

PARLIAMENT/Judith February

Can MPs stand up to executive?

IN THE aftermath of floor-crossing, Parliament has been left with several additional political parties as well as a bloated ruling party. This has contributed to the growth of a widespread cynicism towards not only representative politics but also Parliament itself. It is a cynicism Parliament cannot afford.

The most recent Afrobarometer data in its survey of 16 African countries found a falling level of trust in elected representatives. In this regard, SA was no different from the other countries surveyed. When asked whether they had "trust" in the National Assembly, 20,1% of the South Africans asked said "not at all", 43% responded "a little bit", 24,5% and 6,7% indicated that they had "a lot" or "a very great deal", while 5,7% said they "don't know". These responses indicate much work needs to be done to persuade citizens that elected representatives act in their best interests and that Parliament is worthy of their trust.

The past few years have been difficult for Parliament as it has struggled to define its oversight role and has had to deal with a number of high-profile breaches of its code of ethics. The arms deal, particularly, tested its ability to hold the executive to account and it emerged from that brouhaha with the reputation of its most powerful oversight committee, the standing committee on public accounts, badly tarnished.

While the structure, powers and duties of Parliament are spelt out

unambiguously in the constitution, there remains a gap between the constitutional aspirations for Parliament and how it has fulfilled its mandate. Its shortcomings have been most exposed when the legislature has had to square up to the executive, and it has sometimes capitulated, particularly in the area of oversight. The National Conventional Arms Control Bill and The Protection of Constitutional Democracy against Terrorism Act provide examples of good and bad oversight respectively.

They show the patchy nature of the past 11 years.

In 1999, a draft National Conventional Arms Control Bill was introduced in an attempt to direct the trade in arms. The bill soon ran into trouble and was withdrawn, first in 2000 and again in 2001; it was argued that it deviated from the provisions of the constitution and compromised the principles of transparency, responsibility and restraint.

After various amendments, important aspects of the bill were improved. However, one area of contention remained. It involved the issue of parliamentary participation in the review of applications for the sale of arms.

The bill was withdrawn and redrafted. The redrafted bill broadened the dispute between the executive and Parliament regarding the destination of arms sales, the transparency of such sales and the role of the legislature in the process. In December 2002, the bill, albeit an amended version, was enacted despite the concerns of Parliament and civil society. The clause entrenching prospec-

tive oversight over the sale of arms had been removed.

Parliament lost the battle in its standoff with the executive despite the best intentions of the chair of the defence committee, Thandi

Modise. Modise, a committed, strong-willed MP, went as far as possible to incorporate comments from civil society and from experts. Ultimately, this was insufficient.

In contrast, the Protection of Constitutional Democracy against Terrorism Act of 2004 is a case where Parliament's determination to carry out its oversight function won out.

Various interest groups argued that the bill's broad definition of a "terrorist" and "terrorist organisation" could extend to legitimate protest activity and argued for a more precise definition that would

reduce the chances of arbitrary state action against individuals or organisations.

Nongovernmental bodies that made submissions worried that its provisions posed a threat to personal freedom, freedom of expression and freedom of the media. The Congress of South African Trade Unions opposed the bill effectively on the grounds that its definition of terrorism could lead to the outlawing of legitimate strikes. A revised bill, signed into law on November 12 2004, incorporated most of the issues raised.

At the start of the third democratic Parliament in 2004, the ANC's chief whip said the focus of Parliament would be on strengthening committees and their oversight role. Parliament faces serious challenges in establishing such a culture of oversight, in communicating its function to the nation, increasing public participation and in affirming its relevance. How it meets these challenges will have a direct influence on SA's future politics.

The report card on SA's democratic Parliament over its first 11 years reads "could do better". Whether this will improve in the future will depend upon the willingness of a dominant ANC, reinforced by the recent floor-crossing, to stand up more robustly to the executive.

■ February is head of the Institute for Democracy in SA's Political Information & Monitoring Service. This is an abridged version of a chapter in the *State of the Nation: South Africa 2005-2006*, published by the HSRC Press (Cape Town).

'Parliament faces serious challenges in establishing ... a culture of oversight'
