

A CRITICAL ANALYSIS OF THE OVERSIGHT ROLE AND FUNCTION OF THE  
STANDING COMMITTEE ON PUBLIC ACCOUNTS (SCOPA) IN PROMOTING  
ACCOUNTABILITY IN SOUTH AFRICA'S PUBLIC SECTOR.

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A thesis submitted in fulfilment of the requirements for the degree of Doctor of  
Philosophy in the Faculty of Humanities: Department of Political Sciences.

University of Pretoria

Year: 2019

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## **DEDICATION**

This thesis, whose writing was like being in the trenches, is dedicated to my late mother Buyiswa Nosizwe Matebese who taught me persistence and my father Mncedi Welcome Matebese for being such a great father. Both sacrificed so much in bringing me up with so much love, respects and confidence. To my boys, Siseko and Sihle, I want you know that hard work pays and that nothing comes easily in life. I hope you find inspiration in this study. You have seen me overwhelmed but still dragging myself to complete this thesis because I wanted you to understand that quitting is not an option.

## **ACKNOWLEDGEMENTS**

I would like to first acknowledge the Lord Almighty for helping me through this painstaking but empowering intellectual journey. It was not an easy journey at all. Thank you Bawo ngezithembiso zakho (Jeremiah 29:11). To my family and friends, you have been there since the beginning and your motivating support is acknowledged and deeply appreciated. To my boys I would like to say thank you for allowing me the time and space to complete my work. I am deeply grateful for your love, support and, most of all, your understanding and sacrifices.

Khumo Gomolemo Moerane, sana lam ke a leboha for all the motivation and trust in me, your ceaseless words of encouragement and inspiration soothed me whenever the path seemed paved in discouraging darkness and I felt weak, discouraged and undecided. I hope you will be next to undertake the journey.

A special thanks to Dr Omololu Fagbadebo for pointing out some important directions in the study. Your experience in the area came in very handy. To Dr Mabutho Shangase for helping with the formulation of the research chapter. Another special thanks to Dr Cori Wielenga for organising very helpful engagements in the post-graduate forum.

I wish to express my gratitude to mentors, Prof Siphamandla Zondi and Dr Josiah Lebakeng, for their forbearance and goodwill, patience and commitment to meticulous scholarship. I deeply and unreservedly acknowledge their guidance which helped me to grow intellectually during this long and critical academic journey. Despite their busy schedules, they provided the necessary guidance and advise on every aspect of this project. The belief they both have in me pushed me beyond my own understanding. Working closely with both was a special and rare privilege and I remain truly indebted

to both. Thanks, Professor for all the writing retreats you organised. Dr Lebakeng ndiyabulela kakhulu, your attention to details and insight taught me a great deal about scholarship.

My gratitude to the National Institute for Humanities for Social Science (NHSS) for providing the many helpful opportunities to attend seminars and workshops. More importantly for the financial assistance to pursue my studies. Also, to my employer State Security Agency (SSA), for providing the extra funding and allowing me a one-year sabbatical leave to concentrate on my studies. Without both these sponsors my dream of completing would have remained a pipe dream.

DECLARATION

I, Koliswa M. Matebese-Notshulwana, declares that the thesis, *A CRITICAL ANALYSIS OF THE OVERSIGHT ROLE AND FUNCTION OF THE STANDING COMMITTEE ON PUBLIC ACCOUNTS (SCOPA) IN PROMOTING ACCOUNTABILITY IN SOUTH AFRICA'S PUBLIC SECTOR*, is a submission of my original research work and has never been submitted either in part or whole to any institution for consideration for degree purposes.

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Signature.....

Date.....

## ABSTRACT

The thesis, *A Critical Analysis of the Oversight Role and Function of the Standing Committee on Public Accounts (SCOPA) in Promoting Accountability in South Africa's Public Sector*, looks at the underlying problem of financial mismanagement in the public sector in relation to public accountability in South Africa. This problem has manifested in growing wasteful, irregular and fruitless expenditure in a post-apartheid era confronted by a multitude of social-economic challenges. Post-1994, South Africa embarked on a series of policy and legislative reforms to cater for public service regulation. These include the 1999 Public Finance Management Act and the 2003 Municipal Finance Management Act.

South Africa is struggling with measures to counter corruption and the abuse of power. Given that South Africa has instituted and inaugurated a number of critical institutional mechanisms for legislative oversight, the study seeks to explore the reasons for the rampant problems of non-compliance, unaccountability and lack of answerability within South Africa's public sector since these have serious implications for the future of the country and its ability to address inequalities relating to the history of exclusion of the majority black people, especially Africans.

In light of this growing problem of irregular and wasteful expenditure, the study seeks to locate the role and function of SCOPA as a key parliamentary tool for advancing accountability. The primary research question of the study is: Why is there a growing problem of financial misconduct and abuse of public funds in the public sector, despite the existence of SCOPA as a parliamentary oversight mechanism?

After considering various theories, the study employs Institutionalism as preferred theory of choice because of its explanatory strength regarding oversight issues. The

strands of institutional theory used in this study is the blending of neo-institutionalism and historical institutional. Methodologically, this six-chapter thesis, employs a qualitative research approach based on semi-structured interviews and desk-top methods of data collection. The findings reveal the significance of the role and function of SCOPA in maintaining effective financial management to promote accountability.

However, the conclusion of this study is that, notwithstanding the good intentions underlying the oversight role of SCOPA, democratic South Africa's financial management continues to be afflicted by corruption, fraud and theft. Failure to take action against cases of fraud and corruption brings into question the effectiveness and efficiency of the oversight role of parliament, which includes good governance and democratic accountability in the public sector and affect socio-economic development and prosperity.

The study recommends remedies to bring financial management in the public sector in line with the principles of good governance and promotion of accountability. More importantly, the study recommends that the legislature in South Africa is empowered to exercise its oversight role on the executive on that SCOPA should not be politically interfered with.

In this regard, it is hoped that the study provides insight and make an important contribution in strengthening oversight and reducing wasteful, irregular and fruitless expenditure so that national resources are used prudently to address the challenges facing South Africa.

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## ACRONYMS AND ABBREVIATIONS

AG	Auditor-General
ANC	African National Congress
CCM	Chama Cha Mapinduzi
COO	Chief Operations Officer
COGTA	Department of Cooperative Governance and Traditional Affairs
GNU	Government of National Unity
GCEO	Group Chief Executive Officer
IFP	Inkatha Freedom Party
IPU	Inter-Parliamentary Parliamentary Union
ISD	Institutions Supporting Democracy
MDC	Movement for Democratic Change
MP	Member of Parliament
NCOP	National Council of Provinces
NDP	National Development Plan
NP	National Party
PAC	Public Accounts Committee
PFMA	Public Finance Management Act
PRASA	Passenger Rail Agency of South Africa
PP	Public Protector
QDA	Qualitative Data Analysis
SAA	South African Airways
SABC	South African Broadcasting Corporation
SARS	South African Revenue Service

SASSA	South African Social Security Agency
SCM	Supply Chain Management
SCOPA	Standing Committee on Public Accounts
SISCD	State Institutions Supporting Constitutional Democracy
SOEs	State-Owned-Enterprises
UNDP	United Nations Development Programme
UP	University of Pretoria
ZANU-PF	Zimbabwe African National Union-Patriotic Front
Zisco	Zimbabwe Iron and Steel Company

## TERMINOLOGY USED IN THE STUDY

The following terms are used widely in this study in an effort to give meaning to oversight role and function. Although there is no consensus on their definitions, in this study they are used as follows:

**Accessibility-** in general terms this is used to describe the degree to which a product, device, service, or environment is available to as many people as possible.

**Accountability-** is a pro-active process by which public officials have an obligation to account for the exercise of political, administrative or related powers

**Answerability-** the right to receive a response and the obligation to provide one.

**Committee-** the term refers to the multiparty, deliberative, elected assembly in parliament for providing guidance, monitoring and giving direction to national government departments on how public finance is spent.

**Constitution-**Is the supreme law of the country

**Corruption-** is the abuse of public resources or public power for personal gain.

**Democracy-** is referred to in this study as government of the people, a form of government in which the supreme power is vested in the people and exercised directly by them or by their elected agents under a free electoral system.

**Efficiency-** the term refers to the ability to avoid wasteful expenditure while producing intended results on the use of the public purse.

**Enforceability-** to enforce a rule of law.

**Executive-** is the branch of government that has sole authority for the daily administration of the state (ministers).



**Financial maladministration-** is the misappropriation of funds or poor management of finances resulting in corruption, fraud, wrong-doing on the part of the authorities as well as dishonest use of funds.

**Fruitless, irregular and wasteful expenditure** refers to expenditure that was made in vain and could have been avoided had reasonable care been taken. Such expenditure includes interest, the payment of inflated prices, and the cost of litigation that could have been avoided.

**Good governance-** describes how public institutions conduct public affairs and manage public resources in a transparent, responsive, accountable, equitable and efficient manner amongst attributes.

**Governance-** refers to the constitutional arrangement in which institutions make and implement administrative, political and legal decisions to exercise power in determining mechanisms for accountability. Such decisions involve ethics, transparency, responsibility, integrity of an institution and those that are involved in a best possible process and establish who should be held accountable for the outcomes of the implemented decisions.

**Investigate-** refers to systematic and formal disclosure of maladministration within state.

**Legislature-** is a form of deliberative assembly and the branch of government with the powers to pass, amend and repeal laws (Parliament).

**Monitoring-** is a continuous function that uses systematic collection of data on specified indicators to provide management and main stakeholders of an on-going

development intervention with indications of the extent of progress and achievement of objectives.

**Oversight**- this is a function granted by the Constitution to Parliament to monitor and oversee government action.

**Public sector**-is that portion of an economic system that is controlled by national, state or provincial, and local governments.

**Responsiveness**- refers to the ability to respond to all queries made by the public to representatives of the people in whom the financial administration of the country rests.

**Review**- refers to the evaluation and examination of government expenditure by the SCOPA.

**Separation of powers**- refers to the separation of three arms of government namely, the legislature, the executive and the judiciary through their specific functions, duties, and responsibilities with a defined means of competence and jurisdiction.

**Transparency**- refers to the minimum degree of disclosure to which agreements dealings, practices, and transactions are open to all for verification.

**Unauthorised expenditure** refers to expenditure that is incurred without provision having been made for it in the budget approved by the council or which does not meet the conditions of a grant.

## **CHAPTER ONE**

### **BACKGROUND AND CONTEXTUALISATION OF THE PROBLEM**

#### **1.1 Introduction**

This chapter identifies and contextualises the research problem which explicitly speaks to the efficacy and efficiency of SCOPA to promote accountability in the public sector. This is critical in light of the fact of the growing incidents of financial mismanagement and lack of consequences. Thus, the chapter frames the main research question and attendant sub-questions informing the study. It also articulates the aim and objectives and defines the key concepts used in the study. The chapter also provides the justification, rationale, delimitations of the study and addresses theories chosen to guide the study.

#### **1.2 Statement of the Research Problem**

The first phase of any research project involves transforming an interesting research idea into a feasible and researchable research problem (Mouton, 2001). A research problem is defined as an intellectual puzzle that the researcher wants to investigate (Blaikie, 2010). In essence, it clarifies and explains the specific issue that needs to be addressed in a scientific writing. Leedy and Ormrod (2015) argue that the main research problem is the axis around which the entire research effort evolved.

The last three decades have seen countries in Eastern Europe, Latin America, Asia and Africa, undergoing democratic transitions resulting in civilian governments. With a few exceptions, most of these countries initially embraced democratic governance as a preferred system. This “third wave of democratization” (Huntington, 1991)

generated an increasing interest among the political scientists for what Sartori calls “constitutional engineering” (Sartori, 1994).

In this regard, the separation of powers is considered a cornerstone of the rule of law because it seeks to curtail the abuse of state power by separating those who make the law (the legislature), from those who interpret and apply the law (the judiciary) and those who have the power to enforce it (the executive) (Labuschagne, 2004; Mojapelo, 2013). As such, political scientists have increasingly paid attention to those institutions, which are more likely to lead to the consolidation of democracy in new democracies (Stephan and Skach, 1994). One institution that is considered to be critical in this regard is the legislature, which has, among its central functions, oversight (55(2) of the Constitution).

The potential benefit of a proper oversight function to the political system and developmental trajectory has encouraged countries such as Ghana, Malawi, Nigeria and Tanzania to strengthen the legislature as a means of enhancing democracy, transparency and accountability. Moreover, this has changed the conventional Westminster view on oversight, as inherited by many former British colonies, which was often adversarial and, in some instances, oversight was professed to be the purview of opposition parties and not the legislature as an institution (Oversight and Accountability Model, n.d.). Now the emphasis is on the oversight role of the legislatures, especially as it relates to ensuring government compliance with approved public spending (Parliament of the Republic of South Africa, 2009).

In the case of South Africa, the 1994 elections ushered in a new democratic order and since then the country has been democratising its institutions of government. Much of parliament's focus in the first decade of democracy was ensuring the transformation

of South Africa's legislative landscape, in line with the country's first democratic Constitution, 1996. In this process, parliament's oversight function received less attention. This was further compounded by the fact that the Constitution of South Africa deals with parliament's legislative authority in more detail compared to its oversight role (Mgidlana, 2017). If Mgidlana's assertion is correct, the intendment of the drafters of the Constitution would have missed the heartbeat of legislative authority which is oversight.

The conduct of oversight on the organs of state was constitutionalised to make sure the executive remains accountable to the people. Only then did the concepts of oversight and accountability become important. This constitutionalising came about through the transition from apartheid which deliberately served to bring immense changes and confirmed the vital role of the state in mediating social and economic relations in a highly fragmented society (Pillay, 2016). Therefore, the concept of oversight contains many aspects, which include political, administrative, financial, ethical, legal and strategic elements (Notshulwana, 2011; Fagbadebo, 2019). Oversight bodies were formed in parliament to monitor and detect maladministration, abuse and misuse of public funds within the government machinery. South Africa then successfully established a cohort of constitutional State Institutions Supporting Constitutional Democracy (SISCDs). Section 181 (1) of the Constitution of South Africa provides for the establishment of the SISCDs to strengthen constitutional democracy (Constitution of the Republic of South Africa). It did not only end there, in order to improve the performance of public sector governance, a Ministry for Performance Monitoring and Evaluation was established in 2009, to amongst others, guide the transformation process and ensure optimal performance of the state (Chabane, 2009).

It is against this backdrop, and in the context of sections 42(3) and 55(2)(b) of the Constitution, as well as various provisions that imply oversight functions of the National Council of Provinces (NCOP), that parliament, through the Joint Rules Committee, established a Task Team on Oversight and Accountability. The task team developed an oversight model for parliament in line with the Constitution and Parliament's new strategic vision, together with the realignment of resources to fulfil its mandate with greater efficiency.

In the South African context, oversight and accountability are constitutionally mandated functions of the legislature to scrutinise and oversee executive action and any SOEs (Oversight and Accountability Model, 2011). In addition, SOEs such as Denel, Transnet, Passenger Rail Agency of South Africa (PRASA), the South African Broadcasting Corporation (SABC), South African Airways (SAA), Eskom, PetroSA, Postbank, South African Revenue Services (SARS), South African Social Security Agency (SASSA) and others are subject to oversight. This is a function granted by the Constitution to parliament to monitor and oversee government actions. Somgqeza (2014), in his description of the South African parliament, points to its critical role for holding the government accountable including in the arena of foreign policy. For Pymen (2013), parliaments and legislatures ensure accountability by checking the excesses of the executive powers and ensuring that the government operates lawfully.

In theory, legislatures have an important role in ensuring horizontal accountability by acting as a check or brake on the unconstrained use of executive powers, overseeing some of the main features of government decision-making and providing a bridge between the executive and civil society (Stapenhurst, et al, 2008). Legislatures also play critical financial oversight and accountability roles in scrutinising taxation, expenditure and public services to ensure that the policy and governance that inform

them conform to the law, that they are cost-effective, and that funds relating to them are not misappropriated. The establishment of parliamentary portfolio committees is one mechanism designed to strengthen such oversight and accountability functions.

Failure to take action against cases of fraud and corruption brings into question the effectiveness and efficiency of the oversight role of the parliament, which compromises good governance and democratic accountability in the public service and affects socio-economic development. The adverse consequence is the delay in the provision of good quality services to poor communities, failure in the realisation of good governance and the potential of a threat to state stability and security owing to the disgruntlement of the poor and marginalised. Furthermore, this assertion is supported in the policy brief by (Managa, 2012) that “government’s failure to realise the new developmental mandate of working collaboratively with communities to meet their socio-economic and material needs while improving their lives could cause serious instability”. He adds that, it is therefore imperative that government hold officials accountable for any abuse of power, and ensure efficiency, effectiveness, responsiveness and transparency. Hence, this study refers to good governance as a concept that constitute parts that are deemed appropriate for advancing service delivery and democracy (Naidoo, 2011). This could also undermine key development programmes of the government, especially the National Development Plan (NDP) Vision 2030. Central to the NDP is eradication of poverty and to drastically reduce the levels of inequality among South Africans. (National Planning Commission, 2011).

In this study, the problem and central argument is that in South Africa, despite the existence of SCOPA as a mechanism aimed at ensuring that there is prudent use of public funds, there is a growing problem of financial misconduct and abuse of public

funds in the public sector. According to Van Vuuren (2013), South Africa is struggling with measures to counter corruption and the abuse of power. Adding to the problem is an inadequate analysis of consequences deficit. Herein lies the need to look at the role, functions, capacities and effectiveness of SCOPA as this committee cuts across all portfolio committees. SCOPA has responsibility for overseeing public expenditure of the public sector and to ensure accountability in the use of public funds. This study is important because there is a clear gap in literature on studies of abuse of public funds despite the existence of SCOPA. The gap in studies exists because SCOPA has not been seen as a mechanism to prevent this problem. Obiyo (2007), has conducted an important study particularly on SCOPA but covers a limited period.

In light of this growing problem of financial fraud and misconduct, the study analyses the role and function of SCOPA as a key tool to advance accountability in parliament. Given that institutional mechanisms are in place, the study seeks to explore the reasons for the rampant problems of non-compliance, unaccountability and lack of answerability within the South African public sector as this has serious implications for the future of the country. SCOPA's oversight is thus situated within the broader context of corruption, depravation, maladministration, poverty, unemployment and inequality stemming from the historical context of exclusion and marginalization of the majority of South Africans.

### **1.3 Research Questions**

The research question in literature represents the set of questions that needs to be answered in order to address the useful and important knowledge to achieve the research objectives of the study (Verschuren and Doorewaard, 2010). Furthermore. it mostly consists of a central question and a set of sub-questions which needs to be



addressed. A research question constitutes the most important element of any research design (Blaikie, 2010). Boeije and Hodkinson (2009), argue that a clear research question and purpose direct the entire research project, including the data collection and analysis.

### **1.3.1 The Primary Research Question**

- The primary research question of the study is: Why is it that despite the existence of SCOPA as a parliamentary mechanism, there is a growing problem of financial misconduct and abuse of public funds in South Africa's public sector?"

### **1.3.2 The Secondary Research Questions**

- How effective is the performance of the oversight and accountability functions of the South African parliament?
- How effective is SCOPA's performance in the discharge of its constitutionally assigned functions?
- What has been the impact of SCOPA and the strategic benefit in being chaired by marginal opposition rather than an official opposition?
- Why are government departments, ministries and SOEs failing to take action against officials involved in irregular expenditure and fraud?
- What could be done to improve the current situation in support of accountability in your department/SOE?

## **1.4 Research Aim and Objectives**

### **1.4.1 Aim**

The term research aim usually refers to the overarching purpose of a research project (Thomas and Hodges, 2010) or a statement of what the researcher intends to accomplish with the research (Quinlan, Babin, Carr, Griffin and Zikmund; 2015). For this study the main aim is to critically analyse SCOPA's ability and inability to discharge its oversight role and function in relation to its mandate to promote accountability in South Africa's public sector.

### **1.4.2 Objectives**

Research objectives are specific statements indicating the key issues to be focused on in a research project (Thomas and Hodges, 2010). The objectives assist the aim of this study to break down the problem into themes in order for the study to arrive at a conclusion pertaining issues surrounding lack of accountability in South Africa's public sector. For the purpose of this study, the following descriptive and thematic objectives indicate in more detail the research topics under investigation, derived from the main theme indicated in the research aim.

- ✓ To examine the effectiveness of the performance of the oversight and accountability functions of the South African parliament.
- ✓ To analyse the effectiveness of SCOPA's performance in discharging its constitutionally assigned functions.
- ✓ To assess the impact of SCOPA and the strategic benefit in being chaired by marginal opposition rather than the official opposition.
- ✓ To examine why the public sector is failing to take action against officials involved in irregular expenditure and fraud.

- ✓ To explore what could be done to improve the current situation in support of accountability in the public service.

### **1.5 Justification and Rationale for the Study**

The study addresses a neglected but critical area of the study in politics, public administration and policy studies namely, effectiveness of parliamentary committees, especially SCOPA in exercising its role and functions to ensure great accountability in the public sector. The strength of this study lies in that it does not look at the issue from one side focusing on legislative committee or another (public sector) rather it combines the two and therefore helps to address perspectives of question arising from both.

SCOPA plays a major oversight role in promoting accountability and ensuring good governance in South Africa's public sector. In fulfilling this role, the committee focuses on issues raised in the Auditor-General's report on audit outcomes; issues of financial impropriety disclosed in the financial statements; compliance with the Public Finance Management Act, (PFMA); Treasury Regulations, the Audit Committee and the management report of the accounting officer; interrogation of instances relating to irregular, fruitless and wasteful expenditure; corporate governance of national government departments, state-owned-enterprises and constitutional institutions.

It is particularly for this reason that SCOPA's efficacy is under critical analysis. At the core of this study, is the assumption that the SCOPA plays a vital oversight role on behalf of the legislature to ensure good financial management, as well as to make recommendations to the legislature which, in turn, can impact on the confidence in the overall financial management in government. Although oversight is supposed to be central to the work of the South African parliament, non-compliance is endemic leading

to financial impropriety of fraud, corruption and irregular, wasteful and fruitless expenditure continuing unabated.

Researchers such as Dlomo (2017), have tried to tackle this problem but do not focus on the critical role of SCOPA. On the other hand, Obiyo (2007) pays attention to the shift that has occurred in the way SCOPA functions and how it interacts with political interventions and tendencies external to the Committee. The justification for this study is that it provides a heightened and more nuanced understating of the disjuncture between the availability of oversight mechanisms on one hand and the lack of financial responsibility on the other. This is more so because there is a prevalent perception that there are no consequences for financial transgressions, yet the Constitution enjoins the parliament to ensure accountability. An effective SCOPA must ensure that national resources are appropriately utilised for the implementation of the NDP Vision 2030.

The fundamental departure of the argument advanced in this thesis underscores the phenomenon of wasteful, irregular and fruitless expenditure. This done by critically examining the lack of accountability by elected representatives who are supposed to enforce the requirements of the relevant legislation such as the Public Finance Management Act (PFMA).

## **1.6 Delimitation of the Study**

Cognisant of the fact that there are numerous challenges confronting legislative oversight in South Africa, this study focuses mainly on the oversight role and function of SCOPA as a critical component in promoting accountability. This is due to its role to exercise oversight over the executive to monitor, detect abuse and maladministration and misuse of public funds within the government machinery on

behalf of the country's national parliament (Legislature). This role is not performed in isolation but is complimented by that of the Auditor-General, whose mandate is to conduct audits of public sector bodies, and to submit reports to the legislature, as per the requirements of the Public Audit Act, 2004 (Act No. 25 of 2004) and the Constitution of Republic of South Africa. Subsequently, the Auditor-General writes an audit opinion based on the audits performed. However, this study will not cover issues such as detailed analysis of the patterns of mismanagement and general impact of mismanagement.

Overall, while the study is also justifiable in that it makes important reference to current public debate on the state capture phenomenon and its damaging effects, including parliament and other democracy strengthening institutions. Moreover, because this is not a comparative analysis, the study only selected three institutions to cover various aspects of the public sector. The first one is a national government department, the second is a state-owned enterprise and the third is an institution that is tasked with ensuring that both use public funds prudently.

### **1.7 SCOPA as a Tool in Promoting Accountability: Literature Survey**

Among the purposes of literature review is to learn what others have done (Newman, 2000). In this case, literature review was done to place the study amid contemporary scholarly debates and discussions in this important subject. The literature in this study discusses extensively what oversight is, why it is necessary in properly functioning democratic regimes, why it is good from a normative point of view and what conditions might favour effective oversight. Despite this renewed interest in the study of oversight, the understanding of legislative oversight, as Rockman (1984) has lamented more than three decades ago, is asymmetric.

However, in the course of the past decade, political scientists have been paying increasing attention to the study of legislative oversight, which had been previously described as an important but inadequately researched area of legislative activity (Lees, 1977). There is a steady yet growing literature about parliamentary oversight and this is particularly true with regards to comparative analyses of oversight tools and practices (Lees, 1977). Some studies have discussed the instruments of legislative oversight others have instead investigated how legislative oversight relates to political and socio-economic variables (Pennings, 2000; Damgaard, 2000; Pelizzo and Stapenhurst, 2004). However, despite the legislative oversight being an acknowledged mechanism for controlling corruption particularly in the public sector, its manifestation and growth prove that there is little research undertaken on this subject, and national anti-corruption strategies generally ignore the legislature (Stapenhurst, Jacobs and Pelizzo, 2014).

In this regard, the oversight roles of the legislature have not received its due attention despite its critical role in consolidating democracy. The study expands on how SCOPA sets rules and guidelines to shape the functioning of parliament as a state institution through norms and values, by which the executive live. One example to be displayed by the study is that of SCOPA 's ability to ask questions to the executive in parliament attest to the key role it plays in strengthening accountability. However, in practice, legislatures are likely to face challenges in fulfilling their horizontal accountability functions. In a cross-country assessment of governance regimes in Africa, Van Cranenburgh (2009) observes that notwithstanding the constitutional separation of powers, many African democracies are 'hybrid regimes' assuming 'semi-presidential' forms. These fuse the power-concentrating features of presidential and power-deconcentrating parliamentary systems. Moreover, in countries tending to follow

British traditions of government, Cabinet ministers also serve as members of the parliament, a system which somewhat limits the accountability function of the legislature. In such systems, as illustrated in the case of South Africa in chapter four, legislatures may be unable to restrain executive power because political leaders could count on overwhelming support from a dominant political party. Moreover, powers (such as censure against ministers; capacity to challenge spending plans; over-ruling the presidential veto; capacity to impeach the president; term of office limits) are rarely exercised, are easily circumvented or are subject to executive dominance (Van Cranenburgh, 2009). Izah (2013) argues that through parliament's core oversight function, it holds government to account on behalf of the people. Somgqeza (2014) in his description of the South African parliament points to its critical role of holding the government accountable including in the arena of how the country pursues its foreign policy. This is so because parliaments are no longer merely engaged in the processes of foreign policy but are directly active as participants in international relations (Masters, 2015). Pymen (2013) believes that parliaments and legislatures play a role in holding the executive to account by checking excesses of executive power and ensuring that the government operates lawfully.

Overall, many studies have observed that the presence of oversight tools is necessary but not sufficient condition for effective oversight (Loewenberg and Patterson, 1979; Notshulwana and Lebakeng, 2018). Effective oversight depends not only on the availability of tools, but also on additional conditions. These include the specific oversight powers given to the parliament (constitutional provisions), whether adequate information is provided and the role of individual legislature (Rockman, 1984). In addition, Alan and Claire (2007) argue that although parliamentary capacity-building is not the only way of improving performance, the credibility and accountability of

parliamentary institutes play a significant role in enhancing the effectiveness of legislatures. Two sets of factors appeared to be critical to the success of a parliamentary audit committee, or Public Accounts Committee (PAC): its institutional design and the conduct of its members (Stapenhurst, et al., 2005).

In addition, parliaments are the institutions through which governments are held accountable to the electorate. Through its core oversight function, parliament holds government to account on behalf of the people (Izah, 2013). They have a wide range of tools with which to carry out this oversight function, but until recently little analysis had been undertaken on the characteristics or use of such tools (Pelizzo and Stapenhurst, 2004a). For many scholars, one of the ways parliament could fulfil its oversight role is through its committees, which have been formed in large part to strengthen the role of the legislature and to protect democratic regimes by ensuring the existence of proper governmental and administrative order (Hazan, 2001; Pelizzo and Stapenhurst, 2004).

This study pays attention to public accountability and discusses it as a core element. One of the criticisms of the parliament is that of its inability to hold the executive accountable in cases of misuse of public funds and malfeasance. Accountability means the obligation to answer for the performance of duties (Mulgan, 2011) and central to it are the measures for correction to avert adverse consequences. Schedler (1999) sees accountability as a measure to prevent and redress the abuse of political power. Olsen (2015) conceptualises accountability as an institutional instrument of political order in that “it involves establishing facts and assigning causality and responsibility, formulating and applying normative standards for assessing conduct and reasons given, and building and applying capabilities for sanctioning inappropriate behaviour”.



Accountability has its root in the conceptualisation of the state as a product of a social contract between the state and the citizens. According to Fagbadebo (2019), every democratic constitution espouses this ideal expressing the need to promote the interest of the citizens. This is crucial given that the citizens surrendered their natural rights and freedom of self-government to the state in exchange for the provision of social benefits (Pelizzo and Stapenhurst, 2014). For Fagbadebo (2019), this origin of the modern state and government, which came with the principles of liberty and freedom of association, reinforces the need for checks and balances in the relationship between the government and the governed. Inherent in these principles is the notion of accountability where the officials of the government account for their performance of the terms of responsibility.

Thus, accountability is not limited to the elected political officials only, their political organisations has the duty to ensure effective delivery of the expected public goods. By implication, the elected officials are the agents of both the citizens and the political parties (Fagbadebo, 2019) and this dualistic responsibility of generates tension between accountability and delegation (Klasnja and Titunik, 2017) and this can complicate the accountability regime. In this regard, the capacity of the legislature to monitor and control the activities of the executive branch of government is crucial in ensuring accountability and compliance of government with appropriate policies (South Africa Parliament, 2009) since a strong legislature is one of the determinants of public accountability and democratic survival (Poteete, 2017; Lawan, 2009).

### **1.7.1 Types of Accountability**

Section 33(2) of the South African Constitution (1996) requires that officials provide written reasons for their decisions. For purposes of this study, accountability ensures

that actions and decisions taken by public officials are subject to oversight to guarantee that government initiatives meet their stated objectives and respond to the needs of the community they are meant to benefit, thereby contributing to good governance. Thus, it is important for this study to discuss different types of accountability as a major reason to improve oversight in order to safeguard the public sector against financial mismanagement, abuse of power, wasteful, irregular and fruitless expenditure etc. Below are the types of accountability as discussed in this study:

- *Horizontal accountability*, abuses by public agencies and branches of government are checked by state institutions, such as the legislature and anti-corruption agencies. This type represents the internal processes of ensuring answerability to responsibility and enforceability to dereliction of within the government. This responsibility rests with the legislature, assisted by other institutional agents constitutionally designated as oversight tools. The legislature is thus the principal accountability instrument as an institutional arrangement representing the interests of the people (Fagbadebo, 2019).
- *Vertical accountability* refers to the methods by which the state is (or is not) held to account by non-state agents through the relationship between citizens and their political representatives (Goetz and Jenkins (2005). This accountability measure is an indication that if the internal control and evaluation tools fail to bring the office holders to account, the public has the electoral tool to determine the mandates of their elected representatives.

- *Diagonal accountability* happens when citizens are directly engaged in horizontal accountability institutions. Limited effectiveness of civil society's watch dog function is augmented by breaking the state's monopoly on responsibility for official executive oversight.
- *Political accountability* is the accountability of the government, civil servants and politicians to the public and to legislative bodies such as Parliament (Dykstra, 1939).
- *Ethical accountability* is the practice of improving overall personal and organisational performance by developing and promoting responsible tools and professional expertise, and by advocating an effective enabling environment for people and organisations to embrace a culture of sustainable development.
- *Administrative accountability* refers to internal rules and norms as well as mechanisms for holding civil servants within the administration of government accountable (Mulgan, 2000).

These various types of accountability cohere into effective accountability hence the importance of the various dimensions. For purposes of this study, the concept of accountability refers to an obligation to account for the exercise of political, administrative or related powers. This study argues that accountability on its own remains a symbol of a democratic system. In other words, democracy would be useless if those in power could not be held accountable for their actions involving the misuse of public funds. It is noted in this study that the ultimate goal of SCOPA is to

hold the executive and government officials accountable to the people it serves ([www.parliament.gov.za](http://www.parliament.gov.za)).

Answerability and enforceability are the two components of accountability. Essentially, answerability is recognised in this study as means to ensure accountability. All legislatures, regardless of type have developed different oversight tools to address answerability and enforceability. Answerability is therefore enforced through legislative tools such as oversight committees, question periods or times and the review/approval of certain government appointments. Although very few studies of legislative oversight have been conducted it is generally agreed that in democratising societies, often lack of political will and corruption have reduced the significance and potential gains of the oversight function (Izah, 2013).

Enforceability is applied through tools such as the motions of no confidence, motions of censure, impeachment and election/selection of cabinet ministers. The adaption of these tools depends on the form of government (World Bank Institute, 2013).

Transparency, according to this study, refers to the minimum degree of disclosure to which agreements; dealings, practices, and transactions are open to all for verification. Requires that decisions and actions are taken openly, and that sufficient information is available so that other agencies and the general public can assess whether the relevant procedures are followed, consonant with the given mandate (Lawson and Rakner, 2005).

Responsiveness, according to this study, refers to the ability to respond to all queries made by the public to representatives of the people with whom the financial administration of the country is tasked.

Good governance is a cornerstone of reconstruction and sustainable development (Mafunisa, 2004). It leads to the overall performance by management to produce intended results. The study suggests that good governance should promote and sustain development for the benefit of all the citizens of South Africa as per NDP vision 2030.

Nonetheless, where these can be overcome or minimised, there are several tools the legislature can employ to oversee the government and governmental activities. These include hearings in committees, hearings in plenary assembly, the setting up of ad hoc committees, parliamentary questions and question time (Pennings, 2000).

Although other types of accountability are important, the focus of this study will be on horizontal accountability which focuses on how public agencies and branches of government are checked by state institutions such as the legislature and anti-corruption agencies.

## **1.8 Theoretical Framework**

The literature on oversight provides various theories to determine oversight effectiveness. While the idea to employ a theoretical framework in this study is important, the selection and the choice thereof is critical. Thus, the appropriateness of the selection of the theory is at the core. According to Leedy and Ormrod (2005), the word theory refers to a particular kind of explanation, an organised body of concepts and principles intended to explain a particular phenomenon. Thus, theories explain “How” and “Why” something operates as it does (Johnson and Christensen, 2007). As argued by Boss, Doherty, LaRossa, Schumm and Steinmets (1993), theorizing is the process of systematically formulating and organising ideas to understand a particular phenomenon.

McMillon and Schumacher (2000) state that a theory could develop scientific knowledge thereby (a) providing simple explanation about the observed relations regarding their relation to a phenomenon, (b) be consistent with an already founded body of knowledge and the observed relations, (c) providing a device for verification and revision and (d) to simulate further research in areas needing investigation. For this study, the choice for a theory is mainly from the principal-agent, functionalism, constitutionalism, and institutionalism.

The first theory, principal-agent, is particularly appropriate for explaining the accountability relationship between citizens (as principals) and the executive and the legislature (both as agents), on the one hand, and between the legislature (acting as principal), on behalf of citizens and both the executive and the bureaucracy, on the other (Pelizzo and Stapenhurst, 2004). The weakness of this theory is that it is said to apply as much as to legislative-executive relations as it does to a more general sense accountability to citizens. For example, citizens are often not clear about what they would like their agents to do, leaving substantial room for the agents to develop their own self-serving interest. The cost for the citizen to oversee executive actions may be too high resulting in a lesser oversight function to hold the executive accountable.

The second theory, functionalism, is a theory that focuses on the macro-level of social structure, rather than the micro-level of everyday life. According to Mooney, Knox and Schacht (2007), functionalism interprets each part of society in terms of how it contributes to the stability of the whole society. In this sense, society is more than the sum of its parts; rather, each part of society is functional for the stability of the whole. According to Crossman (2017), Emile Durkheim envisioned society as an organism, and just like within an organism, each component plays a necessary part. However,

no component can function alone, and when one experiences a crisis or fails, other parts must adapt to fill the void in some way.

Davis and Moore (1945) point out that the functionalist approach theory emphasises that social stratification exists in all human societies, such as family and religion and, therefore, it must be functional and beneficial. They believe that social stratification is a 'device by which the most important roles are filled by the most qualified person'. They argue that societies are complex systems of interrelated and interdependent parts, and that each part of a society significantly influences the other. On the other hand, Tumin (1953) criticises this analysis by pointing out that certain functions in any society are more important than the other. The logical question would be: How does one know which functions are more important and who makes that decision?

Functionalism is anchored in positivism according to which there is a single objective reality to any research phenomenon or situation regardless of the researcher's perspective or belief (Hudson and Ozanne, 1988). Positivist researchers seek to detach from the participants of the research by creating a distance, which they consider to be important in remaining emotionally neutral to make clear distinctions between reason and feelings (Carson, 2001). Carson (2001) and Hudson and Ozanne (1988) maintain that positivist researchers seek objectivity and to use consistently rational and logical approaches to research. While it is useful for understanding how institutions function in relations to one another, the theory fails to understand that human behaviour is dynamic and has to be interpreted. The theory was built on classical texts of such proponents as Augustus Comte (1798-1857), Herbert Spencer

(1820-1903) and later refined by Emile Durkheim (1902-1979) and Talcott Parsons (1960) as structural functionalism.

According to Haralambos and Heald (1980), the theory was initially dominant in how sociology viewed the society as a system or set of interconnected parts which together form a whole. However, the theory witnessed a significant drop in popularity within the discipline of sociology partly because of criticisms against it. The main argument for Davis and Moore (1945) is that each society places individuals in social positions and motivates them to work. They added that some positions are more functional than others and require more talent and training than others (Davis and Moore, 1945). However, it was adopted in political and administrative studies. According to Nwosu and Ofoegbu (1986), functions as used by scholars in politics and administration refer to the contributions of an activity (legislature) or patterns of behaviour to the maintenance of a given society. For Olaniyi (1997), (structural) functionalism when related to politics and administration can be described as a means of explaining basic functions of both political and administrative structures, and it is a tool of investigation. This study which particularly pay a greater attention to government as an institution means that functionalist theory would be useful in understanding functions of parliament in accountability.

The third theory, constitutionalism theory, as argued by Adagbabiri (2015), means that the power of leaders and government bodies is limited, and that these limits could be enforced through established procedures. As a body of political or legal doctrine, it refers to government that is, in the first instance, devoted both to the good of the entire community and to the preservation of the rights of individual persons. Constitutionalism is a concept in political theory that explains that a government does not derive its power from itself but as a result of there being a set of written laws that



give the governing body certain powers. Constitutionalism therefore naturally prescribes a system of government in which the government's powers are limited. Government officials, whether elected or not, cannot act against their own constitutions. Constitutional law is the highest body of law in the land, which all citizens, including the government, are subjected to.

According to Adagbabiri (2015), this principle of constitutionalism empowers the judiciary to declare any action that conflicts with the constitutional provision as null and void and ultra vires. It also grants individuals the chance to challenge any action of the government viewed as unconstitutional in the court of law. A constitution may be defined as the whole body of fundamental laws, customs, conventions, principles, rules and regulations according to which a particular government of a country or an organization operates. As a result, governments use constitution in order to spell out the functions and relationship among the branches of government. Constitutional framework provides among other things three independent organs of the state to ensure separation of powers within the government machinery; these are legislative, executive and judiciary. Limitation in the exercise of functions of the constitution implies that the activities of those who govern should not be unconditional. The relevance of this theory for the study lies in that it provides constitutional norms behind oversight mechanism. As Adagbabiri (2015) points out, there is a constitutional limitation in the exercise of their functions

The fourth theory, institutionalism theory, dwells on the deeper and more resilient aspects of social structure. It considers the process by which structures, including rules, norms and routines become established as authoritative guidelines for social

behaviour (Scott, 2001). It is embedded in three approaches (sociological institutionalism, historical institutionalism, and political institutionalism) with their institutional theoretical claims. The claim these theories are making is that something identified at a higher level is used to explain processes and outcomes at a lower level of analysis (Clemens and Cook, 1999; Amenta, 2005).

According to Scott (1995), there is no single and universally agreed definition of an institution in the institutional school of thought. He asserts that institutions are social structures that have attained a high degree of resilience. Scott (2008) argues that institutional theory is a widely accepted theoretical posture that emphasizes rational myth. According to Kraft and Furlong (2007), institutional theory emphasizes the formal and legal aspect of government structure. Two dominant trends exist in a debate around this theory, which guide the literature to understand how norms, rules become established as a guideline for social behaviour namely; new institutionalism and old institutionalism. Whereas new institutionalism is a social theory that focuses on developing a sociological view of institutions, the way they interact and the effects of institutions on society (Powell and DiMaggio, 1991), old institutionalism is an approach to the study of politics that focuses on the formal institutions of government and sees institution as both structural and procedural which should maintain its legitimacy (Dacin, 1997; Deephouse, 1996; Suchman, 1995).

Thus, new institutionalism is often contrasted with "old" or "classical" institutionalism, the latter of which was first articulated in the writings of John Dewey, Thorstein Veblen, John Commons, and others, and which has been further extrapolated by various philosophers and scholars such as Donald Davidson, Richard Rorty and Amartya Sen.

New institutionalism posits that institutions operate in an open environment consisting of other institutions, called the institutional environment. Every institution is influenced by the broader environment (or institutional peer pressure). In this environment, the main goal of organizations is to survive and gain legitimacy. In order to do so, they need to do more than succeed economically, they need to establish legitimacy within the world of institutions.

New institutionalism it seeks cognitive and cultural explanations of social and organizational phenomena by considering the properties of supra-individual units of analysis that cannot be reduced to aggregations or direct consequences of individual's attribute or motives. In order to survive, organisations must conform to the rules and belief systems prevailing in the environment. In his book *Institutional Theory in Political Science: The New Institutionalism*, Guy Peters (2019) assesses the possibility of a unified theory within institutionalism and its potential as a paradigm for political science. Although there is no consensus in the literature regarding the exact meaning of neo-institutionalism, the theory emerged as a perspective in organisation theory and sociology which rejected the rational-actor models of classical economics and comprises eight variations on the theme of institutional analysis.

As alluded to earlier, institutional theory is embedded in three approaches namely, historical, sociological and political institutionalism. Historical institutionalism is an approach to political research that focuses on asking big questions, highlights the importance of institutions in explanations, and rejects functionalist explanations for why institutions emerge. According to Powell and DiMaggio (1991), sociological

institutionalists examines the influence of the world society on cultural and ideational causes. These causes are theorised to exert influence either at super-state level for the states and their policies or at the societal level for organisations. Political institutionalists typically situate their claims at the state or macro-political level and argue that the process of formation of states, political systems, and political party systems strongly influence political processes and outcomes (Amenta, 2005).

Unlike sociological institutionalists, political institutionalists focus not on convergence in policy across countries, but on how long-standing institutions mediate the influence of domestic organised political actors and global processes (Amenta and Ramsey, 2010). It is therefore argued that all three forms of institutionalists' approaches define institutions broadly. Political and historical institutionalists see institutions as formal or informal procedures, routines, norms and conventions in the organisational structure of the polity or the political economy, whereas sociological institutionalists add cognitive scripts, moral templates and symbol system. According to Skocpol and Pierson (2002), these are suggested to exert influence either at the supra-societal or supra-state level for states and their policies, or at the societal level for organizations.

Based on its explanatory strength, the theoretical departure in this study is institutional theory. The study draws from the literature on corruption, accountability and legislative oversight written from the institutionalist school of thought. In this, emphasis is on the institutional mechanisms, i.e. how institutions monitor and enforce compliance of the executive. This theory was also central in assisting the study to explain the role of institutions supporting constitutional democracy through ensured oversight role and functioning of SCOPA. This theory asserts that institutions are formal structures where

norms and values are shaped to guide, influence and determine policy and policy outcome. Thus, the study adopts new institutionalism to ensure accountability is promoted in South Africa's public sector because of its institutional powers that give meaning to the idea of strengthening the role and function of SCOPA in the eyes of the people and the world of institutions.

However, given its range and richness, the study achieves its aim, and objectives and properly addresses its core question by narrowing its focus to new institutionalism. In this respect, new institutionalism addressed the nature and internal workings of SCOPA and historical institutionalism tracked the larger contextual issues of historical exclusion and marginalisation and the result inequalities, poverty, unemployment and abuse of public funds. It is noteworthy that the reason for blending the two is because exclusively foregrounding new institutionalism -- which is sociologically informed -- would have been problematic for a study of political science.

## **1.9 Conclusion**

Having clearly articulated the dangers posed by wasteful, irregular and fruitless expenditure, the justification and rationale for this study becomes obvious and interventions urgent. What emerges from the research problem is the necessity to arrest or reverse the growing challenge which is undermining service delivery and could potentially result in instability in South Africa. Consequently, the growing problem of financial mismanagement and maladministration in the public sector weakens the role and function of the oversight of SCOPA in ensuring accountability. Since oversight and accountability are related concepts, it becomes necessary to investigate SCOPA given its centrality in promoting accountability. Although studies of

legislative oversight have been conducted in South Africa, research shows a knowledge gap relating to SCOPA's oversight role and performance in promoting accountability.

## CHAPTER TWO

### RESEARCH METHODOLOGY

#### 2.1 Introduction

The chapter outlines in detail the research methodology that was used to collect and analyse data. As a strategy for data collection and analysis, it includes the research design, approach, methods of data collection and analysis, selection of the sample, limitations of the study and ethical considerations. McMillan and Schumacher (2010) define research as the systematic process of collecting and logically analysing data for a given purpose. It is as a systematically and purposefully, planned process to yield data on a particular research problem.

#### 2.2 Positionality and Reflexivity

As a researcher background precipitates that I locate myself as a member of the public service who is also familiar with its operations and processes. This is important because my positionality may affect the observed phenomenon, the data collection process and the dynamics of participation in fieldwork. In this regard, reflexive research required that I adopt a willingness to consider how my background, personal values and reflexivity in field research reflect my positionality. This is critical in that reflexivity may be included in the process of selecting the topic, the population and the region to be studied (Probst and Berenson, 2014). Temple and Young (2004) explain that positionality can affect research outcomes and interpretations, because “one’s position within the social world influences the way in which you see it” (p. 164). It is noteworthy that standpoint theories, which focus on positionality, have been utilised primarily by feminists representing a range of critical epistemological perspectives (Collins, 1990; Haraway, 1991; Hardin and Norberg, 2005; Smith, 1990).

Thus, reflexivity is premised on the idea that reality is socially constructed, and knowledge is context-based and historically situated (Mauthner and Doucet, 2003). Reflexive research entails interpretation and reflection. It demands a critical self-examination from the researcher, an “explicit self-aware meta-analysis,” (Finlay, 2002) to understand the researcher-participant dynamic that influences knowledge production. In other words, reflexive inquiry interrogates one’s own interpretation (and construction) of empirical data (Alvesson and Skoldberg, 2009).

### **2.3 Research Methodology**

Research methodology is a way to systematically solve the research problem, (Rajasekar, Philominathan and Chinnathambi, 2013) and essentially signifies how the research will be carried out and which philosophical assumptions underpin the study (Quinlan, Babin, Carr. Griffin and Zikmund, 2015). In other words, research methodology outlines various steps that are generally adopted by a researcher in studying his/her research problem with the logic behind them. Thus, it is necessary for the researcher to know not only the research methods/techniques but also the underpinning philosophical assumptions. Accordingly, researchers not only need to know how to develop certain indices or tests, how to calculate the mean, the mode, the median or the standard deviation or chi-square, how to apply particular research techniques, they also need to know which of these methods or techniques, are relevant and which are not, and what would they mean and indicate and why (Kothari, 2004). In addition, researchers need to understand the assumptions underlying various techniques and know the criteria by which they can decide which techniques and procedures are applicable to address particular problems (Thomas, 2010; Creswell, 2009).



For purposes of triangulation, the methods of data collection chosen for this study are both desktop by focusing on primary and secondary material and semi-structured interviews. Data analysis was informed by the sub-questions posed and structured accordingly.

### **2.3.1 Case Study Methodology**

Pursuant to this choice three qualitative case studies were selected. A case study is broadly a process of conducting systematic, critical inquiry into a phenomenon of choice and generating understanding to contribute to cumulative public knowledge of the topic (Simons, 2009). According to Denscombe (2007), the 'case' that forms the basis of the investigation is normally something that already exists. According to Merriam (1998), the qualitative case study can be defined as an intensive, holistic description and analysis of a single entity, phenomenon or social unit. The units of analysis include individuals, groups and institutions (Welman, Kruger and Mitchell, 2010). According to Idowu (2016), case study research strategy reveals specific insights from specific circumstances, and it involves gaining understanding of phenomenon through the study of detailed activity within a particular real-life context. Yin (2014) therefore strongly asserted that case study should be the preferred strategy when there is a focus on a contemporary phenomenon within real-life context.

In most cases, a case study method selects a small geographical area or a very limited number of individuals as the subjects of study (Zainal, 2007) and involves in-depth research into one case or a small set of cases (Thomas, 2009; Lichtman, 2006). In this regard, Yin (1984) defines the case study research method as an empirical inquiry that investigates a contemporary phenomenon within its real-life context; when the boundaries between phenomenon and context are not clearly evident; and in which

multiple sources of evidence are used. In other words, it allows a small area or subjects of interest to be examined in detail.

The main benefit of using a case study approach is that the focus on one or a few instances allows the researcher to deal with the subtleties and intricacies of complex social situations (Denscombe, 2007). It can be considered a robust research method particularly when a holistic, in-depth investigation is required (Gulsecen and Kubat, 2006). This results in a rich and holistic account of a phenomenon. In addition, the case study method enables a researcher to closely examine the data within a specific context.

In general, case studies are the preferred strategy when "how" or "why" questions are being posed, when the researcher has little control over events, and when the focus is on a contemporary phenomenon within some real-life context. Such "explanatory" case studies also can be complemented by two other types, namely exploratory and descriptive case studies. Regardless of the type of case study, researchers must exercise great care in designing and doing case studies to overcome the traditional criticisms of the method. This is so because despite its advantages, the case study method is traditionally considered to have several major limitations as an evaluation tool. According to Idowu (2016), case study research is often charged with causal determinism, non-replicability, subjective conclusions, absence of generalizable conclusions, biased case selection and lack of empirical clout. But Yin, in his landmark book on case studies, asks, "If the case study method has serious weaknesses, why do investigators continue to use it?" (Yin, 2014).

Considering this explanation of the advantages of case study, it became logical for the researcher to choose case study as a preferred research method as it has the potential

to provide a holistic and in-depth explanation regarding the phenomenon in question. In this regard, the researcher made use of the case study focusing on SCOPA's efficiency as an institution in promoting accountability in the public sector.

### **2.3.2 Research Design**

Mouton (2001), defines a research design as a plan or blueprint of how the researcher intends conducting the research. It is a plan, structure and strategy of investigation so conceived as to obtain answers to research questions or problem (Kerlinger,1986). This study uses a qualitative research design. According to Creswell qualitative research is a research that begins with assumptions, a worldview, the possible use of a theoretical lens and the study of research problems inquiring, into the meaning individuals or groups ascribe to a social or human problem, (Creswell, 2007). The main characteristic of qualitative research is that it is mostly appropriate for small samples, while its outcomes are not measurable and quantifiable (Collis and Hussey, 2003). It is characterised by strategies that take the subject's perspective as central. This approach also pays significant attention to detailed observation to produce a 'rich' and 'deep' description (Morrison, 2002). In qualitative research, detailed consideration is given to the holistic picture in which the research topic is embedded. The underlying idea is that researchers can only make sense of the data collected if they are able to understand the data in a broader educational, social and historical context (Morrison, 2002).

Its basic advantage, which also constitutes its basic difference with quantitative research, is that it offers a complete description and analysis of a research subject, without limiting the scope of the research and the nature of participant's responses (Collis and Hussey, 2003). However, the effectiveness of qualitative research is

heavily based on the skills and abilities of researchers, while the outcomes may not be perceived as reliable, because they mostly come from researcher's personal judgments and interpretations. In this regard, it is more appropriate for small samples, it is also risky for the results of qualitative research to be perceived as reflecting the opinions of a wider population (Bell, 2005).

Morrison (2002) believes that qualitative research is characterised by strategies that take the subject's perspective as central. This approach also pays significant attention to detailed observation in an attempt to produce a 'rich' and 'deep' description. This definition is also preferred by Marshall and Rossman (1999) that qualitative research offers opportunities for conducting exploratory and descriptive research that uses the context and setting to search for a deeper understanding of the person(s) being studied. Qualitative research is a way of knowing that assumes that the researcher gathers, organises and interprets information (usually in words or in pictures), using his or her eyes and ears as filters (Marshall and Rossman, 1999). Evidently, in qualitative research, detailed consideration is given to the holistic picture in which the research topic is embedded.

### **2.3.3 Sampling**

In this study, considerable importance is placed regarding the sample size to play a significant role as the purpose is to study only the magnitude to which the problem under discussion exist. In this regard, the sample was derived from COGTA, PRASA and SCOPA as these were institutions of focus for this study. Authors have written on how to choose a sampling technique for research (Mugo, 2002; Taherdoost, 2016). According to Webster (1985), a sample is a finite part of a statistical population whose properties are studied to gain information about the whole. When dealing with people,

it can be defined as a set of respondents selected from a larger population for the purposes of a survey (Mugo, 2002). For instance, in order for the researcher to be able to collect data in a more representative manner, purposive sampling is selected with its various sub-types, thus, a need to select an appropriate one is important. The Merriam-Webster Dictionary defines sampling as the act, process, or technique of selecting a representative part of a population for the purpose of determining parameters or characteristics of the whole population (Gentles, Charles, Ploeg and McKibbon, 2015).

More often, researchers neither have time nor the resources to analyse the entire population, hence a selection of non-probability sample to reduce ambiguity is preferred. As such, sampling is selected for this reason. In addition, it is used because it facilitates ease in accessing the potential participants based on their broad knowledge and experience on issues of accountability involving SCOPA as well as to find out about the revelations of wasteful and fruitless expenditure surrounding their institutions.

### **2.3.3.1 Purposive Sampling**

Purposive or judgmental sampling is a strategy in which particular settings, persons or events are selected deliberately in order to provide important information that cannot be obtained from other choices (Maxwell, 1996). It is where the researcher includes cases or participants in the sample because they believe that they warrant inclusion. The method of purposive sampling is used to advance the sample of the research under discussion. According to Friedman, Graham, Brazier et al, (2007), sample members are selected based on their knowledge, relationships and expertise regarding a research subject. Additionally, purposive sampling is selected to represent

the population involved in the phenomenon under study as well as for qualities the participant possesses.

According to Etikan, Musa and Alkassim (2016), purposive sampling manifests itself in various types such as (a) maximum variation sampling, (b) homogenous sampling, (c) total population sampling, (d) expert sampling, (e) critical case sampling and (f) typical case sampling. With regards to maximum variation sampling, the idea is to look at a subject from all available angles, thereby achieving a greater understanding. Homogeneous sampling focuses on candidates who share similar traits or specific characteristics. Total population sampling is a technique where the entire population that meets the criteria (e.g. specific skill set, experience, etc.) are included in the research being conducted.

Critical case sampling is extremely popular in the initial stages of research to determine whether a more in-depth study is warranted, or where funds are limited. According to Strewig and Stead, (2001), critical case sampling is where you collect samples that are most likely to give you the information you're looking for and they are particularly important cases or ones that highlight vital information. It is particularly useful in research with limited resources, as well as research where a single case (or small number of cases) can be decisive in explaining the phenomenon of interest. The criterion for deciding whether an example is "critical" is generally decided using the following statements: Typical case sampling is useful when a researcher is dealing with large programs, it helps set the bar of what is standard or "typical". Candidates are generally chosen based on their likelihood of behaving like everyone else. For example, if one was researching the reactions of 9th grade students to a job placement program, one would select classes from similar socio-economic regions, as opposed

to selecting a class from a poorer inner-city school, another from a mid-west farming community, and another from an affluent private school.

Expert sampling is a positive tool to use when investigating new areas of research, to garner whether further study would be worth the effort. Within this context, the participants of this study were senior officials of government departments, SOEs operating both in finance and supply chain management units. For the purpose of this study, finance and supply chain management officials were the targeted audience. Thus, making expert sampling the most applicable. This type is the choice for this study due to the qualities of the participants. As the name indicates, this method calls for experts in a field to be the subjects of the sampling. It is useful when the research is expected to take a long time before it provides conclusive results or where there is currently a lack of observational evidence (Etikan, Musa and Alkassim, 2016).

According to Bernard (2002), the researcher decides what needs to be known and sets out to find people who could and willing to provide the information by virtue of knowledge or experience. It is typically used in qualitative research to identify and select the information-rich cases for the most proper utilization of available resources (Patton, 2002). This involves identification and selection of individuals or groups of individuals that are proficient and well-informed with a phenomenon of interest (Cresswell and Clark, 2011).

The sample participants who were selected for this study have knowledge and experience with the phenomenon under investigation, sufficient and relevant work experience in the field of finance and supply chain management which have a bearing on accountability and compliance with the legislation. Within this context, three

members from each institution namely, COGTA, PRASA and SCOPA were interviewed. These were selected from middle to senior management.

Black (2010) states that purposive sampling (also known as judgment, selective or subjective sampling) is a sampling technique in which the researcher relies on his or her own judgment when choosing members of a population to participate in the study. In this study, the sample is selected based on the frequent appearance before SCOPA for the purposes to enquire about wasteful and fruitless expenditure which leads to mismanagement of public funds revealed in the office of the Public Protector's investigated allegations of fraud and corruption including allegations of maladministration relating to financial mismanagement, systemic corporate governance deficiencies, abuse of power, systematic corporate governance failures; acutely poor human resources management; improperly awarding of tenders; appointment irregularities of service providers without following proper processes and conflict of interest in the procurement of goods and services (Public Protector, 2014-2015).

### **2.3.3.2 Data Collection Methods**

#### **2.3.3.3 Semi-Structured Interviews**

The study used semi-structured interviews as a preferred choice of data collection method. Semi-structured interviews are simply conversations in which the researcher through a set of questions finds out about what they want to know (Fylan, 2005). She argues that that these types of interviews are a versatile means of collecting data, hence they are likely and free to vary and change substantially between participants. The choice for this method in this study is that it provides a more appropriate format for discussing sensitive issues relating to accountability such as compliance,



transparency, corruption etc. This is because a semi-structured interview is a meeting in which the interviewer does not strictly follow a formalized list of questions. In addition to formal questions, they will ask more open-ended questions to allow for a discussion with the interviewee rather than a straightforward question and answer format.

The semi-structured interviews give in-depth details of the phenomena under analysis. Again, semi-structured interviews are seen in this study as the richer and most suitable option to collect data. According to Mouton, these types of interviews are personal and in-depth, and their aim is to identify a participant's emotions, feelings, and opinions regarding a particular research subject. (Mouton, 2000). Furthermore, the purpose in choosing this type of interviews is that participants get the same questions asked, but there is flexibility in how they are asked. What follow-up or probing questions to use, etc.

They are also well suited for exploring attitudes, values, beliefs, and motives in a particular subject. According to Fisher (2005) and Wilson (2003), the main advantage of personal interviews is that they involve personal and direct contact between interviewers and interviewees, and thus can potentially increase response rate. They encourage two-way communication; both the interviewer and the respondent can ask questions, which allows for a comprehensive discussion on the topic while, order can be observed based upon the interviewer's perception of what seems most appropriate.

Considering the above, Galletta (2013) attests that semi-structured interview is a versatile and powerful qualitative research method with its remarkable potential. He further confirms that it is sufficiently structured to address a specific dimension of a research question while also learning space for study participants to offer new

meaning to the topic under study. For purposes of this study, the researcher made use of the case study focusing on SCOPA's efficiency in promoting accountability. In addition, one national government department and one SOE were used to provide evidence as to the role and function of SCOPA in promoting accountability to similar institutions. In addition, desktop was used to understand legislative oversight in Africa, and this involved literature review and overview, scanning official government documents and newspaper reports.

#### **2.4 Research Limitations and Delimitations.**

As it is for most studies, this thesis has the following limitations:

Firstly, time and financial constraints within the confines of this study time did not allow for the exploration of the information which does not fall within the jurisdiction of this study. Secondly, the above factors also influenced the determination of the size of the sample which was relatively albeit it knowledgeable about the issues at hand. Thirdly, there was reluctance by the participants to provide official documents for personal perusal and content analysis, However, they were all prepared to discuss the issues. Fourthly, the analysis of the role and function of SCOPA in the promotion of accountability in South Africa's public sector may be influenced by factors not mentioned in this study. Thus, the study made use of the desktop research to look at other sources of information and double check issues that were discussed during the interviews. In terms of delimitations, the study looked at SCOPA's efficacy in the public sector but not at all SCOPA issues since its establishment. In particular, the study focused on the impact of SCOPA on preventing irregular expenditure in PRASA and COGTA.

## 2.5 Thematic Analysis

According to Maguire and Delahunt (2017), thematic analysis is the process of identifying patterns or themes within qualitative data. The goal of a thematic analysis is to identify themes in the data that are important or interesting for use to address the research. In this study, this is much more than simply identifying themes but to make sense of data as well as interpreting it. It is therefore used to allow the researcher to determine precisely the relationships between concepts and compare them with collected data for possible linkage with various concepts and opinions of the respondents gathered during qualitative interviews which will be useful during data interpretation (Ibrahim, 2012). Braun and Clarke, (2013), argue that, a common pitfall is to use the main interview questions as the themes to offer an accessible and theoretically flexible approach to analysing qualitative data.

Institutional analysis is used to assess the capacity and behaviour of organizations that carry out reforms. It helps identify constraints within an organization that may undermine policy implementation. Such constraints may exist at the level of internal processes, relationships among organizations or be system wide. Institutional analysis evaluates formal institutions, such as rules, resource allocation, and authorization procedures. It also evaluates “soft” institutions, such as informal rules of the game, power relations and incentive structures that underlie current practices. In the latter sense, it identifies organizational stakeholders that are likely to support or obstruct a given reform.

Additionally, the overall study analysis is based on Evaluative Institutional Analysis using concepts that are found to be dominating the study namely; corruption, accountability, compliance and legislative oversight. The study found these concepts

relevant and applicable to describe and examine SCOPA's relevance as well as its effectiveness. As such, choosing these concepts is aimed at finding meaning of the study, to get the feeling from the participants of their understanding with regard to the role of SCOPA as well as to get their understanding of SCOPA's performance to help analyse the study's findings. These concepts also come out stronger during the interview questions to guide the respondents into a particular debate the study seek to achieve as well as to answer the main research question as to "why is it that despite the existence of SCOPA as a parliamentary mechanism, there is growing problem of financial misconduct and abuse of public funds in South Africa's public sector?"

## **2.6 Ethical Considerations and Clearance**

During the researcher's interaction with participants throughout the research process attempts were made to maintain consistent ethical values including respect, integrity, accountability as well as professionalism as contained in the University of Pretoria Code of Ethics for Research.

Investigation for this study was conducted following an approval from the Department of Political Sciences Research Ethics Review Committee in the University of Pretoria (UP). Subsequently, further approval was made through an application for ethical clearance to UP Research Information Management System (RIMS) in line with the UP Policy on research ethics. The researcher, therefore, followed and honoured the ethical standards and official guidelines set by the faculty.

The qualitative nature of this study required that I interact closely with respondents and thus entered their institutional spaces. This meant that permission to conduct research was obtained from COGTA, PRASA and SCOPA. All three institutions

granted me permission and letters of confidentiality were signed. Subsequently, I was able to begin my data collection process after participants had signed consent letters.

I maintained a moral and professional obligation to be ethical in terms of confidentiality, honesty and highly sensitive to plagiarism. The researcher was honest in reporting from the various sources of information consulted and interviews conducted during the research without distorting the ideas and responses of participants. The participants were important in this study and, therefore, were accorded great respect. All sources cited in the study have been, to the best of my knowledge, acknowledged.

As McMillan and Schumacher (2011) point out “the researcher is ethically responsible for protecting the rights and welfare of those who participate in the study”. Newman argues that ethics define what is or is not legitimate to do and is a moral and professional obligation of the researcher to be ethical even when the research participants are unaware of or unconcerned about ethics (Newman, 2011) It is in this respect that, as a researcher at the University of Pretoria, I commit to all requirements to pursue the highest standards of excellence and ethical behaviour in all my research activities.

## **2.7 Conclusion**

As with any journey, important decisions must be made to arrive at a destination. McMillan and Schumacher (2010) point out that a research methodology is systematic, purposeful and planned to yield data on a research problem. Hence the introduction of this chapter outlined the research methodology pursued in this study. The sequence followed in this chapter plays a crucial role to achieve the aim and objective of the study. Having decided upon the research problem I then determined how to go about

finding answers (data collection tools). The interviews were semi-structured to allow flexibility to the flow of the interview.

A qualitative research chosen for this study provided a complete and detailed description of a subject without limiting the scope of the respondents' answers (Collis and Hussey, 2003). Since the philosophical underpinning for this study was that SCOPA plays a major role in governance, the institution is considered a mechanism to prevent the growing incident of financial mismanagement in South Africa's public sector. Methodologically, a qualitative case study is employed with the use of semi-structured interviews as a method of choice relying on purposive sampling to explore the way in which participants perceive this role based on their understanding and perception of both SCOPA as a mechanism of oversight and a tool to promote accountability. According to Motlanthe (2009), the PAC must scrutinise problem areas within departments and public entities, and propose corrective action and changes where required. Thematic analysis is used to identify themes in order to address important areas for interpretation.

In this study, four theories emanating from the relevant literature were reviewed and compared for their usefulness to the study. These were the principal-agent, functionalism, constitutionalism and institutionalism theories. The Institutionalism theory is preferred as argued by Adagbabiri (2015), that the power of leaders and government bodies is limited, and that these limits could be enforced through established procedures. The study complied with the University's standard of ethical research.

## CHAPTER THREE

### LEGISLATIVE OVERSIGHT IN AFRICAN DEMOCRACIES: ASPECTS OF LITERATURE SURVEY

#### 3.1 Introduction

This chapter conceptualises and contextualises legislative oversight in African democracies. Furthermore, it looks at the emergence, impact, challenges and opportunities in conducting oversight in African democracies. It acknowledges the fact that parliamentary democracy, the bedrock of good governance and accountability has witnessed phenomenal growth on the continent of Africa since the early 1990s. Therefore, Ben-Zeev (2012) argues that strong legislatures, alongside free and fair elections, are the bedrock of representational democracies. In this respect, the prospects and problems of the legislatures are discussed within the framework of the dynamics of contestation for power and influence in the domestic politics of and the challenges these pose for the independence and relevance of the legislative institutions in contemporary African democracies.

It is thus argued that while the legislature remains weak in African country such as Zimbabwe and Rwanda despite the third wave of democratisation, in some countries the legislature exhibits vigorous activism in terms of checking the executive, contributing to the processes of policy-making, and as a monitor of policy implementation and detect abuses of power. The chapter is divided into the following sections (a) contextualisation and conceptualisation of legislative oversight, (b) importance of legislative oversight, (c) legislative oversight impact and challenges in African democracies and (d) the conclusion.

### **3.2 Contextualisation and Conceptualisation of Legislative Oversight**

A literature review is an important aspect of any research (Lanier and Briggs 2014). Essentially, it is an organised written presentation of the state of the art in relation to what is being researched. It is in this regard that, the researcher conducted the literature review on legislative oversight in Africa to provide an appropriate contextualization and conceptualization.

Legislative oversight in post-colonial Africa cannot be fully understood outside the history in which the current African state evolved. The Berlin Conference regulated European colonisation and trade in Africa during the New Imperialism period and coincided with Germany's sudden emergence as an imperial power (Porter, 1985). The conference was organized by Otto von Bismarck, first Chancellor of Germany the outcome of the conference was the General Act of the Berlin Conference, which marked the formalisation of the scramble for Africa (Johnson, 2017). The conference ushered in a period of heightened colonial activity by European powers, which eliminated or overrode most existing forms of African autonomy and self-governance (Wasseling, 1996; Michalopoulos and Papaioannou, 2015; Lamek, 2019).

The colonising countries including France, Germany, Portugal, Britain and Belgium thrived on disenfranchising Africans and the superpowers superimposed their domains on the African Continent. By the time Africa regained its independence from the 1950s, the African politico-geographical map had fragmented politically. When they became independent from the late 1950s, most African countries inherited institutions, and more particularly legislative assemblies, that were often modelled on those of the former colonial power (IPU/UNDP, 2003). Alabi (2009) argues that although variations existed in the composition, structure, functions and powers as well



as performance of the colonial legislatures of the African countries, evidence across geographical entities points to the fact that these institutions were weak on the eve of independence. However, decolonisation also meant African countries had to draft new constitutional provisions that created the institutional architecture for the new political dispensation.

The post-colonial parliaments that emerged in Africa assumed different outlooks to reflect the political history and culture of their countries, but they could not totally avoid the entrenched influence of the former colonial countries (Stultz, 1968; Le Vine, 1979) and the global dynamics and trends. Although they all emerged from colonial structures, the post-independence era of the emergence of authoritarianism based on military rule or one-party political entities also had a major influence on the emerging democratic parliamentary culture and practices. The strengthening of parliaments that emerged in the early 1990s was a response to this background, as well as the challenge to make parliaments fully accountable in their role as overseers of government action. Many countries in Africa have adopted constitutions which legislate different forms of decentralisation for their governance structures and systems. This currency and desirability for decentralisation is built on a consensus of African governments, international development agencies and civil society organisations that see it as a democratic system of government which advances citizen participation in human development (Moyo and Ncube, 2014).

Thus, Alabi (2009) notes that despite its global prevalence, the implications of this historical evolution have been that the legislature in Africa had been preoccupied by struggles for political power and relevance and affirmation across political systems. Moreover, as products of specific historical experiences of such factors as colonialism

and militarism, African parliaments had their growth and development stultified and were also left with legacies that continued to hamper their capacity to serve as effective checks on the ever-growing powers of the executive arms of post-independence governments. In fact, the twin-legacy of colonialism and militarism weakened the African legislatures vis-a-vis the executive arms of the governments (Alabi, 2009). Accordingly, the legislatures of Africa had not been placed in vantage positions akin to those of their counterparts in the advanced democracies, and their capacities as effective agents of limited government were seriously constrained (Alabi, 2009). Historical and geopolitical location produced very specific oversight challenges in African governance, owing to weak social compact between state and society in many African states (Crocker, 2019).

African politics for the best part of the post-independence period was dominated by every political system other than democracy, particularly before the “third wave” transitions began in the 1990s, characterized as neo-patrimonial as informal institutions of personal rule, patronage and corruption were central to the political functioning of these regimes to the extent that a single dominant leader personified the regime and, in effect, the state (Diamond, 1999). Beginning from the 1980s, there has been a gradual, but concerted attempt to reverse the trend of political despair and disillusionment, which hitherto characterized political life in Africa (Adejumobi, 2000). The supremacy of these regimes was challenged when the winds of the third wave began to blow on the continent in the late 1980s.

It was only with the wave of democratisation and liberalisation that enveloped the African continent in the 1990s that a great number of countries on the continent organised free, fair, democratically elected governments premised on multi-party

democracy and relooked at their institutional architecture to fit in line with democratisation. Parliaments in the emerging democracies of Africa, which previously had only a limited role in decision-making, emerged as key institutions of democracy and accountable governance (IPU/UNDP, 2003). According to Shija (2012), almost every country, governance and oversight functions by parliament are predicated by the provision of the Constitution. Furthermore, he argues, the Constitution sets the parameters of legitimacy and the checks and balances for the utilization of the national resources to benefit every citizen.

In this respect, the parliamentary strengthening processes that emerged in the early 1990s were a response to the limitations of institutions that were created in the immediate post-colonial period, as well as to the need to make parliaments fully accountable in their function as overseers of government action. A common denominator among them, within the context of changed political landscape, is that they all had the prodigious task of altering the course of governance in their respective countries. In this regard, the overarching mandate of parliament as the legislative authority was universally recognized (Zvoma, 2010). Thus, one of the key challenges confronting parliaments in Africa became how to ensure government accountability. It is noteworthy that the challenges of African parliaments cannot be separated from the conundrum of African statehood and governance.

As Adejumobi (2000) explains, there are inherent problems and contradictions in the nature of the domestic and the International Political Economy of African States, which may significantly vitiate or undermine the “democracy-good governance” project in Africa. Thus, evolving democracy and good governance in Africa will require not only the discipline of the state and the reconstitution of politics, but also the animation of

the civil society and its democratic potentials, re-adjustment in economic policy and agenda from the fundamentalist market orthodoxy, resolving the military question and engendering some relative re-ordering of economic and power relations within the global arena.

This is because the growth of the legislative institutions in Africa was the result of the legislatures being part of the colonial governmental structure handed over at or before independence. They were thus products of constitutional instruments at the time when generally, across political systems and geographical entities, the golden age of representative institutions had passed and the idea of 'parliamentary supremacy', even in Great Britain, had lost its vitality by the time parliamentary institutions began to mushroom in the colonized territories, particularly in Africa (Alabi, 2009).

Parliament's power to hold government to account became critical to executive-legislative relations (Barkan, 2008; 2009). Whereas with the emergence of authoritarian regimes in Africa, scholarly interest in African legislatures ebbed away, the resurgence of democracy renewed scholarly interest in African parliaments (Nijzink, Mozaffar and Azevedo, 2006). Thus, nearly two decades after multiparty politics in Africa, Barkan (2008) has argued that the legislative institutions within the continent were beginning to emerge as institutions to be reckoned with. Although the resurgence of democracy in Africa prompted a renewal of scholarly interest in Africa's parliaments, nevertheless, the ensuing literature bears little dissimilarity from the immediate post-independence focus of studies on single countries, habitually indicative of institutional weakness and the limited decision-making function of Africa's legislatures.

While modern parliaments in Africa receive little attention in the scholarly literature, they are drawing considerable attention from the international donor community; legislative strengthening programmes have become an important part of international democracy assistance. Despite these programmes, knowledge of Africa's current parliaments remains limited. They seem to be widely regarded as potential agents for democratic change but whether national legislatures are in fact enhancing the quality of democracy on the African continent is far from clear (Nijzink, Mozaffar and Azevedo, 2006). Thus, in terms of contextualisation, the legislative oversight process itself must be defined and discussed in the context of democracy since oversight is necessary in functioning democracies, the true test of a democracy should be determined by the extent of the government's response to the needs of the people (Shija, 2012) and effective oversight is good for the proper functioning of a democratic political system (Pelizzo and Stapenhurst, 2006).

Despite this, little research has explored the roles that legislatures and legislators could play in Africa's development (Bowers-Krishnan, 2013) and governance. In fact, legislative oversight has been receiving attention on the public domain and discourse around the world but in Africa much work continues to be done on executive leadership. This is in spite of the fact that an effective legislature that holds the executive to account is considered as a key factor in moving from nominal democracy to substantive democracy that delivers tangible development results for people (Bolarinwa, 2015).

Such assertion is relevant to the African continent as many countries are recovering from the ravages of armed conflicts or burdened by weak governance structures. For historical reasons of colonisation and post-colonial developments, parliaments in

Africa are undergoing transformation in order to enhance their power and function in processes of governance. This is important, given that in modern governments, the legislature wields enormous powers spreading beyond the traditional functions of law making to enforcing accountability and responsible use of political power. This is in contrast with what people take to be the primary function of the legislature which is law making (Onwe, Ibeogu and Nkwede, 2015).

Conceptually, the use of the term 'oversight' is attributed to Woodrow Wilson who defined it as the "duty of a representative body to look diligently into every affair of government and to talk much about what it sees (Guide to Legislative Oversight in the National Assembly, 2016). Others such as Oyewo (2007), elaborate on oversight as the exercise of constitutional powers by the legislature to check or control the exercise of constitutional powers of other arms of government. More specifically, this is to check or control the exercise of executive powers or to make the executive accountable and responsible to the electorate. Pelizzo and Stapenhurst (2004) argue that oversight entails the informal and formal, watchful, strategic and structured scrutiny exercised by legislatures in respect of the implementation of laws, the application the budget, the strict observance of statutes and the constitution.

According to Shick (1976), oversight consists of supervision of the policies and the programs enacted by the government. While Pelizzo, Stapenhurst and Olson (2006) argue that it is not just the supervision of what the executive branch of government does but also the supervision of the legislative proposals. For Ndoma-Egba (2012), legislative oversight refers to the power of the legislature to review, monitor and supervise government agencies, programmes, activities and policy implementation strategies of the executive arm of government. This is to ensure that this arm of the

government appropriately functions to sustain the principles of good governance, remains responsive, transparent and accountable to the electorates.

Therefore, oversight is said to have an end result in, or inevitable aim of, affecting executive behaviour, if effective (Guide to Legislative Oversight in the National Assembly, 2016). Hence Dahlberg (2014) points out that the legislature exercise oversight to ensure that the executive branch administers new and existing programs efficiently, effectively and in a manner consistent with legislative intent.

The result of democratisation has meant that the function of legislative oversight is constitutionally mandated in democracies in Africa and is guaranteed in the doctrine of separation of powers. This separation contemplates the idea that the governmental functions must be based on a tripartite division of legislature, executive and judiciary. Such a clear demarcation is always desirable to keep the democratic system of a nation intact (Singh and Vijay, 2013). In many democracies, parliament exercises political and financial control over the executive, and there are inherent checks and balances to keep each organ within the limits of constitutional power.

### **3.3 The Importance of Legislative Oversight**

In Hudson's view (2007), 'legislation' entails passing the laws which form a country's legal framework, while 'oversight' refers to keeping an eye on the activities of the executive and holding the executive to account, particularly focusing on budget and checking that spending decisions are in line with government's priorities, and finally 'representation' is about collecting, aggregating and expressing the concerns, opinions and preferences of citizen-voters, i.e. public participation. Legislative oversight, therefore, plays a crucial role in ensuring public funds are used according to the plans approved by parliament to benefit the people.

West and Cooper (1989) in Pelizzo and Stapenhurst (2006) argue that effective oversight is beneficial for a political system for at least two basic reasons: firstly, because the oversight activity can actually contribute to improving the quality of the policies/programmes initiated by the government; and secondly, because as government policies are ratified by the legislative branch, those policies acquire greater legitimacy.

Premised on the above collective definitions and explanations, when exercising oversight, parliament focuses on the following areas (a) implementation of laws, (b) application of budgets, (c) strict observance of laws of parliament and the Constitution and (d) effective management of government departments. Therefore, a heightened oversight understanding encourages and creates an increased oversight importance. In this respect, the legislative oversight function is a cornerstone of democracy. Beyond and above overseeing government actions the following are the functions of legislative oversight:

- To hold the government to account in respect of how the taxpayer's money is used by preventing maladministration and misuse of public funds by the state and state official.
- To detect wasteful and fruitless expenditure within government machinery (provincial and national departments and SOEs).
- To monitor compliance on policies enacted by government.
- To improve transparency on government and SOEs activities.

Significantly, legislative oversight should ensure that government programs are implemented and administered efficiently, effectively and in a manner consistent with



legislative intent (CPA, 2002). For example, it gives the legislatures an opportunity to assert their independence and provides an avenue for them to enhance their capacity to play a more active role in the policy making process. Fundamentally, the importance of oversight is to ensure transparency and openness regarding whether government's policies have been implemented and if they are having the desired impact.

This increases knowledge and understanding of government actions and priorities to the broader society. Thus, the importance of oversight function is of enormous benefit to the democratic system. Also, oversight importance ensures an increased efficiency and effectiveness of government's use of public funds and prevents potential abuses of power, arbitrary behaviour, and illegal or unconstitutional conduct by government. This is in addition to parliament as being a site of justification of decisions made and policy proposals and choices. In this respect, the function is not just technical but also deliberative and representative.

### **3.4 The Impact and Challenges of Legislative Oversight in African Democracies.**

#### **3.4.1 Country and Cross-country Studies**

Although the literature on democratisation pays little attention to parliaments of contemporary political regimes in Africa, there have been important studies focusing on institutional weakness of the new legislatures vis-à-vis powerful executives as well as in their limited role in law and policy-making (Stultz, 1968; Barkan, Ademolekun and Zhou, 2004; Wang, 2005; Nijzink, Mozaffar and Azevedo, 2006; Rotberg and Salahub, 2013; and Nwagwu, 2014). Many of these take the form of case studies and cross-national comparisons. Having looked at the constitutional designs, size of parliaments, infrastructure, resources, support systems and formal rules, these

studies point to legislatures on the African continent having to deal with various challenges that have placed uncertainty in their ability to oversee the executive.

Literature suggest that the following challenges are typically experienced mostly by emerging democracies such as those found in Africa; (a) entrenched corruption that continues to be a serious problem thus making it difficult to uproot, (b) legislatures are receiving remarkably low levels of public trust and social legitimacy, (c) oversight in many African democracies has been inadequate and driven more by scandals too large to ignore than by a constant pressure for efficiency, (d) high turnover rates of elected representatives, which generally cause losses of institutional memory cause political systems to stagnate and (e) lack of political will on the part of the strong presidents and the executive. As African legislatures, each at a different point in the process of becoming truly democratic, continue to evolve they face most of these challenges. Some are unique to their circumstances and others are shared with parallel institutions in other countries (Bowers-Krishnan, 2013).

In an important essay, Nijzink, Mozaffar and Azevedo (2006) provide a detailed description of the state of autonomy of parliaments in sixteen selected countries and consider whether African parliaments have the institutional capacity to fulfil a meaningful role. By this, they seek to find out if citizens see their legislatures as valuable institutions. In a path-breaking study, Barkan, Ademolekun and Zhou conducted a comparison of strengths and weaknesses of parliaments in four African countries, they deduced that the often-labelled weak legislatures in Africa vary across cross-national lines (Barkan, Ademolekun and Zhou, 2004)

According to the study, the authority of the legislature ranged from being very weak in Senegal, to moderately strong in Kenya with Benin and Ghana falling somewhere in

between. This measurement is with regard to their ability to hold the Executive to account. They also point out that three sets of variables might assist the understanding of this variation, namely, contextual variables associated with the structure of society; variables relating to constitutional provisions and formal rules; and variables associated with the internal structure of the legislature and the availability of resources to legislators (Barkan, Ademolekun and Zhou, 2004).

In another study comparing the effectiveness of legislatures in four African countries, Rotberg and Salahub (2013) observed that the Malawian parliamentarians have a robust tradition of vigorous debate, including regular criticism of the executive, scrutiny of executive appointments, and serious attempts to exercise their rights of oversight. Using variables such as capacity and independence of parliamentarians because of ease of floor crossing, they averred that legislators in Malawi strived to be effective, knowing that one of their main functions was to restrain the unbridled appetite, of the president and ministers, for mis-governance. Because Malawi's parliament has since 1994 been the home of many political parties, with the party of the executive not always in the majority, Malawian parliamentarians have a robust tradition of vigorous debate, including regular criticism of the executive, scrutiny of executive appointments, and serious attempts to exercise their rights of oversight.

The Speaker usually is painstakingly fair in his rulings and conscientious in his approach to parliamentary business. Similarly, his clerks and other staff approached the business of parliament in a professional manner. Legislators in Malawi strive to be effective and know that one of their main functions is to restrain the unbridled appetite for singular action of the president of the day and her ministers. Since the Malawian legislators belong to several parties and they are able to make with ease from one

party to the other, fulfilling their oversight obligation is comparatively easy. Their ability to criticise the workings of the executive branch is not limited by threats of loss of independence.

Malawi is one of Africa's poorest countries, and because its legislature has very little control over its own budget, legislative supervision and scrutiny of executive branch actions and decisions remained limited in practice (Rotberg and Salahub, 2013). In Malawi, a shortage of resources means that the committees themselves could only, with difficulty, convene; thus, affecting effective oversight. The situation of lack of resources is not confined to Malawi as many parliaments in Africa are under-resourced and are usually dependent on the expertise of ministerial departments they are overseeing (Nijzink, 2015).

In Malawi, as in so many African first-past-the-post systems with limited patronage to dispose, party discipline is weak and legislators (even those who belong to the ruling party) could operate without necessarily being concerned about adverse reactions from the president and cabinet ministers. When parliament is least capable of constraining the executive and there is pressure to demonstrate loyalty to the executive, particularly the president, the executive is likely to run loose and could easily be the centre of looting state resources.

The second country in the Rotberg and Salahub's study is Zimbabwe. The country is a constitutional democracy and like in other constitutional democracies, the three pillars of state, viz the executive, the judiciary and the legislature, therefore, derive their existence, mandate and authority from the Constitution. For the proper functioning of the state, these pillars have complementary and coordinate roles in line with the principle of separation of powers. The overarching mandate of Parliament as

the legislative authority is universally recognized and is derived from section 50 of the Constitution which states “parliament may make laws for the peace, order and good government of Zimbabwe”. This constitutional provision gives parliament the broad function of strengthening the governance system by calling the executive to account for the manner it determines and executes public policy and programmes.

The Parliament of Zimbabwe, through its 25 pre-audit oversight committees comprising 19 Portfolio Committees in the House of Assembly and 6 Thematic Committees of the Senate, monitors all government policies and programmes to ensure not only efficient use of national resources, but also greater accountability and transparency. In addition, the Committee of Public Accounts in the House of Assembly has a post-audit function (Zvoma, 2010). Despite this lofty structure, parliament of Zimbabwe is by far the most resource-constrained of the three arms of government and this constitutes the main barrier to effective accountability.

Newspaper articles such as *The Herald* (Murwira, 2007) and *The Daily News* (Kunambura, 2018) carried stories about Obert Mpfu former Minister of Industry and International Trade, who was charged in 2006 with contempt of parliament after the legislative assembly found out that he had lied under oath. He was minister of Industry and International Trade at the time when a scandal involving the plunder of the Zimbabwe Iron and Steel Company (Zisco) exploded. When the issue came up for discussion in Parliament, Mpfu had told legislators that he had names of Cabinet ministers and other influential people behind the scandal. He even committed himself to bringing the report to the committee in a week, heightening national expectations as people waited with bated breathes for the naming and shaming of the said Members of Parliament and ministers. Kunambura (2018) reported that Mpfu walked into the meeting only to declare that he had no knowledge of such a report. Instead he said

that he was not sure of any particular MP or Cabinet minister or senior person or anybody involved in Zisco. He then decided to absent himself from subsequent meetings and, despite persistent efforts by MPs, the public and civil society, government refused to release the report and it died a natural death. Further investigations into the Zisco scandal were halted, leaving Parliament seized with trying Mpfu for contempt and lying under oath - offences for which he faced jail or fine or both. He escaped with a ZW\$40 000 fine. Critics point out that Mpfu's 2006 case clearly stands out as an aborted mission. While some argue that the fact that parliament actually achieved something by charging and fining him as an oversight milestone, others think it was actually a major let-down because in the end it did not address issues of public interest for which it was intended. Recently, in Zimbabwe's second largest city, Bulawayo News24, Ndlovu, (2019) reports that Mpfu was suspended from the party and will not be allowed to enter party offices until he clears his name on corruption allegations (2019).

At about the same time when the minister disregarded the legislature, Basil Nyabadza, the chairperson of the Agricultural and Rural Development Authority (Arda) was doing the same to the parliamentary portfolio committee on Lands and Agriculture. Nyabadza's case was even worse because he completely lost his cool and charged at the committee's chairperson, Justice Mayor Wadyajena and almost manhandled him. Twice, Nyabadza and his team refused to bring documents which the committee wanted to assess, something which is tantamount to contempt (Kunambura, 2018). These cases provide a perfect example of how parliament is made powerless in executing its oversight function. John Makamure, executive director of the Southern African Parliamentary Support Trust, said even though accountability mechanisms are embedded in the parliamentary procedures, which, on paper, means the august House

is doing its work, implementation and assurance of accountability mechanisms are not being allowed to work.

Prior to 1 July 2013, the Movement for Democratic Change (MDC), Zimbabwe's main opposition party, held a narrow majority of seats in the country's legislative assembly, winning the presidential vote with 61 percent of the vote, with 34 percent going to the late Morgan Tsvangirai (Freedom House, 2014 and Moore, 2014). Under the nation's Government of National Unity, then President Robert Mugabe, and the former head of the Zimbabwe African National Union - Patriotic Front (ZANU-PF), had been compelled in 2009 to share at least some governing responsibilities with Prime Minister Morgan Tsvangirai, then leader of the MDC. Inside the parliament, legislators from the opposition political parties worked together with their mutual objective as the oversight of the initiatives of the executive branch (Rotberg and Salahub, 2013).

Of interest is that even some ZANU-PF legislators acted sufficiently independently of the ruling Zimbabwean government to cooperate successfully with their MDC counterparts in examining some of the unlawful or unbecoming behaviours of key figures in the ZANU-PF party hierarchy and to influence decisions taken by MDC cabinet ministers. These efforts were undermined by the fact that Zimbabwe's parliament had no procedures by which to compel cabinet ministers and officials to testify before committees. Nor could it persuade ministers to reply spontaneously to uncomfortable oral questions. According to Rotberg and Salahub (2013), in many African parliaments, the worthy institution of question time was either ignored or abused, and information with which to oversee executive actions withheld or obfuscated.

In mid-June 2013, Edward Chindori-Chininga, chairman of the Committee on Mines and Energy, a former cabinet minister, and a stalwart member of Mugabe's dominant ZANU-PF, released a searing report condemning the party's involvement in stealing from the country's diamond mines. Chindori-Chininga and his committee demonstrated that parliament constituted a potential force, and that the separation of powers notion was still at play in Zimbabwe (Rotberg and Salahub, 2013). Strangely, the discussion on SW Radio Africa's Hot Seat (2013) between Violet Gonda and Alan Martin reported that a few days after the report became public, Chindori-Chininga died in the same supposedly mysterious manner that previously had led to dozens of "accidental" road deaths in Zimbabwe since the 1980s. This points to the constant looming dangers to those who tried to make the executive to account.

Rotberg and Salahub (2013) observe that Ghana is as stable as Malawi and a well-functioning democracy with four consecutive free and fair elections and two peaceful changes of regime to its credit. Unlike Zimbabwe before August 2013 and the current Malawi, but more like South Africa, Ghana's victorious ruling party occupied most of the seats in the current parliament. This majority gave the president's party the ability to control debate and to overpower committees, including the PAC. Even though Ghana is relatively wealthy, and its parliament is comparatively well supported, the minister of finance drew up and allocated the budget of the legislative assembly, thus limiting its financial autonomy. Rotberg and Salahub (2013) note that Ghana's legislators, like so many in Africa, lacked offices, constituency minders, and research assistants, thus severely limiting the ability of most legislators meaningfully to exercise oversight of the executive.

Furthermore, the Ghanaian parliament, unlike the Zimbabwean and Malawian parliaments, has experienced very heavy membership turnover. In 2013, only two of



its 275 members and the speaker had served in parliament consistently for more than one or two terms. Thus, even though efforts have been made to build capacity within parliament, many of those members who have gone overseas on courses, visited other parliaments and parliamentary institutions, and been trained extensively at home and abroad, have left the legislature for official governmental positions or the private sector.

One test of Ghanaian parliamentary effectiveness is the extent to which the legislature had, for the most part, failed to exert itself over the allocation of permits for oil and gas drilling, the country's recent resource bonanza (Rotberg, 2013). This instance of lax scrutiny partially reflected a lack of expertise and a lack of information. It may also suggest a reluctance to investigate too many of the sources of executive patronage.

There are a few case studies on the effectiveness of the African legislative oversight activities. For instance, in 1992, Tanzania formally separated the ruling party, Chama Cha Mapinduzi (CCM), from the government and adopted a multiparty system. In this respect, regime transition took place under the guidance of the CCM and had been achieved without the upheavals associated with some democratic transitions elsewhere in Africa (Rotberg,2013). Such management from above has given the leadership of the ruling party a strong influence on the process.

The result had been little commitment on the part of the ruling party to ensure progress towards more meaningful democracy other than holding regular multiparty elections (Hyden 1999; Tripp, 2000). The system still vests tremendous powers in the executive and lacks the checks and balances a strong parliament could provide (Tripp, 2000; Ewald, 2002), a problem which has remained one of the greatest challenges to the

Tanzanian democratisation. The ruling political party ideology and interest override national interest to retain, sustain and consolidate political power.

Legislative oversight, as one of the critical aspects of the functions of the legislature, has been severely compromised and often misused to serve personal interest (Oversight and Accountability Model, 2011). These lapses have given rise to a question as to why the legislative oversight, a robust mechanism institutionalized to checkmate the excesses of the executive arm of government and its agencies to curb waste in governance, corruption, absolutism in the exercise of political power, is so compromised and rendered ineffective.

In Tanzania, an assessment of non-legislative powers showed that the 1977 Constitution had a weakness in that it lacked the provisions enabling parliamentary enforceability of an accepted notion of collective responsibility (Wang, 2005). The accepted notion of answerability could also be seen as deficient since only collective accountability was explicitly provided for in the constitution (1977 Constitution Article. 53), while a provision for individual ministerial answerability is ignored. The constitution thus disregarded a range of possibilities for enforceability, which could complement the notion of answerability, for instance the possibility of a no confidence vote or motions of censure regarding ministers collectively or individually and the consequences that should flow from an adverse vote (Wang, 2005).

The powers conferred on the president were considerable as the president had a pocket veto (Mwassa, 2016), which could only be overridden by a two-thirds majority in parliament. If opposed in parliament and the bill is still not acceptable to the president, he or she was requested to call for new parliamentary and presidential elections (1977 Constitution Article. 97). Although, the president has not gone as far

as dissolving the *Bunge* (parliament), his power to veto legislation very effectively functions as a mechanism of pressure, ensuring support and compliance with government policy (Msekwa, 2000). The members of the parliament would, in most cases, do anything to avoid dissolution since the risk of not being re-elected for many would equally lead to losing one's livelihood (Wang, 2005). The remuneration of members of parliament is still generous with attractive fringe benefits like car loans and fuel allowance (Biddle and Mukandala, 2002; Mmuya, 1998), an incentive for the CCM members of parliament to toe the party line.

This case points to the fact that it makes a major difference how the legislators are elected. If they are elected on a list whose placements and rank order are controlled by the ruling party's national executive (and also personally by the head of state), they naturally could act less independently as legislators. Instead of being primarily responsive to the wishes of their electorates and the areas from which they were elected (or to which they were assigned after the fact), they must perforce pay close attention to the preferences of the party executive and the dictates of the party and its internal machinations. Their independence and ability to exercise oversight is appropriately compromised much more than it would be if, instead, they were as loyal equally to a true constituency as to the party to which they belong.

In a study of the Nigerian parliamentary system, Onwe, Ibeogu and Nkwede (2015) established that the legislative arm is incapacitated from carrying out effective legislation for good governance. This is so despite the fact that the powers, duties and functions of the Nigerian legislature are well spelt out in the 1999 Constitution. In section 4 of the 1999 Constitution of the Federal Republic of Nigeria provisions for the exercise of legislative powers by both the National Assembly (NA) and the States

Houses of Assembly which powers must be exercised for purposes of achieving good governance, amongst others are made.

Stultz (1968) identified a number of characteristics common to the legislature in the Third world which apply to the legislature in Nigeria. These include the popular election of legislators, constitutional supremacy, the absence of lobbying by private interests, uninformed debates often focusing on parochial concerns of the legislators, executive dominance and a functional ambiguity proceeding from a limited decision –making role. These features, as Egwu (2005) observed, are obviously shared in several respects by the legislature in Nigeria. These features to some extent impede functionality of the legislature and its contribution to national development.

In their study, *Imperatives of Legislative Oversight Function in Nigeria Democratic System*, Onwe, Ibeogu and Nkwede (2015) examine the strength and level of separation of powers, among the three tiers of government, specifically the autonomy, checks and balances among the arms. The study established that the legislative organ is incapacitated from carrying out effective legislation for good governance because of inadequate autonomy, the executive usurpation of legislative powers by involving itself in oversight function, the problem of god-fatherism and corrupt tendencies of many members of the legislative houses. In particular, the phenomenon of god-fatherism, otherwise known as patron-client politics, has remained a formidable challenge to democracy in some countries.

For Ezeani (2010), an important factor in Nigeria's efforts to strengthen legislative oversight is that it has been marked by executive and legislative conflict. According to Bintube (n.d), a former Attorney-General of the Federation and Minister of Justice, Honourable Justice Oluwadare Aguda, once argued that oversight functions as were

carried out by the legislature are often unconstitutional and violated the principle of separation of powers, a basis for democratic government. He further observed that the legislature in Nigeria was systematically usurping the functions of both the executive and the judiciary. His position is that this could hamper political stability and socio-economic development. Although Nigeria has been historically vacillating between the presidential and parliamentary systems, in both there have been provisions for separation of powers, apportioning disparate powers and duties to the executive, legislative and judicial arms of government (Nwagwu, 2014).

What is clear in this case of Nigeria is that the main criticism of legislative oversight is its integrity, which has been subjected to questions by critics. Critics contend that oversight has become a political tool for the harassment and blackmail of members of the executive arm and perceived political enemies or rivals (Nwagwu, 2014). Another stricture that has been levelled against the Nigerian legislators is their salaries. Sagay (2010) points out that despite Nigeria's position as one of the world's poorest nations, with a meagre per capita income of \$2, 249 (Naira 813.49 )per annum as against \$46, 350 (Naira 16765.26) of the US, the nation's federal lawmakers were the highest paid in the world.

Akomolede and Akomolede (2012) also observe that the Nigerian legislature was truly not independent of the executive because the latter often resorts to the use of money to pursue a "divide and rule" agenda to break the rank and file of the legislators. In addition, the executive orchestrated and fund their cronies to be elected as the leaders of the two houses of parliament through excessive politicking. In this regard, the legislature is often incapacitated from acting as the watchdog of executive activities. Members pursue contracts from the leadership of the houses and even from the

executive such that they easily compromise when it comes to contributing meaningfully to debates on the floor of the house.

However, according to Lewis (2009), "since the transition to democracy in 1999, the Nigerian National Assembly has exhibited an unprecedented independence, increasing ambition, and broader reach". By this the legislators have succeeded in advancing the roles and capacities of their institution, asserted their constitutional prerogative and attempted to exercise greater oversight of the executive and related branches of government.

African legislatures increasingly scrutinise and amend bills, and in a limited way, involve civil society, especially where large urban sectors exist. It is noteworthy that in the cases of Ghana and Kenya legislatures have taken proactive roles to amend constitutions and bills, reform antiquated colonial structures, and approve appointments. In certain cases, such as Kenya legislatures have claimed their rightful positions in government decision-making processes by asserting themselves regarding budgetary processes and strengthening committee systems (Mattes, Barkan and Mozaffar, 2012). This has allowed them to deliberate on public spending and has led to the evolution of systems of portfolio committees that query an executive and hold it to account, one of the most assertive forms of democratic strengthening. According to Johnson, Uganda established professional budget offices to assist parliament to engage in a more assertive role in the budget process (Johnson, 2005). Moreover, Kenya and Uganda expanded their professional staff to ensure that they serve at the charge of parliament's leadership, thereby making their administration independent of the executive (Johnson, 2005). The relatively weaker legislatures, with very little support staff, such as in Benin, have made little impact on the policy-making

process and the operations of the state. This does not imply that bigger legislatures are automatically more effective. This is demonstrated by the cases of Somali, Democratic Republic of Congo (DRC) and South Sudan. In terms of size these are large parliaments with the DRC second only to Ethiopia. There have been signs the Kenyan parliament has been flexing its muscle such as in 2008 when it passed a vote of no confidence against the Minister of Finance who subsequently stepped down after initially resisting following accusations of corruption involving the sale of luxury vehicles (Nijzink, 2015).

However, as contributors in *Legislative Power in Emerging African Democracies* poignantly pointed out, there were cases of good examples of parliaments in Africa (Barkan, 2009). According to their various contributions, it was clear that following the resumption of multi-party politics within the continent, legislative institutions began to emerge as institutions to be reckoned with in terms of their capacity to foster horizontal and vertical accountability (Barkan, 2009).

### **3.4.2 Challenges of Oversight**

More than thirty years since the democratisation of the continent the overall picture of legislative oversight remains one of relative weak parliaments giving more or less free rein to strong presidents with extensive powers (Nijzink, 2015). Part of the problem is that in Africa, the legislature was never designed and neither has it been allowed to play, the kind of role that similar institutions have and still play in mature democracies. This is demonstrated by the specific historical and contemporary underpinnings of the inability of the legislatures in Africa to function in a manner consistent with the dictates of representative government.

According to Alabi (2009), while it is important to note a worldwide 'decline' of the legislatures, identifying the social and political forces that have shaped such developments, it is critical to appreciate the specific problems of the legislatures of Africa in their relationships with other centres of political power, notably the executive.

For instance, with regard to censuring and dismissing the executive, African parliaments are ineffective (Nijzink, 2015). What is clear is that the impact of the availability of oversight tools and of the most broadly understood legislative capacity (availability of material, technical, financial resources; availability of well-trained staff) on the effectiveness with which legislative oversight is performed is conditional. After reviewing a rich body of work on executive–legislative relations and legislative oversight in West Africa of the various conditions that promote or prevent the effective use of oversight tools and capacity, political will is the single most important (Pelizzo and Stapenhurst, 2014).

Many of the challenges facing legislatures in the exercise of oversight stem from the fact that human and financial resources available to the executive exceed those of parliament significantly. The executive also has significantly better access to information than the parliament, and, could largely control the quantity and timing of information made available to parliament, for instance, regarding national budget preparation and execution. This unequal distribution of resources between the two branches is a manifestation of a deeper problem of the culture of excessive executive power and presidentialism. It reflects the toxic environment created by the dominance of personalities and leaderism expressed paternalistically (as opposed to leadership). Hence an increasingly large body of evidence documenting bounded rationality and non-standard preferences has led many scholars to question economics' traditional hostility towards paternalism (Glaeser, 2006).



In many countries, the capacity of the parliamentary administration to provide effective support for the work of parliament – such as non-partisan research in the interests of informed decision-making is limited. Globally, according to data collected for the 2012 Global Parliamentary Report, a relatively small percentage of state budgets (an average of 0.49 per cent) is allocated to parliament (Inter-Parliamentary Union, 2015). Parliaments face the challenge of keeping up with changes in society, such as the use of technology to solicit input from citizens on issues under debate. In design and operation, they were not empowered sufficiently enough to serve as effective watch dogs, on behalf of the people, over the executive wielders of power. Inadequate capacity of parliaments in Africa seriously hampers effectiveness in the discharge of their responsibilities (Onwe, Ibeogu and Nkwede (2015).

Significantly, in order for African parliaments to discharge their responsibilities effectively, these parliaments need to be capacitated through parliamentary strengthening activities that aim to enhance their effectiveness through institutional development, building the capacity of parliamentary staff, members of parliament and committees as well as ensuring that the nuts and bolts of infrastructure and equipment are put in place.

The inadequacy of resources and capacity to respond to challenges has meant that many parliaments have increasingly looked to the international community to provide assistance to enable them to play their role more effectively (IPU/UNDP, 2003). In turn, the international community in the form of the World Bank Institute and Inter-Parliamentary Union has shown a renewed interest in the institution, providing it with increased assistance in order to promote democracy (Malapane, 2015) in areas with regard to oversight tools identified as utilised in various countries including but not limited to committee hearing; hearing in plenary sitting, questions, question time,

commission of enquiry and Ombudsman. The implications of this assistance have been that there is capacitation of African parliaments, but this does not resolve the challenges of resources and African parliaments are not developing organically as they tend to be dependent on those who fund them.

In this regard, legislative oversight in Africa still faces a variety of challenges. Most complaints on legislative oversight have been concerned with the failure to stop executive corruption relating to government expenditure, especially in the procurement sphere. This is significant since a significant number of scholars argue that corruption hinders development and erodes the gains of democracy by destroying trust in state institutions (Mauro, 1997; Wei and Kaufmann, 1998).

In fact, corruption is becoming widespread in Nigeria, Malawi, Ghana, Zimbabwe and South Africa. According to Ackerman (2005), corruption, in addition to directly enriching individual bureaucrats tends to distort markets and hampers service delivery. In the particular case of South Africa, Notshulwana (2017) warns that unless the issue of corruption is addressed in South Africa radical economic transformation would remain elusive. However, corruption also influences activities of the members of a party in government as they have strong incentives not to challenge that government lest they 'cut the hand that feeds them in a corrupt manner'. In this instance the oversight function is typically left to opposition parties in the legislatures, rather than being a collective function of the legislative arm.

Fantaye (2004), notes that developing countries are particularly susceptible to corruption and that it impacts negatively on the attainment of sustainable development goals. On that note Pillay (2004) argues that it is therefore obligatory to believe that the cost of corruption in government interrupts investment, restrict trade, reduce

economic growth and distort the facts and figures associated with government expenditure more especially on awarding of tenders. Key to combatting corruption is demonstrating a firm and harsh implementation of penalties to government officials and companies involved in corrupt practices, included.

A review of the development of African parliaments in this period shows that many of them have sought to assert themselves as effective oversight bodies in the fight against corruption. To mention a few examples, the parliaments of Benin, Kenya and Uganda have been at the forefront of the campaign against corruption in these countries. In this endeavour, the legislature is very crucial in enforcing accountability and responsibility proving that the oversight function is also a very important role of the modern legislature. The oversight function particularly appears to preoccupy modern legislatures (Tom and Attai, 2014). According to Verney (1969), the watchdog function is perhaps more important for a legislative assembly than that of law-making. The legislature provides the institutional mechanism for ensuring accountability and good governance.

### **3.5 Conclusion**

Parliament is one of the important institutions of democracy, which play a critical role in terms of legislation, oversight and representation. However, premised on the illustrative material provided above, it is clear that the challenges of governance faced by many post-independence states in Africa within the last five decades of independence ('the golden age') further reinforced the weaknesses of state institutions, particularly the legislatures. In general, African legislatures continue to exhibit weakness in the exercise of power, particularly in comparison with the executive. Many African countries parliaments are weak, ineffective and marginalised.

Since the demise of colonialism on the African continent, a considerable number of Africa's legislatures, whether constantly or irregularly existent, have been, at best, institutions that are emergent in relation to their capacity to promote horizontal and vertical accountability. Quite a few have evolved into significant actors in the policy-making process, and counterweight institutions vis-à-vis the executive and its powers, as a result. Although very few studies of legislative oversight have been conducted it is generally agreed that in democratising societies, often lack of political will and corruption have reduced the significance and potential gains of the oversight function (Izah, 2013).

Nonetheless, African legislators have been undergoing development and reform, but it is arguable that contemporary legislatures in Africa have increased their power and independence. Thus, it is clear that not all African parliaments are equally weak; some, like in Kenya, Botswana, Mauritius and South Africa, have greater resources, powers and autonomy and are thus more effective than others. Some writings also show that African legislatures have embarked on a new path. Mattes, Barkan and Mozaffer (2012) argue that over the past two decades legislatures in countries such as Ghana, Kenya, Uganda and South Africa have taken steps to develop into institutions capable of fulfilling representative, legislative and oversight functions. This has included the, often uneven, emergence of committee systems to shadow ministers and the building of professional staff. African legislatures increasingly scrutinise and amend bills, and in a limited way, involve civil society, especially where large urban sectors exist.

The contrasting accounts of the performance of legislatures suggest that some African democracies have augmented their strength and institutional capacity, while others have not. What is obvious is that the legislatures in Africa are victims of the dynamics of both historical and present exigencies and despite variations in political systems,

differential impacts and effectiveness, all African democracies have challenges that are overlapping. Moreover, regardless of specific constitutional provisions, they accordingly were created to be weak, to be subservient to executive control and to remain that way. Their effectiveness as mechanisms for popular control of governments has been threatened by single-party dominance rule. In many states, they have remained visible, being the main symbol of democracy, but with reduced powers and significance in relation to the executive arm of government which has come to take the front seat in any analysis of the reality of domestic power relations.

Although variations exist in the composition, structure, functions and powers as well as performance of the African legislatures, evidence across geographical entities points to the fact that these institutions were weak on the eve of independence and with few exceptions remain weak today. It is noteworthy that this is not an isolated development as, in general, legislatures elsewhere, continue to exhibit weakness in the exercise of power, particularly in comparison with the executive.

Hence the following predicament of the legislative arm in ensuring good governance

- (a) The legislature faces a lot of obstacles and challenges that impede effective legislations,
- (b) ineffective representation by the legislature,
- (c) inexperience and lack of clear knowledge or expected roles and rights,
- (d) poor communication link,
- (e) political god-fatherism (with few instances of god-motherism) syndrome in the legislative Houses,
- (f) resistance to oversight duties, programme or policy evaluation and
- (g) legislative/leadership ineptitude and corruption in the legislative Chambers.

The effects of party and party groups on the internal workings of parliament are essential for understanding the impact as well as the behaviour of members of parliament. Parties may contribute to greater institutionalization through party group

infrastructure and leadership positions and may also facilitate the aggregation of views within the legislature. However, complete dominance of parliamentary behaviour by parties limits the potential for independent action by the members of parliament. This is more so where parliamentarians are not constituency based and believe that their actions will not be accompanied by consequences.

In 2013, Pelizzo and Stapenshurst noted in their *Parliament Oversight Tools* that the effectiveness with which legislatures perform their oversight function depends on the oversight tools that are at the disposal of the legislatures, on the absence or presence of relevant contextual conditions and on the political will to exercise legislative oversight effectively.

## CHAPTER FOUR

### THE EVOLUTION OF PARLIAMENT IN SOUTH AFRICA IN SOCIO-HISTORICAL PERSPECTIVE.

#### 4.1 Introduction

This chapter examines the evolution of the South African parliament and periodises this into the colonial, apartheid and democratic era parliaments. This is important because the history of parliament has an impact on the model of government in place today (Monstad, 1999). Therefore, the section discusses the conceptual, constitutional, procedural and structural changes that occurred in the South African parliament over time. Central to this discussion is the fact that the legislature matters, especially in the context of multi-party politics and democracy because as an institution it is a mechanism for achieving vertical and horizontal accountability.

Pursuant to this, the chapter traces the evolution of parliament in South Africa socio-historically by periodising this evolution into two main eras: the first starting with the British occupation of the Cape, continuing through the colonial and apartheid years, and ending in 1994; and the second being the democratic era post-1994. The objective is to compare and contrast how the two different eras of parliaments functioned in promoting accountability or lack thereof. In addition, the chapter will look at some key state institutions supporting democracy and the different committees and their functions and the significant legislative overhauling including from the Exchequer Act of 1975 to the Public Finance Management Act of 1999 to guide public expenditure.

## **4.2 The South African Parliamentary System in Historical Perspective**

### **4.2.1 The Colonial Period**

With the colonial expansion to southern Africa in the late 18th and early 19th centuries, the British not only claimed parts of what would later become South Africa as their own but, in addition, implemented their way of life, morals, values, virtues and system of politics (Pypers and Pothier, 2015). Pursuant to this, indigenous knowledge systems, including political systems were undermined. Thus, it is not out of place to argue that the history of the legislature in South Africa is the history of colonial domination. The British colonialists governed South Africa with its Westminster parliamentary system from the late eighteenth century until 1910 (Picard and Mogale, 2015). Britain is considered to be the best example of parliamentary government. Because Britain is linked so closely to this model, it is often called the Westminster model. In Britain there is no written Constitution, and Parliament is sovereign (Monstad, 1999).

In 1908 white delegates sent a draft proposal for union to the British Parliament, which hurried through the South Africa Union Bill in 1909. The South Africa Act of 1909, which led to the creation of the Union on the 31 of May 1910, was drawn up by white South Africans but passed by the British Parliament. The Act provided for a unitary state for the four colonies of the Cape, Natal, Orange Free State, and Transvaal ([www.sahistory.org.za](http://www.sahistory.org.za)). It stated that "legislative power of the Union shall be vested in the Parliament of the Union of South Africa which shall consist of the King, a Senate and a House of Assembly (Cloete, 1985). What this meant, in essence, was that the Union had its own legislature, while still being a British colony. This Act did not provide for Parliament being the sovereign power of this union. The King was a constituent part of the Parliament. The executive powers were vested in the King of England.



As part of the colonial racial discrimination, this arrangement also excluded indigenous Africans living in the territories from all aspects of political life. With the unification of South Africa came the establishment of a new parliament, the Parliament of South Africa. Such parliament was bicameral and consisted of the Senate, and the House of Assembly (known as the Volksraad in Afrikaans), with the King of the United Kingdom as the monarch and head of state. In the preparations for unification, the federal option was seriously considered. However, at union in terms of a constitution (the South Africa Act, 1909) adopted by the British Parliament, the four colonies became provinces, each with a measure of autonomy but as parts of a unitary state governed in Westminster, fashioned by a national cabinet controlling a sovereign parliament. After the Union of South Africa came into being, the country became a self-governing dominion within the British Commonwealth. This Act served as the Union of South Africa's constitution until 1961. Although the Westminster model, or the parliamentary model of government, was the form of government that was implemented in the Union of South Africa, it differed from the Westminster model in that the franchise was restrictive and the legislature was unrepresentative (Bonne, 1994).

With the end of the British rule in 1910, in legislation and legal discourse, the words 'King', 'Queen', and 'Crown' were replaced by the word State in order to reflect the change to a Republic. A State President replaced the British monarch but enjoyed only the same nominal constitutional powers as the Queen. Real political power continued to reside, as in Britain, with a Prime Minister and a Cabinet, and in a bicameral legislature. Since then, the parliamentary system underwent several reforms and modifications, especially by the NP in the 1960s and 1980s (Fashagba and Mu'awiyya, 2019).

Various segregation laws were passed during this period. Probably the most significant were The Natives Land Act, No 27 of 1913 and The Natives (Urban Areas) Act of 1923. The former made it illegal for blacks to purchase or lease land from whites except in reserves; this restricted black occupancy to less than eight per cent of South Africa's land. The latter laid the foundations for residential segregation in urban areas.

From 1930, white women had the vote, and the right to serve as senators and MPs, on the same basis as white men. In 1931 most of Britain's direct authority over South Africa had been removed, and the Status of Union Act of 1934 affirmed that no Act passed by the British Parliament would apply to South Africa, unless adopted by the Union Parliament. In 1934, Parliament was declared "the sovereign legislative power in and over the Union. During this period, most of the conventions and procedures of the Westminster system were applied in the Union Parliament. In addition, South Africa's electoral system also mirrored Britain's as MPs were elected to represent single-member constituencies with no proportional representation ([www.sahistory.org.za](http://www.sahistory.org.za)).

#### **4.2.2 The Apartheid Period**

Although British colonial rule effectively ended in South Africa in 1910, the Westminster parliamentary system did not (Pypers and Pothier, 2015). This model of politics continued throughout most of the National Party's (NP) years in power, but, underwent a series of gradual changes in the 1960s and 1980s. Although racial discrimination existed since the colonial penetration of South Africa, apartheid as a policy was embraced by the South African government shortly after the ascension of the NP during the country's 1948 general elections. Starting in 1948, the Nationalist Government in South Africa enacted laws to define and enforce segregation.

With the introduction of apartheid, all sectors of South African society - the law courts, churches, media, education, business, sports and cultural sectors - both actively and indirectly reinforced apartheid exclusion, discrimination and the violation of human rights and institutionalised gross denial of human rights. Tens of thousands of black South Africans were funnelled through the apartheid courts, usually without legal representation and with racially and ideologically biased white, male judges and magistrates in charge, and turned into criminals in the process, compounding racial polarisation.

The South African committee system, and its internal organisation, was little developed and reflected the then undemocratic and unrepresentative parliament. According to Obiyo (2007), there were only 13 committees and their deliberations, hearings and functioning were held in secret, their powers were circumscribed, and they existed essentially to applaud and “rubber stamp” the initiatives and legislation of the racist NP government. Bills were drawn up by technocrats at the behest of their ministers, and they would submit amendments as they saw fit. There was no accountability of processes and no representation as the specific contents of proposed legislation would be revealed to the public only when the bills were published and debated in parliament, often, only days before the bills were enacted into law. Even the debates, decisions and any submissions made to committees were held behind firmly closed doors, scrupulously confidential, sacrosanct and aloof. Hamstrung by the executive, parliament and its committees offered no avenues for sincere examination and deliberations of government policies, actions and inactions (Obiyo, 2007). Thus, parliamentary committees served only to help push through legislation without scrutiny or challenge from the legislature and to provide an aura of credibility to official legislation.

It is thus to be noted that under apartheid the white electorate, the beneficiaries of white democracy, was deprived of important avenues for deliberating on its (own) will: the conditions of white will formation were undemocratic under apartheid. What little information of import on the activities of the NP government that came to public light through the opposition MPs in parliament was provided to them by journalists, themselves, hobbled by the states of emergency which precluded publication of the actions of the security forces. At any rate, neither the opposition parties in parliament, nor the rank and file members of the government in the apartheid regime had any real part in the governance of the country. According to Obiyo (2007), their role, together with that of their committees, was just to legitimise government's legislation and actions for the (restricted white) electorate.

Apartheid was implemented and enforced by a many of acts and other laws. This legislation served to institutionalise racial discrimination and the dominance by white people over people of other races, blacks in particular. As pointed out in the preceding paragraphs, while the bulk of this legislation was enacted after the election of the NP government in 1948, it was preceded by discriminatory legislation enacted under earlier British and Afrikaner governments. The period of apartheid, which spanned from 1948 to 1994 was characterised by even more laws of segregation. The apartheid era experienced heightened legislative activity in terms of law-making. In this respect some of the main laws introduced include:

- Prohibition of Mixed Marriages Act, Act No 55 of 1949
- Immorality Amendment Act, Act No 21 of 1950; amended in 1957 (Act 23)
- Population Registration Act, Act No 30 of 1950

- Group Areas Act, Act No 41 of 1950
- Suppression of Communism Act, Act No 44 of 1950
- Bantu Building Workers Act, Act No 27 of 1951
- Separate Representation of Voters Act, Act No 46 of 1951
- Prevention of Illegal Squatting Act, Act No 52 of 1951
- Bantu Authorities Act, Act No 68 of 1951
- Natives Laws Amendment Act of 1952
- Native Labour (Settlement of Disputes) Act of 1953
- Bantu Education Act, Act No 47 of 1953
- Reservation of Separate Amenities Act, Act No 49 of 1953
- Natives Resettlement Act, Act No 19 of 1954
- Group Areas Development Act, Act No 69 of 1955
- Natives (Prohibition of Interdicts) Act, Act No 64 of 1956
- Bantu Investment Corporation Act, Act No 34 of 1959
- Extension of University Education Act, Act 45 of 1959
- Promotion of Bantu Self-Government Act, Act No 46 of 1959
- Coloured Persons Communal Reserves Act, Act No 3 of 1961
- Preservation of Coloured Areas Act, Act No 31 of 1961
- Urban Bantu Councils Act, Act No 79 of 1961

- Terrorism Act of 1967
- Bantu Homelands Citizens Act of 1970
- The Population Registration Act, 1950,
- The Reservation of Separate Amenities Act, 1953
- Job reservation and economic apartheid
- Indians Education Act, 1965
- Pass laws and influx control

In 1961, the Republic of South Africa was established, severing its ties with the United Kingdom (Pypers and Pothier, 2015; Westhuizen, 2014). The only significant change made to the composition of the Parliament was the replacement of the British Queen with the State President. A few significant changes were made later: Coloured representation was ended in 1968, leaving both the Senate and the House of Assembly representing white voters only; the Senate was abolished in 1981, changing Parliament to a unicameral legislature; and South West Africa ceased being represented in Parliament from 1977.

The Exchequer Act was passed in 1975 to advance and pursue apartheid policies. This Act, which stemmed from British colonial rule, provided a framework within which financial management, budgeting and expenditure occurred. In line with apartheid, the Exchequer Act was characteristically undemocratic and (1) only required department to budget for one financial year, (2) had no clear, appropriate measures to ensure that there were effective budget systems in place, (3) lacked punitive measures if departments failed to meet financial reporting requirements and (4)

national objectives were not required to be measurable and outcomes-based (Dlomo, 2017). The budgeting system was secretive and there was no open formula for funds allocation for the country. The budget was a matter of the executive in that the executive was at the forefront of compiling the budget, with less role for parliament. Parliament was simply 'rubber-stamping' what the executive has compiled. As a result, accountability and transparency suffered as elements of good governance.

Service delivery was not customer oriented, as a result value for money suffered. Research indicates that in the past, the South African budgeting system was secretive. There was no open formula for funds allocation for the country. Again, literature reveals that the budget was a matter of the executive, meaning that the executive was at the forefront of compiling the budget, with less role for parliament. Parliament was simply 'rubber-stamping' what the executive has compiled. Due to the secretive nature of the budgeting process, it was difficult to analyse and scrutinise service delivery trends and conduct financial analysis because budget documents were not accessible. As a result, accountability and transparency suffered as elements of good governance. The former Department of State Expenditure and the function Committees determined budget allocations. This confirms that the executive was the major role player when it comes to budget process, particularly allocations to spending departments and parliament's role was minimal. Undoubtedly, the budget process or allocation was no two-way process, inclusive and participatory. The budget process was not inclusive and highly centralised. For example, the function committees were very exclusive in approach and reflected control of funds rather than managing funds for service delivery improvement. These committees were later disbanded (Walker and Mengistu, 1999).

By 1981 internal and international political pressure was mounting and the South African government was at crossroads. Following a request by Prime Minister P.W. Botha, the interim President's Council presented a set of proposals in 1982 for constitutional and political reform. This proposal called for the implementation of "power sharing" between the White, Coloured, and Indian communities. The right wing of the NP was very unhappy about this proposal, and a group of its MPs, led by Dr Andries Treurnicht, a cabinet minister and the leader of the NP in the Transvaal province, broke away to form the Conservative Party (CP) to fight for a return to apartheid in its original form ([www.sahistory.org.za](http://www.sahistory.org.za)).

At that time the Senate was replaced with the President's Council, which was an advisory body consisting of sixty nominated members from the White, Coloured, Indian, and Chinese population groups. Each racial grouping would as a result have a separate House of Assembly, of Representatives and of Delegates with the number of members in each roughly proportionate to the number of the population, in the ratio 4:2:1 (Lapping, 1986). The separate houses were allowed to deal only with problems and legislation pertaining to their own population groups. Consequently, in 1984 there was a move from a bicameral to a tricameral parliament (Behrens, 1989).

In 1983, parliament adopted the Republic of South Africa Constitution Act (Act 110 of 1983) that established a tricameral parliament which was a three-tiered assembly that presided over the last decade of Apartheid. Cloete writes that "some of the national political leaders had realised that a satisfactory constitutional dispensation for the Republic of South Africa could not be reached through separate development (Cloete, 1985) This realisation was also brought about by pressure and dissatisfaction by non-whites and numerous whites. The solution at the time was to bring in or "co-opt" Indians and Coloureds into the parliamentary system. The 1983 Constitution provided



for a committee system, and the tricameral parliament had 13 committees (Monstad, 1999).

It was inaugurated to allow for parliamentary representation for Coloureds and Indians in one of three separate chambers. It was a supposed reform and improvement of apartheid-era Whites-only representation. It retained the existing House of Assembly for whites and established a House of Representatives to represent the Coloureds, and a House of Delegates for the Indians, making parliament a tricameral legislature. Blacks continued to be excluded. In terms of its composition, the government was led by a State President. The office of Prime Minister was abolished, and its powers were de facto transferred to the State President, which was made an executive post with very broad executive powers. He was to be selected by an 88-member electoral college composed of 50 Whites, 25 Coloureds and 13 Indians, each group chosen by its respective house in parliament. The State President appointed a Cabinet of ministers who would be in charge of "general affairs" as well as Ministers' Councils for each of the three parliamentary chambers to manage their "own affairs". Each of these three chambers had power over the "own affairs" (as it was termed) of the population group it represented, such as education, social welfare, housing, local government, arts, culture and recreation ([www.sahistory.org.za](http://www.sahistory.org.za)).

Cases of disagreements between the three houses of parliament on specific legislation would be resolved by the President's Council. According to the constitutional proposal, this council would consist of 60 members 20 members appointed by the House of Assembly, 10 by the House of Representatives, five by the House of Delegates and 25 directly by the State President ([www.sahistory.org.za](http://www.sahistory.org.za)).

Although supposedly based on population figures, the numerical composition of the electoral college and the President's Council meant that the white chamber could not be outvoted by the other two chambers. Thus, the real power remained in white hands and in practice, in the hands of Botha's NP, which had a large majority in the white chamber. For all intents and purposes, Botha held nearly all governing power in the nation (Behrens, 1989).

However, this attempt to broaden political representation by excluding Africans was an attempt to dislodge the two groups from an alliance with African nationalists and other anti-apartheid forces that were demanding authentic democracy and equal rights for all. Under the original proposals, the White chamber was to be known as the "Assembly", while the Indian chamber was to be known as the "Chamber of Deputies". While still entrenching the political power of the White section of the South African population (or, more specifically, that of the NP, it did give a limited political voice to the country's Coloured and Indian population groups ([www.sahistory.org.za](http://www.sahistory.org.za))).

Clearly the constitution made no provision for the representation of Black South Africans, as the NP still claimed that they belonged in their respective homelands, in which they could exercise their political rights. Indeed, blacks had been effectively stripped of their South African citizenship, and, were instead legally considered citizens of the homelands. The tricameral parliament was a farcical reform imposed from above, and existed for about 11 years, it was dissolved when a new interim constitution came into effect which abolished apartheid legislation.

When it comes to parliament holding the executive accountable, the executive developed a technique to deny parliament the information it requested. The executive claimed the importance of national security were at stake if the requested information

was given to parliament. This obstruction of parliament was developed into a fine art. The geographic distance of the executive being in Pretoria, while parliament was situated in Cape Town also added to the weakening and weakness of legislative oversight. Parliament also operated only on a part-time basis (Monstad, 1999).

Prior to the democratic dispensation, the majority parties were as follows: Parliaments of the Union, the majority parties were from the 1<sup>st</sup> parliament to the 4<sup>th</sup> (1910–1924) the South African Party; from 5<sup>th</sup> to 12<sup>th</sup> (1924-1961) it was the NP. During the Parliaments of the Republic were 13<sup>th</sup> to 21<sup>st</sup> (1961 to 1994), it was the NP. The NP stayed in power for over the years with mostly a large majority in Parliament. There was no change in the governing party between 1948 until the first democratic elections in 1994. During the period, there was effectively a one-party dominance of the NP in the apartheid era.

#### **4.2.3 Negotiated Settlement and Transition to Constitutional Democracy**

The increasing social unrest in South Africa that swept through the country in the 1980s, and the changing geopolitical circumstances on the international political scene forced the apartheid government to enter negotiations with the African National Congress (ANC) (Adam; and Moodley, 1993). Consequently, between 1987 and 1993, the NP government entered into bilateral negotiations with the ANC, the leading anti-apartheid political movement, for ending segregation and introducing majority rule. South Africa subsequently embarked on a process of liberalisation and democratisation after years of political conflict between the government and the politically empowered whites on the one hand, and the challengers which usually referred to this conflict as “the struggle”, on the other hand (Seo, 2008).

In 1990, prominent ANC leaders such as Nelson Mandela were released from detention. Apartheid legislation was abolished in mid-1991, pending multiracial elections set for April 1994. In 1994, ten years after the tricameral parliament was formed, one of the last pieces of legislation it passed was the Interim Constitution of 1993, which paved the way for the first non-racial elections that were held on 27 April of that year.

Prior to the first democratic election in April 1994 and during the transitional period of 1993 until 1994, the different cabinet portfolios had been grouped together in clusters representing the major political parties and replacing the previous cabinet by a Transitional Executive Council. Resulting from this, the Ministries of Finance, State Expenditure and Trade and Industry, collectively replaced the previous cabinet portfolios in forming the Transitional Economic Council. This Transitional Economic Council was headed by five political party representatives, including the former Minister Derek Keys of the NP, the former minister of finance, Mr Trevor Manuel from the ANC, Hennie Bekker of the Inkatha Freedom Party (IFP), Dr Zach de Beer of the Democratic Party (DP) and Professor Sipho Tshabalala of the Pan Africanist Congress (PAC). With the new Constitution of South Africa, legislative oversight was institutionalized to make sure that the different branches of government especially the executive are held to account on behalf of and for the good of the people of South Africa.

Convention for a Democratic South Africa (CODESA) finally led to a compromise between the NP and the ANC. Eventually, as a result of compromises on both sides, an agreement was reached on 13 November 1993 which pledged to institute a non-racial, non-sexist, unified, and democratic South Africa based on the principle of “one person one vote” A Transitional Executive Council was formed to supervise national

elections and install new national and provincial governments (Olaosebikan, 2011). The transition to democracy in South Africa was marked by consensus-seeking and the politics of negotiation and this, initially at least, rubbed-off onto the parliamentary committees where cross-party work thrived. This transition was led by the first constitutional GNU, formed by the three political parties which could achieve more than 10% support at the first elections. These political parties were the ANC under Nelson Mandela with about 63%, the National NP under F.W. De Klerk with about 21% and the IFP under Prince Mangosuthu Buthelezi, with about 11%.

When South Africa's Constitution of 1996 came into operation on 4 February 1997, it represented the historical culmination of a focused process of constitution-writing which commenced in December 1991 when the CODESA, a national multi-party constellation established to negotiate a transition to inclusive democracy, got underway.

The Constitution was not a product solely of negotiation in the Constitutional Assembly. Experiences in other parts of the world played a role in its development, and many of its provisions are the realisation of years of struggle and are imbued with historical significance. As the product of contentious adversarial negotiations that were intended to transform a diverse and deeply divided society, the South African Constitution is an ambitious document. The ideals set out in the text are, however, not utopian and indeed reflect hopes of resolving the intractable social and moral ailments of a country emerging from centuries of dysfunctional social and political relationships. The values expressly articulated in the Constitution and the principles upon which the text was written, and on which the Republic is intended to function, reflect those of a contemporary constitutional state.

During the interim constitutional period, the GNU, formed in 1994, stayed intact. However, after the adoption of the Constitution in 1996, the NP resigned and opted to become an opposition party. The IFP however served until the end of the GNU at the time of the general elections of 1999 and thereafter continued to serve at the invitation of the ruling ANC in the government until 2004. After the 2004 elections, the IFP opted out of government and became an opposition party, although they for some time continued to remain in the Provincial Legislature of Kwa-Zulu Natal.

Nonetheless, the 1994 inauguration of democracy under a political reform that liberalised the process of governance with a multiparty constitutional democracy had led to the emergence of a completely new era of constitutional democracy.

#### **4.3 Parliament in the Democratic Dispensation**

According to Economic Commission for Africa (ECA) in its report of 2010 - 2011), the parliament or legislature plays an important role in the life of a nation. It thus performs three main functions: firstly, to make new laws, change existing laws and repeal laws which are no longer needed; secondly, represent and articulate the views and wishes of the citizens in decision making processes and lastly, oversee the activities of the executive so that the government is accountable to the people. South Africa's present parliament occupies the site and the buildings of the Cape Colonial Parliament of the late 1800s. In this regard, South Africa's parliament is, historically speaking, the longest established on the continent due to the country's white colonial-settlerism. However, in 1994 South Africa moved from a racialised undemocratic parliamentary system to a constitutional democracy. Hence Calland (1997), refers to the South African parliament as the institutional centrepiece of the new South African democracy.

With South Africa's first democratic election in 1994, there was a determined effort to make a fundamental break with the colonial-apartheid past. Pursuant to that the old and undemocratic parliamentary rules, procedures and practices were reviewed in light of the constitutional commitment to parliament as a truly deliberative and representative institution. This change was occurring within a constitutional framework embodying important choices about the role and responsibilities of parliament (Murray and Nijzink, 2003).

In the five first years of democracy, South Africa has had a special power-sharing government called the Government of National Unity. In this government, the executive consisted of all political parties that got more than five percent of the vote in the national elections in 1994. Three parties were able to get more than five percent. These were the ANC, NP, and the IFP. In the spirit of nation building and reconciliation, and according to the interim Constitution, the President appointed two Deputy Presidents. The other Cabinet and Ministerial posts were divided amongst the three parties.

What is distinct about the democratic Constitution is that the three arms of government the executive, legislative and judiciary - are subordinate to it (Constitution) and assign responsibilities to them arms of government (Mojapelo, 2013; Calvert, 2011; Davis, 2012). The Constitution lays the foundation for an open society based on democratic values, social justice and fundamental human rights and is hailed worldwide as very progressive. It is the supreme law of our country and ensures government by the people under the Constitution. In other words, the Constitution is the highest law of the land and everyone must act according to its provisions and principles, even Parliament. South Africa being a constitutional state, all laws made by Parliament must

pass the test of constitutionality. So, parliament had to ensure at all times that the laws it made were in keeping with the letter and spirit of the Constitution.

The democratic political dispensation of post-apartheid South Africa inherited a country facing numerous challenges, especially in the public service and governance issues. There was generalised lack of accountability and there was no independent and transparent parliamentary oversight (le Roux, Rupiya and Ngoma, 2004). This was mainly because understanding the role of parliament and oversight has not been easy. In fact, it took time before members of parliament began to internalise the separation of powers and to expect the executive to justify their decisions to parliament and not the other way around (Notshulwana, 2011).

Moreover, as oversight received more attention, it was initially perceived within the South African political context as the purview of opposition politicians. Nonetheless, the concept of oversight in South Africa plays an important role in ensuring that the values and principles associated with democratic institutions are upheld and protected (Notshulwana, 2011).

When the new MP's took their seats in parliament for the first time in May 1994, they entered into an institution that was not equipped to cater for the increased number of MP's, the increased workload, and generally the increased level of activity in parliament. Parliament used to be a rubber-stamp but was now to become a place of work. The new parliament inherited the staff and infrastructure of the old parliament. In the old Parliament, each committee had one clerk, and there were only 13 committees in the old parliament. When the new parliament expanded the number and the activities of these committees considerably, the lack of resources was very noticeable. Kotze (1996) captures this challenge well when he states that up to the



end of 1995 MPs had almost no secretarial and research support services. An example is that ANC members had only one secretary for every 12 MPs and no researchers.

Today, South Africa's parliament is one of the few African parliaments that is relatively well resourced in terms of the size of representation, infrastructure and support systems (Notshulwana and Lebakeng, 2018). It also has clear formal rules, constitutional design and a constitutionally enshrined right to scrutinise and oversee the executive as well as constitutionally prescribed investigative powers to compel the executive to provide information (Nijzink, 2015). South Africa has an impressively capacitated parliament that is relatively well resourced, not only in size, infrastructure and support system, but also in terms of formal rules and constitutional design.

Parliament is the legislature of South Africa under the current Constitution of the Republic of South Africa of 1996. It is composed of the NA and the National Council of Provinces (NCOP). Chapter four of the Constitution of the Republic of South Africa 1996 provides for legislative oversight of the executive and all organs of state. While the principles of cooperative government, as stated in chapter three of the Constitution of the Republic of South Africa, label parliament as supreme under a constitutionally supreme dispensation, non-compliance with the oversight requirements may result in a legal dispute. Section 55(2) of the Constitution of the Republic of South Africa of 1996 has vested the NA and NCOP with powers of oversight over the respective executives in addition to their legislative powers and other powers, such as choosing the President and premiers (Constitution of the Republic of South Africa of 1996). Moreover, Section 55(2) of the Constitution of the Republic of South Africa dictates that the NA must provide a mechanism for ensuring that all executive organs of state in the national sphere of the government are accountable to it.

#### **4.3.1 The National Assembly (NA)**

Section 55 of the Constitution of the Republic of South Africa (Act 108 of 1996) stipulates that the NA is elected to represent the people and to ensure a government by the people under the terms of the South African Constitution. The Constitution of the Republic of South Africa ensures that all executive organs of state at the national level of government are answerable to it. It also maintains oversight over the exercise of national government authority and the implementation of legislation. It is the role and function of the NA to choose the President, to pass laws, to ensure that members of the executive perform their work properly and to provide a forum whereby representatives of the people can publicly debate issues. The NA consists of no fewer than 350 members and no more than 400 members who are elected for a five-year term ([www.parliament.gov.za](http://www.parliament.gov.za)). Section 55(2) of the Constitution stipulates that the National Assembly must provide for mechanisms:

(a) To ensure that all Executive Organs of State in the national sphere of government are accountable to it (b) To maintain oversight of: (i) the exercise of national Executive Authority, including the implementation of legislation. (ii) Any Organs of State. Oversight, as described in Section 55(2)

(b) of the Constitution of the Republic of South Africa (Act 108 of 1996), describes the broader and more flexible activity of a legislature in relation to the executive. Oversight is a function of a legislature which flows from the separation of powers and the concept of responsible government which includes but is not limited to law-making. Foremost among the powers of law-making is the power to hold the Executive accountable. The manner in which the oversight function is carried out varies from committee to committee. NA is also required to provide a mechanism for maintaining oversight of the activities of the national executive authority, including the implementation of

legislation and any organ of state. The Speaker of the NA and the Chairperson of the NCOP lead the two houses that constitute parliament (legislature).

#### **4.3.2 The National Council of Provinces (NCOP)**

The role of the NCOP is to represent the provinces so as to ensure that provincial interests are considered in the national sphere of government, and to exercise oversight over national aspects of provincial and local government (Section 60 of the Constitution of the Republic of South Africa, Act 108 of 1996). Thus, the goal of the NCOP is to contribute to effective government by ensuring that provincial and local concerns are recognised in national policymaking and that provincial, local and national governments work effectively together. A Provincial Legislature must conduct oversight of the Provincial Executive. The NA is primarily responsible for overseeing the National Executive. However, neither provincial legislatures nor the NA are able to easily identify and act upon problems with those national policies that are implemented by provincial executives. The NCOP is uniquely positioned to fulfil this role (The Constitution of the Republic of South Africa, Act 108 of 1996).

The Constitution of the Republic of South Africa (Act 108 of 1996) states that the NCOP serves as a channel of communication between provinces and the National Government. It is believed that by continuing the oversight role, the NCOP can provide a forum in which provinces can engage the National Executive on relevant issues. This role of oversight arises in cases where one sphere of government intervenes in another sphere in a manner that may affect the integrity of the latter sphere of government. NCOP is entrusted with the task of guarding against the abuse of the various powers of intervention. According to the Constitution of the Republic of South Africa, the NCOP exercises oversight as follows:

- Where the National Executive intervenes in a province under Section 100(1) (b) of the Constitution of the Republic of South Africa the NCOP must approve of and regularly review the intervention.
- Where a Provincial Executive intervenes in a municipality under Section 139(1) (b) of the Constitution of the Republic of South Africa (Act 108 of 1996), the NCOP must approve of, and regularly review, the intervention.
- Disputes concerning the administrative capacity of provinces must be resolved by the NCOP under Section 125(4) of the Constitution of the Republic of South Africa. Both Houses of Parliament are required to approve a decision by treasury to stop the transfer of funds to a province under Section 216 of the Republic of South African Constitution. Section 146(6) of the Republic of South Africa stipulates that a piece of delegated legislation cannot prevail over another law, whether it be a statute or delegated legislation, unless it has been approved by the NCOP. The two houses therefore constitute South African parliament, which is itself head of government.

#### **4.3.3 Three Branches of Government**

South Africa primarily follows the internationally recognised patterns and norms of the separation of powers governance model. According to Landsberg and Graham (2017), the intention of separation of powers governance model is historically found in John Locke and Charles de Montesquieu's constitutional theory. In this regard, the democratic dispensation has ensured that the government of South Africa consists of three branches namely; the executive, legislative and the judiciary. The separation of powers system was derived from statutory principle five of the *Interim Constitution of South Africa, 1993* which acknowledges the separation of powers between the executive, legislature and judiciary with suitable checks and balances to guarantee

answerability, transparency and honesty. Subsequently, the Constitution approved in 1996 validated the principle of separation of powers. The main objective of the separation of powers of the three spheres of government is to circumvent the exploitation of authority.

Schedule 4, section VI of the South Africa's interim constitution states that "There shall be a separation of powers between the legislature, executive and judiciary with appropriate checks and balances to ensure accountability responsiveness and openness." (Constitution of the Republic of South Africa. Act Number 200, (1993) Government Gazette No 15466; 28 January 1994).

The final constitution addresses these provisions in various sections, as they relate to a variety of aspects in government administration. They represent the key values that should guide an open and accountable democracy. However, as O'Regan (2005) points out, it seems that the principles underlying the philosophical development of the doctrine relate to the importance of preventing the abuse of power but the doctrine has come to serve other roles in many democracies such as ensuring the functional specialisation of the arms of government.

Foremost among parliament's wide oversight powers, flowing from the separation of powers and the concept of responsible government is the power to call the administration to account. Parliament, the Constitution requires, must establish mechanisms to ensure that all executive organs of state are accountable to it and that members of the Cabinet are accountable collectively and individually to parliament for the exercise of their powers and the performances of their duties. Thus, section 92(2) entrenches the doctrine of ministerial responsibility: a minister is individually responsible for both his own actions and those taken in the department under her

charge, and ministers are jointly responsible for all decisions and policies of government.

#### **4.3.4 The Executive**

Section 85 of the Constitution stipulates that the Executive authority of the Republic of South Africa is vested in the President. The President and Executive Members of Parliament will then form the Executive branch of Government. Executive branch of government is the part of government that has the sole authority and responsibility for the daily administration of State bureaucracy. In a nutshell ministerial responsibility can be said to demand that ministers answer or give an account and submit to scrutiny and make redress for wrongs and correct errors. In the first place Ministers (the Executive) must provide parliament with information about their policies and the activities of their departments. Thus Chapter 5, section 92(3) of the Constitution provides that Ministers must provide parliament with full and regular reports concerning matters under their control. However, the terms control and oversight are often used interchangeably. A distinction can, however, be made between the control exercised at executive and administrative level and the oversight exercised in parliament.

Executive Oversight entails reviewing, monitoring, and supervision of operations and activities (Kaiser, 2006). According to Zvoma (2010), oversight takes a variety of forms and utilizes various techniques. As suggested by (Naidoo, 2011), monitoring is seen as a continuous function that uses systematic collection of data on specified indicators to provide management and main stakeholders of an on-going development intervention with indications of the extent of progress and achievement of objectives. These range from specialised investigations by selected committees to annual

appropriations hearings. It is believed that Oversight is supported by a variety of authorities namely, the Constitution, public law, and chamber and committee rules, and it is an integral part of the system of checks and balances between the Legislature and the Executive. The main role of the executive is to make policies, propose laws, and implement laws and policies.

#### **4.3.5 The Judiciary**

The Judiciary consists of all the courts in the country, from the Constitutional Court to the Magistrates Courts. The key role of the Judiciary is to interpret and administer laws. The Judiciary is independent and “no person or Organ of State may interfere with the functioning of the courts” (Section 165(3) of the Constitution of the Republic of South Africa, Act 108 of 1996). Judicial oversight of services is essential to ensure that Committees comply with the rule of law and legal standards. As such, the mechanisms for control at the judicial level include the granting of warrants and the authorising of intrusive methods of investigation.

#### **4.3.6 The Legislature**

Legislatures perform three functions: representative, legislative, and oversight (Gianfranco and Pelizzo, 2006). They perform a representative function in that they represent the will of the people, the legitimate source of authority in democratic countries. They perform a legislative function by amending, approving or rejecting government bills or introducing legislation on their own. According to Pelizzo, Stapenhurst and Olson (2006), they perform an oversight function by overseeing the preparation of a given policy (ex-ante oversight) and by overseeing the execution and implementation of a given policy (ex post oversight).

Legislative oversight refers to the review and evaluation of selected activities of the executive branch of government by the legislature (Corder, Jagwanth and Soltau, 1999). The legislative branch conducts oversight activities because it not only enacts new programmes for the state, but it also has a duty to ensure that existing programmes are implemented and administered efficiently, effectively and in a manner consistent with legislative intent (Ehigiamusoe and Umar, 2013). While oversight is the specific focus of some legislative activities, it is an integral part of the legislative process that is often difficult to separate from the law-making process (Stair-Hall, 2011). However, the primary role of legislatures is to make and amend laws. They are also responsible for overseeing the work of government departments and agencies that are fully or partly owned by the government ([www.parliament.gov.za](http://www.parliament.gov.za)).

Shick (1976) suggests that legislative oversight consists of the legislative supervision of the policies and programmes enacted by the government. Pelizzo, Stapenhurst and Olso (2006) note that oversight is not just the supervision of what the Executive branch of government has done but is also the supervision of executive legislative proposals. Regardless of whether oversight is viewed as a type of ex-post review of government policies and programmes, or whether it is viewed as a supervision of government activities that can be performed both ex-post and ex-ante, scholars generally agree on the fact that effective oversight is good for the proper functioning of a democratic political system. Studies conducted by West and Cooper (1989) highlight the fact that legislatures may adopt several tools to oversee the actions of executives, such as hearings in committees, hearings in the plenary assembly, the creation of inquiry committees, parliamentary question time, and so on.

Rockman (1984) argues that effective oversight depends on the role of individual MPs, Chairpersons of Committees, the saliency of issues and on how aggressively the



opposition performs its role. Pelizzo, Stapenhurst and Olson (2006) argue that as the oversight potential increases, it becomes easier to scrutinise and control the government and its activities. Moreover, since controlling the Government is a key component of democratic government, the more a government is subject to potential control, the more likely it is for the political system to be democratic. In other words, oversight potential is a cause and not a consequence of democratic quality.

Mill (1985) cited in Pelizzo et.al (2004) argues that the nineteenth century determined that most appropriate tasks of a representative body are to oversee government, clarify its activities to the public, and to compel the executive to provide full explanations and justification for its deeds. One of the ways Parliament can fulfil its oversight role is through its committees, which have been formed in a large part to strengthen the role of the legislature and to protect democratic regimes by ensuring the existence of proper governmental and administrative order as suggested by Lest and Saw (1979 cited in Pelizzo et.al. 2004).

#### **4.3.7. The Legislature and Oversight**

Oversight was adversarial and was conceived as the responsibility of the opposition parties. To address this deficit, Oversight and Accountability Model (2009) argues, parliament, through the Joint Rules Committee established a Task Team on Oversight and Accountability comprising Members of both Houses of Parliament, which studied the mandates relating to oversight emanating from the Constitution. In turn, the task team established the Projects Focus Group, the Budget and the Committees. The objective of the three focus groups was to develop an oversight model for parliament in line with the Constitution and parliament's new strategic vision, together with the realignment of resources to fulfil its mandate with greater efficiency. In developing an

Oversight Model, the Task Team began by determining that an appropriate definition of oversight is as follows: In the South African context, oversight is a constitutionally mandated function of legislative organs of state to scrutinise and oversee executive action and any organ of state (Oversight and Accountability Model, 2009).

Thus, a new model redefined this image of oversight by introducing an oversight regime based less on institutional or political confrontation. Instead, it tries to redefine the legislature as a central component in the public service delivery machine. The redefinition rests on the understanding that if the legislatures' oversight role is exercised in pursuit of good government, then the legislative branch also bears some responsibility for overall government performance. As such, the model is expected to contribute immensely to conducting effective oversight by the legislature over the executive (Fagbadebo and Ruffin, 2018). It is expected that this will result in enhancement of service delivery and improved quality of life for all South Africans.

The success of this new approach is premised on partnerships forged and type of relationships that exist between the legislative sector, the executive and the people of South Africa (Oversight Model of the South African Legislative Sector, 2012). In this regard, the Constitution requires members of the cabinet to provide parliament with full and regular reports concerning matters under their control (Section 133 subsection 3 (a) and (b)). The Constitution further requires the legislature to provide for effective mechanisms of oversight and to ensure that executive organs of state in government are accountable to the legislatures (The Constitution, 1996).

According to Azevedo (2009), oversight is considered one of the classic functions of any parliament, be it in the context of a parliamentarian or a presidential system. He further explains that, overseeing the executive serves as a form of ongoing monitoring

of the activities of the government. Parliamentary oversight generally implies an adversarial relationship between the executive and parliament. Thus, the paradox is that this perspective of the oversight function is unrealistic and counterproductive for the entire assembly (Azevedo, 2009). He then argues, the aim should; therefore, be to have the assembly constructively engaged in overseeing the government. Accordingly, effective oversight will serve as an aid to the executive's performance.

#### **4.4 Oversight Committees**

Although South Africa's parliamentary system, within its first five years, witnessed many radical changes, only few were as significant as the speed with which its committee system developed. Committees of the nascent South African parliament became the key focus for the real work of parliament as they were regarded as the engine room for the work of a democratic parliament (Monstad, 1999; Obiyo, 2007; (Mahiuddin, 2009). Committees are one of the mechanisms through which the function of oversight is practically carried out (Doyle,2016). The selection of committees is based on proportional representation decided on the percentage of votes received by each party in the last national election. As such, most committees in parliament became specialised policy committees to mirror the executive structure by having a committee for each government department.

According to van Onselen (2015), there are approximately 57 committees, which can be further sub-divided into 27 portfolio committees of the NA (shadowing the executive with more or less one committee per national government department), 14 Select committees of the NCOP, seven joint standing committees, 2 joint committees and a range of ad hoc committees.

Given that the work done by parliament in modern times is not only varied but also considerable in volume, in addition to parliamentary tools there are also extra-parliamentary tools towards oversight. Committees are such tools hence they are universally found in parliaments across the world (Yamamoto, 2007). According to Fashagba (2009), committees provide a bridge between the government and the people, especially through their investigative role. Heynes (1996) views committees as specialist bodies of legislators that play a key role in formulating laws and policies of specific government departments and in overseeing what those departments and other organs of state are doing. Aldons (1985) believes that Parliamentary Oversight Committees contribute to pursuing accountability of management in government.

One of the most profound changes in South Africa's system of government since 1994 is, the new and powerful role the Constitution has accorded to the parliamentary committee system. The powers vested in the committees, which, amongst other things, allowed them to hold the executive to account, were also significantly strengthened as they were restructured. The powers vested in the committees by the rules of parliament include: the power to monitor, investigate, enquire into, and make recommendations relating to any aspect of the legislative programme, budget, rationalisation, restructuring, functioning, organisation, structure, personnel, policy formulation or any other matter it may consider relevant, of government departments or departments falling within the category of affairs consigned to the committee (Corder, Jagwanth and Soltau, 1999).

Although the new committee system was super-imposed on the existing infrastructure, it marked a distinct break from the unaccountable and secretive nature that was associated with the system under apartheid (van Onselen, 2015). There is now a renewed sense of optimism in the role that the committee system was playing in South

African politics. They had much more life and independence, and while their relationship with the executive was still developing the cabinet and Ministers initially encouraged this new activism from parliament.

After 1994 however, parliamentary committees were for the first time in SA open to the public and the press (Obiyo, 2007). They quickly became microcosms or engine rooms of the legislative sector, entrusted with legislative drafting, assessing executive or departmental reports, and holding the executive and their departmental chiefs responsible to the people's representatives in the legislatures (Calland, 1999). As they are the platforms that anchor the performance of legislative oversight. Calland (1999), stressed that extensive powers are granted to committees under the post 1994 dispensation. Parliamentary committees are thus now empowered to "to monitor, investigate, enquire into, and make recommendations relating to, any aspect of the legislative programme, budget, policy formulation or any other matter falling within the category of affairs consigned to the committee concerned (Calland, 1999).

The Constitution is clearer on the roles and functions of parliamentary committees than the interim Constitution. However, the interim constitution did give the committees the legal space to develop their own role. The rules governing parliamentary committees were overhauled and the number of committees was increased regarding both *ad hoc* and standing committees to execute its functions and parliament has provisions that guarantee their independence. The latter are appointed for specific purposes and they cease to exist when they finish the task upon which they were established.

Most work of parliament is done by committees (Nsingo, 2014) and the different committees have one or more of the following functions:

- They monitor and oversee the work and budgets of national government departments and hold them accountable.
- They consider and amend Bills and may initiate Bills.
- They consider Private Members' and Provincial Legislative Proposals and special petitions.
- They consider international treaties and agreements
- They examine specific areas of public life or matters of public interest.
- They take care of domestic Parliamentary issues and have the power to summon any person to appear before them, give evidence or produce documents. They may require any person or institution to report to them.
- Committees may also receive petitions, representations or submissions from the public. Each Committee is headed by a Chairperson.

Calland (1997) states that there is a great divergence of experience, with committees defining their roles in very different ways. In other words, there is not uniform 'system' as such. This implies that the committees differ when it comes to effectiveness and activities. The relationship between the chair and the Minister has proved to be a critical factor in determining the nature of the role that a committee has been able to carve for itself (Calland and Nijzink, 2001). There is a link between how active and effective a committee is, and the relationship between the chairperson and the Minister (Calland and Nijzink, 2001). Despite this, parliamentary committee system is the most vital structure that permits the legislators to divide up their labour and specialize in specific areas of activities. It is therefore the most significant legislative mechanism and is often referred to as "miniature legislatures" or "microcosms" of their parent bodies (Strom, 1998; Longley and Davidson, 1998).

## **4.5. Range of Committees in the South African Parliament**

### **4.5.1. Portfolio Committees**

The NA appoints from among its members several portfolio committees to oversee the work of the various national government departments. The role of portfolio committees is to consider Bills, deal with departmental budget votes, oversee the work of the departments for which they are responsible, enquire and make recommendations about any aspect of the department, including its structure, functioning and policy (Munzhedzi, 2016). These committees shadow government departments overseeing the activity of the portfolio department in a quintessential westminster fashion for the tenure of a parliamentary five-year term (Doyle, 2016). By implication, this suggest that the work of committees is not restricted to government but may investigate any matter of public interest that falls within their areas of responsibility. As Mahiuddin (2009) outlines, this typically westminster structure is made use of as it is intended to reinforce parliamentary supervision over the executive. He further explains that committee system in the Westminster model were a reformed for the purpose of strengthening parliaments. Therefore, they are a significant component of parliament in ensuring that the executive remain accountable.

### **4.5.2 Select Committees**

The NCOP appoints from its permanent members several select committees to oversee the work of the various national government departments and to deal with bills. Because only 54 of the 90 NCOP members are permanent delegates compared to the 400 of the NA, Select Committees oversee the work of more than one national government department ([www.parliament.gov.za](http://www.parliament.gov.za)).

### **4.5.3 Members' Legislative Proposals and Petitions Committees**

Draft Bills can be submitted to Parliament by individual Members of the National Assembly. These Bills are considered by the National Assembly's Standing Committee on Private Member's Legislative Proposals and Special Petitions. If the Committee agrees with the principle of the draft Bill, a Bill will be prepared and dealt with by parliament. The NCOP Select Committee on Members' and Provincial Legislative Proposals considers draft Bills from individual NCOP Members and from Provincial Legislatures. Petitions may also be tabled in Parliament and referred to the relevant committee that deals with the issue raised in the petition ([www.parliament.gov.za](http://www.parliament.gov.za)).

### **4.5.4 Internal Committees**

The NA has several internal committees that deal with matters affecting the running of Parliament. The Committees normally consist of Senior Members of Parliament. They also offer MPs a variety of support and opportunities such as encouraging them to build up a more specialised knowledge of policy areas, providing a means of keeping them busy and feeling useful, and granting them more active and rewarding participation in the governing process (Wahlke and Eulau, 1959). They are one of the most effective means of underpinning the authority of the assembly against the executive (Meny, 1990).

The Rules Committee and its sub-committees deal with House rules, the budget of the House, support for Members, internal arrangements, and powers and privileges of members. Other internal Committees are the Programme Committee that plans the work of the Assembly, the Disciplinary Committee and the Committee of Chairpersons.

The NCOP has its own domestic Committees. The Rules Committee and its subcommittees deal with the NCOP rules, the NCOP budget, Parliamentary privileges,



internal arrangements, international relations and delegated legislation. The Programme Committee plans the work of the NCOP and the Committee of Chairpersons make recommendations about the functioning of Committees and other NCOP forums ([www.parliament.gov.za](http://www.parliament.gov.za)).

#### **4.5.5 Ad Hoc Committees**

Parliament or one of its Houses may appoint an Ad Hoc (temporary) Committee when a special task must be done. When the task is complete, the Committee is dissolved. The reason for this is to ensure as well as to enhance the effectiveness of oversight in parliament. Also, it helps to improve transparency and accountability by the Executive to the people of South Africa.

#### **4.5.6 Joint Committees**

The National Assembly and the National Council of Provinces together appoint a number of joint committees, for example the Constitutional Review Committee. The Joint Standing Committee on Intelligence (JSCI) and the Joint Standing Committee on Defence (JSCD) are statutory Committees. This means that they are established by the Constitution or by an Act of Parliament, as well as in terms of the Rules of Parliament. The committees play a very important role in the process of building democracy and involving the public in the processes and activities of Parliament ([www.parliament.gov.za](http://www.parliament.gov.za)).

#### **4.5.7 Ethics Committee**

This committee serves to ensure good code of conduct by the MPs. Furthermore, the Committee assists MPs to conduct themselves appropriately as public

representatives. Some of the requirements of a good code of conduct expected of the Member of Parliament by this Committee are that:

- Members must declare financial interests that they or their spouses may have in a matter before any forum in Parliament.
- A Member may not lobby for remuneration.
- A Member may not engage in remunerated employment outside

Parliament if the employment is incompatible with the Member's role as a public representative.

If a Member makes representation to a Cabinet Member and the Member has a financial interest in the matter, he or she discloses that interest to the Cabinet Member.

Failure for non-compliance may lead to the Member being investigated. Should the findings prove that the Member was correctly accused of inappropriate behaviour or misconduct, a fine as well as suspension of the Member by the Committee may be considered and implemented ([www.parliament.gov.za](http://www.parliament.gov.za)).

#### **4.6 The Public Finance Management Act No. 1 of 1999**

Accountability in South Africa has its origin in the Constitution of the Republic of South Africa, 1996. Cloete (1996) and Mbatha (2002) are in agreement that accountable government in the public sector is an essential prerequisite for a democratic dispensation. Both also emphasise that public sector institutions are universally faced with the issues of ethical and transparent administration and implementing good corporate governance.

In this respect, the introduction of the PFMA was aimed at replacing the Exchequer Act. Essentially, it sets the tone for effective financial management and optimum

utilisation of public resources by both national government departments and state entities such as SOEs. Most importantly, it prescribes key principles of transparency, accountability, predictability and value for money and thus promotes effective, efficient and economic use of the public purse (Dlomo, 2017). In this regard, it is a constitutional requirement (Munzhedzi, 2016).

Critically, it was meant to promote the objectives of effective financial management in order to maximise deliverable outcomes and stop the drain on public finances that might otherwise go to the programmes that bring education, health and other social services. This was important given that the post-1994 era was characterised by an economy that had slowed down and there was budget deficit. (Dlomo, 2017). According to Madue (2007), the PFMA was to modernise financial management and improve quality delivery in the democratic South African public service.

The PFMA was promulgated to:

- Regulate financial management in the national and provincial;
- Ensure that all revenue, expenditure, assets and liabilities of those governments are managed efficiently and effectively;
- Provide for responsibilities of persons entrusted with financial management in those governments; and
- Secure transparency, accountability and sound management of revenue, assets and liabilities of the institutions to which this Act applies (PFMA of South Africa, 1999).

SCOPA was thus used as a specialised committee of the legislature to enhance oversight of the financial operations of government. In the “Westminster model” of democracy (Lijphart, 1999), the committee is known as a PAC. This committee is the

audit committee of the legislature, the core institution of public financial accountability. The distribution of seats within the PAC corresponds, as much as possible, to the distribution of seats in the legislature. This means that the government party (or the government coalition) typically controls most of the seats in the PAC. To counterbalance the power of the majority in the PAC, the opposition party is generally given the chairmanship of the committee. In South Africa this committee is called SCOPA.

SCOPA derives its mandate from section 55 of the Constitution to maintain oversight over all organs of state, and section 92 enables parliament to hold the cabinet accountable operationally, organs of state at national level and Ministers and their departments are generally held to account by parliament. Section 55(2) outlines the oversight powers of the NA, requiring that it provide for mechanisms to ensure that all executive organs of state in the national sphere of government are accountable to it; and to maintain oversight of the exercise by the national executive authority, including the implementation of legislation; and any organ of state (The Constitution of the Republic of South Africa). The Constitution recognises this responsibility by providing for the establishment of the Auditor-General, who has the powers and functions to audit and report to parliament on, inter alia, the accounts, financial statements and financial management of national departments and other public sector institutions to be audited as required by section 188 of the Constitution.

This committee examines the Auditor-General's annual reports on the financial affairs of public institutions. It plays a specific and significant role in the legislative oversight process. Its core function is to satisfy the legislature that public monies are spent in accordance with decisions in the budget. Unlike other committees, SCOPA does not

pass laws or policies; it is there to perform an oversight role on the executive. By extension, it is the mechanism through which the NA exercises control over the expenditure of public money, which it allocates annually to executive organs of state in the national sphere of government. Accordingly, the committee examines the financial statements, as well as audit reports, on the statements of all government departments and constitutional institutions (Siswana, 2007). SCOPA's aim is to ensure that government departments are accountable and responsible to parliament, which represents South Africa's citizens. Since its inception, SCOPA has held several public hearings in an effort to ensure responsibility and accountability.

But the Auditor-General and SCOPA reports often repeat recommendations year after year and there is no improvement. Resolutions in the area of compliance are ignored; reporting on predetermined objectives has received almost no attention. It is encouraging that action has been taken on almost all resolutions, but most actions have not been completed because of non-compliance by those that resolutions concerns. Many resolutions are carried over from previous years (South Africa 2010/2011), so completion of actions is not often realised.

Generally, in South Africa, the mandate of PAC at all levels of government can be expressed narrowly by concentrating on financial probity and regularity or can be expressed more widely in relation to performance or value for financial audits (Ngozwana, 2009). As a result, SCOPA fulfils the responsibility of overseeing the financial performance of the SOEs using the financial audit report, which in most cases is prepared by the Auditor-General. Therefore, the SCOPA plays an important and specialised role of being the "watchdog" and protector of public monies.

At national level, there is direct accountability to parliament by national departments, national public entities and national bodies such as Commissions. The National Assembly do, however, have the right to call organs of state at provincial and local level to account but does not do so operationally unless there are issues of public importance, national interest and shared competencies. Accountability by organs of state at provincial and local level must be conducted through observance of the Intergovernmental Framework Relations Act and the principles of co-operative government (Oversight Model of the South African Legislative Sector, 2011).

Makhado (2016) argues that while the literature on SCOPA has extensively explored the importance of structural, institutional and partisan features in securing/preventing the successful performance, considerably less attention has been paid to the importance of strengthening mechanisms for oversight, to promote transparency and accountability in the SOEs. This, in turn, has created a considerable variation in the effectiveness with which parliaments and legislatures perform their oversight function. The impact of this variation affects the effectiveness with which legislatures oversee the public sector financial management for successful budget implementation. Thus, the objectives, performances and practices of the SOEs need to be clearly understood by oversight bodies and committees in order to conduct effective oversight (OECD, 2008). According to Makhado (2016), the SOEs need to be transparent and accountable in order to ensure that public funds are used for the benefit of the public, and in accordance with the approved strategic plan, budget and annual performance plan.

SCOPA acts as parliament's watchdog over the way taxpayers' money is spent by the Executive. Every year the Auditor-General tables reports on the accounts and financial management of the various government departments and State institutions. Heads of

Government Departments and institutions are regularly called by this committee to report and account for expenditure. The Committee can recommend that the National Assembly (NA) takes corrective action if necessary ([www.parliament.gov.za](http://www.parliament.gov.za)).

#### **4.7. State Institutions Supporting Democracy (ISDs)**

State Institutions Supporting Democracy (ISDs), also known as Chapter 9 State Institutions are put in place to strengthen constitutional democracy in the Republic of South Africa. Section 181(2) of the Constitution states that these institutions are independent and are subject only to the Constitution and the law, and they must be impartial and exercise their powers and perform their functions without fear, favour or prejudice. In addition, these institutions are accountable to the NA, and must report on their activities and the performance of their functions to the NA at least once a year. These are extra-parliamentary bodies relevant for the protection of democracy and include, the Public Protector, the South African Human Rights Commission (SAHRC), the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, the Commission for Gender Equity, the Auditor-General (AG), the Anti-Corruption Task Team, and an Independent Electoral Commission (IEC). The Public Protector and the Auditor –General are the most key in relation to oversight of public funds. Below, we outline their roles.

##### **4.7.1 The Public Protector**

Section 181-183 of the Constitution provides for the establishment of the Office of the Public Protector and that the Public Protector has the power in terms of the Public Protector Act 23 of 1994 to investigate any conduct in State affairs within the public administration in any sphere of government, which is alleged or suspected to be improper or to have resulted in any impropriety or prejudice, or to report on that

conduct and take appropriate remedial action, in order to strengthen and support Constitutional democracy in the Republic of South Africa. However, the Public Protector in his or her functions prescribed by national legislation may not investigate court decisions. In addition, the Office of the Public Protector must be accessible to all persons and communities. In fact, any report issued by the Public Protector must be open to the public unless in exceptional circumstances, to be determined in terms of national legislation, which require that a report be kept confidential. According to Section 183 of the Constitution of the Republic of South Africa, the Public Protector is appointed for a non-renewable period of seven years. Sections 193 and 194 of the Constitution provide for a mechanism for the appointment and removal of the Public Protector.

The most active extra-parliamentary oversight entity has been the Office of the Public Protector, especially during the tenure of Advocate Thuli Madonsela (2016), among the high-profile oversight issues she dealt with was the one involving the capture of the state. The State of Capture report reveals alleged improper and unethical conduct by politicians and businesses. Those implicated in state capture have not been held to account nine months after the release of a report. Former President Jacob Zuma later committed himself to instituting a commission of inquiry into state capture towards the end of his term. However, the former president also launched a legal challenge against the report's recommendations, section saying that they interfere with his executive powers. In 2018, President Cyril Ramaphosa established the Zondo Commission of Enquiry into State Capture to thoroughly investigate allegation of fraud and corruption in the public sector. One of the highlights in the Commission has been the allegations of impropriety regarding the Public Investment Corporation (PIC). This was sparked by alleged management of the PIC, and by implication the Government



Employees Pension Fund (GEPPF) involving billions of South African Rands belonging to South Africans. Media reports alleged dishonest transactions that implicated the management and board of the PIC. Some of the allegations were; the allegation pertains to a R1,7 billion deal that the PIC board approved in 2015 allegedly spent on Project Atlas, wherein the Consortium wanted money to buy 91,8% of the share capital of Tosaco Energy. The PIC, however, had allegedly disbursed R1,8 billion, which means that there is a R100 million unaccounted for. Another alleged transaction involving PIC was the Pan African Infrastructure Development Fund totalling to R8,2 billion.

#### **4.7.2 The Auditor-General**

Section 188 (1) of the Constitution stipulates that the Auditor-General must audit and report on the accounts, financial statements and financial management of all national and provincial State Departments and Administrations. All municipalities and any other institutions or accounting entity are required by national or provincial legislation to be audited by the Auditor-General. In addition to the duties prescribed in subsection (1), and subject to any legislation, the Auditor- General may audit and report on the accounts, financial statements and financial management of any institution funded from the National Revenue Fund, a Provincial Revenue Fund, by a municipality or any institution that is authorised in terms of any law to receive money for a public purpose. Furthermore, the Auditor-General must submit audit reports to any legislature that has a direct interest in the audit, and to any other authority prescribed by national legislation. All reports must be made public. However, the Auditor-General has additional powers and functions prescribed by national legislation. According to

Section 189 of the Constitution, the Auditor-General must be appointed for a fixed non-renewable term of between five and ten years.

A very important point to highlight in this section is that oversight bodies are established to discharge their responsibilities guided by the legislation that establishes them. They are guided by their mandates. A positive aspect is that they all share a common interest, that is, to serve the people of South Africa and remain responsible and accountable to them, as well as to Parliament. These institutions are put in place to assist and to bring relevant information to the public concerning maladministration in government departments and their officials. As is argued by many scholars, democratic accountability requires executive control and Parliamentary oversight as well as inputs by civil society. The AG has consistently produced reports that shine a critical spotlight on irregularities in the public sector. It has helped general political debate and led to civil society campaigns.

#### **4.8 Conclusion**

South Africa's parliament is clearly historically speaking, the longest established in Africa. In the early stages such as during the colonial and apartheid periods consisted of the minority white population and, even then, white women were included long after its existence. Its evolution experienced various reforms that at some point included the Indian and Coloured populations but continued to exclude the majority indigenous African people. Parliament did not question this state of affairs but for lone voices from opposition parties. It has always been among the well-funded and most professionally staffed on the continent.

However, as part of the democratic dispensation South Africa has moved from parliamentary system to a constitutional democracy in which the Constitution is the

supreme law of the land. Much of South Africa's democratic parliament's focus in the first decade of democracy was on ensuring the transformation of South Africa's legislative landscape, in line with the country's first democratic Constitution, Act 108 of 1996. In this process, parliament's oversight function received less attention, and was compounded further by the reality that the Constitution deals with parliament's legislative authority in more detail compared to its oversight role.

Since the new dispensation, South Africa has made substantial and substantive progress and the country has enormous oversight tools to assist the legislature to enforce accountability. The Constitutional mandates are complimented by the independent status of the relevant institutions to provide the necessary environment for apolitical approach and measures to prevent, and where it manifest, to arrest abuse and misuse of state power and public resources.

Despite South Africa having made a remarkable progress in the transition from the vile and anachronistic system of colonial-apartheid to a democratic dispensation and consolidation, the role of oversight particularly of SCOPA, as parliament's 'watchdog' over public finances, has remained extremely difficult and challenging as it is continuously undermined.

This chapter reveals that most work is done by and generated in the operations and workings of the committees of the NA, specifically in the functional area of legislative oversight. As Murray and Nijzink (2002) argued, the most important work is done in committees. While reference is made to specific committees without providing more detail or research into the operation or capacity of these committees to fulfil their mandates, the role and function of SCOPA as the most crucial committee in terms of public spending remains has been highlighted. Through its committees, the South

African parliament has effectively cemented its mark as a cornerstone institution of the country's constitutional democracy. Thus, in any legislative institution committees are regarded as vital centres of power (Doyle, 2016).

## CHAPTER FIVE

### SCOPA AND THE DYNAMICS WITHIN THE PUBLIC SECTOR IN SOUTH AFRICA: NATIONAL GOVERNMENT DEPARTMENTS AND SOES

#### 5.1 Introduction

This chapter discusses and provides the analysis of the findings of the key research question posed in the study namely; “why is it that despite the existence of SCOPA as a parliamentary mechanism, there is growing problem of financial misconduct and abuse of public funds in South Africa’s public sector?”. The question was posed because of the increasing or rather rampant problem of financial misconduct and abuse of public funds within the South African public sector. Moreover, it was raised because studies have neglected this question. The overriding concern is that these funds are meant for service delivery and the public good instead they are diverted into personal interests.

Pursuant to this question, there are five sub-questions underpinning the study. These questions are (a) how effective is the South African oversight and accountability function in support of national government departments and SOEs? (b) has SCOPA been effective in discharging its functions as required by the Constitution? (c) what has been the impact of SCOPA and the strategic benefit in its being chaired by on MPs of a marginal opposition party rather than a big official party? (d) how have government national departments and SOEs responded to wasteful, unauthorised and irregular expenditure? and (e) what could be done to improve accountability in national government department and SOE?

All questions were used to frame the study, to decide what data are relevant, which literature is important, and what themes were useful and to facilitate discussion during semi-structured interviews to give substance, clarity and meaning to the objective of the study. Content analysis was then used to discuss, evaluate and analyse data from the in-depth interviews. Due to the study's qualitative nature, semi-structured interviews that allow for follow up questions and some discussion were used to collect data. The analysis in this study, therefore, is qualitative data analysis (QDA) and the findings are arranged according to the questions posed.

QDA is the range of processes and procedures whereby the researcher moves from the qualitative data that have been collected into some form of understanding, explanation or interpretation of the people and situations under investigation (Dange, n.d). QDA is usually based on an interpretative philosophy and the idea is to examine the meaningful and symbolic content of qualitative data for purposes of interpretation (Coffey, Holbrook and Atkinson, 1996). This is because the purpose of QDA is to give due emphasis to the meanings, experiences and views of the participants in an illustrative and explanatory manner.

Antonius (2003), on the other hand, suggests that data points to information that is collected in a systematic way and organised to enable the reader to interpret the information correctly. As such, data in this study is not collected haphazardly but in response to questions that the researcher posed. Schostak and Schostak (2008) capture the essence of capturing data well when they further add that data are not given as a fixed but are open to reconfiguration and thus also to alternative ways of seeing, finding answers to questions one wishes to answer. Using the responses to the questions above, it was possible to examine the key research question and sub-questions underpinning the study.

According to Yin (1993), a qualitative case study goes beyond descriptive questions to answer the “how and why”. He further argues that, “in general, case studies are the preferred strategy when “how” or “why” questions are being posed, when the investigator has little control over events, and when the focus is on a contemporary phenomenon within some real-life context” (Yin, 1993).

Therefore, this study is exploratory in nature and seek answers to questions posed both in the research question on chapter one and chapter two linked with the role and function of oversight of SCOPA in promoting accountability. Underpinning the main research question, are various sub-questions relating to thematic issues such as oversight, accountability, compliance, transparency and effectiveness, which resonate with the perception of wasteful and fruitless expenditure in the national government departments and SOEs.

## **5.2 Data analysis**

Data analysis refers to the processes associated with surfacing meaning and understanding from the various data sets that may be collected during the action research project as a basis for further action and theory building (Rowley, 2014). This section provides a discussion from the respondents’ point of view. Such respondents were three from each of the selected institutions SCOPA being the unit of analysis for the study with COGTA and PRASA as sample representation of the public sector. The data analysis and findings from the mentioned sample is then complemented by desk top literature ranging from websites, social media and official documents. The purpose is to identify contributing factors to wasteful and fruitless expenditure which reflect weaknesses in oversight practice and subsequently to lack of accountability.

### 5.2.1 Question 1.

#### **How effective is the South African oversight and accountability function in support of national government departments and SOEs?**

This question is posed to establish respondent's understanding of South Africa's oversight responsibility in support of good governance. In addition, the question is raised to recognise a knowledge claim made by Shenga (2007), Musavengana (2012) and Malapane. (2015) that, over the years, the South African parliament has endured criticism over its inability to effectively hold the executive accountable. Financial management fulfils an important role in the public sector, because without public funds to cover operational and capital costs, and without appropriate personnel, no public institution can render effective services (Tsheletsane and Fourie, 2014).

All respondents, without exception, revealed that in terms of the Constitution, the legislature must maintain oversight over the executive and state entities. The discussion went further to reveal that oversight entails proactive interaction with the executive authorities and the national government departments and public or state entities within their respective portfolios to encourage compliance with their constitutional obligations. The respondents further indicated that there are various public finance management regimes that exist to ensure a more organised public sector budgeting and effective expenditure. The country also has legislative, regulatory and institutional framework to address corruption and has embarked on various reforms to that effect. This point is supported by Kututwa (2005), who cites the following reforms that have taken place (a) the initiation and implementation of good management practices, (b) the introduction of codes of conduct, (c) the structuring of modern employment practices and (d) the introduction of financial disclosures.



All respondents pointed out that as part of the Public Finance Management reforms, the Public Finance Management Act (PFMA) No. 01 of 1999 (as amended by Act 29) is the fundamental legal prescript in government. Governance matters in national government departments and entities are vested in the accounting officer as the head of the national government department or SOE to ensure that all revenues, expenditures, assets and liabilities are efficiently and effectively managed. As such, section 38 (1) (c) (ii) of the PFMA requires that accounting officers or any other official who is assigned with a similar responsibility should take effective measures to prevent expenditure that is not compliant. This is consistent with the discussions of PFMA as captured in chapter four of this study.

Respondents made references to the regulatory framework that guides and informs the conduct of the accounting officers. They also pointed out that this guidance is derived from chapter 13 of the Constitution, section 216 as well as chapter five of the PFMA section 38 (1). These sections elaborate on the responsibilities of accounting officers as well as Treasury control.

As discussed in chapter four, parliament has established mechanisms to fulfil its oversight and accountability mandates in terms of the Constitution and under the rules established by the two Houses, individually and jointly. The mandates of the committees are provided for in the rules of each House and the Joint Rules. Committees offer a setting which facilitates detailed scrutiny of legislation, oversight of government activities and interaction with the public and external factors. Consideration of committee reports is necessary because committees work as intermediary bodies between interest groups and government and are an entry point for citizens to the work of Parliament.

The following functions of the committees are considered crucial elements of running parliament in as far as holding the executive accountable. Although different committees have different focus areas, but they play almost similar role and are mandated by the Constitution, they conduct one or more of the following duties:

- Monitor and oversee the work of national government departments and hold them accountable,
- Oversee the accounts of national government departments and state institutions,
- Take care of domestic parliamentary issues,
- Examine specific areas of public life or matters of public interest,
- They consider bills and amend them, and may initiate bills,
- Consider private members' and provincial legislative proposals and special petitions,
- Consider international treaties and agreements Committees have the power to summon any person to appear before them, give evidence or produce documents, they may require any person or institution to report to them, and they may receive petitions, representations or submissions from the public.

Pursuant to these functions, committees interact with civil society organisations, organised business, experts and professional bodies as a way of enhancing accountability and can call accounting officers (Ministers and departmental heads) to account on any issue relating to any matter affecting accountability within the ambit of the provisions of sections 56 and 69 of the Constitution and legislation.

In addition, the work of committees includes study visits that entail physical inspections, conversing with people, assessing the impact of delivery and developing reports for adoption by committees, which contain recommendations for the Houses to consider. According to the Oversight and Accountability Model (2009), in exercising oversight, committees often obtain first-hand knowledge from people engaged in the direct implementation of specific programmes and/or who are directly responsible for service delivery.

The Model further advises that, “in order to evaluate the work of government from a broader perspective, committees may invite experts from outside government to provide background knowledge and analysis on relevant issues”. Parliamentary committees are therefore, established as instruments of the Houses in terms of the Constitution, legislation, the Joint Rules, (Rules of the NCOP, Rules of the NA), and resolutions of the Houses to facilitate oversight and the monitoring of the Executive, and for this purpose they are provided with procedural, administrative and logistical support.

According not this Model, parliamentary committees have various tools of oversight as listed above, including departmental briefing sessions, annual and departmental budget analyses, calls for submissions and petitions from the public, the consideration of strategic plans and annual reports, and public hearings.

Whilst committees have established ways of conducting their oversight functions, their business generally runs parallel to government's political cycle, unless there are specific "ad hoc" oversight functions that are required. In programming their oversight activities, they would thus act in a responsive/reactive manner. According to Malapane (2016), the two branches of the state should be able to compromise in fulfilling their

Constitutional mandates. This is expected to be done through legislative branch's capacity to conduct oversight and, in turn, the executive being keen to conform to this request.

A committee conducts its business on behalf of the House and must therefore reports back to the House on matters referred to it for consideration. A committee may also report on any other matter within the scope of its mandate that it considers necessary in terms of NA Rule 137(2) and NCOP Rule 102(2). When a committee reports its recommendations to the House for formal consideration and the House adopts the Committee report, it gives the recommendations the force of a formal House resolution pursuant to its constitutional function of conducting oversight.

Respondents pointed out that The Treasury Control Bill is as an expression of the Constitutional imperatives and directs that there be an establishment of National Treasury. The National Treasury is required to perform functions such as prescribing measures, norms and standards to ensure both transparency and expenditure financial controls. The intention is to establish more effective and tight expenditure controls to ensure better management of financial and fiscal matters, ensure both transparency and expenditure control in each sphere of government, by introducing— (a) generally recognised accounting practice; (b) uniform expenditure classifications; and (c) uniform treasury norms and standards. (Constitution of South Africa, 1996: 126). Moreover, the National Treasury must enforce compliance with the measures established in terms of subsection (1), and may stop the transfer of funds to an organ of state if that organ of state commits a serious or persistent material breach of those measures (The Treasury Control Bill, 2010)

Data also confirms that introduction of the PFMA of 1999 has been central to accountability (Gildenhuys, 1997; Roman, 2008; Tsheletsane and Fourie, 2014; Dlomo, 2017). More so, its inclusion is to highlight the importance in ensuring all spheres of government are challenged to adhere and conform to the requirements as stated in the PFMA. According to the World Bank, a good public financial management system is essential for the implementation of policies and the achievement of developmental objectives by supporting aggregate fiscal discipline, strategic allocation of resources and efficient service delivery (The World Bank, 2005). As part of financial management, accountability is an institutional routine considered along with the policy process to ensure “exercising authority and power in accordance with fairly stable principles, approved procedures and recognised authority” (Fagbadebo, 2019). However, noteworthy from the data is that financial management is not a ‘once-off’ matter, it is a course of action that is supposed to take place throughout the financial year as a continuous process in the public service.

Respondents pointed to the responsibilities of accounting officer as contained in chapter five of the PFMA, section 38 (1). According to this section, the accounting officer for a national government department, trading entity or constitutional institution must ensure that such department, trading entity or constitutional institution has and maintains (i) effective, efficient and transparent systems of financial and risk management and internal control; (ii) a system of internal audit under the control and direction of an audit committee complying with and operating in accordance with regulations and instructions prescribed in terms of sections 76 and 77; (iii) an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective; (iv) a system for properly evaluating all major capital projects prior to a final decision on the project;

In addition, the accounting officer is responsible for the effective, efficient, economical and transparent use of the resources of the department, trading entity or constitutional institution; and must take effective and appropriate steps to (i) collect all money due to the department, trading entity or constitutional institution; (ii) prevent unauthorised, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct; and (iii) manage available working capital efficiently and economically;

Without limiting the right of the accounting officer to assign specific responsibilities, the general responsibility of the CFO is to assist the accounting officer in discharging the duties [under] prescribed in Part 2 of Chapter 5 of the Act and the Annual Division of Revenue Act (1999). These duties relate to the effective financial management of the institution; the exercise of sound budgeting and budgetary control practices; the operation of internal controls and the timely production of financial reports.

Considering the above, it is then the official's responsibility to make sure rules and regulations are applied as prescribed in both the Constitution and the PFMA. According to respondents, failure to comply with the regulation result in SCOPA being directly involved. The role and function of SCOPA, in this regard, is to ensure that public funds are used on legitimate government spending, that is, government expenditures which have been agreed upon by the legislature, as well as, made to benefit the public. In this respect, South Africa has extensive oversight regulations and requirements. However, as data reveals, it is also clear that these are not working effectively in reducing wasteful and irregular expenditure of public funds. For instance, according to the Auditor-General, irregular expenditure in the 2017-2018 financial year increased to over R45bn, up from about R29.5bn in the previous 2016-2017 financial year and because not all entities had reported their financial results by September 30,

as required by legislation, the Auditor-General estimated that irregular expenditure could easily top R65bn (Makwetu, 2017).

To further enhance the implementation of the expenditure controls and the PFMA, Treasury regulations were adopted in 2000. Respondents agreed that these regulations were applicable to both national government departments and SOEs. In light of this, the respondents pointed out that the current mechanisms are sufficient and well crafted. For example, each national government department has a Portfolio Committee, Select Committee, Standing Committee on Public Accounts, Audit Committee, Internal Audit, Budget Committees, Risk Management Committee, Employee Relations units and lastly the Auditor General and the Public Protector to respond to. The list is not exhaustive, however in the main the listed structures have a responsibility to ensure that there is accountability and professional conduct in national government departments and SOEs.

This arrangement is what Masutha (2014) described as state institutions supporting democracy, designated agencies to provide depoliticised oversight responsibilities with a view to ensuring public accountability. The premise is founded in section 55 (2) of the Constitution of the Republic of South Africa, 1996 and requires parliament to conduct oversight of the executive and any organ of state.

It is established that each year national government departments are required to submit Annual Performance Plans (APPs) detailing activities of that year and the allocations of resources and budget for that year. At the end of the year each national government department is supposed to submit its set of annual financial statements for that year to the Auditor General for auditing and to National Treasury for consolidation. The Auditor General issues a report on both performance and financial

information for that year which will then be communicated to the respective national government departments, Executive Authority, Parliament (Portfolio Committee) and National Treasury.

The national government departments will then develop post audit action plans to address all the shortcomings and mitigating factors to all the risks identified during the audit. In the main, all the oversight committees have a responsibility to inform Parliament about the progress made, findings and any corrective measures to be implemented. According to Mulgan (2011) and O'Donnell (1998), this arrangement is considered horizontal accountability because it provides government branches to hold each other accountable.

Regarding SOEs, legislative oversight vests in Parliament, the Executive and the Boards of SOEs. Parliament exercises its role through evaluating the performance of SOEs by interrogating their annual financial statements (Timothy, 2018). On the other hand, SCOPA reviews the annual financial statements and the audit reports of the Auditor-General. In addition, it exercises oversight over the service delivery performance of national government departments and SOEs and, as such, reviews the non-financial information contained in the annual reports of SOEs and is concerned with service delivery and enhancing economic growth.

However, respondents lamented the fact that despite this arrangement, management or Board of Controls are not really held accountable when things go wrong at their institutions. Interviewees concurred that despite various mechanisms including anti-corruption ones being in place, corruption at national government departments/SOEs is prevalent and there are no consequences for the transgressors. For the respondents, this usually sends a wrong message that fosters a culture of greed,



bribery and cover-ups, intimidation or dismissal of those who for moral, ethical or professional reasons to such deeds. As a result, South African legislative oversight function in support of national government departments and SOEs has proven ineffective in curbing wasteful, unauthorised and irregular expenditure due to disciplinary actions/accountability against culprits not being taken.

### ***Discussion***

Mafunisa (2000) makes the point that accountability is an obligation to explain and justify the actions of the bearer of the responsibility to perform an accepted duty and that corruption in the public sector will continue to rise if civil servants are not held accountable. Ile and Makiva (2017) argue that Parliamentary Portfolio Committees are engine rooms in legislatures as their key role includes ensuring that policy objectives are met by effective implementation on the part of national government departments and SOEs through effective oversight and enforced accountability.

What emerges clearly is that South Africa has made great strides in establishing oversight capacity although there are many challenges in realising effective oversight. Notwithstanding this Madue and Mahwai (2008) make the point that since its introduction the PFMA has improved the management of financial resources in the public sector.

For instance, the PFMA governs/gives authority to the executive authority for oversight powers with reference to the corporate plans, shareholder's compacts and quarterly reports. The Executive authority also has the power to appoint and dismiss the board of SOEs. However, because many of these board members have been appointed by the Executive the tendency is to do what the Executive wants. Sometimes this involves bypassing regulations and requirements. According to Tsheletsane and Fourie

(2014), the qualified audits of various government departments reveal that the requirements of the PFMA, the legislative oversight bodies, and the wider legal framework governing public finances have been partially or wholly ignored. As we argued elsewhere, the mere presence of oversight tools is necessary but not sufficient condition for effective oversight in the face of executive dominance (Notshulwana and Lebakeng, 2018; 2019).

The researcher has noted that the growing problem of misuse of public funds was perpetuated with impunity especially under former President Jacob Zuma's administration to the extent that the country almost lost the war against corruption. Had ANC failed to remove former Zuma, the country might have moved towards a presidency which guarantees impunity. Various observers have also noted that during Zuma's time nepotism and corruption led to misuse of public funds with impunity in the public sector. His administration was mired in a culture of impunity for many serious abuses of powers by his Executive and there were no consequences. Lest this the position is misunderstood, it is important to clarify that the challenges of legislative oversight preceded former president Jacob Zuma and were also prevalent during his predecessors. During former president Nelson Mandela legislatures respected the statesman and during former president Thabo Mbeki many feared to challenge him, and this compromised the efficacy of oversight and accountability (Notshulwana and Lebakeng, 2019).

A major concern is that the funds South Africa loses yearly due to financial mismanagement could be used to address pressing needs such as providing free higher education to deserving poor students and quality accessible healthcare to those who are in dire need. It is against this understanding that Madonsela (2016) in her State of Capture Report said, "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. With all the money South Africa lost during his time, the country was ranked 73rd out of 180 countries that participated in a Transparency International (TI) survey - which ranks participating countries according to their perceived levels of corruption in the public sector (Phakgadi, 2019). In addition, according to Sibanda (2019), The Transparency International's Corruption Perceptions Index (CPI) puts South Africa at an unenviable position number 73, with a score of 43 in the perceived level of public sector corruption out of 180 countries /territories in the world. South Africa's ranking is similar to that of Morocco, and just three notches better than Lesotho, Trinidad and Tobago, Ghana and Burkina Faso, who all ranked at 78 with a score of 53. Singapore scored 85 with a ranking of number 3 and Hong Kong is ranked number 14 with a score of 78.

### **5.2.2 Question two.**

**With regard to SCOPA's performance throughout the years, how has its efficacy been in discharging its functions as required by the constitution?**

This question is posed to establish whether SCOPA has been able to effectively discharge its oversight role and function in the promotion of accountability among officials in the public sector. SCOPA is the audit committee of the legislature, the core institution of public financial accountability. In this regard, it is a tool the legislature uses to enhance oversight of the financial operations in the public sector (Lijphart,1999). Thus, this question is critical because according to Malapane (2016), the nature of the relationship between the executive and the legislature influences effective functioning of oversight. Moreover, it is critical because service delivery,

poverty reduction and economic development and sustainability depend on the availability of money and the ability to use it effectively, which requires good financial management.

Respondents pointed out that SCOPA fulfils the responsibility of reviewing the audit reports of the Auditor General and plays an important and specialised role of being the protector of public monies. In fulfilling this role, the Committee focuses on the following (a) issues raised in the General Report of the Auditor-General on Audit outcomes, (b) issues of financial probity as highlighted in the audit report or disclosed in the management report or notes to the financial statements, (c) compliance with the PFMA, Treasury Regulations, the Audit Committee and the management report of the accounting officer; (d) interrogation and evaluation of instances of over-expenditure and instances of unauthorised expenditure, (e) interrogation of instances relating to irregular, fruitless and wasteful expenditure, (f) the functioning of risk management systems; and (g) corporate governance of national government departments, public entities, and constitutional institutions.

Respondents pointed out that oversight role and function of SCOPA embodies processes and systems by which national government departments and SOEs are directed, controlled and held to account. These are contained in Rule 245 of the Rules of the National Assembly. In addition to legislative requirements based on SOEs enabling legislation, and the Companies Act, corporate governance regarding SOEs is applied through the precepts, in particular the procurement of services which involves acquisition of goods and services through the implementation of the PFMA and run in tandem with the Protocol on Corporate Governance, which encapsulates the principles contained in the King II Report on Corporate Governance.

There is a great deal of consistency and consensus among respondents that SCOPA plays an effective role by making sure that Board of Commissioners (BOC) and the management at national government departments and SOEs face a “grilling” in parliament when questioned over irregularities in their annual reports. In the respondents’ opinion, the committee is effective and has made valuable suggestions and recommendations to various institutions and this is very progressive. As discussed in chapter four, SCOPA derives its mandate from section 55 of the Constitution to maintain oversight over all organs of state, and section 92 enables parliament to hold the cabinet accountable operationally, organs of state at national level and Ministers and their departments are generally held to account by parliament. Section 55(2) outlines the oversight powers of the National Assembly, requiring that it “provides for mechanisms to ensure that all executive organs of state in the national sphere of government are accountable to it; and to maintain oversight of the exercise by the national executive authority, including the implementation of legislation; and any organ of state” (The Constitution,1996). The Constitution recognises this responsibility by providing for the establishment of the Auditor-General, who has the powers and functions to audit and report to parliament on, inter alia, the accounts, financial statements and financial management of national departments and other public sector institutions to be audited as required by section 188 of the Constitution.

The distribution of seats within SCOPA corresponds, as much as possible, to the distribution of seats in the legislature. This means that the ruling party (or the government coalition) typically controls most of the seats in the PAC. To counterbalance the power of the majority in the PAC, the opposition party is generally given the chairmanship of the committee.

However, some of the respondents were quick to point out that unlike other parliamentary committees, SCOPA does not pass laws or policies as part of the ruling party's electoral mandate. The Committee performs a non-partisan oversight role. The tradition has been that SCOPA, because of its exceptional role, should always be chaired by a member of the opposition. This, like many of the arcane traditions which have filtered through to the South African parliament, is a widely held Commonwealth parliamentary tradition. This is a weakness because although the Committee is mandated and expected to oversee financial expenditure, it is excluded from rulemaking in relation to the same rules governing financial management and accountability.

Themba Godi, the MP of African People's Convention (APC), the chairman of SCOPA, which won 30 676 votes in 2014 and had one seat in Parliament was elected to chair SCOPA. In my interview with Godi, he asserted that his Committee was "the watchdog of the public purse and, as such, wanted accountability for every cent used". He further said irregular expenditure has become a serious matter that needed to be investigated to determine if there was justification for the use of funds or if there is any criminality involved. According to him, SCOPA's performance during the 5<sup>th</sup> administration was consistently very good (Interview with MP Themba Godi, Parliament in Cape Town, 04 April 2017).

Respondents acknowledged that SCOPA as a committee responsible for oversight across national government departments and SOEs has been doing a sterling job by being able to summon Ministers and senior officials in the public service. Accordingly, various examples of the executives being called to account for all the wrong doings in their respective national government departments were provided relating to Ministers

Lindiwe Sisulu, Faith Muthambi and Bathabile Dlamini. According to respondents the situation as it is now is that officials, including accounting officers are cautious and respect the committee's role and take cognisance that accounting and responsiveness for the needs of the public is in fact pertinent.

Despite this caution by those being summoned, one respondent lamented the fact that, "action to-date has not been taken against those implicated in investigation reports, including Auditor General reports. Rather, some ministers and senior officials who have been implicated in their portfolios have been reshuffled or moved to other portfolios without being accountable for the damaged they caused in their previous portfolios".

Respondents argued that accounting officers are held responsible in terms of the Public Finance Management Act including its regulations where reporting lines starts with the Executive then to National Treasury. What this suggest is that the bottom line in these cases is that national government departments must comply with the applicable legislation and that there will be consequences in the event of failure to do that. Moreover, there is need for a plan to avoid a re-occurrence of the same nature should be put in place. Overall, respondents agree that SCOPA's performance throughout the years and its efficacy in discharging its functions as required by the constitution has been commendable.

### ***Discussion***

Some scholars have suggested that the effectiveness of parliament Committees is key in strengthening good governance, transparency and accountability in the use of public resources (Marleau and Montpetit, 2000; Makhado, Masehela, and Mokhari, 2012).

Although respondents compliment SCOPA for a good performance in the oversight role, there are many challenges inherent in the composition of this Committee. This is demonstrated by the fact that South Africa's national government departments and SOEs have been plagued by mismanagement, cash shortages and corruption scandals since the advent of the new dispensation. The consequences have been dire and inimical to effective service delivery to the poor and have undermined good governance and democracy. This point is supported by Cohen (2018) who says that both national government departments and SOEs were left in financial strain and thus posing an acute risk to the nation's finances.

SCOPA's effectiveness in its oversight conduct should encourage compliance with the constitutional obligation on the Executive and administration to ensure service delivery for the achievement of government priorities. Central to this is SCOPA's ability to hold the executive accountable to the people. Moreover, SCOPA's usefulness rests on the understanding that if the legislatures' oversight role is exercised in pursuit of good governance, then the government and its entities take responsibility for overall government performance.

### **5.2.3 Question three.**

#### **What has been the impact of SCOPA and the strategic benefit in being chaired by marginal opposition rather than an official opposition?**

This question is posed to get an understanding of the reasoning behind the selection of the chairmanship of SCOPA. It was revealed by question two that the chair is from a marginal opposition which won only 30 676 votes in 2014 and has one seat in Parliament until 2019 elections where it lost that single seat. This is so despite the presence of both the Democratic Alliance (DA) and Economic Freedom Fighters (EFF)



which are majority official oppositions with DA winning 4,091,584 with 89 seats in parliament and EFF 1,169,259 receiving 25 seats respectively during the national elections. Although the selection of the chair from the opposition is normal practice but the current chair's party performed dismally in the elections of 2014 and his party does not have much political weight in Parliament

Regarding the strategic benefit in SCOPA being chaired by marginal opposition rather than an official opposition, the view among respondents was that this is non-issue and that it does not make a difference. In fact, respondents believe this is a major advantage as it translates into the balance of political forces across the board unlike if it were chaired by the ruling party which biased towards its associated members, especially in the executive. This is especially because considering its deployment policies, the majority of senior official are its members so findings to be made would affect the governing party, as well as compromising its fairness in holding the chair accountable.

Some respondents took the position that if the chair were to be from a major opposition there would be dysfunction within parliament as the position would be used for political posturing. Some even mention the DA MP Dion George who is quoted in Drum in 2013 to have accused SCOPA of being toothless watchdog and its chairman for being ineffective. In that claim he added that "the sad truth is SCOPA has become a side show" (George, 2013). George believes SCOPA chairman MP Themba Godi does not take a strong enough stance against government corruption. For some respondents this demonstrates that more powerful opposition parties tend to be combative unnecessarily. However, for Godi (2012), an oversight committee can be rendered

ineffective in the performance of its duties due to several factors such as; capacity related issues, political influence, and uncooperative stakeholders.

In terms of the impact of SCOPA, two respondents illustrated this by pointing out that officials who are not well prepared when called for sessions or to answer questions by SCOPA are dismissed by the committee until further notice. SCOPA does not display a sympathetic attitude towards the executive or senior members of SOEs. For instance, on 7<sup>th</sup> November 2018, SCOPA was forced to send the South African Broadcasting Corporation (SABC) back for not providing the information that the Committee had requested on irregular expenditure amounting to R4.9bn. Respondents emphasised that the impact of SCOPA lies in their not compromising attitude whenever there is wrong-doing as when the Committee is not satisfied by the responses from national government departments or/and SOEs, they do not hesitate to call for criminal charges to be laid against culprits. This is because SCOPA was set up to act as a watchdog over the way taxpayers' money is spent by the executive.

The respondents believe that SCOPA has impacted positively towards the achievement of various government objectives by criticising various ministries and coming up with valuable positive suggestions and recommendations in resolving issues of national importance. Others point to cases such as SASSA to highlight weaknesses in being highly impactful. This, in turn, is one of the values espoused in the Constitution to ensure accountability, responsiveness and openness.

Another view was that the greater impact of SCOPA stems from the fact that there have been improvements on the current SCOPA's cooperation in dealing with national government departments and SOEs. As such, SCOPA (1) monitors compliance on two issues namely, unauthorised and irregular expenditure. SCOPA is basically and

essentially about effective governance based on ethical conduct in the running of national government departments as well as SOEs. In this respect, compliance is their main function in the role and functioning of sound governance principles. SCOPA ensures national government departments and SOEs comply with all applicable standards, regulations, laws and rules.

Despite notable improvements in SCOPA's oversight scrutiny, serious challenges remain about the late processing of resolutions by the House (i.e. several months after the hearings). This has more often not delayed urgent interventions and remedial action to improve the situation. Premised on these observations by respondents, many pointed out that despite SCOPA having a bite, it is clear that unless responsible authorities act to ensure that there are consequences for wrongdoing the sterling work of this Committee will amount to nothing. In the case of South Africa political affiliation and factionalism has undermined the quality of debates and limit the Committee in fully national government departments and SOEs during meetings. This is because legislators let their political interests and goals dictate whether to resist the executive, whatever their technical capacities Malbin and Benjamin (1992). This inevitably leads to a weakened institutional capacity in as far as an oversight purpose is concerned.

### ***Discussion***

Considering that government and its entities spend very large sums of money on goods and services for purposes of service delivery, it is reasonable to argue that the oversight role and function of SCOPA being chaired by an official opposition will play a significant role in defence of public funds as well as a major defence against the wasteful, fruitless, unauthorised and irregular expenditure and corruption broadly. This is because the official opposition have greater political weight and can "muzzle through resistance" by those who do not want to account. Currently, SCOPA's impact is

evaluated by many based on its actions but the reactions by national government departments and SOEs should matter a great deal in evaluating such impact.

It has been noted earlier in this study that, SCOPA across parliaments is traditionally chaired by the member of the opposition in order to strengthen its role. However, for South African parliament, it is currently chaired by a marginal opposition who only occupies one seat in parliament. The question remains, is there a strategic benefit to this choice? The emerging picture is that it is strategic for the ruling party who have managed to avoid scrutiny from a party that can hold them to account by having the Committee chaired by a leader of a significantly marginal party.

According to Yamamoto (2007), oversight function in parliament is to hold the government to account on behalf of the people, ensuring that government policy and action are both efficient and commensurate with the needs of the public. In other words, there can be no democratic system of government without transparency and accountability. For the purposes of this study, this function and responsibility falls squarely on the shoulders of SCOPA to ensure sound financial control in the public sector. It is thus important that this function and role is enhanced and not undermined by selecting parties that are not going to be effective because they are marginal.

DA MP Ian Ollis lambasted SCOPA under Godi's chairmanship as unable and unwilling to take the necessary and punitive steps to ensure that government ministers were made to answer for wasting public money. The reality is that over the years parliament's oversight model has been weakened by the ability ANC legislatures as they have the majority in all committees and in the national assembly and they use that to protect ANC employees and shield cabinet from difficult questions.

#### 5.2.4 Question four.

##### **Why are national government departments and SOEs failing to take action against officials involved in wasteful, unauthorised and irregular expenditure?**

This question is posed because chapter 10, section 81 of the PFMA spells out disciplinary proceedings for financial misconduct by officials in national government departments and constitutional institutions. In addition, it sought to ascertain whether punitive measures are considered a remedy against officials who failed to comply with rules and regulations governing public finance management. This is important because failure to act against cases of fraud and corruption bring into question the effectiveness and efficiency of the oversight role of Parliament, which compromises good governance and democratic accountability in the public service.

Regarding this question, there were various reasons provided for why national government departments and SOEs were failing to act against officials involved in wasteful, unauthorised and irregular expenditure. Respondents highlighted that although the PFMA has been operating for twenty years since its promulgation there is still widespread non-compliance with this financial management prescripts in national government departments and public entities such as SOEs.

Some of the reasons that came up quite often from the respondents were the following:

- Poor quality of leadership at national government departments and SOEs;
- Appointments of unsuitable and unqualified staff in the Supply Chain Management;
- Recruitment process have been mired by a lack of ethics, integrity, skill, by translation, this means no value adding to the attainment of good governance in terms of value add;

- Human Resource Management and Financial Management who tend to be pliable to the unscrupulous executives;
- Inadequate capacity in the office of the Internal Auditor;
- Lack of understanding of the value and the purpose of corporate governance and how it applies at different organizational levels;
- Lack of common vision, ownership and commitment, those involved in grand corruption are the same people who are supposed to ensure accountability;
- Abuse of power as in most of these national government departments or SOEs leaders/managers/senior managers, etc, are conflicted as many have interest in third party business;
- Political pressure plays a role, for instance, National Treasury at some point function under political pressure to release unauthorised funds to the departments and SOEs which leads to rampant problems of unauthorised expenditure;
- The multiplicity of verbal instructions within the line of command which makes it difficult for the disciplinary processes to kick-in in instances where the executives are cited;
- Line management believe that financial management are the responsibility of finance departments or units and thus they are not responsible for acting against those in non-compliance; and
- Lack of internal controls and risk management systems; as well as, lack of consequence management because when people know that no consequences would flow from what they do, they are likely going to repeat the offence.

## ***Discussion***

The identification of these factors by the respondents concurs with the Auditor-General that non-compliance with laws and regulations, lack of internal controls, supply chain management transgressions, unauthorised, irregular, fruitless and wasteful expenditure and corruption are some of the key failures of government entities (Makwetu, 2017).

This is despite the PFMA having introduced a uniform system of public sector financial management which has qualitatively improved on the previous system which was characterised by different legislations applying to different entities and thus was very confusing. However, the findings are disturbing because section 38 (1) (c) (ii) of the PFMA requires that accounting officers should create measures to prevent non-compliance. The chairperson of SCOPA MP Godi has expressed frustration that the committee's reports and recommendations, which are tabled and adopted by the national assembly, are neither acted upon nor monitored.

Although the current policies are very explicit when it comes to consequence management, the results suggest that patterns of wasteful, unauthorised and irregular expenditure clearly indicate non-compliance and contravention of the PFMA. This is attributable to two factors. First, due to factors outside to the oversight regime as a result of misunderstanding of the prescripts, action is not taken which makes it easy and attractive for perpetrators to continue with wrongdoing. Second, the oversight regime is an external mechanism that can only make recommendations but not enforce disciplinary action.

Clearly culture of no consequences gives rise to an environment in which there is no real consequence for contraventions and, as a result, some national government

departments and SOEs appear before parliament to explain the same audit concerns each year.

Fagbadebo (2019) suggests that the capacity of the legislature to monitor the activities of the members of the Executive branch is crucial to ensure accountability and compliance of government with the appropriated policies. This involves an effective control to achieve accountability and transparency. This points to the proper implementation of procurement processes and procedure guided by PFMA to enhance adequate control to prevent financial irregularities (Mantzaris, 2014).

Institutionalism as a theory on the deeper and more resilient aspects of social structure that considers the process by which structures, including rules, norms and routines become established as authoritative guidelines for social behaviour helps to appreciate that the list of reasons given as by respondents are key fault-lines for sustainability and effective delivery and can seriously undermine institutions.

#### **5.2.5 Question five.**

##### **What could be done to improve the current situation in support of accountability in your national government department/SOEs?**

This question is posed because of the need to strengthen oversight in the public sector. According to Welch and Wong (2001), there is a global trend towards greater transparency, openness and accountability in governments around the world. Clearly, If the challenge of public financial management in the South African public sector is not addressed then government service delivery programmes will continue to be impacted negatively.



From the respondents' perspective, the quality of leadership will determine how well national government departments and SOEs such as COGTA and PRASA are likely to improve and thus reverse wasteful, unauthorised and irregular expenditure. There was overall emphasis, from respondents from PRASA and COGTA on the need for political will as an absolute necessity to support accountability. Respondents emphasised that as part of this political will it would be important that the political elite should not undermine anti-corruption agencies.

Respondents pointed out that this is because unauthorised and irregular expenditure more often than not involves high-ranking government officials and executives of state agencies who are entangled in the complex web of "dirty deals". Unless there is political will for political elites and executives not to contravene regulations of, among others, procurement and be committed to account, it would be difficult to reverse the increasing irregular, wasteful and unauthorised expenditures in the public sector. The lack of political will and enforcement capacity are among the many challenges hampering efforts at reducing the many instances of wasteful, unauthorised and irregular expenditure.

Respondents advised that the best and most prudent way to address issues of wasteful, unauthorised and irregular expenditure is by seriously implementing the regulatory framework guiding expenditure which is currently being contravened with impunity. Currently what is transpiring in practice in the conduct and usage of public funds is not in synch with what is on paper legislatively as demonstrated by non-compliance. As such, enforcing compliance and ensuring consequence management can address this problem emanating from such contraventions of the PFMA.

Some revelations during the interviews were that members of boards of SOEs and top executives are deployed on political considerations and in most cases without the necessary expertise and competencies. Respondents illustrated this by pointing to the constant negative reports in the media about SAA, ESKOM, SABC and the PIC and national government departments such as Social Development and Correctional Services. This has affected their performance due to lack of understanding the nature of good governance. The result is that they neither understand nor pay attention to procedures and regulations with the implications that they normally bypass these central tenets of financial management and control. Political appointments have ensured that skills and experience are secondary to political affiliation. Respondents highlighted that the obvious implications are that there is a bypass in terms of the regulation on how civil servants ought to be appointed.

Respondents also pointed to the need to stop the high turnover of directors general and chairpersons of boards of state agencies as such instability has a great bearing on effective management and leadership. This, in turn, affect service delivery and accountability. According to Van Onselen (2018), between 2007 and 2017 South Africa experienced the removal or suspension of 216 directors general. These are people whose positioning is such that they have the important task of translating and guiding the strategic vision, goals and objectives of government into effective service delivery. Given their positioning it is prudent retain them to create a sense of continuity and stability in the running of the public sector.

There was a proposal that the working relationship need to be improve as poor relationships between ministers, deputy ministers, DGs and impede smooth running and focus on achievement of desired results. Some of the respondents pointed out

that Ministers should perform executive functions and not run departments and SOEs administratively as is the case. For the respondents this creates antagonistic relations that undermine the ability to deliver services to those in need. Most of the problems, some involving “fights over turf” also contribute to the dysfunction in the public service. Respondents agreed that standard operating procedures need to be simplified, codified and fully implemented.

Structures of good governance must be reviewed together with legislative mandate that makes it easy to account and hold people responsible. It is expected of parliament as an institution of law-making, supervision and oversight to remain a cardinal institution and play a critical role in ensuring accountability. In the absence of this supervision, many instances of financial misconduct will be lost based on technicalities and lack of knowledge of the reporting requirements and limitations. But this review must be aimed at ensuring that there is no room for political interference. Due to political interference and the involvement of the executive, there is reluctance in responding to the findings and implementing the recommendations of AGSA and SCOPA. Both are external mechanism to legislative oversight and can only make findings and recommendations.

An example was provided by one respondent to the effect that a 2017 investigation by National Treasury found that only 13 out of 216 contracts awarded between 2012 and 2015, all with a value exceeding R10-million, were above board. Another respondent pointed out that in 2013 the AG warned MPs on parliamentary committees that procurement and public finance laws were being flouted by the PRASA. Then PRASA CEO Lucky Montana took exception to former AG Terence Nombembe’s 2013 finding that contracts at the agency were being awarded without following procurement procedures. Montana told parliament that Nombembe had got it wrong. The following

year the new AG Kimi Makwetu found that Prasa had flouted procurement regulations and recommended that the winning bidder be disqualified. This did not happen and locomotives which could have been bought from South African supplier for R25m per locomotive were bought from a Spanish company, Vossloh, for R50m each.

Respondents also proposed the following as what could be done to address the current situation with respect to accountability in national government departments and SOEs:

- There is a need to ensure that understanding financial management prescripts is not only a domain of a select few but also line managers and senior managers who through their authority to manage should be able to control the use of public funds;
- Properly qualified and ethical personnel should be appointed who understand public finance and procurement regulations and are prepared and willing to ensure compliance;
- Capacitate the internal audit mechanism because external ones such as SCOPA and AGSA only feature after non-compliance of or contravention of the PFMA. The weakness of this external mechanisms is that they are not integrated within the departmental or SOE systems;
- The political climate has prevented the full benefits of the existence of the PFMA to materialise. If the government is serious about tackling corruption, it must support the use of the enforcement powers for the AG that the audit bill envisages, by ensuring that those indicated as responsible for irregularities are

brought to justice. It must also take urgent steps to protect auditors from harm and intimidation given the trend toward contestation;

- According to the Auditor-General, irregular government expenditure could top R65bn in 2018 (Makwetu, 2017). In the face of worsening public sector audit outcomes, a renewed focus on ethics and measures to enforce accountability are needed to turn the situation around;
- Creating a culture of accountability more broadly will also be key going forward and academic institutions must do more to impart critical knowledge on ethics and governance to help improve the financial management of institutions.
- The preceding measures of addressing public accountability challenges are vital so as to curtail or reduce the extent of corruption, lack of accountability and improve commitment to improve the state of financial affairs in South Africa. Need to encourage commitment and discourage disregard for financial management and SCM legislative framework since these are major contributors to the poor state of public accountability.

### ***Discussion***

What emerged from the respondents is that apart from political interference, some of the key factors contributing to poor audit outcomes and are the main drivers in terms of further encouraging those entrusted with managing public resources to disregard the PFMA include a chronic skills shortage, a lack of ethical leadership, lack of accountability and consequence management. What is clear is that urgent interventions are needed to address the current situation of escalating fruitless, wasteful and irregular expenditure.

Despite being the key role players in bringing about new mechanisms, the various post-apartheid administrations attempted to subvert or disable checks and balances thus damaging important institutions such as the National Treasury and the Public Protector. Given what has been reported so often in the media about corruption by the political elite, there is need for political will to ensure these institutions perform their constitutional mandates.

Ethically, South Africa is quickly learning that corruption is one of the major impediments to effective development. It therefore fundamentally runs contrary to accountability and the rule of law because it undermines governance, diminishes public trust in the credibility of the state, and threatens ethics of government and society (Heyman and Lipiets, 1999). This is against the efforts made through legislative framework underpinning public sector procurement aimed at empowering the previously disadvantaged to ensure efficient service delivery for all South Africans. Instead, policy framework is often undermined by incidents of lack of accountability, political interference, appointment of inexperienced and unqualified official and contractors, lack of technical expertise, lack of understanding of relevant regulatory framework and non-compliance with policy framework (Horn and Raga, 2012). Section 217 (3) of the Constitution of the Republic of South Africa of 1996 requires that legislation at the national sphere of government prescribe a framework within which the preferential procurement policy must be implemented.

Based on the respondents, there is a general view that it is obvious that the main problem is not the absence of relevant legislation but the political will to implement the legislation and general non-compliance and contravention of the guiding principles and regulations. However, the prevalence of non-compliance and contravention of

PFMA clearly indicate the weakness of the expenditure controls at the political and technical levels.

### **5.3 Conclusion**

Accountability in the public sector has increasingly become important across the world (Oslen, 2015) and connotes the expectation that those entrusted with public responsibility should be answerable to the people in the performance of their duties (Auel, 2017; Dowdle, 2017). With regards to understanding the oversight role and function of SCOPA, combined with the literature generated from the study questions and objectives, there was a general consensus among the respondents that, despite the existence of the oversight role of SCOPA as a legislative oversight mechanism to monitor irregular, wasteful and unauthorised expenditure, accountability among national government departments and SOEs remains a challenge. One of the major problems is non-compliance with legislation such as Section 217 of the Constitution of the Republic of South Africa, Act 108 of 1996 (RSA 1996) and Public Finance Management Act, (Act 1 of 1999). Inferences were made during semi-structured interviews that irregular and unauthorised expenditure are a common contributor to the lack of accountability on the part of the accounting officers.

Therefore, SCOPA needs to ensure that (a) parliament deals decisively with problems of high level of non-compliance with laws and regulations, (b) there is compliance with internal controls, (c) supply chain management transgressors are brought to book, (d) unauthorised, irregular, fruitless and wasteful expenditure are eradicated and (e) corruption is curbed. Put simply, failure for parliament to address the above, national government departments and state entities will fail to ensure quality of life for all South Africans.

It is evident from the above that despite the enormous powers of the legislature in South Africa, governance crisis, induced by accountability problems, persists. It is abundantly clear that the legislative oversight has not been effective in ensuring good governance and responsible utilisation of public funds. In this regard, there is a need to turn around the toxicity of the rotten culture of impunity in the public service and it is about time a more ethical leadership assist so to rehabilitate national government departments and SOEs and to drastically improve service delivery to citizens.



## CHAPTER SIX

### FINDINGS, RECOMMENDATIONS AND CONCLUSION

#### 6.1 Introduction

This chapter outlines at the findings of the study, proceeds with recommendations stemming from the key findings and draws the conclusion. This is done through reflecting on the research question. The findings of the research are based on the respondents' accounts from COGTA, PRASA and SCOPA as well as analysis and insights emanating from desk top study. This latter analysis is factored in to obtain a composite analytical picture that compliments the interviews.

#### 6.2 Research findings and researcher's observations

##### 6.2.1 Oversight limitations

Among the key findings of the study is that despite the Constitution giving mandate to the existence of oversight in parliament, there are serious challenges with ensuring oversight and this has undermined good governance. For instance, Section 55 (2) of the South African Constitution empowers the National Assembly to provide for mechanisms to ensure that (a) all executive organs of the state are accountable to it and (b) that they maintain oversight of the executive authority, including the implementation of legislation and any organ of state. It is confirmed throughout the study that South Africa has done well to set up the formal institutions of democracy since 1994. As it is argued in chapter three, "structures that were created by apartheid regime formally collapsed and were replaced with all-inclusive democratic government making way for a democratic legislative oversight" (Fashagba and Muáwiyya, 2019). It is evident in this study that the capacity of the legislature to monitor and control the activities of the executive arm of government is a critical ingredient for an active and

crucial role in ensuring accountability. In this regard, Perez-Linan (2014) argues that the legislature has the Constitutional requisite to hold the executive accountable and Mulgan (2011) adds that this goes beyond a mere provision of information as it includes the capacity to impose sanctions for the failure or abuse of responsibilities.

The most significant emphasis to emerge from the interviews is that, although in essence, the fundamental objective of legislative oversight is to hold the executive accountable for the implementation of delegated authority, in the case of South Africa this institution faces serious challenges in entrenching a culture of oversight and in affirming its relevance against the backdrop of such an overwhelming majority for the ANC as a dominant ruling party.

According to Fagbadebo (2019), the assumption of the advocates of liberal democracy is that the legislature should have an independent capacity to hold the executive accountable. This assumption is premised on the role of the legislature as an instrument of accountability. When fully developed, in terms of its capacity to perform its collective functions, the legislature is an institution of counter-vailing power that facilitates both horizontal accountability across governmental agencies, and downward accountability to the public (Barkan 2008). In other words, the legislature, as the representative body of the public interest, has the obligation to checkmate the power of the executive in a manner that would promote the public good. As the representatives of the people, members of the legislature are bound to offer an environment conducive for the promotion of accountability in government through an effective oversight of executive decisions.

This study also found that in South Africa the legislature's inability to hold the executive branch of government accountable was primarily because of the dominance of a single

party since the inauguration of the democratic dispensation following the collapse of the vile and anachronistic system of apartheid. The researcher noted with a great concern that respondents agreed throughout the interviews that there is a consistent and prevalent abuse of power on the part of the executive and senior officials of SOEs, especially but not exclusively during the administration of former President Jacob Zuma. This damaged the edifice of society and prevented service delivery and created political apathy.

According to Shija (2012), it is the mandate of parliament through its committees to ensure that government delivers to the needs of the communities. He further argues that the true test of a maturing democracy should be determined by the extent of government's response to the needs of the people. This is so because parliament is an institution of democracy responsible for law-making, conducting oversight over the executive and ensure public participation (Madue, 2012). According to Malapane (2016), parliament as an institution of democracy has a potential and capacity to hold the Executive to account for its actions or inactions, and it could effectively follow-up on the comments made to the people.

However, study found that the poor or failure of oversight by parliament is responsible for the persistence of maladministration and misuse of public funds. Mechanisms to ensure effective and efficient management of public finances in South Africa are necessary tools to irregular, fruitless, and wasteful expenditure. Therefore, if the argument in line with political institutionalism by Oleszek (2014) that oversight is a measure to check or control the exercise of executive powers in a manner that would make the executive accountable and responsible, then the logical conclusion that could be reached is that a serious crisis looms in South Africa because the very

systems, procedures and regulations that are supposed to ensure accountability are undermined.

### **6.2.2 Impact of lack of accountability**

As demonstrated in chapter four of this study, constitutional arrangements make provision for the legislature to ensure answerability and enforceability. It was also evident that accountability is both vertical and horizontal. For instance, in the case of accountability, the Director-General for the national government department reports to the designated minister who is accountable to the legislature for the government performance on how the policy is implemented and how the public funds have been spent (Treasury Regulations for departments, and constitutional institutions, public entities, Parliament and provincial legislatures, 1999).

In this regard, Cloete (1996) and Mbatha (2002) argues that accountable government in the public sector is an essential prerequisite for a democratic dispensation. More so, the point they make is that, public sector institutions are universally faced with the issues of ethical and transparent administration and implementing good corporate governance. Van der Nest (2008) concurs with Cloete and Mbatha that accountability refers to an obligation to expose, explain and justify actions. Moeti (2014) is of the view that public accountability is 'an obligation to answer for the fulfilment of assigned and accepted duties the framework of authority and resources provided' and for Kearns (1996), accountability involves answering to a higher authority in the bureaucratic system of oversight.

According to Schedler (1999) accountability mirrors three key aspects of political accountability: answerability, justification, and enforcement. This implies that the

accountable is obliged to provide answers to explain how decisions were taken. Butler (2011) supports the view that accountability requires justification. This justification is further tested in the Parliament's ability to hold the executive accountable for their actions.

Thus, the study looked at the phenomenon of lack of accountability by management and use of public resources. The researcher's observation is that there are numerous fault-lines undermining the promotion of accountability in the national governments departments and SOEs. It transpired during the interviews that accounting officers are not compliant with the legislation when it comes to discharging their responsibilities which makes it difficult for accountability to be guaranteed. Non-compliance with financial managements regulations and prescripts, lack of transparency and accountability as the highest manifestation of corruption almost paralysed governance and this is highly likely to reverse or stall the gains of socio-economic development and weaken democracy if they are not halted. This particular point of democracy and socio-economic development is essential because as Ababio (2007) and Munzhedzi (2014) point out, accountability is not limited to public expenditure but includes reporting on the progress, performance, failures, successes, actual versus targeted performances, and on the general exercise of authority delegated by a superior authority. This is important for a country like South Africa which is predicated on a moral constitutional obligation to ensure the continued survival of democracy (Mcineka and Ntlama, 2019). What is important here in line with institutionalist is that structures matter but the behaviour and conduct of the executive is even critical.

The findings regarding the impact of lack of accountability is that the legislative arm of the government has not done a good and satisfactory job exercising oversight over the executive and promoting cooperative governance. As discussed in chapter three

of this study, the relationship between the legislature and the executive in South Africa has not been exploited to enhance accountability and transparency. According to Sibiya (2019), SOEs are supposedly central in transforming and driving this developmental agenda. However, these institutions are swamped with poor governance, weak management making corruption inevitable.

Consequently, South Africa has also faced a decade of poor governance over its SOEs. This has recently come to light with the investigations into state capture. The current estimates are that the state capture has cost the economy R1.5 trillion during the second half of president Zuma's term. This represents an enormous opportunity cost for the country in terms of what could have actually been done with the money. The other costs are still on going, if one looks at Eskom the blackouts that South Africa face regularly due to enforced load shedding because of the lack of maintenance of the power plants cost the economy in terms of productivity.

In addition, this impedes their effective role in driving the developmental agenda. It is not an accident of history that these SOEs now and again require bailouts from National Treasury but a result of their being dysfunctional. To this end, there is discussion ensuing in this discourse, partly emanating from the government circles that, bailing SOEs is not sustainable and that the solution lies in privatization. Hence in May 2010, during the Budget Vote, President Jacob Zuma, announced the establishment of the Presidential Review Committee (PRC) on State-owned Entities Review Committee to review the role of SOEs (Chabane, 2013). This is also because despite the entities being the principal drivers of the formal sector of the economy, providing the bulk of economic growth as the main entities that deliver many social goods and services to ensure the quality of life to all South Africans, the SOEs legislative and policy frameworks are fragmented (Kanyane and Sausi, 2015) and

SOEs operate within a framework of multiple pieces of legislation, which are at times in conflict with the broad strategic thrust of the state (Rondinelli, 2007). This constrains the entities in their efforts to respond as effectively as possible to the socio-economic development mandate of the state.

Sibiya (2019), has pointed at the pronouncements of Minister of Finance, Tito Mboweni who is on record backing this privatization. For him, despite the strong view against privatization on the part of labour, the incoming administration led by President Cyril Ramaphosa will decisively without fail privatize some SOEs such as Eskom, SAA and Transnet. However, he is of the view that this will disable the state to strategically intervene and direct the economy to pursue the developmental agenda”.

As such, unlike in Tanzania, where the government is planning on shutting down on SOEs for loss-making SOEs and retain only those that post profits annually (Said, 2018), South Africa is debating about their improvement. According to Corrigan (2014), SOEs are a significant element in Africa’s economies and, as such, their participation in the corporate governance regime is important if they are to come into their own. Common problems, such as lack of uniformed regulatory systems, politicised board appointments and unclear mandates, demonstrate that considerable work still needs to be done to achieve a durable SOE corporate governance regime.

Ultimately, this will be achieved through stressing the professionalisation of the SOEs by recognising that they are companies and should be treated as such; depoliticising boards; and establishing clear regulations and mandates. SOEs should, in common with emerging thinking on the subject, structure their systems based on good corporate governance principles. Accordingly, SOEs are potentially powerful tools in states’ developmental inventories, and the way they operate has considerable

influence on the wider business and corporate governance landscape (Corrigan, 2014).

Non-compliance and poor appointment of personnel in the positions of finance and supply chain management undermines undermined accountability. As a result, financial management responsibility became weak for internal control systems to prevent and detect irregular, wasteful and unauthorised expenditure.

### **6.2.3 Irregular, wasteful, fruitless and unauthorised expenditure and its effect on corruption**

From the interviews it was made clear that officials understood and were familiar with the concept of irregular expenditure which included unauthorised expenditure as a result of non-compliance with the PFMA, Treasury Regulations and Supply Chain Management policies and many other prescribed legislations. Despite this the study found that there is a serious persistence of irregular expenditure, in which most government departments are seen not to comply with the provisions of the Public Finance Management Act No. 01 of 1999. Section 38 (1) (c) (ii) of the Act requires that the accounting officer should take effective and appropriate steps to prevent irregular expenditure and ensure the prevention of irregular expenditure in government departments, unfortunately, this is not the case for South Africa. As shown in the previous chapter, irregular expenditure is an expenditure other than unauthorised expenditure, is money spent without abiding by the appropriate legislation. On the contrary, unauthorised expenditure and its money that was spent for purposes other than for which it was allocated or expenditure in excess of what was allocated (Hickey and Van Zyl, 2002)



However, in a 2017/2018 annual report tabled by the Auditor-General Kimi Makwetu before SCOPA stated that irregular expenditure by national departments and SOEs have accumulated. Concerns were raised over the rising irregular expenditure which was around R50 billion and noted that the increase in irregular expenditure shows that some departments are not adhering to the PFMA. The report showed that total irregular expenditure - spending incurred which was not in accordance with the PFMA increased 70% from R42.8bn recorded.

Makwetu reported that the number of government departments and entities that received clean audit outcomes (those who accounted properly for public funds) had declined during the period under review and had been doing so in the last four years. Clearly, there are huge amounts of public funds that are being used irregularly across national government departments and SOEs.

What the study also points to is that lack of effective accountability in the public sector has seriously constrained sustainable economic development and seriously affected service delivery in South Africa as most of it centres around corruption. Most of the irregular expenditure took the form of corruption under Zuma's administration despite his promise in the 2014 State of the Nation Address that government under his watch would spend public funds prudently. Despite this promise, inferences have been made that irregular expenditure is a function of the lack of accountability on the part of the accounting officers who bypass regulations because of the pressures of the executives. According to Haymans and Lipietz (1999), corruption fundamentally runs contrary to accountability and the rule of law because it undermines governance, diminishes public trust in the credibility of the state, and threatens the ethics of government and society.

Among the most significant findings of this study is that there is a lot of work to be done to turn around South Africa in terms of irregular expenditure. An evaluation of SOEs indicates that they are vulnerable to debt burdens, under-investment, depreciation of assets, corporate governance quagmires and corruption problems. Precisely owing to irregular expenditure which is more often wasteful and fruitless and the fact that they are not properly coordinated and run, there is increasing evidence that most public entities either do not contribute strongly to development or perform their public service functions ineffectively and inefficiently (Rondinelli, 2007).

One can argue that South Africa is a new democracy and, therefore, its structures remain new and evolving. There is a need to make a distinction between the importance of the wasteful, fruitless, unauthorised and irregular expenditure and the impact it has on corruption. It is a fact that the effects of corruption in South Africa have seriously constrained development in all spheres of the economy and has instead significantly inhibited good governance.

The reality is that very few measurable objectives can be found in legislation regarding the oversight responsibility. The scarcity of such measurable objectives makes the oversight function difficult. According to Nijzink (2002) “despite the constitutional imperatives, South African legislatures have not been particularly active as overseers of government action”. One of the problems that Nijzink raises is that there is little agreement among members as to what oversight means. Moreover, data collected during the interviews suggests that there is a lack of cooperation between national government department and SOEs with SCOPA on one hand and other portfolio committees on the hand. While SCOPA focuses on financial matters and the portfolio committee focuses on policy and service delivery, the sharing of information between them is important. Therefore, part of the success of the oversight process depends on

the extent to which portfolio committees and SCOPA are able to leverage inputs by other role-players. These committees are responsible for co-ordinating budget proposals and distributed allocations for a given function (Walker and Mengistu, 1999).

### **6.3 Recommendations**

According to Malapane (2016), in recent times, the work of parliament has been receiving attention in the public domain and discourse. He argues that, this however, does not necessarily mean it successfully fulfils its mandate to hold the executive accountable. Rather, it is because parliament has been faced with various challenges that have placed doubts in its ability to oversee the actions of the executive particularly on issues of accountability. Added to this is the fact that the concept of accountability has been characterised as expansive (Mulgan, 2000) and chameleon-like (Sinclair, 1995).

To avoid the growing problem of the misuse of public funds within the public sector, oversight role of SCOPA should decisively and firmly play its oversight role in providing a complete picture of the performance of SOE's through vigorous oversight exercise, encompassing its finances, its systems, its human resources and its service delivery performance. Only then can oversight work to ensure that policy objectives are met, and public funds are used appropriately for service delivery. Therefore, part of the success of the oversight process depends on the extent to which portfolio committees and SCOPA are able to leverage inputs by other role-players, including civil society.

The strategic objective of this study is to understand why irregular expenditure persists and thus to improve existing mechanism of parliamentary oversight particularly that of SCOPA and enhance its capacity to fulfil its oversight function in line with Parliament's

strategic direction. Considering the findings of the study, the following recommendations are considered as useful in addressing irregular expenditure:

- ✓ There is a need to capacitate senior officials to be able to take responsibility for the financial management and procurement of goods and services within the public sector to promote good governance.
- ✓ There should be enforcement of consequence management or disciplinary action against officials who transgress or violate the regulations and prescripts as this was identified as one of the major challenges.
- ✓ Capacitating and strengthening internal control of the national government departments and SOEs by appointing competent and properly qualified senior personnel who understand public finance and procurement regulations as opposed to cadre deployment.
- ✓ SCOPA should form part of the recruitment process to oversee the selection and appointment of official in positions of finance and supply chain management.
- ✓ To reverse the challenges the prevalence of irregular expenditure as identified in the study, and thus realise development and democracy, there is need for renewed emphasis on strong procurement systems and independent boards, and the legislative oversight to play its mandated role.
- ✓ There is a need to strategically position SCOPA as overall committee mandated to ensure effective public spending and financial management. In this way SCOPA must take its rightful place as a parliamentary oversight committee to ensure effective oversight.
- ✓ The country's Treasury registrar has already been directed to audit all the companies. The audit must result in ensuring that the appropriate mix of

executive and non-executive directors are appointed and that directors have the necessary skills to guide the SOEs.

- ✓ Considering that the PRC report was concluded in 2012, seven years later the state of public finances in the national government departments and SOEs have not improved. If the recommendations contained therein are implemented, then the problem of irregular expenditure in the public service will be reversed.
- ✓ Emphasis in government appointments should be based on ethical and effective leadership.

#### **6.4 Conclusion**

The desire for more accountable public services that both provide greater value for money and meet rising expectations in terms of service performance, seems universal (Hayllar, 2000). Hence the primary function of the legislature, as the representative of the collective will of the people, is to hold the executive accountable through effective oversight process (Fashgba, 2009). Thus, it is evident that the major functions of the legislature in any democratic state is the practice of oversight of the executive arm of government. This entails the formal and informal, watchful, strategic and structured scrutiny exercised by the legislators, in respect of the implementation of laws, the application of the budget and the strict observance of statutes and the Constitution (Legislative Sector in South Africa, 2012). Essentially, the true test of democracy is measured by the extent to which parliament ensures government remains accountable to the people by maintaining its oversight role of government's actions. Otherwise, the realisation of government to deliver good quality services to the poor communities remains a challenge and a potential threat to state stability and security. Accordingly, this is a great concern given the National Development Plan (NDP) vision 2030 and

could undermine key development programmes of government (Notshulwana, 2018). As earlier alluded to in chapter one, central to the NDP is eradication of poverty and to drastically reduce the levels of inequality among South Africans.

This lofty goal cannot be achieved when democracy enhancing institutions are systematically weakened and deliberately undermined as has been the case in the last decade. The role and functions of legislative oversight was challenged, and the developmental state was put under stress. Consequently, the South African legislative oversight failed to hold the executive to account and in the process a number of ministers were implicated in facilitating or enabling state capture.

These had far-reaching consequences as the country experienced negative penetration of the public sector including the very PRASA and COGTA with ravaging economic consequences and governance fault-lines. Now, the assertion this study is making is in line with the argument once made by Cohen, “There is a lot of work to be done to turn around South Africa’s mismanaged, cash-strapped and corrupt state-SOEs (Cohen, 2018).

It became evident throughout the study that oversight role of SCOPA is one of the major progressive mechanisms for change to regulate the misuse of public funds in South Africa. What remains a challenge though is that, despite its existence, weak implementation of its role and function provides major opportunities for corruption to thrive. Due to the nature of the study, despite the written consent letters, certain public sector officials were uncomfortable to participate in the study for the fear of being exposed or found to be speaking on issues relating to financial mismanagement involving their institutions. To them this seemed against the wishes of their seniors.

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Appendices:

Appendix "A" Research Questions

Appendix "B" Signed Consent letters

Appendix "C" Published Articles