

Monitoring Legislative Oversight and Accountability for Sector Based Transformation in South Africa

A Petroleum Downstream Perspective

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ABSTRACT

Parliamentary Portfolio Committees are engine rooms in legislatures, as their key role includes ensuring policy objectives are met through effective implementation by the executive branch and State owned Enterprises (SoEs), quality oversight and enforced accountability. In South Africa, transformation targeted at Historically Disadvantaged South Africans (HDSA) has been a government mandate since the dawn of democracy in 1994, given the dispossession and disempowerment that disadvantaged South Africans suffered under the Apartheid government.

In this article, an empirical investigation to evaluate effectiveness of legislative oversight and accountability towards ensuring transformation targeted at HDSAs in the petroleum downstream industry is conducted. The research relied on qualitative-triangulation research paradigm; gathering information through observations, document analysis and interviews with relevant committees. The Parliamentary Portfolio Committee on Energy (PPCE), which oversees the petroleum industry, among other sectors, was the major focus of the investigation. The PPCE conduct numerous activities such as 'questioning, committee hearings, legislation processing, and site visits' in order to ensure that government departments and relevant SoEs are up to date on implementation of policy. From these activities, researchers analysed the quality and focus of 'questioning' conducted by parliamentarians in the period 2009 to 2014. Research revealed that PPCE questions for instance were insufficiently linked to HDSA transformation in the petroleum industry and for which oversight is sought.

Acronyms: SOE (State owned Enterprises), PPCE (Parliamentary Portfolio Committee on Energy), HDSA (Historically Disadvantaged South Africans).



INTRODUCTION

This article assesses the effectiveness of legislative oversight and accountability in the petroleum industry of South Africa. This assessment of oversight and accountability effectiveness in this article is with regards to the policy objective, which is to ensure that 25% of transformation towards HDSAs is attained within ten years of Petroleum Liquid Fuels Charter (2003) (PLFC) enactment. The role played by PPCE in terms of providing legislative oversight and accountability towards ensuring HDSA transformation, forms the basis of this article. By overseeing the actions of government, Parliament is able to ensure that service delivery takes place as visualised. The article reviews literature on oversight and accountability. This is followed by data analysis in relation to the outcome of selected activities conducted by PPCE in ensuring the implementation of the HDSA transformation agenda.

RESEARCH METHODS AND INSTRUMENTS FOR COLLECTING DATA

A qualitative-triangulation research paradigm was designed for this study. This triangulation consists of documentary analysis, interviews and observation. In terms of documentary analysis, archived empirical documents with rich history and facts on the phenomena being studied were collected and analysed. The main area studied in this regard was to understand alignment of PPCE activities with the policy objective of ensuring HDSA transformation is achieved, to which its direct implementation is done by the Executive branch and other stakeholders. Of interest particularly was to assess robustness of *ex ante* and *ex post* mechanism used by PPCE over this policy imperative and alignment thereof. To this end, some participants were interviewed where issues of clarity were required.

Lastly, observation was deployed to enable study of a natural setting involving human interaction as social constructs (Silverman 2000; Golafshani 2003; Wiersma 1986; Tuckman 1999; Ile 2007). The setting of observation was in Parliament of South Africa where Portfolio Committee meetings are held. There were no encountered major challenges in collating information since Parliamentary Portfolio Committee meetings are open to the public. This technique involves the direct observation of phenomena in their natural setting where what one is trying to uncover are the norms, values, and shared meanings of those being observed (Ile 2007; Fox 1998:3)

Qualitative-triangulation research paradigm suited the empirical research undertaken as it provides best mechanism for obtaining various forms of data in enhancing validity and reliability of the study.

DEFINING KEY CONCEPTS

Authors adopt a view that "Oversight detects and prevents abuse, arbitrary behaviour or illegal and unconstitutional conduct on the part of the government and public agencies" (www.gov.za). Oversight entails the ability to monitor implementing institutions in ensuring that programmes/projects are aligned with government objectives. Accountability, according

to Day and Klein (1987:1) "Is for relevant persons to give an explanation of what they do, to those to whom they are responsible and whose authority empowers them or gives them the right to demand such an explanation". Various authors explicated these concepts separately for the purposes of ensuring that each receives its measurement. Researchers in this article however marry these concepts because Parliamentarians are Principals who conduct both oversight and accountability.

LITERATURE REVIEW ON OVERSIGHT AND ACCOUNTABILITY

Accountability and oversight are complicated concepts in literature discourse because of various divergent dichotomies. Achen and Bartels (2002); Healy and Malhotra (2010); Lenz (2012); Lupia and McCubbins (1998) in Bovens (2010:1) provide an understanding of the public accountability function. They present it as the capability of principals to judge the performance of their agents. According to Bolton and Dewatripont (2005:535), this is a core ingredient of principal-agent theory, which further provides power to the principal to make decisions that affect the incentives of the agent when effecting various possible actions. Analysis and evaluation of accountability as applied in the petroleum industry requires a specification of who is supposed to be accountable, to whom and for what.

Among the philosophies behind oversight functions is to ensure that policies enacted and authorised by Parliament are delivered timeously as envisaged. South Africa employs Oversight and Accountability model as a guide for Parliamentary activities. In the South African context, oversight is a constitutionally mandated function of Legislative organs of state to scrutinize and oversee Executive action and any organ of state (Oversight and Accountability Model 2013). In this regard, the Parliamentary Portfolio Committees (PPCs) wields oversight and holds the Executive branch accountable for performance (or lack thereof). As constitutionally expected, the Portfolio Committees also wields oversight and accountability over the State organs, mainly those that are regulated under the Public Finance Management Act No (1) of 1999. In the pursuit of oversight and accountability, mixed goals are not always achieved by state agencies like the Petroleum, Oil and Gas Corporation of South Africa (PetroSA), as government may have an objective of transformation as in this case, while the sector may have other pressing priorities such as ensuring security of liquid fuels for the country (Energy Security Master Plan – Liquid Fuels 2007). Whether or not both objectives are seamlessly aligned and achieved is a matter for the PPCE to work through. Where performance is less than satisfactory in terms of broader goal of transformation, the question to ponder is who must be held accountable for this poor performance?

It is important to note two predominantly known components of accountability studied by scholars, thus there are those who present accountability as *active* and there are those who observe accountability to be *passive* (Bovens 2010:1). In the former case, accountability is used primarily as a normative concept such as a set of standards for the evaluation of the behaviour of public actors (Bovens 2010:1). In the latter case, accountability is used in a narrower, descriptive sense as it is seen as an institutional relation or arrangement in which an actor can be held to account by a forum (Bovens 2010:1). According to Frink and Klimosky (2004:3) "social systems in general can be defined in terms of common sets of



shared expectations for behaviour". They go on arguing that, accountability, then, could be seen as the 'glue' that binds social systems together (Frink and Klimosky 2004:3).

However, accountability has a potential to pose challenges when it comes to its measurements due to the fact that the concept has various overlapping dichotomies. The dichotomies of accountability are explained in the extensive work done by Blind (2011:3-23). As espoused by Blind (2011:3), the 'dichotomies of accountability can be explained along the prescriptive, descriptive, operational versus longitudinal, political versus legal/judicial, institutional versus social accountability', among others, even though these categories are neither thorough nor mutually exclusive. The institutional versus social accountability divide which has some relevance on this research article is given many more terminologies, thus it is also called "the supply-driven versus the demand-led or top-down versus bottom-up accountability" (Blind 2011:8). Institutional versus social accountability is seen to be more recent. According to Ackerman (2005:16) the institutions of accountability are the parliament, electoral system, the judiciary and the myriad audit organisations, among others. Social accountability, on the other hand is made up of ad hoc initiatives of direct and indirect civil society and citizen engagement in public affairs with the purpose to wield accountability (Ackerman 2005:16).

Supporting this claim is Dowdle (2006:178-9) as make reference to newly edited volume on accountability, which portrays differing conceptualisations and frames for studying accountability. Hence Dowdle (2006) further state that even when scholars notice this crisis they make no attempt to provide a consistent analytical framework. As such, literature show researchers giving different definitions of accountability and addressing very different accountability dilemmas, practices, and potential crises. However, even though this uncoordinated theoretical understanding of accountability causes confusion it does provide base information for research commencement. This fragmented analogy of accountability was useful in the enhancement of cognitive knowledge around the topic of accountability so that the phenomenon of this article is understood better. Mosher (1979:236) accent to this assertion stating that, accountability is essentially an informing function which also entices the questions of who is accountable to whom, for what are they accountable, what are the means or processes.

It is paramount to note that accountability and oversight are inseparable concepts especially when put into context. This means that researchers combined these concepts when collecting and analysing data. The rationale for combining findings on oversight and accountability is that these are blood sisters one cannot separate. The researchers adopt an approach where institutions of accountability and oversight are viewed in collaboration in order to defuse the notion that certain institutions play a particular role. While there are institutions that play a particular role, they are also not immune to accountability and oversight. The argument that researchers bring forth is that these two variables coexist because it is a relationship between the principal and the agent in any societal setting. Agents also do conduct oversight on their subjects, and this chain goes on-and-on. There is therefore a very thin-line between the two concepts. Furthermore, this relationship happens horizontally, vertically and diagonally along the petroleum value-chain.

At the apex, oversight and accountability is conducted by Parliamentarians over the Executive body in order to hold the government answerable for how taxpayers' money is spent. Oversight and accountability also entails that Parliamentarians hold the petroleum

industry to account for performance. It is important to mention three core main functions of Parliament conducting oversight and accountability, namely that they represent constituent interests, legislation, and overseeing the Executive branch and state-owned Companies for performance (World Resources Institute 2009:8). The focus of the research is therefore on the latter. However, PPCs are confined to particular activities in subjecting the executive branch and industry to answerability on issues of performance and maladministration. Pertaining to this the 'questioning' activity is the only one assessed and analysed in this article. The procedure of putting questions to the Executive in South Africa is one of the ways in which Parliament holds the Executive to account. Parliament holds the Executive to account by questioning and challenging the Executive's policies and actions, and requiring Ministers and senior government officials, company Chief Executive Officers overseeing state-owned Companies in the petroleum industry, in person, to account publicly for their decisions. The Accountability and Oversight Model (2013), explains that questions can either be put for oral or written reply to the President, the Deputy President and the Cabinet Ministers on matters for which they are responsible for as well. Also during this time the legislature would set aside time for Parliamentarians to question Ministers on issues of clarity, government projects in their constituencies, the performance of Ministries and policy implementation progress. Question time could lead to debates on certain burning issues that need expeditious and collective attention (World Resources Institute 2009:8). These debates provide maximum opportunity for learning and sharing, which in turn could hone Parliamentarian's oversight and accountability activities.

Of note, question time in this article is analysed based on the policy objective that the petroleum industry sought to achieve thus, transformation geared towards HDSA. It is paramount to understand the type of questions put by Parliamentarians (MPs) and whether they encourage a culture of high performance. In doing so researchers compiled all questions enquired by PPCE to be answered by the Executive, as part of conducting oversight and accountability activities to understand their relevance to transformation by HDSA. The period assessed is from 2010 to 2014 before the national elections. The rationale for selecting this time period is that it marks two decades since democracy was conceived in South Africa and MPs are expected to have learnt more about oversight and accountability at this stage, especially for the industry under scrutiny. It is only reasonable to examine oversight activities for the past five years, in order to manage the research.

RESEARCH FINDINGS ON QUESTIONING REGARDING TRANSFORMATION BY HDSAS

Question period

The number of questions enquired by National Assembly to the Minister of Energy and the Department are shown in Table 1.

Table 1 demonstrates that forty questions were put by the Parliamentarians in 2010. The questions were broadly related to progress made on policy implementation. Of the forty questions, thirty-eight were enquired by the opposition parties, in which two questions were directed to the focus of this study – which is progress made regarding HDSA transformation.



Table 1: Total number of questions relating to petroleum sector in the period from 2010–2014

2010	2011	2012	2013	2014
40	79	98	47	41

Source: www.energy.gov.za

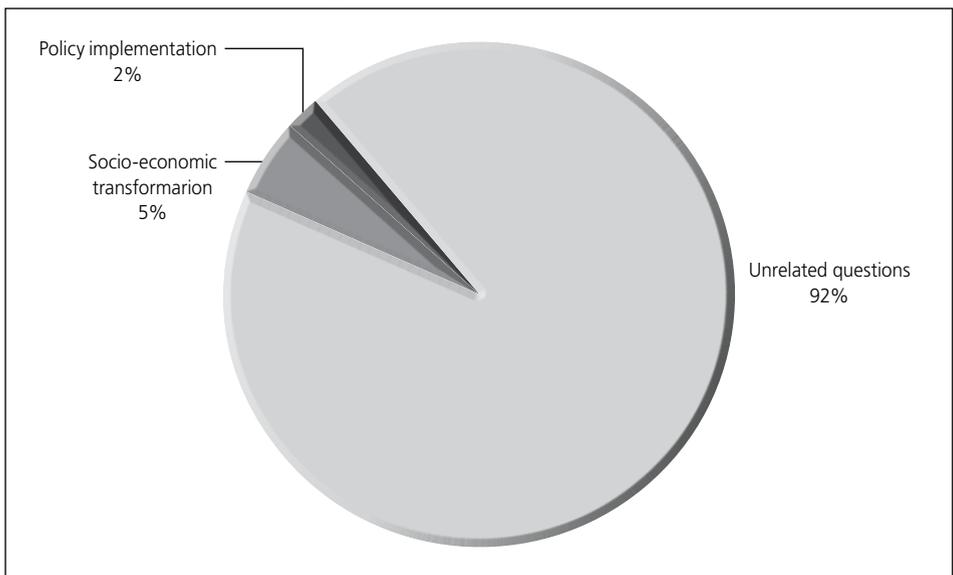
Two other related questions were from the ruling party, which forms the majority in Parliament. Of these two questions from the ruling party (African National Congress), one is related to progress made regarding policy implementation and one is with regard to electricity (which is not the focus of this article). Thus, of a total of 40 sector related questions in 2010, only three could be linked to the issue of HDSA and industry transformation.

The researchers observe that there was very limited monitoring of the transformation objective (or agenda), as Parliamentarians during this period placed more focus on overseeing the electricity sector. Furthermore, there were no specific questions enquired on progress made in awarding licenses to prospective or aspiring business people (from the HDSA group), despite the fact that one of the DoE’s key sub-programmes focused on that. The researchers believe that focus should have been heavily placed on tracking progress relating to this component. Thus, failure to observe implementation of policy objectives by the PPCE suggests that no one will account for poor performance.

Focus of PPCE /Member of Parliament (MP) questions in 2010

The Figure 1 below illustrates this point, portraying that 92% of questions asked in 2010 focused more on electricity, an area that the Department of Energy shares with the

Figure 1: Questions asked by MPs in 2010



Source: Makiva (2015)

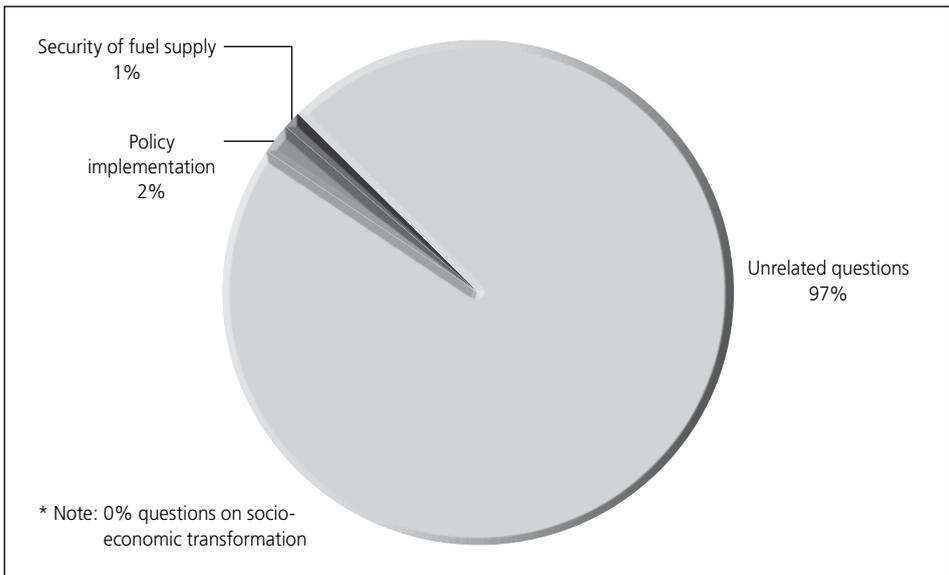
Department of Public Enterprise where Eskom reports. The reason for this skewness in focus may have been as a result of electricity shortages hindered by numerous load-shedding episodes during this time. As Figure 1 displays below, 5% of questions were related to socio-economic transformation and 2% of questions related to progress made on policy implementation in relation to what the Department of Energy is tasked to do.

Focus of PPCE /Member of Parliament (MP) questions in 2011

In 2011 the number of questions increased significantly to seventy-nine. While the increase is welcomed, the focus again was skewed as seventy-seven questions were on electricity. However, two questions that were asked by opposition parties related to Progress made on Project Mthombo and the reasons for not delivering. Another enquiry was related to the amount of fuel imported from 2010 to 2011, and whether there is compliance around fuel specification. It is paramount to note that this question is in-line with the activities that the Executive conducts in the petroleum sector; however, it does not address the transformation objective.

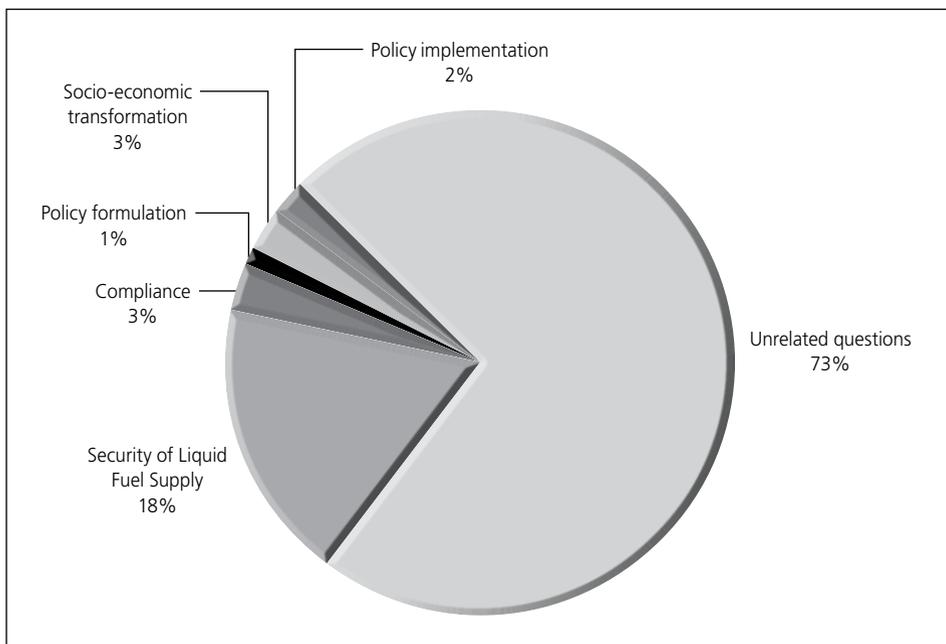
The percentages depicted in Figure 2 suggest that non-related questions to the research increased from 92% to 97%, making it an increase of 5%. This further suggests that in 2011, the PPCE spent much more time on electricity related issues and less on socio-economic transformation. Progress on policy implementation suggests that enquiries remained few at 2%, similarly to the previous year. However, there were **no** questions on socio-economic transformation during this year and neither was there questions pertaining to the status of licensing. None of the questions sought to understand progress made by those entrepreneurs, who are already awarded licenses, so that a determination can be made much earlier, whether these licenses are translated into visible transformation.

Figure 2: Questions asked by MPs in 2011



Source: Makiva (2015)

Figure 3: Questions asked by MPs in 2012



Source: Makiva (2015)

Focus of PPCE/Member of Parliament (MP) questions in 2012

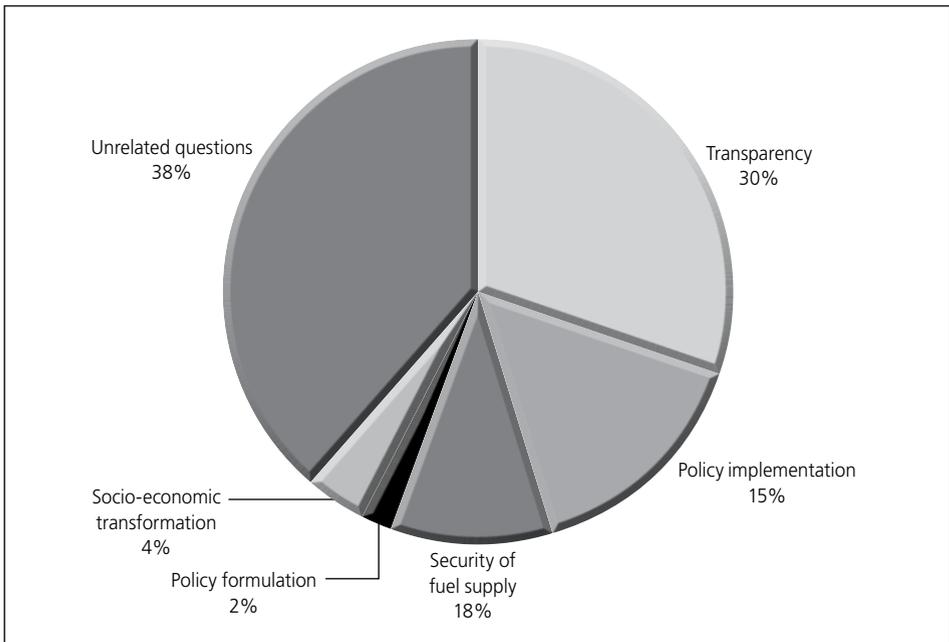
2012 saw a decrease in the number of unrelated questions put to the Minister of Energy and the Department. Ninety-eight questions in total were asked by the Parliamentarians. From these, 72.4% of the questions were not related to focus of this research as they focused on electricity. 17.3% were with regards to security of liquid fuel supply, and enquiries increased significantly more than the previous years. The increase in focus on liquid fuel supply was instigated by a number of international and local factors, which among others include sanctions imposed by the European Union on Iran, a major source of oil imports for South Africa and also as a result of the scheduled shutdown of local oil refineries. This oversight could be argued to be impulsive as it is prompted by exogenous and endogenous shocks. Therefore should there be no such shocks at all, Parliamentarians may have kept mum on monitoring the policy objective that government must achieve with regards to the industry being examined.

Furthermore, Figure 3 below exhibits Parliamentarians also focusing on general compliance enforcement at 3%. This is a move in the right direction for oversight as there is somewhat attempt at ensuring obedience to policy specifications by implementers. Of note is that 1% of question put was related to progress made on policy formulation. It is paramount to note that these two variables did not appear in the years analysed already. It appears that as Parliamentarians assess compliance enforcement; they are also aligning themselves to one of the activities placed in the hands of the Executive (DOE) towards ensuring HDSA inclusion by license holders. However, Figure 3 suggests a 2% decline in the targeted focus on oversight of socio-economic transformation, as compared to 2010. Probe on progress made on policy implementation in this area remains at 2%, respectively.

Focus of PPCE/Member of Parliament (MP) questions in 2013

In 2013 however, there is a significant decline in the number of questions enquired by Parliamentarians to the Minister of Energy. This is the time when the Portfolio Committee on Energy had full capacity: report writers, the researcher and content adviser. Forty-seven questions were put in total during this year. However there was still an increase in the number of questions unrelated to this research article, a total of 38% of questions focused mainly on electricity. 30% of questions sought to harness transparency which did not appear in all the years previously discussed. It is paramount to note that a focus on transparency was prompted by a number of poor corporate governance issues related to tender irregularities in the petroleum industry around this time. This also shows the reactive nature of oversight and accountability which seeks to manage challenges after the effect. Of importance, transparency is one principal component that heightens confidence and ensures that service delivery is done evenly. This exercise should have been done from the outset. As the reader may observe, there is also increasing progress in monitoring policy implementation. Policy implementation monitoring scored a significant 15% of all questions from Parliamentarians in 2013, while enquiries on security of liquid fuels supply declined. One may wonder why monitoring policy implementation progress increased during this year. The researchers are of the view that increasing pressure in following up on policy implementation progress may have been induced by up-coming national elections, in which Parliamentarians must demonstrate progress made on service delivery to South African voters. This pressure is important because it means that Parliamentarians are obliged to answer to South African citizens who placed them in positions of power, and that they are aware they could be

Figure 4: Questions Asked by MPs in 2013



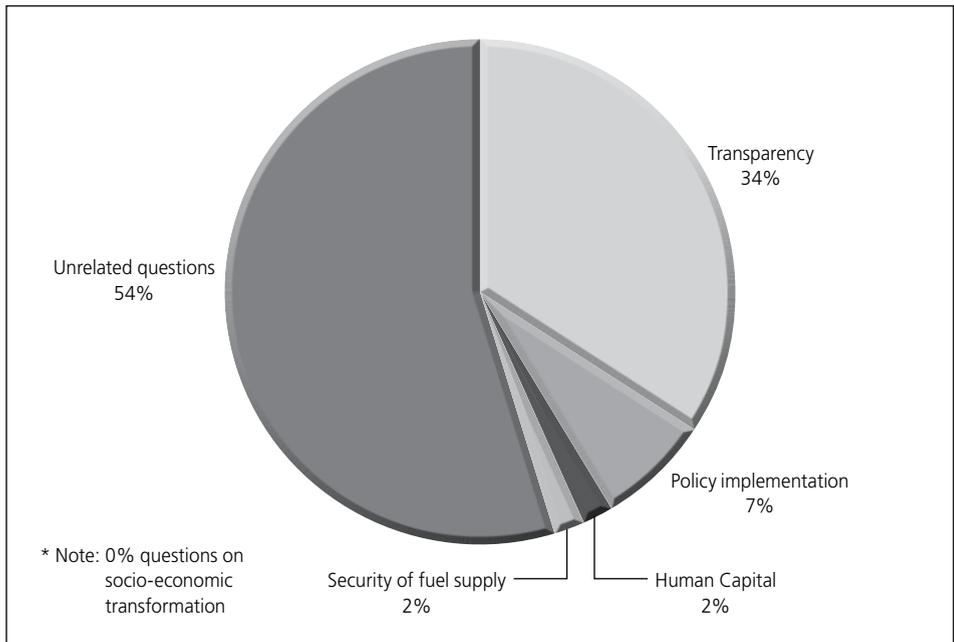
Source: Makiva (2015)

removed easily by way of voting. Service delivery on policy objectives (political ideas) is what prompted votes in the first place, and therefore obtaining more votes is contingent on delivering the promises. Enquiries on socio-economic transformation and policy formulation also grew by 1%, as compared to the previous year. On this front, in 2013 socio-economic transformation enquiries was at 4%, while policy formulation was at 2%. The latter owes to stagnant policy formulation progress by the Executive (DoE) as there were no policies forth coming to the National Assembly during this time.

Focus of PPCE/Member of Parliament (MP) questions in 2014

The declining number of questions raised by MPs to the Minister of Energy continues to persist in the year 2014 as well. Forty-one questions were raised, in which 54% were unrelated to the current study as they focused on electricity. 7% were enquiries on policy implementation progress, while 2% of question was with regards to beefing-up human capital. The reader must bear in mind that human capacity is one crucial input that assists in achieving policy target. Human capacity also entails bridging the gender imbalance wherein race and disadvantaged people as stipulated in the Affirmative Action Act and in the BEE Code of Good Practice, must benefit in the industry. Seemingly, it was emerging that the DoE was experiencing human capital shortages; hence some of the targets were not fulfilled during this year. In the 2014 period only 2% of question thus far is raised on security of liquid fuel supply, dropping significantly from the previous year. Enquiries related to transparency increased by 4% as compared to the previous year. Over, the entire five-year period, oversight and accountability on selected policy objectives of ensuring HDSA transformation has been very minimal.

Figure 5: Questions asked by MPs in 2014



Source: Makiva (2015)

When it comes to question period, the PPCE placed more focus on electricity, and less on oversight over the petroleum industry. Figure 1 confirms this claim as 92% of questions placed more focus on electricity. As such, most of the questions related to electricity that were directed to the Minister of Energy were referred back to the Ministry of Public Enterprise for answering. In this regard, the PPCE lacked a clear framework to give effect to policy objectives and its implementation regarding HDSA transformation. There was little emphasis on questions related to this. This means that there is a huge disjuncture between the activities that the Executive branch conducts when it comes to HDSA transformation and the questions posed by Parliamentarians. Furthermore, follow-up questions on licensing, as an engine to ensure transformation, are very seldom throughout the years. The Report of Portfolio Committee on Energy on its activities undertaken during the 4th Parliament (2009-2014:7) agrees as it points to low rate of inputs on members' statements and motions except for the moderate number of questions to Ministers, which still had a low through-put on energy-specific questions.

CONCLUSION

The issue is that the PPCE lacked the ability to compare apples with apples in order to improve institutional performance during its question time. Thus, if there are agreed upon performance measures and targets between the Executive and the Legislative branch, question time should be guided by this in order to exhume relevant questions. It is clear that the PPCE was faintly aware that the DoE must issue manufacturing, retail and site licensing towards ensuring transformation by HDSAs. Lack of robustness by PPCE in questioning and holding the Executive branch to account for poor performance cast doubt whether there was deep knowledge around the sub-programme pursued by the Executive branch. Furthermore, it is also evident that there is little alignment of PPCE questioning activity with the sub-programme mainly that seeks to address HDSA transformation. The PPCE failed to determine whether from those who obtained licenses to operate, how many of them have put these into practical use and how many entrepreneurs are, as such, generated in the downstream sector as a result of licensing. Questions around the challenges faced by emerging entrepreneurs were hardly raised by PPCE. By ignoring these questions could imply that the PPCE failed the public it represents dismally. Issues underlined show that oversight and accountability, in terms of questioning, is minimally felt, especially for the performance of petroleum industry in terms of ensuring HDSA transformation.

- However, the PPCE may consider the following additional questions in order to achieve alignment with this policy imperative:
- Is petroleum licensing progressing as envisaged? (because it is the assumption of DoE that the more these are rolled out the more transformation is achieved)
- Does the Executive branch conduct compliance monitoring and enforcement effectively, where PLFC is concerned? (this would fast-track compliance enforcement to standard rules set in the PLFC)
- Does the Executive branch conduct stakeholder awareness workshops around use of licenses obtained? (This would ensure general awareness is obtained by stakeholders regarding all of the above)



- Track and report in the Annual Report the number of HDSAs who turned entrepreneurs in the downstream petroleum as a result of obtaining manufacturing, retail and site licenses. (Once these figures are known yearly, then the PPCE may understand the impact of its role and in South Africa at large).

Therefore by focusing on these indicators would mean that the Portfolio Committee on Energy is in-line with the sub-programmes that the Executive forges towards ensuring HDSA transformation, mainly that which is driven through licensing.

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