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Second Expert Meeting on the Global Parliamentary Report

Parliament's power to hold government to account: Realities and perspectives on oversight

25-26 February 2016, Geneva (Switzerland)

SUMMARY REPORT

1. BACKGROUND

The Global Parliamentary Report (GPR) is a joint initiative of the IPU and UNDP to give insight into the role and practice of parliaments in an ever-changing world. Published in April 2012, the first GPR, on *The changing nature of parliamentary representation*, offered a review of how the fundamental relationship between citizens and parliaments is shaped, how it is challenged and how it can be reinforced.

The second GPR, on *Parliament's power to hold government to account*, turns to the oversight function of parliaments. It aims to help parliaments, politicians and other stakeholders identify the value of oversight, as well as challenges to the exercise of oversight, and to present perspectives on how it can be improved. The report should produce practical recommendations to strengthen parliament's oversight role and effectiveness.

In June 2015, IPU and UNDP convened a first expert meeting to provide advice on the framework for the report. Since then, IPU and UNDP have collected quantitative and qualitative data from parliaments, parliamentarians, practitioners, academics and civil society. The analysis of this data allowed for the construction of a preliminary outline of the report.

On 25 and 26 February 2016, IPU hosted a second expert meeting to discuss the research findings and the themes covered in the preliminary outline, as well as to sketch out potential recommendations. The group of 30 experts included members and staff of parliaments in different regions and from different political systems, representatives of supreme audit institutions, academics and practitioners in parliamentary support.

Work took place in both a plenary setting and in small thematic groups. The present report covers the key issues, gaps and opportunities identified by the expert group and ends with a list of potential avenues for recommendations that emerged from the rich discussions.

2. PRELIMINARY OBSERVATIONS

The meeting began with a brief presentation of the status of data collection. Research activities to date have included surveys and interviews with individual parliamentarians; a questionnaire for parliaments; written input from parliaments and other stakeholders; panel discussions; and an e-discussion. National focus groups are due to begin shortly. The research activities are at different stages of completion, and research is expected to be completed by the end of April 2016. Participants welcomed the preliminary analysis of the survey of parliamentarians and recommended further disaggregation of the data (by age, political affiliation...) and multivariate analysis.

3. GLOBAL PARLIAMENTARY REPORT: CONTENTS AND PRELIMINARY OUTLINE

What is oversight?

The GPR needs to identify clearly what is meant by “oversight” and how it relates to “accountability”. Yet this is no straightforward task. There is no consensus on existing definitions in the literature. The concept of oversight can differ according to political tradition, parliamentary system and context: the continental approach to oversight has tended to focus on monitoring the implementation of laws; the anglo-saxon approach is often broader, with an emphasis on rendering account for one’s actions. The terminology varies in different languages, and words may have very specific meanings in a certain cultural context that is not necessarily the same in another.

Participants emphasized that parliamentary oversight is fundamentally political in nature. Oversight is linked to the representative function of parliament. It was suggested that the GPR should emphasize the specificity of parliamentary oversight in comparison with other forms of oversight. The definition of oversight should clarify the relationship between parliamentary oversight and government accountability.

Participants further pointed out that oversight is a process, which takes place for a reason, and leads to certain outcomes. The discussion should draw out the objectives of oversight in specific areas such as gender equality, the fight against corruption, responsible government.

Through its consideration of the meaning and scope of oversight (taking into account variations in terminology), and supported by examples of oversight in practice, the GPR should become a reference in the field.

There was support for taking the definition used in the 2008 IPU report on tools for oversight as a starting point: “the review, monitoring and supervision of government and public agencies, including the implementation of policy and legislation”.

What is being overseen?

While the 2008 definition focuses on oversight of government and public agencies, it is clearly understood that oversight is constantly evolving. One example of how parliament’s oversight role has changed in recent years is the complex set of procedures put in place in European parliaments to monitor policies and legislation emanating from the European Union. In some countries, the scope of parliamentary oversight is expanding to include the private sector. Mention was made of independent authorities, which, in many countries, fall beyond the scope of parliamentary oversight, whether in law or in practice. New models of oversight are emerging, including more decentralized forms of oversight that are closer to the people and contribute to social accountability.

Oversight and gender

There was broad agreement that the GPR should not limit itself to a discussion of “oversight of gender equality”, but should consider the extent to which oversight activities in all policy areas are, and should be, gender sensitive, how gender is being incorporated into oversight of the budget, oversight of the implementation of laws, etc. Examples of good practice were cited in Cabo Verde and Morocco. Parliamentary oversight should ensure that principles of law are respected, and that specific legal standards (such as the Convention on the Elimination of all Forms of Discrimination against Women) are being met.

Who does oversight?

Preliminary analysis of the data collected from the Survey of Parliamentarians suggests that:

- the vast majority of parliamentarians, from government and opposition alike, consider oversight to be the responsibility of all parliamentarians
- MPs from government and opposition have systematically different views on their respective practice of oversight. Opposition MPs consider that oversight is mainly carried out by the

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opposition, and are much less inclined to consider that successful outcomes are frequently achieved

- women parliamentarians are generally more satisfied about the effectiveness of oversight than men, in a broad range of areas. This finding needs to be analysed further, for example to identify whether respondents mainly come from the government or opposition side.

It was noted that, in some contexts, the notion of oversight by parliamentarians from the governing party is purely theoretical. Parliamentarians act politically; the incentive to support their own side is very strong. Politics is clearly a central issue when talking about parliamentary oversight and will permeate the GPR.

Yet the argument was strongly made that every parliamentarian has a duty to act in the public interest, and many examples were provided of how parliamentarians from all political sides play an oversight role.

Impact of Oversight

The starting point to the discussion of impact was the question, “What would happen if there were no parliament?”. Government would not be challenged. Questions would remain hidden. By taking this perspective, it quickly becomes obvious that parliament, and parliamentary oversight, are vital public goods. Democracy is strengthened through parliamentary oversight.

Parliamentary oversight is not a favour accorded by government; it is part of people’s delegation of power. Parliamentarians may sometimes lack confidence in their own power. The budget is a fundamental means of control, and the power of the purse can not be underestimated. Oversight is a strategic issue for parliaments, and brings them legitimacy in the public eye.

Main challenges identified by parliamentarians

The Survey of Parliamentarians asked respondents to identify the three main challenges to effective oversight. The expert meeting discussed the summary of free-text responses received from 218 parliamentarians, which were grouped in 14 different categories. (As acknowledged, some of these categories can overlap or be interpreted differently.)

The largest category of responses related to the challenge presented by government’s attitude towards parliament, followed by technical and human resources, and financial and material resources. It was noted that these categories are not related to parliamentarians’ own actions, but to factors over which they feel they do not have control. It was further argued that parliaments do have the power to shape their environment and that one of the report’s messages could be encourage greater awareness and use of the powers that parliaments have.

One parliamentarian stressed that the potential for improvement lies in the capacity to mobilize other actors such as the media and civil society to come up with answers to the question of “how to make government accountable”, regardless of the government’s attitude.

The discussion of the challenges to effective oversight gave an insight into the realities that parliamentarians face. There can be frustration at the lack (or quality) of response from government to parliamentary questions; a parliamentarian may try once, twice, then give up. There is nothing a parliamentarian dislikes more than to talk to no effect, while decisions are made elsewhere. Ministers may come to meetings accompanied by a suite of advisers, whereas parliamentarians may have little or no support available to them, and may not be perceived by ministers to be serious interlocutors.

Giving teeth to parliamentary oversight

The discussion moved to how to “give teeth” to parliamentary oversight. There are many levers that can be activated, whether formal or informal. At one level, “oversight should involve sanctions”. Sanctions may have political consequences, such as the dismissal or forced resignation of a minister, or even the fall of a government, at one extreme. A budget proposal can be amended or rejected. Parliament can call a minister to appear before it, or, on the contrary, instruct them not to come for a

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period of time. Parliament can pass a law to require some form of action that it has not been able to obtain otherwise. It can block or delay executive nominations.

When all other avenues are closed, parliamentarians may take recourse in the courts. There are examples of parliamentarians bringing court cases to gain access to certain information (perhaps using the country's freedom of information laws); the threat of litigation may be enough to spur government action.

Beyond formal sanctions that require a decision of parliament – and may therefore be unavailable where there is a strong political majority in support of the government – there are many actions that can be taken to increase public pressure on the government. The media and public opinion can be very effective levers. A threat to go public with an issue can be sufficient to make government more responsive.

In some cases, parliament has certain judicial responsibilities and can sit as a high court. In general, however, it is important for parliamentarians to recognize that they are politicians, not judges, and adjust their behaviour accordingly.

Oversight and the enabling environment

The relationship between the executive and legislative arms of government is characterized by both conflict and cooperation. By definition, no government likes to have its actions scrutinized and its ministers held to account. In many contexts, government would prefer to by-pass parliament, or at least to see its proposals approved with the least possible hindrance. At the same time, government needs parliament's support to advance its legislative agenda, and therefore needs to be responsive to parliament's requests for information and recommendations.

Increasingly, though, governments accept that accountability is necessary: the public requires it, and it leads to better legislation and policy and better outcomes for citizens. This acceptance of the importance of accountability is first and foremost a cultural matter. Once the expectation of accountability is embedded, it will not go away. Nevertheless, cultural shifts take time.

In the interest of democracy, parliament should strive to shape an environment that enables effective oversight to take place.. This is an intensely political objective, and calls upon the political will of a range of actors in government, political parties, parliament, civil society and beyond.

The enabling environment consists of many factors, including political systems, federal, decentralized or unitary settings, and the bicameral or unicameral structure of parliament. The role of the electoral system and its consequences on the relationship between elected representatives, parties and constituents is fundamental to any discussion about drivers of oversight.

Transparency and openness in government are also important. Not only does access to government information promote public awareness and involvement, it provides the raw material that parliaments need for oversight. Parliamentary recommendations are more effective when they are grounded in evidence. Oversight bodies such as Supreme Audit Institutions (SAIs) need access to government information to be able to do their work. Greater governmental transparency facilitates effective oversight.

Public funding for political parties may provide resources that help to facilitate a fair balance of power, foster a spirit of independence and enable the opposition to carry out its oversight role more effectively.

The complex relation between parliament and the media emerged frequently in the discussions. At one level, the media often appears to have more power than the parliament. Government is often more responsive to pressure from media than from parliament, where it may hold a majority that keeps issues under control. But there is a close, two-way relationship at play: parliamentarians may bring pressure to bear on government by bringing a story to the media (or threatening to do so); the media may raise issues that are subsequently taken up in parliament.

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Meanwhile, social media are changing the existing power relations. They offer new channels for every political voice and new means to generate public support, and they create new citizen demand for and expectations of oversight.

Legislative oversight tools

An in-depth discussion took place on the utility of a distinction between “formal” and “informal” tools of oversight; the former being those that are part of formal parliamentary procedure, such as questions to ministers, committee reports, etc, and the latter being the myriad other ways in which to influence government policy.

In some contexts, and notably where there is a ruling majority and strong party discipline, the formal tools of oversight may not produce effective outcomes. Committees may meet to deliberate, but when decisions are to be taken, the political majority votes as a block. Ministers may answer questions, but in a way that does not shed further light on the issue. Some argued that the ability to use formal oversight tools effectively is a key measure of parliament’s strength; parliaments must build capacity to make formal tools for oversight work better.

Others considered that the political context limits the use of formal tools in practice, and consequently everything happens informally; parliamentarians need to “use whatever works”. Examples of informal methods of oversight include talking with ministers while waiting to vote (particularly if from the same political side); raising issues at party group meetings; or bringing issues to the media. If it is not possible to set up a committee of inquiry, parliamentarians can still speak to the people who would have taken part in the inquiry. Working with civil society organizations to raise awareness of issues is a useful way to create pressure for change.

On the effectiveness of formal oversight tools, participants noted that it is essential for committees to have financial autonomy. Committees should not be dependent on government for access to resources, for example to carry out visits or to hire expert research assistance.

It is also fundamental that oversight tools should be accessible to the political minority, such as the possibility to set up a parliamentary committee of inquiry.

Oversight institutions such as SAIs can provide significant support to parliament, and the number of such institutions seems to be growing. Careful attention needs to be paid to ensuring that such institutions are not perceived as “competitors” to parliament, and that cooperative relationships are established.

Oversight activities are not necessarily spectacular; they are based on facts, and require tenacity and persistence. They also require there to be a solid parliamentary infrastructure that can provide research support and advice to members, as well as deep links to civil society. The GPR could usefully highlight good practices that make a practical difference, such as how to select witnesses to appear before a committee, how to ask effective questions, how to write terms of reference for a committee inquiry.

Some forms of oversight do not fit neatly into the formal/informal distinction. Cross-party caucuses (e.g. for women) were mentioned as being sometimes more effective than parliamentary committees, as members felt more free to cooperate on issues, whereas actions in committee often follow party lines. Parliaments may have exchanges with oversight institutions such as SAIs that go far beyond the official interactions on annual reports, such as joint workshops on specific issues.

Informal methods of oversight also have negative aspects. They may tend to reinforce a culture of politics as a “gentlemen’s club”, from which women and “outsider” interest groups are excluded – it was noted that having a critical mass of women in parliament (at least 30%) “changes everything” in this regard. A reliance on informality may also entrench the role of established political families. It raises the question of how new parliamentarians can learn informal ways to get things done. At one extreme, doing business informally may also open up parliamentarians to allegations of blackmail or influence-peddling.

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It was observed that formal oversight tools have usually developed from existing practices, only later codified in laws. It may not be desirable to over-formalize things, as laws are hard to change. Recognizing the political realities in different contexts, it appears clear that formal and informal methods of oversight will continue to co-exist to advantage.

The politics of oversight; changing political behaviours

It was argued that the GPR will resonate with parliamentarians if it is able to capture the political dynamics that underpin oversight, and to help them to develop strategies, build alliances and recognize (and seize) political opportunities for reform. When faced with problems, parliamentarians want to know what the solutions are, so they can push for change.

There was some caution about placing too much emphasis on the “political will” of parliamentarians alone. Political will is required at many levels, in government, in parliament and in society. As one parliamentarian put it, “what is the political will of my constituents? It is to see that the roads are fixed”, not to take part in “philosophical discussions” about human rights, etc.

The goal, and the key to change, is to influence political behaviour, by creating a culture that is supportive of oversight by parliamentarians from all political sides, and by demonstrating that oversight is one of the fundamental tasks of parliamentarians. This could mean, for example, party leaders sitting together to come to a bipartisan decision on the need for oversight, and making an agreement to work constructively towards this objective. At another level, it could mean developing strong committees, where members feel they are part of a “culture of committee”.

Paths to reform will vary according to the political context. It was noted that a scandal can provide the opportunity to create innovative tools. But change can also come about through determined leadership or by building alliances. Ultimately, pressure from citizens to meet increased expectations of government accountability is perhaps the fundamental driver of change.

4. AVENUES FOR RECOMMENDATIONS

The report might usefully call for:

- Parliaments to prioritize oversight activities
- A constructive approach to oversight
- Introspection by political parties on what oversight is, how to support it, and how to reconcile the personal and party roles of parliamentarians;
- Recognition of the importance of oversight for good governance
- Greater awareness that gender-sensitive parliaments will offer a more diversified and real representation of society
- Cooperative relations with Supreme Audit Institutions to help parliament “follow the money”
- Commitment to putting government data in the public domain

The report might usefully propose:

- Practical actions by which parliamentarians can shape the enabling environment for oversight
- Dedicated time for oversight activities, including sufficient time for scrutiny of the budget
- Permanent multi-party structures to monitor implementation of public policies
- Instruments to strengthen the role of political minorities
- Training for parliamentarians in carrying out oversight effectively
- Enhanced structures in the parliamentary administration to support parliamentarians’ oversight activities
- Benchmarking tools for parliaments to assess the effectiveness of their oversight activities

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5. APPENDIX: LIST OF PARTICIPANTS

Attiya Inayatullah	Former Member of the National Assembly, Pakistan
Philippe Mahoux	Senator, Former Minister, Belgium
Ghassan Moukheiber	Member of the National Assembly, Lebanon
David Pkosing Losiakou	Member of the National Assembly, Kenya
Nouzha Skalli	Member of the House of Representatives, Former Minister of Gender and Social Affairs, Morocco
Alain Delcamp	Former Secretary General of the Senate, France
Luis Rojas	Pro-Secretary of the Chamber of Deputies, Chile
Alvaro Cabrera	Head of the Information and Methodological Department, National Assembly, Hungary
Philippe Schwab	Secretary General, Council of States, Switzerland. Vice-President of the Association of Secretaries General of Parliament
Robert Sattler	Head of the International Department of the Austrian Court of Audit, on behalf of INTOSAI
Scott Hubli	Director of Governance Programmes, NDI
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Rick Stapenhurst	Professor of Practice at the Institute for the Study of International Development, McGill University
Rasheed Draman	Executive Director, African Centre for Parliamentary Affairs
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Sonia Palmieri	Expert, parliamentary strengthening
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Suki Beavers	Advisor, Policy and Programmes, Health Governance and Inclusive Political Processes
Ricardo Godinho Gomes	Project Manager, Supreme Audit Institutions, National Parliaments & Civil Society (pro PALOP)
Oliver Pierre-Louveaux	Inclusive Political Processes Programme Specialist, Regional Hub for Arab States, Amman, Jordan
Warren Cahill	Chief Technical Advisor, Myanmar
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