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## DEVELOPMENTAL STATE AND THE QUESTION OF ACCOUNTABILITY: ANALYSING THE IMPACT OF THE ELECTORAL SYSTEM ON THE DERELICTION OF PARLIAMENTARY OVERSIGHT

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**Abstract:** In South Africa, despite what appears to be a perfectly designed political system underpinned by the separation of powers, public officials seemingly need more accountability rooted in the proportional representation (PR) electoral system. This study postulates that this has proven ineffective regarding accountability and oversight regarding the implementation of Chapter 13 of NDP and the broader objectives of South Africa's development framework. The infamous Nkandla Projects and Parliamentary Inquiry into Eskom make for a worthy case study in this endeavour for at least one particular reason, These two case studies and all that came to encompass them extended over period adequately lengthy enough to check the consistency of Parliament and how South Africa's electoral system leads to and breeds systemic political corruption that Parliament cannot decisively address and deal with. Furthermore, this study will argue how the Electoral Amendment Bill (B1-2022) could effectively improve how MPs are delegated, held accountable and increase state capacity through Parliamentary oversight.

**Keywords :** Developmental State, Accountability, Electoral System, Impact, Dereliction, Parliamentary Oversight.

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### INTRODUCTION

This paper argues that accountability is at the centre of a developmental state such as South Africa. The Proportional Representation (PR) electoral system needs to improve the capacity of the Parliament to exercise its oversight functions due to the influence of the political parties on parliamentarian members.

The National Development Plan (NDP) was spawned out of the appreciation that a lot of socioeconomic issues needed to be worked on and redressed for the country to progress from its complex past. The democratic dispensation established the National Planning Commission to draft the NDP to formulate and implement policies addressing poverty, unemployment, and inequality. A blueprint for South Africa's development, the NDP was adopted by the cabinet in 2012 and set out plans to eradicate the above-mentioned challenges by 2030 (NDP, 2012). Compounded with democratic institutions such as the Parliament of the Republic of South Africa, the goals of the NDP require a stern and rigorous political willingness, accountability and oversight to achieve a developmental and capable state capacity where the socioeconomic challenges are reduced, if not minimised, by 2030. Accordingly, the paper employs case study method to give evidence on parliamentary proceedings where there has been a lack of accountability by national assembly on the executive – by firstly conceptualizing accountability and its role in a developmental state and the foresight provided in the NDP; and how a lack of accountability is a challenge to achieving the NDP. The paper the explores two case studies and concludes by providing recommendations about how electoral reform may be the answer to this overarching problem.

As recent as December 2022, the ruling ANC announced that it would take disciplinary measures against the 5 MPs who voted in favour of Parliament adopting the Section 89 Panel Report that found that President Cyril Ramaphosa may have a case to answer regarding the Phala Phala Farm scandal – where large amounts of foreign currency was found in his private farm.

## LITERATURE REVIEW

The theoretical framework is as crucial because it guides the aspect of the paper's arguments and cements it on credible scholarship. It is of paramount importance to conceptualise accountability because it is central in achieving a developmental state. As Keohane (2003:1124) denotes,

*since accountability is a relational term, a person or organization has to be accountable to someone else. It is therefore essential, in thinking about accountability in a given situation, to distinguish between power wielders and the accountability holders to which they are held accountable. Accountability is a matter of degree. For a relationship to be one of accountability, there must be some provision for interrogation and provision of information, and some means by which the accountability- holder can impose costly sanctions on the power-wielder.*

The quote above is a significant theoretical point of this paper's arguments and deliberations. This is because parliament, in this regard, is the democratic institution that provides and oversees the interrogation and provision of information that Keohane (2003) descriptively emphasises. There are different types of accountability mechanisms, and the South African Parliamentary system falls under one of these. Kehone (2003:1131) defines this mechanism as Supervisory Accountability - which refers to -

*the practice of authorizing one collectivity [parliament] to act as the accountability holder with respect to specified power-wielders. One prominent example of supervisory accountability is the requirement in representative democracies that executives answer to legislatures for their actions and inactions. Legislatures can change the mandates of executive agencies and can exercise fiscal control. Legislative accountability is particularly strong in parliamentary systems, where only the legislature, not the chief executive, is directly elected.*

This is substantiated by Laver and Shepsle (1999) who state that the essence of a parliamentary democracy such as in South Africa is the accountability of government to the legislature. In this instance, the separation of powers. Along similar lines, Hudson and Wren (2007) states that legislation refers to keeping a watch on the executive's activities and holding them accountable. Effective oversight is argued to be advantageous for a political system for at least two fundamental reasons, according to West and Cooper (1989); Pelizzo and Stapenhurst (2006): first, oversight activity can actually help to improve the quality of the policies that the government initiates; and second, as those policies are ratified by the legislative, those policies need more legitimacy.

Based on the foregoing, Matsebese-Notshulwana (2019) maintains that when exercising oversight, the legislature considers the following: the application of budgets, and the implementation of legislation; strict adherence to parliamentary and constitutional laws, effective management of government agencies. In this way, the legislative oversight role is fundamental to democracy, particularly a developmental state. Matsebese-Notshulwana (2019:54) highlights the following functions of legislative oversight:

1. To hold the government to account in respect of how the taxpayer's money is used by preventing maladministration and misuse of public funds by the state and state officials.
2. To detect wasteful and fruitless expenditure within government machinery (provincial and national departments and SOEs)
3. To monitor Compliance on policies enacted by government

4. To improve transparency on government and SOEs activities.”

Importantly, parliamentary supervision should guarantee that government initiatives are carried out and run effectively, efficiently, and in line with legislative intent. Fundamentally, the purpose of oversight is to ensure openness and transparency on the application of government programs and their effectiveness. This broadens society's awareness and understanding of government priorities and activities - in this case, the NDP. As a result, the democratic system greatly benefits from the oversight function.

### ***Chapter 13 Of The NDP: Accountability And Oversight***

Accountability is significant to such a point that the NDP dedicated an entire chapter to articulate why the nation's blueprint cannot be achieved without parliament doing its foremost duty. Newell and Bellour (2002) state that in the last decade of the 20th century, the accountability discourse gained traction and prominence in development debates. South Africa further proves that this discourse is still relevant in the 21st century based on the goal to build a developmental and capable state through the NDP by 2030; of which accountability is central to this goal. The NDP critically emphasises the democratic success of initiating 'greater accountability' through the Constitution's Parliament and Chapter 9 institutions. These democratic institutions are meant to hold the government accountable and encourage public participation. Theoretically, this is correct in terms of the democratic channels the Constitution has enabled to hold the government accountable through Parliamentary oversight and Chapter 9 institutions.

Such democratic channels, however, need to be enforced effectively; enforced by Members of Parliament and government officials. Newell and Bellour (2002) state that the traditional notions of political accountability are derived from the responsibilities of delegated individuals in public office to carry out specific tasks on behalf of citizens. Day and Klein (1987:7) expand on this by postulating that “it is this understanding of [political] accountability, in which rulers explain and justify actions to be ruled, which traditionally distinguished a democratic society from a tyrannical one”. In South Africa, the explanation and justification of this accountability is done through the democratic institutions mentioned above. Conversely, Chapter 13 of the NDP framework document (2012) does acknowledge that accountability in government structures has been fringed upon and is eroding because of the “political-administrative interface, instability of the administrative leadership, skills deficits, poor organisational design and low staff morale”. As a result, Newell and Bellour (2002) argue that an accountability gap emerges because of this shift in political authority

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leading to patronage. These shortcomings mark accountability as a nebulous and capricious concept, which goes against what Chapter 13 states about supporting government officials to do their jobs for long term skills development in pursuit for a developmental and capable state.

Regarding accountability, the NDP (2012:410) essentially stipulates that to build a developmental and capable state, the government must “promote greater and more consistent delegation supported by systems of support and oversight. Make it easier for citizens to hold public servants and politicians accountable, particularly for the quality of service delivery. Ensure effective oversight of government through parliamentary processes”.

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This is compounded by the fact that the significance of building a developmental and capable state within a “vibrant democratic system” needs accountability at its core (NDP, 2012). Currently, South African governmental structures worryingly lack accountability, compromising the goal of achieving a vibrant democratic system by 2030. The lack of accountability not only gives rise to corruption (stipulated in Chapter 14), but it also regresses the initial process to specifically alleviate poverty and inequality. Subsequently, the government’s failures and constraints to be held accountable (and implement the NDP’s Chapter 13) for the prevailing democratic deficit do not redress relics inherited from both the colonial and apartheid eras.

The NDP states the importance of a transformative and developmental role through establishing measures of accountability systems and mechanisms through the existing democratic institutions such as the Parliament and Chapter 9 institutions as mentioned above (NDP, 2012). Chapter 13 envisages that all strategic sectors that are cornerstones of the democratic dispensation to build a developmental and capable state are authoritatively held accountable in espousing the goal of redressing poverty and inequality and unemployment. These sectors are health (Chapter 10), education (Chapter 9), economic infrastructure (Chapter 4) and rural development (Chapter 6) inter alia. Chapter 13 of the NDP is important to see these sectors thrive through accountability and ensure that decolonialisation is actualised because these particular sectors were fundamental in implementing segregation of the colonial state and separate development of apartheid informed by spatial injustice. The lack of consideration of the NDP’s Chapter 13 does not only

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fails South Africa's democracy currently and its future (2030 in this case), it also fails to account for South Africa's political and socio-economic willingness in overcoming political normalities of historical oppression.

The NDP critically emphasises that in order to build a developmental and capable state, measures of accountability need to improve; the operative word here is *improve*. This is operative because it recognizes a lack of measures in place that effectively hold the government or its incumbent and representatives accountable; the case studies below will substantiate this phenomenon. Newell and Bellour (2002) substantiates this by arguing that political accountability mechanisms can be horizontal and lateral: horizontal meaning accountability within the state machinery (through checks and balances on the powers of the Trias Politica Doctrine) and vertical meaning accountability demanded from citizens and civil societies. Hence Chapter 13 of the NDP's proposal to improve measures of accountability to citizens and, importantly, strengthen parliamentary oversight. Chapter 13 also acknowledges that in 1994 South Africa gave many responsibilities to all three spheres of government (local, provincial and national governments) without paying attention to systems of support and oversight that would hold leaders in those spheres accountable when things go questionably wrong.

Since 2012 when NDP 2030 adopted and with eight years remaining before the destined year, a lot of things have arguably gone wrong in South Africa's political and socio-economic landscapes. The rampant corruption, declining economy, inclining heinous crimes in societies and lack of political participation from citizens are evidence enough to argue that the nation is nowhere near its NDP goals. In South Africa, accountability, especially political accountability, is not taken seriously, allowing incompetence to continue. For this to stop happening in democracy like ours, accountability needs to stop being treated as a spectacle and take a more permanent norm and absolute feature for those in government positions (Newell and Bellour, 2002). For these reasons, this paper argues that the successful implementation of the NDP relies on, but not only, an intricate accountability process, because accountability is only as effective as a mechanism if it is employed. Just as Schedler (1999) argues that accountability that has no real impact is not accountability at all. The NDP (2012) succinctly puts it that a stronger sense of citizen accountability has been made possible by democracy. Parliament should play a key role in exercising oversight and keeping the government accountable.

### ***The challenge to the NDP - Lack of Accountability***

Theoretically, the National Assembly (legislature) makes laws on behalf of the citizens and monitors that the government - the executive - takes through and implements these laws.

This monitoring role presupposes a certain degree of independence from the executive; independence which is meant to enable the legislature to be critical of the executive. *De Facto*, despite what appears to be a perfectly designed political system, there appears to be a problem of accountability. The premise is that accountability is inextricably linked to a developmental state.

Ten years since the adoption of the NDP, South Africa remains the most unequal society in the world, with the highest unemployment - it depletes human capital, causes poverty; wastes enormous amounts of human potential, and destabilizes social and economic conditions wherever it occurs. There has yet to be any substantial progress on the NDP and there is no evidence guaranteeing the attainment of the goals by 2030. While the failure to implement and make progress on the NDP cannot be attributed to one thing, the dereliction of Parliament and its failure to perform oversight and hold the executive accountable has been a contributing factor. This lack of Parliamentary oversight is partly because of the Proportional Representation (PR) electoral system. The discrepancies, therefore, are that MPs are, by contrast to the Constitution and the ideals of democracy, accountable to their organisations and not to the citizens (Southall 2019). Furthermore, Southall (2019:1) states that the “Lack of accountability results in the arrogance of power for which the African National Congress has become increasingly notorious”.

Chapter 13 of the NDP states that accountability and effective Parliamentary oversight are essential in building a developmental and capable state (2012). The argument is that the PR system is not effective in enabling parliament to perform its oversight function because employees in Parliament have been seen to owe allegiance to the party more than the state. This will be substantiated by analysing how MPs have towed the party-line, which compromises building a developmental and capacitated state.

### ***The Lack Of Accountability: Dereliction Of Parliament***

*“You are on the ANC list, you have the duty to strengthen the ANC. You are not a free rider because you are in Parliament,”* ANC National Chairperson Gwede Mantashe, also mineral resources and energy minister, at the State Capture Commission

*“You are on the ANC list. You are in Parliament. You are expected to respect the Constitution... but you are not a free rider. You are not on a free-range where you can do as you like”* ANC President and Head of State, Cyril Ramaphosa at the State Capture Commission

The great South African project of nation-building through the NDP – democracy and transparency – has been side-tracked by a morass of corruption, mismanagement of resources and cronyism, enabled by an ineffective Parliament. Without an effective

Parliament that can perform its oversight duty, the objectives of the NDP remain a pipeline dream. Since the NDP, there have been a number of instances where the National Assembly has failed in its constitutional duty. There are, however, two case studies that stand out and explicitly show how the legislative arm of the state has been found wanting. The infamous Nkandla Projects and Parliamentary Inquiry into Eskom make for a worthy case study in this endeavour for at least one particular reason, these two case studies and all that came to encompass them extended over period adequately lengthy enough to check the consistency of Parliament and how South Africa's electoral system leads to and breeds systemic political corruption that Parliament cannot decisively address and deal with.

### ***Nkandla Upgrades Project***

In December 2007, Jacob Zuma had won a resounding victory for the African National Congress (ANC) Presidency at the party's 52nd National Elective Conference held in Polokwane and set himself on the path to the Union Buildings – South Africa's seat of government. The 2015 Presidential Handbook – Republic of South Africa (2015) states that the government of the Republic has an all-important responsibility of providing security for its Head of State, as such, security upgrades at Nkandla – then President's private homestead, became a necessity when he became President of the Republic of South Africa in 2009.

The implementation of upgrades into the former President's home followed a decision by the security cluster of the Executive branch of government to improve and enhance protection (Bailie 2017). However, Bailie (2017) states that the process of execution of the recommendations came to encompass the erection and setting-up of non-security upgrades – which ballooned the initial budget from R27 million to over R200 million. This ordinarily raised alarms and necessitated investigations into whether or not rules and regulations may have been flouted in the process of upgrading the President's home.

### ***The Public Protector***

The Constitution (1996) provides in chapter 9 for 'State Institutions Supporting Constitutional Democracy', enshrined to check powers and safeguard democracy. These independent institutions of government are made possible to balance public power and curtail the supremacy of the executive branch as it is thought to be the one government branch with substantial powers and privileges.

The Office of Public Protector (PP) is one such institution. The powers vested in the Office PP as prescribed in Chapter 9 of the Constitution (1996) is to investigate any conduct in any



sphere of government that is assumed to be inconsistent with the law. Thornhill (2011) articulates that reports by the PP are significant bases of reference in public administration. Also, and perhaps more importantly, Thornhill (2011) states that the Public Protector provides frameworks within which accounting officers in public service should carry out their work as well as the repercussions of their exertion and responsibilities in financial management. The PP then began investigations. On 07 November 2013, the Security Cluster in the Executive branch of government sought an interdict to prevent the release of the PP's report on the bases that the former had not given them enough time to respond to allegations levelled against them in addition to a claim that the report had several security breaches (Africa Check 2016). This was despite the PP Act stating that reports must be made public unless extraordinary conditions dictate otherwise (Public Protector Act 1994). 7 weeks after the court bid, the Security Cluster abandoned the interdict – paving the way for the release of the report.

### ***Secure in Comfort: The Report Released***

What stood out in the report, titled, *Secure In Comfort*, (2014) is that the security upgrades are different from the reason why the initial budgeted fee for the upgrades went from R27 million to over R200 million. The report articulated how the Cabinet Policy of 2003 was totally violated and disregarded as the cause of implementation did not occur within the frameworks set out in the law (Public Protector 2014). Also, to be noted, the deviation from the security recommendations led to improper conduct and maladministration.

In the report, the PP argued that since Nkandla was declared a National Key Point, it failed to comply with the contents of the declaration which was signed by the Minister of Police who was a key figure in the project (2014). And the fact that the private home of the former President was declared a National Key Point meant that President Zuma himself was now responsible for security installations at his residence (PP Report 2014), unless the declaration was amended, something which was not done, thereby uncovering the incompetence of the Minister of Police who was responsible for the declaration. One of the many problems that characterised the Nkandla Project was the fact that the actors involved disregarded the Constitution by deviating from the correct procurement procedures of Supply Chain Management as a necessity for laws and policies. Public office bearers, particularly of the following departments: Department of Public Works, Department of Defence and the Department of Police (South African Police Service), failed to discharge their duties with respect to supply chain management, security upgrades implementation and curbing expenditure, which led to maladministration. The promotion of the former President's private architect as the principal agent of the project even though he did not have

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the necessary qualifications to handle a project of that magnitude was also seen to have contributed to the maladministration in the Nkandla Project (PP Report 2014).

Perhaps more importantly, the PP Report (2014) also found that a critical service delivery programme was shelved, put aside and money diverted to the Nkandla upgrades. There was a violation of section 237 of the Constitution (which places emphasis on performing constitutional duties effectively and efficiently) and the Batho Pele White Paper when funds meant for service delivery in the form of Inner City Regeneration and the Dolomite Risk Management Programmes of the Department of Public Works were redirected to upgrading the former President's home. The PP's report painted a grim picture of government incompetence and flouting of noble tender procedures. Skirting due process, the relevant departments approving expensive non-security upgrades, including the relocation of neighbours – and because the work was done at the then President's house, deviations were assumed to be justified and not be questioned. Government departments broke the law and the former Presidents conduct in tacitly accepting the upgrades even after reports of excessive spending was unethical and his failure to provide leadership regarding the extravagant spending of the State into his own private residence violated the Constitution and the Executive Ethics Code.

### ***Failures of Parliament's Oversight***

The PP's report was released at the latter stages of the 4<sup>th</sup> Parliament, and it was expected that the 5<sup>th</sup> Parliament would deal with it. However, there were contrasting reactions from within the ruling party. Max Sisulu, ANC senior member and Speaker of the 4<sup>th</sup> Parliament announced that the National Assembly would immediately form an *ad hoc* committee to take into consideration the fateful report - a dignified man who sought to lead Parliament beyond partisanship and ensure that democracy prevails. ANC MPs on the other hand argued that they receive their mandate from Luthuli House and that there's no rush in working on the Nkandla report, moving to call for the committee to be disbanded and proposing the next Parliament to deal with it; the committee was then disbanded on 30 May 2014. Max Sisulu was never reappointed and was delegated into a backbencher in the 5<sup>th</sup> Parliament – despite being high on the ANC list to Parliament. Sisulu was demoted because that the ANC was not happy that he established an *ad hoc* committee to deal with the report of the PP.

Launching attacks on the PP, undermining the report, blindly adhering to rules delivered to 90 Plein Street from Luthuli House became the order of the day. Nkandla was the biggest crisis faced the Legislative arm of the State however the institution was negatively restructured with the sole purpose of defending party leaders and members of his Executive.

ANC MPs blindly assumed defensive mode and ensured that the full constitutional and legal form of the legislative arm was in support of their seniors. The leadership and senior members of the ANC knew that discrepancies and irregularities existed in the Nkandla project and chose to invoke its majority in the National Assembly - the party leadership stirred around with its majority in the Legislature to prevent Parliament from exercising its constitutional duty. The Nkandla debacle transparently illustrated the challenges of holding public officials, or political office bearers to account for their actions given the dominance of the ANC in the National Assembly. It showed the deterioration of the ANC in Parliament to hold its members to account, regression the ANC has delivered to the doorsteps of the people it claims to best represent.

### ***Constitutional Court Judgement***

With ANC MPs taking their cue from Luthuli House, it was clear that Parliament would not effectively and meaningfully deal with the Nkandla matter and that the former President and ministers involved would not follow through with the Public Protector's remedial actions. The two biggest opposition parties sought the intervention of the Judiciary. The Democratic Alliance (DA) and the Economic Freedom Fighters (EFF) approached the highest court in the land. On 31 March 2016, the Constitutional Court handed down a historic ruling - declared that President Jacob Zuma and ministers involved acted inconsistent with and failed to uphold and defend the Constitution of the Republic by essentially rejecting the Public Protector's reports and refusing to comply with the remedial actions (Constitutional Court Judgement 31 March 2016). More importantly, the apex court also ruled that Parliament had failed its constitutional obligation of performing accountability and oversight. The State's legislative arm acted unlawfully when it exonerated the President and ministers involved without subjecting Madonsela's report to a judicial review process.

### ***Portfolio Committee on Public Enterprises – Eskom Inquiry***

One would have hoped that the National Assembly would have learnt from the Nkandla debacle and restructure itself in such a way that the legislative arm of the State is able to perform its oversight duties, but that was different. The Commission of Inquiry into allegations of State Capture, Corruption and Fraud in the Public Service, generally known as the Zondo Commission, painstakingly tracks the legislative branch's internal conflict on how to participate in any parliamentary inquiry as well as the shifting power dynamics that resulted in the political shifts.

Through the Portfolio Committee on Public Enterprises (PCPE), the DA proposed that the PCPE launch an investigation "into the capture of SOE's by the Guptas" in April 2016, which marked the beginning of Parliament's involvement in the controversy. This was as a result of an investigation by the PP about allegations of improper conduct by President Zuma, members of the Executive and the influence of the Gupta family (State Capture Report Part IV 2022). A mere 6 days after the Constitutional Court ruling that Parliament had failed in holding the Executive accountable, Dipuo Letsatsi-Duba, the then-chairperson of the committee and a former minister of state security, declined to establish an inquiry in Eskom.

In a second attempt, the nation's official opposition proposed the establishment of an *ad hoc* committee (State Capture Report Part IV 2022). But with ANC MPs having seen what happened to Max Sisulu when you do not toe party line, they voted against the DA's motion. Interestingly, in May 2017, significant changes occurred within the PCPE. Ms. Zukiswa Rantho was chosen as the committee's acting chair because the previous chair had been deployed elsewhere by the ruling party. And in an unexpected move, the PCPE abruptly said that it would indeed begin an investigation—at the very least into Eskom. According to the Zondo report, this was a complete *volte face* by the PCPE from its previous position (State Capture Report Part VI 2022). Levy (2022) reveals that a significant number of ANC parliamentary caucus members pushed to end the inquiry, claiming that it would cause divides and compromise the ANC's integrity. Rantho bravely oversaw the Parliamentary Inquiry into fraud and mismanagement at Eskom, which produced a report that was unanimously endorsed across party lines in a rare display of bipartisanship.

In a *déjà vu*, when the ANC released its national and provincial candidate lists ahead of the 2019 general elections - both the list of those who made it and the list of those who did not stand out. Zukiswa Rantho was booted out and placed into political obscurity. Just like Max Sisulu, Rantho's case seriously calls into question the constitutional provision requiring the legislature to hold the administration accountable. That no branch of government will be supreme; none will dominate the others; and each will be independent but equal, with concurrent rights to hold the others accountable.

Beyond the Eskom, the Zondo Commission heard that the Portfolio Committee on Transportation did not launch any investigations and the Portfolio Committee on Home Affairs didn't show much enthusiasm for moving on with proper promptness - even if it conducted a successful investigation in the end, it moved far too slowly (State Capture Report Part IV 2022). The Portfolio Committee on Mineral Resources was unable to undertake a thorough investigation, initially as a result of the then-Minister Mosebenzi Zwane's evasive behaviour (State Capture Report Part IV 2022),

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### ***The Electoral System and the Dereliction of Parliament***

The limited public accountability finds its origins in the fact that MPs are selected by – and answerable to – their parties rather than the voters. According to an article published at the University of Cape Town’s Newsletter (19 September 2017) the failure of the Legislature to perform its critical task of holding the executive to account is because the electoral system gives power to the majority party whose ‘deployees’ to Parliament have all but little independence to perform their duties in a constitutional manner. The electoral system severely restricts the mechanism provided for in Section 55(2) of the Constitution (1996), which compels Parliament to hold the executive accountable. The political party that an MP represents, not the individual MP, "owns" the parliamentary seat in South Africa's closed-list proportional representation system.

It is a powerful deterrent to those backbench MPs who might otherwise contemplate challenging the front benches of their own party. It gives enormous power to the chief whips and other senior party ‘managers’. In this context, it may be simply implausible to expect, for example, junior members or backbenchers of the ruling party to make adverse findings against senior ministers when such an action could spell the end of their political career.

We argue that South Africa’s electoral system diminishes the role of public officials who rely on party chiefs for direction when performing their duties in addition to the fact that it accords disproportionate power to the executive that seems to dominate the legislature, to which it should account. Clarity of the nexus between political parties and members they choose to deploy in public institutions, including the National Assembly and provincial legislatures is not provided for in the Constitution (de Vos 2017). MPs prioritise party and self interests over national interests which diminishes accountability mechanisms and systems in place. This eventually undermines the implementation of the NDP.

The Electoral Task Team (2003), the Independent Panel Assessment of Parliament Report (2009) and the Motlanthe High Level Panel On The Assessment Of Key Legislation And The Acceleration Of Fundamental Change (2017) all found that the inability of MPs to objectively exercise accountability and subsequent to that, its remoteness from the citizens is because of the electoral system. Amongst its observations, the Independent Panel (2009) found that the PR system fosters the oversight of political parties on their chosen members to Parliament instead of MPs exercising oversight over the Executive and being accountable to the citizens.

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The electoral system makes elected representatives to be accountable to the party, as such, MPs of the ruling party had to protect their seniors in order to keep their jobs. In both the case studies above, it was politically required of them. The dereliction in Parliament has been characterised by a negative attitude and substantive treatment on the PP and interaction with the opposition in the ad hoc committees. The attitude of disdain and hostility against an institution that is doing its job and rendering their colleagues into political obscurity in order to defend each other. The Democracy Works Foundation (2018) states that this kind of electoral system grows the belief within the ruling party and its members that democratic institutions such as the National Assembly are its extensions.

De Vos (2017) notes that in this kind of electoral system, representatives in the legislatures are more likely to be channels through which party leaders ensure that their instructions are implemented. Within such a system, MPs become mere extensions of the party within legislatures, and discharge their duties under the directorate of the party that deployed them its leaders instead of serving the country as enshrined in the Constitution. The lack of oversight found in the proportional representation system has weakened Parliament and introduced the dominance of party bosses over the MPs. Piombo and Nijzink (2005) are of the view that the lack of accountable practices in the National Assembly limits the body's independence; this is traced to the fact that parliamentary politics and partisan considerations increasingly dominate parliamentary proceedings.

The operative command and control of political parties over the conduct of MPs also weakens the doctrine of separation of powers between the Executive and Legislative branches (Botha 2019), on which South Africa's constitutional democracy is based. Botha (2019) also makes reference to the Constitutional Court case between the EFF and Others Vs the Speaker of the National Assembly and Another in 2017 (where opposition parties took the President to task on his failure to implement recommendations of the Public Protector – arguing that those recommendations were legally binding) on how Parliament failed to discharge its constitutional obligations of accountability and oversight over the Executive to the point that even the courts, as revealed earlier, had to intervene to remind Parliament on its duty. The MPs' allegiance to their political organisations and not the state is problematic and has proven to be against the NDP. The clandestine networks of corruption - neopatrimonialism - prevail as the result of this phenomenon.

Warioba (2011) points out that as a result of the closed party list as enshrined in the PR system, elected representatives are under no requirement do discharge their duties in relation to the needs, dreams and desires of the electorate but rather the instructions and needs of the party and its leaders, who have the power of determining whether or not they

make party list for forthcoming elections. Mokgaole (2017) states that directions and instructions from party headquarters must be followed, regardless of whether the individual is of the view that they might be wrong or inconsistent with the law. In respect of the morality and integrity of the individual, Mokgaole (2017) states that it is not tolerated within the party, as a result, MPs become 'yes men' as it is the only way to ensure survival and longevity of political career and maintenance of a seat in the Legislature. Do as the party leadership says or get fired, which explains why Parliament failed in oversight.

### ***Enhancing the NDP Through Electoral Reform***

Democratic forms, procedures and organizations underpinned by the all-important effectiveness and representativity are fundamentally important in ensuring service delivery, prosperity and equality for all. Unfortunately, every so often, the PR system makes it difficult for constitutionally democratic institutions such as Parliament to be accountable and responsive.

Although the PR system diminishes accountability and oversight, it was carefully selected to ensure that Parliament is representative of the broad demographics of the population. The current electoral system has been important for the maintenance of reconciliation, nation building, the promotion of strong political institutions and sustainable development characterized by peace and good governance. Also, to make sure that there is political diversity in Parliament – these are not short term goals, they will be achieved over a long period of time and even in the event of attainment of such a State, it will be important to uphold it. That is why discarding it the PR system is not viable, and equally so, using it purely, is not sustainable.

The Electoral Task Team was established to investigate electoral reform and propose a preferable electoral system because the PR system was never meant to be used beyond the first two democratic elections (Louw, 2014). As a precursor to the Electoral Task Team, in 1999, outgoing President Nelson Mandela said, in the final sitting of Parliament, "...we need to ask whether we need to re-examine our electoral system, so as to improve the nature of our relationship, as public representatives, with the voters!" (26 March 1999). The four standards that underpinned the work of the Task Team was an electoral system that would have: fairness, inclusivity, simplicity and accountability (Electoral Task Team Report, 2003). Accountability was specifically identified as a weakness. Electoral Task Team Report (2003) recommended various changes to the current electoral system, including the 'mixed system'. The 'mixed' system put forth propositions to amend the 9 multi-member districts into 69

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smaller districts with each district having between 3-7 representatives in the National Assembly, depending on the size of the members (Electoral Task Team Report, 2003).

Moser and Scheiner (2004) define a mixed electoral system as one that ensures that the electorate casts their votes two times for a legislature: one for a party list in a PR system tier and the other for a candidate in a region or district, known as the single-member district (SMD). This type of electoral system has emerged as a major alternative to strictly PR or SMD systems (Moser and Scheiner 2004). This would enhance accountability in such a way that the electorate would be provided with two ballot papers at the polls: one for the party of one's choice and the other for a representative in one's constituency or district. Parliamentary seats were to be divided into 300 seats based on the regional constituency winners and the other 100 seats would be based on proportional representation based on national votes (Electoral Task Team Report, 2003). This type of system is particularly important because neither a pure PR system nor a pure constituency- based system is the answer. Adv. Pansy Tlakula, former Chair of the IEC stated during the Centre for Human Rights discussion on South Africa's electoral system (2016) that as a member of the Electoral Task Team, it was believed that the mixed system would contribute accountability of elected representatives. With the historic Constitutional Court ruling of 2020 (11 June 2020), which declared that individual candidates must be allowed to contest Parliament and subsequent to that, the on-going debate around the electoral amendment bill before Parliament currently, this is a well-timed paper.

## CONCLUSION

This paper has engaged factors responsible for the lack accountability by parliament of the executive arm of government. The paper used two compelling case studies to properly illustrate the nexus between the PR electoral system and the accountability deficit. The paper also sought to out forth recommendations which may be much needed answers to this overarching problem. This is because accountability is important in the implementation of key programmes and determines progress in the realisation of envisaged outcomes of the NDP. Key to building a developmental state is ensuring accountability and oversight in the public service - paramount to the establishment of the developmental state is ensuring that Parliament holds public officials accountable. The unintended consequences of South Africa's electoral system is the difficulty in allowing Parliament to hold the executive accountable. Notwithstanding the compelling reasons for selecting the PR electoral system, it cannot be divorced from how Parliament, an institution that ideally ought to represent the dreams and aspirations of the country as articulated in the NDP, has been ineffective. In any parliamentary system, effective supervision depends on Parliament upholding its



independence and embracing the power granted to it by the Constitution. For South Africa to witness any meaningful progress towards the NDP, accountability and oversight by Parliament is non-negotiable and equally so, the dereliction of parliamentary oversight can only come to an end if the electoral system is reformed.

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