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Parliamentary oversight of South African defence deployments

Introduction

Military deployments represent an important hard power tool for executive branches of government around the world. A study by [Wagner, Peters and Glahn](#) found that military deployments largely remain the prerogative of the executive in most states with parliamentary permission not required to effect such deployments. This is particularly relevant in parliamentary systems rooted in British tradition. However, while *ex ante* parliamentary oversight of military deployments may not be as common, this does not imply the complete lack of an oversight role for parliaments regarding military deployments. Parliaments should, in the context of the *trias politica*, serve as a [counterweight to executive dominance](#). This implies an important role in oversight of military deployments, even where only *ex post* oversight is permitted.

The South African approach to military deployments and oversight

As with many other parliamentary systems rooted in British tradition, military deployments in South Africa remains the prerogative of the executive. Section 201(2) of the 1996 [Constitution](#) states that “only the President, as head of the national executive, may authorise the employment of the defence force (a) in co-operation with the police service; (b) in defence of the Republic; or, (c) in fulfilment of an international obligation.” A similar mandate to deploy the military inside South Africa or in international waters is provided to the Minister of Defence according to Section 18(1) of the 2002 [Defence Act](#).

While executive privilege in legislation is evident, specific roles for the Parliament of South Africa are also prescribed. When read together, Section 201(3) of the 1996 Constitution and Section 18(3) of the 2002 Defence Act note that when the President or Minister deploys the military, they should inform Parliament “promptly and in appropriate detail” of (a) the reasons for the deployment; (b) the place of deployment; (c) the number of personnel deployed; (d) the deployment period; and, (e) deployment costs. These prescriptions thus imply an oversight role for the South African Parliament of all internal and external military deployments. Furthermore, Schedule 6 of the 1996 Constitution notes that certain sections of the 1993 [Interim Constitution](#) remains in place, some of which have implications on military deployments and the role of Parliament. Section 228(4) of the 1993

Constitution states that in the case of military deployments, when Parliament is not in sitting, “the President shall summon the joint standing committee referred to in subsection (3) to meet expeditiously, but not later than 14 days after the commencement of such employment, and shall inform the committee of the reasons for such employment. Parliament may by resolution terminate any employment referred to in 227 (1)(a), (b) or (e) but such termination of employment shall not affect the validity of anything done in terms of such employment up to the date of such termination, or any right, privilege, obligation or liability acquired, accrued or incurred as at the said date and by virtue of such employment.” Similar provisions for Parliament are made in Section 18(5) of the 2002 Defence Act. The legislation noted above clearly highlights an *ex post* oversight role for Parliament regarding deployments and also flags the elevated role of the Joint Standing Committee on Defence (JSCD). Furthermore, it can be argued that robust engagement on deployments are required given Parliament’s right to terminate such deployments.

Reviewing Parliament’s work on deployments

Given the specific role of the JSCD in overseeing deployments, strong debate at committee level should ideally provide for elevated levels of oversight. However, when committee minutes compiled by the [Parliamentary Monitoring Group \(PMG\)](#) are reviewed, it reflects limited engagement. The President typically submits a letter of deployment to Parliament which is then referred to the JSCD. Committee minutes between 1998 and 2004 reflect no active engagement on such deployment letters. Between 2005 and 2018, 18 meetings reflect engagement on letters of deployment with various outcomes. While in most of the 18 cases letters were adopted by the committee, at least six meetings reveal that letters were not adopted due to a lack of quorum or postponement of the adoption. In 2009, 2010 and 2012, no meetings related to deployment letters were held. Engagement by the JSCD on deployment letters also compare poorly to the actual submission of such letters by the Office of the President. For example, in 2015, eight deployment letters reflect in Parliament’s Announcements, Tablings and Committee Reports (ATC). However, only one of these were considered and adopted by the JSCD. Towards the end of the Fifth Parliament, in 2017 and 2018, the adoption of letters occurred more frequently, but several submitted letters remained undebated at committee level.

In addition to considering deployment letters, the JSCD (and to a lesser extent the Portfolio Committee on Defence and Military Veterans) held general meetings debating ongoing military deployments. PMG minutes again reflect limited engagement. For example, between 1998 and 2018, the two committees held only 13 meetings related to active military deployments. Furthermore, visits by the committees to deployments areas only occurred in 2005 and 2018. Crucially, two incidents with significant battle losses for the South African military in Lesotho (1998) and the Central African Republic (2013) both resulted in only one committee meeting each by the JSCD.

Conclusion

While the legislative scope exists for the Parliament of South Africa to execute *ex post* oversight of military deployments, a review of committee activity reflects that the executive is not effectively held to account for the utilisation of the military. It should be noted, however, that oversight developed from a low base after 1994 and the JSCD often struggle with administrative arrangements to schedule meetings. Nonetheless, the two defence committees in Parliament provide capable platforms for robust engagement on deployments. Failure to effectively scrutinise deployments limits the ability of Parliament to impact positively on future military deployments through the budgetary allocation process and parliamentary recommendations to the Department of Defence. At a broader political

level, failure to oversee military deployments has the potential to undermine Parliament's role as a counterweight to executive dominance.

Recommended further reading.

Born, H., Fluri, P. H., & Lunn, S. (2003). Oversight and guidance: The relevance of parliamentary oversight for the security sector and its reform. Geneva: NATO Parliamentary Assembly.

Born, H. (2003). *Parliamentary oversight of the security sector: Principles, mechanisms and practices*. Geneva: Geneva Centre for the Democratic Control of Armed Forces.

Peters, D. and Wagner, W. (2014) Executive Privilege or Parliamentary Proviso? Exploring the Sources of Parliamentary War Powers. *Armed Forces & Society*, Vol. 40(2) 310-331.

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