<sup>th</sup> Knessets. Her paper centers on the structural and procedural problems which characterize the Israeli parliamentary committee system, and which may impair the effectiveness of its oversight.

Robert J. Griffiths discusses parliamentary oversight of defense policy in post-apartheid South Africa. Using the case study of the Strategic Defense Procurement Package he provides insight into the development of transparency and accountability in defense policy, while highlighting the challenges of effective parliamentary oversight such as party discipline, executive-legislative relations, and the capacity of parliamentary committees to adequately monitor the complexities of government policies.

The views expressed herein are entirely those of the authors and do not necessarily reflect the views of the World Bank Institute.

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# Democracy and Oversight

Riccardo Pelizzo  
Rick Staphenurst

## *Introduction*

In the past decade, the field of political science has paid increasing attention to the study of legislative oversight, once described as “an important but inadequately researched area of legislative activity” (Lees, 1977). Lees’ comment is particularly true with regard to comparative analyses of oversight tools and practices. Recent studies have discussed the instruments of legislative oversight (Maffio, 2002); while others have investigated how legislative oversight relates to both political variables (Pennings, 2000; Damgaard, 2000; Pelizzo and Staphenurst, 2004a) and socio-economic conditions (Pelizzo and Staphenurst, 2004b). Despite the renewed interest in oversight, our understanding of legislative oversight, as Rockman lamented more than two decades ago (1984), remains asymmetric. The existing literature discusses extensively what oversight is; why it is necessary in properly functioning democratic regimes; why it is good from a normative point of view; and what conditions favor effective oversight. Less attention has been paid to whether legislative oversight has any impact on the functioning of a political system and, if so, what kind.

The purpose of this paper is to discuss whether, and to what extent, oversight affects the functioning or the nature of a political regime. Specifically, we test whether, and to what extent, the oversight potential, measured on the basis of the number of oversight tools available to a parliament in a given country, affects the probability that that country is formally democratic or liberal democratic.<sup>1</sup>

The first section of the paper will discuss current legislative oversight literature and how this literature has investigated the determinants, the mechanisms, the tools and the possible consequences of legislative oversight of government activities. We argue that since democracy does not depend exclusively on a government’s ability to perform, but also on government’s actions being subject to scrutiny and control, the probability that a country is democratic should be affected by the legislature’s potential to oversee the government.<sup>2</sup>

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<sup>1</sup> The difference between oversight potential and effective oversight is, as we will discuss in the course of the paper, of great importance. We speak of effective oversight, when legislatures actually oversee governments’ actions and activities and when this oversight function has an impact on the political system and, more specifically, on the government behavior. We speak of oversight potential to denote the set of formal powers and instruments that legislatures have to oversee government activities regardless of whether these powers and instruments are actually used.

<sup>2</sup> This view is obviously very different from Huntington’s (1991) argued several years ago. For Huntington (1991: 9-10) “elections, open, free and fair are the essence of democracy, the inescapable sine qua non. Governments produced by elections may be inefficient, corrupt, shortsighted, irresponsible, dominated by special interests, and incapable of adopting policies demanded by the public good. These qualities may make such governments undesirable but they do not make them undemocratic”. Huntington’s position is questionable for at least two reasons. First of all, if instead of conceiving democracy as a dichotomous variable (a regime is

In the second part of the paper, we present the results of our statistical analyses. Our findings are consistent with our hypothesis: the results of logistic regressions reveal that the probability that a country is formally democratic increases as the number of oversight tools increases. Similarly the probability that a country is liberal democratic is also sensitive to the number of oversight tools available to the parliament, although not to the same degree as the probability that it is formally democratic.<sup>3</sup>

The third and final section of the paper discusses the implications of these findings. We suggest that the results of our analyses are relevant for two reasons:

1. The results show that oversight potential has a profound effect on the nature and the functioning of a political system. The probability that a country is formally democratic (and to a lesser extent the probability that a country is liberal democratic) is affected by the oversight potential.
2. The results show that international organizations are correct in arguing that strengthening legislatures is beneficial to promoting democracy and good governance. However, our work shows that while oversight potential promotes (formal) democracy, the promotion of liberal democracy requires that real and effective oversight is implemented. International organizations therefore have to find ways to promote effective oversight and not just oversight potential.

### *Oversight in the Literature*

The study of legislative oversight focuses on four basic questions:

1. What is oversight?
2. Why is oversight good for a political system?
3. How can oversight be exercised?
4. What is the impact of oversight?

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democratic or non democratic) we conceive it instead as a continuous variable (a regime can be more or less democratic), the fact that a government is corrupt, irresponsible, unable, or unwilling to address citizens' demands makes the political system less democratic than those systems in which governments are responsive, accountable and responsible. Second, it could also be argued that beyond a certain point, irresponsiveness, irresponsibility, and non-accountability make governments non-democratic. Huntington's faith in elections as a sine qua non must be considered with some skepticism. With the emergence of illiberal democracies we now know that elections are a necessary but insufficient condition for a political regime to be democratic. See Diamond (1999) and, more recently Carothers (2002).

<sup>3</sup> Formal democracies are political regimes characterized by vertical accountability through regular, free and fair elections and by the lack of horizontal accountability. By contrast, liberal democracies are characterized by the fact that they are both vertically and horizontally accountable, that is by the fact that the power of the executive branch is constrained, checked and balanced by other branches of government, and also by the fact that civil rights and political rights of individuals and groups are protected. While democracy and freedom are not exactly the same thing (Morlino, 1975; Katz, 1997), The Gastil index of Freedom still provides a useful and usable measure of democracy or liberal democracy precisely because it estimates a country's level of freedom/democracy by assessing the extent to which civil and political rights are respected.



With regard to the first question, scholars have proposed several different definitions of oversight. Some scholars have suggested that legislative oversight consists of legislative supervision of the policies and programs enacted by the government (Schick, 1976). Other scholars have suggested instead that oversight goes beyond supervision of the executive branch's activities to include supervision of the executive's legislative proposals (Maffio, 2002). In parliamentary systems, where the executive branch of government has the power to introduce a bill, the process through which a bill becomes a law (the referral of the bill to specific committees; the discussion of the bill within such committees; the debates on a bill in the plenary; and the fact that the parliament ultimately has the power to amend, approve or reject a government's legislative proposal) gives the legislative branch the power oversee a government's plans before they are enacted.

Regardless of whether oversight is viewed as a sort of *ex post* review of government policies and programs or whether it is viewed instead as supervision of government activities that can be performed both *ex post* and *ex ante*, scholars generally agree that effective oversight is good for the proper functioning of a democratic political system. Effective oversight is beneficial for a political system for at least, two reasons (West and Cooper, 1989): first, because oversight activity can contribute to improving the quality of policies or programs initiated by the government; second, as government policies are ratified by the legislative branch, such policies acquire greater legitimacy.

Scholars have also given some attention to the tools that parliaments and legislatures can employ to oversee the government and the government's activities. Legislatures may adopt several tools to oversee the actions of the executive such as committee hearings; hearings in the plenary assembly; the creation of special inquiry committees; parliamentary questions or question time; the interpellations; and the ombudsman (Maffio, 2002; Pennings, 2000). Scholars have noted however, that the presence of an oversight tool is a necessary prerequisite, but an insufficient condition, for effective oversight. Effective oversight may depend on the specific oversight powers given to the parliament, for example whether the parliament has the ability to modify legislation (Loewenberg and Patterson, 1979); whether parliaments and parliamentarians are given the relevant information to perform their oversight tasks adequately (Frantzich, 1979); the role of individual MPs; the role of committee chairs; the saliency of issues; and how aggressively the opposition performs its role (Rockman, 1984).<sup>4</sup>

While there is a wealth of information generated by the study of legislative oversight with regard to the virtues, tools, and conditions necessary for effective oversight, much less has been written on the impact of oversight. Does oversight actually affect the functioning, and possibly the nature, of a political system? Over the past decade, international organizations, bilateral agencies, and NGOs have taken a much greater role in promoting democracy (Stapenhurst and Pelizzo, 2002; NDI, 2000). They have tried to promote democracy, among other things, by strengthening legislatures, and they have tried to strengthen legislatures by

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<sup>4</sup> Though high partisanship and fierce opposition may be conducive to more effective oversight in general, studies on Public Accounts Committees have argued that co-operation between committee members across party lines is critical in promoting effective oversight of the public accounts (Stapenhurst et alii, 2005).

improving legislatures' ability to oversee governments' activities.<sup>5</sup> Does oversight actually make a difference as international organizations have assumed?

Given the nature of the data at our disposal, we were unable to test whether and to what extent effective oversight affects the functioning of a political regime, the democratic quality of that regime, or that regime's potential to be democratic. We cannot produce this kind of analysis because while our data (concerning the number of oversight tools available to a given legislature) provide a fairly clear indication of a parliament's oversight potential, they provide no indication of whether oversight is actually performed and performed effectively. Given the impossibility of testing the full impact of effective oversight with the data at our disposal, we instead tested whether oversight potential has an impact on a political system.

As oversight potential increases, it becomes easier to scrutinize and control the government and its activities. Since control of the government is a key component of democratic government, the more a government is subject to potential controls, the more likely it is that the political system is democratic. In other words, oversight potential is a cause and not a consequence of democratic quality.<sup>6</sup> Having hypothesized this possible causal relationship, we tested for statistical evidence sustaining the claim that the probability that a country is democratic increases as oversight potential increases. The next section shows statistical analyses on whether, and to what extent, the causal relationship between democratic quality and oversight potential is corroborated.

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<sup>5</sup> Given the interest in legislative strengthening and in improving parliaments' oversight capabilities, international organizations have undertaken several studies to ascertain whether oversight is beneficial to the functioning of a given political regime. The studies found that most countries have some instruments to oversee the actions of the government and that legislatures in parliamentary regimes have, on average, a greater number of oversight tools than legislatures in presidential and semi-presidential regimes (Pelizzo and Staphenurst, 2004a; Pelizzo and Staphenurst, 2004b). Pelizzo and Staphenurst (2004b) have however emphasized that while the number of oversight tools that a legislature can employ to oversee the executive provides an indication of the oversight potential of that legislature, it does not provide any indication as to whether that oversight potential is then translated in effective oversight. This is why, Pelizzo and Staphenurst (2004b) argued, some countries may have great oversight potential and still be non-democratic. In these countries, legislatures have several oversight tools at their disposal but are either unwilling or unable to use them or use them effectively. In countries like Gabon, Indonesia, and Zambia, the oversight potential does not seem to have any effect on the democratic quality of the regime. However, the evidence presented in these international organizations' publications was at best suggestive. It showed that, on average, liberal-democratic regimes had more oversight tools and oversight potential than formally or quasi-democratic regimes and that these, in their turn, had a greater oversight potential than non-democratic regimes. But while more democratic regimes tend to have, on average, more oversight tools than less democratic regimes, it is unclear whether the adoption of a larger number of oversight tools is a consequence or a cause of higher democratic quality in a given country.

<sup>6</sup> We are aware of the possibility that oversight potential, that is the number of oversight tools available to a given parliament in a given country, may be the consequence of that country's democratic quality or status. To test this causal relationship we need to test whether the number of oversight tools changed as a consequence of improvements in the democratic quality or the status of a country. While we have historical data concerning how the quality of democracy changed in the countries included in our sample, we unfortunately do not have data on how the number of oversight tools has changed over time. As a result, we are not able to perform the necessary tests to assess how oversight potential is affected by changes in democratic quality.

## Data and findings

The data on oversight tools was collected as part of a survey conducted by the World Bank Institute (WBI) in collaboration with the Inter-Parliamentary Union (IPU). This data has been presented previously in working papers by the World Bank Institute (Pelizzo and Stapenhurst, 2004b; Pelizzo, Stapenhurst and Olson, 2004). Parliaments of 82 countries and the European Parliament responded to the WBI-IPU survey questionnaire. The information provided by the respondents is presented in Table 1. The responses indicate that (with the exception of Lesotho which did not provide any information) most parliaments have several oversight tools at their disposal. As some respondents did not indicate whether specific oversight tools are used by the parliament, it is safe to conclude that the average number of oversight tools available to parliaments and legislatures worldwide is likely greater than the WBI-IPU survey suggests.

**Table 1. Countries and the Number of Parliamentary Oversight Tools**

0	2	3	4	5	6	7
<i>Lesotho</i>	<i>Azerbaijan</i>	<i>Congo</i>	Angola	<i>Australia</i>	<i>Andorra</i>	Austria
	<i>Russia</i>	<i>Macedonia</i>	Armenia	<i>Bulgaria</i>	<i>Belarus</i>	Belgium
		<i>Tajikistan</i>	China	Cameroon	Benin	Costa Rica
		<i>Zimbabwe</i>	Ivory Coast	<i>Iran</i>	Brazil	Croatia
			Kazakhstan	<i>Jordan</i>	Canada	Czech Republic
			Liechtenstein	<i>Mexico</i>	Cyprus	Estonia
			Rwanda	<i>Mongolia</i>	EU	France
			<i>Uruguay</i>	Nicaragua	Germany	Gabon
				Palau	<i>Guatemala</i>	Greece
				<i>Philippines</i>	Guinea Bissau	Hungary
				<i>Samoa</i>	Guinea	Indonesia
				Senegal	<i>Iceland</i>	Japan
				<i>Singapore</i>	<i>Ireland</i>	Lithuania
				<i>South Africa</i>	Korea	Madagascar
				<i>Sudan</i>	Jamaica	Mali
				Turkey	<i>Latvia</i>	Romania
				<i>Ukraine</i>	Luxembourg	Spain
				Yemen	<i>Namibia</i>	Sweden
					<i>Netherlands</i>	Switzerland
					Niger	Zambia
					<i>Poland</i>	
					<i>Slovakia</i>	
					<i>Slovenia</i>	
					Tchad	
					<i>Thailand</i>	
					Togo	
					Tunisia	
					<i>Uganda</i>	
					U.K.	

Note: The score of the countries in Italics indicates that information concerning the presence/absence of some tools of parliamentary information was not available as indicated in Appendix.

49 of the 83 parliaments that responded to the survey provided complete information as to the presence/absence of the seven oversight tools mentioned in the WBI/IPU survey.

The seven oversight tools are:

1. Committee hearings,
2. Hearings in plenary sittings,
3. Inquiry commissions,
4. Questions,
5. Question time,
6. Interpellations, and
7. The ombudsman.

The countries included in this 49-country sample differ with regard to the level of democracy (as measured by the Gastil index), income level (low income, middle income, and high income) and form of government (presidential, semi-presidential, or parliamentary).

**Table 2: Form of Government and Number of Parliamentary Oversight Tools.**

Form of Government	4	5	6	7
Presidential	Ivory Coast Kazakhstan	Nicaragua Palau	Benin Brazil Cyprus Guinea Korea Chad Tunisia	Costa Rica Indonesia
Parliamentary	Liechtenstein	Australia Turkey	Canada Germany Guinea Bissau Jamaica Luxembourg United Kingdom	Austria Belgium Croatia Czech Republic Estonia Greece Hungary Japan Lithuania Spain Sweden
Semi-Presidential	Angola Armenia Rwanda	Cameroon Senegal Yemen	Niger Togo Yugoslavia	France Gabon Madagascar Mali Romania

Only 47 of the 49 countries that provided complete information as to the number of oversight tools available to parliament also provided information on their form of government. The results, presented in Table 2, show that slightly less than 30 percent of the countries included in our 47-country sample adopt either a presidential or semi-presidential form of government, while 42.5 percent of the countries adopt a parliamentary form of government. The data reported in Table 3 also indicate that the number of oversight tools available to legislatures in parliamentary systems is higher on average than the number of oversight tools available to legislatures in presidential or semi-presidential systems.

**Table 3: Number of Oversight Tools by Form of Government**

Number of Oversight Tools						
Form of Government	4	5	6	7	Tot	Mean
Presidential	2	2	7	2	13	5.69
Semi-Presidential	3	3	3	5	14	5.71
Parliamentary	1	2	6	11	20	6.35
Total	6	7	16	18	47	

Information concerning income level was available for all of the countries included in our 49-country sample. Income level was measured on the basis of the criteria used by the World Bank. In the World Bank's 2002 World Development Indicators countries are divided in three groups:

1. "High Income Economies", in which the gross national income (GNI) per capita was \$9,266 or more;
2. "Middle Income Economies", which have a GNI per capita between \$ 755 and \$9,265; and
3. "Low Income Economies", in which the GNI per capita is below \$ 755.<sup>7</sup>

The sample is fairly balanced: 30.6 percent of the countries are high-income countries; 32.6 percent fall in the middle income category; and 36.7 percent fall in the low-income category. The data in Table 4 further suggest that the number of oversight tools available to parliaments in middle- and high-income countries is substantially higher than the number of oversight tools available to parliaments in low-income countries.

**Table 4: Number of Oversight Tools by Income Level**

Number of Oversight Tools						
Income Level	4	5	6	7	Total	Mean
Low	4	4	7	3	18	5.50
Middle	1	2	5	8	16	6.25
High	1	1	6	7	15	6.27
Total					49	

Political scientists and sociologists have developed several measures of democracy (Morlino, 1974; Bollen, 1980; Bollen, 1993). The most common and most widely adopted despite some shortcomings is the Gastil Index of Freedom. Diamond (1999), for example, categorized the world's countries as liberal-democratic, formally democratic and non-democratic depending on whether these countries are ranked as free, partially free or non-free on the basis of the scores assigned to them by Freedom House. Freedom House computes an annual index of freedom for all countries worldwide. This index is computed in the following way. Freedom House assigns each country a political rights and a civil rights score. Both scores are on 7-

<sup>7</sup> We transformed this information into a quantitative variable to be used in our statistical analyses, by assigning value 1 to countries in the Low Income group, value 2 to countries in the Middle Income group and value 3 to countries in the High Income group.

point scales. The Gastil index is measured by adding the political rights score to the civil rights score and by dividing their sum by two. This means that if a country has a political rights score of 3 and a civil rights score of 4, the freedom score for this country is  $(3+4)/2=3.5$ . Countries that score from 1 to 2.5 points on this scale are considered free; countries scoring from 3 to 5.5 are considered as partially free and countries with a score of 5.5 or higher are considered non-free.<sup>8</sup> Data presented in Table 5 reveal that 55.1 percent of the countries included in our sample are liberal democratic; 28.6 percent are formally democratic; and 16.3 percent are non-democratic.

**Table 5: Number of Oversight Tools by Level of Democracy**

Level of Democracy	Number of Oversight Tools				Total	Mean
	4	5	6	7		
Democracy	1	2	9	15	27	6.41
Quasi Democracy	2	3	6	3	14	5.71
Non Democracy	3	2	3		8	5.0
Total	6	7	18	18	49	

The nature of the countries included in our sample allowed us to test whether, and to what extent, the probability that a country is formally democratic or liberal democratic is affected by the number of oversight tools available to the parliament, while controlling for the effects of the country's form of government and income level.<sup>9</sup>

To test whether the probability that a country is at least formally democratic is affected by the number of oversight tools available, we run the following model:

$$\text{Logit (democracy)} = a + b_1 \text{ Tools} + b_2 \text{ gofor} + b_3 \text{ incomelevel} \quad (1)$$

<sup>8</sup> We constructed a tri-chotomus variable by assigning values 1, 2 and 3 to countries that were ranked respectively as non-free, partially free and free. Though we realize that freedom and democracy are not exactly the same thing, we adopt, as is often done in the literature, the Gastil index of freedom as our measure of democracy, so that non-free, partially free, and free countries are treated respectively as non-democratic, formally democratic (or quasi democratic), and liberal democratic.

<sup>9</sup> We control for the effects of income level, as a proxy for development, as scholars have long acknowledged that democratic countries are generally better off in material terms than non-democratic ones (Lipset, 1959). Lipset's statement concerning the relationship between democracy and development received two different, though not mutually exclusive interpretations. For some scholars (Rueschenmeyer, Huber and Stephens, 1992) Lipset was arguing (as scholars working within the modernization theory framework also later argued) that development creates the condition for democratic transition (Huntington, 1991). Other scholars thought that Lipset was positing a relationship between development and democratic consolidation. Recent research carried out by Przeworski et alii tested both theoretical claims. Przeworski's work showed that the relationship between democracy and development is still strong (Przeworski et alii, 2000:79), that the level of development is not a particularly good predictor of transitions to democracy (Przeworski et alii, 2000:92-98), and that development is a strong predictor of democratic consolidation (Przeworski et alii, 2000:98). We also control for the effects of the form of government as a fairly large body of literature has argued that democratic regimes are less likely to consolidate in presidential democracies than they are in parliamentary systems (Linz, 1994; Mainwaring, 1993; Sartori, 1994a; Sartori, 1994b; Stepan and Skach, 1994; Przeworski et alii, 2000: 128-137). Hence there is some reason to believe that the probability that a country is democratic may be influenced by the form of government adopted in that country.

The democracy variable takes value 1 for countries that are at least formally democratic. The number of oversight tools variables ranges from 2 to 7. The gofor variable refers to the form of government. This variable takes value 1 for presidential systems, value 2 for semi-presidential systems and value 3 for parliamentary systems. The incomelevel variable takes respectively values 1, 2 and 3 for low income, middle income and high income countries.

By performing this analysis we find that our model takes the following values:

$$\text{Logit}(\text{democracy}) = -4.915 + .713 \text{ Tools} + .053 \text{ gofor} + 1.487 \text{ incomelevel} \quad (2)$$

(.008) (.010) (.913) (.018)

The form of government variable, as we can see from the p-values reported in parenthesis, is entirely insignificant and thus it is legitimate to exclude it from the model. By dropping the gofor variable, our model takes the following values:

$$\text{Logit}(\text{democracy}) = -4.958 + .775 \text{ tools} + 1.262 \text{ incomelevel} \quad (3)$$

(.002) (.005) (.023)

The findings are clear. Even when we control for the effects of the income level, we find that the coefficient for the number of oversight tools is strong and statistically significant. In a middle income country with seven oversight tools, the equation gives the following result:

$$\begin{aligned} \text{Logit}(\text{democracy}) &= -4.958 + .775(7) + 1.262 \quad (2)= \\ \text{Logit}(\text{democracy}) &= -4.958 + 5.425 + 2.524 = 2.991 \end{aligned}$$

In this case, the probability that the political system of that country is democratic is

$$e^{2.99} / (1 + e^{2.99}) = .952 \text{ or } 95.2 \text{ percent.}$$

This means that a middle income country has a phenomenally high chance of being at least formally democratic when all seven oversight tools are available to the parliament. The data presented in Table 6 provide a clear indication of how (and how much) the probability that a country is at least formally democratic increases as the number of oversight tools available to the parliament increases.

**Table 6: Number of Oversight Tools and the probability that a country is formally democratic**

If in a middle income country the number of oversight tools is	The probability that a country is formally democratic is:
0	.08
1	.16
2	.29
3	.47
4	.66
5	.81
6	.90
7	.95

Diamond (1999) noted that formal democracies are effectively quasi democracies. They have the forms, the mechanisms, and the institutions that can be found in properly democratic regimes, but they do not really function like real democracies. Therefore, we shifted the focus of our analysis to investigate whether the probability that a country is liberal democratic changes as the number of oversight tools available to that country's parliament increases. In order to test whether the probability that a country is liberal democratic is affected by the number of oversight tools, we ran the following logistic regression model:

$$\text{Logit}(\text{liberaldemocracy}) = a + b_1 \text{Tools} + b_2 \text{Incomelevel} \quad (4)$$

The liberaldemocracy variable takes value 1 for countries that are ranked as free by the Gastil index of freedom, while it takes a value of 0 (zero) otherwise. Both the tools variable and the incomelevel variable take the values specified above. With these considerations in mind, when we run our model we find that it takes the following values:

$$\text{Logit}(\text{liberaldemocracy}) = -7.193 + .576 \text{ tools} + 2.162 \text{ incomelevel} \quad (5)$$

(.000)    (.036)    (.000)

The coefficient for our tools variable is still positive, and still fairly strong, but it is not as statistically significant as the incomelevel variable. It should also be noted that the tools variable in the equation (5) is weaker and much less significant than in the equation model (3). Be that as it may, the greater the number of oversight tools in a middle income country, the greater the probability that the country is liberal democratic. Compare what happens if we compare the probability that a middle income country is liberal democratic when it has only two oversight tools with the probability that a middle income country is liberal democratic when it has seven oversight tools. When a middle income country has only two oversight tools, our equation (5) takes the following values:

$$\text{Logit}(\text{liberaldemocracy}) = -7.193 + .576 (2) + 2.162 (2) = -1.72 \quad (6)$$

This means that the probability that such a country is liberal democratic is:  $e^{-1.72} / (1 + e^{-1.72}) = .152$  or 15.2 per cent.

When a middle income country has instead seven oversight tools, our equation (5) takes the following values:

$$\text{Logit}(\text{liberaldemocracy}) = -7.193 + .576 (7) + 2.162 (2) = 1.16 \quad (7)$$

This means that the probability that such a country is liberal democratic is:

$$e^{1.16} / (1 + e^{1.16}) = .762 \text{ or } 76.2 \text{ per cent.}$$

As we can see from the data presented in Table 7, as the number of oversight tools increases, the probability that a country is liberal democratic also increases, but this increase is not as marked as the probability that a country is only formally democratic. While there is about a 95 percent probability that a middle income country with seven oversight tools is formally democratic, the probability that this same country is liberal democratic is just 76.2 percent



**Table 7: Number of Oversight Tools and the probability that a country is liberal democratic**

If in a middle income country the number of oversight tools is	The probability that a country is liberal-democratic is:
0	.05
1	.09
2	.15
3	.24
4	.36
5	.50
6	.64
7	.76

These findings clearly indicate that a parliament's oversight potential, as measured by the number of oversight tools, makes a difference as to whether that country is liberal democratic. Our data also reveal that the oversight potential exercises greater influence on the probability that a country is formally democratic than on the probability that a country is liberal democratic. Why? The data at our disposal do not allow us to answer this question conclusively, but we can nonetheless formulate some educated guesses as to why the relationship between oversight potential and the probability that a country is liberal democratic is more tenuous.

Liberal democracy needs not only oversight potential, but real and effective oversight implementation. This is the major difference between formally democratic and liberal democratic regimes. In formally democratic regimes democratic institutions may have only a cosmetic function. They are present but they are not effectively used. This may be the case for oversight tools as well. Parliaments in formally democratic regimes may adopt oversight tools but these tools may not be used, or may not be used effectively. In formal democracies, the form of democratic government is respected but not its substance.

By contrast, liberal democracies are concerned with the substance of democracy. The presence of oversight tools, or oversight potential, is not enough. What is peculiar to liberal democratic regimes is the fact that governments are not only empowered to perform their duties and tasks but that they are also subject to control. Governments have the power to govern but this power is constrained as they are required, or at the very least are asked, to provide justifications for their actions or inactions. In parliamentary systems, if a government fails to justify their course of action to the legislature, it risks being voted out of office.

While the presence of oversight tools is a necessary condition for effective oversight, it is not, by itself, sufficient. In addition to parliaments' oversight potential, the political will must exist to oversee government activities. In his study of Public Accounts Committees, McGee (2002) showed that one of the major obstacles that Public Accounts Committee face in their attempt to oversee governments' accounts is that parliamentarians are unwilling to engage in serious oversight of government accounts.<sup>10</sup> The job of scrutinizing government accounts may be

<sup>10</sup> In spite of the fact that Public Accounts Committees are proper oversight committees, that is committees established to oversee government accounts, the list of oversight tools considered by the WBI-IPU survey did not include the Public Accounts Committees. On Public Accounts Committees see also Wehner (2003; 2005).

considered as giving little visibility to MPs, and that may be a disincentive for members seeking to be re-elected. Worse, MPs belonging to the governing party (or coalition) may fear that by scrutinizing government's accounts they will be forced to choose between performing their oversight functions effectively (possibly straining the relationship between an MP and its party) and preserving a strong tie to their party.<sup>11</sup> Therefore, in parliaments with Public Accounts Committees, the presence of these committees is a necessary but not sufficient condition for effective scrutiny of government accounts. If this conclusion could be extended from the particular case of the Public Account Committees to the oversight tools in general, it could equally explain why the presence of oversight tools does not necessarily amount to effective oversight—which is what is needed for a country to be considered liberal democratic.

## *Conclusions*

The purpose of this paper was to investigate the relationship between the number of oversight tools available to a parliament on the one hand and the probability that a country is formally democratic and/or liberal democratic on the other hand. Analyzing the survey data collected by the WBI in collaboration with the IPU, we found that the number of oversight tools available to a country's parliament is a strong predictor of whether that country is at least formally democratic. Our findings indicate that the probability that a country is formally democratic increases as the number of oversight tools increases. In this respect we found that when a middle income country has all of the seven oversight tools for which the WBI-IPU survey sought information available to its parliament, there is a 95 percent probability that the country is formally democratic. We also found that the probability that a country is liberal democratic increases as the number of oversight tools available to the parliament increases. However, we observed that the relationship between oversight potential and liberal democracy is neither as strong nor as significant as the relationship between formal democracy and oversight potential. This difference may be explained by the fact that liberal democratic regimes are concerned not only with the formal aspects of democracy such as the presence of democratic mechanisms and institutions, but also with the substance of democracy. Liberal democracies are not satisfied with oversight potential, rather they seek effective oversight implementation. Furthermore parliaments need the political will to exercise oversight effectively.

These findings suggest two additional considerations. First, our analyses, by showing that increased legislative oversight is good for democracy, confirm what several international organizations have often assumed, namely that strengthening legislatures (and legislature's oversight potential) is good for democracy building. Legislatures also contribute significantly to democratic governance. By performing their oversight function, parliaments play a major role in keeping governments responsive and accountable for their actions, and are thus instrumental in preventing abuses of power. Second, our analyses further suggest that while international organizations are correct in arguing that strengthening legislatures is critical for the promotion and consolidation of democracy, they may need to reconsider their legislative

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<sup>11</sup> The reasons why partisanship may represent a major obstacle to the proper functioning of Public Accounts Committees are discussed by Staphenurst et alii (2005).

strengthening strategies (NDI 2000; NDI, 2001; Pelizzo and Stapenhurst, 2004b). In the past programs focused mainly on strengthening legislatures' oversight potential. Yet parliaments must have not only the tools but also the political will to oversee the government. Only then can they move from formal to liberal democracy because liberal democracy requires effective oversight implementation and not just oversight potential. The major challenge for the international organizations concerned with the promotion and consolidation of democracy is to identify and promote the conditions under which parliaments and parliamentarians are more likely to engage in effective oversight of government activities.

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# Public Accounts Committees

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## *Introduction*

The collapse of many authoritarian regimes in the course of what Samuel Huntington called “the third wave of democratization” (Huntington, 1991) and the democratic transitions in Eastern and Central Europe, Latin America and Asia, have generated an increasing interest among political scientists for what Giovanni Sartori calls “constitutional engineering” (Sartori, 1994a)<sup>12</sup>. Political scientists are paying new, and increasing, attention to which institutions are more likely to lead to the consolidation of democracies that emerged in this ‘third wave’ (Stepan and Skach, 1994:119). More specifically, political scientists have investigated whether and to what extent democratic consolidation or democratic collapse is affected by the form of government.

In the course of this debate several positions have emerged. Juan Linz (1994) posited that the parliamentary form of government better suits democracy and democracy’s consolidation. He argued that the presidential form of government, because of its rigidity and the dual legitimacy of the executive and the legislative, is less likely to sustain democracy. Przeworski and others (1997:301) have provided extensive empirical evidence supporting Linz’s argument. They showed through statistical analysis that the probability of a democratic breakdown in countries with a presidential form of government is three times higher than it is in countries with a parliamentary form of government. At the same time, Scott Mainwaring underlined that the survival of democratic regimes under the presidential form of government is only in danger when coupled with a hyper-fragmented party system (Mainwaring, 1993: 198-228)<sup>13</sup>.

While political scientists investigated which forms of government are more likely to ensure the survival of democratic regimes, several international organizations began to investigate the relationship between democracies and institutions. Organizations such as the World Bank

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<sup>12</sup> A transition is the period between the crisis or the collapse of a political regime and the establishment of a new one. A transition is a democratic transition when it ends with the establishment of a democratic regime. A democratic transition is also called democratization. There is a wave of democratization when the number of countries in transition from a non-democratic system to a democratic one outnumbers the countries moving in the opposite direction. See Huntington (1991:15).

<sup>13</sup> This evidence has led many political scientists to believe that the presidential form of government is less likely to sustain the survival of a democratic regime and that therefore, parliamentarism is the best form of democratic government. Giovanni Sartori (1994a; 1994b:107) has noted however that the fact that presidentialism is not good for democracy does not make parliamentarism the ‘good alternative’. Parliamentary governments may be unstable and inefficient, and their instability and ineffectiveness may lead to a regime breakdown. Historical examples of this include the Weimar Republic, the French Fourth Republic, and the Spanish Republic—on this see Sartori (1976) or Pelizzo-Babones (2005). A critical assessment of the criticisms of presidentialism can be found in Shugart and Carey (1992:28-54).

Institute (WBI) and the United Nations Development Program (UNDP) are paying increasing attention to legislatures and the role they can play in consolidating democracy, improving governance, curbing corruption, and, ultimately, reducing poverty (National Democratic Institute, 200; Stapenhurst and Pelizzo, 2002; Pelizzo and Stapenhurst, 2004a; Pelizzo and Stapenhurst, 2004b; Pelizzo, Stapenhurst and Olson, 2004).

International organizations have adopted an interesting approach to the study of legislatures. They acknowledge that modern political systems are often characterized by a sort of “executive dominance” or “executive preeminence”. This means that governments have the political and the legislative initiative, and they have the competence, the information, and the know-how necessary to analyze pressing problems and formulate policies and solutions. Meanwhile, parliaments and legislatures perform more of an oversight function. They evaluate the virtues (or the lack thereof) of government policies; keep governments in check, prevent governments from abusing their power; examine and assess the merits of governments’ legislative proposals, and vote to amend, approve or reject them. In addition to this ex ante oversight function (oversight which is exercised before a policy is enacted) parliaments and legislatures also perform an ex post oversight function as they are in charge of overseeing policy implementation. Parliaments ensure that policies are implemented as they were approved by the legislature.

The above suggests that legislatures and parliaments may be less capable of initiating policies than they were in the past, but that they counterbalance this loss of political initiative by performing an increasing oversight role. International organizations are thus paying increasing attention to which institutional instruments may help legislators and legislatures to oversee governments’ actions and activities (National Democratic Institute, 200; Stapenhurst and Pelizzo, 2002; Pelizzo and Stapenhurst, 2004a; Pelizzo and Stapenhurst, 2004b; Pelizzo, Stapenhurst and Olson, 2004). The interest in Public Accounts Committees (PACs) originated within this context. This paper will first look closely at PACs, how they are established and institutionalized, and the functions that they perform. The paper will also analyze a selection of survey data collected by WBI in collaboration with the World Bank’s South Asia Region Financial Management unit (SARFM) to assess the good functioning of the PACs and factors that enable good functioning.

### ***Public Accounts Committees (PACs)***

PACs are one of the instruments that parliaments can use to check governments’ activities<sup>14</sup>. These committees, first instituted in the United Kingdom by a resolution of the House of Commons in 1861, are now fairly common in the countries of the Commonwealth. In general PACs are parliamentary standing committees of the Lower House. However there are some

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<sup>14</sup> Although they are generally called Public Accounts Committees, the PAC may sometimes take different names. For example in the Seychelles, they are called Committees of finances and public accounts (art. 104(1a) of the Constitution. In the Cook Islands they are called Public Expenditures Committees (art.71 (3) of the Constitution). However, it is important to note that in spite of the fact that they may assume different names, the PACs all perform the same set of functions..



exceptions to this general trend. In Australia and in India, for example, the PAC is a bicameral committee.

PACs may be institutionalized in different ways. A PAC may be established by a country's constitution. This is the case in Antigua and Barbuda (art. 98 of the 1981 Constitution); Bangladesh (art. 76 of the 1972 Constitution); the Cook Islands (art. 71(3) of the Constitution); Kiribati (art. 115 of the Constitutions); the Seychelles (art. 104(1a) of the Constitution); Saint Vincent (art. 76 of the 1979 Constitution), Trinidad and Tobago (art. 119 of the 1976 Constitution); and Zambia (art. 103(5) of the Constitution).<sup>15</sup> There is a second group of countries in which PACs are institutionalized by the standing order of the assembly. PACs were instituted respectively by art. 70(2) of the Standing Order of the Parliament in Guyana; by art. 89 of the Standing Orders in Tanzania; by art. 122 (1) of the Standing Orders in Uganda; by art. 108(3) of the Standing Orders in Canada; by art. 120E of the Standing Orders in Malta; by art. 69 of the Standing Orders in Jamaica; and by the articles 308 and 309 of the Rules of Procedures in India. There is a third group of countries, which includes Australia and the United Kingdom, in which the PAC is instituted by an Act of Parliament—respectively the Public Accounts and Audit Committee Act 1951 in Australia (consolidated on November 6, 1997) and the National Audit Act in the United Kingdom (1861).

The number of members in a PAC varies from country to country. There are seven members in Malta, seventeen in Canada, and twenty-two in India<sup>16</sup>. Interestingly, despite the size of the membership, the distribution of seats within a PAC corresponds, as much as possible, to the distribution of seats in the whole assembly. This means that the government party (or the government coalition) controls a majority of the seats in the PAC.

To counterbalance the power of the majority in the PAC, the opposition party is generally given the Chairmanship of the PAC. David McGee notes that “in two-thirds of the cases PACs are chaired by an opposition member” (McGee, 2002:66). McGee underlines that in countries such as the United Kingdom or India, this practice is the result of “a very strong convention” (McGee, 2002:66). In other countries it is codified by the same norms and rules that establish the PAC itself. For example, art. 120E(4) of the Standing Orders of Malta's Parliament establishes “one of the members nominated by the Leader of the Opposition and so designated by him in consultation with the Leader of the House shall be appointed as Chairman of the Public Accounts Committee”. Similarly art. 87(5) of the Standing Orders of the Tanzanian Parliament establishes that “the Chairperson for the Public Account Committee shall be elected from amongst the Members of the Committee from the Opposition”.

That the Chairmanship of the PAC is given to an opposition member performs two basic functions. First, it re-equilibrates the balance of power between the government and the opposition. Second, it performs a symbolic function. The fact that the Chairperson of the PAC is an opposition member indicates the willingness of both the majority and the minority to operate within the PAC in a bipartisan manner.

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<sup>15</sup> It is worth noting that the PAC in Trinidad and Tobago is established by both art. 119 of the Constitution and art. 72 of the Standing Orders.

<sup>16</sup> Of these 22 members, 15 are members of the Lok Sabha and 7 are members of the Rajya Sabha.

Australia represents an interesting exception to this general trend. In Australia, the Chairperson of the PAC is generally an MP from the parliamentary majority. This choice is motivated by the fact that “in Australia it is considered advantageous to have a government Member as Chair, as this can assist with the implementation of the PAC’s recommendations. It is regarded as the duty of the Chair to advocate that the PAC’s recommendations be taken up and implemented by the government. This can involve behind the scenes work persuading reluctant ministers to act. A government Member can do this more effectively than an opposition Member who as political opponent will not have the confidence of the ministers” (McGee, 2002:66).

### ***Role and Functions of the PACs***

PACs are standing committees which help Parliament oversee the activities performed by the Government. Like any other standing committee, a PAC has the power to investigate and examine all the issues that are referred to it by the parliament<sup>17</sup>. A PAC can also investigate specific issues such as government accountability to Parliament regarding expenses approved by the government; effectiveness and efficiency of government enacted policies; and the quality of the administration.

To fulfill its role, the PAC is given additional and more specific powers, such as the power to examine the public accounts, the comments on the public accounts, and all the reports drafted by the Auditor General and the National Audit Office. The PAC also has the power to conduct investigations (directly or indirectly); to receive all the documentation that it considers necessary to adequately perform its functions; to invite government members to attend PAC meetings and to respond to questions; to give publicity to the PAC’s conclusions; to report to the Parliament; and to present the PAC’s recommendations to the government.

### ***The Success of PACs***

The WBI and the SARFM surveyed 33 Chairs of Public Accounts Committees from national and sub-national parliaments in the Commonwealth. This paper presents the data generated in the course of this survey. Until recently, very little was known about the effectiveness of PACs. No comparative study had systematically investigated whether, and to what extent, PACs actually contribute to effective oversight of government activities and expenses. The survey conducted by the WBI, and the SARFM, has generated fairly interesting data. The survey data can be used to perform two tasks. First, the data may be used to assess results achieved by the PACs under specific conditions. Second the data may be used to assess which conditions and factors may help PACs work well.

Looking at the data on the success of the PACs, it is important to note that their success rate varies significantly depending on the nature of the results they seek to achieve. For example, while 78.8 percent of the Chairpersons surveyed reported that the recommendations

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<sup>17</sup> Or by the president of the Chamber as in Tanzania.

formulated by the PAC are frequently accepted by the government, only 63.6 percent of respondents stated that the recommendations formulated by the PAC are frequently implemented. Conversely, while only 15.2 percent of the respondents reported that the PAC's recommendations are rarely accepted, 27.3 percent of respondents indicated that the recommendations formulated by the PAC are rarely implemented by the government. Data are presented in Table 1.

**Table 1: Results achieved by the PAC: how frequently has the PAC achieved the following result?**

<i>Result achieved</i>	<i>Frequently</i>	<i>Rarely</i>	<i>of N</i>
Recommendations accepted	78.8	15.2	33
Recommendations implemented	63.6	27.3	33
Better information	60.8	18.2	33
Disciplinary action	27.3	15.2	33
Modification of legislation	15.2	54.5	33

Further analysis of the data suggests some additional considerations. For more than 60 percent of respondents, the government frequently provides better information to the parliament in the light of the PAC's recommendations. However it is rare that the actions, suggestions and recommendations of the PAC lead to disciplinary action against public officials who have violated the existing rules and norms. Less than one-third of respondents reported that disciplinary action occurs frequently in the wake of the PAC's recommendations. It is also worth noting that the government rarely modifies its legislation and legislative proposals in light of the PAC's recommendations and suggestions.

*The Determinants of a PAC's Success*

The WBI/SARFM survey did not simply ask whether, to what extent, and how PACs are effective or successful. It also attempted to assess which conditions facilitate the good functioning and the success of PACs.

The survey administrators provided a list of 37 factors which could be considered as possible determinants of a PAC's success. Respondents were then asked to indicate how much importance they attached to each of these factors, that is whether they considered the factors to be very important, somewhat important or not important. These factors fell into one of the following three categories: the composition of the commission; the powers of the commission; and the practices of the commission. Respondents were also asked to identify which conditions could prevent the successful functioning of a PAC.

*Composition of the Commission*

Only two of the 37 factors in the above-mentioned list belong to this first category:

1. 'balanced representation of all major political parties in the commission'
2. 'exclusion of government members from the commission'

The importance of this second factor is clear. The mission of a PAC is to investigate the activities of the government, especially with regard to the use of public funds and resources. In order to perform its oversight activity, the PAC has to be free to conduct its business without any government interference. This condition (freedom from government interference) could be difficult to achieve if government members were also serving as members of the PAC. If MPs already serving in the cabinet were allowed to serve on the PAC, they might try to slow down or mislead the investigative action of the commission in order to protect the cabinet in which they also serve.

Even assuming that MPs, serving in the cabinet, do not mislead or slow down the PAC in the performance of its duties, their membership in the PAC would still pose a problem for the proper functioning of the committee. The study by McGee (2002) revealed that PACs are not the most appealing commissions on which MPs can serve. Some MPs fear that serving on a PAC requires a great amount of work without providing much visibility. Membership in a PAC may also be seen as not being adequately rewarded at the ballot box – in other words there may be little or no electoral incentive to serve on a PAC. The absence of electoral incentives is coupled with the absence of partisan incentives (or the presence of partisan disincentives). MPs fear that serving on a PAC may cause them trouble with their own respective parties. MPs, belonging to the majority party (or coalition) often worry that serving in a PAC might force them to choose between loyally serving the party (by not performing their committee duties) and loyally serving the PAC (potentially alienating their own party). If MPs with appointments in the cabinet were allowed to serve in the PAC, their presence in the committee would provide a further incentive to the younger MPs to favor partisan interests over committee interests. The committee would thus end up functioning in a partisan manner. As composition of the committee is fairly proportional, it reflects the distribution of seats in the assembly as a whole, and in parliamentary systems the government party (or coalition) controls the majority of the parliamentary seats. Hence, as soon as the PAC starts operating in a partisan fashion, the government would be able to control the PAC and avoid parliamentary oversight.

There is a third reason why cabinet ministers (and under-secretaries) should not be allowed to serve on a PAC. Even assuming that the presence of government officials in the PAC does not negatively affect its functioning, it certainly affects the credibility of the PAC and its deliberations—which are the PAC’s true assets. For these reasons, government members should not be allowed to serve on the PAC.

**Table 2: Success and Composition of the PAC. How important is this factor?**

<i>Factor</i>	<i>Very Important</i>	<i>Important</i>	<i>Not important</i>	<i>N</i>
Proportional representation of the various parliamentary parties	86.2	10.3	3.4	29
Exclusion of MPs with cabinet posts	85.2	14.8	0	27

Table 2 shows that while some respondents have not assessed the importance of the composition of the PAC as a condition for a PAC’s success, the majority believe that the composition of the PAC is a crucial factor in making PACs work and work well. Excluding

MPs serving in the cabinet from the PAC is considered important or very important by respectively 14.8 and 85.2 percent of respondents. Similarly, the proportional representation of parliamentary parties in the PAC is considered to be important or very important by 10.3 and 86.2 percent of the respondents respectively. Interestingly, while 3.4 percent of the respondents said that proportional representation of parties in the PAC is not important, none of the respondents considered the exclusion of government members as not important.

*Powers of the Committee*

The survey, asked the 33 PAC Chairs to indicate how important certain powers and/or characteristics were for the success of the PAC. Respondents were given a list of 17 powers or characteristics, and asked to indicate whether they considered these powers as very important, important or not important.

Analysis of the survey data reveals that the importance of certain powers or characteristics is almost unanimously acknowledged. For example, the power to formulate suggestions and to publish them; the power to choose which topics should be investigated without having to accept orders or suggestions from the government; and the power to investigate all the current and the past expenses deliberated by the executive are almost unanimously considered as important or very important. All respondents also considered as important or very important that the PAC have a clear focus on keeping the government accountable for the use of public money.

It should be noted that while a large percentage of respondents did not consider whether the PAC has the power to summon the cabinet ministers before it as important, they almost unanimously considered important or very important that the PAC has the power to force witnesses to respond to questions. More than 93 percent of the respondents indicated that the power to force witnesses to respond to questions is important or very important. Further details are presented in Table 3.

**Table 3: Success and Powers of PACs. How Important is this factors? Percentages.**

<i>Power of the Committee</i>	<i>Very important</i>	<i>Important</i>	<i>Not important</i>	<i>N</i>
Formulate recommendations and publish the conclusions	97	3	0	33
Investigate all past and present expenses	93.5	6.5	0	31
Choose topics for investigation without following the suggestions of the government	90.9	9.1	0	33
Focus on keeping government accountable for spending	90.9	9.1	0	33
Force witnesses to answer questions	87.1	6.45	6.45	33
Examine the budget of the Legislative Auditor	58.8	35.3	23.5	17
Force cabinet ministers to appear before the committee	55	15	45	33
View the proposed legislation or the amendments to the Legislative Auditor’s Act	47.8	30.4	21.8	23

### *Success and Practices of the PAC*

There is a third set of factors that may facilitate the success or the effectiveness of PACs in performing their tasks. This third set of factors is based on practices adopted by PACs themselves and their members.

In order to identify which practices and dynamics could improve the performance of PACs and make them more successful, the survey asked respondents to assess the importance of the 18 practices.

Two practices were considered to be particularly important for the success of PACs. Respondents reported that keeping the records or the proceedings of meetings was one the most important ways to improve the PAC's performance. Respondents also noted that the PAC's performance was greatly enhanced when members of the PAC did their homework before attending the PAC's meetings. Both practices were considered as important or very important by 97 percent of respondents although keeping the transcripts of the sessions was considered to be slightly more important than doing homework. In fact, while preparation for/before the meeting is considered as very important by 78.8 percent of the respondents, keeping the transcripts is considered to be very important by 87.9 percent of the respondents.

The existence of procedures and mechanisms to assess whether the government actually implements the recommendations formulated by the PAC is also considered as an important condition for success of the PAC. The existence of such procedures was considered as important or very important by more than 93 percent of respondents. Further details can be found in Table 4.

Bipartisanship and the bipartisan functioning of the PAC are considered as the fourth most important practice (or dynamic) for the success of a PAC. More than 90 percent of respondents indicated as important or very important that there is a close working relationship between committee members regardless of their partisan affiliation.

This is an interesting result, particularly if considered in light of what was noted above. The data presented above revealed that the importance of certain powers at the disposal of PACs was unanimously acknowledged. Yet a small percentage of PAC Chairs considered parliamentary parties' representation in a PAC as unnecessary for a PAC's success. Why? One reason may be that a PAC is by its very nature a committee in which partisan divisions should be sidelined (Rockman, 1984). In order for a PAC to work and work well, it needs to function in a bi-partisan or rather non-partisan manner<sup>18</sup>. If MPs serving in a PAC must behave in a non-partisan fashion, the importance of their partisan affiliation decreases and it may be argued that therefore the importance of a proportional representation of the various parliamentary parties also decreases.

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<sup>18</sup> In order to create this close working relationship between a PACs' members from the various parties, some parliaments request that all the PAC's decisions be unanimous. According to McGee, 33 percent of the national and sub-national parliaments in the Commonwealth request that the PAC's decisions be unanimous. McGee (2002:98).

It is worth noting that not all practices are regarded as important for the good functioning or success of the PACs. As shown in Table 5, almost one third of respondents indicated that economic incentives provided to members serving on the PAC were not important for a PAC's success.

**Table 4: Are Practices and Procedures important for the Success of a PAC? The most important practices. (Percentages)**

<i>Practice of the Committee</i>	<i>very important</i>	<i>Important</i>	<i>Not important</i>	<i>N</i>
Keeping the transcripts of the meetings	87.9	9.1	3.0	33
Preparation before Committee Meetings	78.8	18.2	3.0	33
Procedures to determine whether the government has taken any step to implement the recommendations of the Committee	75.0	18.7	6.3	32
Close working relationship between the members of the various political parties	75.0	15.6	9.4	32

In addition, more than one third of respondents considered the establishment of sub-committees (to help the PACs perform their tasks) as unimportant. Respondents tended to agree that the political and the professional experiences of the PAC's members have little impact on the functioning and success of the PAC. Experience in business or administration was considered as unimportant by more than one-third of respondents. Similarly, previous experience in other parliamentary committees was considered as unimportant by almost 42 percent of the respondents. Finally, broadcasting the PACs meetings was considered the least important practice.

**Table 5: The Least Important Practices and Dynamics for the Success of the PAC. (Percentages).**

<i>Practice of the Committee</i>	<i>Not important</i>	<i>N</i>
TV Broadcasting of the meetings	52.0	19
PAC members with at least 2 years of experience in any parliamentary committee	41.7	24
PAC members with administrative or business experience	35.7	28
Creation of sub-committees	35.3	17
Extra money or additional incentives for members to participate in the meetings scheduled outside the normal legislative session	31.8	22

### *Obstacles to the good functioning of the PAC*

The survey data presented in this paper provide useful indications as to which institutional factors facilitate the good functioning and success of PACs. However, oversight potential does not necessarily translate in effective oversight. Which conditions may prevent the PACs from functioning effectively?

The first obstacle to the good functioning of a PAC is partisanship, that is some PAC members operating with a partisan spirit and using the investigative powers of the PAC to promote their own political fortunes (along with those of their respective parties). This problem is not necessarily due to institutional factors; rather it is a behavioral problem. However, in so far as institutions provide incentives for (political) behavior, it may be possible to find institutional solutions to these problems. For example, in order to minimize the risk of partisan conflicts within a PAC, many parliaments assign the PAC's Chairmanship to a member of the opposition. In the Australian case, where the PAC's Chairperson is a member of the majority party, the importance of reaching unanimous decisions on suggestions and recommendations is greatly emphasized. In order to minimize partisan tensions within the PAC, many parliaments stress that the PAC's mandate is not that of assessing the political value or content of the policies enacted by the government, but instead assessing whether policies are implemented in an efficient and effective manner. However none of these solutions by themselves are sufficient to ensure bipartisan cooperation. What else can be done?

When members join a PAC they could be asked to underwrite a (formal or informal) code of conduct in which they pledge their loyalty to the good, non-partisan functioning of the committee. Their word would be considered binding and the PAC's Chairpersons could use this pledge to induce members to perform their functions and respect their institutional duties.

A second, and more serious, problem for the effectiveness of the PAC's activity is that governments may have little interest in (if not open aversion to) parliamentary oversight of their activities. Governments may consider parliamentary oversight as an intrusion in their sphere of influence. Similarly governments may think that PACs are not sufficiently informed or competent enough to formulate suggestions, criticisms and observations. This is a serious problem as it indicates poor understanding of the functions that the executive and legislative branches perform in parliamentary systems.

In parliamentary systems, the government governs and the parliament ensures that the government is governing well. When governments try to avoid parliamentary controls, or when governments consider parliamentary controls merely as obstacles to effective government action, they misunderstand the principle the principle of parliamentary oversight.

This said, it is important to keep in mind that this imperfect understanding represents a problem is not confined to newly established democracies, or democratizing regimes, which have a fairly limited experience in the functioning of democratic institutions. It also exists in well established and consolidated democracies. The Australian case is, in this respect, rather emblematic. Between 1932 and 1951, the PAC of the Australian Parliament did not meet because the government – which could not see what benefits would come out of the meetings of this committee – decided that meetings of this committee were unnecessary. This important problem can be solved only by inducing governments to be respectful of PACs and their activities.



A final observation is in order at this point. The good functioning of PACs is seriously threatened in those countries in which corruption and other forms of improper behavior (such as the conflict of interest) are tolerated. In fact, if there is no demand for good governance – efficient, effective, transparent and honest governance - by civil society and others, the political class does not have any incentive to use the available parliamentary oversight mechanisms to check and possibly improve the quality of governance.

### ***Conclusions***

The purpose of this paper was to discuss one of the oversight tools adopted in the countries of the Commonwealth—Public Account Committees. The paper looked at what these committees are; how and by whom they are instituted; how they function; results they are able to achieve (and therefore how they influence the political system); and the conditions which promote PACs good functioning and success.

The analysis was performed based on the assumption that parliamentary control of government activities can prevent governments from abusing their powers and thus contribute to the promotion of good governance. In other words, it was assumed that parliaments and parliamentarians are the agents of good governance. In many countries, this is indeed the case. Parliaments and parliamentarians play an important role in the promotion of good governance.

However, while parliaments control governments (and their activities), they must be controlled in their turn. In the absence of such controls, how would one know whether parliamentary control of the executive is truly exercised for the good of the country and not for the good of few individuals? This point should receive more attention in the future. In order to ensure the success of a PAC (as well as that of the other instruments of parliamentary oversight), the morality (or ethical standards) of a PAC and its members must be above suspicion. This is the first step towards establishing a viable system of good governance.

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# **Legislative Oversight and the Israeli Committee System: Problems and Solutions**

Chen Friedberg

## ***Introduction***

The nineteenth century English philosopher John Stuart Mill determined that the most appropriate tasks of a representative body are to: oversee the government, clarify its activities to the public, compel the executive to provide full explanations and justification for its deeds, criticize it and, in extreme cases, withdraw support (Mill 1958). One of the ways Parliament can fulfill its oversight role is through its committees, which have been formed in large part to strengthen the role of the legislature and to protect democratic regimes by ensuring the existence of proper governmental and administrative order (Lees and Shaw 1979, Hazan 2001, Pelizzo and Stapenhurst 2004).

This paper looks at parliamentary oversight by the Israeli Parliament, the Knesset, through its committee system. It centers on the structural and procedural problems which characterize the Israeli parliamentary committee system, and which impair the effectiveness of its oversight. This is demonstrated by examining the functioning of two committees: (i) the State Control Committee and (ii) the Education and Culture Committee.

## ***The Knesset and its Oversight Role***

The Knesset is a House of Representatives with 120 Members elected for a four-year term. One of the functions of the Knesset is to oversee the government (ministerial cabinet), most of whose ministers and deputy ministers are also elected Knesset members. The Knesset fulfills its supervisory role in various ways:

- Every law that the government intends to enact must be approved by the Knesset, including the budget and taxation laws.
- The Knesset may also demand that the government provides additional information, either within the framework of its committee system or in the plenum - by means of debates, motions for the agenda, or parliamentary questions.
- An additional means of supervision are the State Comptroller's reports, which are presented to the Knesset.

## ***The Parliamentary Committee System in the Knesset***

The Israeli government is based on coalitions and membership in the committees is on parliamentary group basis. The number of Knesset members who are free to serve on committees is limited to about 80, while possible nominations for Knesset committees can reach about 200.

There are four types of Knesset committees: permanent committees, special committees, committees on a particular matter, and parliamentary inquiry committees:

- *Permanent committees* (discussed in detail below)
- *Parliamentary inquiry committees* are appointed by the plenum to deal with special issues of national importance.
- *Special committees* include two permanent committees, the Ethics Committee and the Interpretations Committee, which have a different status to that of the permanent committees.
- *Committees on particular matters* function in a similar manner to the permanent committees but are appointed for a limited period of time.

There are also *subcommittees* established on a temporary basis in order to deal with specific issues that demand more intense attention.

The Knesset committees draw their power from two legal sources: (i) the Knesset Parliamentary Rules of Procedure and (ii) the Basic Law: the Knesset (1958).

### ***Permanent Committees***

There are twelve permanent committees. The permanent committees and their chairmen are elected at the beginning of the term of each Knesset on the basis of a recommendation by the Arrangements Committee. Membership in the committees is on a Parliamentary Group basis. The number of members in each committee has changed over the years (ranging from 10 to 20 members). It should be noted that the number of Knesset committees and their size enables, at least in theory, more efficient oversight of the executive. However committee structure and other factors often hinder the committees' ability to implement effective oversight.

### ***Structural and Procedural Failures Characterizing the Israeli Committee System***

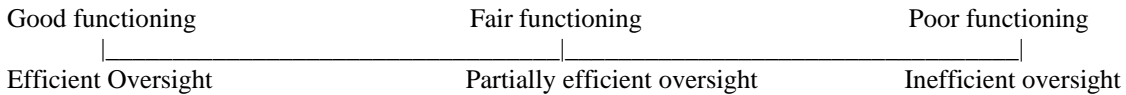
- ***Lack of association between committees and government ministries.*** Each permanent committee is responsible for a number of, or sometimes all, governmental ministries. As committees are forced to cover a wide variety of government activities under several ministries, committee members are often unable to focus on, and gain in depth expertise in, an area of a specific government ministry.
- ***The ability of parties to change committee members as desired.*** Knesset Parliamentary Procedures permit parties to change their committee representatives whenever they wish. Parties do so particularly when one of their committee members expresses an opinion in opposition to the position of the party. This turnover weakens the power of the committees and thus their oversight ability as members can be replaced after they have gained expertise by a member with no expertise.

- ***The lack of requirement for a quorum.*** The Knesset Parliamentary Procedures do not require a quorum for debates or votes, and determine that the committee chair has the power to continue committee meetings with any number of members present. The lack of requirement for a quorum impairs the decision-making ability of the committee and also damages their public image as committees may meet and vote with a small number of members present.
- ***The lack of legal ability of committees to require ministers and officials to appear before them.*** The Knesset committees have the power to request: (i) information regarding a government ministry's activities, and (ii) that ministers and government officials to appear before them. However, the committees do not have the power (except for the State Control Committee) to compel appearances of the government officials or to enforce handing over a full set of information. There are no sanctions to deal with non-appearance of officials or provision of only partial information.
- ***The lack of binding status for committee conclusions.*** The Knesset Parliamentary Procedures determine that motions for the agenda, which are passed to a committee, are returned to the Knesset with the committee's conclusions. After a lengthy period of government disregard for the committee conclusions, two sections were incorporated in the Knesset Parliamentary Procedures (1977, 1985), which state that the Knesset Chair will transfer committee conclusions to the relevant minister, who then is obliged to respond within three months regarding actions taken in the light of the conclusions. However, it should be noted that committee conclusions are treated only as recommendations to the government and are not binding.
- ***The public nature of committee meetings.*** Knesset Parliamentary Procedures state that committee meetings are not open to the public unless the committee decides otherwise. Closed-door sessions may enable committees to conduct their business in more conducive atmosphere, which may lead to a compromise across party lines and provide more efficient oversight. Starting with the Seventh Knesset (1969-73) committees began opening some of their meetings to the media. Since then this trend has increased due to the general penetration of electronic media into the Knesset, and the desire of some Knesset members to appear publicly. This trend may weaken efficient oversight of committees (Hazan 2001).

## *Empirical Examination of Two Knesset Committees - Methodological Issues*

### *Research population*

The two Knesset permanent committees, whose oversight functions are examined, are the State Control Committee and the Education and Culture Committee. Committee functioning is defined for the purpose of this paper as a sequence, which is termed the “Efficiency Sequence” and appears as follows:



The functioning of the two committees is examined through a number of detailed parameters, which move along the “efficiency axis”, ranging from poor to good functioning. The research comprises qualitative content analysis from archival sources, committees’ protocols, and official and internal publications.

### *Period of Time Examined*

The time period of the study covers three Knesset terms during the last three decades of the 20<sup>th</sup> century, chosen in order to identify the development of trends in parliamentary oversight over time. The examined Knessets are: the Seventh Knesset (1969-1973), the Tenth Knesset (1981-84) and the Thirteenth Knesset (1992-96).

### *Definitions of Parameters*

The functioning of both committees was examined by reviewing the following parameters:

1. The first parameter differs for the two committees. For the State Control Committee the first parameter is “The deficiencies Raised by the State Comptroller”. The first parameter for the Education Committee is “Sources of Information Used by Committee”.
2. Simultaneous Membership in a Number of Committees
3. Participation of Committee Members in Meetings
4. Professional Advisory Staff
5. Monitoring of Implementation of Committee’s Recommendation

## *Sampling*

### **A) The State Control Committee**

The State Control Committee scrutinizes the State Comptroller's reports and submits its conclusions and proposals to the Knesset plenum, which debates and approves them. It should be noted that in the 7<sup>th</sup> Knesset, the State Control Committee was a subcommittee of the Finance Committee.

Three Annual Reports of the State Comptroller that were published during the terms of the three Knessets were examined:

1. Annual Report 23 for 1972 (7<sup>th</sup> Knesset),
2. Annual Report 33 for 1982 (10<sup>th</sup> Knesset), and
3. Annual Report 44 for 1993 (13<sup>th</sup> Knesset).

Then the State Control Committee's protocols dealing with the three Annual Reports mentioned above were surveyed. The debates which were chosen dealt with deficiencies raised by the State Comptroller in three main areas that consume more than one third of the annual budget: Education, Health and Interior Ministries (one debate in the 7<sup>th</sup> Knesset, 14 debates in the 10<sup>th</sup> Knesset, and 14 debates in the 13<sup>th</sup> Knesset). Oversight activities of the State Control Committee and its efficiency are evaluated according to these protocols within the chosen parameters.

### **B) The Education and Culture Committee**

The Education and Culture Committee deals with the following issues: education, culture, science, the arts, broadcasting, cinema, and sports.

In the first two Knessets examined, a random sample of fifteen committee debates were chosen that were identified as having an "oversight" character (i.e. debates on government plans and activities of government ministries), and resulted in conclusions that were tabled in the Knesset. Oversight activity of the Education Committee and its efficiency are evaluated according to these discussion protocols, with analysis made according to the chosen parameters. In the 13<sup>th</sup> Knesset it was found that conclusions were drawn on only three issues that were not discussed within the plenum of the committee but rather in a subcommittee of the Education Committee. Therefore, no statistical evaluation of activity of the Education Committee in the 13 Knesset was possible.

### ***Empirical Evaluation of the Two Knesset Committees - Findings***

The extent of oversight effectiveness of the committees was examined through five parameters.



**A) The State Control Committee**

*1. Discussions in the Committee about the deficiencies raised by the State Comptroller regarding activities of the Education, Health and Interior Ministries:*

13 <sup>th</sup> Knesset - committee debated most deficiencies (95%)	10 <sup>th</sup> Knesset - committee debated only a portion of the deficiencies (44%)	7 <sup>th</sup> Knesset - committee debated only one deficiency (4%) during one debate
Good (full) functioning (Efficient oversight)	Fair functioning (Partially efficient oversight)	Poor functioning (Inefficient oversight)

The findings indicate that the Committee’s oversight effectiveness on deficiencies raised by the State Comptroller increased over years. The committee debated only one deficiency (4%) in the 7<sup>th</sup> Knesset while in the 13<sup>th</sup> Knesset it debated 95% of the deficiencies. However, the debate on large number of deficiencies raised by the State Comptroller does imply better functioning of the Committee in other parameters, which were examined.

*2. Simultaneous Membership in a Number of Committees:*

Number of members <b>only</b> on State Control Committee:	Number of members who served on a second committee:	Number of members who served on at least two other committees:
- 7 <sup>th</sup> Knesset: 46%	7 <sup>th</sup> Knesset: 39%	7 <sup>th</sup> Knesset: 15%
- 10 <sup>th</sup> Knesset: 0	10 <sup>th</sup> Knesset: 44%	10 <sup>th</sup> Knesset: 56%
- 13 <sup>th</sup> Knesset: 1 member	13 <sup>th</sup> Knesset: 47%	13 <sup>th</sup> Knesset: 47%
Good (full) functioning (Efficient oversight)	Fair functioning (Partially efficient oversight)	Poor functioning (Inefficient oversight)

Close to half of the committee members in both the 10<sup>th</sup> and in the 13<sup>th</sup> Knesset served on at least two other committees.

*3. Participation of Committee Members in Meetings:*

In the 7 <sup>th</sup> Knesset the average attendance in the debates was 62%. However, there was only one debate on deficiencies raised by the committee	The average attendance of in the debates in the 10 <sup>th</sup> Knesset was 45%. There were 14 debates on deficiencies.	The average attendance in the debates in the 13 <sup>th</sup> Knesset was low at 25%. There were 14 debates on deficiencies.
Good (full) functioning (Efficient oversight)	Fair functioning (Partially efficient oversight)	Poor functioning (Inefficient oversight)

The findings show that the average participation of members in the committee meetings decreased from 62% in the debates examined in the 7<sup>th</sup> Knesset (although, the committee

debated only one deficiency and thus arguably did not fulfill its oversight role) to 44% in the 10<sup>th</sup> Knesset and 25% in the 13<sup>th</sup> Knesset.

#### 4. Professional Advisory Staff

Wide-ranging advisory staff - <b>not found</b>	A fair-sized advisory staff - <b>not found</b>	In the three Knessets checked there was a limited advisory staff at most in all debates
Good (full) functioning (Efficient oversight)	Fair functioning (Partially efficient oversight)	Poor functioning (Inefficient oversight)

There was a limited number of professional advisory staff attending the debates checked and available to support the committee work.

#### 5. Monitoring of Implementation of the Committee's Recommendations

The committee carried out continual monitoring activity - <b>not found</b>	The committee in the 13 <sup>th</sup> Knesset carried out limited monitoring activity	The committee did not monitor implementation of its recommendations raised in three main areas in the 7 <sup>th</sup> and the 10 <sup>th</sup> Knessets
Good (full) functioning (Efficient oversight)	Fair functioning (Partially efficient oversight)	Poor functioning (Inefficient oversight)

When it comes to committee monitoring of implementation of its recommendations, there was a small improvement in the 13<sup>th</sup> Knesset in comparison to the two previous ones. However, it may be said that within this parameter, all three Knessets indicated overall poor functioning. In the 7<sup>th</sup> and the 10<sup>th</sup> Knessets the committee did not debate any follow-up steps, while in the 13<sup>th</sup> Knesset it carried out only very limited monitoring activities.<sup>5</sup>

#### 5. Overall Findings

#### 6. Overall Findings

According to three parameters, there has been a deterioration in committee functioning. In addition, the last parameter on "Monitoring of Implementation of Committee's Recommendations" shows poor committee functioning during all three Knessets. Simultaneous membership of the State Control Committee members in at least two other committees may have hindered the quality of the committee's work and impaired its ability to apply proper oversight in the examined Knessets (particularly in the 10<sup>th</sup> and the 13<sup>th</sup> Knessets). There may be a link between membership in multiple committees and the meager attendance of the committee meetings. Finally, even when a large number of deficiencies raised by the State Comptroller were debated, there was no monitoring of the implementation of the committee's recommendations. If the committee's recommendations were not implemented then the committee's work may have been in vain. The data shows that the State Control Committee functioning (although improved in one of the parameters examined) was

mediocre, and deteriorated in several cases over time.

## B) The Education and Culture Committee

### 1. Sources of Information Used by Committee:

Use of Independent Sources only - <b>not found</b>	In two Knessets checked there was great dependence on governmental sources (65% and 76%)	Dependence only on governmental sources - <b>not found</b>
Good (full) functioning (Efficient oversight)	Fair functioning (Partially efficient oversight)	Poor functioning (Inefficient oversight)

The committee functioning during the two periods was at best mediocre since the committee depended primarily on the government's sources of information (76% in the 7<sup>th</sup> Knesset and 65% in 10<sup>th</sup> Knesset).

### 2. Simultaneous Membership in a Number of Committees:

Number of members <b>only</b> on Education and Culture Committee:	Number of members who served on a second committee:	Number of members who served on at least two other committees:
- 7 <sup>th</sup> Knesset: 32%	7 <sup>th</sup> Knesset: 63%	7 <sup>th</sup> Knesset: 0
- 10 <sup>th</sup> Knesset: 46%	10 <sup>th</sup> Knesset: 27%	10 <sup>th</sup> Knesset: 27%
- 13 <sup>th</sup> Knesset: 0	13 <sup>th</sup> Knesset: 38%	13 <sup>th</sup> Knesset: 62%
Good (full) functioning (Efficient oversight)	Fair functioning (Partially efficient oversight)	Poor functioning (Inefficient oversight)

The findings indicate that in the second parameter, there was deterioration (particularly from the 10<sup>th</sup> Knesset to the 13<sup>th</sup> Knesset). In the 10<sup>th</sup> Knesset, almost half of the members served only on the Education and Culture Committee, while one third of the members participated in a second committee. In the 13<sup>th</sup> Knesset, no members served exclusively on Education and Culture committee, and almost two thirds of them served on at least two other committees.

### 3. Participation of Members in Committee Meetings:

Average attendance of committee members in debates was high (more than 50%) – <b>not found</b>	In the 7 <sup>th</sup> and 10 <sup>th</sup> Knessets average attendance of committee members in 30 debates checked was fair - 42% and 47% respectively	Average attendance of committee members in all debates was low (less than 1/3) – <b>not found</b>
Good (full) functioning (Efficient oversight)	Fair functioning (Partially efficient oversight)	Poor functioning (Inefficient oversight)

In the third parameter in the two Knessets examined, functioning was mediocre. The average participation in committee meetings was 42% in the 7<sup>th</sup> Knesset and 47% in the 10<sup>th</sup> Knesset.

4. *Professional advisory staff:*

A wide-ranging advisory staff - <b>not found</b>	A fair-sized advisory staff - <b>not found</b>	In the two Knessets checked there was no advisory staff present during the debate except for one legal advisor during one debate in the 10 <sup>th</sup> Knesset
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Good (full) functioning (Efficient oversight)	Fair functioning (Partially efficient oversight)	Poor functioning (Inefficient oversight)

Research showed a lack of independent professional advisors, therefore the committee functioning is determined as poor.

5. *Monitoring of Implementation of the Committees Conclusions:*

Follow-up debates regarding implementation of most of the committee conclusions - <b>not found</b>	Follow-up debates regarding implementation of some of the committee conclusions - <b>not found</b>	In the 7 <sup>th</sup> and the 10 <sup>th</sup> Knessets the Education Committee did not carry out follow-up debates on implementation of its conclusions
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Good (full) functioning (Efficient oversight)	Fair functioning (Partially efficient oversight)	Poor functioning (Inefficient oversight)

In the fifth parameter, the research shows that the committee did not carry out any follow-up debates on its conclusions which were tabled in the Knesset.

6. *Overall Findings*

Many of the Education and Culture Committee members served on other committees during the three Knessets examined potentially diminishing the time spent on the Education and Culture Committee. This may be linked to the relatively low participation of committee members in the checked debates. In addition, the committee depended largely on government information, and lacked independent professional staff and advisors. Finally, the lack of follow-up debates on implementation of the committee’s recommendations demonstrates weak oversight. Lack of follow-up may mean that government does not feel pressure to implement the committee’s recommendations. Overall the Education Committee’s functioning deteriorated in one of the parameters examined, and remained poor during the 7<sup>th</sup> and the 10<sup>th</sup> Knessets. During the 13<sup>th</sup> Knesset there were almost no conclusions despite the large number of matters debated, showing weak oversight efficiency.

## *Conclusions*

Knesset committees suffer from structural deficiencies and a large number of procedures, which prevent them from carrying out efficient oversight of the Executive. The examination of the State Control Committee and the Education and Culture Committee shows that simultaneous membership on different committees has been increasing over the years. Previous research shows that this may lead to lowered attendance in the committee meetings, thus hindering oversight of the executive which requires time, expertise, and knowledge of the supervised areas. Committees can scrutinize draft laws from the government more efficiently and effectively than the plenary assembly through the benefits of specialization (Krehbiel 1991). When a Knesset member serving on several committees must rush from one meeting to another (most committee meetings take place in the mornings of the three working days of the Knesset), that member may not have the time nor the ability to prepare for committee meetings and to develop expertise in the supervised areas, particularly as committees tend to oversee the activities of several ministries.

How could Knesset committees functioning be improved? The following conclusions, supported by a study of Knesset committees carried out by Hazan (2001), show that partial solutions are possible. Since the number of Knesset members will not change in the foreseeable future, structural changes could alter the areas of authority of the committees in order to harmonize them with the areas of activities of central government ministries. At the same time, the number of members of each committee could be decreased. These steps would reduce some of the difficulties, particularly the problem of simultaneous membership in a large number of committees. Knesset members, who serve on fewer committees, will have more time to prepare, and strengthen their knowledge and expertise on the issues covered by the committee. Furthermore, committee members should cover only activities of one or two ministries in order to further narrow down the areas covered.

In order to address procedural failures, political parties should be restricted from freely changing members of committees, and committees should be autonomous so that their members are not constantly threatened with removal when they express opposition to the position of their party. In addition, all committees (not only the State Control Committee) should have the authority to compel public servants and other citizens to appear before them and to submit full documentation. Having the power to compel individual cabinet ministers to attend a committee meeting and supply oral testimony places committees in a strong position to monitor ministries' activities. Committees can use such hearings as an opportunity to question a minister on activities and policies, and to determine how the minister's actions and attitude might differ from the politics of the coalition. Finally, committee meetings may benefit from being closed to the media and the public.

Only an increase in committee budgets and removing them from the control of government will enable the committees to provide truly independent oversight, which should be enhanced by professional staff (including external experts and research institutes). Increasing the number of professional staff available to support the work of committees is crucial. Today each committee has one to two legal advisors on staff (the Finance Committee has also an

economist), however the committee chairs still complain that this insufficient to meet their needs. Furthermore, improving information sources for committees will improve their functioning. The first significant step to address this issue was taken by the Chair of the 15<sup>th</sup> Knesset. He initiated a reform that established an independent information and research center to supply Knesset members with objective and practical information through research, studies, and comprehensive background documents.

The final area, where significant change is possible, is the ability of a committee to follow up on implementation of its recommendations. The committee, in general, must be capable of verifying government reactions to its conclusions and recommendations, whether they were taken in consideration or not. Strong committees are not only able to monitor and amend proposed government legislation, they have the added ability to monitor and scrutinize the non-legislative actions of individual cabinet ministers. Therefore, committee conclusions should be granted a legal status, requiring ministers to report back to committee on their subsequent actions. Only then will the chain of oversight be complete.

An improvement in the Knesset's oversight function through its parliamentary committees is possible. If reforms are undertaken, they may help turn the Knesset committees into real watchdogs that can help to defend public interest, oversee government spending, and ultimately help to prevent corruption.

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# Parliamentary Oversight of Defense in South Africa

Robert J. Griffiths

## *Democratic Transformation and Defense Policy*

South Africa's transformation from apartheid to majority rule represents a remarkable example of democratic transition and consolidation. The creation of perhaps the world's most progressive constitution combined with the establishment and strengthening of institutions supportive of democracy have been important components of this success. Among the critical issues that have had to be addressed in the context of this transformation is the reorientation of defense policy and the establishment of civilian control of the armed forces. The issues surrounding security sector reform have been particularly important because of the role of the armed forces in repressing opposition to apartheid. South Africa's role as regional hegemon and its role in regional peacekeeping and humanitarian intervention further underline the importance of security sector reform.

One of the key elements of the effort to insure transparency and accountability in the reorientation of defense policy is the establishment of parliamentary oversight of defense policy. Because the security sector has responsibility for a critical state function, and because of the role of the military under apartheid, it is essential that parliament assure that the armed forces are under effective civilian control. Beyond that, parliament can also serve as a counter-weight to executive dominance of defense policy.<sup>1</sup> During apartheid there were theoretically mechanisms of civilian control, although in practice there was little oversight of the armed forces. There were two reasons for this lack of supervision. First, national security played a paramount role during the "total strategy" era, giving the armed forces considerable influence in policy making.<sup>2</sup> Second, while members of parliament had some military experience due to conscription, there was little effort to develop expertise in military affairs. Instead, the tendency was for parliament to accept the military's assessments and recommendations.<sup>3</sup> As one member of the parliamentary defense committee remarked in 1996, before 1994 there were no civil-military relations to speak of, no strict oversight existed.<sup>4</sup> Democracy's requirements of accountability, transparency, and legitimacy necessitated the creation of institutions to ensure civilian dominance of defense policy and also opened civil-military relations and defense policy to greater parliamentary control. This involved the creation of a civilian defense department and secretariat, as well as establishing mechanisms for effective parliamentary oversight. The effectiveness of parliamentary

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1. See *Parliamentary Oversight of the Security Sector: Principles, Mechanisms, and Practices*, Inter-Parliamentary Union & Geneva Center for Democratic Control of Armed Forces, 2003, p. 18.

2. Total strategy was a policy formulated by the apartheid regime to combat what it saw as a total onslaught from communist and anti-apartheid forces. See for instance, R. Griffiths, "The South African Military: The Dilemmas of Expanded Influence in Decision-Making," *Journal of Asian and African Studies* XXVI, 1-2 (1991); Kenneth Grundy, *The Militarization of South African Politics*, (Bloomington, Ind.: Indiana University Press, 1986; and Steven Metz, Pretoria's Total Strategy and Low Intensity Conflict in Southern Africa," *Comparative Strategy*, 6.

3. Interviews, Defense Headquarters, Pretoria, June 1992 and July 1996.

4. Interview, Parliament, Cape Town February 2000.



oversight is influenced by a variety of institutional and practical considerations including the nature of the electoral system, patterns of party discipline, executive-legislative relations, and the capacity of the defense committees to effectively monitor policy.

### ***The Establishment of Parliamentary Defense Oversight***

South Africa's electoral system uses a closed list, proportional representation method. Political parties compile regional and national lists for the 400 seats in the National Assembly (NA) and representation is awarded on the basis of the party's proportion of the vote using the proportional, largest remainder method.<sup>5</sup> Because the parties submit the lists of candidates and MPs do not represent specific districts, the party can impose strict discipline on its members and there is a high likelihood that MPs will support the party's position on policy issues.<sup>6</sup> Moreover, the executive has a substantial advantage in terms of expertise especially given the technicalities of defense policy. The technical expertise of the executive provides greater influence in formulating defense policy in contrast to the parliamentary committees which lack support staff.

Reflecting the concern about civil-military relations and defense policy, two parliamentary committees were created to deal with defense after the 1994 elections, the Portfolio Committee (PC) and the Joint Standing Committee on Defense (JSCD). The Portfolio Committee focuses largely on legislation regarding defense. However, due to the changes required of the armed forces in South Africa, the Joint Standing Committee, composed of members of both the National Assembly and the National Council of Provinces (NCOP), was established primarily to oversee the military's transformation.

The allocation of seats on the PC is determined by the percentage of seats held in the parliament. The current distribution of seats on the portfolio committee breaks down in the following way: the ANC holds 10 seats, the Democratic Alliance (DA) holds two, the Inkatha Freedom Party (IFP), Freedom Front Plus (FF+), and the Pan-Africanist Congress (PAC) each have one seat. There are five alternates, three of whom are from the ANC while the other two representatives are from the IFP and the United Democratic Movement (UDM). On the JSCD, where representation is restricted to those parties with more than ten seats, the ANC holds 20 seats, the DA has four, and the IFP has two. Of the four alternates, three are from the ANC and one from the DA.

The committees have a range of powers that include the ability to summon witnesses before them, require them to give evidence or produce documents, require reports from individuals or institutions, and receive petitions, representations, or submissions from the public.<sup>7</sup> Under the NA rules, the Portfolio Committee must maintain oversight of "the exercise within its

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5. For a detailed explanation of South Africa's electoral system see "Election Resources on the Internet: The Republic of South Africa Electoral System," by Manuel Alvarez-Rivera available at <http://electionresources.org/za/system>.

6. See Lia Nijzink, "Opposition in the New South African Parliament," *Democratization*, Vol. 8 Issue 1 (Spring 2001), 56.

7. See Parliament of South Africa, "The Work of Committees" available at [www.parliament.gov.za](http://www.parliament.gov.za).

portfolio of national executive authority, including the implementation of legislation; any executive organ of State falling within its portfolio; any constitutional institution falling within its portfolio; any body or institution in respect of which oversight was assigned to it.” It may also “monitor, investigate, enquire into, and make recommendations concerning any such executive organ of state, constitutional institution, or other body or institution, including the legislative program, budget, rationalization, restructuring, functioning, organization, structure, staff and policies of such organ of the state, institution, or other body or institution.”<sup>8</sup>

The JSCD has responsibility for investigation and for recommendations on the budget, functioning, organization, armaments, policy, morale, and the South African National Defense Force’s state of preparedness as well as any other functions related to parliamentary supervision of the forces as may be prescribed by law.<sup>9</sup> The JSCD played an important role in reviewing the drafts and final version of the 1996 Defense White Paper and the 1998 Defense Review. Its membership has been drawn largely from the ranks of party bureaucrats and the committee has exercised considerable political clout.<sup>10</sup> Because of the broad mandate outlined in the Defense White Paper of 1996, the JSCD has been involved in a variety of oversight activities. It has reviewed the budget, overseen policy implementation, tried to reconcile differences that emerged between the SANDF and the Defense Secretariat, and has engaged in fact-finding efforts such as after the September 1999 incident in which a black officer went on a rampage at an army base outside Blomfontein and killed seven whites before being shot dead. The JSCD’s broad monitoring role was deemed necessary due to the challenges of integrating and transforming the South African armed forces.<sup>11</sup> Although the transformation of the South African National Defense Force is not yet complete, the Portfolio Committee has taken on most of the responsibility for committee work related to the defense sector.<sup>12</sup>

Early tensions between the defense force and the parliamentary committees have given way to greater cooperation. Initial exchanges between the defense force and parliamentary committees were strained, especially between old guard SADF officers who were unaccustomed to scrutiny by parliament, particularly by a committee headed by ANC members of parliament.<sup>13</sup> In fact, an initial request by the navy to purchase new vessels was rejected by parliament. This came as a surprise to military officers accustomed to getting what they wanted.<sup>14</sup> During the development of the Defense White Paper and the Defense Review, as well as work on the Defense Act, the JSCD was actively involved and refused to rubber stamp decisions. Their involvement in drafting policy was initially resisted and viewed as

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8. National Assembly Rules, June 1999, Part 9, rule #201, p. 50.

9. Defense White Paper, May 1996, Chap. 3, Section 2.

10. Philip Frankel, *Soldiers in a Storm: The Armed Forces in South Africa’s Democratic Transition*, (Boulder CO: Westview Press) 118-119.

11. Interviews, Parliament, Cape Town, February 2000.

12. Gavin Cawthra, “Security Governance in South Africa,” *African Security Review*, Vol. 14, No. 3(2005) available at [www.iss.co.za/pubs](http://www.iss.co.za/pubs).

13. Interviews, Parliament, Cape Town July 1996 and February 2000.

14. Interviews with Defense Committee staff, Cape Town July 1996.

interference but has now come to be accepted and even welcomed.<sup>15</sup> Despite getting off to a somewhat rocky start, parliamentary oversight is now well-established and the committees regularly request meetings with defense officials and review policy and budgets.

Certain key documents provide the basis for South Africa's defense policy and represent guidelines for parliamentary oversight. South Africa's shift to democracy prompted the Minister of Defense to present a draft White Paper on National Defense in June 1995, and to invite comments from parliament and the public. Several subsequent drafts incorporated the comments of the various political parties, NGOs, the defense industry, defense analysts, the SANDF, the parliamentary committees, and the public. The final draft, incorporating input from these participants was approved by the cabinet and released in May 1996.<sup>16</sup> In presenting the White Paper, then Defense Minister Joe Modise described it as reflecting "a national consensus on defense policy."<sup>17</sup> The White Paper outlined policy on the challenges of transformation, civil-military relations, the strategic environment, budgetary issues, the role and function of the armed forces, the arms industry, and human resources issues.

In an effort to elaborate on the broad policy outlines of the White Paper and in a further effort to involve the public, a Defense Review was undertaken in 1996. Under the auspices of a working group appointed by the minister and coordinated by the defense secretary, national consultative conferences were held in February and August of 1996 and in May of 1997. Two rounds of regional workshops were also held throughout the country in July 1996 and May 1997.<sup>18</sup> The Defense Review sought to determine the appropriate size, structure, and force design of the SANDF into the 21<sup>st</sup> century and addressed issues such as South Africa's approach to security and defense, arms control, defense posture and spending, peace operations and regional security, and deployment of the defense forces in support of the police.<sup>19</sup> The review concluded that the SANDF should be primarily a defensive force under constitutional control and shaped by South African defense and national policy. Its tasks were to defend against military threats and internal threats to the constitutional order, and to promote regional and international security. The SANDF was envisioned as consisting of a core force that could be expanded by calling up a part-time component when necessary. The size and design of the force was to be based on a needs-driven but cost constrained approach to defense. Initial indications were that defense allocations would be in the neighborhood of 1.5% of GDP with recognition that circumstances might dictate fluctuation in that figure.<sup>20</sup>

### ***The Strategic Defense Procurement Package and Parliamentary Oversight***

The R50 billion Strategic Defense Procurement Package (SDPP) announced in 1998 provides an opportunity to examine South Africa's progress in solidifying legitimacy, transparency,

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15.Thandi Modise, "Parliamentary Oversight of the South African Department of Defense: 1994-2003," in *Guarding the Guardians Parliamentary Oversight and Civil-Military Relations: The Challenges for SADC* ed. By Len LeRoux, Martin Rupiya, and Naison Ngoma. Available at [www.iss.co.za/pubs/books](http://www.iss.co.za/pubs/books).

16."Drafting Memorandum," *Defense White Paper*, May 1996.

17.Forward, *Defense White Paper*, May 1996.

18.See *South African Defense Review*, ch. 1, available at [www.mil.za/secretariat/defense](http://www.mil.za/secretariat/defense).

19.See *Defense Review*, chap. 1.

20.*Defense Review*, chap. 15, sections 13-20.

accountability, and parliamentary oversight of defense in light of the controversial decision to go forward with a large purchase of weapons from abroad.

During apartheid, an international arms embargo prevented Pretoria from acquiring weapons abroad. Although South Africa developed a sophisticated domestic arms industry it could not meet all the armed forces' needs. In 1998, after a 4-year debate, the government announced an R30 billion arms procurement deal to up-grade South Africa's defense capability. The purchases included three submarines, four corvettes, 30 helicopters, 28 jet fighters, and 24 training aircraft.<sup>21</sup> To pay for this package military spending was slated to increase from R10.72 billion in fiscal year 1999-2000 to R13.76 billion in 2000-2001 and then up to R15.27 billion the following year.<sup>22</sup> The R3 billion increase in the defense budget between the 1999-2000 and the 2000-2001 budget was due to this procurement.<sup>23</sup> Military spending was scheduled to rise to 16.8 billion in 2002/2003 with a further increase to 17.8 billion in 2003/2004.<sup>24</sup>

The decision to purchase these weapons and the increased military spending provoked considerable debate. While the need to replace aging weapons was widely acknowledged, many questioned the expenditure of such a large sum. Critics argued that it was extravagant in a country that was struggling to provide housing, electricity, and other social services while others charged that the procurement was ill-suited to South Africa's likely defense challenges.<sup>25</sup> Defense Department officials contended that instability in the region and the need to protect maritime resources justified the spending package.<sup>26</sup> To make the purchase more palatable, a deal was negotiated that would purportedly bring some 65,000 jobs to South Africa's economy which is desperately in need of employment opportunities. The jobs would come as a result of an industrial offset package that requires suppliers of the weapons to invest in local industry.<sup>27</sup> Despite government approval of the package, questions remained regarding the employment benefits of the deal and irregularities in the procurement process.

The force design contained in the Defense Review was presented to parliament in March 1998. While parliament endorsed the Review, it is not clear that parliament ever actually approved the arms package. The Institute for a Democratic South Africa (IDASA) asserted that when the parliament approved the force design, it did not approve the procurement package. Instead, IDASA maintained that parliament approved a concept of defense that was likely to change over time, was subject to parliamentary oversight, and actually represented a

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21. Address by Minister of Defense Mosiuoa Lekota on the Occasion of the Defense Budget Vote, April 7, 2000, available at <http://www.mil.za/ministry/speeches>.

22. See "Military Manoeuvres" *Africa Confidential* 41, 8 (14 April 2000) 1.

23. See "Business Report Budget Special," *Cape Times*, 2/24/2000.

24. "South African Military Budget" available at [www.globalsecurity.org/military/world/rsa/budget.htm](http://www.globalsecurity.org/military/world/rsa/budget.htm).

25. See Rocklyn Williams, "How Primary is the Primary Function?: Configuring the SANDF for African Realities," *African Security Review* Vol. 8, No. 6 available at <http://www.iss.co.za/pubs/ASR>.

26. See Tom Nevin, "South Africa: Guns and Butter," *African Business*, January, 1999.

27. See for instance, "Improper Influence in Arms Deal Probed," *Daily Mail and Guardian*, October 31, 2000, available at <http://www.mg.co.za>.

wish list which the Defense Department realized was unrealistic given fiscal constraints.<sup>28</sup> Nevertheless, the government went forward with the deal, announcing in September 1999 that the suppliers had been selected and the price of the package was placed at R21.3 billion over eight years.<sup>29</sup> The cost subsequently rose to R30.3 billion and by September 2000 was reported to be R43.8 billion due to foreign exchange rate changes and contractual price escalations.<sup>30</sup> Estimates of the cost of the SDPP eventually rose to R53b by 2003.<sup>31</sup>

Aside from the cost increases, questions were also raised regarding the benefits of the offsets guaranteed under the terms of the deal. These offsets required contractors to provide certain economic benefits to South Africa including selecting local subcontractors to provide some of the military hardware. Contractors were also required to provide non-military trade and investment. The value of these offsets was initially put at R110 billion but this was later reduced to R104 billion.<sup>32</sup> These offsets were also supposed to create the 65,000 new jobs.<sup>33</sup>

There were also allegations of corruption in the awarding of the contracts. Then-Pan Africanist Congress MP Patricia de Lille produced documents she said came from ANC members alleging corruption including bribes paid to senior ANC officials and contracts for their relatives.<sup>34</sup> Among those subsequently convicted of corruption were Tony Yengeni, then the ANC's chief parliamentary whip and Chair of the Joint Standing Committee on Defense during the contract negotiations, who obtained a discounted Mercedes from a contractor. He was convicted of fraud and sentenced to four years. Other high ranking ANC officials accused of wrongdoing were the late former Defense Minister Joe Modise who signed an agreement for the purchase of submarines three days before leaving office. Modise subsequently obtained a loan to buy shares of a company, of which he served as chairman, that had interests in the arms industry. Shamin Shaik, who was head of arms procurement for the Defense Department, was also alleged to have family connections to local firms that were awarded contracts as part of the offsets arrangement.<sup>35</sup> Shaik's brother, Durban businessman and one-time financial adviser to former deputy president Jacob Zuma, was also convicted of fraud and corruption. His conviction resulted in Zuma's dismissal from his post as deputy president following Judge Hilary Squires' characterization of the relationship between Shaik and Zuma as "generally corrupt."<sup>36</sup> The combination of skepticism about the cost and benefits of the package as well as the allegations of corruption ultimately triggered a series of investigations into the arms deal.

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28. "Democracy and the Arms Deal: An Interim Review by IDASA," available at [www.idasact.org.za/pims/arms/review](http://www.idasact.org.za/pims/arms/review).

29. "Chronology of the Arms Deal/ Strategic Defense Procurement Package," available at [www.idasact.org.za/pims/arms/ebrahim.htm](http://www.idasact.org.za/pims/arms/ebrahim.htm).

30. "Fourteenth Report of the Standing Committee on Public Accounts," available at [www.idasact.org.za/pims/arms/scopa.htm](http://www.idasact.org.za/pims/arms/scopa.htm).

31. "Arms Deal Cripples SANDF," *Mail and Guardian*, 20 March 2003, accessed at [www.mg.co.za](http://www.mg.co.za).

32. "Democracy and the Arms Deal," [www.idasact.org.za/pims/arms/review](http://www.idasact.org.za/pims/arms/review).

33. Tom Nevin, "SA's R50b Arms Deal Scandal," *African Business*, June 2001.

34. "Arms for Oblivion," *Africa Confidential*, Vol. 42 No. 3, (9 February 2001) 7.

35. "Lethal Weapons: South Africa's Arms Deal Investigation May Uncover Corruption in the ANC," *Time International*, (16 April 2001) 44.

36. "Zuma Axed," *The Star*, 14 June 2005, available at [www.iol.co.za](http://www.iol.co.za).

In September 2000, the Auditor-General (A-G) who is constitutionally responsible for auditing all government expenditure submitted a report to the parliament's Standing Committee on Public Accounts (SCOPA). SCOPA has responsibility for overseeing public expenditure of all government departments. When SCOPA receives a report from the Auditor-General indicating any fiscal irregularity, the committee must investigate. In the course of its investigation, SCOPA has the power to call the parties involved before the committee to account for and explain their actions.<sup>37</sup> The A-G questioned why the approved package was significantly more expensive than other proposals and recommended a full investigation.<sup>38</sup> SCOPA considered the A-G's report and issued its own report in October 2000 raising questions about the cost, offsets, the selection of both contractors and subcontractors and the Defense Department's acquisition policies. It also called for a combined investigation involving the A-G, the Special Investigating Unit (SIU), the Public Protector, the Investigating Directorate of Serious Economic Offenses, and any other relevant investigative bodies.<sup>39</sup>

A meeting was held in November 2000 of several investigative bodies and it was determined that the Directorate of Special Operations of the National Prosecuting Authority, the offices of the A-G and the Public Prosecutor, and the Special Investigating Unit under the direction of Judge Willem Heath would conduct a joint investigation of the Strategic Defense Procurement Package.<sup>40</sup> The South African Constitutional Court subsequently ruled that a judge could not head the SIU and Minister of Justice Penuel Maduna advised President Mbeki that the SIU under Heath should not play a role in the investigation. President Mbeki then announced that he would not grant a special proclamation authorizing the SIU to take part in the investigation.<sup>41</sup> The SIU, established by former president Nelson Mandela, had the capacity to invalidate contracts and reclaim state money if corruption was involved in the granting of contracts.<sup>42</sup> The SIU reclaimed some R314 million between 1997 and early 2001 from deals where it found evidence of corruption. Critics charged that the SIU was excluded because of its effectiveness.<sup>43</sup> This issue became the subject of considerable controversy around whether SCOPA expressly called for the inclusion of the SIU in the investigation and President Mbeki's decision not to allow the SIU permission to participate.<sup>44</sup>

Acting on the recommendation of the Standing Committee on Public Accounts, the Joint Investigative Team (JIT), consisting of the Office of the Public Prosecutor, the Auditor-General, and the Directorate of Special Operations of the National Prosecuting Authority held

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37. "A Brief Introduction to SCOPA," available at [www.idasa.org.za](http://www.idasa.org.za).

38. "Chronology of the Arms Deal/ Strategic Defense Procurement Package" available at [www.idasact.org.za/pims/arms/ebrahim.htm](http://www.idasact.org.za/pims/arms/ebrahim.htm).

39. "Fourteenth Report of the Standing Committee on Public Accounts" available at [www.idasact.org.za/pims/arms/scopa.htm](http://www.idasact.org.za/pims/arms/scopa.htm).

40. "Joint Report on the Strategic Defense Procurement Package," Chapter 1, page 7, available at [www.agsa.co.za](http://www.agsa.co.za).

41. "Chronology of the Arms Deal/Strategic Defense Procurement Package" available at [www.idasact.org.za/pims/arms/ebrahim.htm](http://www.idasact.org.za/pims/arms/ebrahim.htm).

42. Nevin, "Arms Deal Scandal."

43. "Arms for Oblivion," *Africa Confidential*, 7.

44. See Judith February, "Democracy and the South African Arms Deal," available at [www.iss.co.za/seminars/2004/1503graft/rsa.pdf](http://www.iss.co.za/seminars/2004/1503graft/rsa.pdf).

its first meeting in November 2000. Prior to its commencement, the JIT was referred to a total of six parliamentary committees.<sup>45</sup> The joint investigation was unique because it involved the cooperation of three agencies conducting a simultaneous investigation into alleged irregularities and criminal conduct. The public nature of the investigation was also unprecedented and as a result the JIT worked in uncharted territory.<sup>46</sup> The JIT found that there were some irregularities and shortcomings in the procurement process. There was a lack of evaluation criteria for companies submitting bids, business plans were not submitted in a timely fashion, and decisions on offset arrangements were made on an ad hoc basis. The JIT also found that the Cabinet was aware of the cost escalation in the deal and investigators were critical of the model used by the Affordability Team. In addition, the JIT found that there had been a conflict of interest related to the involvement of the Defense Department's Chief of Acquisitions, Shamin Shaik, whose brother had an interest in one of the foreign contractors.<sup>47</sup>

### ***The Implications for Defense Oversight***

The Strategic Defense Procurement Package provides insight into the development of transparency and accountability in defense policy and highlights the challenges of effective parliamentary oversight. Arms procurement is particularly well-suited for analysis of transparency and accountability due to the controversy generated by arms sales, their technical complexity, and the potential for corruption often associated with such lucrative transactions. It also exemplifies several problems associated with parliamentary oversight including the role of party discipline, executive-legislative relations, and the capacity of parliamentary committees to adequately monitor the complexities of defense policy, particularly those related to arms procurement. While the Defense White Paper and the Defense Review offered broad guidelines for defense policy, details were left out. The controversy over whether parliament directly approved the SDPP illustrates the ability of the executive to push forward with policies it favors even in the absence of explicit legislative approval. Once the executive decision was made, strong ANC party discipline made it difficult for MPs to challenge the SDPP. Opposition parties could question the deal, and they did, but they were powerless to stop it. Moreover, a lack of both parliamentary expertise related to arms procurement and parliamentary support staff to assist MPs in making independent judgments regarding the purchase made it even less likely that parliament would challenge the decision. This reflects a key shortcoming of parliamentary committees in new democracies - the lack of defense expertise.<sup>48</sup> Although members of the South African parliamentary committees often have military backgrounds, that does not guarantee the high level of expertise required to oversee the complexities of such an arms deal.

Although the arms purchase was unique and such a decision is unlikely to come up again soon, the package demonstrates that the military retains significant influence in defense policy making despite the fiscal constraints and competition for resources in post-apartheid South

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45. Interview, Parliament, Cape Town, July 2003.

46. "Strategic Defense Package Joint Report," chapter 1, 10.

47. "Democracy and the Arms Deal: Part III," available at [www.idasa.org.za/m\\_main.php?view=2&art\\_id=919](http://www.idasa.org.za/m_main.php?view=2&art_id=919).

48. Laurie Nathan, "Obstacles to Security Sector reform in New Democracies," *Journal of Security Sector Management*, Vol. 2 No. 3 (2004) available at [www.jofssm.org](http://www.jofssm.org).

Africa. The armed forces, prevented from purchasing arms from abroad during apartheid, lobbied successfully for a major upgrade in military hardware taking advantage of an open market and a post-Cold War excess of defense production capacity in the West. The end of the international arms embargo and the decision to purchase arms from foreign suppliers required the creation of new procurement procedures. Parliamentary capacity, characterized by an unfamiliarity with the recently established procurement process and lack of technical knowledge needed to translate the approved force structure into appropriate weapons systems, combined with executive dominance of decision making and tight party discipline, hindered the ability of parliament to effectively moderate the armed forces' push for an expensive weapons package. There was also confusion regarding whether the parliament's approval of the Defense Review constituted approval of the arms purchase. Gaps in the oversight capacity of the defense committees on this issue are also apparent. Among the general shortcomings regarding oversight mentioned by MPs are a lack of budgetary expertise, some unwillingness to challenge the defense department for fear of being labeled obstructionist or undermining democracy, and not developing an overall capacity to effectively oversee defense issues.<sup>49</sup> In the latter case, legislative capacity-building has to be emphasized through the "development of analytical and policy-interrogative skills and defense parliamentarians' understanding of the defense policy, planning, budgetary, and programming cycle."<sup>50</sup>

The arms deal also suggests some questions regarding the functions of independent investigative agencies, the separation of the ANC and the government and the role of parliamentary committees. As the Institute for Democracy in South Africa (IDASA) noted, in one-party dominant democracies, the strong party system and the close links which MPs have with the executive branch make it difficult to exercise effective oversight.<sup>51</sup> The ANC's dismissal of Andrew Feinstein, its head of the parliamentary study group on SCOPA and his replacement by Geoff Doidge, the ANC's Deputy Chief Whip was seen as a reprisal for Feinstein's backing of SIU involvement in the JIT.<sup>52</sup> Feinstein later spoke at an IDASA seminar on parliamentary oversight and accountability and advocated close oversight of the executive and executive accountability to parliament. He also called for SCOPA's insulation from political interference, particularly from the executive.<sup>53</sup> The February 2002 resignation of the Inspector General of Intelligence also raised questions of civil oversight, and in the aftermath of the SCOPA's controversial push for an investigation of the arms deal, indicated a trend toward consolidation of executive power.

Under President Mbeki parliamentary oversight has become less vigorous. The president no longer faces weekly questions from parliament, and ministers appear before parliament less than they did under President Mandela.<sup>54</sup> Nevertheless, parliamentary oversight has been firmly established even if not always fully realized. The Defense Portfolio Committee and the Joint Standing Committee on Defense are capable of reviewing legislation, holding hearings,

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49. Interviews, Parliament, Cape Town, February 2000.

50. Rocky Williams, "African Armed Forces and the Challenges of Security Sector Reform, *Journal of Security Sector Management* (March 2005) p. 21.

51. "Democracy and the Arms Deal: Part III."

52. See Arms for Oblivion, *Africa Confidential*, 42, 3 (9 February 2001), 7.

53. "The Arms Deal/Strategic Defense Procurement Package."

54. "Watch on the Spooks," *Africa Confidential*, 43, 3(8 February 2002), 3.



and monitoring defense policy. Also, since 1994, parliamentary rules give committees extensive powers, and most parliamentary committees conduct their meetings in public.<sup>55</sup> Furthermore, oversight ability is improving and the Portfolio Committee regularly amends bills seeking to leave its mark on legislation.<sup>56</sup> Parliamentary influence on two other important pieces of legislation since the arms deal has yielded mixed results. The National Conventional Arms Control Act of 2002 was enacted despite concerns in parliament regarding issues of transparency and parliament's participation in the review of conventional arms sales. In the case of the Protection of Constitutional Democracy Against Terrorism Act of 2004, parliament played an important role in changing the provisions of the law defining terrorist activity.<sup>57</sup>

In addition, the so-called Chapter 9 institutions, which are grouped in the constitution under the heading of "State Institutions Supporting Constitutional Democracy," and include the Public Prosecutor and the Auditor-General are functioning and, in conjunction with the National Prosecuting Authority of the judicial branch, have played an important role in the investigation of the arms deal. IDASA's evaluation of the Joint Investigative Team's report disagreed with critics who labeled the report a "white wash." IDASA concluded that the report was in some ways "quite damning." It noted that the report was explicit about areas and departments in which controls were non-existent and checks and balances were ignored.<sup>58</sup> Furthermore, IDASA's monitoring role and that of other organizations demonstrates an increasingly effective and vigilant civil society.

The problems illustrated by the arms deal can be seen as the growing pains of a consolidating democracy. The ANC's dominant political position raises some concerns about transparency and accountability that will undoubtedly remain given the ANC's capture of two-thirds of the vote in the 2004 elections and a commanding advantage of 279 of the 400 NA seats. Perceptions of the ANC's intolerance of criticism and the centralization of power in the executive reinforce these concerns.<sup>59</sup> Despite some flaws, the handling of the investigation and the public nature of the controversy over the SDPP demonstrates significant promise for the further strengthening of South African democracy and provides important lessons regarding defense oversight in South Africa.

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55. Barry Streek, "Watchdogs that Bark, Not Bite," *Daily Mail and Guardian*, 2/14/01. Available at [www.mg.co.za](http://www.mg.co.za).

56. Interviews, Parliament, Cape Town, July 2003.

57. Judith February, "Parliament's Oversight Role" available at [www.idasa.org.za](http://www.idasa.org.za).

58. "Democracy and the Arms Deal: Part III" available at [www.idasa.org.za/m\\_main.php?view=2&art\\_id=919](http://www.idasa.org.za/m_main.php?view=2&art_id=919).

59. See Jessica Piombo, "Politics in a Stabilizing Democracy: South Africa's 2004 Elections,"

*Strategic Insights*, Vol. III, Issue 5(May 2004) available at [www.ccc.nps.navy.mil/si/](http://www.ccc.nps.navy.mil/si/)