Response

14th February 2024

Undermining the Status of Parliament

Last Thursday's State of the Nation Address went off without the tedious disruptions that we have become used to over the past few years. This was partly due to the absence of the EFF members of Parliament, who boycotted the event in solidarity with their leader and five other senior MPs who had been suspended from Parliament by the powers and privileges committee of the National Assembly as a result of their physical disruption of last year's SONA.

But it was also due to a new regulation adopted by Parliament's joint rules committee, in terms of which *"no member is allowed to interrupt the President while delivering the State of the Nation Address. Similarly, interruptions are prohibited during the President's speech at the opening of Parliament."*[1] This rule, clearly aimed at pre-empting the EFF's tactic of misusing points of order and other procedural provisions in order to create a spectacle and garner coverage, apparently enjoyed the support of all other parties.

Few people will take much issue with the suspension of Mr Malema and his colleagues. Their occupation of the stage last year, holding placards and physically preventing the President from continuing with his address, was contemptuous of him as Head of State, of the Speaker whose instructions they ignored, of Parliament itself and – most importantly – of citizens who chose to tune in to hear the speech. The suspension, carried out with due process, seeks to protect Parliament from being demeaned and distracted from its proper purposes.

But the rule against interrupting the President is another matter entirely, and one that should worry anyone who values Parliament as the pre-eminent institution of "government by the people under the Constitution", as section 42(3) of that document puts it. The new rule fails to distinguish between legitimate interruptions on the one hand, and cynical attempts to cause chaos on the other. It also diminishes the status and role of the public's representatives, Members of Parliament, while elevating that of the President.

MPs' first duty, through the Constitution, is to the people who elected them to Parliament. Fulfilling this duty may involve, for example, raising a genuine point of procedure during an address to Parliament, whether by the President or anyone else. Depriving MPs of the procedural tools they may need in order to carry out their duty can only, in the long run, weaken the mechanisms of accountability and oversight.

It is not hard to imagine a President, though maybe not Mr Ramaphosa, taking advantage of the 'cover' provided by this rule in order to score party political points, or to use the SONA platform to spread misinformation, or to malign opponents. The fact that they may have the right of reply in the debate that follows SONA is of scant comfort – people watch SONA in large numbers, very few watch the speeches of opposition leaders over the next few days.

There is also the question of precedent. Now that SONA has been made sacrosanct in this way, is there any reason why the President's reply at the end of the week-long debate should not also be cocooned from interruption? And then there is the Budget Speech, also in the past occasionally a target for EFF disruption. Why should the Finance Minister not also be given a free ride for the duration of his speech?

[1] It is not clear what the distinction is between 'SONA' and the 'opening of Parliament speech'. The former is merely the unofficial term used for the latter, copied from the American President's 'State of the Union Address'.

This rule, and the tendency of successive presiding officers to define as 'unparliamentary' all sorts of perfectly normal, if provocative, words and phrases[2] evinces a misunderstanding of the nature of a Westminster-style parliament as a place of robust debate and exchange. There are sound historical reasons why an MP's freedom of speech in the House stretches further than it would outside, or than an ordinary citizen's would anywhere.

It is precisely because of their Constitutional duty to exact accountability from the Executive, on our behalf, that they are given this extraordinary leeway. If they abuse it, as the EFF has done repeatedly, there are mechanisms such as suspension and fines to deal with the problem. And as we have seen, offending MPs can also be physically removed. But a blanket bar on MPs interrupting the President does nothing to enhance the purposes of Parliament or the stature and rights of the people whose Parliament it is.

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[2] See for example https://www.parliament.gov.za/storage/app/media/NCOP-Rulings/NCOP_Rulings_Booklet_2nd_edition.pdf Some years ago the leader of COPE, Mosiuoa Lekota, complained in a committee of the National Assembly that members were 'being treated like sheep' by a minister who was not answering their questions satisfactorily. He was taken to task by a fellow MP for 'comparing Honourable Members to animals', which had been ruled unparliamentary. The complaint was upheld.