

Oversight and Accountability in the City of Johannesburg

**A research report submitted to the Faculty of Commerce,
Law and Management, University of the Witwatersrand, in
partial fulfilment of the requirements for the degree of
Masters of Management in the field of Public Policy**

By

Thandekile Mbunge

Student No.: 396562

LIST OF ABBREVIATIONS AND ACRONYMS

ANC:	African National Congress
ACDP:	African Christian Democratic Party
COC:	Chair of Chairs
COJ:	City of Johannesburg
DA:	Democratic Alliance
ED:	Executive Director
FIS:	Focused Intervention Studies
ID:	Independent Democrats
IFP:	Inkatha Freedom Party
MEC:	Member of Executive Council
MFMA:	Municipal Finance Management Act
MMC:	Member of Mayoral Committee
MOE:	Municipal Owned Entity
NGO:	Non-Governmental Organisation
OSC:	Overview and Scrutiny Committee
PFMA:	Public Finance Management Act
UK:	United Kingdom

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ABSTRACT

This study investigates oversight and accountability in the City of Johannesburg. The study explores the City of Johannesburg's new governance model as implemented after the 2006 local government elections. The study is premised on establishing an understanding of the issues that the City of Johannesburg is grappling with since rolling out its oversight and accountability model as adopted by its Council in 2006. The Constitution of South Africa (1996) vests both the executive and legislative authority in the Municipal Council. This is in contrast to other spheres of government, namely National and Provincial, whereby there are specific chapters on what the Executive, the Parliament and Provincial Legislatures powers are.

The study begins by discussing the cases of separation of powers in local government in the United Kingdom and the City of Johannesburg governance model and the rationale behind implementing such a model. The study then makes an analysis of the legislative framework in South Africa that gives expression to oversight and accountability in government broadly. The study discusses its research methodology and the rationale for such a methodology in investigating issues that the City of Johannesburg is faced with in implementing its oversight and accountability model.

In this case study the researcher explores the functionality of the model. In doing so, the researcher then proposes ways of ensuring that the oversight and accountability could be more effective and whether there are any legislative impediments, and then propose to national law makers what needs to be done as informed by the research conducted.

DECLARATION

I, Thandekile Mbunge, declare that this research report is my unaided work. It is submitted in partial fulfilment of the requirements for the degree of Masters of Management in Public Management in Public Policy (MM-PP) in the University of the Witwatersrand, Johannesburg. It has not been submitted before for any degree or examination in this or any other University.

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Thandekile Mbunge

16 October 2015

DEDICATION

I would like to thank my wife Vuyokazi and our children for their unconditional love, support and understanding throughout the research process, I love you, guys.

I would also like to thank my parents, my late father, Mongameli Mbunge and my surviving mother Buyiswa Mbunge for always inspiring me to be the best person I could ever be in whatever I want to become in life. Thank you for believing in me at all times.

ACKNOWLEDGEMENTS

I would like to take this opportunity to express my sincere gratitude and appreciation to my supervisor, Dr Horácio Zandamela for his support and guidance throughout the process of completing this research report.

I would also like to extend my utmost gratitude and appreciation to my colleagues and the respondents during the process of data collection and finalisation of this research report.

CHAPTER ONE

INTRODUCTION

This research report is based on an exploratory study on the City of Johannesburg's new governance model. The researcher conducted this exploratory research on the City of Johannesburg municipality based on the new governance model which had been implemented in the municipality since the local government term that started in 2006 ending in 2011. The researcher used a case study approach by focusing on the City of Johannesburg model.

One of the key challenges of the first term of developmental local government, beginning in December 2000, was the establishment of an entirely new institutional and governance structures. Although pieces of legislation such as the Municipal Systems Act (No.32 of 2000) and Municipal Structures Act (No.117 of 1998) provided a comprehensive outline of the legal architecture of the new democratic local government, the translation of these legal precepts into new organisational structures, systems and processes required strong political and administrative leadership at local level. In the first term of office the South African government has pioneered a new and uncharted path towards the realisation of a democratic and developmental local state. The White Paper on Local Government (1998) clearly spells out government's commitment to build a developmental local government system.

The end of the first term of developmental local government term of office that started in December 2000 and ended in March 2006 provided a natural vantage point for reflection on the progress made. Some of the lessons learnt meant an opportunity to examine the efficacy of the previous local governance models. The main area of focus was firstly the extent to which the municipal councils exercised accountability and

oversight over the executive. This is sometimes referred to as the notion of the separation of powers between the executive (Mayoral Committee) and legislature (Municipal Council) in political governance arrangements.

Secondly, the issue, is whether enough has been done to ensure the accountability of councillors to the citizens. This was based both on the experience of the last few years of democratic local government and some empirical work done towards the end of the term. The local government performance review of the previous term of office, which was conducted by the erstwhile Gauteng Department of Local Government (2005), for instance, has noted that municipalities were lacking in the culture and practice of democratic accountability and thus councillors were quite inexperienced in dealing with matters of accountability, but more so on issues of financial accountability.

So these weaknesses structural in nature, meant that when a policy decision was taken prior to the 2000 election to create an executive mayoral system, not enough attention was paid to what then becomes the role of ordinary councillors. With the benefit of hindsight it almost appears like this was an incomplete restructuring of the local government system.

The key issue here being that, in the South African system of local government, municipal councils perform a dual role, which means the municipal council, is empowered to perform both legislative and executive roles. This is in contrast to national and provincial spheres of governance that separate parliament from national government and provincial legislatures from provincial government.

Indeed, local government in other parts of the world, such as the United Kingdom had begun to experiment with the separation of powers. This practice is premised on the view that the Council's role should be focused on a legislative, oversight and participatory role, and without absolving

itself of its executive responsibilities, that it delegates its executive function to the executive.

1.1 BACKGROUND TO THE STUDY

The City of Johannesburg new governance model is a product of many deliberations at the City of Johannesburg's council (COJ: Mayoral Committee: 2006). This is an attempt to respond to the governance challenges facing local government. Thus, in accordance with the reforms on local governance arrangements in the Gauteng Province, it was agreed in the ruling party's local government forum that City of Johannesburg would therefore move, at least on a pilot basis, towards a new governance and oversight arrangement that encompasses the separation of powers.

The main objective was to experiment on how the Gauteng Province, through the City of Johannesburg pilot, can strengthen the role of the council as a legislature, and enhance its role in oversight and ensuring participation. Accordingly, the City of Johannesburg pilot meant a move away from the chapter 80 committees (Local Government: Municipal Structures Act No. 177 of 1998) to Section 79 committees.

Local government being regarded as a sphere on its own, the Constitution (1996) and local government legislation defines and reserves the following legislative and certain high-level executive roles for the Council: approval of by-laws, policy, the Integrated Development Plan, tariffs for rates and service charges and the budget. In the approach taken, at least in the short term, it was decided that these should remain in place not only for pragmatic or legal reasons, but because they are the primary areas of local government responsibility (COJ: Mayoral Committee: 2006).

The Gauteng Department of Local Government Performance review (2006) of the first term of developmental local government starting from 2000 to 2005 has, for instance, noted that municipalities were lacking in

the culture and practice of democratic accountability. This was largely attributed to the fact that most councillors were inexperienced in dealing with matters of accountability, especially financial accountability.

Once again these structural weaknesses could be attributed to the fact that when a policy decision was taken prior to the 2000 election to create an executive mayoral system, not enough attention was paid to the pertinent question of what becomes the role of ordinary councillors as articulated in the White Paper on Local Government (1998). With the benefit of hindsight, it almost appears like an incomplete restructuring of the local government system took place back then in the year 2000.

The contentious issue here being that in the South African system of local government, municipal councils appear to perform a dual role, which is, municipal councils are empowered to perform both legislative and executive roles. This is in contrast to national and provincial spheres of governance where separation between parliament or provincial legislatures and Cabinet or Executive council has been clearly spelled out in the legislation.

One of the key challenges of the first term of local government that started in December of the year 2000, was the establishment of new institutional and governance structures to further enhance oversight and accountability, and therefore deepen democracy. Although the introduction of pieces of legislation on local government such as the Municipal Systems Act (No. 32 of 2000) and the Local Government: Local Government: Municipal Structures Act (No. 117 of 1998) provides a comprehensive outline of the legal architecture of the new democratic local government, the translation of these legal precepts into new organisational structures, systems and processes require strong political and administrative leadership.

It was during the first term of office that new and uncharted path towards the realisation of a democratic and developmental local state was

pioneered. The type of local government envisaged was outlined in the White Paper on Local Government (1998). This meant the transformation of the local government as a distinct and autonomous sphere of government continued.

The subsequent local government term of office that began in early 2006 provided government with a natural vantage point for reflection on the progress made and lessons learned. This further provided a platform to examine the efficacy of the previous local governance models of governance. The main area of focus in this instance would be to assess the extent to which the municipal councils exercise their oversight and scrutiny role on the executive, that is, the executive mayors, members of mayoral committees, municipal managers and executive directors. This is, alternatively, referred to as “the doctrine of separation of powers” between the executive and the legislature in political governance arrangements. The primary question at this stage is whether enough has been done to ensure that the executive becomes accountable to municipal council and to communities.

The City of Johannesburg’s pilot was indeed an attempt to respond to the governance challenges facing local government. The researcher therefore sought to assess the inception process, including some early signs of effectiveness of the new governance and separation of powers model. In essence, the City of Johannesburg’s pilot represented a complete attempt to move away from the section 80 committees to section 79 oversight committees.

1.2 LEGISLATIVE AND REGULATORY FRAMEWORK

Since the advent of democracy in 1994, South Africa has been making concerted efforts of bringing about a legislative framework that is in line with the values and principles enshrined in the Constitution of the Republic of South African, Act 108 of 1996. There has been a lot of progress done

in ensuring good governance in the public sector by providing effective, transparent, accountable and coherent government aimed at serving the South African public. The Constitution of the Republic of South Africa (1996) requires all organs of state to conduct themselves in a manner which ensures efficiency and effectiveness when serving the public, but to also be transparent, open and accountable when doing so.

This meant that there has to be some kind of a legislative improvement, which could mean the amendment of those pieces of legislations that were no longer in line with the values and principles of a new democratic South Africa. This meant that policy and law makers had to be innovative in the manner in which they conceptualised the legislative framework that would live up to the values and principles as spelt out in the Constitution. This had to be the case to all three spheres of government.

In this chapter the researcher provides an overview of the legislative framework within which oversight and accountability mechanisms, such as the COJ governance model could function. This will be done through discussing the Constitution as it sets out the basis for oversight and accountability, and then discuss other pieces of legislation in the three spheres of government that have some relevance to the notion of oversight and accountability at the sphere of local government.

1.3 CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA

Once again, the Constitution (1996) section 1(d) from the onset states clearly that accountability, responsiveness and openness as the values that South African government should be premised on. Section 41(1) (c) of the Constitution requires that all spheres of government and all organs of state within each sphere must provide effective, transparent and accountable and coherent government for the Republic as a whole. These principles of accountability and transparency are therefore established by

the supreme law of the country.

The section 43 of the Constitution (1996) establishes Parliament and provincial legislatures as the legislative authorities within the national and provincial spheres of government, and the municipal councils as the legislative authority within the municipal council. Sections 55 and 114, gives legislatures the responsibility of ensuring that all executive organs of the state are accountable to the Constitution. This means therefore that legislatures are compelled to maintain oversight over the executive arm.

1.4 POWERS, PRIVILEGES, IMMUNITIES OF PARLIAMENT AND PROVINCIAL LEGISLATURES ACT

The Powers, Privileges, Immunities of Parliament and Provincial Legislatures Act, No. 4 of 2004 (PPIPL), expands on the powers that the RSA Constitution gives to committees of legislatures. Chapter 5 of the PPIPL provides for the summoning of 42 witnesses; the examination of witnesses; and offences relating to witnesses.

For instance, if an individual who has been summoned to appear in front of any municipal committee does not do so when expected to do so and place specified in the summons, or who fails fully and reasonably to answer all questions lawfully put to him or her, or fails to produce any document in his or her possession or custody or under his or her control, which he or she has been required to produce, commits an offence. Such a person is then liable to a fine or to imprisonment for a period not exceeding 12 months or to both the fine and the imprisonment.

This provision also applies to a person who threatens or obstructs another person in respect of evidence to be given before a House or committee. However, in such a case a penalty for a period of up to two years imprisonment is possible.

Section 6(3) further provides that evidence given under oath or affirmation by a person before a House or committee may not be used against that person in any court or place outside Parliament, except in criminal proceedings.

The above mentioned provisions are important, for they empower committees of the legislatures to carry out informed and unhindered oversight, and also provide protection to witnesses who may be afraid of giving incriminating evidence. It should be noted though that, these powers and privileges do not apply to municipal councils or their committees, which results in a lack of clarity regarding the roles, powers and functions in relation to municipal council oversight portfolio committees as is in the case of COJ.

1.5. LOCAL GOVERNMENT: MUNICIPAL STRUCTURES ACT

The Local Government: Municipal Structures Act, No. 117 of 1998 provides for the establishment of various categories of municipalities in accordance with and for the regulation of the internal systems, structures and office bearers of municipalities.

The most relevant sections of the act are those that relate to the establishment of the committees of the municipality. According to section 33 of the Act, a municipality may establish a committee if the establishment of the committee is necessary, taking into account the extent of the functions and powers of the municipality; the need for the delegation of those functions and powers in order to ensure efficiency and effectiveness in their performance; and the financial and administrative resources of the municipality available to support the proposed committee.

Sections 79 and 80 create non-executive and executive committees: Section 79 committees are non-executive committees that may be established for the effective and efficient performance of any of a municipal council's functions, or the exercise of any of its powers, provided that the municipal council determines the functions of a committee and delegates duties and powers to it. The council must appoint the chairperson, and may authorise a committee to co-opt advisory members who are not members of the council within the limits determined by the council. The council may also determine a committee's procedure.

Section 80 committees are provided for to assist the executive committee or executive mayor. If a municipal council has an executive committee or executive mayor, it may appoint, in terms of section 79, committees of councillors to assist the executive committee or executive mayor. Such committees may not in number exceed the number of members of the executive committee or mayoral committee. The executive committee or executive mayor appoints a chairperson for each committee from the executive committee or mayoral committee, and may delegate any powers and duties of the executive committee or executive mayor to the committee. Section 80 committees must report to the executive committee or executive mayor in accordance with the directions of the executive committee or executive mayor.

1.6 LOCAL GOVERNMENT MUNICIPAL SYSTEMS ACT

The Local Government: Municipal Systems Act, No. 32 of 2000 (MSA), makes provision for the core principles, mechanisms and processes that are necessary to enable municipalities to move progressively towards the social and economic upliftment of local communities. In section 6, the said Act sets out the duties of municipal administrations, including the requirement that the administration of a municipality must be responsive to the needs of the local community; must facilitate a culture of public service

and accountability amongst staff; must take measures to prevent corruption; must give members of the local community full and accurate information about the level and standard of municipal services they are entitled to receive; and must inform the local community how the municipality is managed, of the costs involved and the persons in charge.

The oversight function of a municipal council is not spelt out clearly, although section 11(3) (j) of the MSA lists one of the functions of council as the monitoring of the impact and effectiveness of any services, policies, programmes or plans.

Schedules 1 and 2 of the Act contain codes of conduct for councillors and municipal staff members.

1.7 STATUTORY AND REGULATORY GUIDANCE ON OVERSIGHT COMMITTEES

The Constitution (1996) does not express the role of separation of powers in the sphere of local government in chapter 7 on local government. Section 151(2) vests both the executive and the legislative authority on the municipal council. This therefore makes it difficult for oversight to go smoothly as the bedrock of any democracy.

The section 79 and 80 of the Municipal Structures Act (1998) is the only part that expresses separation of powers but falls short of giving the non-executive councillors necessary powers hold the members of the executive accountable for their actions.

Even though the Municipal Structures Act (1998) lays foundation for the establishment of municipal executive structures, namely the executive mayors and mayoral committees, the legislation remains weak in the role of the non-executive councillors and the structures concerned. This calls

for a clearly defined statutory framework that will ensure that non-executive councillors are able to conduct their oversight and scrutiny on the work of the executive members of councillors. Therefore national government need to come up with a legislation that gives expression to the notion of separation of powers at the sphere of local government between the executive and the non-executive arm of council or make the necessary amendments to the Municipal Structures Act (1998).

1.8 SEPARATION OF POWERS IN LOCAL GOVERNMENT: INTERNATIONAL EXPERIENCES

By way of a contextual background, it is worth noting that the reforms undertaken by the City of Johannesburg drew inspiration from the oversight and scrutiny models practiced by local government in the United Kingdom (UK) (*as per the report given by the Gauteng Department of Local Government officials on the 2005 UK trip*), hence the discussion of the UK model below.

The UK Local Government Act of 2000 introduced substantial changes to the structure of political management in local Government in England and Wales. In particular, the Act requires councils to implement new arrangements designed to bring about a formal separation of the roles of executive decision-making and scrutiny of those decisions. The Act created an 'executive or non-executive split' between members.

The British law explicitly provides for the establishment of Overview and Scrutiny Committees (OSCs) within municipal governments and vests these committees with significant statutory power. These powers include the ability to 'call-in' decisions of the executive. Where an OSC decides to call-in a decision of the executive, the executive is unable to proceed with its planned course of action without first referring its decision to full council for approval.

Furthermore, this law allows an OSC to require members of the executive and officers to attend their meetings to account for their actions. While these provisions are used rarely, their existence in law gives significant weight and legal force to the operations of the OSCs.

The concept of scrutiny in the UK helps to ensure that a council delivers on its mandate by creating a transparent mechanism for non-executive councillors to shape, question, evaluate and challenge policies, decisions and performance. The role of Scrutiny is distinct from that of the Executive, but the two should not necessarily be viewed to be in opposition to each other. Rather, the role of the Scrutiny should be viewed as that of a 'critical friend' to the Executive as well as external authorities and agencies. This role is exercised by means of:

- Constructive, robust and purposeful challenge to ensure executive reflection on policy development and decision making;
- Holding decision-makers to account;
- Nurturing a partnership approach and positively influencing the work of external agencies;
- Focused and proactive policy development and review in collaboration with executive colleagues;
- Coordinated workload planning, which is integrated into corporate processes; and
- Reflecting the voice and concerns of the public and communities by ensuring ongoing dialogue with the public and its diverse communities; taking a community leadership, focusing on issues of concern for communities; providing transparent processes with public access to information, participation, and feedback where appropriate.

In addition, the non-executive councillors are enabled to take lead in scrutiny by maintaining independence from the Executive; working in constructive partnership with professional officers and advisers to support

scrutiny by lay people; developing an independent work programme informed by the priorities of a Council, and the interests and concerns of the public; as well as the desire to support the development of services that benefit the public at large.

According to the officials (2005 UK trip report), overview and scrutiny is also intended to make an impact on the delivery of public services, by promoting the well-being of communities and improving their quality of life. In addition, its focus is on scrutinising policies, plans and budgets; carrying out reviews of policy and service performance in line with strategic objectives; monitoring service performance against key indicators; as well as contributing to the continuous improvement of public services.

It is worth noting that the law that introduced reforms in the governance of Local Government in the UK has been highly contested from some quarters and it has yielded mixed results in different parts of that country (UK). Nevertheless, issues and lessons from the experience of the UK could inform ongoing debate as well as the development of effective oversight by legislatures in Local Government, and specifically could assist both the national government and the Gauteng Provincial Government to reflect on the Governance Model adopted by City of Johannesburg.

Below are some of the critical issues and lessons from the UK experiences:

- The UK local government system is open and transparent. For example, local cabinet meetings are open to the public and opposition parties. While only cabinet members can vote when a decision must be taken, all documents and other information are generally available to non-executive members, including those of opposition parties.

- While the new system has enhanced the role of councillors in oversight and scrutiny activities, there appears to be a general dissatisfaction with the new arrangements amongst non-executive councillors. The majority of them are of the view that they are less involved and less influential in council decision making processes. The main issue here is that they are no longer in the position to make executive decisions as it was the case during the previous committee system.
- Another key aspect of the OSC system is its emphasis on co-operation across different political parties. Non-executive councillors are expected to work in a collegial manner, while party caucuses are expected to play little or no role in determining the decisions made in OSCs. It is nonetheless not clear if this is indeed the case.
- While OSC structures play an important role in monitoring the executive and holding it to account for its programme, there is strong outward focus, where scrutiny is concerned with the delivery of all public services in the municipal space, rather than the portfolios of the executive alone. As part of this work, scrutiny panels conduct inspections and reviews of public services. There is also an emphasis on the outcomes of public policy and their effects on the community.
- An important factor in the success of scrutiny processes is the choice of key issues on which the scrutiny panels should focus. Rather than attempting to review and monitor all aspects of the council's work, effective OSCs have selected a limited number of key issues and focused on them during the course of its work.
- Since inception with the passing of the UK Local Government Act in 2000, the UK system councils are still grappling with the appropriate design of scrutiny structures and no overall model has

been adopted. Rather, experimentation and innovation are emphasised, with each council free to set up its own specific arrangements.

1.9 PROBLEM STATEMENT

1.9.1 PROBLEM

The Constitution of the Republic of South Africa (1996) in section 151 (2) vests both the executive and legislative functions with the municipal council. As a result, the only way to achieve a split is by way of delegations from executive functions to the legislative arm. Specifically at the level of the COJ, the limitations imposed by the current legislation were also posing some challenges. The absence of a specific legislative framework that specifies the roles and functions of the oversight and accountability model as is the case with both the national and provincial legislatures renders the work of these newly established committees in the COJ ineffective as they cannot really oversee their colleagues on the executive who also occupy senior positions in the same council. This is also due to the fact that they are not supported by any piece of legislation at this point in time.

The Constitution (1996) clearly separates the powers and functions of the executive and non-executive members in both the national and provincial spheres of government. The Constitution has separate chapters for the Parliament and the national members of the executive and as well as separate sections in respect of provincial legislatures and provincial executive members. The constitution does not give in detail such powers and functions in the case of local councils and local members of the executive.

This therefore means that a weak legislative landscape does not afford sufficient powers to the oversight and accountability portfolio committees, which makes it extremely difficult for these committees to hold the

executive accountable for its actions.

To further complicate matters it then becomes difficult for these committees if not legislated to be able to have all the resources they need, to undertake their functions.

Even though the establishment of this model in COJ was premised on improving governance and service delivery, it would appear that it is being derailed by the lack of the legislative prescripts that support this move.

1.9.2 KNOWLEDGE GAP

Although research on the oversight and accountability mechanisms as implemented by both the Parliament and Provincial Legislatures in South Africa exists, very little has been published on oversight and accountability at the sphere of local government. The researcher also anticipates that the research will contribute towards legislative reforms that might lead to the drafting of specific pieces of legislation that will categorically spell out the roles and responsibilities municipal councils have in holding the members of the executive responsible for the decisions they make regarding public funds.

The researcher has also taken note that proper oversight and accountability at the sphere of local government remains weak. This is unfortunate because local government as the sphere of government that is closest to the people remains the one that is responsible for service delivery and overall realisation of the national imperatives. It means then therefore that, in order for local government to manage its finances properly and deliver on the set service delivery plans as tabled on each municipal integrated development plans, local government needs to have a properly legislated body formed of non-executive members that would conduct scrutiny and oversight on the work that the executive is doing, as it is the case with both Parliament and Provincial Legislatures.

An establishment of such an oversight and accountability body should not be as slow as it is the case at this point in time. Although the researcher understands that the apparent poor policy direction on this matter is linked to the absence of a specific legislative framework that gives some guidance to matters of committee make-up and powers and functions of such committees. The researcher anticipates that this research report will give some guidelines to those authorities charged with the responsibility of setting up these committees at the local sphere of governance.

1.9.3 CONTEXT

There was limited flow of information in respect of which reports were being considered within each of the chapter 80 Committees and the status of report reviews. This made it also difficult to access information with regards to progress and stage of such discussions.

Thus, the approach of the City of Johannesburg was influenced by the factors outlined above. The amendments to the City's previous institutional and governance model were based on the need to maintain and promote optimal governance structures, whilst also ensuring that institutional capacity is streamlined to enhance service delivery.

Lessons were drawn from international trends, whereby legislatures are seeking to enhance their role in the governance process of government. The end of the previous local government term of office and the 2006 municipal elections provided an ideal opportunity to effect any necessary changes to the model.

Against this background, the then Department of Local Government (DLG), together with the City of Johannesburg, embarked on a study to document and assess how this new oversight model has been working. In the main, this study was aimed at achieving two main objectives, which is,

assess the functioning of this new oversight structure and draw lessons and make recommendations on whether or not the model should be adopted and be extended to all Gauteng municipalities.

Effectively, the task was to investigate whether this new arrangement is an appropriate response to the challenges of strengthening the oversight and accountability function in the local sphere of government. The investigation was benchmarked against the objectives as outlined in the implementation of the pilot. Some international benchmarks and experience were also used as a basis to draw lessons on what works and does not.

Taking note of the findings of the Gauteng Department of Local Government study conducted in 2007, the main aim of this exploratory study was therefore to evaluate the functionality of the Governance Model implemented by the City of Johannesburg. This study was conducted against the background of interventions put in place by both the City and the Department with the view to enhance the functionality and efficiency of the model.

The objectives of this exploratory study were therefore to:

- Re-confirm the rationale behind the adoption of the Governance Model of the City of Johannesburg;
- Analyse the institutional arrangements that were put in place to operationalise the Model. This would, among others, focus on the challenges, the capacity requirements and resources needed, and what have been achieved in that regard;
- Assess the strengths and weaknesses of the Oversight and Accountability Model in terms of:
 - Holding the Executive accountable;
 - Improving service delivery; and
 - Promoting public participation and deepening democracy.

- Make recommendations that seek to bring about improvements in the manner in which the Model is implemented, and how it could be further rolled out to other municipalities in the Gauteng Province and countrywide.

1.10 PURPOSE STATEMENT

The aim of this study is to assess the functionality of the new oversight and accountability models of the City of Johannesburg, and to assess the implementation and functionality of this new governance model, and whether it could be replicated across the Gauteng province and countrywide. This study will be exploratory, given that it intends to assess a matter that has not been well investigated at the sphere of local governance before. Neuman (2003) argues that an exploratory research is suitable in circumstance whereby a social phenomenon hasn't been written about formulates precise questions that future research in the subject may investigate more and that there is no baseline data to move from.

As already been argued, the current local government legislation and system of local government in South Africa vest both the executive and legislative functions with the municipal council. As a result, the only way to achieve a split is by way of delegations of executive functions to the executive arm. Specifically at the level of the City of Johannesburg, the limitations imposed by the current legislation were also posing some challenges:

- Limited opportunity for debate in council, with council format of discussion confined to written questions for the Executive Mayor and MMCs only.
- No provision being made for question time and through discussion on issues tabled at council.

- There was limited flow of information in respect of which reports are being considered within each of the chapter 80 Committees and the status of report reviews.
- It was also difficult to access information with regards to progress and stage of these discussions.

Thus, the approach of the City of Johannesburg was influenced by the factors outlined above. The amendments to the City's previous institutional and governance model were based on the following:

- The need to maintain and promote optimal governance structures, whilst also ensuring that institutional capacity is streamlined to enhance service delivery.
- International trends, whereby legislatures are seeking to enhance their role in the governance process of government.
- The fact that the end of the previous local government term of office and the 2006 municipal elections provided an ideal opportunity to effect any necessary changes to the model.
- Analyse the institutional arrangements that were put in place to operationalise the oversight models in the City of Johannesburg.
- This would, among others, focus on the implementation challenges, the capacity requirements and resources needed, and what have been achieved in that regard;
- Assess the strengths and weaknesses of the oversight and accountability models in terms of:
 - Holding the executive accountable;
 - Improvements in service delivery; and
 - Promoting public participation and deepening democracy.
- Discuss the policy and legislative implications of the oversight and accountability models, and assess the ability of local government

Councils to conduct oversight and scrutiny on the work that the Executive does.

The researcher expects that this study will contribute towards a knowledge gap that exist on oversight and scrutiny at the level of local governance in the country, for the City of Johannesburg is the pioneer in implementing this model in the South Africa. Local governance scholars and practitioners could also utilise the findings of the study to motivate for a review of a number of pieces of legislation to give power to similar models as implemented in the City of Johannesburg. This study could open a debate on powers and functions of local government as a sphere of governance that is closest to the public in relation to its ability to effect good governance and ensuring service delivery.

1.11 MAIN RESEARCH QUESTION

- How can local government as an institution conduct meaningful oversight and accountability?

1.11.1 SECONDARY QUESTIONS

- Do existing institutional arrangements enable public participation in oversight and scrutiny?
- How can the shift from chapter 80 to Section 79 committees strengthen political accountability?
- Has the City of Johannesburg gone far enough in establishing mechanisms to improve service delivery?

1.11.2 THE SIGNIFICANCE OF THE STUDY

The research is regarded as significant based on the fact that local government is the closest sphere of government to the public. It means then, that local government is at the coal face of service delivery. However, the researcher has noted that oversight and accountability still remains extremely weak if at all existent. The researcher notes that by having such an oversight and accountability structure in local government.

Both service delivery and financial and project management would vastly improve the manner in which things happen at the level of local government. The study therefore seeks to become a stimulus for change in the manner in which oversight and accountability is being conducted in local government and that a debate on legislative reform that enables oversight and accountability at this level takes place.

1.12 RESEARCH OUTLINE

This research report is divided into the following chapters:

Chapter One: Introduction: Introduces the study and background details to the study. The also chapter provides an overview of the legislative framework within which oversight and accountability mechanisms, such as the COJ governance model functions. The chapter discusses the problem and purpose statement. The chapter also includes research questions and lastly discusses the significance of the study.

Chapter Two: Literature review: This chapter covers the relevance of literature review in academic research. The chapter also covers debates on the notion of separation of powers and accountability, international experiences on separation of powers in local government, the oversight and accountability role of the South African Parliament, and some lessons learned from Provincial Legislatures.”

Chapter Three: Research Methodology: This chapter outlines the research design and methodological approach utilised to undertake this study. The selection of the City of Johannesburg as a case study is explained, as well as the selection of the respondents. Furthermore, the researcher discusses how data will be analysed and interpreted. Lastly, the researcher discusses the reliability and validity of the data and ethical considerations will be maintained.

Chapter Four: Data Presentation and Discussion of Findings: This chapter presents and discusses the findings of this exploratory study conducted in the City of Johannesburg based on the in-depth interviews, focus groups and documentary analysis. In particular, the chapter provides details regarding perceptions of respondents as indicated in the methodology section.

This chapter also presents the challenges in implementing oversight and accountability in the local sphere of governance in the South African context with particular reference to the City of Johannesburg given the range of matters raised by the respondents.

Chapter Five: Conclusion and Recommendation: This chapter draws conclusion on the basis of the assertions made by the respondents and the municipal oversight reports that the research has read and analysed. Secondly and lastly the chapter advances recommendations that would assist policy developers and implementers should they review the current local government legislations.

CHAPTER TWO

LITERATURE REVIEW

2.1 INTRODUCTION

This chapter constitutes the literature review. The chapter covers the relevance of literature review in academic research. The chapter also covers debates on the notion of separation of powers and accountability, the oversight and accountability role of the South African Parliament, and some lessons learned from Provincial Legislatures.”

2.2 REASONS FOR LITERATURE REVIEW

A literature review is specific to academic research (Badenhorst 2007:43). Its significance in academic research is that it allows the researcher to discuss previous research, theoretical frameworks and locates the study at hand within the available body of knowledge. Creswell (1994:21) argues that, literature review traces available trends on the subject matter and enables the researcher to fill in the existing gap in the body of knowledge and relates a study and locates it within the academic debates. Moreover literature review enables the researcher to structure his or her study whilst justifying its importance, showing how his or her findings relate to other published findings on the same subject matter and maintaining the focus of the study.

Nonetheless, for the purposes of this current study the researcher proposed to conduct literature review for two major reasons, namely, to identify gaps within available literature on oversight and accountability in local governance and to establish and understand the theory which the researcher suggested to use as the lens to comprehend the institutional capacity in implementing the oversight and accountability at the sphere of local government.

2.3 SEPARATION OF POWERS AND ACCOUNTABILITY

The notion of separation of powers and accountability serves as a conceptual and practical framework for this report. It presents a contextual framework for the discussion on oversight responsibilities and functions at the local sphere of government.

In terms of conventional wisdom, in its crude form, separation of powers between the three arms of the state (the executive, the legislature, and the judiciary) prevents the abuse of power by the state. Carpenter (1994) argued that powers vested in the state need to be limited and contained, irrespective of such state being a democratically elected or politically legitimate. The dictum in this case is the idea that the legislature makes laws, the executive implements them, and the judiciary applies and interprets them. This implies that:

- The legislature does not administer laws and does not function as a court of law;
- The executive does not exercise legislative or judicial power; and
- The judiciary does not have legislative or executive powers.

This notion of separation of powers between the executive, legislative, and the judiciary enables the executive to implement government programmes within delegated powers, while at the same time allowing the legislative to strengthen its ability to make laws and execute the oversight function. Having said that, the challenge is that, in practice, such a clear-cut model barely exists. Usually, the executive arm of government determines policy, while the legislature is confined to scrutinising policy and making recommendations to the former.

Hedger and Blick (2008) argue that the accountability relationship is a horizontal one, and is made possible by the clear separation of powers between the executive and the legislative authority, and that this forms

bedrock of democratic systems of government. Indeed this is true, for Brazier, Flinders and McHugh (2005) is of the view that the scrutiny of executive arm of government and holding it accountable for its actions is the key function of the legislature. McGee (2002) concurred, by saying that being held accountable for the exercise of power is a requirement for democracy.

According to, Corder, Jagwanth, and Soltau, (1999); they argue that oversight is a commodious concept that refers to the crucial role of legislatures in monitoring and reviewing the actions of the executive organs of government. The term is used to define a large number of activities carried out by legislatures in relation to the executive. More specifically, and embracing the Constitutional provisions set-out above, Besdzick and Senay (1999) define oversight as follows:

“Oversight in the South African provincial context is the proactive interaction initiated by a legislature with the executive and administrative organs of a province that encourages compliance with the constitutional obligation on the executive and administration to account to the public’s elected representatives, and which advances the ideals of good governance, development and co-operative governance”

According to Griffin (2005), these effectively stand guard as watchdogs over the executive and act as guardians of integrity on behalf of the citizens. Gutto, Soncga, and Mothoagae (2007) concur with this assertion that oversight entails the informal and formal, watchful, strategic and structured scrutiny exercised by legislatures in respect of the implementation of laws, the application of budget and strict observation of statutes and the Constitution. In addition and most importantly, it entails overseeing the effective management of government departments by individual members of the Cabinet in pursuit of improved service delivery

for the achievement of a better quality life for all citizens. In local government as the sphere of government that is closest to the people, the Council and the in the City of Johannesburg plays the role that gets played by Parliament of holding accountable the Members of the Mayoral Committees which are political stewards of the Departments.

In addition, for the specific purposes of this paper, accountability addresses the concerns that governments, in this case local governments, and their agencies should fulfill and, where problems occur or complaints arise; there should be mechanisms available to hold the executive to account for their actions or omissions. Gutto, *et al.* (2007) sees accountability as a social relationship where an actor feels an obligation to explain and justify his or her conduct to some significant other. Accountability then refers to institutional practices of giving account of how assigned responsibilities are carried out.

Corder, *et al* (1999), argue that accountability can be understood in two senses, that is, a technical sense as it refers to the duty of the head of department to account as 'accounting officer' to his or her Minister, the Auditor-General and finally the Public Accounts Committee. This refers to giving account of actions and spending. This definition responds to the Public Finance Management Act (1999) notion of administrative accounting of the public officials.

The second one is a wider understanding that accountability requires Ministers and MECs to give an explanation and justification against criteria of some kind and their decisions or actions. This therefore also requires that the person goes back and make amends for any fault and takes steps to prevent its recurrence in the future.

The exercise of that type of power in a constitutional democracy is that the administration or executive is overseen by, and held accountable to an

organ of government distinct from it. This resonates with the separation of powers, which provides for checks and balances in respect to the executive's exercise of executive power, thus making the executive more accountable to the elected legislatures and the public as a whole.

Murray and Nijzink, (2002: 88) argue that in order to concretise the assertion above, there are four elements that are necessary for political accountability, as required by the Constitution (1996), to work:

- i. Persons who have the power to make decisions and put them into effect;
- ii. Objectives or standards that are attained by those persons;
- iii. Na authority to whom the decision maker is answerable
- iv. Some means of calling those responsible for decisions to account.

Furthermore, Calland (1999) argued that “the executive arm is able to dominate the legislature because it has the expertise, resources and experienced technocrats”, resulting in a relative imbalance of powers between the executive and the legislative arms. This makes the institution of a viable system of checks and balances, as well as consistent lobbying for the continuous capacity development for the legislative arm very imperative if the separation of powers between the arms of the state is to materialise.

It is therefore worth noting that the rise to prominence of accountability on the part of the historically powerful executive is tied with the need to promote good governance. This term is usually used as a short-hand for arguing in favour of principles of good governance that should be upheld by governments. These principles are:

- Transparent governance;
- Adoption of mechanisms of accountability; and
- Encouraging and promoting participatory democracy.

According to literature, there are various forms of oversight systems that could be adopted by a government. Among others, the following are prominent:

- Oversight and scrutiny of policy and administration, and public accounts committees;
- Oversight on the usage of public finances; and
- Oversight on the implementation of policy.

In terms of these forms, the legislature makes use of portfolio and standing committees to advance its oversight role. This therefore means accountability seeks to address the concern that governments, in this case local governments and their agencies should fulfill their responsibilities. Where problems occur or complaints arise, there should be mechanisms available to hold the executive to account for their actions or omissions.

2.4 OVERSIGHT AND ACCOUNTABILITY ROLES IN THE CONTEXT OF THE SOUTH AFRICAN PARLIAMENT

2.4.1 Oversight and Accountability

The conventional Westminster view on oversight inherited by most of the former colonies of Britain is in most instances adversarial and viewed as the purview of opposition politicians, rather than the legislature as an institution. In this instance, emphasis is placed on ensuring compliance with approved public spending by the executive, (Brugge, 2008).

In the context of South Africa, oversight could be defined as a constitutionally mandated function of the legislature to scrutinise and oversee the executive and other organs of the state. It therefore follows that oversight is a combination of informal and formal, and structured scrutiny exercised by the legislature in respect of:

- The implementation of laws;

- The application of the budget;
- The observation of statute and the Constitution;
- Overseeing the effective management of government departments and state-owned enterprises to ensure improved service delivery.

According to the document entitled, *South African Parliament, Oversight and Accountability Model: Asserting Parliament's oversight role in enhancing democracy* (1994). The functions of oversight include:

- To detect and prevent abuse, arbitrary behaviour or illegal and unconstitutional conduct by government and public entities to protect the rights and liberties of citizens;
- To hold the government to account on how it uses the tax payers' money to ensure efficiency and effectiveness of the operation of government; and
- To ensure that policies announced by government and authorised by parliament are delivered.

On the basis of the above account, it could be easily concluded that in the context of South Africa, the concept of oversight is broad and include a number of aspects, namely, political, administrative, financial, legal, ethical as well as strategic elements.

2.4.2. Definition and Functions of Accountability

Brugge (2008) argues that, accountability could be defined as a social relationship where ministers and their departments, national public entities, and other national bodies such as commissions feel obliged to explain and justify their conduct to the accountability forum, in this case Parliament.

The functions of accountability include:

- To enhance the integrity of public governance to protect the government against corruption, nepotism, abuse of power and other manifestations of inappropriate behaviour;
- To effect democratic control;
- To improve performance, which result in institutional learning and improved service delivery; and
- To promote transparency, responsiveness and answerability in order to ensure public confidence in government, and bridge the gap between the governed and the government.

A distinguishing feature between oversight and accountability is that the former (oversight) involves initiative undertaken by the legislature to scrutinising the actions of the executive, while in case of the latter (accountability), the onus lies with the different Ministers and the departmental officials, public entities and other national bodies to explain their actions to the legislature. It could, nonetheless, be argued that in practice, accountability by departments and government agencies is the outcome of oversight and scrutiny by the legislature.

2.4.3 Accountability and Oversight instruments in the context of the South African Parliament

According to the document entitled, *South African Parliament, Oversight and Accountability Model: Asserting Parliament's oversight role in enhancing democracy* (1994), accountability and oversight instruments adopted by the South African Parliament are classified into several categories, namely, the role played by Committees to oversee the Executive and to ensure accountability on the part of the different organs of the State; the application of plenary processes; as well as the utilisation of activities and reports from institutions of the State that support constitutional democracy to further enhance oversight functions of

Parliament.

a) The practices of committees to effect accountability and oversight

The mandates of the Parliamentary Committees are provided for in the rules of each of the two the Houses of Parliament (namely, the National Council of Provinces and the National Assembly) as well as in Joint Rules. These Committees are responsible for scrutinising legislation, exercising oversight over the activities of government, and interacting with the general public through hearings and requests for submissions before Bills are passed into Acts.

Oversight tools employed by Parliamentary Committees include:

- Oversight visits that include physical inspections;
- Conversing with people;
- Departmental briefing sessions;
- Annual and departmental budget analyses;
- The consideration of strategic plans and annual reports;
- Calls for submissions and petitions from the public;
- Public hearings; and
- Assessing the impact of delivery and developing reports for adoption and making recommendations for the two Houses to consider.

Parliamentary Committees are in essence conducting their business on behalf of the two Houses of Parliament; hence they are expected to prepare reports with recommendations for presentation. Different types of reports are presented by the Parliamentary Committees. These are the Legislation Report, Report on Study Tours, and Report on the Oversight activities of parliamentary committees, International Agreements Report,

Report on legislative proposals by Private members, Budget Votes Reports, Report on Petitions submitted to Parliament, and Report on Statutory Provision.

b) Plenary processes to effect accountability and oversight.

The following plenary processes are utilised to effect oversight:

◆ Budget Votes

Budget votes occur when the Minister of Finance announces the budget projections for the next financial year, as well as the budget votes of each department. The Budget only becomes law once approved by Parliament.

Subsequent to the presentation of the Budget by the Minister of Finance, portfolio committees conduct hearings with the respective departments. During the hearings, the portfolio committees ascertain whether the departments have kept the promises of the previous financial year and spent the tax payers' money prudently. The committees have significant influence in the budget votes of their respective departments. The departmental budgets are debated in the National Assembly and the National Council of Provinces only after the portfolio committees have finalised their engagements with the departments.

◆ Questions

Members of Cabinet are collectively and individually accountable to Parliament for the exercise of their powers and the performance of their function as per Section 92 of the Constitution (Act 108 Of 1996). Members of Parliament use questions as a procedure of holding the Executive accountable. The questions could be put for oral or written reply to the State President, the Deputy President or the Cabinet Ministers on matters

relating to their portfolios. The questions centre mainly on service delivery and policy matters.

◆ **Statements by Members**

This process enables the Members of Parliament to make statements on any matter to the House.

◆ **Statements by Cabinet Members**

This process makes it possible for Ministers to make factual or policy statements in relation to government policy, and executive action. The statement is restricted to 20 minutes with the permission of the Speaker.

◆ **Notices of motion**

Notices of motion is a mechanism used by members of all political parties to bring matters of political importance before Parliament. A notice of motion is given to members and parties to prepare before it could be debate in Parliament.

◆ **Notices without motion**

These motions are moved when the presiding officer calls for any formal motion near the beginning of the sitting. This allows for consultation between parties to obtain consensus on issues that must be brought to the attention of the House.

◆ **Plenary debates**

During plenary debates, mechanisms such as the consideration of reports from parliamentary committees' reports, scrutinising and debating the implementation of policy and budget votes, members' statements and

questions by members of Parliament are used to conduct oversight and draw the attention of the executive to the concerns of the members and/or that of their constituencies.

2.5 SEPARATION OF POWERS IN THE PROVINCIAL LEGISLATURES IN SOUTH AFRICA

2.5.1 Legislative Framework on the Oversight role of Provincial Legislatures

The Constitutional mandate for the Provincial legislatures is clearly spelt out in terms of Chapter 3, Section 41(1)(c); Chapter 6, Section 114(2); Section 118, and Section 133(2) and 133(3)(b) of Constitution of the Republic of South Africa (Act 108 of 1996).

♦ Chapter 3, Section 41(1)(c)

In terms of Section 41(1) (c), "... all spheres of government and all organs within each sphere must provide effective, transparent and accountable and coherent government". This constitutional provision lays a foundation for sound governance across the three spheres of government, including all the other state organs within each of the spheres.

♦ Chapter 6, Section 114(2)

According to Section 114(2), "A provincial legislature must provide for mechanisms:

- (i) To ensure that all provincial executive organs of the state in the province are accountable to it; and
- (ii) To maintain oversight of:
 - The exercise of provincial executive authority in the province, including the implementation of any legislation; and

- Any provincial organ of state.

This section empowers provincial legislatures to hold provincial executive authorities and provincial organs of state accountable and oversee their actions to ensure sound governance and effectiveness.

♦ Chapter 6, Section 118

Apart from ensuring transparent and affective governance, and holding the provincial governments accountable, provincial legislatures are constitutionally obliged to “facilitate public involvement in the legislative and other processes of the legislature and its committees” as per the provisions of Section 118. This constitutional provision binds legislature to put measures in place to promote a participatory system to further enhance accountability to the public in a direct manner.

♦ Chapter 6, Section 133(2) and 133(3) (b)

Section 133(2) states that “Members of the Executive Council of a province are individually and collectively accountable to the Legislature for the exercise of their powers and performance of functions”. In addition, “Members of the Executive Council of a province must provide the legislature with full and regular reports concerning matters under their control” in terms of Section 133(3) (b).

This constitutional provision is in line with the principles of a constitutional democracy as it subjects the executive to oversight and held accountable by a distinct organ, thus making the separation of powers between the executive and the legislature clear. The notion of separation of powers provides for checks and balances in the exercise of executive power.

2.5.2 Oversight approaches applied by Provincial Legislatures in South Africa

Oversight approaches or processes implemented by provincial legislatures include:

- Public participation;
- Reporting junctures in the budget cycle (oversight on the budgets and annual reports); and
- Application of oversight report and fact finding missions (oversight visits).

a) Public Participation

Approaches applied by legislatures in the promotion of public participation range from mass-based participation, for instance, “taking the legislature to the people”, to more refined participation of organised civil society groups such as NGOs, CBOs and experts, especially during committee oversight processes.

b) Reporting junctures in the budget cycle

Reporting junctures in the budget cycle include engaging with quarterly reports during a financial year, oversight on the budgets and annual reports.

c) Oversight visits

Oversight visits are fact-finding missions by portfolio committees. The focus of such visits is mainly on overseeing the implementation of departmental budget and determining whether service delivery plans are

being adhered to.

2.5.3 Gauteng Provincial Legislature Oversight Methodology

The oversight method implemented by the Gauteng Provincial Legislature is referred to as Programme Evaluation and Budget Analysis (PEBA) or Public Service Oversight Model (PSOM). This methodology was informed by the need for a structured, predictable and programmed approach to exercising oversight and holding the executive accountable, as well as the requirements of the Public Finance Management Act of 1999 (PFMA). It is argued that the PEBA methodology is closely aligned to performance budgeting, financial management, reporting and accountability regime of the PFMA. It could further be argued that the methodology (PEBA) gives effect to the Constitutional provisions discussed earlier in this section of the report.

a) Elements of the Programme Evaluation and Budget Analysis (PEBA) and Public Service Oversight Model (PSOM)

The oversight model implemented in the Gauteng Provincial Legislature has three key elements, namely:

- The evaluation of the efficacy of public service programmes (the programme evaluation /analysis element of PEBA that focuses on the effectiveness of service delivery);
- The appropriateness of financial resource allocation and management (the Budget Analysis element of PEBA that focuses on the efficiency of service delivery; and
- The relationships between the four (4) variables of PSOM, namely: priorities, inputs, outputs, and outcomes.

b) Summary of the Oversight Process of the Gauteng Legislature

The oversight process of the Gauteng Legislature can be summarised in five key steps as follows:

- The point of departure is a presentation by a researcher (technocratic input) on the submission of a department, including issues and questions to be considered by the committee. The researcher's input focuses generally on the PSOM variables (inputs, outputs and programmes) that would inform a Committee;
- Presentation by a department on a budget or annual report;
- Public participation;
- Supplementary questions to departments for immediate reply (prior to the end of the 5-meeting process);
- Committee deliberations and the finalisation of an Oversight Report for tabling in the House. The draft oversight report is finalised by the support staff, researcher included, the Committee Chairperson, and sometimes a sub-committee.

c) Successes of the PEBA Methodology

There is numerous success factors recorded as a result of the implementation of this model in the Gauteng Provincial Legislature. The most notable successes are the following:

- Oversight process is beginning to gain "critical mass" in terms of placing responsibility on departments and the executive to respond to a wide range of performance related matters as a result of consolidation of the oversight process across all committees according to time-frames of the budget cycle (financial year);
- The format of oversight reports is specified in advance across all committees to ensure uniformity during engagements with provincial departments and other provincial state organs;

- The oversight approach is highly proactive, that is, it does not rely on / respond to submissions from provincial departments or state organs. The Focused Intervention Studies (FIS), which are planned and structured oversight visits, are used as the primary tool of proactive oversight and a platform intervention in cases of service delivery problems or failures;
- Oversight has graduated to focus both on matters relating to efficiency (budget analysis) and effectiveness (achievement of results), and raised for response by departments and Members of the Executive Council (MECs);
- Recommendations are debated in the House;
- Public participation is both broad-based (which means taking legislature/committees of the legislature to the people) and specific or sectoral (through the attendance by and submissions from NGOs, CBOs and experts);
- A Monitoring and Evaluation Process has been launched for both the quarterly and annual oversight processes, based on the PEBA directives; and
- The Gauteng Legislature has a committee which exercises oversight over both the activities of the Provincial Legislature as well as the performance of the Office of the Premier. Oversight on the Office of the Premier, which articulates the functions of all provincial departments and state organs, as well as conducting Monitoring and Evaluation on overarching and thus ensuring that transversal priorities of government are met.

d) Challenges and Constraints of the PEBA Methodology

While there is a number of successes with the Model as described above, there are equally numerous challenges and constraints. In particular, oversight challenges are experienced in terms of quarterly reports, the budget, public participation and the disjuncture between research input

and Committee deliberations. These are further deliberated upon below.

◆ External constraints that impede the oversight on quarterly reports

Among other external factors that present challenge to the oversight and scrutiny on quarterly reports at the Gauteng Provincial Legislature, the following two appear to be prominent:

- (i) Late submissions by provincial departments and entities. This tendency impact adversely on the programme of the Legislature given the high volume of work that needs to be dealt with and the limited number of meetings; and
- (ii) The lack of a consistent reporting format.

◆ The external constraints that impede the oversight on the budget

The following are some of the major constraints impacting on the oversight and scrutiny on the budget at the Gauteng Provincial Legislature:

- (i) A budget format that is not consistent with the performance budgeting requirements of the PFMA, with clear linkages between PSOM variables (priorities, inputs, programs, outputs and outcomes);
- (ii) The incorrect usage and confusion of the PSOM variables; and
- (iii) By the time the Committees engage with departments, the budget is already printed and fixed. This limits the ability of Committees to scrutinise and effect changes to the current budget in terms of the applicability of priorities and outcomes, performance indicators, targets and financial allocations.

♦ **Public participation**

Public participation is still biased towards the value of attendance as opposed to integrating submissions into committee deliberations and reports.

♦ **The disjuncture between research input and Committee deliberations**

There seem to be a lack of a proper balance between research input and Committee deliberations in that there is an over-reliance on the technocratic input. This disjuncture should be guarded against because it limits debates at committee level and the articulation of pronouncements on political implications of service delivery challenges.

2.6 CONCLUSION

The purpose of this section was to reflect on the existing literature on the subject of separation of powers, as well as highlight what has already been written about the subject. The cases studied are on the oversight role of the South African Parliament, and the experiences of the provincial legislatures in South Africa, with particular reference to the Gauteng Provincial Legislature.

As demonstrated on the background section of this study, the review of existing literature has revealed that the reforms in the governance system of local government in the UK were brought about by the introduction of the Local Government Act of 2000. This Act gave effect to a formal separation of roles between councillors vested with executive decision-making (executive councillors) and those responsible for the scrutiny of those decisions (non-executive councillors). Key lessons learnt from the case of UK and the Wales are follows:

- The introduction of Local Government Act has created a clear split between the executive and the non-executive branches of the municipal councils;
- Executive accountability has been enhanced through the creation of a variety of transparent mechanisms. These mechanisms enabled non-executive councillors to influence, question, evaluate and challenge policies, decisions, as well as the performance of the executive;
- Focused and proactive policy development and review by non-executive councilors in collaboration with their executive colleagues have been made possible;
- The concerns of the communities and the general public are taken into consideration by ensuring ongoing dialogue and promotion of public participation, making information accessible, and providing feedback where appropriate;
- The system puts emphasis on co-operation among different political parties for the purposes of oversight, scrutiny and holding the executive accountable for their decisions and performance, while party caucuses are expected to play very little role if not none; and
- The key success factor of the scrutiny process is dependent on the prioritisation of vital issues on which the scrutiny panels should focus instead of attempting to review and monitor all of the work of municipal councils.

Despite the positive experiences of the UK oversight and scrutiny model for local government, there is nonetheless some level of dissatisfaction with the system on the part of the non-executive councillors. These councillors have a perception that the new governance mechanisms are disempowering them as they believe that they now have a limited role to play in influencing decision-making processes in councils as compared to

the old committee system.

In the case of the South African Parliament, a number of valuable lessons have also been learned in terms of how oversight activities are carried out. In South Africa, it is the primary and overarching role of Parliament to exercise oversight and hold the executive accountable. Oversight in this case is a combination of informal and formal, and structured scrutiny exercised by Parliament in respect of a variety of issues. These include overseeing the implementation of laws, application of the budgets, the observation of statute and the Constitution, as well as overseeing the management of government departments, state-owned enterprises and other agencies of the state in order to ensure improved service delivery. Oversight functions, therefore, include detecting and preventing abuse, arbitrary behaviour or illegal and unconstitutional conduct by government and public entities to protect the rights and liberties of citizens, holding the government to account on how it uses public funds to ensure efficiency and effectiveness of the operation of government, and ensuring that policies announced by government and authorised by Parliament are delivered. In short, the concept of oversight in the context of South Africa incorporates political, administrative, financial, legal, ethical as well as strategic elements.

On the other hand, accountability functions of Parliament include enhancing the integrity of public governance to protect the government against corruption, nepotism, abuse of power and other manifestations of inappropriate behaviour, effecting democratic control, improving performance of state institutions, and promoting transparency, responsiveness and answerability in order to ensure public confidence in government.

The main distinguishing feature between oversight and accountability is that the former involves initiatives undertaken by the legislature to scrutinise actions of the executive, while in case of the latter, the onus lies with the different members of the executive and the departmental officials, public entities and other national bodies to explain their actions to the legislature. It could nonetheless be argued that in practice, accountability by departments and government agencies is the outcome of oversight and scrutiny by the legislature.

Parliament has adopted a variety of accountability and oversight mechanisms to enable it to meet its constitutional mandate. These incorporate oversight activities of the parliamentary standing and portfolio committees, oversight activities by the plenary, and the utilization of activities and reports from state institutions responsible for supporting constitutional democracy and other statutory bodies.

Provincial Legislatures are also constitutionally empowered to adopt mechanisms that would ensure that all provincial executive and other organs of the state that fall within its jurisdiction are accountable to it. These mechanisms should in addition enable the maintenance of oversight on the manner in which the executive authority and other provincial organs of the state execute their authority.

Furthermore, Legislatures are mandated to facilitate the involvement of the public in legislative and other processes of these institutions and their committees. Three oversight approaches are implemented by provincial legislatures, namely; public participation, the scrutiny and analysis of departmental budgets and annual reports, and the application of oversight reports as well as fact-finding missions or oversight visits.

At Local Government level, the literature review revealed that newly implemented Section 79 Portfolio and Standing Committees of the City of

Johannesburg are largely modelled around committees of Provincial Legislatures, particularly the Gauteng Provincial Legislature.

CHAPTER THREE

RESEARCH METHODOLOGY

3.1 INTRODUCTION

This chapter outlines the research design and methodological approach utilised to undertake this study. In the main, the study is a qualitative, and case study approach in order to gain an in-depth understanding of the respondents of the City of Johannesburg's governance model. The selection of the City of Johannesburg as a case study is explained, as well as the selection of the respondents. Furthermore, the researcher discusses how data was analysed and interpreted. Lastly, the researcher discusses the reliability and validity of the data and ethical considerations will be maintained.

Documentary analysis, literature review and in depth interviews are discussed under this chapter. The researcher has indicated how data collection was undertaken, primary, secondary sources of data as well as sampling strategies for the primary data sources. Furthermore, the researcher will discuss how data was analysed and the reliability and validity of the data and how this was maintained.

3.2 RESEARCH APPROACH

The researcher has chosen the qualitative approach in conducting this study. This is due to the fact that qualitative approach is interactive in nature and the researcher is a participant in the research and is able to associate with the respondents. It is premised on the respondents' views on the matters the study would like to understand.

The qualitative method developed as a counter to the quantitative school

of thought. This method is also termed the constructivist approach or naturalist (Lincoln and Guba, 1985). Some refer to the qualitative research method as interpretative approach (Quartz, 1992). Unlike in the quantitative research where a broad view is critical, qualitative research is inductive. Categories emerged from the respondents rather than from the researcher.

Creswell (1994) advises that qualitative researchers should therefore be honest when interpreting social reality and rely on voices and interpretations of the respondents. In the qualitative approach the researcher is very active and engages with the respondents to generate a detailed understanding of the social reality under study.

The distance between the researcher and the researched is reduced as a researcher can live with the respondents while studying them and this is called ethnography. The language reporting for qualitative research uses researcher-value laden vocabulary and uses words such as discover, understanding and meaning (Creswell, 1994). Qualitative language is personal and informal.

Furthermore, Welman (2005:6) argues that the qualitative research method was selected because of its ability to interpret and understand human and organisational behaviour. Hesse-Biber (2006:5) argues that, this approach enables the researcher to deal with the holistic nature of knowledge building and knowledge production through an ongoing interplay between theory and methods, researcher and researched.

The qualitative research approach was useful for it does not just assist in understanding how the committees operates but also to learn how that came about and to gain better insight behind some underlying reasons behind the practices.

Hebber-Biber and Leavy (2006:4) argue that the qualitative method is aimed at gaining complex knowledge directly from people with certain attributes or life experiences. The qualitative approach according to Gerring, 2007:10 is often associated with case studies as a result it is relevant for this research.

3.3 RESEARCH DESIGN

The researcher has employed a research method that combines secondary data sources and in depth interviews in the City of Johannesburg municipal council with both the executive and non-executive councillors, administrative support official from both the executive and legislative arms of council.

The study is exploratory in the sense that there is limited literature and research on the implementation of the new local governance model in the City of Johannesburg. As stated in the objectives of the study, the researcher's aim was to develop a deeper understanding on the institutional arrangements in place to implement this policy as well as developing knowledge from which further inquiry on the subject may be built on.

As acknowledged that the results of this study could not be common to other cases due to peculiar realities the City of Johannesburg finds itself in. It was not the intention of the researcher to depend on other cases elsewhere in the world but to understand the theory of policy implementation and also contribute to the debate on institutional arrangements and policy implementation on this matter of oversight and accountability at the sphere of local government with a particular reference to the City of Johannesburg new governance model.

Yin (1994:20) agrees that case study researchers are not pre-occupied with generalisation to broader populations but to simplifying and

contributing to theoretical propositions. The researcher goal in this research report, as stated in the objectives, is to contribute to knowledge generation and provide a foundation from where further research on the subject can be built as well as contributing to knowledge generation in an attempt to address the existing knowledge gap.

3.4 CASE STUDY

Willing (2008:74) argues that, a case study is not by itself a study methodology but a research approach. To provide a rounded understanding of social phenomenon case study researchers employ different methods. A case study then, according to Leedy and Ormrod (1984:149), Creswell (1994:85) and Neuman (2006:40), is a detailed analysis, investigation or exploration of a social phenomenon bounded by time, activity and space. Yin (1994:23) defines a case study as an empirical inquiry that investigates social phenomenon within its real life context when the boundaries between that particular social phenomenon under study and context are blurred. These definitions emphasise the fact that a case study is characterised by a clear unit of analysis that bound space and that a case study is bound by time. Furthermore in case study the context is thoroughly studied so as to understand the social phenomenon in its totality as well as in its real life situation. In this study the unit of analysis is the institutional arrangements in place for implementing of the new governance model in the City of Johannesburg as approved by council in the term of local government commencing in 2006 to 2011 as a pilot then.

3.5 PRIMARY DATA

Primary data was generated from in depth interviews with respondents who participated in the study. The next subchapter discusses the in depth interviews and the informant selection procedure that the researcher

followed.

3.6 IN-DEPTH INTERVIEWS

This is a qualitative method that has the ability to generate in depth, detailed and rich information on the subject matter. Semi-structured interviews provided the researcher with an opportunity to hear respondents speak about the institutional arrangements in place to implement the oversight and accountability policy as implemented by the City of Johannesburg. In a semi-structured interviews, questions posed by the researcher acted as stimulus and triggered the respondents to speak in detail about this particular social phenomenon (Willing 2008; 24). Troachim (1994) recommends semi-structured in-depth interviews for an exploratory study. Jolley and Mitchel (2001:67) note that qualitative researchers have the ability to get to the bottom of the subject by probing and follow up questions that the researcher may pose during interviewing. Muyangwa and Imenda (1996:101), Neuman (2006:151), and Mouton (1996:47) note that the exploratory and inductive nature of in depth interviews gives it weight as a research methodology.

In depth interviews are relevant to people who can engage in matters of policy at a higher level and the researcher hoped that in depth and detailed information can be generated to understand the institutional arrangements in place to implement the oversight and accountability model as the policy had intended. Semi-structured interviews are ideal because the research needs to be flexible so that all aspects about the institutional arrangements for the implementation of the oversight and accountability are interrogated.

The researcher thus has been able to move the conversation in the direction that answers the research questions and fulfilled the goals of the research as was originally intended. The researcher managed to avoid

leading questions during interviews.

The respondents for the semi-structured interviews were categorised as follows:

- The **Municipal Manager** of the City of Johannesburg
- **Speaker** and **Secretary of Council** in the City of Johannesburg
- **Members of the Mayoral Committee (MMCs)** in the City of Johannesburg:
 - *Finance, Economic Development, Health, Housing, Infrastructure & Services, and Community Development*
- **Chairpersons of the Oversight Committees** (Section 79 Committees) in the City of Johannesburg for:
 - *Finance, Economic Development, Health, Housing, Infrastructure & Services, and Community Development*
- **Executive Directors** in the City of Johannesburg for:
 - *Finance, Economic Development, Health, Housing, Infrastructure & Services, and Community Development*

The rationale for only focusing on the portfolios that are mentioned is that, other than the fact that they constitute 50% of the total number of portfolio committees in the municipal councils; the experience from the initial evaluation study has taught us that one is likely to get comparable responses between committees. Insistence on studying all committees is likely to lead to duplication. Furthermore, and particularly with regards to the Finance portfolio, we are likely to gain much greater insight and adequate indication of where sector departments are in terms of adherence to their plans by looking at their expenditure patterns, more so whether these department stick to procedures and regulations when procuring goods and services.

Lastly, the chosen portfolios were sufficient in providing a detailed picture on the issues that this study seeks to understand.

Table 1 below is a summary of the interviews. The table further shows all the interviews that were successfully completed and those that were not completed, and the reasons for non-completed.

Table 1: Respondents for the structured In-depth Interviews

<i>Office</i>	<i>Designation</i>	<i>Number of Completed Interviews</i>	<i>Comment</i>
Office of the Executive Mayor	• The Executive Mayor • The Executive Director: Central Strategic Unit • The Executive Directors: Transport Planning	Two (2)	• The Executive Mayor could not be interviewed due unavailability. • Interviews were successfully completed with both EDs
Office of the Municipal Manager/ City Manager	• The Municipal Manager (City Manager)	Zero (0)	• The City Manager could not be interviewed due unavailability
Office of the Speaker	• The Speaker of Council • The Secretary of Council	Two (2)	• Both the Speaker and the Secretary of Council were Interviewed
Members of the Mayoral Committee (MMCs)	• Members of Mayoral Committees	Six (6)	• Six (6) MMCs were interviewed. • Four MMCs could not be interviewed due unavailability
The Whippers	• Chief Whip of Council	Zero (0)	• The Chief Whip could not be interviewed due unavailability
Chairperson of Committees	• Chairperson of Committees	One (1)	• Interview successfully conducted with the Chair of Chairs

Source: Own (2015)

As can be seen from the table above, interviews could not be conducted

with the intended respondents in certain instances due to unavailability. That was particularly the case with the Executive Mayor, the City Manager and the Chief Whip of Council.

3.7 FOCUS GROUP DISCUSSIONS

A focus group is defined as a group of people selected for their relevance to a study that is moderated by a trained facilitator in a series of discussions designed for sharing insights, ideas, and observations on a topic of concern, comprised a group of 8 to 10 people, who engage in a discussion on a particular subject for 45 to 60 minutes. Each person is given an opportunity to relate their views and experiences on the subject, while the moderator presents topics in such a way that they trigger discussions. These groups could potentially generate rich information through data collection in a discussion form. Gathering information in a discussion form is particularly important as it provides the respondents an opportunity to relate their individual experiences while also engaging in some form of a group discussion. Respondents get the opportunity to present common or differing views, while illuminating the subject further (Neuman, 1998).

The focus group discussions were held with members of the various Section 79 committees. The rationale was to solicit inputs on the experiences and impressions of ordinary committee members about the oversight models. Studying these committees allowed for cross-referencing while also guaranteeing consistency in terms of successes and challenges facing the oversight responsibility.

Table 2: Respondents for the Focus Groups

<i>Office / Structure</i>	<i>Designation</i>	<i>Number of Participants</i>	<i>Comment</i>
Section 79 Committees	Members of Section 79 Oversight Committees, Area Based Committees, and MPAC	Twenty Nine (29)	Focus Group took place
Chairpersons of Committees	Chairpersons of Portfolio Committees, Area Based Committees & MPAC	Nine (9)	Focus Group took place
Minority Parties (ID, CDP, IFP, and UDM)	Whips	Four (4)	Focus Group took place
Office of the Municipal Manager	Executive Directors and Directors	Sixteen (16)	Focus Group took place
Office of the Speaker	Managers	Three (3)	Focus Group took place

Source: Own (2015)

As can be seen in Table 2, the focus group with Section 79 Committee members was particularly large far beyond the norm in terms of the number of participants. The one with managers in the Municipal Manager's office was also large, but not too much beyond the norm.

3.8 ANALYSIS OF COMMITTEE OVERSIGHT REPORTS

Analysis of committee oversight reports has served two main purposes, in that it has been able to assess the quality of the reports, including the extent to which the produced reports address issues of concerns for councils, and assisted in corroborating the assertions made by respondents. Reading the reports with these observations in mind, the researcher has therefore been able to ensure that he is able to answer the questions of functionality and accountability, which formed the bedrock of this study. In essence, the thorough reading and analysis of the committee reports assisted the researcher in demonstrating the extent to which the

committees make impact.

3.9 LIMITATIONS OF THE STUDY

It should be noted that this study like any other would have some constraints. These constraints relate to the fact that there has not been much written on the matter of oversight and accountability at the level of local government. This is anticipated due to the fact that academic research builds on previous research and uses existing research to fill in the knowledge gap (Mouton 1996, Creswell 1994, Neuman 2006:110). The researcher envisages that the study will be denied an academic framework to use as the starting point as well as that which it could be measured against.

This then means that the research will be based on the views of those who will be interviewed, effectively making it a qualitative study with some elements of a case study reference and also relying on the secondary data premised on this phenomenon elsewhere. The limitation is therefore that this research will rely heavily on the impressions of the people interviewed. This will mean that the information which could be used to draw conclusions and make recommendations will be based on experiences that various respondents had in working on and accounting to the Section 79 committees. Furthermore international literature will be consulted, due to the fact that the model in the City of Johannesburg is the first of its kind in the country, and therefore would like to see how a similar policy has been rolled out in those cases. This is not meant to under-value the usefulness of qualitative research, on the contrary, has a lot of value.

It is also anticipated that the insights from international experience on this phenomenon of oversight and accountability at local government level will assist with regards to institutional arrangements in the implementation of oversight and accountability at the sphere of local government. Bell (2007:11) makes the point that the extent to which findings from the case

study can be generalised to other examples depends on how far the case study example is similar to other cases of its type.

Babbie (1998:91) argues that one of the weaknesses of exploratory research is that they seldom provide satisfactory answers to research questions. This is because there is too much room for flexibility in exploratory research. It must be noted that the researcher acknowledges this weakness, however maintains that the study will generate useful insights and questions for other researchers to take the study forward.

The researcher is aware that, like in all case studies, his views and values may influence the direction of the findings. However the researcher will make efforts to limit and minimise bias throughout the research processes. An interview guide which was designed helped the researcher during interviewing process in data collection and analysis. In the analysis quotes will be taken from the transcripts to avoid the voice of the researcher over clouding the evidence from the respondents.

3.10 VALIDITY AND RELIABILITY

Van der Wal (2004:49) argues for two main criteria for testing validity and reliability. Validity seeks to understand how well an instrument was in measuring the matter it is supposed to measure. Reliability on the other hand speaks to matters of accuracy and consistency a measuring instrument was in dealing with the matter being investigated.

This means that the researcher is expected to be consistent and to ensure that a correct instrument is utilised for measurement. According to Mc Millian and Schumacher (2006:355), to deal with the issue of validity and reliability in a qualitative research, researchers have to record the interviews or focus group discussions to ensure completeness of the conversations and that provides adequate detail for reliability checks. The

researcher has had to request consent from informants for recording the conversations. This also assists in backing up data and sources of validating the information.

3.11 ETHICAL CONSIDERATIONS

Creswell (2003:62) argues that social researchers should approach research ethically and morally. Similarly, Neuman (2006:129) agrees that researchers should observe the research code of conduct if their moral and professional obligation is to be achieved. The researcher, though pursuing knowledge and respondents experiences, undertakes not to compromise respondents' rights in pursuit of knowledge. Even though the researcher works in the local governance sector, he remained impartial and did not compromise the subject and the findings of the study. The researcher explained in detail the background, objectives and purposes of the research to the potential respondents before data collection.

The researcher also explained that participation in the research is voluntary and no informant will be forced or enticed to participate in the study and that the in depth interviews will be recorded for the purposes of transcription. In relation to the fact that participation, the participant were informed by the researcher, that it was on voluntary basis and that they had a right to stop the interview at any time if they felt uncomfortable and they were be assured that they will not be reprimanded for stopping the interview.

The confidentiality of respondents had to be secured and the information they gave the researcher was only be used for the purposes of this research only. The researcher has made use of symbols like, A, B, C and so forth to ensure that the respondents' identity remains confidential. Names of the participants were deleted from the transcripts and in the write up of the report their names were also not mentioned to maintain

anonymity and protect the respondents. The researcher deleted respondents' names from transcripts before submitting the research report. Furthermore, the researcher conducted himself with integrity during data collection processes and throughout this research.

Creswell (2003:66) puts forward that ethical considerations do not stop at the level of data collection and analysis but extends to write-up and dissemination of the report. The researcher has attempted to do that by ensuring that anonymity of the respondents who took part in this study for academic purposes is protected and that the results of this study will not be disseminated.

3.11 CONCLUSION

This chapter has discussed the research methodology that was used in collecting and analysing data through this exploratory study. The chapter discussed different research methods and the reasons for each of the above discussed methods were put forward. The research also would like to mention that the in-depth interviews with different role-players in the City of Johannesburg oversight model enabled the researcher to reach the conclusions in the following chapter.

CHAPTER FOUR

PRESENTATION AND ANALYSIS OF DATA

4.1 INTRODUCTION

This chapter discusses the research findings based on the data collected through in-depth interviews, focus groups and secondary documentary research of this exploratory study conducted in the City of Johannesburg. The transcripts of the in-depth interviews and focus groups were recorded by the researcher in order to ensure confidentiality of the respondents. Furthermore, the researcher familiarised himself with the council documents whereby the new governance was being discussed and subsequently approved by council.

Although it was a majority view that the Oversight Committees at the City of Johannesburg are functioning well, and to an extent, adequately discharging their responsibility, the study found that there were numerous challenges that face these Committees and the Oversight Model in general. The following were identified by the respondents as some of the key challenges facing the Committees and Model:

In particular, the chapter provides details perceptions of respondents as detailed in the methodology section. The main areas explored in this chapter are as follows:

- Composition and structure of the oversight committees;
- Overall perceptions of the respondents regarding the COJ Oversight Model in general;
- Views of the Respondents on the functionality of the Model two years after implementation;

- Perceptions of interviewees regarding the effectiveness of the Model as an oversight mechanism in the local sphere of government; and
- Key challenges facing the Model according to the respondents.

For ease of reporting and consistency, the findings of the research will, as much as possible, be presented along the key themes listed above.

4.2 THE COMPOSITION AND STRUCTURE OF THE OVERSIGHT COMMITTEES IN JOHANNESBURG

The table below is a tabular summary of the oversight committees that are currently in place and in operation at the City of Johannesburg Metropolitan Municipality. Of particular significance to note from this table is the size of the committees in terms of the number of committee members or councillors serving on each committee, the level and type of support received by each of the committees in terms of Committee Coordinators and/or Researchers, as well as the alternate role played by some committee members.

The table illustrates that ten Section 79 Portfolio Committees have been established in the City of Johannesburg to replace the traditional Section 80 Portfolio Committees. The Portfolio Committees are a mirror image of the administrative departments of the City. In addition to the Portfolio Committees, a Standing Committee on Public Accounts (commonly referred to as the Municipal Public Accounts Committee - MPAC) has also been established. As demonstrated in the table, all these Oversight Committees, including the MPAC, are chaired by Councillors from the City's ruling party (i.e., African National Congress - ANC). The number of permanent committee members ranges between 15 and 20, averaging at about 17 members per Committee. The latter is evident of the large size of the municipal council in the City of Johannesburg, which may not be the case anywhere in the country, let alone the province of Gauteng.

Furthermore, the table below demonstrates the finding that all the oversight committees are supported by a Committee Coordinator and a Researcher, although in almost all cases, a single team made of a Coordinator and a Researcher serves two committees.

Table 3: List of Section 79 Oversight Committees in Operation in the City of Johannesburg

<i>Portfolio of Section 79 Committee</i>	<i>Committee Chairperson Elected?</i>	<i>Chairperson's Political Affiliation</i>	<i>Number of Permanent Members (P)</i>	<i>Number of Alternates Members (A)</i>	<i>Total Number of Members (P+A)</i>	<i>Committee Coordinator & Researcher ?</i>
Environment & Corporate Services	Yes	ANC	14	3	17	Yes
Development Planning & Urban Management	Yes	ANC	17	11	28	Yes
Community Development	Yes	ANC	16	9	25	Yes
Finance	Yes	ANC	15	9	24	Yes
Economic Development	Yes	ANC	16	5	21	Yes
Health	Yes	ANC	17	7	24	Yes
Housing	Yes	ANC	17	11	28	Yes
Infrastructure & Services	Yes	ANC	17	9	26	Yes
Safety	Yes	ANC	20	10	30	Yes
Transport	Yes	ANC	17	8	25	Yes
Public Accounts Committee	Yes	ANC	17	6	23	Yes

Source: Own (2015)

While this study focused specifically on committees that replaced the traditional Section 80 Portfolio Committees, it is important to note that there are other Standing Committees in the City of Johannesburg that are not accounted for in the table above. Among such committees are the

Petitions and Public Participation Committee, the Rules Committee, Ethics and Disciplinary Committee, Audit as well as Programming Committees.

4.3 RESPONDENTS' PERCEPTIONS OF THE OVERSIGHT MODEL

The study found that there is a widely held perception among members of the executive, both politically and administratively, that the new governance and oversight model implemented in the City is a step in the right direction towards the ideal of a separation of powers at the local sphere of government. There was also a view among this cohort that the model was “reaching another level of accountability”, despite a variety of challenges continuously experienced by all stakeholders within the municipality (A, Interview, 17th November, 2014).

For this group of respondents (B, Interview, 17th November, 2014), the usefulness of the model lies in the fact that as members of the executive, they are no longer viewed as “accounting to themselves, but rather to the council in general through the new oversight committees chaired and manned by non-executive councillors”.

Some of the respondents (B, Interview, 17th November, 2014) expressed a view that the traditional arrangement in terms of Section 80 portfolio committees was “a dangerous practice because it did not allow members of the executive to look at their performance from a different perspective and thus learn from their own mistakes and strive to improve their performance”.

Among a few that held a different perspective, the main area of concern was the feeling that the new governance model, emphasising oversight and scrutiny, sometimes serves as an “impediment in the normal execution of duties for the Executive”. Those that viewed the oversight model as an impediment argued that “some members of the Executive are no longer free to take executive decisions just in case that would be seen as inappropriate by the oversight committee they dealt with”(C, Interview,

18th November, 2014).

This latter view was however strongly opposed by members of the opposition and minority political parties in the council (D, Interview, 19th November 2014). For this group of respondents, “there is a great deal of merit in the model”. According to them, this model provides them an opportunity to closely monitor the performance of the municipal executive much better than it is the case during the general council sittings.

Further to the views of the members of the executive and that of the opposition and minority parties discussed above, there was a view from those in the Office of the Speaker, which pointed mainly at the issue of the oversight committees’ legitimacy and authority.

For the respondents (E, Interview, 20th November 2014) in the Speaker’s Office, whom these committees are a part of their key responsibility, the model is “a good attempt at enhancing sound governance in local government”.

However, the lack of a clear legislative framework governing this model at the local sphere, vis-à-vis the provincial and national spheres, will always pose a threat to the relevance and the effectiveness of the model. They, in addition, submitted that the executive has in the past “resisted the model” precisely because of this legislative gap. They, however, hastened to recognise that “things have improved for the better now” despite there being no legislative changes to entrench the new governance model. Furthermore, for this group of respondents, “gaps still exists and the model could be improved even more” (E, Interview, 20th November 2014).

4.4 FUNCTIONALITY OF THE OVERSIGHT MODEL IN JOHANNESBURG

Functionality in the context of this study referred to aspects of the oversight model that deal with the operations of the committees rather than the “usefulness”, which is dealt with later in this report under the

“effectiveness of the model”. In this particular case, the study looked at the issue of committee existence, appointment or election of committee chairpersons, as well as the general perceptions or views of respondents in order to assess the functionality of the model.

As observed in the preceding sub-sections, the issue of the existence committees and appointment or election of the committee chairpersons has been positively demonstrated, thus presupposing a positive assessment regarding the functionality of the model or the oversight committees themselves. As it concerns the respondents’ perception, there was more convergence on this view than divergence. This is to say that the study participants were generally of the view that the Section 79 Oversight Committees are adequately functional in that they do exist, have chairpersons in place, and that committee meetings do take place (A, Interview, 17th November, 2014).

Representing the executive and the legislative arms (Interviews A, B and C, 17th and 18th November, 2014) respondents from both sides argued that the functionality of the Section 79 Oversight Committees is, however, ‘basic’ and not yet ‘optimal’. Basic functionality, according to the respondents, meant that:

- the Oversight Committees are able to meet once per month as scheduled;
- the committees have defined objectives and year plans;
- the Committees do prepare oversight reports on the performance of departments they are responsible for, which are ultimately presented to Council with recommendations; and
- The committees have clear terms of reference.

There is, nonetheless, a general consensus among the respondents that the Oversight Committees could do more in terms of oversight and

scrutiny, including holding the executive accountable, which is more a matter of 'efficiency and effectiveness' as indicated earlier. In order for Committees to achieve this goal, the level of committee functionality would need to reach an optimum level, which according to the respondents would involve the following:

- Ensuring that the Oversight Committees are empowered and capable of holding the municipal departments and the Municipal Owned Entities (MOEs) accountable on every aspect of their mandate.
- Having the ability to ask the "right" questions to the departments and the MOEs.
- Oversight Committees are in a position to focus on oversight and scrutiny aspects that will impact on the functionality and efficiency of the departments and the MOEs. An example provided in this regards was that of the Section 79 Oversight Committee on Safety, which is argued to have not as yet focused its energies on by-law enforcement matters.
- Finally, ensuring that the Oversight Committees are adequately capacitated to scrutinize reports and closely monitor expenditure patterns of the municipal departments and the MOEs.

4.4.1 CAPACITY BUILDING

Capacity building was identified as one of the key components that would ensure the functionality of the Oversight Model of the City of Johannesburg. In this context, capacity building referred to training for committee members and chairpersons, the allocation of support staff, the provision of office space and other tools required by the committees to execute their duties. In essence, capacity building referred to both skills development on the part of committee members, as well as resource allocation in its broad sense (Interview A, 17th November 2014).

In this regard, the study found that there were numerous concerns around training and the general empowerment of members of the Section 79 Oversight Committees as was the case during the initial study conducted the Gauteng Department of Local Government in 2007. Respondents representing the non-executive councillors, the Office of the Speaker, some executive councillors (MMCs), and the officials argued that not much has been done in terms of equipping members of the Oversight Committees with the necessary skills to perform oversight and scrutiny. There was a general consensus across different categories of respondents that sector specific training is required by all the Section 79 Committee members and that needs to be done as a matter of urgency (E, Interview, 20th November 2014).

In addition, members of the opposition and minority political parties have raised concerns with regard to what is seen as 'unfair and biased' selection of Councillors nominated to undertake study tours D, Interview, 19th November 2014). Among these respondents, there was a view that "empowerment of the Oversight Committee members through study tours is not equitable as it appears to be reserved for some members of the committees rather than all". They argued that only members of certain political parties are sent on study tours which should rather be made available to all the section 79 Oversight Committee members regardless of which political party they belong to, or the party's level representation in the municipality.

In as far as the provision of administrative and physical support, in terms of office space to the Section 79 Oversight Committees is concerned; it was observed that there have been significant improvements as compared to what was discovered during the initial study conducted by the Gauteng Department of Local Government in 2007. The current study found that coordinators and researchers have been appointed for all the committees. Respondents unanimously agreed that "strides have also been made in accommodating the support staff, although much could still be done to

further improve the resource provision.” Some of the respondents reported a view that a separate building would be more appropriate for the legislative arm of Council as it is done at the provincial and national spheres. They argued that this would assist in drawing the line between the two arms of council (E, Interview, 20th November 2014).

A development that was highly commended and hailed by almost all the respondents was that all the non-executive councillors have in recent times been allocated laptop computers, that are further equipped with access to e-mail and internet connection. This was viewed by the respondents as “a positive development that would, in time, assist the non-executive Councillors to perform their oversight and scrutiny responsibility effectively and efficiently as they would be having the working aids they require”.

4.4.2 THE FUNDING OF THE OVERSIGHT STRUCTURES

Similar to the issue of skills development and allocation of a dedicated working space for the Oversight Committees, the issue of funds and funding model was viewed as an important factor influencing the functionality of the Oversight Model, thus investigated.

A respondent, whose responsibility involves, serving and supporting the Oversight Committees, reported that “initially the executive did not allocate resources to fund the model even if the separation powers model was adopted as a Council resolution”. The respondent further went on to remonstrate that “it took some time, about twelve months, for the executive to allocate financial resources to the legislative arm.

There was, nonetheless, consensus among different respondents that the situation has in recent times improved in terms of funding and the allocation of financial resources to the Committees. The biggest area of concern was the fact that the legislature is expected to appear before the Budget Panel chaired by the MMC for Finance to justify what should be

allocated them financially. The respondents, especially those representing the legislative arm, retorted that “the current arrangement directly contradicts the notion of separation of powers because the executive still has an upper hand in the allocation of resources to the legislature”. In their view, “a funding model appropriate to the current governance model that emphasises the separation of powers between the two arms needs to be put in place”. In essence, a funding model similar to the one applied in respect of the Provincial Legislatures and the National Parliament was identified and singled out as the model to replicate.

In conclusion, the respondents lamented the perceived silence and apparent lack of clarity and policy direction from the national government on the funding model of Oversight and Scrutiny at the local government sphere of government. In this regard, the respondents indicated that “a national policy on the funding of the oversight model at the local sphere of government would make it easier for the oversight committees to gain recognition and perform their oversight duties more efficiently” (Interviews, A, B, C, D and E, 17th to the 20th November 2014).

4.5 AN ASSESSMENT OF THE EFFECTIVENESS OF THE MODEL: IS THE MODEL PRODUCING RESULTS?

An assessment on the functionality of the Oversight Committees was by itself not adequate to determine whether the City of Johannesburg’s Oversight Model was achieving its objectives or not in terms of holding the executive accountable. The assessment on functionality had to be supplemented with an exploration on the effectiveness of these Committees.

In context of this study, the investigation on the effectiveness involved ascertaining whether the Oversight Committees were indeed fulfilling their core mandate of ensuring that the members of the executive are held accountable, including whether the Committees efficiently perform the scrutiny and oversight role through the promotion of meaningful debates in

Council as well as encouraging sound governance in the Municipality. In short, the question to be answered was whether the City of Johannesburg's Oversight Model was achieving the results All Interviews A, B, C, D and E on the week of 17th November 2014) .

4.5.1 ABILITY TO HOLD THE EXECUTIVE ACCOUNTABLE

When asked whether, in their view, the Section 79 Oversight Committees at the City of Johannesburg were successfully achieving the objective of holding members of the executive accountable, the respondents were generally positive in their responses. This view was, however, hastily qualified with a submission that "it could still improve". In elaboration, the respondents reported that "the Model has evolved overtime, and different stakeholders in the Municipality have undergone a steep learning curve in accommodating the Model into the institutional makeup of Municipality". In other words, the respondents were of the opinion that the Model was moving towards bringing about the desired results, even though the Model has been met with numerous challenges associated with acceptance and legitimacy (All Interviews A, B, C, D and E on the week of 17th November 2014) .

4.5.2 ABILITY TO UNDERTAKE SCRUTINY AND OVERSIGHT ROLES

Through the interviews and focus group discussions held with different respondents from the Municipality, it was established that the Section 79 Portfolio Committees do indeed undertake their oversight and scrutiny roles as envisaged. However, the respondents emphasized that, for a variety of reasons, some Committees are more effective than others. One of such reason stated by the respondents was the caliber and personality of the Committee Chairpersons, along with the quality of the support staff, notably Committee Researchers. With this assertion, the respondents clarified that in cases where the Committee Chairperson is well informed about his/her roles and responsibilities, and he/she is confident about

his/her work, including having the necessary skills, such Committee(s) tended to be more efficient in terms of performing their scrutiny role.

There was, nonetheless, a general consensus among the respondents that “the Model has evolved overtime and the majority of the Committee members now have a better understanding of their roles as compared to the initial stages of the implementation of the model”.

4.5.3 MEASURING OVERALL EFFECTIVENESS OF THE OVERSIGHT COMMITTEES

In addition to asking respondents’ perceptions on the ability Committees to hold the members of the executive accountable, including their aptitude to perform oversight, the research questions were extended to investigate other aspects of the effectiveness of the Committees by interrogating four (4) additional elements of effectiveness. These elements were:

- Resources and support at the disposal of the Oversight Committees;
- Kind of oversight mechanisms/activities undertaken by the Committees to ensure accountability;
- Consistency and frequency of meetings held by the Oversight Committees , including attendance by members; and
- Number and quality of oversight reports generated by the Oversight Committees.

In essence, these four elements constituted supplementary tools for measuring the effectiveness of the Oversight Committees over and above the perceptions of the individuals and groups interviewed during the study.

a) Resources and support at the disposal of the Oversight Committees

The issue of *resources and support* focused primarily at the nature and extent of financial and physical support the Committees enjoyed in order for them to be able to perform their oversight responsibility. The need to focus on this aspect was largely informed by the findings of the initial study, in which it was found that lack of financial support, physical space and support personnel hindered the Committees from performing the oversight and scrutiny role as effectively as was expected of them.

The findings of the current study demonstrate that there has been a significant improvement in this regard. The study found that there was a general agreement among respondents that the situation has improved immensely between now and the early days of the implementation of the model. Significant strides have been made in terms of increasing personnel in the Office of the Speaker, notably, the appointment of full-time Coordinators and Researchers for the Section 79 Committees. Although the level of support may not be ideal, as demonstrated in Table 1 earlier in this report, the Committees are now able to draw on the support of a Researcher and Committee Coordinator/Administrator whenever necessary.

b) Analysis of the oversight mechanisms and activities employed by Committees

The study found that the Oversight Committees at the City of Johannesburg employ different mechanisms and embark on a variety of activities in order to fulfill their oversight and scrutiny role. Among others, it was found that the Section 79 Oversight Committees regularly embark on oversight visits, make requests for departmental reports for scrutiny purposes, as well as inviting Members of the Mayoral Committee and executive officials to clarify issues of concern before the Committees.

According to the respondents, oversight visits are sometimes announced in advance, but at times no prior announcements are made. The latter are commonly referred to as “unannounced oversight visits” because they take place without prior notification to the members of the executive responsible for executing the function in question. According to the members of the Oversight Committees, these are the most popular and preferred as they enable the Committees to find out the status of programmes and projects on the ground without the influence of executors. It was further established that these visits have in the past assisted Committees to verify claims made in reports from the administration, which in certain instances were proved to be inaccurate. In corroboration of this assertion, a respondent from the executive pointed out that “officials are now thinking twice before making certain claims regarding service delivery and outputs in their reports because they are aware that such claims would be verified by means of unannounced oversight visits”.

In terms of the departmental reports and invites to the Members of the Mayoral Committee, the respondents (All Interviews held on the week of 17th to the 20th November 2014) clarified that this mechanism largely involves request for submission of project status reports on one hand, and requests for MMCs to submit departmental reports and making presentations to the Oversight Committees. In terms of the latter, the Committees engage the member of the executive involved for clarity and accountability reasons.

c) The number of meetings held by the Oversight Committees

In order to fulfill their oversight and scrutiny role, the study found that, apart from attending and participating in ordinary meetings of Council on a monthly basis, members of the Section 79 Oversight Committees also meet once a month in order to attend to the business of their portfolios. As one of the respondents submitted, “These monthly meetings are usually combined with oversight visits”.

Further on the issue of Oversight Committee meetings, the study established that Committee members do not always have adequate time to scrutinize departmental reports because of their part-time councillor status. This, according to one respondent “negatively impacts on the effectiveness of the Committees as the members only have a limited amount of time to perform the scrutiny work due to them being part-time councillors”. This concern was also echoed by a respondent from the Office of the Speaker, who argued that “because the Oversight Committees are constituted by part-time Councillors, some of which have primary jobs outside of Council, they have limited, or inadequate, time to perform the Committee work”.

d) The number and quality of reports generated by the Committees

The fourth and final measure of *effectiveness* designed by the research team was the number and quality of reports generated by the oversight committees. With this measure, the research study aimed to establish whether the oversight reports collated and produced by the Committees provide an adequate account of their Portfolio Committees performance.

When asked for their views, respondents representing different stakeholder groups reported differing views. On one hand, those from the legislative arm, *vis-à-vis* those from the executive arm, felt that the reports were generally of a good standard as they “reflected on pertinent issues such as over- and under-expenditure, poor performance by departments, and other similar issues”. However, others, especially members of the opposition political parties in council, were unhappy with the quality of the reports from the Municipal Public Accounts Committee (MPAC), reporting that these “were of a lesser quality, particularly in terms of content and lack reference to appropriate financial jargon”.

The reading and analysis of a sample of oversight reports conducted by the researcher demonstrated that the reports produced by the Oversight

Committees at the City of Johannesburg were comparable to those of the Portfolio Committees at the provincial level in terms of structure and the manner of raising and reporting on findings to the respective Legislatures.

This was a positive finding as the Oversight Committees at the City of Johannesburg and other municipalities are, for all intents and purposes, modeled on the Portfolio Committees at national and provincial spheres of government. To the extent that the sampled oversight reports produced by the Oversight Committees in the City of Johannesburg were comparable to those of the Portfolio Committees at the Provincial Legislature, the research team was of the view that the quality of the oversight reports was commendable.

In addressing matters that respondents from both in-depth interviews and focus groups held, the following issues were identified by the respondents as some of the key challenges facing the Committees and Model:

4.6 LACK OF A LEGISLATIVE FRAMEWORK

The respondents, across stakeholder groups, reported that implementation of the Oversight Model is a serious challenge in the absence of a legislative framework that clearly spells out the roles of different stakeholders, how the interface between the legislature and the executive will unfold, and a funding mechanism for the Model. When asked to elaborate, the respondents reported that “at times it becomes difficult for the Oversight Committees to enforce rules regarding the submission of departmental reports or appearance of the members of the executive before the Committee as there is no legal framework guiding this interface”

In a nutshell the Municipal Structures Act, No. 117 of 1998 provides for the establishment of various categories of municipalities in accordance with and for the regulation of the internal systems, structures and office bearers of municipalities. The Act (1998) also in Section 33, argues that a

municipality may establish a committee if the establishment of the committee is necessary, taking into account the extent of the functions and powers of the municipality; the need for the delegation of those functions and powers in order to ensure efficiency and effectiveness in their performance; and the financial and administrative resources of the municipality available to support the proposed committee.

Sections 79 and 80 of the Act (1998), create non-executive and executive committees: Section 79 committees are non-executive committees that may be established for the effective and efficient performance of any of a municipal council's functions, or the exercise of any of its powers, provided that the municipal council determines the functions of a committee and delegates duties and powers to it. The council must appoint the chairperson, and may authorise a committee to co-opt advisory members who are not members of the council within the limits determined by the council. The council may also determine a committee's procedure.

As have indicated earlier these sections do not necessarily afford the members of these non-executive committees to call in decisions made by the executive nor they have the right to summon the members of the executive.

The section 43 of the Constitution (1996) establishes Parliament and provincial legislatures as the legislative authorities within the national and provincial spheres of government, and the municipal councils as the legislative authority within the municipal council. Sections 55 and 114, gives legislatures the responsibility of ensuring that all executive organs of the state are accountable to the Constitution. This means therefore that legislatures are compelled to maintain oversight over the executive arm.

This is not the case with local government as it as a sphere does not have such clearly defined powers and the oversight and accountability

committees therefore cannot really hold the executive accountable for the things that they do that may not be in line with public policy implementation plans.

4.7 LACK OF SUPPORT FROM NATIONAL PROVINCIAL SPHERES

It was felt that National and Provincial Departments do not appreciate the dynamics of local government. For instance National Standing Committee on Local Government has never met with the City during the current term of office and there is no such forum to facilitate such interaction (Interviews held on the week of the 17th to 21st November 2014).

The required legislation at national and provincial levels does not come through fast enough. Such legislation would for instance have allowed the Office of the Speaker to determine its own budget unlike in the current situation where budget is determined by the Executive and yet Council is supposed to oversee the Speaker (Interviews held 17th to the 21st November 2014).

4.8 PART-TIME STATUS OF COUNCILLORS SERVING ON SECTION 79 OVERSIGHT COMMITTEES

The part-time status of members of the Oversight Committees was a major concern for the respondents, especially those serving on the Committees and those responsible for supporting the Committees. It was raised as especially concerning that the Committee Chairpersons were part-time Councillors as well. When elaborating, the respondents emphasised the view that “in terms of workload load and the provision of leadership, the Chairpersons of Committees are on par with their executive counterparts (MMC) who are full-time Councillors while former remain part-time Councillors”.

In agreement with this view, it was further highlighted by the respondents “this part-time status does not allow members of the Section 79 Oversight

Committees to do diligent work that is expected due to the limited time that they have available to them. This state of affairs further perpetuates the information gap that exists between the executive and the members of the Oversight Committees, and renders the Committees less effective than it otherwise would have been if the members were full-time councillors like members of the Portfolio Committees at the provincial and national legislatures”.

4.9 INADEQUATE FINANCIAL AND PHYSICAL RESOURCES

Although there is a general consensus among the respondents that the situation in terms of the provision of resources to the Office of the Speaker for supporting the Oversight Model has improved, the situation is not yet ideal. As reported by the respondents, “the lack of a defined funding model still limits the extent to which the Committees can access and utilise resources for the purpose of oversight and scrutiny”. It was lamented that “the Legislature and the Oversight Committees, in particular, is still at the mercy of the Executive for funding its operations, and this compromises the independence of the Oversight Committees”.

4.10 LIMITED NUMBER OF OVERSIGHT MEETINGS

There was a general feeling that monthly oversight meetings needed to be revisited as this does not tally with the amount of work that has to be done. It was the respondents’ view that “meetings may need to happen more often than just once a month” (Interviews held on the week 17th to the 21st November 2014).

The respondents were, however, mindful of the challenge that part-time Councillors that are either self-employed or employed elsewhere on a permanent basis might require additional time-off from their non-council responsibilities, which may be to the detriment of their businesses or full-time employment engagements.

The importance of more regular Oversight Committee meetings and oversight visits to programmes and projects was however identified as critically important as the current number of meetings is insufficient to allow the Committees to perform their oversight and scrutiny function fully. The other point one of the Councillors make is that if these visits were stipulated into law even at the local sphere of governance like it is the case with national and provincial things could be done in time and their interventions would count (A, Interview 17th November 2014).

4.11 ROLE CLARIFICATION: TENSIONS BETWEEN THE EXECUTIVE AND THE LEGISLATURE

Although the respondents reported a view that the understanding of the Model has improved significantly since its inception, there are still some signs of tension and a lack of a common understanding of the Model between the Executive and the Legislature.

Furthermore, a lack of role clarification continues to present a challenge for the Oversight Model at the City of Johannesburg. The lack of role clarity was especially reported to be between the Office of the Speaker and the Chief Whip of the ruling party.

This matter is still attributed to a lack of a specific legislative framework that supports oversight and accountability and separation of powers at local governance level.

LATE SUBMISSION OF REPORTS AND IRREGULAR PROVISION OF INFORMATION BY THE EXECUTIVE

The Section 79 Oversight Committees as established by the Local Government Municipal Structures Act (1998) require relevant information from the Executive in time for them to perform a meaningful scrutiny. Contrary to this expectation, the study found that Oversight Committees still receive reports late. As reported by the respondents, “reports are sometimes received two, or even three, quarters late. This late submission

of reports makes the role of the Oversight Committees insignificant and irrelevant”.

In the words of one of the Councillors (B, Interview, 18th November 2014) serving on one of the Oversight Committees, “this late submission gives the impression that the work we do is nothing more than rubber-stamp executive decisions”.

4.12 LIMITED COMMUNITY PARTICIPATION IN OVERSIGHT

Scoffe and Jaffe argued that people need to be central in any planning and transition process, for this gives them sense of ownership and control and cannot lead to any potential resistance in future. This is also agreed to by Harvey (2006), that it is an ideal approach to allow people to take part in the planning of the change process and this can be further advanced by continuous communication.

The study found that there is very limited community or civil society participation in the oversight and scrutiny activities. According to the respondents (Interviews held on the week 17th to 21st November 2014), community participation is usually limited to *ad hoc* interaction with community members during oversight visits. Other than this, no structured community participation in the work of the Section 79 Oversight Committees is in place according to the respondents.

4.13 UNPROFESSIONAL CONDUCT BY SOME MEMBERS OF THE SECTION 79 PORTFOLIO COMMITTEES TOWARDS OFFICIALS

Respondents (Interviews C and E held the 18th and 20th November 2014 respectively) representing the Executive, particularly Mayoral Committee Members and Senior Managers, indicated that they are from time to time subjected to “verbal abuse and unprofessional conduct by some members of the Section 79 Committees”. According to these respondents, this behaviour has a potential to deter Senior Managers and other members of the Executive from cooperating with the Section 79 Oversight Committees

and “can put a strain on the relationship between the Executive and the Legislature to the detriment of effective oversight and scrutiny”.

4.14 CONCLUSION

This chapter of the report focused on the findings of the empirical study conducted in the City of Johannesburg. The chapter reflected particularly on the perceptions of a variety of stakeholders on the functionality and effectiveness of the Model as an oversight mechanism at the local sphere of government.

The chapter also reflected on the challenges and successes of the model as perceived by those directly involved in the new model aimed at realising the separation of powers between the executive and the legislature.

One of the most significant findings was that the new governance model implemented in the City is a step in the right direction towards the ideal of a separation of powers at the local sphere of government. The research findings further revealed that the model is fully functional although there is still room for improvement. For the respondents (Interviews held the week of the 17th to the 21st November 2014), it was critical that the oversight committees are adequately capacitated through skills training and funding.

The absence of a piece of legislation providing for the oversight model at the local sphere of government, the part-time status of committee members, especially the committee chairpersons and inadequate resource allocation were identified as some of the major challenges impacting on the effectiveness of the model.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1 INTRODUCTION

This chapter provides conclusions and recommendations of the study. The main research was the lack of a legislative framework which gives expression to oversight and accountability at the sphere of local government. The purpose of the study was to conduct an exploratory study on the City of Johannesburg's new governance model in an attempt to raise shortcomings on the current legislative framework regarding local governance and make suggestions on what could be done to improve this aspect of oversight and accountability at the sphere of local governance.

The chapter therefore provides the conclusions of the study in an attempt to raise the matter of a legislative review on local government to cater for the oversight and accountability function such as the model implemented by the City of Johannesburg.

5.2 REFINING AND IMPROVING THE GOVERNANCE MODEL WITHIN THE CITY OF JOHANNESBURG

Based on the research methodology outlined in chapter three above, the following recommendations have been made aimed at making further improvements, refinements and institutionalising the model.

5.3 RELATIONSHIP INTERFACE BETWEEN SECRETARY OF COUNCIL AND CITY MANAGER

Given the fact that the next term of local government will begin without there being any changes to the legislative framework governing local government and noting that the relationship interface between the Secretary of Council and the City Manager has been characterised challenges in terms of reporting requirements of the Municipal Financial

Management Act (2003), it is recommended that a specific delegations and reporting agreement is signed between the office of the Speaker and the Office of the Executive Mayor to govern this interface.

5.4 LOBBY FOR THE LEGISLATIVE AMENDMENTS TO NATIONAL LEGISLATION

The legislative environment within which the oversight model of the City of Johannesburg operates is an area of debate. There is a view, generally in the minority, that the current legislation supports the Governance Model as it has been implemented throughout the pilot period. However, even those who hold this view do admit that legislative amendments may be the best way of rolling out the model nationally and institutionalising it in the City. During the interviews, a lot of the success of the pilot was attributed to the political maturity of key players such as the Executive Mayor and the Speaker of Council.

Oversight committees are established in terms of Section 79 of the Municipal Structures Act, which simply provides for the “establishment of council committees...” without necessarily detailing the oversight responsibility and authority. This ill-defined legislative provision is contrary to what exists internationally (e.g., in UK) and at the national and provincial spheres in South Africa.

It is therefore recommended that as medium to long term strategy, the City lobby Provincial and National Departments to amend legislative framework governing local government.

5.5 STRENGTHEN THE OFFICE OF THE SPEAKER

The office of the Speaker needs to be elevated so that it closer in status with the Office of the Executive Mayor. In truly separation of powers model, the Office of the Speaker ought to be a separate branch government headed by the Speaker of Council with the Secretary of

Council as the administrative head. To give effect to this, there needs to be formal recognition of the Office of the Speaker as being on par with the Office of the Executive Mayor. This might serve to reduce the tendency by some to diminish the role of the Speaker and by extension the role of Council which is a body headed the Speaker.

5.6 MAKE IT MANDATORY FOR MMC TO APPEAR ONCE A QUARTER BEFORE THE RELEVANT SECTION 79 COMMITTEE

MMC appear before Section 79 Committees only by invitation of Section 79 Committees. It was reported by some chairpersons and opposition councillors that it is a challenge to get some MMC to appear before their committees. Opposition particularly Councillors felt that in some instances appeared reluctant to summon/invite MMC. It was therefore strongly suggested by Chairpersons, Councillors and some in the Executive, that MMC appear before their Section 79 Committee at once a quarter. This would further entrench Governance Model by requiring MMC to avail them at once a quarter.

5.7 INSTITUTIONAL INTERFACE BETWEEN COUNCIL AND SECTION 79 COMMITTEES

In the current setup, there is no institutional mechanism that allows ward committee recommendations and findings to be carried through onto to the agenda of Council. It is therefore recommended that institutional mechanisms be put in place to formally address this gap.

5.8 STRENGTHENING THE WHIPPERY

During the interviews with the Whippery, it was reported by opposition whips that the Whippery is dysfunctional and does not meet regularly. Those that attended the focus group interview alleged that the Whippery had only met a hand full of times instead of at least once a month. This may in part explain why the opposition, while rating the Governance Model itself, felt that the progress towards the stated goals was fair (2 out of 5).

In addition, previous study findings indicated there were perceptions that party loyalty had compromised impartiality in oversight and scrutiny.

5.9 BUILD THE CAPACITY OF COUNCILLORS

It is critical that the capacity of Section 79 Committee members and chairpersons be improved through the means of a generic and sector or portfolio specific training. Some of the committees, such as Development Planning and Urban Management, are very technical in nature and would therefore require some sector specific training. Many of the Councillors also identified training in budgeting and finance as a critical skill since much of oversight work dealt with budget issues thereby making it a minimum requirement that each Councillor be conversant with financial statements.

5.10 BUILD THE CAPACITY OF SUPPORT STAFF

As part of the establishment phase of the pilot, provision was made to provide Councillors with support staff that would in turn provide technical as well administrative support. It was found that they weren't enough support staff to the required services. For example, the DA reported that there were 59 Councillors who had three support staff members which they felt was inadequate. In addition to the numbers, it was also reported across the board that there is insufficient content knowledge.

5.11 STRENGTHEN THE POSITION OF CHAIRPERSON

One of key reasons cited for the ineffectiveness of Oversight Committees was the part time nature of Councillors as well as Chairpersons which made it difficult to conduct diligent oversight. A second reason why Chairpersons were said to be ineffective as leaders of oversight committees was the political seniority of MMC relative to Chairpersons which made it difficult for Chairpersons to encourage/force MMC account more effectively. In addition, the fact that Chairpersons were paid considerably less than MMC also meant some people appointed were not

of the desired level.

It is therefore recommended that the position of Chairperson be made full time so as to provide the required time for effective oversight. Second, the elevation of the status of Chairpersons with commensurate remuneration can reduce the perceived political distance between MMC and Chairpersons.

5.12 DEVELOP COMMUNICATION STRATEGY TO PROFILE THE GOVERNANCE MODEL TO THE COMMUNITY

While community awareness of the Governance Model was not part the evaluation, it emerged during interview sessions there is a feeling within the City that community still does understand the Model in terms of the principle of separation of powers and more critically their role in the model. The persistence of violent service delivery protests was said to be as a result of communities not knowing how to air their grievances through public participation platforms created by the City. It was found by the evaluation team that there was no communication strategy aimed at popularising and creating community awareness of the model.

It is therefore recommended that a communication strategy be developed to address this gap. The development of such a strategy is in line the objective strengthening Council as legislature. Council along with the community is able to hold the Executive accountable through public participation. By providing the general public with a forum to air grievances it is plausible to surmise communities engage in less violent protests.

5.13 CONCLUSION

The governance model of the City of Johannesburg Metropolitan Municipality has come a long way since its adoption in April 2006. Although characterised by a variety of challenges since inception, and

these still continue, there are perceptions from both the executive and the non-executive councillors within the City that the model is necessary and will soon realise the objective of enhancing accountability, which will in turn improve service delivery and promote public participation.

The study has established that the Section 79 oversight committees have been established for all portfolios of council, and these are fully operational. The functionality of the committees, however, may not be regarded as optimal owing to a number of challenges such as lack of adequate skills, a dedicated legislative framework, and the part-time status of councillors serving on these committees. These challenges require urgent attention if a true separation of powers is to be realised in local government.

The study has, however, also been able to point to some valuable lessons coming out of the City of Johannesburg's Oversight Model. These include the fact that Section 79 portfolio committees have been able to gain recognition when it comes to accounting for service delivery and budget spending. In practical terms, this means that members of the executive now acknowledge that they have to account to a particular committee of council, and consequently to the broader council unlike was the case under the Chapter 80 Portfolio Committee dispensation.

In line with the above, the general conclusion of this study is that the COJ Oversight Model is a desirable model that promises to bring about accountability through oversight and scrutiny if well implemented and fully rolled-out. What is required is for the model to be fully supported and adequately equipped. A clearly defined legislative framework detailing the authority of the committees would go a long way in achieving this goal. Without such a legislative framework, the model will continue to strive for legitimacy without ensuring the desired impact. What better reference do we need other than our very own national and provincial SCOPAs?

The researcher would like to register following as the lessons that need to

be taken to by a municipality before attempting to rollout the Governance Model:

The first thing is that, should a municipality decided to do the roll out same model as the COJ, institutional arrangements should be in place to support the move. The COJ's lack of proper institutional arrangements created a lot of unnecessary tension.

Municipalities need to define roles and responsibilities regarding the separation of powers model from the onset to reduce unnecessary political tensions.

There needs a lot of political maturity and respect among office bearers if the model is to be a success. The relative success of the Johannesburg pilot was partly attributed to the respectful relationship between the Executive Mayor and the Speaker of Council. A deliberate strategy for team building must be developed and implemented.

It is important that Councillors understand their roles as non-executive Councillors. Councillors need to be prevailed upon that it is their duty to hold the executive to account regardless of party affiliations.

Capacitation of Councillors should be done at the outset. Members must be capacitated on the work they need to do on the committees. Ongoing generic and sector specific training is especially critical.

Chairpersons of Committees should, where possible, have some prior training or experience in the relevant field of expertise. This has come up as an issue that some do not have the necessary capacity to execute their duties properly.

Mutual respect between role players is critical to the success of the model especially in the absence of a legislative framework. It is important to realise that every Councillors.

SALGA, Provincial and National Departments must be on board from the onset to provide support. This may assist in advocating for both legislative reform and synergy in similar attempts across the country.

Mechanisms that foster inter party cooperation must be strengthened so as to improve perceptions of impartiality in oversight and scrutiny work. This once again could mean that all role-players need to display some political maturity and move above shallow party political lines and focus on servicing the public they represent.

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Addendum A: Interview Guide

Name:

Current position:

Date of joining the municipality:

Previous role/position:

- What is your understanding of the role of the committee, the chairperson and members of the committee?
- What are some challenges that you have faced in conducting oversight work?
- What resources, facilities, or other support would be beneficial to the oversight function?
- Can you describe some examples of committee work that you were involved with that you feel could have been more effective and how it have been improved?
- What do you see as some of the positive aspects of the committee system as it is currently operating?
- What are some improvements that you think could be made in terms of how the new oversight function operates which would improve the effectiveness and impact of the committees?
- How clear are councillors on what kinds of issues oversight committees should deal with?
- Has the community or community representative bodies been involved in your work, if so how?
- Overall, would you say that you feel that oversight function is making a positive contribution to the work of the Municipal Council, and how would you describe that contribution?
- What are some of the strengths and weaknesses of the oversight function that you have observed?
- Have the changes to the system given you effective leverage in conducting oversight? Please explain.

- Has there been real empowerment to chairpersons in their relationship between the executive? Explain.
- Has the oversight function had an impact on the relationship between the Executive and the Council?
- How would you describe the relationship between the Executive and the Council?
- What are some of the lessons which you have learnt from your experience in oversight function?
- What recommendations would you make as to how the oversight function and the operations of the system could be improved?