



## South Africa's Parliamentary System: From Westminster to Hybrid?

*"When King Charles I came to Parliament in 1642 to arrest five Members of the Commons for treason, Speaker Lenthall gave the following reply: May it please Your Majesty, I have neither eyes to see, nor tongue to speak in this place, but as the House is pleased to direct me, whose servant I am here, and I humbly beg Your Majesty's pardon that I cannot give any other answer than this to what Your Majesty is pleased to demand of me."<sup>1</sup>*

### 1. Introduction

Since the beginning of a true parliamentary system in South Africa in the 1800s, it has undergone a series of gradual changes. It has become a hybrid system, but one still fundamentally based on the Westminster system. This system developed in the United Kingdom and spread to many British colonies. With their colonial expansion to southern Africa in the late 18<sup>th</sup> and early 19<sup>th</sup> centuries, the British not only claimed South Africa as their own but, in addition, implemented their way of life, morals, values, virtues and system of politics. Although British colonial rule effectively ended in South Africa in 1910, the Westminster parliamentary system did not. This model of politics continued throughout most of the National Party's (NP) years in power, with some changes in the 1960s and 1980s. With South Africa's first democratic election in 1994, there was further change, towards a more 'hybrid' system, suitable to our new political dispensation.

One of the key features of the Westminster system – highlighted in the quote above – is the way in which it maintains a strict demarcation between the powers of the executive and those of the legislature. In this, the Speaker of Parliament plays a vital role. Recently, the Speaker of SA's National Assembly has attracted widespread criticism for her allegedly unfair, or partisan, behaviour towards some opposition MPs; and for continuing to hold a 'top six' position in the governing party. This briefing paper looks at the evolution of our parliamentary system, and focuses in particular

on the debate around the Speaker.

### 2. The Westminster Parliamentary System

The original Westminster Parliament, situated in the Palace of Westminster in London, conducts its business according to a series of conventions and procedures for operating a legislature. Among its key features are:<sup>2</sup>

- The **head of state** (Queen Elizabeth II, the constitutional monarch) is 'above politics' and acts on the advice of a Prime Minister. The head of state may possess reserve powers which are not normally exercised, and plays a largely ceremonial role. The head of state formally dissolves Parliament, at the request of the Prime Minister, and 'invites' the winner of an election to form a new government.
- The **legislature**, known as **Parliament**, consists of two houses: the **House of Commons** and the **House of Lords**. The House of Commons is made up of 650 members, each elected by a geographical constituency, while the House of Lords has both hereditary and appointed members. (Some other countries which broadly follow the Westminster system have bicameral systems in which both Houses are elected.)
- The **head of government** is the Prime Minister, who leads a Cabinet which is accountable to Parliament. The Prime Minister is usually the leader of the majority party, and

is chosen by the MPs of that party. The government requires the support of a majority of members of the House of Commons to stay in office.

- The **opposition** is led by the leader of the party with the second largest number of seats in the lower house.
- The **Speaker** is the chief officer and the highest authority in the House of Commons. He or she is an MP who, once elected to the office of Speaker, must be politically impartial, and takes no part on the affairs of his or her party. The main tasks of the Speaker in the House of Commons are to uphold order in the House; to ensure that MPs have an opportunity to speak; to chair debates in Parliament, which includes applying the rules and conventions of parliamentary debate; and exerting discipline where necessary, including requesting MPs to withdraw rude and abusive remarks, or suspending continually disobedient MPs. He or she is assisted by one or more Deputy Speakers.

There are numerous traditions, ceremonies and conventions associated with a Westminster-style system, many of which are mirrored in South Africa's Parliament.

- The Head of State makes a speech at the annual Opening of Parliament, setting out the government's plans and programmes for the coming year. In Britain, this is known as the 'Queen's Speech'; in South Africa it has become known as the 'State of the Nation Address'.
- Westminster-style parliaments are usually rectangular in shape, with the governing party seated to the right of the Speaker, and the opposition party or parties directly opposite, on the Speaker's left.
- The Speaker sits at the head of the room, with a mace mounted in front of him or her as a symbol of authority. Various black-robed clerks and messengers sit in front of the Speaker, and the Sergeant-at-arms is present to symbolise (and enforce) order, if necessary removing any MP or other person at the instruction of the Speaker.
- Members refer to each other as 'Honourable' or 'the Honourable Member',

and they traditionally bow to the Speaker when entering or leaving the chamber.

### **3. The Evolution of South Africa's Parliamentary System**

For present purposes, South Africa's parliamentary system can be divided into two main periods: the first starting with the British occupation of the Cape, continuing through the colonial and apartheid years, and ending in 1994; and the second being the democratic era post-1994.

#### ***3.1. Pre-1994: the colonial period***

South Africa's present Parliament occupies the site and the buildings of the Cape Colonial Parliament of the late 1800s. After the Union of South Africa came into being in 1910, the country became a self-governing dominion within the British Commonwealth, when the Cape and Natal colonies and the Boer republics of the Transvaal and the Orange Free State were merged under the South Africa Act, passed by the British Parliament in 1909<sup>3</sup>. This Act served as the Union of South Africa's constitution until 1961. By 1931, however, most of Britain's direct authority over South Africa had been removed, and the Status of Union Act of 1934 affirmed that no Act passed by the British Parliament would apply to South Africa, unless adopted by the Union Parliament.

During this period, most of the conventions and procedures of the Westminster system were applied in the Union Parliament. In addition, South Africa's electoral system also mirrored Britain's: MPs were elected to represent single-member constituencies, with no proportional representation.

#### ***3.2. Pre-1994: the apartheid period***

South Africa officially became the 'Republic of South Africa' in 1961, following a national referendum amongst white voters<sup>4</sup>. All political ties with Britain were cut, and in legislation and legal discourse the words 'King', 'Queen', and 'Crown' were replaced by the word State in order to reflect the change to a Republic<sup>5</sup>. A State President replaced the British monarch, but enjoyed only the same nominal constitutional powers as the Queen. Real political power continued to reside, as in Britain, with a Prime Minister and a Cabinet, and in a bicameral legislature consisting of a House of Assembly and

a Senate. A purportedly independent Judiciary was provided for, although its members were appointed directly by the executive. The State President could dissolve Parliament or extend its term by a maximum of six months, in practice only at the request of the Prime Minister. Once again, most of the conventions and practices of the Westminster system continued to be followed after 1961.

The most significant change – pre-1994 – took place in 1983, when the post of Prime Minister was abandoned, and an executive Presidency was adopted, combining the offices of Head of State and Head of Government. To this extent, the new system was closer to the American system and those of some European countries (except that all members of the executive – other than the State President – remained elected members of Parliament.) The other major change in 1983 was the introduction of the ‘Tri-cameral Parliament’, which gave limited, and much contested, representation to ‘coloured’ and ‘Indian’ South Africans in separate chambers.<sup>6</sup> Nevertheless, the system still remained fundamentally based on the system of Westminster; each of the three houses had a Speaker, they were arranged according to the Westminster pattern, and the conventions of debate and address were similar.

### **3.3. Post-1994: the democratic era**

Since the 1994 elections, and the adoption of the Constitution in 1996, South Africa has been a constitutional democracy with an executive President, a two-chamber Parliament, a three-tier system of government, and an independent Judiciary<sup>7</sup>. The three spheres of government – national, provincial and local – all have legislative and executive authority within their own areas of competence, and the arrangement is defined by the Constitution as “distinctive, interdependent and interrelated”.<sup>8</sup>

Some of the key features of South Africa’s present parliamentary system continue to reflect the traditions of Westminster, but in other respects we have departed from that precedent: <sup>9</sup>

- **The President**, elected by the **National Assembly** from among its members, is the executive Head of State and leads the Cabinet. The President may not serve more than two five-year terms in office. His or her duties include appointing a Deputy-President, Ministers and Deputy-Ministers. The members of Cabinet, including the President,

are individually and collectively accountable to Parliament.

- **The Legislature, or Parliament**, is situated in Cape Town, and consists of two houses, the **National Assembly** and the **National Council of Provinces (NCOP)**. Parliament is bound by the Constitution and can only act within the limits of the Constitution. In this regard it differs from the Westminster system, in which Parliament, not the (unwritten) British Constitution, is supreme. The National Assembly consists of 350 - 400 members and serves a five-year term on the basis of a common voters’ roll. Seats in the National Assembly are awarded to each political party by means of proportional representation, another difference from the Westminster practice, in which elections are generally constituency based.
- **The NCOP** was created to achieve co-operative governance and participatory democracy. It consists of 54 permanent members and 36 special delegates, and elects its own chairperson. Each of the nine provinces of South Africa sends 10 representatives, of which six are permanent members, and four special delegates led by the Provincial Premier, or a member of the Provincial Legislature designated by the premier of that province. It is not an ‘upper house’ in the Westminster sense, as for example, the House of Lords is in Britain.
- The National Assembly is presided over by a **Speaker** (currently Ms Baleka Mbete), with the assistance of a **Deputy Speaker** (currently Mr Lechesa Tsenoli). The Speaker must ensure that the procedures and processes of Parliament are in accordance with the Constitution<sup>10</sup>. Institutionally, the Speaker is the administrative head of Parliament; is responsible for providing leadership and direction to the National Assembly; has final authority on the interpretation and application of the rules of the National Assembly; is allowed to rule or frame rules where these are not provided; and must act impartially at all times to ensure objectivity and fairness<sup>11</sup>. In all of this, the office of Speaker in South Africa closely follows that of the Westminster Parliament.

### 3.4. The role of the Speaker

The South African Parliament prides itself on the impartiality of its Speakers<sup>12</sup>; however, the current Speaker has engendered considerable controversy. Far from distancing herself from her party, she has retained very strong ties with the ANC, and serves as its National Chairperson. Predictably enough, it has proved impossible for Ms Mbete to combine these two roles successfully. For example, after she called EFF leader Julius Malema a 'cockroach' at a recent ANC conference (wearing her 'party' hat)<sup>13</sup>, Mr Malema could hardly be expected to be confident that he would receive impartial treatment from her while she wears her 'Speaker's' hat in the National Assembly. This was not the only example of Ms Mbete confusing her roles. At the State of the Nation Address she wore the ANC's black, green and gold colours while presiding from the Speaker's chair; she delved into internal party matters with her statement that some ANC members were plotting to overthrow President Jacob Zuma<sup>14</sup>; and she appeared reluctant to call President Zuma to order during the President's first question session of 2015, when he repeatedly ignored her instruction to sit down so that she could take a point of order from an MP; to make matters worse, she later defended the President's failure to obey her instruction.<sup>15</sup>

These examples are more than sufficient to raise some very serious questions about Ms Mbete's impartiality as Speaker; they reinforce, too, the wisdom of the centuries-old practice of the Westminster system, that the Speaker – at least for his or her term of office – should stand apart from any party political position or activity. Unfortunately, the Constitution does not prescribe this; it is left up to the judgment of the person and party concerned. The matter is further exacerbated by the ANC's own internal rules, as Prof Pierre de Vos has pointed out:

"In our system it is therefore very difficult for a speaker to be truly impartial and unbiased. For a speaker who is a member of the governing party this pressure will be even more severe as section 5.4 of the Constitution of ANC states that: "ANC members who hold elective office in any sphere of governance at national, provincial or local level are required to be members of the appropriate caucus, to function within its rules and to abide by its decisions under the general provisions of this Constitution and the Constitutional structures of the ANC.""<sup>16</sup>

### 4. The American System

The Westminster system has many advantages, but it is by no means the only, or necessarily the best, parliamentary system. By way of comparison, the United States has two houses of Congress: the House of Representatives and the Senate. The Speaker of the House of Representatives is the third highest political authority in the country. The role of the Speaker is to administer the oath of office to members of the House; to call the house to order, preserve order, and recognise members to speak and make motions; to decide on points of order; to present unfinished business to the House and certify actions of the House; and to appoint select and conference committees, and appoint certain house officers<sup>17</sup>. These duties are significantly more far-reaching than those of a Westminster-style Speaker. However, the US Speaker not only serves as the leader of the House, but as the leader of the majority party too. As a result, the Speaker often advances the agenda and interests of the majority party. This is the complete antithesis of the Westminster system, but it appears to have served America well enough for two centuries.

The Presiding Officer, or President, of the Senate is the Vice-President of the US. This role is primarily formal (it is in fact one of the few duties of the Vice-President) and includes opening the Senate's annual sessions; casting a deciding vote in the event of a tie; presiding during ceremonial occasions; and formally announcing the result of a Presidential election.<sup>18</sup> Once again, this goes against the grain of the Westminster system, since the American Vice-President is very much a party political figure. Indeed, it also offends against the principle of the separation of powers – a member of the executive should not have direct authority over a house of the legislature.

### 5. Conclusion: Westminster or Hybrid?

There are points of both similarity and contrast between the original Westminster parliamentary system and the current South African system. They are fundamentally the same in that both have a separate executive and legislature, both Parliaments are bicameral, and they both follow very similar rules and conventions of conduct and procedure. In South Africa the NCOP, which is housed in the old parliamentary building, looks very much like the House of Lords (even to the red leather seats), with the opposition parties sitting directly across from the governing party. The

National Assembly, however, to accommodate all 400 MPs, is shaped in a horse-shoe and has modern as well as cultural elements to it. But, like Westminster, it has an elected Speaker and Deputy Speaker, it uses a mace as a symbol of authority, and has very similar traditions, ceremonies and conventions.

But there are also a few contrasts. The Westminster system has the Queen as the head of state, whereas South Africa has an executive president as both head of government and head of state. Both of South Africa's houses of Parliament consist of elected members, while at Westminster the House of Lords is made up of appointed and hereditary members. The House of Lords also has a much more powerful role – it can influence and delay legislation to a far greater extent than the NCOP can do in SA. In addition, South Africa's Parliament is subject to a written constitution, while the Westminster Parliament is effectively supreme. The rules and conventions of the unwritten British Constitution have profound force and effect, but they can ultimately be overridden by Parliament far more easily than is the case in this country.

Finally, it is worth considering that the Westminster system developed organically over

many centuries, reflecting the gradual transfer of political power from the monarchy to the citizenry. Its rules, traditions and procedures are not simply a quaint hangover from a bygone era. Rather, they express and preserve the democratic rights of the people whom the UK Parliament represents and serves. This does not mean, of course, that any other country should uncritically adopt the Westminster system and slavishly follow its conventions. But it does mean that, before abandoning either the core aspects of that system or its key conventions, there should be certainty that such a move will not end up, retrogressively, in the transfer of power from the people to those who are supposed to be their servants.

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<sup>1</sup> <http://www.parliament.uk/business/commons/the-speaker/the-role-of-the-speaker/history-of-the-speakership/>

<sup>2</sup> A video illustration of United Kingdom's parliamentary system. Retrieved: March 4, 2015. From:

<http://www.parliament.uk/education/about-your-parliament/>

<sup>3</sup> [http://www.photius.com/countries/south\\_africa/government/south\\_africa\\_government\\_system\\_of\\_government.html](http://www.photius.com/countries/south_africa/government/south_africa_government_system_of_government.html)

<sup>4</sup> [http://www.photius.com/countries/south\\_africa/government/south\\_africa\\_government\\_system\\_of\\_government.html](http://www.photius.com/countries/south_africa/government/south_africa_government_system_of_government.html)

<sup>5</sup> <https://www.nelsonmandela.org/omalley/index.php/site/q/03lv01538/04lv01828/05lv01829/06lv01904.htm>

<sup>6</sup> [http://en.wikipedia.org/wiki/Tricameral\\_Parliament](http://en.wikipedia.org/wiki/Tricameral_Parliament)

<sup>7</sup> Retrieved: March 10, 2015. From: <http://www.southafrica.info/about/government/gov.htm#>.

[VPWpty5jKec#ixzz3TKESIEBk](http://www.southafrica.info/about/government/gov.htm#VPWpty5jKec#ixzz3TKESIEBk)

<sup>8</sup> Constitution of the Republic of South Africa, 1996, section 40.

<sup>9</sup> Retrieved: March 10, 2015. From: <http://www.southafrica.info/about/government/gov.htm#>.

[VPWpty5jKec#ixzz3TKESIEBk](http://www.southafrica.info/about/government/gov.htm#VPWpty5jKec#ixzz3TKESIEBk)

<sup>10</sup> [http://www.parliament.gov.za/live/content.php?Item\\_ID=453](http://www.parliament.gov.za/live/content.php?Item_ID=453)

<sup>11</sup> <http://www.dailymaverick.co.za/opinionista/2014-09-19-the-speakers-dilemma/#.VTc6TJPK-ao>

<sup>12</sup> [http://www.parliament.gov.za/live/content.php?Item\\_ID=453](http://www.parliament.gov.za/live/content.php?Item_ID=453)

<sup>13</sup> <http://www.bdlive.co.za/national/politics/2015/02/16/opposition-unites-against-mbete-after-cockroach-insult>

<sup>14</sup> <http://www.news24.com/SouthAfrica/News/ANC-MPs-plotting-against-Zuma-Mbete-20150413>

<sup>15</sup> <http://www.dailymaverick.co.za/article/2015-03-12-presidents-qa-number-one-large-and-in-charge/#.VTc4IZPK-ao>

<sup>16</sup> <http://www.dailymaverick.co.za/opinionista/2014-09-19-the-speakers-dilemma/#.VTc6TJPK-ao>

<sup>17</sup> Heitshusen, V. (2011). The Speaker of the House: House Officer, Party Leader, and Representative. CRS Report for Congress: Congressional Research Service.

<sup>18</sup> [http://www.senate.gov/artandhistory/history/common/briefing/Vice\\_President.htm](http://www.senate.gov/artandhistory/history/common/briefing/Vice_President.htm)