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**A COMPARATIVE OVERVIEW:
ENHANCING PARLIAMENTARY OVERSIGHT AND EXECUTIVE ACCOUNTABILITY**

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EXECUTIVE SUMMARY

The Constitution of the Republic of South Africa, 1996, renders members of Cabinet individually and collectively accountable to Parliament for the exercise of their powers and the performance of their functions. It obliges the National Assembly to scrutinise and oversee executive action, maintain oversight of the exercise of national executive authority and to ensure that all executive organs of state are accountable to it. Pursuant to this obligation, the Rules of Parliament empower the institution and its committees to summons persons to appear before them. Moreover, under its Rules, portfolio committees are empowered to “monitor, investigate, enquire into and make recommendations concerning” the exercise within their portfolios of national executive authority and to conduct public hearings. Notwithstanding these powers, the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector, including Organs of State, (Zondo Commission) found that Parliament had largely failed to exercise its oversight and accountability mandate during the years of state capture or exercised ineffective oversight. The Commission made three recommendations to enhance parliamentary oversight and improve executive accountability to Parliament. These are:

- *Regular, timeous and proper reporting to Parliament by representatives of the executive (including State Owned Enterprise’s and other organs of state)* - The Commission recommended that Parliament considers whether there is a need to legislate on the issue of reports by representatives of the Executive to Parliament.
- *Non-Attendance of Ministers and others at scheduled meetings is not acceptable* - The Commission recommended that Parliament considers legislating to regulate non-appearance without adequate cause.
- *Parliament’s role in key appointment processes should be improved* - The Commission recommended that Parliament considers whether it is desirable to amend its Rules to give effect to the proposals by Corruption Watch on appointments by Parliament.

This paper reviews existing mechanisms (such as legislation, Standing Orders and/or guidance manuals) used by the Parliaments of 12 countries to enhance oversight and improve Executive accountability to the legislature as it relates to the above-mentioned three recommendations of the Zondo Commission. The Parliaments under review are those of the Republic of Korea, Serbia, Japan, United Kingdom, Brazil, Germany, Nigeria, United States of America, Kenya, India, New Zealand and Canada. The majority of the countries reviewed have bicameral Parliaments.

None of the countries reviewed has an overarching piece of legislation, such as an Accountability Standards Act, to enhance the accountability of the Executive to the Legislature. While some countries have introduced dedicated legislation, such as the National Assembly Act in the Republic of Korea and the Diet Act in Japan, these Acts are not dedicated to parliamentary oversight and accountability of the Executive. Instead, most of the countries reviewed are guided in respect of their oversight mandate by a Constitutional Framework and other mechanisms, such as Parliamentary Rules, Standing Orders, as well as Codes and Manuals and even unwritten conventions. However, in many of these countries there is a



growing demand for an improvement in and strengthening of the parliamentary oversight of the Executive.



1. INTRODUCTION

Globally, parliamentary oversight is expected to underpin countries' progress toward the goals set out in the 2030 Agenda for Sustainable Development.¹ Parliaments have a central role to play in advancing this agenda. Parliamentary oversight improves the quality of government, helps to keep in check the power of the executive and therefore contributes to strengthening democracy. Ultimately though, effective oversight requires more than just rules and systems; it depends on active and willing participants who are prepared to give a high level of priority and commitment to oversight activities over an extended period of time.² Moreover, while the presence of oversight tools is a necessary condition for effective oversight, it is not, by itself, sufficient. In addition to Parliaments' oversight potential, the political will must exist to oversee government activities.³

The South African Parliament has specific obligations under the Constitution, 1996, to scrutinise and oversee executive action, to maintain oversight of the exercise of the national executive authority and to ensure all executive organs of state are accountable to it.⁴ However, one of the key findings of the Report of the *Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector, including Organs of State*, (Zondo Commission) was that during the period of state capture, Parliament had failed to use the oversight and accountability measures at its disposal.⁵ The Commission noted that State capture was not a transitory phenomenon. It endured for almost a decade, during which time it successfully insulated itself against exposure and accountability. A number of oversight bodies tasked by the Constitution and legislation to identify, confront and root out corruption in the public domain took little or no action. This included Parliament.⁶ In response to these findings the Commission made a number of recommendations to strengthen and enhance Parliament's oversight function.

This paper provides a comparative overview of existing mechanisms (such as legislation, Standing Orders and/or guidance manuals) used by selected Parliaments to enhance oversight and improve

¹Inter-Parliamentary Union, Global Parliamentary Report 2017 Parliamentary oversight: Parliament's power to hold government to account (Accessed at <https://www.ipu.org/resources/publications/reports/2017-10/global-parliamentary-report-2017-parliamentary-oversight-parliaments-power-hold-government-account>)

²Ibid

³Pelizzo R, Stapenhurst R and Olson D, Parliamentary Oversight for Government Accountability (Accessed at https://ink.library.smu.edu.sg/cgi/viewcontent.cgi?article=1136&context=soss_research)

⁴ Constitution, 1996, specifically, section 42(3), section 55(2), section 56, section 89(1), section 92(2) and (3) and section 102. In addition to the Constitution, the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 addresses the powers of Parliament, inter alia, to summon and question witnesses, a key function in ensuring oversight, particularly through inquiries.

⁵Report of the Judicial Commission of Inquiry into allegations of State Capture, Corruption and Fraud in the Public Sector Part 6 Vol. 2 p284 para 736 (Accessed at https://www.statecapture.org.za/site/files/announcements/670/OCR_version_State_Capture_Commission_Report_Part_VI_Vol_II_-_CR.pdf) Part 6 Vol 2 P185 para 474

⁶ Report of the Judicial Commission of Inquiry into allegations of State Capture, Corruption and Fraud in the Public Sector Part 1 Vol 3 paragraph 622. Page 824.



Executive accountability to the legislature (and in that way to the people) as it relates to the following three recommendations of the Zondo Commission on parliamentary oversight:

- Reports by representatives of the Executive to Parliament.
- Ministers' attendance of committee meetings.
- Parliamentary procedures associated with the selection of office bearers in state institutions.

The Parliaments under review are those of the Republic of Korea, Serbia, Japan, United Kingdom, Brazil, Germany, Nigeria, United States of America, Kenya, India, New Zealand and Canada. The majority of the countries reviewed have bicameral Parliaments.

2. IMPLICATIONS OF THE ZONDO COMMISSION FINDINGS AND RECOMMENDATIONS: PARLIAMENTS NEED TO STRENGTHEN OVERSIGHT AND ACCOUNTABILITY

In the main, the Zondo Commission concerned itself with determining whether state capture, corruption or fraud occurred in the public sector, as well as the nature and scale thereof and who participated in it. However, to enable it to make recommendations concerning the avoidance of similar problems in the future, the Commission was of the view that it was necessary to consider why state capture and corruption were able to become so entrenched and to persist over an extended period and to consider, in particular, why institutions, which ought to have contributed to detecting or addressing these maladies, may not have been as effective in doing so as one would have hoped. Amongst these institutions was Parliament.⁷

Parliament has clear obligations under the Constitution to scrutinise and oversee executive action, to maintain oversight of the exercise of national executive authority and to ensure that all executive organs of state are accountable to it. Section 92(2) provides that members of the Cabinet are “accountable” collectively and individually to Parliament for the exercise of their powers and the performance of their functions. Section 92(3) provides that members of the Cabinet must provide Parliament with full and regular reports concerning matters under their control. Both under the Constitution and its own Rules, Parliament and its committees have the power to summons persons to appear before them. Moreover, under its Rules, portfolio committees are empowered to “monitor, investigate, enquire into and make recommendations concerning” the exercise within their portfolios of national executive authority and to conduct public hearings.⁸

Despite these powers the Commission found that Parliament had largely failed in respect of its oversight and accountability mandate during the years of state capture. Moreover, the Commission was of the view that even where the will to oversee the executive existed, parliamentary oversight

⁷Report of the Judicial Commission of Inquiry into allegations of State Capture, Corruption and Fraud in the Public Sector Part 6 Vol. 2 p551 para 735

⁸Ibid p553 para 748



had too often proved to be ineffective.⁹ In response the Commission made a number of recommendations to strengthen Parliamentary oversight. These recommendations included the following:

- **Regular, timeous and proper reporting to Parliament by representatives of the executive (including State Owned Enterprises and other organs of state).** The Commission noted that this is essential if Parliament is to be in a position to exercise proper oversight. This was recognised some years ago by the Corder Report.¹⁰ Though considerable reporting by representatives of the Executive to Portfolio Committees does clearly take place, it appears to the Commission that such reporting is all too often not timeous and inadequate. Parliament needs to make it clear that this type of practice will not be tolerated. It needs to ensure that consequences follow for those who, without adequate cause, make proper and timely oversight impossible. The Commission recommended that *Parliament considers whether there is a need to legislate on the issue of the reports by representatives of the Executive to Parliament.* It may be that in the absence of such legislation, the present sometimes unsatisfactory situation will persist.¹¹
- **Non-Attendance of Ministers and others at scheduled meetings is not acceptable.** It is for Parliament to make clear that this type of practice will not be tolerated and to ensure that consequences are visited on those who offend without adequate cause. Parliament must decide how it wants to be treated. The Executive must not be allowed to call the shots in Parliament. The Commission recommended that *Parliament considers legislating to regulate non-appearance without adequate cause.*¹²
- **Parliament's role in key appointment processes should be improved.** Corruption Watch made a submission to the Commission dealing with the appointment process of leaders of key institutions, with recommendations in relation to the parliamentary appointment processes. These included: developing multi-stakeholder structures to oversee the appointment process and testing candidates for integrity and ethics, as well as their skills and expertise, using clear, merit-based and objective criteria. The Commission endorsed the recommendations made by Corruption Watch and *recommended that Parliament considers whether it is desirable to amend its rules to give effect to the proposals by Corruption Watch on appointments by Parliament.*¹³

It is with respect to these three areas that the next section of this paper provides a comparative overview of the approach to parliamentary oversight in the selected countries mentioned. Although the key focus is on legislation, reference is also made to mechanisms such as Standing Orders, Codes and Guidelines.

⁹ Ibid p747 para 1280

¹⁰ Corder et al (1999). Report on Parliamentary Oversight and Accountability.

¹¹ Ibid. Part 6 Vol 2 P445 paras1221 and 1222

¹² Ibid. Part 6 Vol 2 P446 para 1228

¹³ Ibid. Part 6 Vol 2 P453 para 1246.



3. COMPARATIVE OVERVIEW OF SELECTED COUNTRIES

The table below provides a brief background of the parliamentary systems in the countries selected for the comparative overview as follows:

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| Republic of Korea | The Parliament of the Republic of Korea, known as the National Assembly (NA), is unicameral. Its members elected directly from single-member constituencies or by a proportional representation system. The NA and its various Committees possess various rights to check and oversee the government. The National Assembly Act was enacted to contribute to the democratic and efficient operation of the National Assembly, by providing for various aspects relating to the matters of organisation and proceedings. The competences of the NA are regulated by the Constitution of the Republic of Korea, the National Assembly Act and Parliamentary Rules of Procedure. ¹⁴ |
| Serbia | The National Parliament of Serbia is a unicameral Parliament known as the National Assembly (NA). The competences of the NA are regulated by the Constitution of the Republic of Serbia. The functions of the NA are further regulated by the Law on the National Assembly (Articles 7, 15, 27, 40, 41, 53 and 56). Committees supervise the work of the Government within their respective competences and other bodies and institutions over which the NA has oversight. This is done in accordance with the Serbian Constitution, the Law on the National Assembly and Rules of Procedure of the National Assembly. |
| Japan | Japan's Constitution provides for a bicameral system of Parliament. The Diet, Japan's Parliament, is composed of the House of Representatives (Lower House) and the House of Councillors (Upper House). Although the two chambers share legislative powers, the Lower House prevails in the legislative process. ¹⁵ Each House has the right to investigate government-related matters and require reports from government agencies, the presence and testimony of witnesses, and the production of records. The Constitution of Japan and legislation, including the National Diet Act, as well as the Rules of the two Houses, provide for the matters of organisation and proceedings in the Houses. |
| United Kingdom | The United Kingdom (UK) does not have a formal written Constitution. The process of overseeing the work of the Executive is governed by long-established custom and conventions. ¹⁶ The UK Parliament is bicameral, consisting of the House of Commons and the House of Lords. The principal |

¹⁴Inter-Parliamentary Union, The parliamentary system of the Republic of Korea (Accessed at <https://www.asgp.co/sites/default/files/documents/YHSBUGDMHVJDRCYFGAYYEGFMIVRLYW.pdf>)

¹⁵D'Ambrogio E, Japan's Parliament and other political institutions (Accessed at [https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/651951/EPRS_BRI\(2020\)651951_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/651951/EPRS_BRI(2020)651951_EN.pdf))

¹⁶Law Library of Congress, Parliamentary Oversight of the Executive Branch (Accessed at <https://tile.loc.gov/storage-services/service//ll/lglrd/2017299150/2017299150.pdf>)



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| | <p>parliamentary mechanism through which the government is held to account is via the work of Select Committees in both Houses. The powers of Select Committees are set out in Standing Orders (SO's). Since 1995, following the publication of a report of the House of Commons Committee on Standards in Public Life, there has been a requirement that Ministers and officials will adhere to certain standards in engagements with Parliament. These standards are contained in the Cabinet Manual, as well as various 'codes', including the Ministerial Code, the Civil Service Code.</p> |
| Brazil | <p>The Brazilian National Parliament (the National Congress) consists of two chambers. In terms of Article 44 of the Brazilian Constitution, legislative power is exercised by the National Congress, which is composed of the Chamber of Deputies and the Federal Senate. The Chamber of Deputies is composed of representatives of the people, elected by the proportional system, in each state, territory and in the Federal District (Article 45). The Federal Senate is composed of representatives of the states and of the Federal District, elected by a majority vote (Article 46). The Constitution of 1988 is the landmark of legislative oversight in Brazil. It specifies (Art. 49) that the National Congress will have the exclusive prerogative of overseeing the executive. The standing orders (regimentos internos) of the Senate and the Chamber of Deputies merely flesh out the details of oversight procedures and instruments set up by the Constitution. The only exception is the Oversight Initiative Bill (Proposta de Fiscalização e Controle), the introduction of which is permitted in each chamber. This tool allows the permanent Comissão de Fiscalização e Controle to conduct strict inspections or auditing of the administration.¹⁷</p> |
| Germany | <p>The German Constitution, the Grundgesetz (Basic Law for the Federal Republic of Germany) (revised version published in the Federal Law Gazette Part III, classification number 100-1, as last amended by the Act of 28 June 2022 (Federal Law Gazette I p. 968) establishes a bicameral Parliament. It sets out the competences of Parliament comprising the Bundestag (comprising directly elected members representing the federal or national state) and the Bundesrat (proportionally elected members representing the 16 Länder (autonomous states)). In addition to the Constitutional framework the rules governing Parliament's work include, in particular, the Rules of Procedure as well as a Code of Conduct for Members.</p> |
| Nigeria | <p>The country operates a bi-cameral legislature comprising the Senate and the House of Representatives. The Committee structure in the National Assembly (House of Representatives and Senate) is used to execute oversight functions and ensure that activities of the executive arm of government and its agencies are kept under constant surveillance and scrutiny by the</p> |

¹⁷Lemos LB, Accountability in Brazil: Congressional oversight of the executive branch (Accessed at https://www.academia.edu/217765/Horizontal_accountability_in_Brazil_congressional_oversight_of_the_executive_branch_English_)



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| | <p>legislature. The conduct of oversight is legalised by the various Standing Orders of Nigerian Legislative Houses. Sections 60 and 101 of the 1999 Constitution (as amended) empower the National and State Houses of Assembly to regulate their own procedure, including the procedure for summoning and recess of the House. The Rules have also defined jurisdiction of all Special and Standing Committees over all legislative activities, including oversight of agencies under jurisdiction of a particular committee.</p> |
| USA | <p>The United States Congress is bicameral (consisting of the Senate and the House of Representatives). Major processes related to congressional oversight include the investigative, impeachment, confirmation, appropriations, authorisation, and budget processes. The Constitution of the United States does not specifically give Congress the power to conduct oversight but oversight is “implied” within the U.S. Constitution, public laws, and House and Senate rules. The power of congressional oversight is reinforced by the “necessary and proper” clause (Article I, Section 8, Clause 18) of the Constitution, which grants Congress the power. The scope of Congress’ powers of oversight extends to virtually all programs, activities, regulations, and polices implemented by the presidential cabinet departments, independent executive agencies, regulatory boards and commissions, and the President of the United States.¹⁸</p> |
| Kenya | <p>Article 93 of the Constitution establishes the Parliament of Kenya as bicameral, consisting of the National Assembly and the Senate. The oversight powers of the legislature can be divided into three: exclusive oversight powers of the National Assembly, oversight powers shared by the two chambers, and special oversight powers of the Senate on specific matters touching on counties. The Constitution provides that each House of Parliament shall make Standing Orders for the orderly conduct of its proceedings.</p> |
| India | <p>The Constitution of India provides for a bicameral Parliament, comprising the House of the People (Lok Sabha) and the Council of States (Rajya Sabha). Parliament has power to call for information, to discuss, to scrutinise and to put the seal of approval on the proposals made by the Executive. Article 75 of the Constitution provides that the executive is responsible to the Parliament, particularly the Lok Sabha. Parliamentary committees draw their authority from article 118 of the Constitution (Parliament’s authority to make rules and regulations for its conduct).</p> |
| New Zealand | <p>The House of Representatives is the sole chamber of the New Zealand Parliament. The House passes laws, provides ministers to form Cabinet, and supervises the work of government. It is also responsible for adopting the state’s budgets and approving the state’s accounts. The House of</p> |

¹⁸Longley R, Congressional Oversight and the US Government (Accessed at <https://www.thoughtco.com/congressional-oversight-4177013>)



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| | <p>Representatives was created by the New Zealand Constitution Act 1852 (an Act of the British Parliament, which established a bicameral legislature, however the upper chamber, the Legislative Council, was abolished in 1950. Standing Orders and the Legislation and House Procedure Handbook provide the regulatory framework for the work of the House of Representatives.</p> |
| Canada | <p>The Parliament of Canada is the federal legislature of Canada, and is composed of three parts, the King, the Senate, and the House of Commons. By constitutional convention, the House of Commons is dominant, with the Senate rarely opposing its will. The Senate reviews legislation from a less partisan standpoint and may initiate certain Bills. The monarch or his representative, normally the governor general, provides royal assent to promulgate Bills into law. The Standing Orders of the House of Commons are the permanent written rules under which the House of Commons regulates its proceedings. There are currently more than 150 standing orders, which provide a detailed description of the rules governing the legislative process, the role of the Speaker, the parliamentary calendar, the work of committees, and Private Members' Business, among other things.</p> |

3.1 REPORTS BY REPRESENTATIVES OF THE EXECUTIVE TO PARLIAMENT

REPUBLIC OF KOREA

The **National Assembly Act** provides for reports to the Assembly from the Government as follows:¹⁹

- **Article 128.** The plenary session, committees, or sub-committees may request by resolution that the Government, administrative agencies, etc. report or present documents, and photographs and videos owned by the relevant agencies (related directly to the deliberation of bills, or inspection or investigation of the State administration: *(Provided, that if any Committee requests a presentation of documents, etc. related to a public hearing, inspection, or investigation of the State administration, it may do so by its resolution or at the request of not less than 1/3 of the registered members.)*)
- The Government, administrative agencies so requested shall, unless the period is designated separately, report or present documents, etc. within 10 days from the date of receipt of the request: *(Provided, that if any special reason exists, the period may be extended after reporting the reasons thereof to the Speaker or the chairperson.)*

The **Act On Testimony, Appraisal, etc. before The National Assembly** provides additional provisions for the request for reporting and presentation of documents, testimony, appraisal, etc. made in connection with the deliberation on bills or investigation of the state administration by the National Assembly.

¹⁹Republic of Korea, National Assembly Act (Accessed at https://elaw.klri.re.kr/eng_service/lawView.do?hseq=25732&lang=ENG)



- **Article 2.** Except as provided otherwise in this Act, any person who is requested to make a report and present documents in connection with the deliberation of bills, inspection, or investigation of the state administration by the National Assembly, or to attend as a witness or expert or to make an appraisal, shall comply with it, regardless of the provisions of other Acts.

SERBIA

In respect of the performance of activities within its scope of work, a Committee in the Serbian National Assembly may request from a Ministry, or other state institutions, data and information of importance for the committee's work. In terms of the **National Assembly Act**:

- **Article 41.** A Member of Parliament shall have the right to be fully and timely informed about all issues within the competences of the National Assembly, as well as the right to seek information required for performing the function of an MP from, the Speaker of the National Assembly, the Chairperson of the Committee and other working bodies of the National Assembly, the Prime Minister, the members of the Government and officials of other state bodies and organisations. The exercise of rights in terms of paragraph 1 of this Article shall be regulated by the Rules of Procedure.
- **Article 56.** Upon the request of the National Assembly, the Government shall report to the National Assembly on its work, at least once a year

These powers are expanded on further in the Rules of Procedure of the National Assembly, which provide as follows:

- **Article 228.** The Government reporting to the National Assembly on its work:²⁰
 - The Government shall submit a report to the National Assembly on its work, in particular on implementation of policies, execution of laws and other general acts, implementation of development and spatial plans and execution of the State Budget.
 - The Government shall submit reports to the National Assembly when so requested by the National Assembly or on its own initiative, at least once a year.
 - The National Assembly may, acting on a committee proposal, conclude without a debate request from the Government to supply a report on its work, or a report in which the Government reports to the National Assembly on issues relating to policies' implementation, execution of laws and other general acts, in a certain area of activity.
 - Immediately upon receiving it, the Speaker of the National Assembly shall communicate the Government report to MPs for their information.
 - The National Assembly may decide, acting on a proposal of a committee which considered the Government report, that the report also be considered at a sitting of the National Assembly.

²⁰National Assembly of the Republic of Serbia (Accessed at [http://www.parlament.gov.rs/national-assembly/important-documents/rules-of-procedure-\(consolidated-text\)/entire-document---rules-of-procedure.1424.html](http://www.parlament.gov.rs/national-assembly/important-documents/rules-of-procedure-(consolidated-text)/entire-document---rules-of-procedure.1424.html))



In addition, according to the Rules of the National Assembly, the Serbian Parliament may establish an Inquiry Committee or Commission for the purpose of assessment of the situation in a certain area or establishment of facts on certain occurrences or events.

- **Article 68.** Inquiry Committees and Commissions
 - The Inquiry Committee and the Commission shall be entitled to demand data, documents and information from state institutions and organisations and to take statements from individuals which they require.
 - Representatives of state institutions and organisations shall respond to the invitation of the Inquiry Committee or Commission and provide truthful statements, data, documents and information.

Upon completing work, these Inquiry Committee and Commissions report to the National Assembly on their findings and disband after the National Assembly adopts the decision on the report. “Despite their authorisations and scope...these parliamentary bodies may not perform investigative and other judicial actions”.²¹

JAPAN

Article 62 of the Japanese Constitution provides that each House may conduct investigations in relation to government, and may demand the presence and testimony of witnesses, and the production of records.²²

The **National Diet Act** provides that when a House or House committee requests a report or records from the Cabinet or a government agency, the Cabinet or government agency must submit the requested item(s). If the Cabinet or agency fails or refuses to comply with the request, it must give a plausible reason.²³ This is set out in the Act as follows:

- **Article 104.**
 - The Cabinet, public agencies and others must comply with the requests of a House or any of its Committees for the production of reports and records necessary for consideration or investigation.
 - In case the Cabinet or a public agency fails or refuses to comply with a request as referred to in the preceding paragraph, it must give a plausible reason. If the reason is found acceptable by the House or the Committee, it is not necessary for the Cabinet or the public agency to produce the reports and records requested.

²¹National Assembly of the Republic of Serbia (2023). The oversight function of the National Assembly. Available at www.parlament.rs. p8

²²The Constitution of Japan (Accessed at https://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html)

²³ The Diet Law (Accessed at <https://www.sangiin.go.jp/eng/law/diet/index.htm>)



- If the reason is found to be not acceptable, the House or the Committee may ask the Cabinet to declare that the production of the reports and records would be gravely detrimental to the national interest.
- If such a declaration is issued, it is not necessary for the Cabinet or the public agency to produce the reports and records requested.
- If the Cabinet does not issue the declaration within ten days from the filing of the request, the Cabinet or the public agency must produce the reports and records as requested.

In addition, **Article 104-II** provides that in a case where a committee of either House requests the submission of reports or records containing information comprising specially designated secrets, and where the Head of an Administrative Organ declines to provide a statement of prima facie reasons for declining to respond, the committees of either House may request that the Board of Oversight and Review of Specially Designated Secrets conduct an investigation into the Head of the Administrative Organ's refusal to respond.²⁴ A House or House committee may also request the Board of Audit to carry out an audit upon specified matters and to produce a report on the results.²⁵

In addition to the Diet Act the **Act on Oaths and Testimonies of Witnesses in a House** contains provisions to regulate the testimony of witnesses. If a House requests a person to attend a meeting and testify or submit a document, the person must comply. A person who does not appear, does not submit a requested document, or refuses to take an oath or testify is punishable by imprisonment for a maximum period of one year and/or a maximum fine of 100,000 yen (approximately R13 500).²⁶

UNITED KINGDOM

In the UK the **constitutional convention of ministerial responsibility** holds ministers responsible and accountable for their departments' actions and performance. Civil servants are accountable to ministers, not directly to Parliament. So while officials frequently appear before select committees, as representatives of the Executive, they do so to speak on behalf of their Ministers rather than in their own right, and are restricted in what they can say. The Ministerial Code states that: Ministers should require civil servants who give evidence before Parliamentary Committees on their behalf and under their directions to be as helpful as possible in providing accurate, truthful and full information in accordance with the duties and responsibilities of civil servants as set out in the Civil Service Code.²⁷

Detailed guidance to officials who may be called upon to give evidence to Parliamentary select committees is contained in the Cabinet Office memorandum Departmental Evidence and Response

²⁴ Ibid

²⁵ Law Library of Congress, Parliamentary Oversight of the Executive Branch (Accessed at <https://tile.loc.gov/storage-services/service/ll/lglrd/2017299150/2017299150.pdf>)

²⁶ Ibid

²⁷ Ibid



to Select Committees, commonly called the Osmotherly Rules. This memorandum summarises a number of longstanding conventions that have developed in the relationship between Parliament, in the form of select committees, and successive governments.

Parliament has generally recognised these conventions, but the Osmotherly Rules is a government document and therefore has no parliamentary standing or approval.²⁸ Formal acceptance by Parliament would mean accepting restrictions on the information Parliament may be provided. In turn, this could undermine the doctrine of ‘exclusive cognisance’ – the right of both Houses to determine their own proceedings. The Rules also set out a number of restrictions on civil servants’ engagement with select committees. Rooted in the convention of ministerial responsibility, the rules state that since civil servants are not personally accountable to Parliament, their central purpose in appearing before select committees is ‘to contribute to the central process of ministerial accountability.’²⁹ ‘Ministers are ultimately accountable for deciding what information is to be given and for defending those decisions as necessary... their views should be sought if a question arises of withholding information which a Committee has asked for.’³⁰

Many parliamentarians and select committees have been critical about how candid officials are when giving evidence and have called for greater powers for select committees to force officials to appear before their inquiries. In 2014 the coalition government changed the Osmotherly rules to ensure that officials who were Senior Responsible Owners (SROs) of major projects could be directly accountable to Parliament for implementation of projects they oversee.³¹

BRAZIL

The **Brazilian Constitution** provides for compulsory testimony by public officials (Art. 50); as well as public hearings (Art. 58). In addition, Congress has a higher auditing court known as the Tribunal de Contas da União (TCU), defined as the “main auxiliary agency for the external oversight of the administration” (Arts. 70 and 71). Despite the name (which implies that it is an organ of the judicial branch), the TCU is in fact a Congressional institution that performs auditing and/ or ex post evaluation of government programmes and expenditures, either under direct Congressional orders

²⁸The Cabinet Manual (Accessed at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/60641/cabinet-manual.pdf)

²⁹Paun A and Barlow P, Civil Service Accountability to Parliament <https://www.instituteforgovernment.org.uk/sites/default/files/publications/civil%20service%20accountability%20to%20parliament.pdf>

³⁰Ibid

³¹Haddon C, Ministerial accountability (Accessed at <https://www.instituteforgovernment.org.uk/article/explainer/ministerial-accountability>)



or by its own initiative. Its jurisdiction covers 2,500 public administrative units, and it is intended to be independent and non-partisan.³²

In terms of **Article 49 of the Constitution of the Federative Republic of Brazil**³³ “it is exclusively the competence of the National Congress: (CA No. 19, 1998)” to:

- “(v) “[S]top the normative acts of the Executive Power which exceed their regimental authority or the limits of legislative delegation”.
- (IX) “[E]xamine each year the accounts rendered by the President of the Republic and to consider the reports on the execution of Government plans”.
- (X) “[S]upervise and control directly or through either of its Houses, the acts of the Executive Power, including those of the indirect administration”.
- (xiv) “[A]pprove initiatives of the Executive Power referring to nuclear activities”.

In terms of **Article 71 of the Constitution** of the Federative Republic of Brazil, “External control, incumbent on the National Congress, shall be exercised with the aid of the Federal Audit Court, which shall:

- I – examine the accounts rendered annually by the President of the Republic, by means of a prior opinion which shall be prepared in sixty days counted from receipt;
- II – evaluate the accounts of the administrators and other persons responsible for public monies, assets and values of the direct and indirect administration, including foundations and companies instituted and maintained by the Federal Government, as well as the accounts of those who have caused a loss, misplacement or other irregularity resulting in losses to the public treasury;
- III – examine, for the purpose of registration, the lawfulness of acts of admission of personnel, on any account, in the direct and indirect administration, including the foundations instituted and maintained by the Federal Government, with the exception of the appointments to commission offices, as well as the granting of civil and military retirement and pensions, except for subsequent improvements which do not alter the legal fundamentals of the conceding act;
- IV – carry out, on its own initiative or on that of the Chamber of Deputies of the Federal Senate, or of a technical or inquiry committee, inspection and audits of an accounting, financial, budgetary, operational or property nature in the administrative units of the Legislative, Executive and Judicial Powers and other entities referred to in item II;
- V – control the national accounts of supranational companies in whose capital stock the Union holds a direct or indirect interest, as set forth in the acts of incorporation”.

³²Lemos L, Horizontal accountability in Brazil: congressional oversight of the executive branch (Accessed at https://www.academia.edu/217765/Horizontal_accountability_in_Brazil_congressional_oversight_of_the_executive_branch_English_)

³³Constitution of Brazil, 2nd Edition (2009). Constitutional text of October 5, 1988, with the alterations introduced by Constitutional Amendments No. 1/92 through 57/08 and by Revision Constitutional Amendments No. 1/94 through 6/94.



GERMANY

Besides the annual reports of the Minister of Finance and of the Court of Audit, the Government has the duty to report to the Bundestag on a wide range of other matters.³⁴ The Bundestag establishes one specialised committee for each ministry. There are exceptions, for instance, the Budget Committee, which considers the federal budget and all related issues. Given that its task is to deliberate on the budget and to exercise budgetary control, the Budget Committee also participates in the parliamentary scrutiny of all federal ministries.³⁵

The committees are expressly permitted under **the Rules of Procedure** to deal with matters in their sphere of competence which are not referred to them by the plenary. **In such cases, a Committee discusses the matters concerned and may request representatives of “its” ministry to attend its meetings and provide information.**³⁶

UNITED STATES OF AMERICA (USA)

Congress's power to obtain information from either the executive branch or the general public is very broad. While there is no express constitutional provision authorising congressional oversight, the authority to conduct inquiries or investigations of the executive, to have access to records or materials held by the executive, or to issue subpoenas for documents or testimony from the executive or investigations, the Supreme Court has firmly established that such power is so essential to the legislative function as to be implied from the general vesting of legislative powers in Congress in Article I of the Constitution.³⁷

Oversight is implied in Congress's array of enumerated powers. The legislature is authorised to appropriate funds; raise and support armies; provide for and maintain a navy; declare war; provide for organising and calling forth the Militia; regulate interstate and foreign commerce; establish post offices and post roads; advise and consent on treaties and presidential nominations (Senate); and impeach (House) and try (Senate) the President, Vice President, and civil officers for treason, bribery, or other high crimes and misdemeanors. Reinforcing these powers is Congress's broad authority "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." Congress could not reasonably or responsibly exercise these powers without knowing what the executive was doing; how programmes were being administered, by whom, and at what cost; and whether officials were obeying the law and complying with legislative intent.

³⁴Germany Deutscher Bundestag (German Bundestag) (Accessed at http://archive.ipu.org/parline-e/reports/CtrlParlementaire/2121_F.htm)

³⁵ <https://www.btg-bestellservice.de/pdf/80080000.pdf>

³⁶Linn S and Sobolewski F, The German Bundestag Functions and procedures (Accessed at <https://www.btg-bestellservice.de/pdf/80080000.pdf>)

³⁷Congressional Research Services, Congressional Oversight and Investigations (Accessed at <https://crsreports.congress.gov/product/pdf/IF/IF10015>)



The Executive branch is accountable to Congress in several ways. For example, the President is required to provide Congress with information on the state of the union, and the Executive branch must submit an annual budget proposal to Congress for approval. Congress also has the power to oversee the activities of the Executive branch through hearings, investigations, and the confirmation process for presidential appointees.

Executive Privilege can act as a significant limitation on Congress's authority to obtain information from the executive branch. The privilege, aspects of which are constitutionally rooted, has been invoked when Congress asks the executive branch to produce documents or testimony that reflect presidential decision-making and deliberations that the President believes should remain confidential. But executive privilege is qualified, not absolute, and a presidential assertion of the privilege can be overcome by an adequate showing of need.

In addition, there are laws that require the Executive branch to provide information and reports to Congress on various issues, such as national security and foreign policy. For example, the **War Powers Resolution** requires the President to report to Congress when the US military is involved in hostilities abroad, and the **Foreign Assistance Act** requires the President to consult with Congress before providing foreign aid to other countries. Overall, while there are no specific laws that regulate oversight and accountability of the Executive to Parliament in the US, the Constitution and other laws establish a system of checks and balances that allows Congress to monitor and oversee the activities of the Executive branch.

- **The United States Constitution:** Article II, Section 3 of the Constitution requires the President to "from time to time give to the Congress Information of the State of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient."
- **Congressional Budget and Impoundment Control Act of 1974:** This law requires the President to submit an annual budget proposal to Congress and provides a framework for Congress to consider and approve the budget.
- **Congressional Oversight Manual:** This document, published by the Congressional Research Service, outlines the various ways in which Congress can conduct oversight of the Executive branch, including through hearings, investigations, and the confirmation process for presidential appointees.
- **War Powers Resolution:** This law, passed in 1973, requires the President to report to Congress within 48 hours of introducing US armed forces into hostilities or imminent hostilities abroad and requires the withdrawal of forces within 60 days unless Congress authorises their continued presence.
- The **Government Performance and Results Act** of 1993 (P.L. 103-62) requires agencies to consult with Congress on their strategic plans and report annually on performance plans, goals, and results. More than 2,000 reports are submitted each year to Congress by federal departments, agencies, commissions, bureaus, and offices.
- The **Reports Consolidation Act** of 2000 (P.L. 106-531), moreover, instructs the Inspector-General's to identify and describe their agencies' most serious management and



performance challenges and briefly assess progress in addressing them. This new requirement is to be part of a larger effort by individual agencies to consolidate their numerous reports on financial and performance management matters into a single annual report. The aim is to enhance coordination and efficiency within the agencies; improve the quality of relevant information; and provide it in a more meaningful and useful format for Congress, the President, and the public. Inspectors General (IGs), for instance, report their findings about waste, fraud, and abuse, and their recommendations for corrective action, periodically to the agency head and Congress. The IGs are also instructed to issue special reports concerning particularly serious problems immediately to the agency head, who transmits them unaltered to Congress within seven days.

- **Foreign Assistance Act:** This law, passed in 1961, requires the President to consult with Congress before providing foreign aid to other countries and requires the submission of annual reports on foreign assistance programmes.

KENYA

Section 125 of the **Kenyan Constitution** provides that either House of Parliament, and any of its committees, has the power to summon any person to appear before it for the purpose of giving evidence or providing information. In respect of reports by representatives of the Executive to Parliament, Kenya has introduced provisions in a number of laws. Some of the key laws in this regard are:

- The **Public Finance Management Act, 2012**. This law provides for the management, control, and regulation of public finances in Kenya. It requires the Executive to submit regular reports to Parliament on the implementation of the national budget and the management of public funds.
- The **Public Procurement and Asset Disposal Act, 2015**. This law provides for the regulation of public procurement and disposal of public assets in Kenya. It requires the Executive to follow a transparent and competitive procurement process and to submit regular reports to Parliament on procurement activities.
- The **Leadership and Integrity Act, 2012**. This law provides for the promotion of ethical leadership and integrity in public office. It requires the Executive to submit annual declarations of wealth and to disclose any conflicts of interest to Parliament.
- The **Parliamentary Powers and Privileges Act, 2017**. This law provides for the powers and privileges of Parliament and its members. It gives Parliament the power to summon any person to appear before it to give evidence or produce documents, and to punish any person who disobeys its orders or interferes with its proceedings.

INDIA

Rule 270 of the Rules of Procedure and Conduct of Business in the Lok Sabha provides that: A Committee shall have power to send for persons, papers and records: Provided that if any question arises whether the evidence of a person or the production of a document is relevant for the purposes of the Committee, the question shall be referred to the Speaker whose decision shall be final:



Provided further that Government may decline to produce a document on the ground that its disclosure would be prejudicial to the safety or interest of the State.

NEW ZEALAND

Ministers and officials interact with Select Committees as part of ministerial accountability to the House. Officials appearing before a select committee on behalf of a State Sector agency do so in support of Ministerial accountability. They are ultimately answerable to the Minister of the agency, who is in turn accountable to the House for the operations of the agency. Within this accountability framework, the precise relationship between the Minister and the official may vary depending on the type of State Sector agency the official works in, and its enabling Act or Constitution. Under section 3 of the Crown Entities Act 2004, for example, accountability relationships “between Crown entities, their board members, their responsible Ministers on behalf of the Crown, and the House of Representatives” are recognised.³⁸

Select committees have the right to request information from Ministers or departments under the **Standing Orders** (Ministers and their officials are expected to meet requests from committees to produce documents and to provide information, unless it is not in the public interest to do so). In terms of Standing Order 256, the Government must, not more than 60 working days after a Select Committee report has been presented, present a paper to the House responding to any recommendations of the committee which are addressed to it.³⁹

Occasionally information requested by a Select Committee may be classified, or there may be a good reason to protect it from public release. While the **Official Information Act** specifies interests that may usefully inform a decision by officials not to release information to a committee, the Act itself does not bind or constrain the House and its committees, and any response declining to provide the requested information should not imply that it does.

On learning the reason why particular information needs to be protected, the Select Committee may choose to waive its request or consider a compromise option, such as a summary of the information requested. Officials should consult the relevant Minister, who is ultimately responsible for the release of information by officials to select committees. Further guidance on this issue is provided by the **State Services Commission in Officials and Select Committees - Guidelines**.⁴⁰ In terms of these Guidelines, officials should assist committees by providing complete and accurate information. Officials are not ultimately responsible for the release of information to select committees - that is the Minister's responsibility.⁴¹

³⁸Officials and Select Committees – Guidelines (Accessed at <https://www.publicservice.govt.nz/assets/Uploads/officials-selectcommittees-guidelines07.pdf>)

³⁹Providing information to select committees (Accessed at <https://dpmc.govt.nz/our-business-units/cabinet-office/supporting-work-cabinet/cabinet-manual/8-official-information-5>)

⁴⁰Ibid

⁴¹Officials and Select Committees – Guidelines (Accessed at <https://www.publicservice.govt.nz/assets/Uploads/officials-selectcommittees-guidelines07.pdf>)



CANADA

Under the **Standing Orders**, committees of the House and Senate are entitled to exercise all or any of the powers delegated to them. These include the right not only to invite witnesses to appear but to summon them to appear, if necessary. They include the right to examine witnesses on oath. While the House and Senate, and their committees, have the power to call (or summon) whomever they see fit, only the House and Senate themselves can compel witnesses to attend.

Parliamentary committees have the right to receive government documents in the course of their deliberations. Parliamentary committee members frequently ask ministers and officials who give testimony to provide further information in writing. These requests are typically not tied to a formal motion, and the information received may be given to the members without forming part of the parliamentary record. Sometimes, the information is requested through a formal motion adopted by the committee. However, documents sometimes arrive incomplete and redacted because of confidentiality considerations.⁴²

In terms of Standing Order 109, within 120 days of the presentation of a report from a standing or special committee, the government shall, upon the request of the committee, table a comprehensive response thereto, and when such a response has been requested, no motion for the concurrence in the report may be proposed until the comprehensive response has been tabled or the expiration of the said period of 120 days.

NIGERIA

Section 89 (1) (c) of the **Federal Republic of Nigeria Constitution** grants the Senate and House of Representatives or their committees the right to “summon any person in Nigeria to give evidence at any place or produce any document or anything in his possession or under his control, and examine him as a witness and require him to produce any document or other thing in his possession under his control. The section also provides the power for the House to compel attendance by those who fail to appear before it when summoned. It may issue a warrant to compel the attendance of any person who, after having been summoned to attend, fails, refuses or neglects to do so.

Sections 60 and 101 of the 1999 Constitution (as amended) empower the National and State Houses of Assembly to regulate their own procedure. The Rules of the Houses have defined jurisdiction of all Special and Standing Committees over all legislative activities including oversight of ministries, departments and agencies under jurisdiction of a particular committee.

⁴²Canada, Executive Accountability (Accessed at https://www.sgi-network.org/2022/Canada/Executive_Accountability)



3.2 MINISTERS' ATTENDANCE OF COMMITTEE MEETINGS

REPUBLIC OF KOREA

The **National Assembly Act** provides as follows in Article 121 (Request for Attendance of Members of State Council, etc.):⁴³

- The committee may demand by resolution that the Prime Minister, a member of the State Council, or a government delegate attend the committee. In this case, the Chairperson of the committee shall report it to the Speaker.
- Where there is a request, the Prime Minister, member of the State Council or Government delegate shall attend and answer. When the Prime Minister or member of the State Council receives a request for attendance, the Prime Minister may have a member of the State Council attend and answer on his or her behalf, and the member of the State Council may have a Government delegate attend and answer on his or her behalf with the approval of the Speaker or the Chairperson of the Committee concerned. In this case, the Speaker shall consult with the National Assembly member representing each negotiating party, and the chairman of the committee shall consult with the executive secretary.

SERBIA

The **Rules of the National Assembly** provide as follows:

- **Article 229.** Ministries informing committees on their work:
 - Every Minister shall inform the competent committee of the National Assembly on the work of his/her ministry four times a year.
 - At committee sittings, questions related to the information submitted by the Minister may be posed to the Minister by members of the competent committee and authorised representatives of parliamentary groups who do not have members in this committee.
 - Authorised representatives of the parliamentary groups referred to in paragraph 2 of this Article may pose questions to the Minister only after the competent committee has finished its own questioning.
 - The committee shall submit a report to the National Assembly on its conclusions relating to the information submitted.

UNITED KINGDOM

In general, Select Committees in the UK rely on powers delegated to them, usually through the **Standing Orders** (the rules of Parliament) or **resolutions** of one of the Houses. While the exact powers delegated vary between Select Committees, they usually include the ability to: send for persons, papers and records – this is the key evidence-gathering power. However, it is subject to a significant limitation, namely that it cannot be used to compel MPs (with the exception of the Committee on Standards and Privileges), Lords, or the Crown (including government ministers) to

⁴³National Assembly Act (Accessed at https://elaw.klri.re.kr/eng_service/lawView.do?hseq=25732&lang=ENG)



attend.⁴⁴ Their power has, therefore, been viewed as limited by the lack of clear enforcement powers to compel attendance.⁴⁵

Therefore, there is currently no legislative power to compel Ministers to attend Select Committees. However, there is a **constitutional Convention of Ministerial responsibility to Parliament**, which was incorporated into the **Ministerial Code** after being formalised in 1997 by a House of Commons resolution on ministerial accountability.⁴⁶ The Ministerial Code is an Executive document, which is issued by the Prime Minister at the beginning of each new administration. The following principles govern the conduct of Ministers in relation to Parliament:⁴⁷

- 1) Ministers have a duty to Parliament to account, and be held to account, for the policies, decisions and actions of their Departments and Agencies.
- 2) It is of paramount importance that Ministers give accurate and truthful information to Parliament, correcting any inadvertent error at the earliest opportunity. Ministers who knowingly mislead Parliament will be expected to offer their resignation to the Prime Minister;
- 3) Ministers should be as open as possible with Parliament, refusing to provide information only when disclosure would not be in the public interest, which should be decided in accordance with relevant statute and the Government's Code of Practice on Access to Government Information.

These principles are also reflected in the **Cabinet Manual**, which provides guidance on Ministerial accountability to Parliament. The Manual is also an Executive document. The first edition of the Cabinet Manual was published by the then Government in 2011, as a “guide to the laws, conventions and rules on the operation of government.” The Cabinet Manual is therefore a guidance document or work of reference rather than a code. The Manual does not require ministers or officials to behave in a particular manner beyond what is already required by the Ministerial Code or by law. Accordingly, the Manual does not include enforcement mechanisms.⁴⁸ However, although the consequences of contravention might be “merely” political, they remain a powerful means of shaping ministerial behaviour and enhancing scrutiny of executive action.⁴⁹

In respect of their parliamentary duties, as opposed to ministerial duties, the Ministerial Code states that Ministers: must also comply with the Codes of Conduct for their respective Houses and also any

⁴⁴Marshall J, Select Committees (Accessed at <https://www.instituteforgovernment.org.uk/article/explainer/select-committees>)

⁴⁵ Enhancing the Scrutiny Role of Select Committees: The House of Commons Health and Social Care Select Committee's New Independent Expert Panel

⁴⁶UK Parliament, Ministerial accountability to Parliament (Accessed at <https://erskinemay.parliament.uk/section/4569/ministerial-accountability-to-parliament/>)

⁴⁷UK Government, Ministerial Code (Accessed at <https://www.gov.uk/government/publications/ministerial-code/ministerial-code>)

⁴⁸House of Lords, Select Committee on the Constitution 6th Report of Session 2021–22 Revision of the Cabinet Manual (Accessed at <https://committees.parliament.uk/publications/6598/documents/71481/default/>)

⁴⁹Ibid



requirements placed on them by the Independent Parliamentary Standards Authority (IPSA). In these circumstances, ministers may be subject to sanctions or penalties recommended by the Standards and Privileges Committee and agreed by the House or by IPSA's Compliance Officer.⁵⁰

BRAZIL

Both Houses of Parliament, or any of their committees, may summon a Minister or any head of agency directly subordinate to the Presidency to provide personally information on a previously determined matter. A failure to appear once summoned without adequate justification constitutes a crime of malfeasance. Ministers may attend the Senate, the Chamber of Deputies or any of their committees, on their own initiative and by agreement with the respective bureaux, to report on a matter of relevance to their Ministry. This is provided for in the following Articles of the Constitution:

- **Article 50** of the Constitution of the Federative Republic of Brazil
“The Chamber of Deputies and the Federal Senate, or any of their committees, may summon a Minister of State or any chief officers of agencies directly subordinate to the Presidency of the Republic to personally render information on a previously determined matter, and this absence without adequate justification shall constitute a crime of malfeasance⁵¹: (RCA No. 2, 1994)”

Paragraph 1. “The Ministers of State may attend the Federal Senate, the Chamber of Deputies or any of their committees, on their own initiative and by agreement with the respective Directing Board, to report on a matter of relevance to their Ministry”.

Paragraph 2. “The Directing Boards of the Chamber of Deputies and of the Federal Senate may forward to the Ministers of State, or any of the persons mentioned in the head paragraph of this article, written requests for information, and refusal or non-compliance, within a period of thirty days, as well as the rendering of false information, shall constitute a crime of malversation”.
- **Article 58 of the Constitution** of the Federative Republic of Brazil
Paragraph 2: Committees have the power on account of the matter under their authority to:
 - “II- hold public audiences with entities of civil society;
 - III – to summon Ministers of State to render information on matters inherent to their duties;
 - IV – to receive petitions, claims, statements or complaints from any person against acts or omissions of Government authorities or entities; [and]
 - V – to request the testimony of any authority or citizen”.

⁵⁰UK Government, Ministerial Code (Accessed at <https://www.gov.uk/government/publications/ministerial-code/ministerial-code>)

⁵¹ In terms of the Collins dictionary this refers to improper or corrupt behaviour in office, especially in public office.



GERMANY

Parliamentary committees' right to summon ministers is established by the **German Constitution** or Basic Law. Ministers (or their state secretaries) typically attend meetings to which they have been invited. The Basic Law also gives members of the federal government or the Bundesrat the right to be heard in front of the plenum or any committee.

It is in fact standard practice for a committee to request "its" minister to report on planned legislation and other topical questions relating to his or her department several times during the electoral term. The committees may also recommend that "their" ministers take specific measures. Their right to take up matters on their own initiative has become an important tool in scrutinising the work of the ministries.⁵²

The **Basic Law** codifies a general right of the Bundestag and its committees to require the presence of any member of the Federal Government at their public sessions as follows:⁵³

- **Article 43 [Right to require presence, right of access and right to be heard]**
 - (1) The Bundestag and its committees may require the presence of any member of the Federal Government.
 - (2) The members of the Bundesrat and of the Federal Government as well as their representatives may attend all sittings of the Bundestag and meetings of its committees. They shall have the right to be heard at any time."
- **Article 44 [Committees of inquiry]**
 - (1) The Bundestag shall have the right, and on the motion of one quarter of its Members the duty, to establish a committee of inquiry, which shall take the requisite evidence at public hearings. The public may be excluded.
 - (2) The rules of criminal procedure shall apply, mutatis mutandis, to the taking of evidence. The privacy of correspondence, posts and telecommunications shall not be affected.
 - (3) Courts and administrative authorities shall be required to provide legal and administrative assistance.
 - (4) The decisions of committees of inquiry shall not be subject to judicial review. The courts shall be free to evaluate and rule upon the facts that were the subject of the investigation".
- **Article 53 [Attendance of members of the Federal Government]**

"The members of the Federal Government shall have the right, and on demand the duty, to participate in meetings of the Bundesrat and of its committees. They shall have the right to

⁵²Linn S and Sobolewski F, The German Bundestag Functions and procedures (Accessed at <https://www.btg-bestellservice.de/pdf/80080000.pdf>)

⁵³Basic Law for the Federal Republic of Germany (Accessed at <https://www.btg-bestellservice.de/pdf/80201000.pdf>)



be heard at any time. The Bundesrat shall be kept informed by the Federal Government with regard to the conduct of its affairs”.

UNITED STATES OF AMERICA (USA)

In the United States, the term "Ministers" is not typically used to refer to government officials. However, there are similar positions in the US government, such as Cabinet Secretaries and other high-level executive branch officials, who may be required to appear before congressional committees to provide testimony and answer questions.

Executive officials do not appear on the House or Senate floor. However, department secretaries and other high-level officials of the executive branch appear with great frequency and regularity, essentially on request, before legislative committees and sub-committees. In the context of an investigation, committees sometimes subpoena executive branch members to make an appearance. Most appearances are voluntary, however, motivated by the desire to maintain strong relationships with the congressional committee.⁵⁴

The attendance of executive branch officials at congressional hearings is generally enforced through a combination of legal and political mechanisms. Some of the key ways in which attendance of executive branch officials at congressional hearings is enforced in the US include:

- **Subpoenas:** Congressional committees have the power to issue subpoenas to compel executive branch officials to appear before them and provide testimony. Failure to comply with a subpoena can result in legal consequences, such as being held in contempt of Congress.
- **Political pressure:** Executive branch officials may face political pressure to attend congressional hearings, particularly if they are seeking approval for a policy proposal or confirmation for a high-level position.
- **Public scrutiny:** The public and the media can put pressure on executive branch officials to attend congressional hearings and provide transparency on important policy issues.
- **Oversight hearings:** Congressional committees can hold oversight hearings to investigate whether executive branch officials are fulfilling their duties and responsibilities. If an official is seen as avoiding or ignoring oversight hearings, it may damage their reputation and impact their ability to carry out their duties effectively.

It's worth noting that the specific mechanisms for enforcing the attendance of executive branch officials at congressional hearings can vary depending on the circumstances and the level of government involved. Additionally, the exact procedures for enforcing attendance may be described in laws, regulations, and congressional rules, as well as in historical precedents and traditions.

INDIA

⁵⁴USA, Executive Accountability (Accessed https://www.sgi-network.org/2022/United_States/Executive_Accountability)



In India the attendance of Ministers in Portfolio Committees is enforced through the **Rules of Procedure and Conduct of Business** in the Lok Sabha and Rajya Sabha. The Handbook for Members of Lok Sabha specifies that Ministers are required to attend meetings of Parliamentary Committees to which they have been nominated, and that they may be required to provide information or evidence.

Rule 331 of the Lok Sabha Rules and Rule 269 of the Rajya Sabha Rules state that every Minister shall be a member of the committee concerned with the subject of his/her Ministry and that the Minister or Minister of State may depute another Minister or Minister of State to represent him/her in the committee. These rules ensure that Ministers are accountable to Parliament and are required to attend committee meetings.

The Rules also provide that Portfolio Committees can exercise their powers to summon Ministers to appear before them to provide information or to answer questions related to their respective Ministries. If a Minister fails to attend a committee meeting without sufficient reason, the committee can take action against the Minister, such as issuing a warning, recommending to the Speaker or Chairman of the House for the suspension of the Minister from the House, or moving a privilege motion against the Minister.

KENYA

In Kenya, the enforcement of attendance of Ministers in Portfolio Committees is primarily the responsibility of the Speaker of the National Assembly or the Chairperson of the relevant committee. The following are some of the procedures that are used to enforce attendance:

- The Speaker or Chairperson can issue a summons requiring the Minister to appear before the committee to answer questions. If the Minister fails to attend without sufficient cause, he or she may be held in contempt of Parliament.
- The committee may also request the House to issue a resolution ordering the Minister to appear before the committee. If the Minister fails to comply, he or she may be found in contempt of Parliament and may be subject to penalties such as fines or imprisonment.
- The committee can also report the absence of the Minister to the House, which may result in the House taking action against the Minister.
- In some cases, the media may also publicise the Minister's absence from committee meetings, which can lead to public pressure on the Minister to attend.

It is worth noting that while attendance of Ministers at committee meetings is expected, it is not mandatory under the law. However, the Constitution of Kenya provides for the principle of collective responsibility, which means that Ministers are collectively responsible to Parliament for the policies and actions of the government. This means that even if a Minister does not attend a committee meeting, he or she may still be held accountable by Parliament for the actions of their Ministry.

NEW ZEALAND



It is common practice that Ministers follow invitations to visit select committee meetings. The general rule is that committees can request, but not require, that a minister appear before them. Only the House of Representatives itself can compel members to attend a committee if they do not do so voluntarily.⁵⁵

The **Standing Orders** allow a Minister to take part in the proceedings of a select committee even if the Minister is not a member of the select committee. In such cases, a Minister is not entitled to vote. Recent practice has been for a Minister to be available to a select committee to explain the considerations underlying a government Bill, and to otherwise facilitate the select committee's consideration of the Bill.⁵⁶

The general rule is that a Minister should actively liaise with the Chairs or senior government members of select committees that have the Minister's legislation before them, to be aware of progress and to personally ascertain any intervention or other action necessary to advance the legislation.

CANADA

Canada operates on a system of responsible government because the Government must retain the confidence of the House of Commons and because Ministers are responsible to the House for everything that is done under their authority. They are answerable to Parliament and its Committees. As Ministers decide policy, they must defend it before the House and ultimately before the people of Canada. Accordingly, responsibility for providing information to Parliament and its committees rests with Ministers.

Ministers are normally expected to appear before parliamentary committees. Ministers may decline a committee invitation, but they have to appear, or send a representative, when receiving a formal summons approved through a committee motion. A deputy minister may appear instead of a minister for questions linked to departmental operations. The parliamentary secretary may stand in for the minister if the matter at hand is legislative in nature.⁵⁷

NIGERIA

Section **67(2) of the Federal Republic of Nigeria Constitution** provides that a Minister of the Government of the Federation shall attend either House of the National Assembly if invited to explain to the House the conduct of his Ministry, and in particular when the affairs of that ministry are under discussion.

⁵⁵New Zealand, Executive Accountability (Accessed at https://www.sgi-network.org/2022/New_Zealand/Executive_Accountability)

⁵⁶New Zealand House of Representatives (Accessed at https://en.wikipedia.org/wiki/New_Zealand_House_of_Representatives)

⁵⁷Canada, Executive Accountability (Accessed at https://www.sgi-network.org/2022/Canada/Executive_Accountability)



3.3 PARLIAMENTARY PROCEDURES ASSOCIATED WITH THE SELECTION OF OFFICE BEARERS IN STATE INSTITUTIONS

REPUBLIC OF KOREA

The approach of the National Assembly of the Republic of Korea to the selection of certain office-bearers in state institutions bears some similarities to the American approach to confirmation hearings. The appointment of certain high-level officials of the executive and the judiciary requires a prior personnel hearing at the National Assembly according to the **National Assembly Act and related laws**. These hearings proceed with holding a question and answer session, hearing opinions from the nominee, and listening to opinions issued by witnesses, appraisers and reference witnesses where necessary.

In terms of **Article 65(2) of the National Assembly Act**:⁵⁸

- Each Standing Committee shall hold a personnel hearing whenever there is a request for the personnel hearing pursuant to other Acts on a public official candidate falling under any of the following:
 - A candidate for a Justice of the Constitutional Court, a member of the National Election Commission, a member of the State Council, the Chairperson of the Korea Communications Commission, the Director of the National Intelligence Service, the Chairman of the Fair Trade Commission, the Chairman of the Financial Services Commission, the Chairperson of the National Human Rights Commission of Korea, the Commissioner of the National Tax Service, the Prosecutor General of the Supreme Prosecutors' Office, the Commissioner General of the National Police Agency, the Chairperson of the Joint Chiefs of Staff or the Governor of the Bank of Korea, respectively appointed by the President.
 - A candidate for a member of the State Council appointed by the President-elect under Article 5 (1) of the Presidential Transition Act;
 - A candidate for a Justice of the Constitutional Court or a member of the National Election Commission, respectively appointed by the Chief Justice of the Supreme Court.

In addition, the National Assembly Act also provides in Article 46(3) for the creation of a **Special Committee on Personnel Hearing** in order to examine the approval Bill for the appointments of the Chief Justice of the Supreme Court, the President of the Constitutional Court, the Prime Minister, the Chairperson of the Board of Audit and Inspection and the justices of the Supreme Court, whose appointments require an approval of the National Assembly under the Constitution, and the approval Bill for appointments of the justices of the Constitutional Court and the commissioners of the National Election Commission who are to be elected at the National Assembly, or the Bill for election introduced by the Speaker in consultation with the National Assembly members representing each negotiating party.⁵⁹

⁵⁸National Assembly Act (Accessed at https://elaw.klri.re.kr/eng_service/lawView.do?hseq=25732&lang=ENG)

⁵⁹ Personnel Hearing Act (Accessed at https://korea.assembly.go.kr:447/res/low_06_read.jsp)



The **Personnel Hearing Act** provides for necessary matters regarding the composition and operation of the National Assembly Special Committee on Personnel Hearings and the procedure for, and the operation of, personnel hearings. In general, such hearings are open to the public. The Act provides that the Committee shall describe the proceedings of examination or personnel hearing in the report that it submits to the Speaker.

SERBIA

Article 99 of the Constitution of the Republic of Serbia (2006) deals with the competences of the National Assembly in respect of certain appointment processes. It provides that “[w]ithin its election rights, the National Assembly shall:

1. Appoint and dismiss judges of the Constitutional Court,
2. Appoint the President of the Supreme Court of Cassation, presidents of courts, Republic Public Prosecutor, public prosecutors, judges and deputy public prosecutors, in accordance with the Constitution,
3. Appoint and dismiss the Governor of the National Bank of Serbia and supervise his/her work,
4. Appoint and dismiss the Civic Defender and supervise his/her work,
5. Appoint and dismiss other officials stipulated by the Law.”⁶⁰

The Rules of the National Assembly provide procedural guidance as follows:

- **Article 203.** Procedure for election and termination of term of office.
 - Proposals for the election and dismissal of the Governor of the National Bank of Serbia, the Council of Governors of the National Bank of Serbia, the Ombudsman, the Commissioner for Information of Public Importance and the President, Vice President and members of the Council of the State Audit Institution and other officials established by the law, shall be submitted with a rationale to the National Assembly by authorised proposers.
 - If an authorised proposer for the election of the official referred to in paragraph 1 of this Article, elected by the National Assembly, is not stipulated by the law, the proposal shall be submitted by the competent committee of the National Assembly.
 - Prior to the election of the officials referred to in paragraph 1 of this Article, nominated by the competent committee of the National Assembly, interviews shall be carried out with the candidates, before the competent committee of the National Assembly.

UNITED KINGDOM

In the United Kingdom Government Ministers are formally responsible for all appointments to public bodies, making around 2,000 appointments and re-appointments annually. However, whereas Ministers previously enjoyed ‘virtually unbridled power over public appointments’, recent decades

⁶⁰ Constitution of the Republic of Serbia (Official Gazette of the RS no. 98/2006).



have witnessed a 'silent revolution' whereby their 'capacity and discretion' became 'highly constrained'. This was due to two critical changes:

- The establishment of the **Independent Office for the Commissioner for Public Appointments** (OCPA) in 1995. The OCPA has powers to regulate around 10,000 appointments. Under successive Commissioners, OCPA's scope expanded, with appointments governed by an increasingly elaborate Code of Practice. Intended to ensure transparency and appointment on merit, while reconciling independent scrutiny with ministerial responsibility, the Code effectively depoliticised the appointments process. The UK has reportedly amongst the lowest rates of politicised appointments in Europe, with fewer than one in ten appointees declaring any significant political activity or affiliation.
- **Introduction of Parliamentary Scrutiny of the process.** In 2007, in response to a report by the Select Committee on Public Administration, which supported pre-appointment scrutiny of key public appointments by Parliamentary select committees, government agreed that certain senior public appointments would be submitted to parliamentary scrutiny through the Select Committees of the House of Commons.⁶¹
 - The Commissioner for Public Appointments described the introduction of pre-appointment hearings as a "democratic check" on the public appointments process.⁶² The overall objective was to ensure that the Executive is properly accountable to Parliament. The pre-appointment hearings would be limited to posts in which Parliament and the public have a particularly strong interest, for example, posts which play a key role in protecting the public interest or holding the Executive to account.⁶³ However, Parliament would not be given a veto over appointments; the final decision remains in the hands of the Secretary of State. The government and House of Commons Liaison Committee (consisting of all the Select Committee chairs) agreed that the hearings should focus on the candidates' professional competence and personal independence.⁶⁴
 - The Cabinet Office and the House of Commons Liaison Committee (consisting of all the Select Committee chairs) subsequently agreed a list of just over 50 key positions which would be subject to the new procedure. These positions include the following: Children's Commissioner for England; Chair of the UK Statistics Authority; Chair of the Environment Agency; Governor of the Bank of England; Deputy Governor of Bank

⁶¹Hazell R, Improving Parliamentary Scrutiny of Public Appointments (Accessed at https://discovery.ucl.ac.uk/id/eprint/10064625/3/Hazell_Parliamentary%20Scrutiny%20of%20Public%20Appointments%20v10%20for%20Liaison%20Ctee%2019%20Jan%2018.pdf)

⁶² The Commissioner for Public Appointments, Public Administration Select Committee, Third Report of Session 2007-08, Parliament and public appointments: Pre-appointment hearings by select committees, HC152, Ev 5, para 16.

⁶³ House of Commons Liaison Committee Pre-appointment hearings by select committees: Government Response to the Committee's First Report of Session 2007 -08 (Accessed at <https://publications.parliament.uk/pa/cm200708/cmselect/cmliaisn/594/594.pdf>)

⁶⁴UCL, Parliamentary Scrutiny of Senior Public Appointments September 2009 - January 2010 (Accessed at <https://www.ucl.ac.uk/constitution-unit/temp/consultancy/consultancy-projects/parliamentary-scrutiny-senior-public-appointments>)



of England; Chair, Equality and Human Rights Commission and HM Chief Inspector of Prisons. The hearings have been found to confer a positive benefit in terms of democracy, transparency and accountability.

- The Liaison Committee developed guidelines for select committees holding pre-appointment hearings. Select committee pre-appointment hearings have the following purposes and objectives:⁶⁵
 - Scrutiny of the quality of ministerial decision-making, which is a proper part of ministerial accountability to Parliament;
 - Providing public reassurance, in addition to the processes of the Office for the Commissioner of Public Appointments, that those appointed to key public offices have been selected on merit;
 - Providing public evidence of the independence of mind of the candidate;
 - Enhancing the appointee's legitimacy in undertaking his or her function.

In November 2013, the Cabinet Office and Liaison Committee issued revised guidelines for pre-appointment hearings. The Cabinet Office guidance included a revised list of appointments subject to pre-appointment hearings, and stated that additions to the list must be agreed by the Secretary of State and the relevant Select Committee. It remains up to the relevant Committee whether to hold a pre-appointment hearing.

A pre-appointment hearing by the relevant Select Committee with the proposed appointee takes place in public before such appointments are made, but after the selection process is complete. The hearings cover issues such as the candidate's suitability for the role, his or her key priorities, and the process used in selection. A report is then published setting out the Committee's view on whether or not the candidate is suitable for the post. The views of the Committee are almost invariably non-binding, but the Government has agreed that Ministers should consider the committee's report before deciding whether or not to appoint the candidate. Pre-appointment hearings only apply to new appointments; however, Select Committees do take evidence from serving post-holders as part of their continuing scrutiny of public bodies and public appointments.⁶⁶

More often than not, when a committee gives a candidate a hard time or issues a negative report, the appointment does not go ahead. Committee screening for conflicts of interest has also proved, in some cases, more stringent than the government's recruitment processes. Some commentators have expressed the view that these parliamentary hearings have a wider deterrent effect: because pre-appointment scrutiny is rigorous, testing and in public, Ministers will be reluctant to put forward weak candidates who will not pass muster before the Select Committee. It cannot be quantified in

⁶⁵Liaison Committee guidelines for select committees holding pre-appointment hearings (Accessed at <https://www.parliament.uk/globalassets/documents/commons-committees/liaison/pre-appointment-hearing-guidelines.pdf>)

⁶⁶The Cabinet Manual (Accessed at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/60641/cabinet-manual.pdf)



the same way; but the wider deterrent effect (Parliament's 'soft power') may be as important as the number of appointments reversed.⁶⁷

Parliament has also continued to chip away in seeking greater control over public appointments, and in some cases a veto. It has gained a formal veto over the appointment of the top staff in the Office for Budgetary Responsibility; an effective veto over the appointment of the Information Commissioner; and parliamentary involvement through a Select Committee chair sitting on the appointment panel for the chair of the UK Statistics Authority, and the Parliamentary Ombudsman.⁶⁸

JAPAN

The Diet is not involved in appointing senior government officials who are directly engaged in government agencies. The appointment of members and other posts in neutral government agencies, however, such as the chairperson and members of the Fair Trade Commission, members of the National Public Safety Commission, the inspectors of the Board of Audit and commissioners of the National Personnel Authority, requires the agreement and approval of the Diet.⁶⁹

GERMANY

In terms of the German Constitution, the Bundestag and Bundesrat only play a role in the appointment of certain judges of the Constitutional and Federal Courts.

- “Article 94 [Composition of the Federal Constitutional Court]
 - The Federal Constitutional Court shall consist of federal judges and other members. Half the members of the Federal Constitutional Court shall be elected by the Bundestag and half by the Bundesrat. They may not be members of the Bundestag, or the Bundesrat, of the Federal Government or of any of the corresponding bodies of a Land.
- “Article 95 [Supreme federal courts]
 - The Federation shall establish the Federal Court of Justice, the Federal Administrative Court, the Federal Finance Court, the Federal Labour Court and the Federal Social Court as supreme courts of ordinary, administrative, financial, labour and social jurisdiction.
 - The judges of each of these courts shall be chosen jointly by the competent Federal Minister and a committee for the selection of judges consisting of the competent Land ministers and an equal number of members elected by the Bundestag.”

⁶⁷ Ibid

⁶⁸Hazell R, Improving Parliamentary Scrutiny of Public Appointments (Accessed at https://discovery.ucl.ac.uk/id/eprint/10064625/3/Hazell_Parliamentary%20Scrutiny%20of%20Public%20Appointments%20v10%20for%20Liaison%20Ctee%2019%20Jan%2018.pdf)

⁶⁹IPU, JAPAN Sangiin (House of Councillors) (Accessed at http://archive.ipu.org/parline-e/reports/CtrlParlementaire/2162_F.htm)



BRAZIL

The 1988 Brazilian Constitution lays out many oversight procedures and instruments including for confirmation processes. Senate confirmation processes for a number of key office holders is set out in (Art. 52, III) of the Constitution which provides that:⁷⁰

- It is exclusively the competence of the Federal Senate: (CA No. 19, 1998; CA No. 23, 1999; CA No. 42, 2003; CA No. 45, 2004)
 - iii – to give prior consent, by secret voting, after public hearing, on the selection of:
 - a) judges, in the cases established in this Constitution;
 - b) Justices of the federal audit court appointed by the president of the Republic;
 - c) Governor of a territory;
 - d) president and directors of the Central Bank;
 - e) Attorney-General of the Republic;
 - f) holders of other offices, as the law may determine;
 - iv – to give prior approval, by secret voting, after closed hearing, on the selection of heads of permanent diplomatic missions.

The confirmation process involves not only questions about the appointee's skills, but also provides an opportunity for debating over policies and programmes, as well as preferences.

Nominations submitted for confirmation in the Senate include for appointees to the Central Bank board, the Supreme Court and high court judges, as well as 36 other offices. Military commanders, foreign service career employees, cabinet members and federal judges do not undergo a confirmation process.⁷¹

UNITED STATES OF AMERICA (USA)

The procedures associated with the selection of office-bearers in state institutions in the United States can vary depending on the specific institution and the level of government involved. However, some general procedures that are often followed include:

- **Nomination:** Candidates for office-bearers in state institutions are usually nominated by the President (for federal positions), the Governor (for state positions), or other relevant officials.
- **Confirmation:** In many cases, the nomination of an office-bearer must be confirmed by a relevant legislative body. For example, nominees for federal judgeships and executive

⁷⁰Constitution of the Federative Republic of Brazil (Accessed at https://www.stf.jus.br/arquivo/cms/legislacaoConstituicao/anexo/brazil_federal_constitution.pdf)

⁷¹Lemos L, Horizontal accountability in Brazil: congressional oversight of the executive branch (Accessed at https://www.academia.edu/217765/Horizontal_accountability_in_Brazil_congressional_oversight_of_the_executive_branch_English_)



branch positions must be confirmed by the Senate. State legislative bodies may also be involved in confirming nominees for state-level positions.

- **Background check and vetting:** Nominees are usually subject to a thorough background check and vetting process to ensure that they meet the qualifications and standards for the position.
- **Confirmation hearing:** **Nominees may be required to attend a confirmation hearing before the relevant legislative body, where they may be asked to answer questions about their qualifications, experience, and views on relevant issues.**
- **Vote:** **After the confirmation hearing, the legislative body will usually hold a vote on whether to confirm the nominee. If the nominee is confirmed, they will then take office and begin their duties.**

It's worth noting that the exact procedures can vary depending on the specific institution and the level of government involved. For example, the selection process for judges at the state level may differ from the process for federal judges. Additionally, some positions may be appointed directly by the relevant official (such as the President or Governor) without requiring confirmation by a legislative body.

KENYA

Most senior appointments by the President are subject to the ratification of the National Assembly. The National Assembly is, in turn, required to ensure that the President satisfies the Constitution in making appointments, such as the requirements of standards of integrity, respect for diversity and regional balance, among other constitutional requirements.⁷²

The parliamentary approvals process set out in Kenya's **Public Appointments (Parliamentary Approval) Act, 2011** is supposed to ensure that persons nominated and subsequently appointed to hold public office are appointed in accordance with the law and the stipulated procedure. The process also ensures that candidates meet the statutory requirements for appointment and that they are suitable for the office.

The Public Appointments (Parliamentary Approval) Act requires a parliamentary committee to inquire into the credentials, professional training, experience and personal integrity among qualities of a candidate for office. The Act provides that any appointment under the Constitution or any other law for which the approval of Parliament is required shall not be made unless the appointment is approved or deemed to have been approved by Parliament in accordance with the Act.⁷³

⁷²Bosire C, Part II The Relationship Between the Legislature and the Executive, 4 Kenya's Budding Bicameralism and Legislative–Executive Relations (Accessed at <https://oxcon.oup.com/display/10.1093/law/9780198759799.001.0001/law-9780198759799-chapter-5#law-9780198759799-chapter-5-note-35>)

⁷³Implementation of Chapter Six of the Constitution of Kenya 2010 (Accessed at <https://africog.org/wp-content/uploads/2015/10/Implementation-of-Chapter-Six-of-the-Constitution-of-Kenya-20101.pdf>)



Once a person has been nominated into a constitutional or statutory office, an appointing authority is required to notify the relevant House of Parliament accordingly. A notification of appointment shall be accompanied by information concerning the nominee. Thereafter, Parliament shall carry out an Approval hearing. An approval hearing shall focus on a candidate's academic credentials, professional training and experience, personal integrity and background. During the Approval hearing, the issues for consideration by the relevant House of Parliament in relation to any nomination shall be: the conclusion of an approval hearing, the Committee shall prepare its report on the suitability of the candidate to be appointed to the office to which the candidate has been nominated, and shall include in the report, such recommendations as the Committee may consider necessary. This Act thus seeks to ensure that Parliament, through its oversight role, appoints the right persons to positions of leadership in statutory and Constitutional bodies in Kenya.

The vetting of a few Presidential appointments requires the approval of both Houses, for example the appointment of the Inspector General of Police.⁷⁴ In terms of Article 245(2)(a) of the Constitution, the Inspector-General of the National Police Service is appointed by the President with the approval of Parliament.

NEW ZEALAND

Holders of a few public roles are placed in the category of "Officer of Parliament" by the statutes under which their positions are established. These offices are, in very general terms, associated with the oversight of executive authority. The first Officer of Parliament to be expressly created as such by statute was the **Ombudsman** (then known as a commissioner for investigations) when this position was established in 1962. A second Officer of Parliament, the **Wanganui Computer Centre Privacy Commissioner**, was created in 1976. This office was abolished on 30 June 1993. A third Officer of Parliament, the **Parliamentary Commissioner for the Environment**, was created on 1 January 1987. An older position than any of these, that of the **Controller and Auditor-General**, formally became an Officer of Parliament position on 1 July 2001.

- **Procedures for the appointment of Officers of Parliament**

Officers of Parliament are appointed by the Governor-General on the recommendation of the House. The Officers of Parliament Committee is specifically charged with recommending to the House the appointment of persons as Officers of Parliament. The procedures followed vest the function of coordinating consultations for appointments (and reappointments) firmly in the Speaker, working through the Officers of Parliament Committee.

Any member can suggest a name for appointment, but the committee will follow a rigorous selection process regardless of whether such a suggestion is made. A job description and person specification is prepared with assistance from the State Services Commission or a specialist adviser to the

⁷⁴ Mwangi O, Kenya's parliament and senate: how will they work together if there's no clear majority? (Accessed at <https://theconversation.com/kenyas-parliament-and-senate-how-will-they-work-together-if-theres-no-clear-majority-189474>)



committee. The position is advertised, and the recruitment adviser will also initiate a job search, as directed by the committee. The adviser helps the committee to assess applications and draw up a short list of candidates. Candidates are interviewed by a sub-committee chaired by the Speaker, which reports to the full committee for final endorsement of the recommendation. Members are pledged to consider candidates for appointment in the light of the qualifications and qualities required by the relevant legislation, and to use their best endeavours to find a person whose appointment can be supported by all parties.

No proposal will be put to the House without the unanimous agreement of the committee, unless the Speaker considers that total agreement is impossible, that it is unreasonable to prolong the consultations, and that the public interest requires that an appointment be made forthwith.

When agreement has been reached on an appointment, the recommendation is put to the House by means of a Government notice of motion in the name of the Leader of the House. An Officer of Parliament may resign from office by informing the Speaker in writing. The Speaker informs the House of any such resignation.

An Officer of Parliament may be suspended or removed from office only by the Governor-General on an address from the House on the grounds of disability affecting performance of the officer's duties, bankruptcy, neglect of duty or misconduct. An officer may be suspended by the Governor-General while Parliament is not in session, but such a suspension obtains only for a limited period after the next session commences, during which time the House may consider the matter.

The House is involved in the appointment or removal of a number of other officers, apart from the Officers of Parliament. They include the Representation Commission and the Electoral Commission, the Clerk of the House of Representatives and the Parliamentary Service Commission, and judges of the High Court, the Employment Court and the Environment Court, who can be removed from office only following an address from the House.

CANADA

In Canada, like in New Zealand, Officers of Parliament support both Houses in their accountability and scrutiny functions by carrying out independent oversight responsibilities assigned to them by statute. These officers are responsible directly to Parliament rather than to the government or a federal minister. While no statutory definition exists of what constitutes an officer of Parliament, they should not be confused with officials who assist Parliament in procedural and administrative matters.

The main criteria used to identify officers of Parliament is that their appointment is made by the Governor in Council; their appointment is approved by one or both Houses of Parliament through a resolution; the term of their appointment is guaranteed by statute; they can be removed from office by a resolution of one or both Houses; their reports are submitted to the Speakers of one or both houses; and they have independence from the government of the day.



These officers are the Auditor General of Canada, the Chief Electoral Officer of Canada, the Commissioner of Official Languages, the Information Commissioner of Canada, the Privacy Commissioner of Canada, the Conflict of Interest and Ethics Commissioner, the Commissioner of Lobbying, the Public Sector Integrity Commissioner and the Parliamentary Budget Officer.

- **Standing Order 111** deals with Officers of Parliament and the referral of the name of the proposed appointee to the appropriate Committee.
 - (1) Where the government intends to appoint an officer of Parliament, the Clerk of the House, the Parliamentary Librarian or the Conflict of Interest and Ethics Commissioner, the name of the proposed appointee shall be deemed referred to the appropriate standing committee, which may consider the appointment during a period of not more than 30 days following the tabling of a document concerning the proposed appointment.
 - (2) Not later than the expiry of the 30-day period provided for in the present standing order, a notice of motion to ratify the appointment shall be put under Routine Proceedings, to be decided without debate or amendment.

Ministerial Appointments/Nomination

Standing Orders of the House of Commons provide for the tabling of appointments and nomination for appointments by Ministers to non-judicial positions, which are deemed to be referrals to the relevant select Committees.

- Standing Order 110:

Tabling of order in council appointments. Deemed referred to committee.

(1) A minister of the Crown shall lay upon the table a certified copy of an order in council, stating that a certain individual has been appointed to a certain non-judicial post, not later than five sitting days after the order in council is published in the Canada Gazette. The same shall be deemed to have been referred to a standing committee specified at the time of tabling, pursuant to Standing Order 32(6), for its consideration during a period not exceeding 30 sitting days.

Tabling of certificate of nomination for appointment. Deemed referred to committee.

(2) A minister of the Crown may, from time to time, lay upon the table a certificate stating that a specified individual has been nominated for appointment to a specified non-judicial post. The same shall be deemed to have been referred to a standing committee specified at the time of tabling, pursuant to Standing Order 32(6), for its consideration during a period not exceeding 30 sitting days.

- Standing Order 111 deals with the appearance of the appointee or nominee before the Committee, which will examine the appointment or nomination.

Appearance of appointee or nominee.

(1) The committee specified pursuant to Standing Orders 32(6) and 110, during the period of 30 sitting days provided pursuant to Standing Order 110, shall if it deems it appropriate, call the so named appointee or nominee to appear before it during a period not exceeding 10 sitting days.



Qualification study of appointee or nominee.

(2) The committee, if it should call an appointee or nominee to appear pursuant to section (1) of this standing order, shall examine the qualifications and competence of the appointee or nominee to perform the duties of the post to which he or she has been appointed or nominated.

(3) The committee shall complete its examination of the appointee or nominee not later than the end of the 10-sitting-day period indicated in section (1) of this standing order.

Appointee's curriculum vitae to be provided.

(4) The office of the minister who recommended the appointment shall provide the curriculum vitae of such an appointee or nominee to the committee upon written application from the clerk of the committee.

Officers of Parliament. Referral of the name of the proposed appointee to committee.

(1) Where the government intends to appoint an officer of Parliament, the Clerk of the House, the Parliamentary Librarian or the Conflict of Interest and Ethics Commissioner, the name of the proposed appointee shall be deemed referred to the appropriate standing committee, which may consider the appointment during a period of not more than 30 days following the tabling of a document concerning the proposed appointment.

(2) Not later than the expiry of the 30-day period provided for in the present standing order, a notice of motion to ratify the appointment shall be put under Routine Proceedings, to be decided without debate or amendment.

4 FINDINGS/LESSONS

The countries reviewed in this paper yielded no evidence of an overarching piece of legislation, such as an Accountability Standards Act, to enhance the accountability of the Executive to the Legislature. While some countries have introduced dedicated legislation, such as the National Assembly Act in the Republic of Korea and the Diet Act in Japan, these Acts are not dedicated to parliamentary oversight and accountability of the Executive. Most of the countries reviewed are guided in respect of their oversight mandate by a Constitutional Framework and other mechanisms, such as Parliamentary Rules, Standing Orders, as well as Codes and Manuals and even unwritten conventions.

What is noticeable is that in many of these countries there is a growing demand for an improvement in and strengthening of the parliamentary oversight of the Executive. For instance:



- In the United Kingdom, MPs believe that committees need stronger, perhaps statutory powers to compel witnesses to attend and government information to be provided.^{75,76} There are concerns that the way ministerial accountability operates has on occasion been unacceptable, with ministers blaming officials for failures in their departments or in agencies for which they are responsible, but also with officials then refusing to answer questions which would indicate where responsibility for failure actually lies. Recently, the House of Commons Committee of Privileges reviewed select committee powers, concluding they should be legally strengthened. As yet, the necessary legislation to introduce a new system has not been considered by the House of Commons. In the absence of legislation it has been proposed that joint guidelines are developed for departments and committees, which recognise ministerial accountability, the proper role of the Civil Service and the legitimate wish of Parliament for more effective accountability⁷⁷.
- In Nigeria there is concern about a lack of solid legislative framework for oversight. Whenever oversight functions are carried out, most often than not, the legislature would pass a Resolution to that effect. However, it should be noted that resolutions could be ignored by the executive. In response, one recommendation has been that it would be best if there were legislation making it mandatory for the executive to respond to resolutions and to give reasons for not implementing them.⁷⁸
- In India recommendations to strengthen the Committee system include establishing a general oversight committee to oversee the work of other permanent and ad-hoc committees. For example, the US has established a Committee on Oversight and Government Reform specifically to perform oversight functions over the federal government, even though individual committees also perform oversight functions over their sectors.⁷⁹

⁷⁵Paun A and Barlow P, Civil Service Accountability to Parliament (Accessed at <https://www.instituteforgovernment.org.uk/sites/default/files/publications/civil%20service%20accountability%20to%20parliament.pdf>)

⁷⁶ Ibid

⁷⁷House of Commons Committee of Privileges, Select committees and contempt: review of consultation on Committee proposals (Accessed at <https://committees.parliament.uk/publications/22660/documents/166534/default/>)

⁷⁸ Guide to Legislative Oversight in the National Assembly in Nigeria (Accessed at <https://placng.org/i/wp-content/uploads/2019/12/Guide-to-Legislative-Oversight-in-The-National-Assembly-Final-Purple.pdf>)

⁷⁹PLAC, Parliamentary Oversight of the Executive Background Note for the Conference on Effective Legislatures (Accessed at https://prsindia.org/files/parliament/discussion_papers/1417667860Parliamentary%20Oversight%20of%20the%20Executive.pdf)



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