



Custodian of Good Governance

STRENGTHENING ACCOUNTABILITY & ETHICAL FOUNDATIONS IN SOUTH AFRICA

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1. INTRODUCTION

- The purpose of this paper is to explicate that accountability as a fundamental value and principle in the Constitution of South Africa is not simply an aspiration.
- It carries moral obligations, political responsibilities and a wide variety of legal implications that are paramount to ensuring the rule of law and the realisation of the rights and values underlying the Bill of Rights.
- Accordingly, this paper aims to provide an analytical and critical overview of public administration accountability in South Africa, to reflect on South Africa's aspirations of creating an ethical, developmental and capable state and to offer proposals for the strengthening of the accountability ecosystem.



CONSTITUTIONAL VALUES AND PRINCIPLES

The Republic of South Africa is one, sovereign, democratic state founded on the following values, with the nine (9) specific principles governing public administration. The mandate of the PSC in Section 195 (1) of the Constitution is to promote these values and principles, which every public servant should abide by:



2. THE CONSTITUTIONAL VALUE & PRINCIPLE OF ACCOUNTABILITY

- “... our constitutional vision is to make a decisive break from the unchecked abuse of State power and resources that was virtually institutionalised during the apartheid era. To achieve this goal, we adopted accountability, the rule of law and the supremacy of the Constitution as values of our constitutional democracy...”
- ...For this reason, public office-bearers ignore their constitutional obligations at their peril. This is so because constitutionalism, accountability and the rule of law constitute the sharp and mighty sword that stands ready to chop the ugly head of impunity off its stiffened neck”.

Economic Freedom Fighters v Speaker of the National Assembly 2016. 3. SA 580 (CC)



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THE CONSTITUTIONAL VALUE & PRINCIPLE OF ACCOUNTABILITY CONTINUE..

- Public accountability is the symbol of modern democratic governance and in South Africa's constitutional context as it features prominently in every facet of government.



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FOUNDING VALUES
* Human dignity, equality, human rights and freedoms
* Non-racialism and non-sexism
* Supremacy of the Constitution and rule of law
* Regular elections, accountability, responsiveness and openness

PROFESSIONAL ETHICS PROMOTED

EFFICIENT, ECONOMIC AND EFFECTIVE USE OF RESOURCES

A DEVELOPMENT-ORIENTED PUBLIC ADMINISTRATIONS

IMPARTIAL, FAIR AND EQUITABLE SERVICES

PEOPLE'S NEEDS MUST BE RESPONDED TO AN PUBLICS PARTICIPATION ENCOURAGED

ACCOUNTABLE PUBLIC ADMINISTRATION

FOSTERING TRANSPARENCY

THE CULTIVATION OF GOOD HUMAN RESOURCE MANAGEMENT & CAREER DEVELOPMENT PRACTICES

A REPRESENTATIVE PUBLIC ADMINISTRATION

THE CONSTITUTIONAL VALUE & PRINCIPLE OF ACCOUNTABILITY CONTINUE..

- Although the Constitution is replete with accountability as a foundational value, it is not defined.
- In conventional public administration discourse, scholars refer to the obligation of public functionaries or institutions to account for their activities, provide information about decisions and actions, explain and justify decisions, accept responsibility for them, and to disclose the results in a transparent manner. In this definition, the intersection between accountability, openness, and transparency is apparent.
- Constitutionally, these are separate principles, but openness and transparency are in fact derivatives of accountability. In other words, achieving accountability would be exceedingly difficult without a culture of openness and transparency.
- Although the conventional definition serves as a good point of departure, it is trite and overlooks the very important aspect that in a constitutional dispensation, it ought to be understood and defined within the paradigm of constitutionalism.



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- Fombad provides that the concept of constitutionalism entails the idea that a government should not only be sufficiently limited in a way that protects its citizens from arbitrary rule, but also that it should be able to operate efficiently and to be effectively compelled to operate within its constitutional limits. Fombad, C.M. (2010). The Constitution as Source of Accountability: The Role of Constitutionalism. In *Speculum Juris* (2010) (2).
- The concept of constitutionalism is constituent of the following main attributes:
 - i. The existence of certain limitations imposed on the state, particularly in its relations with citizens, based on a defined set of core values.
 - ii. The existence of a clearly defined mechanism for ensuring that the limitations on the government are legally enforceable.
 - iii. Its core elements include the recognition and protection of fundamental rights and freedoms; the separation of powers; an independent judiciary; the review of the constitutionality of laws; the control of the amendment of the constitution; and institutions that support democracy.



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- By placing accountability within this frame of reference and with the emphasis on the various institutional checks and balances through which the actions of government are controlled in a democracy, its scope and meaning become clearer and sharper.
- Accountability therefore must involve a series of mechanisms and institutions which are designed, in both theory and practice, to control and constrain government to prevent the arbitrary abuse of power.
- The mechanisms include political, legal and administrative accountability.



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- The primary form of political accountability is free and fair elections which provide citizens with the opportunity to hold political representatives and political parties to account for their performance, and to vote them out of office if such performance is deemed unsatisfactory.
- Of course, this occurs periodically, and it would be clearly inadequate if this is the only mechanism of political accountability.
- The Constitution has therefore included safeguards that the executive and legislature should be held politically accountable for their discretionary decisions that include cabinet appointments and dismissals, policy development, and legislative modalities for holding the executive to account.
- Political accountability encompasses several mechanisms and include the judiciary, public accountability institutions such as the Public Protector, constitutional limitations and particular constitutional principles such as participatory democracy and transparency.
- Public participation and participatory democracy are core features of South Africa's democracy as the Constitution obligates all three spheres of government to put in place mechanisms that allow ordinary citizens to participate in the legislative and policy-making processes.



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- Legal accountability mechanisms include the Constitution and other legal instruments, such as laws, decrees, rules, codes and regulations which define actions that public officials may or may not take as well as the remedies available to citizens against those officials whose conduct is considered unsatisfactory.
- The effectiveness of legal liability depends on the power and authority of the courts to review the decisions and actions of public officials and governmental agencies.
- In South Africa, the guiding principle that has been developed by the court is the doctrine of legality that provides that every exercise of public power must be expressly or impliedly authorised by law.



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- Administrative accountability refers to the constitutional and legislative framework, systems, processes and structures that were established to ensure accountability within the three spheres of government. Internal systems of control include ethical codes of conduct, administrative reviews and norms and standards to promote a system of checks and balances.
- Mechanisms also include oversight institutions such as: the Public Protector responsible for hearing and addressing citizens' complaints; the Auditor General to assess, scrutinise and audit the use of public funds; and the Public Service Commission to exercise oversight over the public administration and the public service. Section 195 of the Constitution provides for a value system to which the public administration and the public service must adhere.
- The enshrined nine values and principles include a high standard of professional ethics; the provision of services to communities impartially, fairly, equitably and without bias; responding to people's needs; public participation in policy making; accountability; and transparency.
- Although not justiciable on their own, these are peremptory constitutional standards against which the performance of public officials is measured.



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3. THE EROSION OF ACCOUNTABILITY ECOSYSTEM IN SOUTH AFRICA

- Scheddler in Ocampo and Artega (2015) maintains that accountability comprises two interrelated dimensions. The first one is answerability, which is an obligation of public officials to inform, explain and justify their decisions and actions. The second dimension is enforceability which is the capacity of accounting agencies to impose sanctions on public sector officials who violate their duties. This implies that officials are subject to the rule of law and the threat of sanctions should they violate it.
- It is the second dimension that has been found wanting throughout the accountability ecosystem that has resulted not only in the arbitrary abuse of power but a culture of impunity throughout the public sector.
- It is now trite that the lack of ethical conduct and the failure of the accountability mechanisms fostered the ideal conditions for state capture in South Africa.



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- This allowed local networks of patronage to be established, bribe and extortion to occur, the misuse of public resources and the manipulation of the public procurement processes.
- When governance systems and rules are intentionally and wilfully flouted, it does not only lead to the collapse of the accountability framework but also to a crisis of legitimacy for the state.
- Gumede has cogently argued that effective accountability requires a sound accountability ecosystem that involves legal reporting frameworks which will include:
 - i. Effective internal government controls, processes, and institutions.
 - ii. Democratic oversight institutions, such as Parliament, the Auditor-General, the Public Protector, and other Chapter 9 institutions as well as the Public Service Commission.
 - iii. Public access to information on state actions, decisions, and use of public resources.
 - iv. Non-state oversight institutions such as the media, civil society, and ordinary citizens.
 - v. Consequences for wrongdoing.



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4. CONCLUSION

- Public service accountability is at the heart of a healthy democratic system and serves its purpose by instilling integrity, public trust and confidence.
- The paper has shown that the fundamental value and principle of accountability is expressed in various parts of the Constitution and the judgments of the courts have shown the constitutional importance placed upon this value.
- This means that if the executive, legislature, either individually or collectively, or any member of the state fails the test for accountability in the performance of a public duty, it is by that act in breach of the relevant provision of the Constitution.
- The principle of accountability under constitutionalism means that public functionaries must act within the constraints of their powers under the Constitution and the law and there is thus no room for any organ of state to act arbitrarily or capriciously.
- This paper has further shown that the proper implementation of oversight over the executive by the legislature has been constrained by the dominance of party loyalty, the absence of political savviness and a muffled freedom of expression.



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CONCLUSION CONTINUE...

- This may require a revisit of the model that allows cabinet members to be members of the legislature and therefore to be able to exercise a powerful influence over legislative decisions by virtue of their positions.
- The Constitution was designed to ensure sufficient checks and balances and therefore Institutions Supporting Democracy were established to independently render assistance to the legislature through their oversight mandates.
- However, many of these institutions have been compromised and therefore do not always exercise their respective mandates without fear, favour and prejudice.
- To that extent, it may be prudent to review the process of the nomination and appointment of the executive to these various institutions.
- Accountability within public service fosters credibility and trust both within political leadership and the wider public.



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- The emphasis placed upon this value means that, collectively, the Executive, the Legislature, any senior member of the state bureaucracy, institutions supporting democracy and other state organs have a constitutional, legal, political and moral duty and obligation to ensure that this foundational value is upheld.
- There is thus no room for any organ of state to act arbitrarily or capriciously in the face of a constitutional imperative which demands as a fundamental value that public functionaries must act within the constraints of their powers under the Constitution and the law.
- Consequentialist theories posit that punishment, or sanctions are not purposeful when it does not deter the very same transgression from reoccurring.
- For a plethora of reasons, the consequence management mechanisms that are in place in the public sector, no matter how stringent, are simply not effective.



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NGIYATHOKOZA KE A LEBOHA DANKIE KE YA LEBOGA
NGIYABONGA
NDIYABULELA
ENKOSI | NDO LIVHUWA
NDZA KHENSA
Thank you GANGANS



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