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LEGISLATIVE OVERSIGHT AND EXECUTIVE ACCOUNTABILITY IN THE

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CHAPTER 1
INTRODUCTION AND BACKGROUND TO THE STUDY

1.1. Introduction

It is fifteen years since South Africa's democratic government came into office. In 1994 the first democratic elections marked the end of apartheid regime and heralded a constitutional democracy founded on a doctrine of the separation of powers between the executive, parliament and judiciary, as well as on the principles of non-racism, non-sexism and respect for fundamental human rights.

Like in many constitutional democracies worldwide, the country's post-apartheid constitutional democracy is anchored on a representative system of government in which legislative oversight and executive accountability are central to democratic governance and public policy implementation.

In this respect, Section 55 (2) of the Constitution, Act 108 of 1996 requires the National Assembly in Parliament to perform oversight functions to ensure executive accountability on public policy implementation and management of public finances (see Republic of South Africa, 1996: 28). Furthermore, Section 114 (2) of the same constitution makes similar oversight provisions for the provincial legislatures in the country's nine provinces (see Republic of South Africa, 1996: 51).

Policy-making and legislative (law-making) functions dominated the work, and to some extent overshadowed the oversight functions, of the National Assembly and all provincial legislatures in the first decade of democracy in South Africa. The oversight functions have, however, become even more important in the second decade of democracy as the country shifts from policy formulation to placing more emphasis on the effective implementation and monitoring of policies that were introduced in the first decade of South Africa's democratic dispensation.

This study focuses on legislative oversight and executive accountability in South Africa, with specific reference to the Gauteng Provincial Government. While the constitution requires the Gauteng Provincial Legislature to perform both legislative

and oversight functions, this research focuses only on its oversight functions and on executive accountability of the provincial executive council.

The rationale behind the selection of the Gauteng Provincial Government as the case study is that major service delivery pressures in this province (due in part to rapid urbanisation, but also to already-dense population numbers) heighten the importance of oversight and executive accountability. Optimal legislative oversight and executive performance are key to ensuring that service delivery challenges are addressed. The growing power and influence of this province as the economic powerhouse of South Africa and Africa as a whole also make this province an interesting case study from which others can learn important lessons and best practices. It is important to note upfront that this study relates to the period prior to the 2009 general elections, which ushered in the fourth term of democratic government in South Africa.

1.2. Problem Statement

In any representative democracy effective legislative oversight is important for ensuring accountable government. Murray and Nijzink (2002: 87) argue that "accountability and oversight are crucial aspects of the representative role of legislatures … the accountability of the executive to the legislature is enforced when the legislature exercises oversight over it and scrutinises executive action". The Constitution of the Republic of South Africa, Act 108 of 1996 and Public Finance Management Act (PFMA) require national parliament (National Assembly) and the provincial legislatures to hold national and provincial executives (cabinet) accountable for public policy implementation and management of public finances.

Despite these constitutional powers and other legislative instruments at the legislatures' disposal, there are, however, many concerns about the quality of oversight work of the legislatures in the country, with respect to both the national and provincial legislatures. The first concern that is expressed in the literature is that the legislatures have not done well in their oversight functions compared to their policy-making (law-making) functions (see Murray and Nijzink, 2002: 88). In this regard, Murray and Nijzink (2002: 88) maintain that "…procedures for holding the

government accountable are less well established and … politicians have a much poorer understanding of oversight than their law-making responsibility".

The second concern is that the ruling-party parliamentarians are quite soft and unwilling to hold the executive to account (Boyle, 2006a; Boyle, 2006b). However, the post-Polokwane politics of the ruling party, African National Congress (ANC), suggested at times that oversight politics and balance of power between parliament and the executive may have changed to a more vigilant and accountable mode. It is, however, premature to draw conclusions on whether this possible shift represents a permanent feature of post-Polokwane parliamentary oversight politics.

The third concern relates to South Africa's electoral system of proportional representation. This electoral system is said to undermine the independence of the parliamentarians and promote party loyalty and lack of accountability to the citizens (Malefane, 2006a; Nethononda, 2006; also see Pheko, 2006). The fact that seats in parliament belong to political parties under the prevailing electoral dispensation gives political parties a power of control (Calland, 2006: 109).

The literature on international comparative experience points to the importance of constituency-based element in the electoral system in contributing to making parliamentarians responsive to the needs and interests of the voters. For example, in the United States of America, while political parties and the executive have influence, the parliamentarians are responsive to their constituencies because their political future depends on their constituencies (Burns, Peltason, Cronin and Magleby, 1997: 285; Greenberg and Page, 1999: 375; McKenna, 1998: 229).

The other concern in the past has been the "juniorisation of parliament" of South Africa – the filling of parliament with "…junior ruling party members who lack the political clout to hold the executive to account" - which has some impact on oversight functions and the functioning of parliament (Robinson, 2006: 4). Related to these concerns has been the notion that parliament has become a lapdog and rubber stamp of executive decisions (see Mkhabela, 2006a). The strong power of the executive and the subordination of parliament (see Calland, 2006: 106) explain the notions of the lapdog and rubber stamp role of parliament. As indicated above, post-Polokwane

ANC politics may have changed oversight politics in favour of parliament, although it remains to be seen if this shift was to be sustained into the future.

Further concerns relate to both the ineffectiveness and inability of the provincial legislatures to perform their oversight functions, and to their domination and subordination by provincial political leadership (Malefane, 2006b). These are some of the key factors that possibly contribute to weak oversight in the provincial legislatures. For example, regular instances of provincial under-expenditure on capital budgets (see Boyle, 2005; Mwanza, 2005; Mkhabela, 2005; Steyn, 2005a; Steyn, 2005b) demonstrate weak oversight on the part of the provincial legislatures to ensure effective public service delivery and sound financial management.

The report of African Peer Review Mechanism (APRM) for South Africa also raised similar concerns about weak legislative oversight in the country (Mkhabela, 2006b; see APRM Secretariat, 2007:167). Political point-scoring and competition of egos and races further undermine substantive policy debates in parliament (Mkhabela, 2006c). The weakness of opposition parties in parliament is a further area of concern (Nethononda, 2006).

This state of affairs has serious implications for South Africa's constitutional democracy, governance and public policy implementation. Poor legislative oversight and executive accountability undermine effective public policy formulation and implementation as well as efficient management of public finances. In turn, poor public policy implementation and management of public finances undermine both the electoral mandate and democratic rights of the citizens as well as the principles of democratic governance. In short, poor legislative oversight and executive accountability undermine democracy. Effective oversight, in contrast, is important for improving public service delivery (National Treasury, 2005: 26).

This background confirms that legislative oversight and executive accountability are important public policy issues that require empirical research. This research project explores legislative oversight and executive accountability in the Gauteng Provincial Government of South Africa.

1.3. Purpose Statement

The purpose statement is important in any research in that it sets out the central purpose of the study and provides the road map or direction for the study (Creswell, 1998: 95; 2003: 87). Thus, in relation to this research project, the purpose is to explore the extent to which the Gauteng Provincial Legislature performs its oversight functions to ensure executive accountability on public policy implementation and management of public finances in the Gauteng Provincial Government. The research intends to understand the challenges and limitations of the existing oversight frameworks and mechanisms in the Gauteng Provincial Government and then to project these understandings into the domain of recommendations for the optimisation of legislative oversight and executive accountability.

This research is premised on the constitutional prescripts set out in Sections 55(2), 92(2), 114(2) and 133(2) of the Constitution of the Republic of South Africa, Act 108 of 1996, which place an obligation on national and provincial legislatures in South Africa to hold national and provincial executives accountable to ensure effective public service delivery and sound financial management.

1.4. Research Questions

In a qualitative research project, the researcher poses research questions (central question and secondary questions) and does not use hypotheses (Creswell, 2003: 105). The importance of research questions is that they "…narrow the purpose statement and become major signposts for readers of research" (Creswell, 2003: 116). Qualitative research questions are open-ended and evolve, often starting with words such as "what" or "how" rather than "why" (Creswell, 1998: 99).

With these guidelines in mind, this study poses the primary research question as: to what extent does the Gauteng Provincial Legislature perform its oversight functions to ensure executive accountability on public policy implementation and management of public finances in the Gauteng Provincial Government? This overall research question lends itself to the following set of supplementary research questions:

(a) What are the institutional mechanisms and processes for legislative oversight and executive accountability in the Gauteng Provincial Government?
(b) What is the institutional relationship (in the context of power politics) between the Gauteng Provincial Legislature and the Provincial Executive Council?
(c) What is the influence of party politics (and electoral politics) on legislative oversight and executive accountability in the Gauteng Provincial Government?
(d) What are the challenges, limitations or weaknesses associated with the exercise of legislative oversight in the Gauteng Provincial Government?
(e) What resources and interventions are in place to build and support institutional capacity of the Gauteng Provincial Legislature to perform its oversight functions?
(f) What lessons can be learned from international comparative experience, South Africa's and Gauteng Provincial Government's experience with regard to legislative oversight and executive accountability?

1.5. Conceptual Framework

There are different political traditions or systems in the world which include democracy, tyranny, monarchy, oligarchy and aristocracy (Magstadt, 1998: 28). Personal dictatorships (tyrannies), military oligarchies (military juntas) and monarchies are authoritarian or autocratic regimes (Magstadt, 1998: 33). Many of these political traditions have long history and predate modern political institutions. For example, authoritarianism is an old political tradition which was found in many societies in the past and still remains prevalent in other parts of the world such as Africa, the Middle East and Asia (Magstadt, 1998: 33).

For conceptual clarity and positioning of this research, a distinction is made between democratic and non-democratic political traditions. In this context, personal dictatorship (tyrannies), military oligarchies (military juntas) and monarchies are considered non-democratic political traditions. These non-democratic traditions do not fall within the scope of this research. This research, including the conceptualisation and definition of key concepts, is therefore located within the context of a liberal democratic tradition.

This section defines a select number of concepts that are central to the research questions and the problem statement. Key concepts are legislative oversight and executive accountability. In addition, this section clarifies the institutional anchors of this study, namely the executive, parliament, provincial legislature, provincial executive and provincial government.

It is, however, important to clarify the meaning of government first because the whole concept of parliament and executive is related to the concept of government. In simple and modern terms, government refers to "the individuals, institutions, and processes that make the rules for society and possess the power to enforce them" (Cummings and Wise, 1997: 16). This includes the development and implementation of policies and programmes to improve the lives of citizens. Parliament and the executive are key institutions of government.

In democratic countries, parliament – often referred to as the legislature (Laundy, 1989:65) - refers to an institution or branch of government made up of democratically elected representatives. Nearly all parliaments perform a representative function (Laundy, 1989: 11). It must however be noted that parliament "is not universally used to describe a representative assembly" (Laundy, 1989:1). The functions of parliaments (legislatures) include oversight of policy development and implementation (Murray and Nijzink, 2002: 3), lawmaking and representation (Bogdanor, 1993: 325). These functions can be summarised as being "legislative, financial, deliberative, critical, informative and representative" (Laundy, 1989: 11).This study is confined to the oversight functions of parliament.

While the make-up and structure of the executive differ from countries, the executive (cabinet) generally refers to a branch of government made up of the president or prime minister and ministers whose function is to implement laws and policies of the nation. The executive also includes government departments which are collectively known as bureaucracy (see Burns, Peltason, Cronin and Magleby, 1997: 362). In this context, bureaucracy refers to non-elected professional officials (employees) of government whose function is to serve the president and his/her political appointees (ministers) (Burns, Peltason, Cronin and Magleby, 1997: 362). Bureaucracy

implements policy (Patterson, 1999: 441) and political decisions (Ginsberg, Lowi and Weir, 1999: 541).

Legislative oversight and executive accountability are central themes of this study. In almost all democratic countries, the relationship between parliament (legislature) and the executive (cabinet) is an accountability relationship often defined in the constitution or some form of statutes. It is an accountability relationship in which the executive accounts to parliament. This is called legislative or parliamentary oversight. Although there are different conceptualisations, the literature mainly defines legislative oversight in terms of the supervision of the executive (see Ginsberg, Lowi and Weir, 1999: 481; Patterson, 1999: 367). In simple terms, legislative oversight means scrutiny of government actions and decisions, including budget (Murray and Nijzink, 2002: 6). It also involves monitoring the effectiveness and efficiency of implementing public policy and spending public finances (McKenna, 1998: 233; Patterson, 1999: 367). In a representative democracy, elected politicians are required "to oversee the way government implements policy and spends tax revenue" (Murray and Nijzink, 2002: 87). Legislative oversight is therefore central to executive accountability, which in turn is central to overall democratic accountability to the citizens. In most instances, weak accountability leads to poor public service delivery and mismanagement of resources (Agere, 2000: 45). Oversight is one of the core functions of parliament (National Assembly) and provincial legislatures in South Africa.

In the literature, executive accountability refers to the accountability of the cabinet (including government departments) to parliament regarding public service delivery and management of public finances (see Murray and Nijzink, 2002). In the context of this study, the notion of accountability should be understood within the context of liberal democratic theory in which parliament is one of the most important mechanisms of accountability (see Haque, 2000: 599). In its liberal democratic sense, the notion of accountability aims to promote checks and balances in a political system (see Barberis, 1998: 463). Aucoin and Heintzman, 2000: 45 argue that "accountability is a cornerstone of public governance and management…"

In terms of the Constitution of the Republic of South Africa (Act 108 of 1996), the provincial legislature is a law-making and oversight institution made up of representatives of different political parties democratically elected in terms of a system of proportional representation (Republic of South Africa, 1996). The provincial legislatures in South Africa are required to hold the provincial executives accountable for public policy implementation (Republic of South Africa, 1996: 51).A provincial executive is made up of the Premier and Members of the Executive Council (MECs) and is responsible for management of provincial departments and implementation of provincial policies (Republic of South Africa, 1996). The provincial legislature and executive, together with provincial departments, constitute a provincial government. There are nine provincial governments in South Africa, including the provincial government of Gauteng.

1.6. Foregrounding Theoretical Framework

This section serves to foreground the theoretical framework for this research, which will be discussed in detail in chapter 2 of this report. A number of themes emerge in building the theoretical framework for this study. An exploration of international comparative experience on legislative oversight and executive accountability points to salient issues such as (1) the influence of the electoral system and party politics (and includes reference to party discipline), (2) the institutional relationship (in the context of power politics) between the executive and the legislature, and (3) the institutional infrastructure and support for the legislature as key issues that are relevant to the core theme of this study. These issues are further explored in detail in chapter 3 of this thesis in order to allow the researcher to identify existing international parallels and differences, and to draw key lessons for South Africa (and in particular for Gauteng Province).

A brief exposition of these issues is provided below. The study draws heavily on literature that emerges from the United States (U.S.) and Britain. The literature illuminates the international comparative experience of countries that have long-established democratic traditions from which South Africa could potentially learn lessons.

1.6.1. The influence of the electoral system and party politics on legislative oversight and executive accountability

Members of the legislature and executive worldwide do not perform their constitutional functions in a political vacuum. There are important political dynamics and variables at play. These dynamics influence the functioning of the legislature and executive branches of government, as well as the behaviour of their members.

In this regard, the review of international comparative experience points to the immense influence of party discipline on the behaviour and independence (or lack of it) of members of the legislatures in many democracies worldwide. For example, in the United States, party leadership has a major influence on the behaviour of members of political parties in both houses of the congress (Ginsberg, Lowi and Weir, 1999: 476).

In elaboration of this argument, the literature also reveals major political divisions between members of different political parties in the United States. Major political differences exist between the two parties (i.e. Democrats and Republicans) and the Democrats often vote against Republicans or visa versa in congress (Patterson, 1999: 366). These party political divisions are also evident in the voting behaviour of committee members in the legislature (Patterson, 1999: 366). This suggests that the parliamentarians place high premium on loyalty to their political parties. This affects the quality of legislative oversight, which, in turn, often compromises executive accountability.

Furthermore, the international comparative experience points to the influence of the electoral system on the oversight-related behaviour of the parliamentarians. For example, in the United States, while the influence of the political parties and executive affect the behaviour of the parliamentarians, the interests of their constituencies are important because their re-election depends on their constituencies (Burns, Peltason, Cronin and Magleby, 1997: 285). In this context, it is noted that members of congress “are highly responsive to constituency interests” (Patterson, 1999: 371). This implies that there are influences beyond deference to the executive

and political parties that might help determine their actions in relation to oversight and insistence on accountability.

1.6.2. Institutional functions, support and relationships between the executive and the legislature

The literature on international comparative experience indicates that parliaments (legislatures) worldwide perform legislative and oversight functions (see Laundy, 1989). In fact, oversight is a function that is performed by all parliaments in all systems of government (Laundy, 1989: 84), even though the scope and quality of this exercise may differ. Similarly, the executive in many countries the world over often initiates and implements public policy, and manages public finances.

Despite certain legislative and oversight variations, many countries use approximately similar methods and approaches to perform their legislative and oversight functions. For example, in the United States, "the committee system is central to the operation of Congress" (Ginsberg, Lowi and Weir, 1999: 462). Congress performs its legislative (law-making) and oversight (executive supervision) functions through its various committees and subcommittees (Patterson, 1999: 347; Ginsberg, Lowi and Weir, 1999: 462; Greenberg & Page, 1999: 378).

In the United States, "congressional oversight of the executive is extensive" (Laundy, 1989: 91) and the oversight functions include authorisation of government budgets and monitoring of public policy implementation and management of public finances by the executive (Patterson, 1999: 367). Committees and sub-committees have immense powers, which include "the power to subpoena witnesses, take oaths, cross-examine, compel testimony, and bring criminal charges for contempt (refusing to cooperate) and perjury (lying)" (Ginsberg, Lowi and Weir, 1999: 481).

Legislative and oversight arrangements in Britain are similar to the American set-up. In the British system "…. standing committees … review bills during legislative proceedings… (S)elect committees help Parliament exert control over the executive by examining specific policies or aspects of administration. …monitor the conduct of

major departments and ministries. …hold hearings, take written and oral testimony, and question senior civil servants and ministers" (Krieger, 2004: 60).

The international comparative experience also points to some challenges facing the legislatures in performing their oversight functions. For example, in the United States, the first main oversight challenge to the legislature relates to the workload. Patterson (1999: 371) argues that "the biggest obstacle to effective oversight is the sheer magnitude of the task". The size of government and the number of public policy programmes to be monitored also make the oversight function extremely difficult for the legislatures and their committees (see Patterson, 1999: 371).

The international comparative experience further indicates that institutional infrastructure and support are important for building the institutional capacity of the legislatures and their members to ensure effective performance of their constitutional functions, including legislative and oversight functions. The implication is that the lack of the necessary infrastructure and support could undermine the ability of the legislatures to perform their functions – a situation that could be detrimental to democracy and public policy implementation in general.

In the United States, for instance, the legislature and its committees have the necessary institutional infrastructure and resources, which include research and support staff, as well as support agencies (such as Congressional Research Service, General Accounting Office and Congressional Budget Office) (Patterson, 1999: 346; Laundy, 1989: 123). As Cummings and Wise (1997: 578) note: **"**in addition to staff members on their office payrolls, senators and representatives have large committees and subcommittee staff to serve them". This infrastructure and support enable congress and its committee to perform their functions effectively (Laundy, 1989: 91).

The second challenge is a more political one which relates to the political relationship between party members in the legislatures and members of the executive. In the United States, for instance, members of congress find their oversight function difficult and problematic (Patterson, 1999: 370). For example, the U.S. presidency has more power and influence which may affect the oversight behaviour of members of congress. As Ginsberg, Lowi and Weir (1999: 480) argue "… the office [the

presidency] is a touchstone of party discipline in Congress". This points to interplay of power between the executive and congress with regard to legislative oversight and executive accountability.

From this overview of comparative research and theory, it is evident that there are inherent political tensions between the legislatures and executive in many countries – what Krafchik and Wehner (1999:1) describe as "tension between technicality and democracy". In this section the tension was illustrated drawing very briefly on the experience of the United States. The comparative review also illustrated the (political) dominance of the executive over legislatures, despite immense constitutional powers of the legislatures.

In conclusion, the review of international comparative experience suggests that there may be similar challenges and tensions that parliament and provincial legislatures in South Africa are facing in dealing with the national and provincial executives. In this regard, the influence of party politics (party discipline) on parliamentarians and subordination of parliament by the executive (see Calland, 2006; Mkhabela, 2006a; Murray and Nijzink, 2002; Rapoo, 2004) are some of the key oversight challenges facing South Africa. These inherent institutional (and fundamentally political) tensions and dynamics between the executive and legislatures have far-reaching implications for democracy, accountability and public policy in general. The issues raised in this section are further pursued in detail in all the chapter of this report, including chapter 5, which deals with legislative oversight and executive accountability in the Gauteng Provincial Government.

1.7. Foregrounding South African Experience

This section provides a brief overview of key issues relating to legislative oversight and executive accountability in South Africa in order to foreground detailed discussion in chapter 4 of this report. The literature on the South African experience with regard to legislative oversight and executive accountability points to similar issues, challenges and dilemmas facing democracies such as the United States and Britain. It is however important to note that a relatively limited dedicated literature on this specific topic of study exists in South Africa. This research offers an account of

the available scholarly literature. It also notes the public debates that have taken place on the topic, even if these have not yet given rise to systematic scholarly literature. In addition, and in the context of the relative paucity of a dedicated literature, this research notes a selection of contributions from analysts, mostly as expressed in opinion pieces in the mass media.

The literature indicates that, like in other democracies, the national parliament and the provincial legislatures in South Africa are using a range of committees and other oversight instruments and processes to conduct their legislative and oversight functions. Their oversight instruments include, *inter alia*, the departmental strategic plans, annual and quarterly progress reports, departmental budgets and expenditure reports, and field trips by committee members to various government projects to obtain first-hand information on policy implementation (Rapoo, 2004: 3).

The literature also indicates that the national and provincial legislatures in South Africa are facing similar political dilemmas to those of their international counterparts, such as those in the United States and United Kingdom. The demands of party discipline and loyalty, coupled with the lack of proper understanding (and sometimes the lack of support) of oversight functions among some members of the national and provincial executive, often compromise independence and complicate oversight work of the national and provincial legislatures (Murray and Nijzink, 2002: 88). In practice, party discipline has created a situation where the actual balance of power has shifted in favour of the executive, and the executive thus dominates the legislatures in South Africa (Rapoo, 2004: 4).

In the period prior to the ruling party's December 2007 Polokwane conference, there was a concern that the ruling party parliamentarians were unwilling to hold the executive accountable (Boyle, 2006b) and that party discipline and loyalty of the ruling party parliamentarians undermined the role of parliament as the custodian of public interests (Pheko, 2006). However, post-Polokwane African National Congress (ANC) politics appears to have changed parliamentary oversight politics, although it still remains to be seen if this would revert to poor oversight once a politically consensual relationship is re-established between the legislative and executive branches in the country. For example, in 2008 and early 2009 parliament appeared to

be more assertive and vocal than in the Mbeki era in conducting its oversight functions.

The literature on South Africa further points to the influence of the country's electoral system. The international comparative experience indicates that the electoral system has a bearing on the behaviour of the parliamentarians. The literature on the South African experience points to the same phenomenon. For example, concerns have been raised about the country's prevailing electoral system for encouraging blind party loyalty and eroding independence of members of the legislatures in performing their constitutional functions (Murray and Nijzink, 2002: 14; also see Malefane, 2006a; Parliament of the Republic of South Africa, 2009: 8). In 2008 and 2009 the debate on the country's electoral reform gained further impetus, due, in part, to the recall of former State President Thabo Mbeki and the election campaigns. Many political parties such as the Congress of the People, United Democratic Movement and Independent Democrats included electoral reforms in their 2009 election manifestos.

A part of the argument is that constituency-anchored electoral systems, in contrast, promote accountability to the constituency, rather than to the party leadership. The fact that parliamentary seats belong to political parties under South Africa's electoral system provides political parties with power of control (Calland, 2006: 109). The argument is that South Africa's electoral system compromises the quality of legislative oversight, which, in turn, compromises executive accountability. It could also be argued that this state of affairs undermines democracy – which requires the public representatives to serve the citizens and not (probably narrow) party political interests.

It is against this background that there have been calls for the introduction of either a constituency-based system or a mixed electoral system in South Africa to reduce blind party loyalty in the legislatures and to encourage members to perform their constitutional functions more effectively (Murray and Nijzink, 2002: 14; also see Malefane, 2006a; Parliament of the Republic of South Africa, 2009: 8). In the aftermath of the recall from office of former State President Thabo Mbeki in September 2008, calls for the reform of the country's electoral system included direct election of the state president by the electorate. The 2009 election manifesto of the

Congress of the People wanted the State President and Premiers to be elected directly by the citizens.

These calls for electoral reforms echo majority view of the Electoral Task Team chaired by Dr. Frederick Van Slabbert, which favoured an electoral system based on a combination of constituency representation and party lists to promote more accountability to the voters (Electoral Task Team, 2003: 24-30).

The international comparative findings suggest that the constituency-anchored electoral system makes parliamentarians responsive to the needs and interests of the voters. For example, in the United States, while political parties and the executive have influence, the parliamentarians are responsive to their constituencies because their political future depends on their constituencies (Burns, Peltason, Cronin and Magleby, 1997: 285; Greenberg and Page, 1999: 375; McKenna, 1998: 229). Although this international comparative experience does not offer a general panacea to the challenges of oversight and accountability, it does however provide an important experiment from which South Africa could learn select lessons.

The other important issue relates to institutional infrastructure and resources. The international comparative experience points to the importance of institutional infrastructure and resources for legislatures to enable them to perform their functions more effectively (see Laundy, 1989: 91). The literature on the South African experience also acknowledges the importance of resources, but points to serious challenges facing the country's legislatures with regard to institutional infrastructure and resources (Murray and Nijzink, 2002: 23).

Another key issue emerging from the literature is that the executive uses its political seniority to undermine parliament and that parliament might have become a 'lapdog' and 'rubber stamp' of executive decisions (see Mkhabela, 2006a). This has given rise to a criticism that parliament is quite weak in relation to the executive (Calland, 2006: 106; Mkhabela, 2006a). This criticism about weaknesses of parliament is also echoed in the APRM report that assessed the quality of governance in South Africa (Mkhabela, 2006b; see APRM Secretariat, 2007: 167). These concerns were more

pronounced prior to the 2007 ANC elective conference in Polokwane, but the jury remains out on the post-conference and post-Election 2009 oversight dynamics.

Although strictly not in the genre of literature, further media writings on the topic also draw attention to concerns that provincial legislatures are ineffective in performing their oversight functions (Malefane, 2006b). The domination of the provincial legislatures by the provincial political leadership is also a concern (see Malefane, 2006b). For an example, there have been incidents of executive interference in the oversight functions of the legislatures (see Yende, 2006a).

In conclusion, a brief overview of the literature on legislative oversight and executive accountability in South Africa points to the influence of party politics (party discipline) on the oversight behaviour and conduct of the parliamentarians. The literature further paints a picture of a relatively weak parliament and provincial legislatures compared to the executive when it comes to legislative oversight and executive accountability. However, post-Polokwane ANC politics seem to have changed the parliamentary oversight politics in South Africa, although it remains to be seen if this shift will be sustained into the future.

The literature further points to the weaknesses of the country's prevailing electoral system. This electoral system promotes party loyalty and undermines robust legislative oversight over the executive. It is against this backdrop that calls have made for the reform of the electoral system to include constituency representation. Overall, the literature on legislative oversight and executive accountability in South Africa points to issues and concerns which provide justification for this research. Chapter 4 provides detailed discussion of these issues.

1.8. Research Design

Research design is central to the integrity and credibility of any research project and its findings. This study takes great care to identify and elaborate the most appropriate design. There is a range of research choices that combine to constitute the research design. For example, there is a choice between different research methods and approaches. There are choices between quantitative and qualitative approaches. The

choice of research design is also based on different philosophical assumptions (see Creswell, 1998; 2003). A brief explanation of quantitative and qualitative research designs is therefore important to highlight their philosophical and methodological differences, and to provide a better understanding of why qualitative research design is deemed to be appropriate to this study.

Quantitative research is based on a philosophical approach called "the traditional, experimental or positivist approach" (Leedy and Ormrod, 2001: 101). In quantitative research, the researcher measures cause and effect relationships between variables (Denzin and Lincoln, 1998: 8). Quantitative research uses hypotheses to test theories and the researcher collects data to affirm or reject the hypotheses using statistical analysis (Creswell, 2003: 20).

The purpose of quantitative research is to explain, predict, confirm or validate the relationships between variables and to make generalisations (Leedy and Ormrod, 2001: 102). Surveys and experiments are common methods of inquiry in quantitative research (Creswell, 2003: 18). Unlike qualitative inquiry, quantitative research emphasises objectivity or value-free research in which the research is free from personal bias (see Denzin and Lincoln, 1998: 8). Random sampling is also part of quantitative enquiry (Creswell, 2003: 185).

In contrast, qualitative research is based on "the interpretative, constructivist or postpositivist approach" (Leedy and Ormrod, 2001: 101). Qualitative research is based on philosophical assumptions that reality is socially constructed and that there is more than one meaning (multiple meanings or realities) of individual experiences (Creswell, 1998: 76; 2003: 18). Qualitative research is often multi-method, naturalistic and interpretive in that the researcher could use different methods to study phenomena in their natural environment and interpret reality in terms of people's meanings (Denzin and Lincoln, 1998: 3).

In contrast to quantitative research, the purpose of qualitative research is to describe and understand the phenomena from the perspective of the research participants (Leedy and Ormrod, 2001: 101). Whilst quantitative research purports to be objective and value-free (see Leedy and Ormrod, 2001: 102), it is accepted that qualitative

research could be affected by values, and could have a subjective nature (see Creswell, 1998: 75; 2003: 182). Personal interpretation of data is therefore part and parcel of qualitative research (Creswell, 2003: 182).

Qualitative research is also exploratory in nature (Creswell, 2003: 22) and includes data collection methods such as interviews, observation, document analysis and visual methods (Creswell, 2003: 185; Denzin and Lincoln, 1998: 2; Leedy and Ormrod, 2001: 158). Most qualitative interviews aim to generate interpretations, not facts or laws (Warren, 2001: 83). Qualitative research uses the so-called 'purposive sampling' (if the term "sampling' is used at all) in which the researcher purposefully selects participants or sites that will enable the researcher to gain a better understanding of the research problem (see Creswell, 2003: 185).

It is also important to note that there are different types of qualitative research: grounded theory study, biographical study, phenomenological study, ethnographical study and case study (Creswell, 1998; also see Leedy and Ormond, 2001). These qualitative studies differ fundamentally in intent, focus, methods of data collection and analysis (Leedy and Ormrod, 2001: 157; also see Creswell, 1998: 64).

Against the backdrop of the above theoretical explanation of quantitative and qualitative research designs, this study falls within the realm of qualitative research and specifically lends itself to a case study approach. The philosophical premise of this study is that the diverse perspectives and experiences of the research participants are important in helping the researcher to answer the central research question(s) and better understand the research problem. This is also important in facilitating an in-depth understanding of the case under study.

The study has therefore relied on qualitative data collection methods (i.e. document analysis and interviews) to obtain primary and secondary data on legislative oversight and executive accountability using the case study of the Gauteng Provincial Government. A case study is a detailed analysis of a particular case (a programme, an event, an activity or individuals) within a particular context (physical, social, historical or economic environment) through multiple data collection methods such as

observation, interviews, audio-visual material, document analysis and reports (Creswell, 1998: 61).

The use of different data collection methods is important in a case study research in order to "build an in-depth picture of the case" (Creswell, 1998: 123). The document research is undertaken to provide depth and context (both national and comparative-international) to the specific case study.

The rationale behind the selection of the Gauteng Provincial Government as the case study is that the province is facing immense service delivery and socio-economic development challenges, which heighten the importance of oversight and executive accountability. Optimal legislative oversight and executive performance are key to ensuring that service delivery challenges are addressed. The growing power and influence of this province as the economic powerhouse of South Africa and Africa as a whole also make the Gauteng Provincial Government a benchmark case study from which others can learn important lessons and best practices with regard to legislative oversight and executive accountability. It must also be noted that the case study approach has limitations with regard to the generalizability of its findings to other situations (see Leedy and Ormrod, 2005:135). The researcher is aware of these limitations and data analysis and interpretation are therefore treated with care.

1.8.1. Data collection methods

In line with qualitative research paradigm, the study has relied on the following qualitative data collection methods to gather the primary and secondary research data required to address the research questions.

1.8.1.1. Document analysis

Document analysis is one of important data collection methods in qualitative research (Creswell, 2003: 188). It entails the "… study of existing documents either to understand their substantive content or to illuminate deeper meanings… and these may be public documents like media reports, government papers ..." (Ritchie, 2003: 35). Document analysis helps the researcher to "obtain the language and words of

participants … [and]… saves a researcher the time and expense of transcribing" (Creswell, 2003: 187). The study analysed some documents and relevant pieces of legislation to obtain some background information about the Gauteng Legislature and also to inform the design of interview questions and approach. In this regard, the analysis focused on information and themes relevant to the key questions of the study.

1.8.1.2. Interviews

Interviews form part of the important data collection methods in qualitative research (see Creswell, 1998; 2003; Denzin and Lincoln, 1998). There are different types of interviews such as face-to-face individual interviews, telephonic interviews and focus group discussions (Creswell, 2003: 188). There is also a distinction between structured, semi-structured and unstructured interviews. This study used semi-structured, face-to-face interviews to obtain empirical data on legislative oversight and executive accountability in the Gauteng Provincial Government. Semi-structured interviews are centred on central questions (Leedy and Ormrod, 2001: 159) and in this case the interview questions were derived from the primary and secondary research questions of the study.

In this study, the interviews were important for three main reasons. Firstly, the answers to the research questions were with members of the Gauteng Provincial Legislature and interviews with the members helped the researcher to answer the research questions. Secondly, the diverse perspectives of the members were anticipated to provide the researcher with deeper insights into, and in-depth understanding of, the research problem. The third important reason is that the interviews provided more opportunities and flexibility to the researcher to explore issues in greater detail and depth, advantages of qualitative interviews that are suggested by Greeff (2005).

In this regard, semi-structured, face-to-face interviews were conducted with six members of the provincial legislature (MPLs), each from a different political party represented in the Gauteng Provincial Legislature. The political parties which were represented in the Gauteng Provincial Legislature at the time of the interviews for this research in 2008 were the African National Congress (ANC), the majority party,

Democratic Alliance (DA), the official opposition, and minority parties were Inkatha Freedom Party (IFP), African Christian Democratic Party (ACDP), Independent Democrats (ID), Freedom Front Plus (FF+), Alliance of Free Democrats (AFD) and African People's Convention (APC).

The selection criterion for these interviews was based mainly on political party representation and the participation of interviewees in oversight committees. This criterion was used to ensure a balanced perspective and varied insights from various political parties represented in the legislature. The MPLs interviewed during this research served in various committees of the legislature, such as standing committee on public accounts, finance committee, rules committee, privileges and ethics committee and portfolio committees on housing, health, social development, sports, recreation, arts and culture, public transport, roads and works.

1.8.2. Data analysis

Leedy and Ormrod (2001: 160) argue that "…there is usually no single 'right' way to analyze the data in a qualitative study", meaning that the qualitative researchers have different data analysis methods at their disposal. The human factors, including the intellect, insights and style of the researcher, have influence on qualitative inquiry and analysis (Patton, 2002: 433). In this study, the researcher analyses data through categorisation of information from the interviews into themes related to the questions of the study. Research questions can be used as a framework to organise data for analysis in qualitative research (Patton, 2002: 437).

In the analysis, the researcher looks at the pattern of information from the interviews and makes interpretation based on this pattern of information. This is broadly in line with the thematic framework or approach to qualitative data analysis which helps the researcher to arrange data according to key themes (see Ritchie, Spencer and O'Connor, 2003: 220). This approach is important in enabling the researcher to make informed interpretations.

1.9. Significance of the study

Whilst there is a wealth of knowledge in other democratic countries (e.g. the United States and Britain) about the role of the legislative institutions in ensuring accountability of the executive and bureaucracy in general, little information exists with regard to the specific case of South Africa. Whereas there is some research on these phenomena on the national level, there is a paucity of research on the provincial legislatures of South Africa, and particularly on the oversight role of the Gauteng Provincial Legislature.

Legislatures in South Africa are well known for their legislative (law-making) functions and their successes and effectiveness in this regard are well documented in the literature. However, the oversight functions of these legislatures have not received enough research attention in the past. Legislative oversight issues in South Africa are often covered by newspaper articles and there is a limited academic literature on the subject in the country. This study therefore aims to contribute to the body of knowledge on legislative oversight and executive accountability in South Africa, more specifically with respect to the Gauteng Provincial Government.

1.10. Limitations of the study

The proposal has explored various possibilities and limitations to this study. The most important limitation is the fact that this is a case study and the experiences and practices of the Gauteng Provincial Government, as a case study, might be different from other provinces. It is also important to note that the study was conducted within a particular time period and there might be changes in experiences and practices over time.

1.11. Outline of chapters

This research report has a total of six chapters. A brief outline of chapters below highlights key issues to be covered in each chapter.

Chapter 1: Introduction and background to the study

This chapter is designed to provide the overall positioning of and background to the study. It provides an introduction, problem statement, purpose statement, research questions, conceptual framework, preliminary theoretical framework, brief South African experience, research design, and statements on the significance and limitations of the study as well as an outline of chapters.

Chapter 2: Theoretical framework for the study

This chapter provides an overview of different theories on legislative oversight and executive accountability and locates the study within the theoretical framework appropriate to this research project.

Chapter 3: The British and U.S. international comparative experience

This chapter provides a review of international comparative experience on legislative oversight and executive accountability drawing heavily on developed democracies of Britain and United States. The chapter draws international lessons and best practices from these developed democracies looking at, *inter alia*, key issues such the influence of electoral politics on legislative oversight and executive accountability, the institutional relationship (power politics) between the executive and the legislature, etc. More importantly, the chapter concludes by teasing out key lessons relevant to South Africa.

Chapter 4: Legislative oversight and executive accountability in South Africa

The chapter begins with a brief exposition of the system of government in South Africa, looking at key policy and regulatory framework that underpins the system and provides the foundation for legislative oversight and executive accountability in South Africa. This is important in providing an essential context to the understanding of the broader policy underpinnings of legislative oversight and executive accountability in South Africa. The details that are reported in this chapter result from the document analysis that was undertaken for the purposes of ultimately understanding legislative oversight and executive accountability in the Gauteng Provincial Government.

This chapter also explores how the electoral system of proportional representation and the politics of multi-party democracy (including opposition politics) in parliament and provincial legislatures influence legislative oversight and executive accountability in the country. The chapter further explores in detail issues and implications related to institutional tensions and power dynamics between the executive and parliament, including provincial legislatures. Other key issues explored in the chapter include the influence of party politics (party discipline) on legislative oversight and executive accountability and the institutional infrastructure and resources available to the legislatures.

Chapter 5: Legislative oversight and executive accountability in the Gauteng Provincial Government

This chapter focuses on detailed analysis, reporting and discussion of the empirical findings of the study. The chapter reports on the findings related to the oversight processes, methods and mechanisms of the Gauteng Provincial Legislature, resources and capacity of the committees of the legislature, major oversight weaknesses of the legislature, the influence of party politics (party discipline) on legislature oversight and executive accountability in the Gauteng Provincial Legislature. The chapter further reports on the level of institutional infrastructure and support for the Gauteng Provincial Legislature, including key issues such as professional support, training support and budget.

Chapter 6: Conclusion and recommendations

This chapter provides key conclusions and recommendations that emerge from the study.

1.12. Conclusion

This chapter has provided overall introduction to and positioning of the study. Overall, this research has both theoretical and practical significance. The theoretical significance of the study is that it represents an academic contribution to the understanding of the constitutionally-sanctioned oversight functions of the Gauteng Provincial Legislature (as a representative institution of the citizens of the province) and the importance of these functions in ensuring accountability of the executive on public service delivery (public policy implementation) and the management of public finances. Apart from the theoretical contribution of the study, it is also hoped that the key findings and issues emerging from this study will be useful in enhancing the existing oversight methods and practices of the legislatures. The next chapter provides a theoretical analysis of legislative oversight and executive accountability in order to gain a better theoretical understanding of and insight into this subject matter.

CHAPTER 2
THEORETICAL FRAMEWORK FOR THE STUDY

2.1. Introduction

The role of political institutions (i.e. parliament and executive) has dominated philosophical and political discourse for a long time. Classical political philosophers such as Aristotle and Plato philosophized about these institutions and developed political theories and postulations about different systems of political governance. Central to this discourse about political institutions has been a quest for a better system of government to create a just and equal society. In this regard, Aristotle believed that the aim of politics is to achieve good life (Magstadt, 1998: 12). This has more relevance to this study in the sense that legislative oversight and executive accountability are democratic political mechanisms designed to promote better service delivery to improve the lives of citizens.

In this quest, democratic theory gained currency in global political discourse as a vehicle to a better system of government that would create a just and equal society. In this regard, democratic theory postulates that good governance is a necessary condition to building a just and equal society. This (democratic) theory further postulates that good political governance requires strong and effective political institutions, in particular parliament as a custodian of public interest in democratic countries.

The ongoing efforts in both domestic and global politics that seek to strengthen and reposition parliaments as truly democratically elected institutions of the people are therefore a continuation of this long-standing quest to build a better and just society. This is even more important in the light of the current socio-economic and political challenges facing many states, such as poverty, unemployment, socio-economic inequalities, crime, corruption, etc. These issues require strong parliaments to ensure effective implementation of public policy and efficient use of public finances. This research is therefore based on the premise that effective public policy implementation and efficient management of public finances require strong legislative oversight.

The purpose of this chapter is to provide a theoretical backdrop and framework for this research. This chapter will first provide a brief historical background about the evolution of political institutions (i.e. parliament and executive) and democratic political traditions with a view to establishing parameters and criteria for the systematic assessment of the core constructs of oversight and accountability. The chapter will then discuss a theory on legislative oversight and executive accountability, looking at important political factors such as the influence of electoral politics on legislative oversight as well as the role of the media in democratic politics. Overall, this chapter provides a theoretical foundation for the subsequent chapters in this research.

2.2. The evolution of political institutions

This section provides a brief overview of the evolution of parliament as part of the broader background to the understanding of this study. More importantly, this section locates this study within a liberal democratic conception of the role of parliament and the notion of accountability to provide a theoretical framework for the understanding of the whole study.

Assemblies (known as parliaments today) date back centuries (Ginsberg, Lowi and Weir, 1999: 447). The evolution of political institutions can be traced to traditional forms of government. Prior to modern forms of government, traditional forms of government existed in different primitive societies across the world. Formal political institutions such as parliament, executive and judiciary did not exist in their current configuration. All legislative (law-making), executive and judicial powers were fused and vested in kings or monarchs who were often assisted by a hand-picked group of councillors. These forms of rule were autocratic (in contrast to being democratic) in nature and form.

Over time these forms of government evolved into modern forms of government made up of formal political institutions such as parliament, the executive and judiciary. What was known as assemblies evolved into formal institutions called parliaments (Ginsberg, Lowi and Weir, 1999: 447). The term “parliament” comes

from the Europeans because they considered talk to be an essential element of their national assemblies (Ginsberg, Lowi and Weir, 1999: 447).

These later forms of government are associated with the period of modernisation and industrial revolution, which marked the transition from primitive society to modern society, including the transition from primitive institutions to modern political institutions. As Ginsberg, Lowi and Weir (1999: 447) note: "until the eighteenth century – with the American and French Revolutions – assemblies were usually means used by monarchs to gain or regain the support of local leaders". In Britain, this institution called parliament "was hardly democratic or even representative" (Roskin, 1998: 27) during this period. These political institutions however differ from country to country, depending on the predominant political ideology and political culture.

In this study the role of parliament is located within a democratic context. In a democracy, parliament serves a key mechanism for government accountability and transparency. In this study, the notion of accountability is therefore framed within the context of liberal democratic theory in which parliament is one of the most important mechanisms of accountability (see Haque, 2000: 599). In its liberal democratic sense, the notion of accountability aims to promote checks and balances in a political system (see Barberis, 1998: 463). "Accountability is a cornerstone of public governance and management…", note Aucoin and Heintzman (2000: 45).

2.3. Theoretical exposition of democratic traditions

Since this study is framed within a democratic context, this section provides a brief theoretical exposition of the concept of democracy and different democratic traditions in order to build the broader backdrop and context for the understanding of legislative oversight and executive accountability. The understanding of the concept of democracy and democratic traditions is fundamental to this research. It is important in that the framing of the constitutional powers and relationship between executive, legislative and judicial branches of government in many democratic countries is based on a choice of a democratic tradition or variation (hybrid) of different democratic

traditions. This also frames the context within which legislative oversight and executive accountability take place.

Unlike in the past where many countries were dominated by non-democratic traditions such as dictatorships and other forms of autocratic regimes, democratic tradition has gained currency in the current global politics and as a result democracy has become the preferred system of government in many countries across the world.

The concept of democracy comes from two Greek words *demos* (the people or populace) and *kratos* (authority / power / rule) which collectively means government by the people (Burns, Peltason, Cronin and Magleby, 1997: 1; Cummings and Wise, 1997: 18; Patterson, 1999: 14). This concept (democracy) entails many ideas and meanings (Burns, Peltason, Cronin and Magleby, 1997: 1). Notwithstanding many definitions of the concept, in this context democracy simply means government in which people rule directly or indirectly through their elected representatives (Patterson, 1999: 14).

A distinction is made between direct and indirect democracy. Direct democracy refers to a system of government in which citizens directly make laws and policies (Ginsberg, Lowi and Weir, 1999: 21). The concept of direct democracy comes from ancient Greek cities (such as Athens) where "citizens came together to discuss and pass laws and select their rules by lot" (Burns, Peltason, Cronin and Magleby, 1997: 1). In modern states, representative (or indirect) democracy has replaced direct democracy because it is no longer possible for citizens to directly make policies and select their representatives (Burns, Peltason, Cronin and Magleby, 1997: 1)), due to the mass nature and complex requirements of modern society.

Representative democracy refers to a system of government in which people govern through their elected representatives (Ginsberg, Lowi and Weir, 1999: 24), thus constituting a form of indirect democracy. In this regard, representative democracy is based on the principle of free and fair elections to give citizens an opportunity to influence public policy direction and to hold their elected representatives accountable (Burns, Peltason, Cronin, and Magleby, 1997: 3).

This form of democracy is based on the principles of popular sovereignty and majority rule (see Cummings and Wise, 1997: 18; Ginsberg, Lowi and Weir, 1999: 24; Greenberg and Page, 1999: 135; Patterson, 1999: 14). The principle of popular sovereignty represents the notion that in a democratic state power should be in the hands of the people (Ginsberg, Lowi and Weir, 1999: 24). The principle of majority rule is based on the notion that in a democratic state majority views should prevail over minority views (Patterson, 1999: 14). In democratic theory, the fundamental principles of popular sovereignty and majority rule are based on the notion that public policy should reflect and address the needs of the citizens – which means that government should do exactly or approximately what the citizens want (Greenberg and Page, 1999: 168). Legislative oversight and executive accountability are key mechanisms through which democratic governments give practical expression to these fundamental principles of representative or indirect democracy. It is through legislative oversight that public policy is directed to addressing the needs of the citizens and that government is held accountable for failure to address these needs.

In many societies, democratic principles, practices and procedures are codified in the constitutions of countries (i.e. constitutional democracy) to ensure that political parties derive their authority and legitimacy to govern from set procedures such as elections (see Magstadt, 1998: 29). Many constitutional democracies (i.e. democratic countries founded on constitutional law) are found in Western Europe (Magstadt, 1998: 97). However, this is not to suggest that democracy does not exist in Africa and other continents. Many African countries have undergone democratic reforms. For example, members states of the Southern African Development Community (SADC) have regular multi-party elections (Matlosa, 2006:2). Although elections do not in themselves amount to democracy, they are however an essential or fundamental pillar of democracy (Matlosa, 2006: 2). Modern-day democracy also promotes the principle of political pluralism (political competition) that allows the existence of opposition political parties to strengthen democratic governance (see Burns, Peltason, Cronin and Magleby, 1997: 3).

In contemporary comparative politics, both parliamentary democracy (exemplified by Britain) and presidential democracy (exemplified by United States) are the main dominant democratic traditions (Magstadt, 1998: 29). In a parliamentary democratic

tradition as exemplified by the British Westminster system, a prime minister and cabinet ministers come from the majority party (quite often from the leadership of the majority party) in parliament or the legislature (Magstadt, 1998: 30). In contrast, in a presidential democratic tradition as exemplified by United States, the president is elected by the citizens and there is a separation of power and checks and balances between the executive, legislative and judicial branches of government (Magstadt, 1998: 29). In this regard, it is also important to note that party discipline affects parliamentary systems more than presidential systems (Sartori, 1994: 189). Most parliamentary democracies maintain strong party discipline (Laver and Shepsle, 1996: 262).

The choice of a democratic tradition is fundamentally important to the understanding of power relationships and dynamics between the executive and parliament (legislature) with respect to matters of legislative oversight and executive accountability. In simple terms, a democratic tradition has a major influence on the relationship between the executive and parliament (legislature) which in turn influences how parliament (the legislature) performs its oversight functions and how the executive accounts to parliament (the legislature) on public policy implementation and management of public finances.

Overall, parliamentary and presidential traditions have varied implications for legislative oversight and executive accountability. Chapter 3 of this report will unpack in detail the extent to which these traditions, as applied in the United States and Britain, influence the exercise of legislative oversight and executive accountability. These democratic traditions were chosen as case studies for this research mainly because these traditions are relatively well-established traditions from which South Africa could learn diverse lessons. This is not to suggest that these traditions are flawless, but rather that they present a benchmark for the analysis of legislative oversight and executive accountability in South Africa.

2.4. The influence of the electoral politics on legislative oversight and executive accountability

Legislative oversight and executive accountability cannot be studied and understood outside the context of the electoral politics. Of relevance to this research is that electoral politics and electoral systems have implications for legislative oversight and executive accountability which in turn affect public policy and democratic governance in countries. In this regard, electoral theories suggest that the behaviour and conduct of the parliamentarians in performing their oversight functions and holding the executive accountable is influenced and, to some extent, framed by the electoral system.

Elections are central to democratic politics (Greenberg and Page, 1999: 313). They provide a platform and mechanism through which citizens participate in democratic politics. In a representative democracy, the elections provide citizens with an opportunity firstly to elect their political representatives and secondly to influence public policy directions (see Ginsberg, Lowi and Weir, 1999: 355). More importantly, elections are important to influence public policy choices, promote accountability and protect citizens from abuse of state power (Ginsberg, Lowi and Weir, 1999: 355; see Burns, Peltason, Cronin and Magleby, 1997: 3). The elections also reward performance and punish poor or non-performance of elected political representatives (see Greenberg and Page, 1999: 348). Elections are furthermore important for legitimisation (see Ginsberg, Lowi and Weir, 1999: 355) of the state and elected political representatives. An electoral system is important in that it sets out the rules of the political game for political parties and also determines how citizens participate in democratic politics and vote for their political representatives.

Many democratic states have multiparty systems of government (Burns, Peltason, Cronin and Magleby, 1997: 187; Greenberg and Page, 1999: 283). Parliament (the legislature) is an important institution in a multiparty system (Burns, Peltason, Cronin and Magleby, 1997: 187). The significance of parliament (the legislature) in a multiparty democracy comes from the fact that it represents multiplicity or plurality of

political interests of citizens through various political parties or political representatives, including majority and minority political interests.

Electoral systems vary from country to country. There is a range of democratic electoral systems which are designed to promote political competition, but also non-democratic (autocratic) electoral systems which promote one-party domination (Ginsberg, Lowi and Weir, 1999: 355).

The major distinction between democratic electoral systems is between majoritarian (winner takes all) and proportional representation electoral system (Sartori, 1994: 3; Hague, Harrop and Breslin, 1992: 192). Majoritarian electoral systems are often characterised by individual candidates and proportional representation electoral systems by party lists (Sartori, 1994: 3). Proportional representation (PR) systems are the most common democratic electoral systems used by democratic countries, for example, Western European countries (see Ginsberg, Lowi and Weir, 1999: 363; Greenberg and Page, 1999: 284).

In a proportional representation (PR) electoral system, political parties are allocated seats in parliament in direct proportion to their votes (Burns, Peltason, Cronin and Magleby, 1997: 187; Ginsberg, Lowi and Weir, 1999: 363; Hague, Harrop and Breslin, 1992: 192). For example, a party that wins 60 per cent of the votes receives 60 per cent of seats in parliament or the legislature (see Ginsberg, Lowi and Weir, 1999: 363; Greenberg and Page, 1999: 284). In contrast, in a majority-based electoral system, “the candidate(s) with the largest number of votes in a particular area wins election” (Hague, Harrop and Breslin, 1992: 192).

The PR system is often regarded as more appealing than other electoral systems. It promotes plurality of political parties (political competition) and provides incentives for minority political parties and more importantly opposition political parties to participate in democratic politics (see Burns, Peltason, Cronin and Magleby, 1997: 187; Ginsberg, Lowi and Weir, 1999: 363). The PR system also appeals for its fairness in representation (see Sartori, 1994: 58). Proportionality is important for fairness in a representative democracy (Sartori, 1994: 69).The PR system is therefore of fundamental importance for democracy in that minority interests are also

accommodated in political representation and public policy decisions. However, the downside of the PR system is that it creates a distance between elected representatives and their constituencies (Laundy, 1989: 17).

In contrast to the PR systems, other democratic electoral systems (plurality and majority - based electoral systems) such as the U.S. majority-based electoral system limit political competition (especially of minority political parties) and often promote two-party system in which only major political parties dominate political space (Burns, Peltason, Cronin and Magleby, 1997: 187; Ginsberg, Lowi and Weir, 1999: 363; see Roskin, 1998: 8). For example, the U.S. electoral competition and parliamentary politics are dominated by the Democratic Party and the Republican Party.

This does not imply that these electoral systems (such as the U.S. electoral system) are non-democratic (autocratic) systems. They are democratic in that they allow democratic participation of political parties in the elections and opposition political parties in their parliaments or legislatures. The U.S. electoral system is discussed in detail in chapter 3 of this thesis.

The literature makes observations about the influence of the electoral system on legislative oversight and executive accountability in parliamentary systems of government. The literature indicates that although parliaments in parliamentary systems are powerful in theory as they are the ones who elect the executives, in practice the executives are often more powerful and dominant than their parliaments (Mckenna, 1998, 209). This happens because political parties are more powerful and disciplined in parliamentary systems and their power allows the executive to dominate parliament (Mckenna, 1998, 209). Political parties derive their power from the fact that in parliamentary systems political parties are the entities that contest the elections and own seats in parliament. Individual parliamentarians are nominated by their political parties. The common practice is that the parliamentarians are nominated on the basis of their loyalty to their parties and this puts political career of the parliamentarians at the mercy of their political parties (Mckenna, 1998, 209).

Logically, party loyalty also extends to actual oversight duties and obligations in parliament. The expectation (whether explicit and implicit) therefore is that the parliamentarians should toe party line and support party positions in parliament. The literature indicates that this practice (party discipline) creates a conflict of interest and political dilemma for the parliamentarians in that they are forced to choose between their political careers, at the expense of their constitutional obligations, or their constitutional obligations at the expense of their political careers.

Quite often and understandably so the parliamentarians choose the former and allow themselves to be political pawns and uncritical rubberstamps of the executive decisions. Consequently, this situation results in weak legislative oversight and poor executive accountability which in turn undermines public policy implementation and democratic governance.

In contrast, the literature points to a different situation with regard to the presidential systems such as the U.S. presidential system. Using the U.S. presidential system, the literature points to the opposite of a situation found in a parliamentary system. It indicates that in the U.S. system, which includes a constituency-based electoral system, the parliamentarians are elected by their constituencies and owe their political careers to their constituencies and not their political parties (see Greenberg and Page, 1999: 386). It is therefore not surprising that the parliamentarians in the U.S. congress are more responsive to their constituencies (see Burns, Peltason, Cronin and Magleby, 1997: 285; Ginsberg, Lowi and Weir, 1999: 487; Greenberg and Page, 1999: 375; Patterson, 1999: 325). It is also not surprising that this situation weakens political parties and party discipline in the U.S. congressional politics (see Greenberg and Page, 1999: 386).

The constituencies are therefore powerful in that they have real powers to punish the parliamentarians by voting them out of office. This provides real incentives for the parliamentarians to put policy interests and preferences of their constituencies above narrow party political interests in performing their parliamentary duties and obligations, including their oversight duties. Consequently, the constituencies often become the winners in the overall political scheme.

In conclusion, this section has provided a brief overview of different electoral systems, with a special focus on the dimension of accountability. The section has provided a theoretical understanding of how the electoral systems influence the exercise of legislative oversight and executive accountability. It did this by foregrounding detailed discussion in chapter 3 of this report on the influence of the electoral system on legislative oversight and executive accountability in the British parliamentary system and the U.S. presidential system. Overall, the key contribution of this section is that the understanding of the influence of the electoral politics and systems is fundamentally important to the understanding of the political dynamics impacting on the relationship between parliament (the legislature) and the executive in relation to the exercise of legislative oversight and executive accountability. Chapter 3 will further discuss the electoral politics in detail in relation to the U.S. and British case studies in order to draw specific parallels to and lessons for South Africa and Gauteng Provincial Government.

2.5. The role of the media in democratic politics

Information is central to legislative oversight and executive accountability. Effective legislative oversight depends on the availability of information about the performance of public policy programmes and public finances. While the parliamentarians conduct their own oversight investigations, the media is an important source of some of the information required for effective legislative oversight and executive accountability. The media is therefore an important aspect that warrants some analysis in this study.

The media is fundamentally important to democratic politics (Ginsberg, Lowi and Weir, 1999: 305). The media is important for many reasons. The citizens depend on the media for information about politics, government and public policy (Cummings and Wise, 1997: 279). More importantly, the media is important for promoting the accountability of the executive and keeping an eye on parliaments (Agere, 2000: 49). In this regard, the media play an important oversight role over government and public officials by investigating and exposing government wrongdoing (Ginsberg, Lowi and Weir, 1999: 305; Greenberg and Page, 1999: 176).

This information is important for two basic reasons. Firstly, it helps the citizens to hold public officials or representatives accountable (Greenberg and Page, 1999: 176) and secondly to make informed decisions about public policy choices and political candidates to vote for (Cummings and Wise, 1997: 279; Ginsberg, Lowi and Weir, 1999: 275; Greenberg and Page, 1999: 176). More importantly, the media influence public opinion and public policy agenda and debates (Greenberg and Page, 1999: 201)

Directly important to this research is the oversight role of the media. Whilst the media are not accountable to the citizens (Patterson, 1999: 314), there are immense opportunities for both parliament (the legislature) and the citizens to make effective and intelligent use of the media information in holding the executive and government in general accountable for public policy implementation and management of public finances.

This however does not suggest that the parliamentarians should blindly and uncritically rely on media information for its oversight functions. The media has its own political interests and therefore cannot always claim to represent public interest even though it serves public interest through public information.

This research does not intend to explore the full spectrum of the roles and functions of the media in democratic politics. In this research the role of the media is explored only in relation to its relevance to legislative oversight and executive accountability. This important question of the role of the media in legislative oversight and executive accountability will be explored further in the next chapter.

2.6. Conclusion

This chapter has provided a brief overview of the evolution of parliament as part of building a broader background to the understanding of this study. The chapter has framed the study within a liberal democratic conception of the role of parliament and the notion of accountability to provide a theoretical framework for the analysis and understanding of the whole study. As part of framing the study within a democratic context, the chapter has further provided a brief theoretical exposition of the concept of democracy and different democratic traditions in order to build the broader

backdrop and context for the understanding of legislative oversight and executive accountability as applied in this study.

The chapter has further provided some understanding of the influence of the electoral politics and systems on legislative oversight and executive accountability. In this regard, the key contribution of this chapter is that the understanding of the influence of the electoral politics and systems is important to the understanding of the political dynamics impacting on the relationship between parliament (the legislature) and the executive in relation to the exercise of legislative oversight and executive accountability. The chapter has also highlighted the importance of the media in relation to legislative oversight and executive accountability. Overall, the whole chapter provides a theoretical framework for this study.

CHAPTER 3
THE BRITISH AND U.S. INTERNATIONAL COMPARATIVE EXPERIENCE

3.1. Introduction

This chapter constitutes part of the document and literature study aimed at building the understanding of legislative oversight and executive accountability in Britain and the United States with a view to obtaining key lessons for South Africa with specific to the Gauteng Provincial Government. The British and U.S. democratic traditions are relatively old and matured traditions in the world, although with some imperfections. The British parliamentary democratic tradition has influenced many countries in the world (Rose, 1996: 155). As a former British colony, South Africa (including the current post apartheid democratic dispensation) has also inherited the British parliamentary tradition, conventions and practices. In addition, it is also important to note that, while the South African parliament reflects the British parliamentary tradition, its overall system of government is more a hybrid of different models from different countries, including the U.S. and European models.

The provincial system of government (including the provincial legislatures) in South Africa is more a replica of the country's national system of government. For an example, the nine provincial legislatures are modeled on the national parliament, including their structures, systems, conventions and practices. The main difference is that the national parliament is bicameral (i.e. the National Assembly and National Council of Provinces) and the provincial legislatures are unicameral. The other differences relate to the number of seats, number of committees, etc, but overall there are no fundamental differences in the manner in which the national parliament and the provincial legislatures conduct their legislative (law making) and oversight functions.

The British system of government is based on a parliamentary democratic tradition and the U.S. system is modelled on the presidential democratic tradition (Magstadt, 1998: 29). As some of the most mature democratic countries in the world, albeit with imperfections, both the British and the U.S. models lend themselves to interesting case studies for international comparative experience from which lessons could be learned. More importantly, these case studies have been selected because they also

represent different democratic traditions, the analysis of which would provide diverse insights and lessons, including a better perspective of the parallels and differences with regard to legislative oversight and executive accountability.

This study is fully cognisant of the fact that many African countries have undergone democratic reforms and have multiparty elections and parliamentary systems. For example, most member states of the Southern African Development Community (SADC) hold regular multiparty elections (Matlosa, 2006:2). However, this study does not draw comparisons from African case studies mainly because democratic parliamentary practices are still in a process of development since most African countries have a very recent democratic history compared to the U.S. and the British democratic history. The effectiveness of many African parliamentary institutions remains suspect (see Kpundeh, 2004: 124). Many African legislatures are controlled by the ruling party or the executive and checks and balances are lacking in many African countries (Kpundeh, 2004: 124). African legislatures also lack infrastructure and technocratic and analytical capacity (Gyimah-Boadi, 2004: 10).

In other words, democracy is relatively new and parliamentary practices are still developing in Africa compared to the British and the U.S systems. The African Peer Review Mechanism (APRM), which is part of major continental initiatives to entrench good democratic governance in many African countries, including strengthening key state institutions such as parliament, attests to the relative infancy of democracy in Africa compared to the European and the U.S. democracies.

Against this background, it is therefore the contention of this study that African case studies would at this stage provide very limited insights and lessons hence the focus on the British and the U.S. case studies. This however does not suggest that the British and the U.S. models are flawless, but rather that they would offer more insights and lessons against which South Africa could benchmark itself with regard to legislative oversight and executive accountability.

3.2. Analytical framework for international comparative analysis.

This section is intended to foreground key issues to be analysed and what the study hopes learn in this chapter. The chapter begins with a brief background of the British and the U.S. case studies to provide both a contextual understanding of these case studies and the backdrop for their analysis. The structure, functions and powers of parliament and the executive in these case studies are examined to understand how these institutional arrangements support or constrain legislative oversight and executive accountability in these countries. The key question is: what lessons could be learnt from the British and the U.S. institutional arrangements in relation to legislative oversight and executive accountability? In other words, are there any key institutional enablers or constraints to legislative oversight and executive accountability that could be learnt from the British and the U.S models? As core themes of this study, legislative oversight and executive accountability in both countries are also analysed in detail. The chapter seeks to gain deeper insights and understanding of how parliaments in these countries conduct oversight and hold the executive accountable. This includes their overall approach, methods and instruments used to conduct oversight as well as key constraints and weaknesses that militate against effective legislative oversight and executive accountability in these countries.

The analysis also seeks to understand the extent to which the British and the U.S. democratic traditions support or undermine legislative oversight and executive accountability. The nature and the dynamics of institutional relationship (power politics) between parliament and the executive as well as the influence of the electoral politics in these countries are also unpacked in greater detail to add further insights to the study with regard to the institutional and political nuances of legislative oversight and executive accountability in these case studies. This is the crux of what this study intends to learn from the international comparative analysis.

The ethical dilemmas facing the U.S. parliamentarians are also highlighted in relation to a conflict of interest relating to party and constituency interests. This is important to this study in two main respects. Firstly, it could provide key lessons on how a conflict between party and constituency interests may affect the behaviour and conduct of the parliamentarians when discharging their oversight responsibilities.

Secondly, it could also shed some light on the extent to which constituency-anchored electoral system makes the parliamentarians responsive or indifferent to their constituency interests when conducting oversight over the executive.

While it is peripheral to this study, a brief analysis of the media in the U.S. democratic politics is provided, more specifically in relation to its importance to legislative oversight and executive accountability. The chapter concludes the international comparative analysis by teasing out key insights and lessons from the British and the U.S. experiences.

3.3. The British Experience

3.3.1. Background

This background section aims to provide a backdrop to the analysis and understanding of Britain as a case study. The understanding of the British system of government is fundamental to the understanding of the broader political context and intricacies of the relationship between its parliament and the executive, and how this relationship impacts on legislative oversight and executive accountability. The British system of government is based on a parliamentary democratic tradition which is different from presidential democratic tradition found in the United States (Magstadt, 1998: 29). The main characteristics or features of the British parliamentary system are the unitary system, fusion of powers, collective ministerial responsibility and two-party system (Magstadt, 1998: 99).

In contrast to the federal (decentralized) system of government found in the United States, the British system is a unitary (centralized) system of government in that the central government has more powers in relation to the local governments which have very limited delegated powers (Magstadt, 1998: 99). Furthermore, unlike the United States which has separation of powers between parliament, executive and the judiciary, there is a fusion of these powers in the British system of government, which means that cabinet members are at the same time members of parliament (Magstadt, 1998: 99).

In the British context, the notion of collective ministerial responsibility (accountability) means that the prime minister and cabinet members are bound and required to support and defend government policies and account to parliament regarding the implementation of these policies (Magstadt, 1998: 99). The two-party system does not mean that only two political parties exist in Britain, but that the British politics are dominated by two major political parties which often "alternate in power" (Magstadt, 1998: 99).

This contextual background shows some of the features of the British parliamentary system of government. These features underpin the relationship between parliament and the executive. The relationship between parliament and the executive is important because it is this relationship which enables or constrains legislative oversight and executive accountability. The significance of this relationship and other important issues or features highlighted in this contextual background will be further elaborated later in this chapter. Overall, this section provides the broader political context and backdrop to the analysis and understanding of the dynamics of legislative oversight and executive accountability in this country.

3.3.2. The structure and functions of the British parliament

Legislative oversight and executive accountability cannot be considered and analysed outside the institutional configuration and context of parliament. In fact, legislative oversight and executive accountability are framed by the structure and functions of parliament. The understanding of the institutional configuration of the British parliament is therefore the first important step towards understanding the institutional parameters and anchors of legislative oversight and executive accountability in this country.

The structure of the British parliament is based on a bi-cameral parliamentary system. The British parliament is made up of the monarch (ceremonial figure), the House of Commons and the House of Lords (Wilson, 1994: 56). The House of Commons is made up of the elected political representatives and the House of Lords consists of unelected parliamentarians (see Krieger, 2004:58).

Of utmost importance and interest to this study is the House of Commons since it represents public interest or the electoral mandate of the British citizens. It is this elected house of parliament which is the custodian of the legislative oversight and executive accountability. In constitutional terms, the main functions of the House of Commons are (1) to pass laws, (2) to authorize public finances and taxation and (3) to oversee government and public policy (Krieger, 2004:58). The House of Lords is also involved in the performance of these functions, albeit to a different degree.

The British parliament is underpinned by the notion of parliamentary sovereignty and this makes the British parliament more powerful in that it can overrule any law and that the executive, the judiciary and the monarch cannot overrule parliament (Krieger, 2004: 49). In Britain, "only parliament can nullify or overturn its own legislation" (Krieger, 2004: 49). This means that the British judiciary has limited powers in that the courts do not have the powers and authority to conduct the judicial review of legislation or rule on the constitutionality of the legislation (Krieger, 2004: 56).

The only thing the courts can do is that "they can only determine whether policy directives or administrative acts violate common law or an act of Parliament" (Krieger, 2004: 56). This British parliamentary system is different from the U.S. presidential system which is based on the separation of powers between parliament, the executive and the judiciary (see Magstadt, 1998: 99). In theory this notion of parliamentary sovereignty makes the British parliament the most powerful institution in the British government. At face value, the parliamentary sovereignty also weakens the institutional powers and authority of both cabinet and the judiciary. More importantly, this provides the British parliament with more power and clout to conduct oversight and hold the executive accountable without any hindrance. However, in practice, parliament is not that powerful in relation to the executive (see Krieger, 2004: 59) and this will be elaborated further in the later sections of this chapter.

3.3.3. The structure and functions of the British cabinet

The configuration and functions of the executive are important to legislative oversight and executive accountability. Like in many countries, the British cabinet or executive is made up of the prime minister and cabinet members (often called secretaries). The British cabinet includes government departments which run day-to-day operations of government under the leadership of cabinet ministers or secretaries of state (Magstadt, 1998: 104).

Unlike in other countries such as the United States., "the formation and functioning of the cabinet illustrate the fusion of legislative and executive powers in the British system" (Magstadt, 1998: 104). In Britain, "the prime minister chooses leading MPs [members of parliament] to serve in the cabinet" (Magstadt, 1998: 104). The prime minister is a powerful politician in British politics in that he dominates or leads cabinet and bureaucratic and party machinery (Dragnich, Rasmussen and Moses, 1991: 157).

Both the prime minister and cabinet members "retain their legislative seats while they simultaneously serve in executive posts in the government" (Magstadt, 1998: 30). This practice is different from the U.S. parliamentary tradition which "bars members of Congress from concurrently holding a cabinet office" (Magstadt, 1998: 99).

Like in many countries, the main function of the British cabinet (executive) is policy implementation (see Krieger, 2004: 57). The prime minister (and his cabinet) is accountable to the House of Commons (Krieger, 2004: 49) for public policy implementation and management of public finances.

Clearly, the blurred boundaries between the British parliament and the executive raise fundamental questions about whether the British system is conducive to a robust and independent legislative oversight over the executive. It is the contention of this study that the design of the British system militates against effective legislative oversight and executive accountability. Further analysis in the next sections of this chapter will highlight the systemic constraints of the British parliamentary system to legislative oversight and executive accountability.

3.3.4. Legislative oversight and executive (ministerial) accountability

This section aims to unpack how the British parliament exercises oversight over the executive. This includes the analysis of overall oversight approach, methods and instruments as well as the enablers, constraints and weaknesses that impact on legislative oversight and executive accountability in this country. This section is key to building the overall understanding of the British oversight machinery as well as key insights and lessons to be learnt from this country.

The British system of executive accountability to parliament is based on the principle of collective cabinet responsibility (collective ministerial accountability) (see Laundy, 1989: 85). This means that the British government (ministers) is collectively and individually accountable to parliament (Laundy, 85). It also means that all cabinet ministers are required to support government policy (Curtis, 1997:76).

Like in many parliaments, the British parliament has committees that conduct oversight over government departments (Krieger, 2004: 60; Laundy, 1989: 77). These committees "hold hearings, take written and oral testimony, and question senior civil servants and ministers" (Krieger, 2004: 60). This paints a picture of committees equipped with various oversight instruments. The representation of the opposition party in these committees is proportional to its representation in the House of Commons (Curtis, 1997: 86). The British tradition allows the opposition party to chair some of the parliamentary committees (Curtis, 1997: 86). The principle of proportionality is important and preferable for democratic fairness. However, in the context of the British parliamentary tradition in which the majority party dominates both parliament and the executive, this limits the influence of the opposition on legislative oversight and executive accountability.

The British parliament uses different oversight instruments and mechanisms to hold the executive accountable for public policy implementation and management of public finances. The first important oversight instrument used by the British parliament is the appropriation or authorization of government expenditure (budget) and taxation (Laundy, 1989: 76). This enables parliament to ensure that budget and

spending priorities of government reflect public policy priorities and the needs of the citizens. It is also important for public accountability and transparency on public finances in terms of government spending priorities and total public expenditure.

Another important oversight instrument of the British parliament is the Public Accounts Committee (see Laundy, 1989: 77). This committee performs financial oversight on behalf of parliament with the help of the Auditor General (Laundy, 1989: 77). The committee scrutinizes expenditure of government departments to expose inefficiencies and waste, and to ensure that public finances are utilized for the intended purposes (Laundy, 1989: 77). In British parliamentary tradition, the Public Accounts Committee is chaired by the opposition party in parliament and accounting officers of government departments are called to the committee to answer questions and adverse findings contained in the report of the Auditor General (Agere, 2000: 46; see Laundy, 1989: 77-78). The allocation of the chairpersonship of the Public Accounts Committee to the opposition is meant to strengthen the independence, integrity and impartiality of this committee. This British tradition has influenced financial oversight practices in many parliaments (Laundy, 1989: 78). In South Africa, the National Assembly's standing committee on public accounts (Scopa) is also chaired by the opposition.

The other important oversight instrument of the British parliament is question time (see Agere, 2000: 47; Dragnich, Rasmussen and Moses, 1991: 143; Laundy, 1989: 89). While the British ministers are not obligated to respond to parliamentary questions (Laundy, 1989: 89), question time allows the parliamentarians to hold the executive accountable (Agere, 2000: 47). Question time has been used as a powerful weapon by the skilled parliamentarians (Dragnich, Rasmussen and Moses, 1991: 143).

However, the British oversight machinery has certain weaknesses and shortcomings compared to the U.S. oversight machinery. The weaknesses are highlighted in the following quote from Wilson (1994), which is centred on issues of independence, subordination and the lack of resources and support.

> *"In comparison with the powerful and independent United States Congress, the British House of Commons appears weak and subordinate to the executive.*

> *It lacks the resources for developing real power. Its committee system is weak; its members are poorly paid; they lack adequate secretarial and legislative staff; office space is very limited" (Wilson, 1994: 59).*

Unlike their U.S counterparts, the British parliamentary committees have limited decision making powers in that they can only make recommendations to the House of Commons (see Laundy, 96). This limits the power and authority of these committees to enforce their oversight decisions. Furthermore, the British parliamentary committees are weak and under-staffed, and do not have powers to compel ministers to testify (Roskin, 1998: 41). This is disempowering to these committees and undermines the quality and effectiveness of their oversight work. The other important weakness is that taxation and expenditure (money) bills can only be introduced by government (Laundy, 69). This gives further power to government (Dragnich, Rasmussen and Moses, 1991: 160) and disempowers parliament.

The most important weakness or shortcoming is a political one and has a lot to do with the systemic weaknesses of the British parliamentary tradition itself. The fact that British parliamentarians are required to maintain the party line (party discipline) irrespective of their individual views coupled with the majority party control of both the executive and parliament (Dragnich, Rasmussen and Moses, 1991: 162-163) means that the parliamentarians cannot conduct their oversight functions without interference from the party and the executive. The fact that the British executive dominates parliament (Dragnich, Rasmussen and Moses, 1991: 166) should therefore be understood against the backdrop of the British parliamentary tradition itself. The overall implication of all these weaknesses means that legislative oversight in the British parliament is conducted in a politically controlled and disciplined environment, which undermines the independence of the parliamentarians when it comes to robust legislative oversight over the executive.

3.3.5. The institutional relationship between parliament and the executive

The institutional relationship (concerning power politics) between parliament and the executive is one of the major issues in contemporary political discourse (see Krieger, 2004: 73). This relationship is at the core of legislative oversight and executive accountability. It may either support or compromise legislative oversight and executive accountability. The critical analysis of this relationship is therefore necessary to obtain insights into the extent to which its dynamics enable or constrain effective legislative oversight over the executive in Britain.

In Britain, the oversight relationship between parliament and the executive has serious systemic flaws. The British parliamentary tradition has a lot to do with the nature of this relationship. Despite immense constitutional powers (parliamentary sovereignty) vested in the British parliament (see Krieger, 2004: 49; Magstadt, 1998: 101), the power of the British parliament has drifted to the executive and the prime minister (Smith, 1998: 49). In practice, the ruling party and the executive are the powerful institutions in the British system (Krieger, 2004: 59). Both the ruling party and the executive dominate and constrain parliament (Krieger, 2004: 61) making it a "little more than a rubber stamp for the government's decisions" (Dragnich, Rasmussen & Moses, 1991: 163). Since political parties in the British parliament are disciplined (Almond & Powell, 1996: 115), it is therefore logical that majority party and the executive will dominate parliament. The fusion of legislative and executive powers reinforces the executive domination over the British parliament.

The literature points to the immense powers of the prime minister. It indicates that the prime minister is the most powerful politician in the British government in that he or she is the chief executive officer (head) of government, the leader of majority party in parliament and the advisor to the queen (Magstadt, 1998: 103). The prime minister further derives power from the fact that he or she "appoints and dismisses cabinet members, sets the legislative agenda, decides major policy issues, directs the bureaucracy, and manages the nation's diplomatic affairs" (Magstadt, 1998: 103).

The political implications of this fusion of legislative and executive powers is that it allows the prime minister (and by extension the executive) to dominate parliament. This is a systemic weakness which undermines effective legislative oversight over the executive. It is contrary to the U.S. system where the principle of separation of powers does not allow the executive or the parliamentarians to hold both the executive and parliamentary positions at the same time (see Magstadt, 1998: 99). By design, the configuration of U.S. system is therefore conducive to effective legislative oversight over the executive.

The literature further points to the influence of strong party discipline in British parliamentary politics (see Dragnich, Rasmussen & Moses, 1991: 162-164; Magstadt, 1998: 99; Roskin, 1998: 37) and the power of majority party chief whip in enforcing party discipline in parliament (Magstadt, 1998: 102; see Roskin, 1998: 37). It is also clear from the literature that majority party does not only dominate parliament, but also dominate parliamentary portfolio committees (Magstadt, 1998: 101). However, despite the domination of the majority party, there is space for opposition parties to participate in British parliamentary politics.

The literature goes further and points to the importance of parliamentary question time as an important opportunity for the opposition parties to criticise, embarrass and hold government accountable (Magstadt, 1998: 102). However, in the context of majority party domination over parliament and its committees, fundamental questions need to be pondered about the influence of the opposition on legislative oversight and executive accountability in the British parliamentary system. Clearly not much opposition influence could be expected under such context.

In the bigger scheme of multi-party democratic governance, the overall picture about the institutional relationship between parliament and the executive in the British politics does not augur well for effective legislative oversight and executive accountability. It is clear from the literature review that the influence (including party discipline) of the majority party and the executive constrains, if not undermines, the constitutional obligations and the independence of the parliamentarians to perform their oversight functions. This undermines parliament as a representative (democratic)

institution of the citizens and, by implication, overall democratic accountability in Britain.

Overall, the key insight from this analysis is that party politics, rather than formal (constitutional) powers, is a key factor in framing the relationship between parliament and the executive in British parliamentary democratic politics. It must however be noted that party discipline is not a problem peculiar to British parliamentary politics. Party discipline is strong in many parliaments to the extent that the parliamentarians vote in line with their party whip instructions (Roskin, 1998: 7). This, however, needs to be understood against the backdrop of the inherent systemic flaws of the parliamentary tradition found in Britain and other countries.

3.3.6. The influence of the British electoral politics

Legislative oversight and executive accountability cannot be analysed outside the context of the electoral configuration and politics. Since the electoral system determines the allocation of power to political parties in parliament, it has an influence on the context and the manner in which the parliamentarians exercise their oversight functions. In other words, the electoral politics are at the core of the independence (or lack of it) of the parliamentarians when it comes to legislative oversight and executive accountability. This section therefore aims to build an understanding of the extent to which the electoral politics impact on legislative oversight and executive accountability in the British parliamentary system.

The British electoral system is based on a single-member plurality system or winner-takes-all system (i.e. first-past-the-post principle) which means that each political party is represented by a single candidate in each electoral (constituency) district and the candidate who wins the most votes (plurality) becomes the winner in that particular district or constituency (Krieger, 2004: 64; Magstadt, 1998: 108; Laundy, 1989: 15-16; Wilson, 1994: 30). In theory, this constituency-anchored electoral system is appealing from a public accountability point of view.

In Britain, there is only one national election which happens on a four- or five-year interval and only people aged 18 years and above qualify to vote as long as they have registered for the elections (Magstadt, 1998: 108). This aspect of the British electoral system is similar to the South African electoral system which also happens on a five-year interval and only people aged 18 years and above are eligible to vote provided they have registered. The British electoral system is party-oriented in that "voters do not determine who governs but which party wins the most seats in Parliament" (Rose, 1996: 191). Again, this is similar to South Africa. This party-oriented electoral system has serious implications for the independence of the parliamentarians when it comes to their oversight responsibilities.

Unlike many European countries, the British electoral system is not based on proportional representation (Krieger, 2004: 64). Furthermore, the British elections are only for parliamentary seats in the House of Commons (representative house of the British parliament) and there is no separate election for the prime minister, but the prime minister is elected as a member of parliament (MP) through a single-member electoral (constituency) district (Krieger, 2004: 64). This is also similar to South African electoral system, but only in so far as the president and other members of the executive are not elected separately, but through party lists as members of parliament.

Of utmost importance to this study is the fact that the British elections "are more party-oriented than in the United States, where the personality, reputation, and charisma of the individual candidate are often paramount" (Magstadt, 1998: 109). The most obvious implication of this party-oriented electoral system is that it gives political parties more control over their elected members (the parliamentarians). This makes party discipline more effective and the independence of the parliamentarians compromised or constrained. This in turn undermines independent and robust legislative oversight over the executive.

The literature maintains that this winner-takes-all electoral system tends to favour major parties and promote two-party dominance (i.e. two major parties dominate the elections) in British parliamentary politics (Krieger, 2004: 64-66; Roskin, 1998: 43). Moreover, the British electoral system also distorts the political preferences of the citizens in terms of representation in parliament (Wilson, 1994: 30). This has

implications for issues of representation and fairness in the British democratic politics (Krieger, 2004: 64).

3.3.7. Conclusion

The analysis of the British case study has provided key insights and lessons with regard to legislative oversight and executive accountability. The structural configuration of the British parliamentary system provides for both elected (i.e. House of Commons) and unelected (i.e. Senate) houses of parliament. The elected house of the British parliament conducts oversight through a number of committees, including Public Accounts Committee which conducts financial oversight. The British tradition of giving the chairpersonship of the Public Accounts Committee to the opposition strengthens the overall independence, integrity and impartiality of this committee. More importantly, it augurs well for effective financial oversight over the executive.

The British oversight instruments include the appropriation of government budget and expenditure, authorisation of taxation, hearings and question time. However, the literature points to the weaknesses of the British oversight machinery. The British parliamentary committees lack resources and have limited oversight powers in that they cannot enforce their oversight decisions and can only make recommendations.

Whilst the notion of parliamentary sovereignty (i.e. parliamentary supremacy) theoretically makes the British parliament a supreme and powerful institution, in practice the executive is more powerful and influential than parliament. This is a systemic flaw of the British parliamentary tradition which, through a system of fusion of legislative and executive powers and the tradition of party discipline, allows the majority party and the executive to dominate parliament. This executive domination is further reinforced by Britain's party-based electoral system which gives political parties more control over their parliamentarians. This combination of parliamentary tradition and party-based electoral system allows political parties to exercise strong party discipline and control over their parliamentarians.

Overall, this state of affairs undermines the independence of the parliamentarians to conduct robust and effective oversight over the executive. The British opposition also appears to be generally weak with limited oversight influence. The proportional representation of parties in parliamentary committees further weakens the oversight influence of the opposition. These weaknesses reflect the systemic flaws of the British parliamentary system.

3.4. The U.S. Experience

3.4.1. Background

This background section aims to provide the backdrop to the analysis and understanding of the United States (U.S.) case study. Like the British case study, the understanding of the U.S system of government is fundamental to the understanding of the political context and intricacies of the relationship between its congress and the executive in this country, and how this relationship impacts on legislative oversight and executive accountability. In other words, it provides the broader context and backdrop to the understanding of legislative oversight and executive accountability in this country.

The U.S. system of government differs from the British one. The U.S. system is based on a system of federalism (decentralization) and separation of powers (DeSipio, 2004: 320; Ginsberg, Lowi and Weir, 1999: 92). In this context, federalism means a system of government in which powers are distributed or divided between different spheres of government (DeSipio, 2004: 320; Burns, Peltason, Cronin and Magleby, 1997: 41). It is however important to understand that the existence of different spheres of government does not in itself amount to federalism as federalism means giving each sphere of government substantial powers and functions, including taxation powers (Burns, Peltason, Cronin and Magleby, 1997: 41).

In the United States, federalism means distribution of powers and functions between the federal (central) and state (regional) governments (DeSipio, 2004: 320). The U.S. federal government has concurrent (shared) powers and functions with state governments in areas such as taxation and commercial regulation (Burns, Peltason, Cronin and Magleby, 1997: 47).

The states have their own constitutions which outline the structure of their state governments and the provisions relating to the executive, legislative and judicial branches as well as the limits of powers of their state governments, including the powers of the governor and the legislature (Cummings and Wise, 1997: 789). Like the president of the federal government, state governors are heads of the executive branch of their state governments (Cummings and Wise, 1997: 789).

In addition to federalism as a fundamental pillar of the U.S. system of government, the principle of separation of powers between the executive, legislative and judicial branches of government is also a key pillar of the U.S. government (DeSipio, 2004: 320). In this context, the principle of separation of powers means having separate branches of government with independent powers to ensure that no branch of government can dominate other branches of government (DeSipio, 2004: 320). The U.S. government also has a system of checks and balances as one of the mechanisms to ensure separation of powers between the branches of government (Ranney, 1996: 791).

This principle of separation of powers is important for democratic checks and balances between the executive, legislative and judicial branches of the U.S. government (see Ginsberg, Lowi and Weir, 1999: 92). This is a direct contrast to the British system of government where there is a fusion of executive, legislative and judicial powers (see Magstadt, 1998: 99).

Furthermore, while the U.S government is based on the principle of multi-party democracy, the U.S. democratic politics are dominated by two major political parties (Cummings and Wise, 1997: 294). It is a public knowledge that the Republicans and Democrats dominate the U.S. politics. The U.S. electoral system has something to do with this two-party dominance and this will be dealt with later in the section dealing with the U.S. electoral politics.

The analysis of the U.S. case study focuses on the structure, powers and functions of the U.S. congress and executive (cabinet), legislative oversight and executive accountability, the institutional relationship between the executive and congress, the influence of the electoral politics, ethical dilemmas facing congress and the role of the

media in the U.S. democratic politics. An overall analysis of these key issues aims to establish an understanding of and insights into the workings and dynamics of the U.S legislative oversight and executive accountability in order to derive key lessons relevant to South Africa with specific reference to the Gauteng Provincial Government.

3.4.2. The structure of the U.S. congress

Like the British parliament, the U.S. congress is based on a bicameral parliamentary system made up of two houses or chambers which are the House of Representatives and Senate (Burns, Peltason, Cronin and Magleby, 1997: 276). These houses of congress are organised along party lines mainly between the Republicans and the Democrats (Cummings and Wise, 1997: 574; Patterson, 1999: 334). At face value, this party political division implies that the U.S. parliamentarians perform their duties and cast their votes based on narrow party political interests rather than the interests of the citizens. However, the later sections of this chapter will show that the U.S. parliamentarians have much diverse (and often conflicting) interests than the British parliamentarians who operate under a culture of strong party discipline which forces them to put their party political interests before those of the citizens.

Unlike many countries, the U.S. parliamentarians are “well-educated, middle-aged, and come from upper-middle or upper income backgrounds” (Burns, Peltason, Cronin and Magleby, 1997: 276). In theory, this means that the U.S. parliamentarians are well-equipped to deal with the intellectual and analytical demands of legislative oversight and executive accountability. Similar to the British parliament and other parliamentary traditions in the world, the U.S. House of Representatives (the elected chamber of congress) has the speaker, majority leader, majority whip, minority leader and minority whip who are the main party leaders in the House (Patterson, 1999: 335). Like in Britain and other democracies, the speaker in the U.S. congress comes from the majority party and is the presiding officer in the elected chamber of congress (Burns, Peltason, Cronin and Magleby, 1997: 278).

The speaker is assisted and supported by the majority leader and the majority whip who are elected by the party caucus (Cummings and Wise, 1997: 565). The majority leader keeps party members in line (Burns, Peltason, Cronin and Magleby, 1997: 279)

and serves as the floor leader and key strategist of the party (Cummings and Wise, 1997: 565). The majority whip (with the help of deputy whips) ensures that party members vote in support of their party in congress (Cummings and Wise, 1997: 566). The caucuses are the unofficial structures of the U.S. congress (Ginsberg, Lowi and Weir, 1999: 466). The political influence of these congressional leaders and caucuses on the oversight conduct of the parliamentarians will be unpacked later in the section dealing with legislative oversight and executive accountability.

Apart from the main congressional leaders mentioned above, the U.S. congress has many committees called "the little legislatures" (Burns, Peltason, Cronin and Magleby, 1997: 291; Laundy, 1989: 110). This implies power and influence of the U.S. congressional committees. The U.S. congressional committees include different types of committees such as standing committees, select committees and joint committees (Burns, Peltason, Cronin and Magleby, 1997: 291; Ginsberg, Lowi and Weir, 1999: 462). The U.S. congress conducts most of its work through its committees and subcommittees (Burns, Peltason, Cronin and Magleby, 1997: 302).

These committees are "chaired by the most senior members of the majority party" (Ginsberg, Lowi and Weir, 1999: 464) who are elected on the basis of seniority (Cummings and Wise, 1997: 578; Greenberg and Page, 1999: 381). This practice has implications for legislative oversight and executive accountability since it provides the majority party with more influence and control over committees and their work. In addition, there is a committee on house rules whose function is to determine rules of congress (Ginsberg, Lowi and Weir, 1999: 462). The work and functions of these committees will be discussed further in the later section dealing with legislative oversight and executive accountability.

Furthermore, the U.S. congress has support agencies and staff. The U.S. congressional support agencies are the General Accounting Office (GAO), the Congressional Research Service (CRS) and the Congressional Budget Office (CBO) (Patterson, 1999: 346). The main function of the GAO is to monitor and oversee expenditure of public finances by the executive, including departments and agencies (Patterson, 1999: 346). The GAO also operates as a watchdog and conducts investigation on

financial and programme activities of the executive to support congress and its committees (Cummings and Wise, 1997: 580; Ginsberg, Lowi and Weir, 1999: 466). The CRS conducts research for the parliamentarians (Cummings and Wise, 1997: 580; Ginsberg, Lowi and Weir, 1999: 466; see Patterson, 1999: 346) and the CBO supports congress with "an independent analysis of the president's budget and economic assumptions" (Cummings and Wise, 1997: 580). In this regard, the CBO provides congress with information relating to the country's economy and government revenue and expenditure to help congress interrogate budget proposals from the president (Patterson, 1999: 346).

These agencies were created to serve individual parliamentarians, committees and subcommittees (Patterson, 1999: 346). More importantly, these agencies are "designed to provide the legislative branch with resources and expertise independent of the executive branch" (Ginsberg, Lowi and Weir, 1999: 466). There is no doubt that "these agencies enhance congress's capacity to oversee administrative agencies and to evaluate presidential programs and proposals" (Ginsberg, Lowi and Weir, 1999: 466).

In addition to congressional committees, congress has employed personal support staff for individual parliamentarians (i.e. individual senators and representatives) and support staff for committees (Cummings and Wise, 1997: 579; Ginsberg, Lowi and Weir, 1999: 465). The general duties of these support staff include assisting with constituency work, drafting proposals and legislation, organising and scheduling hearings, providing research support, and dealing with departments and agencies of the executive branch (Ginsberg, Lowi and Weir, 1999: 465; see Cummings and Wise, 1997: 579).

Clearly this is an expensive, but important institutional support infrastructure and machinery for effective legislative oversight and executive accountability. Compared to Britain, the U.S. congress is institutionally well-resourced and positioned to discharge its legislative and oversight functions. This however does not suggest that the U.S. legislative oversight is flawless. Further analysis later in the section dealing with legislative oversight and executive accountability will raise other important

factors that impact on legislative oversight and executive accountability in this country.

3.4.3. The powers and functions of the U.S. congress

The above section dealt with the institutional architecture of the U.S congress, which is made up of two houses (chambers), committees and subcommittees, congressional support agencies and professional staff (i.e. congressional bureaucracy). This section builds on the above section and looks at the powers and functions of the U.S. congress, including the powers of committees and certain individual parliamentarians. This is important to understanding how the powers and functions vested in the U.S. congress support or constrain legislative oversight and executive accountability in this country.

Like in many democratic countries, the powers and functions of the U.S. congress are stipulated in the constitution. The main functions of the U.S. congress include representation, law-making, budget appropriation and oversight (see Burns, Peltason, Cronin and Magleby, 1997: 278; DeSipio, 2004: 328; Patterson, 1999: 367). Congress authorizes and appropriates (allocates) annual budget to the executive through appropriation legislation which gives congress control over public finances (see Burns, Peltason, Cronin and Magleby, 1997: 395; Cummings and Wise, 1997: 580; DeSipio, 2004: 329). Budget appropriation is an important oversight instrument in two main respects. Firstly, it enables congress to align government spending priorities to public policy priorities. Secondly, it promotes public accountability and transparency in the allocation and expenditure of public finances.

Like many parliaments, the U.S congress conducts most of its functions through its committees and subcommittees (Cummings and Wise, 1997: 574; Greenberg and Page, 1999: 378). These committees conduct oversight and legislative activities of congress (Greenberg and Page, 1999: 378: see Cummings and Wise, 1997: 574).

Of particular interest to this section are standing committees of the U.S. congress. The standing committees are permanent committees of the U.S. congress (Patterson, 1999: 340). Each standing committee specialises in public policy subject matter that

corresponds to the jurisdiction or mandate of departments and agencies of the executive (Ginsberg, Lowi and Weir, 1999: 462). Although there are many committees in the U.S. congress, standing committees are the bedrock of the U.S. congressional committee system (Cummings and Wise, 1997: 575). The standing committees deal with legislative proposals (bills) and conduct hearings and investigations (Cummings and Wise, 1997: 575). More importantly, they provide an important platform for congressional policy making (Ginsberg, Lowi and Weir, 1999: 462).

The U.S. congressional party politics are also of much interest to this study due to their influence on legislative oversight and executive accountability. The U.S. congressional committees and subcommittees are dominated by the majority party and chaired by the senior members of the majority party (Patterson, 1999: 338 - 344). Committee chairpersons command power and influence in that they determine and control legislative agenda, schedule meetings and hearings and control committee staff and budget (Cummings and Wise, 1997: 579; Greenberg and Page, 1999: 382; see Patterson, 1999: 338). This clearly allows the majority party to exert political influence on the legislative and oversight duties of congress. Party political division in committee voting (Patterson, 1999: 366) attests to party political influence on the work of the U.S. parliamentarians.

Above all committees, the speaker of the U.S. congress is the most influential parliamentarian. In this regard, the power of the speaker is summarised below:

> *"The Speaker is often said to be the second most powerful official in Washington, after the president. The Speaker has the right to speak first on legislation during House debate and has the power to recognize members – that is, give them permission to speak from the floor. Since the House places a time limit on floor debate, not everyone has a chance to speak on a bill, and the Speaker can sometimes influence legislation simply by exercising the power to decide who will speak and when. The Speaker also chooses the chairperson and majority-party members of the powerful House Rules Committee, which controls the scheduling of bills for debate" (Patterson, 1999: 335)*

> *"The Speaker can draw upon shared partisan views and has a few rewards on hand for cooperative party members; the Speaker can, for instance, help them obtain public spending projects for their districts and fovorable committee assignments for themselves" (Patterson, 1999: 336)*

It can be concluded that the power configuration of the U.S. congress is made up of the speaker, the leaders and whips of the major parties, the rules committee and the chairpersons of the committees (Cummings and Wise, 1997: 566). The interaction of these powerful individuals and committees affect the fate of the legislation (Cummings and Wise, 1997: 566). This points to immense political influence of political parties and party leaders on the work of the parliamentarians. This raises fundamental questions about political independence of the U.S. parliamentarians when exercising oversight over the executive. Further analysis will later on shed some light on these questions, including the influence of the constituency interests on the conduct and behaviour of the U.S. parliamentarians.

3.4.4. The structure and functions of the U.S. executive

The above sections have outlined the structure, powers and functions of the U.S. congress, which is a branch of government entrusted with the responsibility to represent the citizens (the electorates), to make laws and to hold the executive branch accountable for public policy implementation and management of public finances. The configuration of the U.S. congress provides insight into the institutional context and political dynamics underpinning legislative oversight and executive accountability in this country.

This section builds on the previous sections and outlines the structure, powers and functions of the executive branch of the U.S. government. The function of the executive branch of the U.S. government is to execute policies and laws passed by congress (Greenberg and Page, 1999: 458; Mckenna, 1998, 233).

Although the U.S. constitution does not explicitly provide for cabinet (Greenberg and Page, 1999: 422), the U.S. executive branch is made up of the president, his cabinet and state departments and agencies. In contrast to the executive branch of government

in many countries, the U.S. cabinet (except the presidency) is more a traditional practice rather than a formal constitutional construct (see Greenberg and Page, 1999: 422)

The U.S. president heads both the state and government (DeSipio, 2004: 321). The president appoints his or her cabinet members (called secretaries) and has the prerogative to dismiss them (Mckenna, 1998, 260). This is similar to practices in many countries (including South Africa) where the president has the power to appoint and fire cabinet ministers.

Like in many countries, the U.S. cabinet ministers or secretaries head state departments (Burns, Peltason, Cronin, & Magleby, 1997: 365). However, unlike in many parliamentary democratic traditions such as Britain where cabinet ministers are accountable to parliament, the U.S. cabinet ministers are accountable to the president (Burns, Peltason, Cronin, & Magleby, 1997: 365).

The U.S. president also appoints, with the approval of the Senate, senior officials to state departments (DeSipio, 2004: 323). This is similar to a practice in South Africa where the directors-general (DGs) of state departments are officially appointed by the state president in terms of Public Service Act, 1994. The nine provincial premiers also appoint heads of provincial departments (HODs) in terms of Public Service Act, 1994. The U.S president has his or her own office staff members (i.e. White House office staff) who provide support on matters such as “domestic policy, economic policy, national security or foreign policy, administration and personnel matters, congressional relations and public relations” (Burns, Peltason, Cronin and Magleby, 1997: 324). This paints a picture of a well-resourced U.S. executive machinery.

Although in terms of formal constitutional powers the U.S. presidency is less powerful than congress, the presidential roles make the president more powerful (DeSipio, 2004: 321-322). Again, this is not different from many countries where the president has more practical powers and clout than parliament despite immense constitutional powers vested in parliament. The power relations between the U.S. presidency (including cabinet) and congress will be dealt with in the following sections of this chapter.

3.4.5. Legislative oversight and executive accountability

The above sections have dealt with the institutional configuration, powers and functions of the U.S. congress and the executive. This section deals with the U.S. legislative oversight and executive accountability. As the core focus of this study, this section aims to build an understanding of and insights into the U.S. legislative oversight and executive accountability.

Like in other democratic states, the U.S. executive, which includes government departments and agencies, is responsible for the execution of laws and policies (see Mckenna, 1998, 233; Patterson, 1999: 367). The function and obligation of the U.S. congress is to supervise the executive to ensure that the laws, policies and finances of the nation are implemented and managed effectively and efficiently – a function referred to as legislative or parliamentary oversight (Burns, Peltason, Cronin and Magleby, 1997: 295; Cummings and Wise, 1997: 552; Greenberg and Page, 1999: 397; Mckenna, 1998, 233; Patterson, 1999: 367).

In the U.S congress, committees and subcommittees of the congress conduct oversight activities on behalf of congress (Ginsberg, Lowi and Weir, 1999: 481; Greenberg and Page, 1999: 397; Patterson, 1999: 367). The standing committees conduct oversight over governments departments and agencies (Laundy, 1989: 110). Congressional committees and subcommittees specialise in different subject matters and this specialisation helps them cope with huge workload and enable the parliamentarians to gain specialised technical expertise (Burns, Peltason, Cronin and Magleby, 1997: 293).

These committees also have their own politics. Congressional standing committees are chaired and dominated by members of the majority party and minority party representation in these committees is often in proportion to their representation in congress (Burns, Peltason, Cronin and Magleby, 1997: 293). This clearly gives the majority party more control and influence over the oversight work of these committees whilst at the same time neutralises the oversight influence of the minority parties.

The chairmanship of these committees is often based on seniority which means that members of the majority party with the longest service on the committees are appointed the chairs of the committees (Burns, Peltason, Cronin and Magleby, 1997: 294). This raises fundamental questions about the political independence of the U.S. parliamentarians, especially members of the majority party, in relation to their oversight duties in committees.

In choosing committees, individual parliamentarians are also influenced by different political considerations such as their constituency interests (Ginsberg, Lowi and Weir, 1999: 464). The importance of constituency interests in the U.S. congressional politics will be discussed under the section dealing with the U.S. electoral politics.

The congressional committees use different methods and approaches to conduct oversight. The committees conduct oversight through hearings and investigations (Cummings and Wise, 1997: 552; Burns, Peltason, Cronin and Magleby, 1997: 383; Ginsberg, Lowi and Weir, 1999: 481; Greenberg and Page, 1999: 397). The purpose of these oversight activities is to evaluate the performance (i.e. efficiency and effectiveness) of policies and programmes implemented by the executive, including state departments and agencies (see Burns, Peltason, Cronin and Magleby, 1997: 295; Ginsberg, Lowi and Weir, 1999: 481).

The executive (government) programmes are funded on an annual basis and annual appropriation hearings help congress in its oversight work (Ginsberg, Lowi and Weir, 1999: 481; Patterson, 1999: 369). This is important for public accountability and transparency in the allocation and expenditure of public funds. It is important to note that "committees or subcommittees have the power to subpoena witnesses, take oaths, cross-examine, compel testimony, and bring criminal charges for contempt (refusing to cooperate) and perjury (lying)" (Ginsberg, Lowi and Weir, 1999: 481). These powers are important for the influence and effectiveness of the U.S congressional committees in performing their oversight functions.

As discussed in the previous section, congress and its committees have support agencies and professional staff to help them conduct their functions more effectively. The key congressional support agencies are General Accounting Office (GAO),

Congressional Budget Office (CBO) and Congressional Research Service (CRS) (Ginsberg, Lowi and Weir, 1999: 466).

The main function of the GAO is to monitor and oversee expenditure of public finances by the executive, including departments and agencies (Patterson, 1999: 346). The GAO also operates as a watchdog and conducts investigation on financial and programme activities of the executive to support congress and its committees (Cummings and Wise, 1997: 580; Ginsberg, Lowi and Weir, 1999: 466).

The CRS conducts research for the parliamentarians (Cummings and Wise, 1997: 580; Ginsberg, Lowi and Weir, 1999: 466; see Patterson, 1999: 346) and the CBO supports parliament with "an independent analysis of the president's budget and economic assumptions" (Cummings and Wise, 1997: 580). The CBO provides congress with information relating the country's economy and government revenue and expenditure to help congress interrogate budget proposals from the president (Patterson, 1999: 346).

These congressional support agencies were established to provide congress with information, resources and expertise independent of the executive branch (Ginsberg, Lowi and Weir, 1999: 466 - 570). For example, the existence of Congressional Budget Office means that congress no longer depends on the executive for budget information and figures (Cummings and Wise, 1997: 581). Overall, these support agencies are fundamental to the capacity of congress to monitor and evaluate the programmes of the executive branch (Ginsberg, Lowi and Weir, 1999: 466). The existence of these support agencies demonstrates the extent to which the U.S. congress is determined to maintain its institutional independence from the executive. This is a critical success factor for independent and robust oversight over the executive.

Unlike other parliaments in the world, congress has a huge team of professional staff which includes researchers and budget analysts (Burns, Peltason, Cronin and Magleby, 1997: 287). The general duties of these support staffs include assisting with constituency work, drafting proposals and legislation, organising and scheduling hearings, providing research support, and dealing with departments and agencies of

the executive branch (Ginsberg, Lowi and Weir, 1999: 465; see Cummings and Wise, 1997: 579). The congressional support staff "is just as professionalized and specialized as the staff of executive agencies" (Ginsberg, Lowi and Weir, 1999: 570). This clearly demonstrates that the U.S. congress understands that legislative oversight has intellectual complexities and challenges which require professional and specialised skills and expertise.

However, despite extensive support, resources and expertise available to the members of congress, there are challenges facing the U.S. congress with regard to its oversight functions. Oversight enjoys less attention from the U.S. parliamentarians compared to lawmaking and representation (Patterson, 1999: 372). This is because the parliamentarians find it to be unrewarding because it works against their relationships with bureaucrats (Patterson, 1999: 370). The other factor is that "tough oversight … can make enemies among congressional colleagues or powerful interest groups" (Starling, 1998: 72)

Another challenge relates to a sheer volume of work. "The biggest obstacle to effective oversight is the sheer magnitude of the task. With its hundreds of agencies and thousands of programs, the bureaucracy is beyond comprehensive scrutiny" (Patterson, 1999: 371).

Using oversight for political point scoring also poses a challenge. For example, when there are allegations of wrongdoing against the presidency, members of the opposition parties can use oversight to embarrass the president (Patterson, 1999: 371). This is not different from oversight politics in other democratic countries, including South Africa.

3.4.6. The institutional relationship between congress and the executive

From the analysis in the previous sections of this chapter, it is clear that the U.S. congress has more formal constitutional powers than the U.S. executive. However, the politics of the U.S. congress - executive relationship reveal different power dynamics between these two institutions. In this section, it is therefore worth looking at the role of party politics in framing the institutional relationship (power politics) between

congress and the executive, and how this party politics influence the behaviour of the members of congress in performing their oversight functions.

Despite the immense formal constitutional powers of the U.S. congress, the political parties and the executive (president) have more influence on the behaviour (including voting behaviour) of the U.S. parliamentarians (Burns, Peltason, Cronin and Magleby, 1997: 287-288). The presidency is so influential that it is considered "a touchstone of party discipline in congress" (Ginsberg, Lowi and Weir, 1999: 480). Party leaders in both houses of the U.S congress also influence the behaviour of their party parliamentarians and the whippery system provides an important instrument through which party leaders exercise this influence on members (Ginsberg, Lowi and Weir, 1999: 476-479). Apart from the whippery system, congressional house rules also give majority party leadership procedural control over congressional business which enables them to control the parliamentarians (Ginsberg, Lowi and Weir, 1999: 476).

It is therefore not surprising that the speaker of parliament and chairs of congressional committees are members of the majority party (see Burns, Peltason, Cronin and Magleby, 1997: 278; Ginsberg, Lowi and Weir, 1999: 464). These individuals are key gatekeepers and political resources to the majority party in the U.S. congress. For example, the speaker's power of recognition during congressional debates ensures that the majority party controls congressional agenda (Ginsberg, Lowi and Weir, 1999: 470).

These political mechanics of the workings of the U.S. congress clearly demonstrate the power of the political party (majority party) in shaping the balance of power (power politics) between congress and the executive. Like in British parliamentary politics, the majority party in the U.S. congressional politics provides an important political instrument through which the executive dominates parliament. The key lesson here is that party politics play an important role in the relationship between the U.S. congress and the executive. Party politics is so pervasive in the U.S. congress that even the congressional staff members are required to be partisan and loyal to the parliamentarians and their political parties (Burns, Peltason, Cronin and Magleby, 1997: 192).

The voting behaviour of members along party lines and the tendency of the Democrats to vote against the Republicans (see Burns, Peltason, Cronin and Magleby, 1997: 287) should therefore be understood within the context of party political dynamics in the U.S. congressional politics. The overall implication of the influence of party politics on the behaviour of the U.S. parliamentarians is that it compromises the independence of these parliamentarians in relation to their oversight functions over the executive. However, apart from party politics (party discipline), constituency politics also influence the U.S. parliamentarians. The influence of the U.S. constituency politics is linked to the U.S electoral politics which are discussed in detail in the next section.

3.4.7. The influence of the U.S. electoral politics

The electoral system has immense bearing on legislative oversight and executive accountability. It determines the extent to which the parliamentarians can maintain independence from their political parties when they perform oversight and hold the executive accountable. It is for this reason that this section is considered relevant to this study. This section therefore aims to provide key insights into the U.S electoral politics and their influence on legislative oversight and executive accountability.

The U.S. electoral system is different from the electoral systems in other democratic states (Mckenna, 1998, 241). While in other democratic states (including Britain) parliament and the executive are elected at the same time, the U.S. congress and executive are "elected at different times and by different constituencies" (Mckenna, 1998, 241). The U.S. electoral system is based on a winner-takes-all, single-member-district electoral system (Greenberg and Page, 1999: 284). This aspect is similar to the British electoral system (Wilson, 1994: 30). Each electoral district only elects one candidate and whoever obtains most votes wins the elections (DeSipio, 2004: 332; Greenberg and Page, 1999: 284). To win the U.S. elections, the candidate does not need a majority votes, but only a plurality votes (i.e. the most votes) (Burns, Peltason, Cronin and Magleby, 1997: 235).

In terms of the U.S. constitution, the fixed term of office for the House of Representatives is two years, six years for the Senate and four years for the presidency (Burns, Peltason, Cronin and Magleby, 1997: 234). The U.S. presidential term of office is limited to a maximum of two terms (DeSipio, 2004: 321). This is similar to South Africa's presidential term of office which is also limited to two terms as set out in the constitution. The U.S. electoral system is different from the electoral systems based on proportional representation in which political parties obtain parliamentary seats in proportion to their votes in the elections (Burns, Peltason, Cronin and Magleby, 1997: 235).

There are also major differences between the U.S and European political parties with regard to their role and influence in the elections. The European political parties have more influence in the elections in that they are the ones which dominate the elections and not the candidates (Patterson, 1999: 239). In contrast, the U.S. political parties are relatively weak institutions in the elections because congressional candidates run and finance their own election campaigns with little or no support from their parties (Burns, Peltason, Cronin and Magleby, 1997: 309; Greenberg and Page, 1999: 386; Patterson, 1999: 256).

Because the U.S. electoral system is a constituency-based electoral system, the U.S. political parties have very limited powers to enforce party discipline on their members because individual members depend on their constituencies for elections (Greenberg and Page, 1999: 386). The U.S. constituency-anchored electoral system has certain benefits and advantages for the citizens. To ensure their re-elections, members of the U.S congress are highly responsive to the needs and opinions of their constituencies (Burns, Peltason, Cronin and Magleby, 1997: 285; Ginsberg, Lowi and Weir, 1999: 487; Greenberg and Page, 1999: 375; Patterson, 1999: 325). While a constituency-based electoral system is not a panacea to all the challenges of public accountability, it is evident that it provides incentives for the parliamentarians to better serve and account to their constituencies compared to a party-based electoral system which makes the parliamentarians beholden to their political parties.

Greenberg and Page (1999) and Ginsberg, Lowi and Weir (1999) demonstrate the advantages of the U.S. constituency-based electoral system to the citizens. The quotations below serve to illustrate such advantages.

> *"Representatives and senators pay a great deal of attention to the interests and the preferences of people in their districts and states. Because they are worried about being reelected, they try to see as many people as they can during their frequent visits home, and they pay attention to their mail and the public opinion polls. Moreover, they vote on and pass laws in rough approximation to public opinion. Members of Congress vote in a manner that is consistent with public opinion in their districts about two-thirds of the time…" (Greenberg and Page, 1999: 375)*

> *"The influence of constituencies is so pervasive that both parties have strongly embraced the informal rule that nothing should be done to endanger the re-election chances of any member" (Ginsberg, Lowi and Weir, 1999: 452)*

The fact that the U.S. citizens vote for candidates and not political parties makes the candidates directly accountable to the voters (Cummings and Wise, 1997: 320). This is important for strengthening public accountability in a representative democratic system. In contrast to the U.S. constituency-anchored electoral system, there is no direct public accountability of individual parliamentarians in countries using party-based proportional representation systems because the citizens elect political parties and not the individual candidates. This makes parliamentarians beholden to their political parties and affords them an opportunity to hide behind their political parties when it comes to public accountability.

However, unlike countries using proportional representation systems which promote multiparty democracy through the existence of minor parties, the U.S winner-takes-all electoral system does not promote the existence of minor political parties (Burns, Peltason, Cronin and Magleby, 1997: 187; Patterson, 1999: 222-223). It promotes the existence of a two-party system (Cummings and Wise, 1997: 294; Patterson, 1999: 222; see Roskin, 1998: 8). This militates against democratic plurality in the U.S. congressional politics.

3.4.8. Ethical dilemmas facing the U.S. congress

The U.S. parliamentarians are facing serious ethical dilemmas and conflict of interest issues in their day-to-day duties. These have much to do with the nature of the U.S. electoral system. As indicated in the previous section, the U.S. electoral system is a constituency-based system which is different from proportional representation systems used in other countries.

In this regard, the first main issue of conflict of interest relates to the national interests versus constituency interests. The U.S parliamentarians are required to serve the whole nation and at the same time their constituencies (Patterson, 1999: 371). These dual roles of the U.S parliamentarians are inherently and mutually conflictual in that the national interests are not always the same as or compatible with the constituency interests. By their nature, the national interests are broader interests of the nation as a whole while the constituency interests are narrow interests of a particular district, region or group of people. The fundamental question here is which interests are more important to the parliamentarians. Part of the answer to this question lies in the dynamics of the country's electoral system.

While these dual roles require the parliamentarians to maintain balance between the national and constituency interests (Burns, Peltason, Cronin and Magleby, 1997: 284), the parliamentarians are more responsive to their constituency interests because they depend on their constituencies for elections (Patterson, 1999: 371). They consider the constituency interests essential to their primary work as the parliamentarians (Burns, Peltason, Cronin and Magleby, 1997: 308; Patterson, 1999: 363) and vote in congress in line with public opinion in their constituencies (Greenberg and Page, 1999: 375).

Their choice of congressional committees is also influenced by the constituency considerations or interests (Ginsberg, Lowi and Weir, 1999: 464). The U.S. parliamentarians often prefer committees that are important to their constituency interests (DeSipio, 2004: 329). Since the U.S. congressional committees also deal with oversight functions, this also implies that even the oversight duties of the U.S. parliamentarians promote the constituency interests.

While this bodes well for public accountability in a representative democratic system, different constituency interests can sometimes prejudice the national interests. The balance between the national and constituency interests is therefore important. Unlike the U.S parliamentarians, the British parliamentarians do not have this conflict of interest because they all serve the national interests (Patterson, 1999: 363)

Furthermore, the U.S. parliamentarians are facing dilemmas relating to narrow interest groups versus broader public interests. For example, the fact that interest groups have important role in election campaign funding means that these groups have some degree of influence on the agenda of the U.S. congress (Greenberg and Page, 1999: 376). While the U.S. parliamentarians "must balance the needs and demands of interest groups against those of the public as expressed in public opinion polls and elections" (Greenberg and Page, 1999: 376), the fundamental question worth pondering is to what extent do these different (and often diametrically opposed) interests affect the behaviour and independence of the U.S. parliamentarians in performing the constitutional duties, including their oversight duties. This is a much bigger empirical question that requires further research.

3.4.9. The role of the media in the U.S. democratic politics

Free flow of information is fundamental to democracy (Patterson, 1999: 295). Many people obtain information about government through the news media (Gordon, 2000: 297). The media is important in that it helps the citizens to evaluate government, to make policy and electoral choices, and to participate in politics (Greenberg and Page, 1999: 208). The media also informs the politicians about the views of the citizens (Greenberg and Page, 1999: 208).

The media also influence public policy in that it affects the actions of government (Greenberg and Page, 1999: 203). More importantly, the media plays a watchdog role through which it keeps the officials in check and exposes their wrongdoings (see Patterson, 1999: 310). It also helps expose problems to the politicians (Greenberg and Page, 1999: 203). The news media therefore provides an important mechanism for government accountability to the citizens (Gordon, 2000: 297)

The media is therefore extremely important to legislative oversight and executive accountability. The information from the media can enhance the effectiveness and efficiency of parliament in performing its oversight functions. For example, parliament can use media information as important pointers and inputs in oversight hearings and investigations. The media therefore presents a window of opportunity for effective legislative oversight and executive accountability.

However, while the media is important to democratic politics, it is not accountable to the public and therefore cannot replace the representative role of the politicians who have public accountability through the elections (see Patterson, 1999: 315-318). It is also important to note that the media owners and advertisers sometimes influence the media reporting to advance their own interests (Greenberg and Page, 1999: 209). It is therefore important that the media information is analysed and used carefully to promote effective legislative oversight and executive accountability in order to serve public interest rather than private interests.

3.4.10. Conclusion

The U.S. system of government is based on a system of federalism and the principle of separation of powers between the executive, legislative and judicial branches of government. This is meant to ensure democratic checks and balances so that there is no abuse of power and domination of one branch over other branches of government. The U.S. congress is made up of the House of Representatives (the elected house) and Senate (unelected house).

It has a highly developed and well-resourced congressional support machinery (congressional bureaucracy) in the form of congressional support agencies and a huge team of professional support staff. The congressional professional support staff includes researchers and budget analysts who support congress in its legislative and oversight functions. This congressional support machinery indicates that the U.S. congress is determined to maintain and safeguard its institutional and functional independence from the executive. It also demonstrates that the U.S. congress appreciates the fact that legislative oversight is an intellectually complex and

demanding exercise which requires professional and specialised knowledge, skills and expertise.

The U.S. congress conducts oversight through its committees. Key oversight instruments include budget appropriation, hearings and investigations. The congressional committees have more powers and clout in that they can subpoena witnesses, cross-examine and press criminal indictment for contempt and perjury.

However, congress has its own politics. Whilst congress has immense formal constitutional powers, in practice the executive is powerful and influential. The majority party is also more influential in the U.S. congressional politics through the speaker and other senior party leaders such as whips and chairs of committees. All congressional committees are chaired and dominated by the majority party. This neutralises the influence of the opposition and gives the majority party control over congress, raising fundamental questions about the independence of the parliamentarians in relation to their oversight functions. Political polarisation between the Democrats and the Republicans in their voting behaviour and pattern does not bode well for independent and robust legislative oversight in this country. This makes the U.S congressional politics a serious countervailing force against effective legislative oversight and executive accountability.

The U.S constituency-anchored electoral system adds a complex dynamic to congressional politics. This electoral system frames the political loyalty of the parliamentarians and makes them more responsive to their constituencies. In fact, it provides incentives for the U.S. parliamentarians to better serve and account to their constituencies compared to a party-based electoral system which makes the parliamentarians beholden to their political parties. This however does not make the U.S. electoral system flawless and a panacea to the all challenges of public accountability inherently found in representative democracies.

3.5. Synthesis and lessons from the British and U.S. experience

This section provides a synthesis and summary of key lessons that the research on legislative oversight and executive accountability in South Africa can derive from these two international comparative case studies. The first key lesson relates to the institutional configuration and politics of the British parliament and the U.S. congress. It is important to first summarise the institutional similarities between these two case studies. Both parliaments are bicameral made up of elected and unelected houses and have speakership, whippery and committee system. Of importance to this study are key institutional enablers and constraints to legislative oversight and executive accountability in these case studies.

In Britain, the principles of parliamentary sovereignty (parliamentary supremacy) and collective ministerial accountability are key institutional enablers to effective legislative oversight and executive accountability. These principles make parliament a supreme and powerful institution whilst at the same time make the executive subordinate to parliamentary authority. However, the systemic flaws of the British parliamentary tradition are major constraints and countervailing forces to effective legislative oversight and executive accountability. This parliamentary tradition allows the majority party and the executive to control and subordinate parliament. Through the culture and tradition of party discipline, which is enforced through senior parliamentary party leaders, the majority party and the executive are able to control the conduct and behaviour of individual parliamentarians, which in turn undermines their independence to conduct effective oversight over the executive.

In contrast, the principle of separation of power between the executive, legislative and judicial branches of the U.S. government is a major institutional enabler to effective legislative oversight and executive accountability. This principle provides democratic checks and balances. More importantly, it safeguards the institutional independence and autonomy of the executive, legislative and judicial branches of the U.S. government. The immense constitutional powers of congress also provide an important institutional enabler to effective legislative and executive accountability.

However, the political influence of the majority party over the U.S. congress and its committees militates against effective legislative oversight and executive accountability in this country, although to a lesser degree compared to the British case study. The tradition in both case studies whereby the speaker of parliament and chairs of parliamentary committees come from the majority party, with the exception of opposition-chaired British parliamentary committees such as Public Accounts Committee, reinforces the political influence of the majority party on legislative and oversight work of both the British parliament and the U.S congress. Overall, parliamentary party politics emerge as the common institutional denominator in working against effective legislative oversight and executive accountability in both case studies.

The second lesson relates to the strengths and weaknesses of the British and U.S. oversight machinery. Both the British parliament and the U.S. congress have similar approaches to legislative oversight. They both have committees responsible for oversight over different government departments. Appropriation of budget and taxation authorisation, hearings and investigations are key oversight instruments used in both the British parliament and the U.S. congress.

Unlike its British counterpart, the U.S. congress has a well-resourced and highly advanced oversight support machinery in the form of congressional support agencies (i.e. General Accounting Office, Congressional Research Service and Congressional Budget Office) and a huge team of professional support staff such as researchers and budget analysts. This affirms the institutional independence and autonomy of the U.S. congress. It also indicates that the U.S. congress understands and appreciates the fact that legislative oversight is an intellectually complex and demanding exercise which requires professional and specialized knowledge, skills and expertise. This is a fundamental lesson that needs to be appreciated and embraced for effective legislative oversight and executive accountability in South Africa.

The U.S. congress also has a relatively strong and powerful committee system than the British parliament. The British parliamentary committees lack resources and have relatively limited powers in the sense that they cannot enforce their oversight decisions and can only make recommendations to the House of Commons. These

committees cannot force the ministers to testify, which is a major oversight weakness and constraint. Although the British tradition of giving the chairpersonship of the Public Accounts Committee to the opposition promotes independent and credible financial oversight, the majority party domination over parliamentary committees in both the British parliament and the U.S. congress neutralises the opposition and undermines the independence of the parliamentarians in relation to their oversight responsibilities. This is a fundamental reality that South Africa must also acknowledge in the best interest of improving legislative oversight and executive accountability in the country.

On electoral front, both the British and the U.S. electoral systems are based on a constituency-based winner-takes-all electoral system. There are however major differences between the two electoral systems. The British electoral system is a party-orientated electoral system which provides for one parliamentary election on a four or five year interval. It is this party-based electoral system which allows the majority party to control parliament and undermine independent legislative oversight over the executive. In contrast, the U.S. electoral system provides for separate elections and terms of office for the president and different houses of parliament.

Unlike the British party-oriented electoral system which promotes strong party discipline, the U.S. electoral system is more individual and personality-oriented. The U.S. constituency-anchored electoral system makes the parliamentarians more responsive to their constituency interests compared to the British electoral system which makes the parliamentarians beholden to their political parties. It is also worth noting that the electoral systems in both countries promote a two-party system, which militates against full expression of real multi-party democracy often found in proportional representation electoral systems. Overall, a key lesson for South Africa is that, although it is not a panacea to all the problems, a constituency-anchored electoral system strengthens public accountability of the parliamentarians to the citizens. In other words, it provides incentives for the parliamentarians to better serve and account to their constituencies rather than to political parties.

This international comparative analysis of the British and the U.S. case studies has identified fundamental issues, which provide key focus areas of analysis for the next chapter on South African situation. This means that key issues and lessons emerging from this international comparative analysis will be further explored and unpacked in the next chapter in the context of South Africa. This is intended to enable the study to draw parallels and differences as well as key lessons important for effective legislative oversight and executive accountability in South Africa.

CHAPTER 4
LEGISLATIVE OVERSIGHT AND EXECUTIVE ACCOUNTABILITY IN SOUTH AFRICA

4.1. Introduction

This chapter also forms part of the document and literature study that intends to contribute to the understanding of the national context, dynamics and approaches to legislative oversight and executive accountability in South Africa as a backdrop to the case study analysis of the Gauteng Provincial Government. In 1994 South Africa achieved democracy and at least formally buried an apartheid ideology of racial oppression and segregation. The democratic dispensation brought about fundamental reforms to all state institutions and the system of governance in the country. It brought about all-inclusive representative government in which the national parliament and the provincial legislatures are the main custodians of the will of the people. These key state institutions (national parliament and provincial legislatures) are constitutionally enjoined to serve the will and interests of the people.

Legislative oversight is a key constitutional instrument through which these institutions are required to hold the executive accountable for public service delivery and management of public finances. In order words, parliament and the provincial legislatures provide a key democratic platform through which citizens can demand better performance and public accountability from government. This is a fundamental pillar of a truly representative democracy.

In this chapter, the mechanics, the dynamics and the politics of legislative oversight and executive accountability in South Africa are analysed and unpacked in detail. The main focus and emphasis of this chapter is on the national executive and parliament (i.e. National Assembly) to provide a national perspective and context to the next chapter, which deals with the Gauteng Provincial Government as an empirical case study. The chapter will also make reference to the provincial legislatures, where relevant.

4.2. Analytical framework for this chapter

This chapter seeks to obtain a better understanding of the functioning of South Africa's parliamentary oversight machinery and the fundamental challenges that impact on the constitutional obligations of parliament in holding the executive to account. The objective is therefore to help enrich the existing body of knowledge on the subject of legislative oversight and executive accountability in South Africa. Since there is paucity of scholarly literature on the subject in South Africa, this research strives to represent a scholarly academic contribution. The chapter builds on the previous chapter on international comparative analysis by analysing the key issues in the context of South Africa.

The chapter starts off with a brief background about the system of government in South Africa. Understanding how government is structured is the first point of departure in the analysis of legislative oversight and executive accountability. This is important for understanding the broader context and systemic enablers and constraints to legislative oversight and executive accountability in South Africa. The fundamental question underpinning this analysis is: how does the system of government in South Africa support or constrain effective legislative oversight and executive accountability?

The structure and functions of parliament are also analysed to provide insights into the institutional context, contours and anchors of legislative oversight and executive accountability in South Africa. Parliament is the site of legislative oversight and executive accountability in both physical and substantive terms. In fact, legislative oversight and executive accountability are deeply embedded and anchored in the structure and functions of parliament. Therefore, fundamental issues relating to legislative oversight and executive accountability cannot be analysed and understood outside the context of both the structure and functions of parliament. The analysis therefore aims to examine the extent to which the institutional configuration of the South African parliament promotes or undermines effective legislative oversight.

The understanding of the structure and functions of the executive is also important to this study. The institutional configuration of the executive has a bearing on the extent to which the executive is able to fulfil its constitutional obligations and, more importantly, to account to parliament on public policy implementation and management of public finances. Therefore, understanding the institutional configuration of the executive is key to understanding institutional enablers and dynamics of executive accountability to parliament. It is also important to providing key insights into the institutional power dynamics between the executive and parliament with regard to the exercise of legislative oversight and executive accountability.

The electoral system and politics are also central to this study. The electoral system frames the accountability relationship between the executive and parliament. In fact, it determines the manner in which both the executive and parliament conduct themselves in relation to oversight and accountability. The international comparative analysis clearly points to the fact that the nature of the electoral system can serve as an incentive or disincentive for effective legislative oversight and executive accountability. It is therefore important to understand how South Africa's electoral system promotes or undermines effective legislative oversight and executive accountability. This will enable the study to point out the nature of the electoral reforms that would, based on the lessons from international comparative analysis, be desirable to promote effective legislative oversight and executive accountability in South Africa. This chapter builds on the theme dealing with the influence of the electoral politics on legislative oversight and executive accountability which was dealt with in sections 3.3.6 and 3.4.7 of chapter 3.

Legislative oversight and executive accountability are the central theme and focus of this study. This chapter will examine the methods and instruments used to conduct legislative oversight over the executive, drawing on parallels and differences with the international comparative experience. The mechanics and efficacy of these methods and instruments will also come under scrutiny. This will enable the study to provide insights into the nature of the reforms required to strengthen legislative oversight and executive accountability in South Africa.

Parliamentary party politics also add an important dimension to legislative oversight and executive accountability. This dimension plays itself out through the institutional relationship (in terms of power politics amongst institutions) between the executive and parliament. In fact, the findings from the international comparative analysis suggest that party politics, rather than formal constitutional powers, define the nature of the relationship between the executive and parliament. The international comparative analysis goes further to suggest that party politics constrain the independence of the parliamentarians when it comes to their oversight functions over the executive. This chapter therefore seeks to understand how party politics define the relationship between the executive and parliament in South Africa and, more importantly, how this undermines the independence of the parliamentarians when it comes to their oversight obligations.

Overall, all these key dimensions of legislative oversight and executive accountability will enable the study in building a holistic understanding of the complexities and deficiencies of legislative oversight and executive accountability in South Africa and the nature of the reforms required to improve the situation.

4.3. Brief background about the system of government in South Africa

South Africa is a democratic state founded on the supremacy of the constitution, the rule of law and the democratic principles of human dignity, equality, human rights and freedoms, non-racialism, non-sexism, multi-party democracy and accountability (Republic of South Africa, 1996: 5). The Republic of South Africa is made up of the legislative, executive and judicial branches of government. These branches of government operate in terms of the liberal democratic doctrine of separation of powers in that the constitution vests legislative powers in parliament, executive powers in the executive and judicial powers in the judiciary (courts) (see Republic of South, 1996). This is in sharp contrast to the British system of government, but similar to the U.S. system of government. As discussed in the previous chapter, the U.S. government is based on a system of separation of powers as opposed to the system of fusion of powers found in Britain.

Apart from these branches of government, the Republic of South Africa has national, provincial and local spheres of government founded on a system of cooperative government and intergovernmental relations in terms of Chapter 3 of the Constitution (Republic of South Africa, 1996: 21). Intergovernmental Relations Framework Act, No. 13 of 2005 provides a detailed legislative framework within which national, provincial and local spheres of government should cooperate on intergovernmental matters and other important matters of mutual interest.

The powers and functions of these different spheres of government are set out in detail in Schedule 4 and 5 of the Constitution. Part A of Schedule 4 of the Constitution outlines concurrent (shared) functions (powers) of the national and provincial government. Part A of Schedule 5 of the Constitution sets out exclusive functions (powers) of the provincial government whereas Part A and B of both Schedule 4 and 5 allocate functions (powers) to local government. It is this complex power-sharing architecture that makes a system of cooperative government and intergovernmental relations imperative for the effective functioning of government in South Africa.

The national sphere of government is made up of the national parliament and the national executive which includes the national government departments. The provincial sphere of government consists of nine provinces which have their own provincial legislatures and provincial executive councils which include the provincial government departments. The local sphere of government consists of different types of municipalities (i.e. metropolitan, district and local municipalities) which have their own councils and administration. The focus in this section is on the national and provincial spheres of government.

Whilst the Constitution provides a broad architecture and anatomy of the South African government as whole, detailed institutional and operational frameworks for the national and provincial spheres of government are set out in subordinate legislation. In this regard, key pieces of legislation that are of particular interest to this study are the Public Finance Management Act (PFMA), No. 1 of 1999 (as amended), Intergovernmental Fiscal Relations Act, No. 97 of 1997 and Annual

Division of Revenue Act. These pieces of legislative have a bearing on legislative oversight and executive accountability in South Africa.

The PFMA provides a regulatory and accountability framework for the management of public finances at both the national and provincial government level. It empowers the National Assembly and the provincial legislatures to appropriate annual national and provincial budgets respectively. It also prescribes that the Minister of Finance and Members of the Executive Council (MECs) for Finance in the provinces must table detailed annual national and provincial budgets to the National Assembly and the provincial legislatures respectively, including details relating to government revenue, expenditure, debt, deficit and borrowing.

This legislation further requires the accounting officers of both the national and provincial departments to respectively submit measurable objectives for their departmental budgets to the National Assembly and the provincial legislatures. These legislative provisions promote financial accountability and transparency by compelling both the national and provincial executives to account to the National Assembly and the provincial legislatures respectively. More importantly, they provide the National Assembly and the provincial legislatures with tools and information to enable them to perform their oversight functions more effectively.

The Intergovernmental Fiscal Relations Act, No. 97 of 1997 and Annual Division of Revenue Act promote transparent and equitable system of intergovernmental fiscal relations with respect to the division of national revenue between different spheres of government. Intergovernmental Fiscal Relations Act, No. 97 of 1997 requires government to adopt an equitable share formula to ensure equitable allocation of revenue to different spheres of government.

The Annual Division of Revenue Act that the Minister of Finance tables before the National Assembly every year sets out a clear equitable share formula and detailed national, provincial and local government equitable share allocations. The Act also provides for other streams of funding for government such as conditional grants which are allocated to specific service delivery functions based on pre-determined conditions and criteria. All these legislative provisions promote financial transparency

and accountability and provide key oversight tools and information at both the national and provincial level.

Apart from the national, provincial and local spheres of government, the Constitution further makes a provision for independent state institutions such as the Public Protector, Human Rights Commission, Auditor-General, Electoral Commission, Commission on Gender Equality whose mandate is to support constitutional democracy (see Republic of South Africa, 1996: 77). The Auditor General is central to legislative oversight and executive accountability.

A detailed operational framework for the Auditor General (AG) is set out in the Public Audit Act, No. 25 of 2004, including its powers and functions which involve auditing and reporting on public finances and financial statements of the national, provincial and local government as well as other state institutions. Auditing of public finances and reporting of the audit findings by the Auditor General enable and support the standing committee on public accounts (Scopa) of both the National Assembly and the provincial legislatures to perform financial oversight over the executive.

Overall, the system of government in South Africa is built on a legislative framework that empowers and provides both the National Assembly and the provincial legislatures with key legislative tools and instruments to exercise oversight over the executive. Therefore, the conclusion at this point is that South Africa's system of government is underpinned by a legislative framework that provides an enabling environment for legislative oversight and executive accountability. The section on legislative oversight and executive accountability will, however, examine the extent to which the National Assembly and the provincial legislatures make use of this supportive legislative framework to exercise oversight over the executive.

4.4. The structure and functions of parliament

The previous section indicated that the legislative framework underpinning South Africa's system of government provides an enabling environment for legislative oversight and executive accountability. This section outlines the institutional configuration of the South African parliament. Parliament is the site of legislative oversight and executive accountability in both physical and substantive terms. In fact, legislative oversight and executive accountability are deeply embedded and anchored in the structure and functions of parliament. Therefore, fundamental issues relating to legislative oversight and executive accountability cannot be analysed and understood outside the context of both the structure and functions of parliament. The analysis therefore aims to examine the extent to which the institutional configuration of the South African parliament promotes or undermines effective legislative oversight.

Like many countries, South Africa has a bicameral system (two houses) of parliament. Section 42(1) of the Constitution provides for two houses or chambers of parliament: the National Assembly and the National Council of Provinces (NCOP) (Republic of South Africa, 1996: 23).

4.4.1. The National Assembly

The National Assembly is an elected house of parliament whose members are democratically elected through an electoral system of party lists based on a proportional representation. To promote a culture of multi-party parliamentary democracy in South Africa, section 57(2)(d) of the Constitution provides for "the recognition of the leader of the largest opposition party in the Assembly as the Leader of the Opposition" (Republic of South Africa, 1996: 28-29). In terms of the Constitution, term of office for the National Assembly is five years (Republic of South Africa, 1996: 26).

In terms of section 3 of the Constitution, the functions of the National Assembly can be classified as representation, legislative and oversight functions (Republic of South Africa, 1996: 23). The National Assembly has constitutional powers to "initiate", "prepare", "consider", "pass", "amend" or "reject" legislation as well as powers to

hold the executive organs of the state accountable (Republic of South Africa, 1996: 28). Like in other countries, the National Assembly has a number of portfolio committees which deal with the technical details of the legislation and oversight. Hence these committees are referred to as "the engine room of the new parliamentary democracy" (Taljaard and Venter, 2001: 34). It is practically impossible for a plenary of the National Assembly made up of hundreds of members to deal with such minute details.

Although the National Assembly has different types of committees, the focus of this study is on portfolio committees and the standing committee on public accounts (Scopa) because these committees are responsible for oversight over the executive and their departments. The portfolio committees of the National Assembly specialise in subject matters that mirror the functional mandates of government departments. Each government department has its own portfolio committee. For example, there is a portfolio committee on health which oversees the implementation of policies and programmes of the Department of Health. The standing committee on public accounts conducts financial oversight over all government departments to ensure efficiency, value for money, accountability and transparency on public expenditure.

The composition of committees is usually based on the principle of proportionality and committee chairpersons usually come from the majority party with the exception of Scopa which, in line with the international democratic practice and tradition, is chaired by a member of the opposition party (Parliament of the Republic of South Africa, 2004: 44). Although the principle of proportionality in committee composition is meant to maintain democratic fairness in the country's parliamentary practices and operations, it however gives the majority party more control and neutralises the oversight influence of the opposition parties. In theory, the chairpersonship of Scopa by opposition augurs well for the independence and impartiality of this committee in its exercise of financial oversight over the executive. However, the principle of proportionality in committee composition means that this committee (Scopa) is dominated by the majority party, which in practice works against its independence and impartiality.

Like other parliaments, the National Assembly has a speaker and deputy speaker. Although the Constitution does not make any specific provision with regard to parties from which the speaker and deputy speaker should be elected, these people come from the majority party in line with the parliamentary democratic tradition. As a former colony of Britain, it is safe to conclude that this South African parliamentary practice has been influenced by the British parliamentary tradition where the speaker and deputy speaker often come from the majority party. South Africa has "mimicked the values, systems and institutions embodied within Westminster" (Pheko, 2007).

Although the speaker comes from a political party, the speaker is required to maintain fairness and impartiality in performing parliamentary duties (Parliament of the Republic of South Africa, 2004: 17). Whether this is the case in day-to-day party politics of the South African parliament is debatable. Like other parliamentary systems elsewhere in the world, South African parliamentary politics also operate within the confines of a strict party discipline. In practice, the speaker and deputy speaker are not immune from party discipline.

Furthermore, the National Assembly has a whippery system made up of whips of various political parties in parliament. "The term "whip" is derived from the fox-hunting term "whipper-in", someone who kept the hounds from straying from the pack" (Parliament of the Republic of South Africa, 2004: 25). In parliamentary terms, a whip is a member of parliament appointed by his or her political party to ensure the smooth running of the party in parliament (Parliament of the Republic of South Africa, 2004: 25). In South African parliament, political parties appoint whips on the basis of proportionality and whips earn additional remuneration than ordinary members of parliament (Parliament of the Republic of South Africa, 2004: 26).

The main duties of the whips (in particular chief whips) include maintaining discipline among the parliamentarians, coordinating and allocating speakers from their party caucuses for parliamentary debates and coordinating the parliamentary programme with the speaker and the leader of government business (Taljaard and Venter, 2001: 32). For example, the chief whip of the majority party maintains discipline among members of the majority party (Parliament of the Republic of South Africa, 2004: 26 – 27) and this is the "most influential" parliamentarian (Taljaard and

Venter, 2001: 32). The powers and influence of the whips have serious implications for legislative oversight and executive accountability. For example, the power of the whips to allocate the parliamentarians to speak in parliamentary debates gives political parties tight control over the parliamentarians. It is a mechanism to ensure that the parliamentarians advance pre-caucused party positions in parliamentary debates. It therefore follows that the parliamentarians who differ with their party positions are unlikely to be given an opportunity to speak in parliamentary debates.

This does not bode well for the independence of the parliamentarians in conducting their legislative and oversight functions. Failure or refusal to comply with the instructions from the whip means the defiance of party discipline which in South African context could result in the affected member losing his or her parliamentary seat if the member is fired from his or her political party (Taljaard and Venter, 2001: 32).

These consequences are strong enough to cow the parliamentarians into submission to party discipline at the expense of their legislative and oversight obligations. The situation whereby a parliamentarian loses his or her parliamentary seat when he or she is expelled from his or her political party is a construct of our country's electoral system which allocates parliamentary seats to political parties. This is a serious systemic flaw that undermines the independence of the parliamentarians and put them at the mercy of political parties.

Overall, this section has provided the broader context and backdrop to the subsequent sections of this chapter. The section has also begun to point to the institutional enablers and constraints to legislative oversight and executive accountability, which will be discussed further in the subsequent sections of this chapter. The National Assembly committee system and the practice of giving the chairperson of Scopa to the opposition are key institutional enablers to legislative oversight and executive accountability. The practice of giving the chairpersonship of Scopa to the opposition augurs well for independent, impartial and credible financial oversight over the executive. However, parliamentary party politics, as driven mainly by the party caucus and whippery system, is a major institutional constraint to independent and robust legislative oversight over the executive. This reflects the inherent systemic

flaws of the parliamentary tradition and the prevailing electoral system, which give political parties more control over the parliamentarians. These issues will be unpacked in detail later in this chapter.

4.4.2. The National Council of Provinces

The National Council of Provinces (NCOP) is a house of parliament made up of delegations or representatives from all nine provinces. In terms of section 60 of the Constitution, each provincial delegation to the NCOP consists of ten delegates made up of four special delegates (including the premier of the province) and six permanent delegates (Republic of South Africa, 1996: 30). Section 64 (1) of the Constitution requires the NCOP to have a chairperson and two deputy chairpersons. The main function of the NCOP is to represent the provincial interests in parliament, especially on legislative matters that affect the provinces (Republic of South Africa, 23).

All bills - the so-called Section 76 bills - that affect the provinces need to be tabled before the NCOP so that all the provinces can have an opportunity to make inputs (see Republic of South Africa, 1996: 36). The NCOP also has its own committees, called select committees, to deal with details of its work like the portfolio committees in the National Assembly. To facilitate cooperation between the National Assembly and the NCOP on joint business of parliament, there are joint committees established in terms of section 45 of the Constitution (Republic of South Africa, 1996: 24).

Overall, while it often participates in parliamentary visits to the provinces to listen to people's concerns and issues on service delivery, the NCOP has a limited role on legislative oversight and executive accountability. The fact that NCOP lacks "political weight" (Calland, 2006: 112) compared to the National Assembly, should therefore also be understood against the backdrop of its limited oversight role. With this overall understanding of the configuration and functions of both houses of the South African parliament, the subsequent sections of this chapter will only focus on the National Assembly as the house of parliament which is tasked with oversight responsibilities.

Apart from the national parliament and its two houses, the Constitution also makes provision for the provincial legislatures in all the nine provinces. The provincial legislatures have similar powers and functions to those of the National Assembly, except that their powers are limited to their own provinces. They have powers to legislate for their own provinces any matter that falls within their areas of legislative competence outlined under Schedule 4 (concurrent functions) and Schedule 5 (exclusive functions) of the Constitution (Republic of South Africa, 1996: 47). Furthermore, section 114(2) of the Constitution empowers the provincial legislatures to hold all executive organs of the state in their provinces accountable. This means that, similar to the National Assembly's oversight over the national executive, the provincial legislatures are required to conduct oversight over their provincial executives.

Like the national parliament, the provincial legislatures are elected (concurrent with the national) through an electoral system of proportional representation for a five-year term of office (Republic of South Africa, 1996: 48-49). Similar to the National Assembly, the provincial legislatures also have their own speaker and deputy speaker elected in terms of section 111 of the Constitution (Republic of South Africa, 1996: 50).

Overall, the provincial legislatures are a replica of the National Assembly in terms of institutional design (including powers and functions, parliamentary procedures, practices and committees) and parliamentary tradition (i.e. parliamentary speakership and whippery) except some minor differences such as composition (the number of seats) and the fact that national parliament is bicameral (two houses) whereas provincial legislatures are unicameral. The next chapter will discuss in detail the case study of the Gauteng Provincial Legislature.

4.5. The structure and functions of the executive

The structure and functions of the executive are also important to this study. This includes the executive institutional architecture within which government planning and budgeting take place. This is important for legislative oversight and executive accountability.

The institutional configuration of the executive has a bearing on the extent to which the executive is able to fulfil its constitutional obligations and, more importantly, to account to parliament on public policy implementation and management of public finances. Therefore, understanding the institutional configuration of the executive is key to understanding institutional enablers and dynamics of executive accountability to parliament. It is also important to providing key insights into the institutional power dynamics between the executive and parliament with regard to the exercise of legislative oversight and executive accountability.

The Republic of South Africa has a president who is both the head of state and the national executive (Republic of South Africa, 1996: 41). The Constitution limits the term of office of the president to two terms (Republic of South Africa, 1996: 42). The president is elected by the National Assembly and ceases to be a member of the National Assembly immediately upon his or her election as a president (Republic of South Africa, 1996: 42). The president in turn appoints (and may dismiss) deputy president and ministers from the National Assembly who collectively constitutes cabinet or national executive (Republic of South Africa, 1996: 43).

The Constitution also allows the president to appoint a maximum of two ministers from outside the National Assembly (Republic of South Africa, 1996: 43). The Constitution vests the executive authority of the country in the president who exercises this authority with members of the national executive (Republic of South Africa, 1996: 41). In terms of the Constitution, the functions of the national executive include national policy development and implementation, implementation of national legislation and management of state departments (Republic of South Africa, 1996: 42). In addition, the national executive has powers to intervene in all the nine

provinces in terms of section 100 of the Constitution if the provinces fail to fulfil their obligations (Republic of South Africa, 1996: 45).

The national executive (cabinet) is assisted by deputy ministers who are also elected (and may be dismissed) by the president from the National Assembly (Republic of South Africa, 1996: 44). In terms of line of accountability, which is a central question of this research, cabinet is collectively and individually accountable to parliament (Republic of South Africa, 1996: 43). This is as far as formal constitutional line of accountability is concerned, but there is a complex interplay of political forces and factors relating to this accountability relationship between cabinet and parliament which will be discussed later in this chapter.

During the third term of democratic government, the national cabinet worked through a cluster system made up of a social cluster; economic, investment and employment cluster; international relations, peace and security cluster; justice, crime and security cluster; and governance and administration cluster (see Calland, 2006: 54). This cabinet system was supported by administrative machinery made up of the Forum of South African Directors-General (FOSAD), Cabinet Office and Policy Coordination and Advisory Services (PCAS) located in the Presidency (Presidency of the Republic of South Africa, 2005: 7-10). The Director-General in the Presidency is a Cabinet Secretary (Presidency of the Republic of South Africa, 2005: 4). Cabinet also relies on Government Communication and Information Services (GCIS) to communicate cabinet and government-wide information and policy decisions.

Apart from the national executive (cabinet), the Constitution also provides for the provincial executive for each of the nine provinces. The institutional design of the provincial executives mirrors, to a large extent, the institutional design at the national level. The Constitution vests the executive authority of the province in the premier of the province (Republic of South Africa, 1996: 54). The premier is elected by a provincial legislature from its members for a maximum of two terms and the premier in turn appoints (and may dismiss) members of the executive council (MECs) from members of the legislature who collectively with the premier (as head of the provincial executive) constitute the provincial executive council (Republic of South Africa, 1996: 55-56).

The functions of the provincial executive councils include the implementation of the national and provincial legislation, development and implementation of the provincial policy and management of the provincial departments (Republic of South Africa, 1996: 54). The provincial executive councils are further empowered by the Constitution to intervene in municipalities which fail to fulfil their obligations (Republic of South Africa, 1996: 57). The provincial executive councils are collectively and individually accountable to the provincial legislatures (Republic of South Africa, 1996: 56). The empirical analysis of this research will explore in detail key issues and challenges affecting the accountability relationship between the provincial legislature and the provincial executive council in the Gauteng Provincial Government (GPG).

Government coordinates its planning, budgeting and public policy implementation (public service delivery) at national, provincial and local government level within the framework of cooperative government and intergovernmental relations, including intergovernmental fiscal relations. In this regard, key macro planning frameworks, processes and instruments include Cabinet Makgotlas, Medium-Term Strategic Framework (MTSF), and Medium-Term Expenditure Framework (MTEF). In addition, key intergovernmental structures such as Budget Council (a structure made up of the Minister of Finance and the provincial MECs for finance) and Budget Forum (a structure made up of the Minister of Finance, the provincial MECs for finance and representatives of organized local government) handle the planning and coordination of intergovernmental fiscal and financial matters for all spheres of government.

At operational (departmental) level, Public Finance Management Act, No.1 of 1999 (as amended) and Treasury Regulations prescribe detailed technical planning and budgeting framework as well as regulatory and accountability framework for revenue, expenditure, assets and liability management for the national and provincial government departments. At local government level, Local Government: Municipal Finance Management Act, No. 56 of 2003 and Local Government: Municipal Systems Act, No. 32 of 2000 provide the main regulatory framework for detailed municipal planning, budgeting, revenue, expenditure, assets and liability management, including

the requirements for public participation in municipal planning and budgeting processes such as integrated development planning (IDPs).

Overall, the national executive is well established with the bureaucratic support machinery, planning and budgeting frameworks and structures that enable it to plan and perform its constitutional functions and account to the National Assembly. The institutional configuration of the executive is therefore important to legislative oversight and executive accountability in two main respects. Firstly, it indicates strong institutional capacity of the national executive compared to the National Assembly. The implication is that the National Assembly also requires more institutional capacity for effective legislative oversight and executive accountability. Secondly, the planning and budgeting frameworks and structures promote public accountability and transparency and are therefore key institutional enablers for legislative oversight and executive accountability. It will become much clearer later in this chapter how these key government planning and budgeting frameworks and instruments support legislative oversight and promote executive accountability.

4.6. The influence of the electoral politics on legislative oversight and executive accountability

The elections represent a fundamental pillar of a democratic choice and accountability in any representative democracy. They allow citizens to elect their public representatives, thus allowing them to participate in matters of governance (Mutasah, 2006: 52). This section intends to provide an overview of key policy and legislative framework as well as salient features of South Africa's electoral system. More importantly, the section aims to delve into the politics of the country's electoral system and its implications for democratic accountability in general and legislative oversight and executive accountability in particular. Sections 3.3.6 and 3.4.7 of chapter 3 dealt with the influence of the electoral politics on legislative oversight and executive accountability in relation to the British and the U.S case studies. In this section, the analysis will also include the critique of the country's electoral system. It is not the intention of this section to delve into the technical mechanics and modalities of the country's electoral system.

The Constitution of the Republic of South Africa, the Electoral Commission Act, No. 51 of 1996 and the Electoral Act, No. 73 of 1998 provide a fundamental policy and regulatory framework for South Africa's electoral system. The Constitution provides for regular elections (every five years), universal adult suffrage, minimum voting age (i.e. 18 years) and democratic pluralism (multi-party democracy) based on proportional representation.

Before the elections, political parties compile their party lists (i.e. national and provincial party lists for the National Assembly and the provincial legislatures) of the potential parliamentarians and citizens vote for their preferred political parties which are then allocated parliamentary seats in proportion to their votes (Parliament of the Republic of South Africa, 2004: 38). This ensures direct correlation between support to political parties and their parliamentary seats (Rautenbach and Malherbe, 1998: 4). Political parties represented in the National Assembly and the provincial legislatures are funded in terms of Public Funding of Represented Political Parties Act, No. 103 of 1997 in accordance with a prescribed formula based on key principles such as proportionality and equity.

The Constitution further regulates terms of office and numerical sizes of the national parliament and the provincial legislatures as well as term of office for the president and the premiers. In terms of the Constitution, term of office for parliament and the provincial legislatures is five years and the president and the premiers cannot hold office for more than two terms, which practically means not more than 10 years.

Further details about the country's electoral system are set out in various pieces of subordinate legislation. The Electoral Commission Act, No. 51 of 1996 provides the operational framework for the Electoral Commission, including powers and functions of the Commission, appointment, terms of office and conditions of service of the Commissioners, etc. The Electoral Act, No. 73 of 1998 provides an overall regulatory framework for the elections for the National Assembly and the provincial legislatures, including requirements and qualifications for elections such as the participation of political parties in the elections, age requirements for voting, etc. In terms of the Electoral Act, No. 73 of 1998, all South African citizens aged 18 and above

possessing a valid South African identity document are eligible to vote subject to certain exclusions such as citizens with mental problems.

Since South Africa's democratic emancipation in 1994, the country's electoral system has been a subject of debate in public policy discourse. The system has been praised in some quarters and equally criticized in other quarters of the society. The main positive aspect of the electoral system is that a proportional representation has enhanced the country's multi-party democracy by allowing small political parties to have parliamentary seats (Besdziek, 2001: 181).

However, many strong arguments have been advanced against the electoral system or certain aspects of it. The main criticism against the system is that parliamentary seats do not belong to individual parliamentarians, but to political parties (Calland, 2006: 109). This gives political parties more power and control over the parliamentarians (Besdziek, 2001: 181; Calland, 2006: 109; Venter, 2001: 74). This promotes accountability of the parliamentarians to their political parties and not to the electorate (Parliament of the Republic of South Africa, 2009: 8). This also promotes party loyalty (see Malefane, 2006a; Nethononda, 2006) and undermines public accountability of the parliamentarians to the voters (Minnie, 2006: 13; Van Zyl Slabbert, 2007). Further concerns about this party-based electoral system relate to issues of accountability, the visibility of the parliamentarians and their weak link with their constituencies (Nijzink and Piombo, 2005: 73-74). The lack of direct representation has disempowered the citizens from holding their parliamentary representatives accountable (Ramphele, 2009). The African Peer Review Mechanism (APRM) Country Review Report No.5 for South Africa has also raised issues relating to public accountability of the parliamentarians under the prevailing electoral dispensation (APRM Secretariat, 2007: 109).

The prevailing electoral dispensation also seems to limit or undermine the independence of individual parliamentarians (see Besdziek, 2001: 181; Malefane, 2006a; Minnie, 2006: 13; Venter, 2001: 74). The independence of the parliamentarians is fundamental to effective legislative oversight over the executive. Limited or lack of independence compromises the quality and effectiveness of legislative oversight and executive accountability. The floor-crossing (defection)

legislation, which was formally repealed in early 2009, further undermined democracy and public accountability of the parliamentarians (see Camay and Gordon, 2004: 343; Bell, 2007).

It is therefore against the backdrop of the above criticism and concerns that a call for the reform of the country's electoral system has been made and continue to be made in different quarters of the South African society. In this regard, the main call is for the introduction of a constituency representation system in the electoral system (see Besdziek, 2001: 181; Feinstein, 2007: 260 – 261; Malefane, 2006a; Taljaard and Venter, 2001: 28-29). This call resonates with the majority view of the South African Government- commissioned Electoral Task Team headed by Van Zyl Slabbert, which also favoured an electoral system based on a combination of constituency representation and party lists (Electoral Task Team, 2003: 30). This is echoed by the view of the independent panel of experts commissioned by the South African parliament, which also supports a mixed electoral system based on constituency and proportional representation (Parliament of the Republic of South Africa, 2009: 8). Party political campaigns for the 2009 general elections also came out in favour of the country's electoral reform. For an example, the 2009 political manifestos of many political parties such as the Congress of the People, United Democratic Movement and Independent Democrats called for the country's electoral reforms.

The main argument advanced for a constituency-based system is that it will strengthen direct public accountability of the parliamentarians to their voters (constituencies) (Besdziek, 2001: 181; Electoral Task Team, 2003: 24; Malefane, 2006a). It is further argued that a constituency-based system would free the parliamentarians from narrow political interests of their political parties (see Besdziek, 2001:181; Feinstein, 2007: 260–261). The electoral reform could also be key to restoring the image of parliament and the parliamentarians (see Nijzink and Piombo, 2005: 83). Although a constituency-anchored electoral system is not a panacea for all the problems of accountability associated with representative democracy, international comparative findings point to the importance of the system in making the parliamentarians responsive to the needs of their constituencies.

In conclusion, whilst the country's electoral system promotes multi-party democracy, it is however characterised by systemic weaknesses which undermine the very fundamental pillars of the country's democratic dispensation. These mainly include party political control over the parliamentarians, which undermines their independence and make them beholden to party discipline at the expense of legislative oversight over the executive and public accountability to the voters. The ANC's decision at its 52nd national conference in December 2007 to maintain the electoral status quo and the silence of its 2009 manifesto on this issue clearly indicate that the system is beneficial to the ruling party. This policy position should therefore be understood against the backdrop of the existing levers of political control and patronage the ruling party has over its parliamentarians under the prevailing electoral dispensation. Therefore, the complexities and weaknesses associated with the country's legislative oversight and executive accountability cannot be analysed and understood outside the context of this electoral politics.

4.7. Legislative oversight and executive accountability

Legislative oversight and executive accountability are constitutional imperatives to promote transparent and accountable government. Transparency and accountability are fundamental pillars of any representative democracy. Effective legislative oversight is also important for improving the quality of public service delivery (National Treasury, 2005: 26). The Constitution entrusts parliament (National Assembly) with oversight functions and demands accountability from the executive. The National Assembly conducts oversight over the executive through portfolio committees and standing committee on public accounts (Scopa).

The main functions of these portfolio committees include dealing with the finer details of oversight work over the executive (Parliament of the Republic of South Africa, 2007: 6). These portfolio committees called "the engine room of the National Assembly" (Robinson, 2006) exactly mirror national departments for which they are responsible with the exception of the standing committee on public accounts (Scopa) which performs financial oversight over public finances across all government departments and other state institutions. The difference between the portfolio committees and Scopa is that the portfolio committees have both oversight and

legislative (law-making) functions and Scopa only deals with financial oversight functions (Calland, 2006: 106).

South Africa's legislative oversight approaches and methods include "visits to public institutions and facilities to scrutinize their operations; the reception of interim, quarterly and annual reports from departments and public bodies; holding public hearings; and receiving representations" (Besdziek, 2001: 177). Annual reports enable parliament to make an assessment of the departmental performance after the end of the financial year (National Treasury, 2005:3). Parliamentary visits enable parliament to independently verify service delivery progress on the ground. Parliamentary committees have powers to summon any person to give evidence or documents, to receive petitions, representations and submissions and to conduct public hearings (Parliament of the Republic of South Africa, 2004: 241). These powers provide these committees with key tools for effective legislative oversight and executive accountability.

Question Time is another important oversight method that provides parliamentarians with an opportunity to hold the executive accountable through posing questions to the executive for oral and written reply on matters relating to their portfolios (see Parliament of the Republic of South Africa, 2004: 191 – 211). This represents a powerful and potent weapon at the disposal of parliament to hold executive accountable for their departmental lapses and under-performance with regard to public service delivery and management of public finances.

Apart from the portfolio committees which are mainly committees of the National Assembly, parliament also has joint committees made up of members of the National Assembly and National Council of Provinces. For example, in the third term of democratic government, there was a Joint Budget Committee which considered the Medium-Term Expenditure Framework (MTEF), the Appropriation Bill and Medium-Term Budget Policy Statement (MTBPS) on behalf of parliament (Parliament of the Republic of South Africa, 2007: 6). These frameworks are important tools through which the executive accounts to parliament on public expenditure allocations and priorities of government.

The Constitution, Public Finance Management Act, No. 1 of 1999 (as amended) and Treasury Regulations also provide key oversight tools for both parliament and the provincial legislatures in that they prescribe detailed accountability obligations and requirements for the Directors-General (DGs) as the accounting officers of the national government departments and Heads of Departments (HODs) as the accounting officers of the provincial government departments. All the national and provincial departments are required by Public Finance Management Act (PFMA), No. 1 of 1999 (as amended) and Treasury Regulations to table their annual strategic plans in parliament and provincial legislatures respectively.

The PFMA also requires the national and provincial departments to table their annual reports and audited financial statements to the National Assembly and the provincial legislatures respectively. This enables both National Assembly and the provincial legislatures to evaluate both service delivery performance and public expenditure of government departments. The PFMA further supports legislative oversight and enforces executive accountability through its provision which requires the Minister of Finance to table annual budget to Parliament in February every year. It requires the annual budget to include estimates of government revenue and expenditure as well as information relating to budget deficit and borrowing.

This key fiscal information is contained in key documentation that accompanies the budget speech such as Estimate of National Expenditure, Main Appropriation Bill, Division of Revenue Bill, Budget Review and tax proposals. "The Main Appropriation Bill is the annual bill that appropriates money for the ordinary annual services of government. The bill consists mainly of a schedule made up of Votes. Each Vote represents the projected annual budget of a specific department of state or other state agency" (Parliament of the Republic of South Africa, 2004: 183). This detailed financial information does not only support legislative oversight and executive accountability, but also promotes public accountability and transparency in the allocation and expenditure of public finances.

The same applies to the provincial governments. At the provincial government level, MECs for Finance in the provinces are also required by the PFMA to table their annual budgets in their provincial legislatures in February every year (following the

tabling of the national budget), including provincial revenue and expenditure estimates, provincial Appropriation Bill (containing votes or budgets of all provincial departments) and proposals on provincial own revenue, including adjustments to provincial taxes, charges, fees and levies such as liquor licence fees, horse racing fees, casino taxes, motor licence fees, etc. Furthermore, *Provincial Budgets and Expenditure Review* which is published by National Treasury periodically provides multi-year budget and expenditure trends for all the provinces.

Overall, all these substantial amounts of documents and information are meant to provide parliament and the provincial legislatures with key financial and non-financial information to enable them to perform their oversight functions more effectively. They are also meant to promote public accountability and transparency to the citizens. However, there are certain factors which appear to militate against effective legislative oversight and executive accountability. The fact that the parliamentary committees can only make recommendations to parliament and do not have powers to make decisions (Parliament of the Republic of South Africa, 2007: 6) limit the oversight effectiveness of these committees. The capacity of the parliamentary committees to hold government departments accountable is also a challenge (see National Treasury, 2005: 3). In this regard, Taljaard and Venter (2001: 35) argue that "the lack of resources, staff and skills has proven to be a great impediment to the effectiveness of committees".

In conclusion, South Africa has a legislative framework that supports and promotes legislative oversight and executive accountability as well as public accountability and transparency in the allocation and expenditure of public finances. Although South Africa has parallels to Britain and the United States with regard to oversight approaches and methods, its site visits for independent verification of service delivery progress on the ground represents an important innovative approach to legislative oversight and executive accountability. However, South Africa could learn important lessons from the international comparative experience with regard to institutional support infrastructure and resources for legislative oversight and executive accountability. The U.S. congressional support machinery clearly demonstrates the importance of institutional capacity and resources for effective legislative oversight and executive accountability. It also indicates a congressional appreciation of the fact

that legislative oversight is an intellectually complex and demanding exercise, which requires specialised skills, knowledge and expertise. This holds important lessons for South Africa.

4.8. The institutional relationship between parliament and the executive

The nature of institutional relationship (power politics) between parliament and the executive affects the quality and effectiveness of legislative oversight and executive accountability. This section delves into the underlying political dynamics and systemic factors that shape the institutional power relations between parliament and the executive. More importantly, the section critically unpacks how the balance of power between parliament and the executive affects legislative oversight and executive accountability.

In South Africa, the relationship between parliament and the executive should be understood within the context of the country's parliamentary system of government. "In parliamentary systems, the executive is always far more powerful than the legislature" (Calland, 2006: 46). In this system the prime minister or the president has more power over parliament because of his or her control of the majority party (Calland, 2006: 46).

In parliamentary systems there is often a strict party discipline maintained by political parties (Taljaard and Venter, 2001: 33) and chief whips are the ones that ensure party discipline (Calland, 2006: 109). In South Africa, these inherent systemic or structural flaws of the parliamentary system as well as the political culture and tradition of the majority party (African National Congress) militate against effective legislative oversight and executive accountability.

Many analyses point to the South African parliament as a weak institution in relation to the executive (see Feinstein, 2007: 240; Makhanya, 2007; Mkhabela, 2006a; Msomi, 2007). These analyses also point to the inability or ineffectiveness (and sometimes even unwillingness and reluctance) of parliament (and the majority party parliamentarians in particular) to hold the executive accountable (see Boyle, 2006a; Boyle, 2006b; Makhanya, 2007; Msomi, 2007).

It is however worth noting that the post-Polokwane ANC politics seems to have changed the balance of power between the executive and parliament. However, some developments (e.g. the disbandment of the Scorpions) that took place in parliament during 2008 suggest that power of control has now shifted from the executive to the ruling African National Congress (ANC) without giving the majority party parliamentarians any political independence to conduct independent legislative oversight.

The provincial legislatures are also considered less effective in performing their oversight functions and are said to be dominated by the provincial political leadership (see Malefane, 2006b). The concerns about the weaknesses of legislative oversight in the country are also echoed by African Peer Review Mechanism (ARPM) Country Review Report No. 5 for South Africa (APRM Secretariat, 2007: 167).

There are key political factors or issues at play which warrant attention to explain this state of affairs. The first political factor at play has a lot to do with the country's electoral system. The influence of the electoral politics on legislative oversight and executive accountability has already been dealt with in the previous section of this chapter.

The second political factor relates to the internal politics and influence of the African National Congress (ANC) which is the ruling party in government and majority party in parliament. The argument is made that the ANC parliamentarians operate in a political culture that promotes party loyalty ahead of public interests (Pheko, 2006). The much-publicized arms deal investigation by parliament's standing committee on public accounts (Scopa) is a classic example of how the majority party parliamentarians are constrained by party discipline and loyalty when it comes to independent legislative oversight over the executive. Due to its huge financial and socio-economic implications for the country, the arms deal investigation was a matter of immense public interest, which warranted rigorous oversight to ensure full executive accountability and transparency on the deal. Ramphele (2009) argues that the arms deal represents the worst failure of parliament to hold the executive accountable.

In his book, *After the Party*, Andrew Feinstein, former ANC MP and member of Scopa, details how the executive with the help of some senior majority party (ANC) parliamentarians interfered with the Scopa's oversight work on the arms deal investigation and how the majority party members of Scopa were cowed into submission to party loyalty and discipline (Feinstein, 2007: 154 – 207). In his article, *ANC Today deaf and blind to the realities of arms deal corruption*, published in the Sunday Times on 25 November 2007, Feinstein further paints the same picture of the executive and ANC interference in the oversight work of Scopa in relation to the arms deal investigation.

In his book *Anatomy of South Africa: Who Holds the Power?* Richard Calland (2006: 106) also points to political interference in the Scopa's investigation of the arms deal corruption – "the first major corruption scandal of democracy" (Haffajee, 2008). Calland (2006: 113) goes further to describe the ANC's parliamentary handling of the arms deal as "disgraceful" and "the parliamentary low point of the last twelve years". The political interference in the arms deal investigation has undermined the effectiveness of Scopa as a non-partisan committee of parliament (see Camay and Gordon, 2004: 339). The fact that Feinstein describes parliament as "an empty vessel" (Feinstein, 2007: 240) demonstrates the extent to which the oversight functions of parliament have been compromised, at least with reference to the period of study.

Overall, this points to a subversion of the constitutionally-sanctioned oversight obligations of parliament and the undermining of the constitutional principles of the separation of power between parliament and the executive. It further paints parliament in a negative light as political playground where narrow party political interests take supremacy over public interests and constitutional obligations of the parliamentarians.

The allegation that the ANC interfered with the appointment of the previous South African Broadcasting Corporation (SABC) board (see Mafela, Boyle, Harper & Mkhabela, 2007) further reinforces the perception that party political interests take precedence over the country's constitutional imperatives and broader public interests. In this regard, it is worth noting that the power and influence of the ANC parliamentary political committees (such as ANC parliamentary caucuses) on the parliamentary work and political conduct of the parliamentarians cannot be

underestimated (see Rossouw and Basson, 2008). Although they are not formal organs of parliament, party caucuses are influential in that all members of the party in parliament are required to follow the decisions of the caucus (Taljaard and Venter, 2001: 33; also see Camay and Gordon, 2004: 340).

The whole situation clearly creates a conflict of interest between the constitutional obligations of members of parliament and their party political obligations – a situation that could best be described as a conflict between "party democracy" and "electoral democracy" (Murray and Simeon, 2008). In other words, the parliamentarians are caught between loyalty to public interests and loyalty to party political interests which are often contradictory and mutually exclusive. Unfortunately, the latter is a logical political choice for many parliamentarians given the current political hegemony of the ruling party reinforced by the country's electoral system which allocates parliamentary seats to political parties. The criticism of the prevailing electoral dispensation which is based on party-based proportional representation system is therefore not misplaced.

The executive interference in legislative oversight is not only confined to the national parliament. In the Western Cape, the allegations reported in the media that the provincial executive instructed the cessation of special investigation sanctioned by the provincial legislature and its standing committee on public accounts into the financial affairs of a certain provincial department also suggest the executive interference in matters of legislative oversight (see Joubert, 2007). The same allegations of executive interference in the legislative oversight work were also reported in the media in relation to Limpopo legislature (Scopa) hearing / investigation into international transport convention held in 2005 (see Yende, 2006a).

The third issue is a constitutional one which limits the powers of parliament to amend money bills. In terms of section 77 (2) of the Constitution, separate legislation is required to enable parliament to amend money bills. A money bill is a legislative proposal that deals with macro-economic policy and public finances, including budget, taxes, levies, duties, surcharges and other charges (see Parliament of the Republic of South Africa, 2004: 182 – 185). For example, the annual Division of Revenue Bill that allocates revenue to different spheres of government and Annual

Appropriation Bill that appropriates budget to various state departments are examples of money bills tabled by the Minister of Finance annually in the joint sitting of the National Assembly and National Council of Provinces.

The fact that parliament cannot amend money bills (including budget) impedes proper parliamentary oversight work (see Boyle, 2006a; also see Camay and Gordon, 2004: 337-338). This inability of parliament to amend budget has been the main limitation since 1994 (Boyle, 2006c). However, parliament has since passed Money Bills Amendment Procedure and Related Matters Act, No.9 of 2009, which will make it possible for parliament to amend money bills. Notwithstanding the fact that parliament took a long time to pass this piece of legislation, the power to amend bills will enable parliament to influence key decisions on fiscal and financial matters (such as budget, taxes, levies, etc). This is critical to effective financial oversight over the executive.

The fourth factor relates to the weaknesses of the opposition parties in parliamentary politics and South African politics in general. The weak opposition politics in South Africa makes the country a de facto one-party state (Nethononda, 2006). In this regard, there are several factors that clearly explain the weaknesses of the opposition politics in South Africa. They range from policy weaknesses to systemic weakness associated with the electoral system. Opposition parties in the country suffer from "a poverty of ideas and policy directions" (Sadie, 2001: 295–296) and are unable to provide "constructive, reality-grounded counter-proposals for policy" (Camay and Gordon, 2004: 341). The country's party-based electoral system of proportional representation also means that the majority party has more power and influence than the opposition parties in parliament.

The parliamentary majority of the ruling party (ANC) and the allocation of parliamentary questions to political parties on the basis of their proportional representation in parliament provide little opportunity for the opposition parties to hold the executive accountable (Camay and Gordon, 2004: 337). The credibility and legitimacy of the ANC as the liberation movement (Calland, 2006: 185) and the lack of credibility and legitimacy on the part of the opposition (Sadie, 2001: 297) also account for the weaknesses of the country's opposition politics.

The adversarial and confrontational approach to opposition politics in parliament is also a key factor that undermines the role and influence of opposition parties in South Africa. The criticism of the ruling party without providing sound policy alternative (Camay and Gordon, 2004: 341) also works against the opposition parties. The lack of cohesive opposition and diverse political agendas of opposition parties also undermine the influence of the opposition politics (Camay and Gordon, 2004: 341).

The last key factor that accounts for the current asymmetrical relationship between parliament and the executive is the lack of institutional capacity and resources in parliament. Budget and capacity constraints affecting parliamentary portfolio committees present challenges to parliamentary oversight (see Kgosana, 2008). Political parties in parliament are funded by the state on the basis of proportionality and as a result the small parties experience resource constraints for policy research and other parliamentary work (Camay and Gordon, 2004: 342).

African Peer Review Mechanism (APRM) Country Review Report No.5 for South Africa also highlights limited capacity, staff and resources as the challenges facing parliament and the provincial legislatures (APRM Secretariat, 2007: 167). Another argument is that legislative oversight has been weakened by the "juniorisation of parliament" which means a situation whereby parliament is made up of relatively new and junior ruling party parliamentarians "who lack the political clout to hold the executive to account" (Robinson, 2006).

There are however some good news and positive affirmations which indicate that some parliamentarians and parliamentary portfolio committees take their oversight functions seriously (see Mkhabela, 2006a; 2006c).

The hardline stance by standing committee on public accounts (Scopa) of the Limpopo Legislature, which required government officials to repay millions of rand lost or unaccounted for through negligence and mismanagement boded well for accountability (see Yende, 2007). Limpopo's Scopa further demonstrated that it takes its oversight work seriously when it dealt with public expenditure relating to international transport convention held in Limpopo in 2005 (see Yende, 2006a; 2006b). The media report that Scopa in the Western Cape Legislature ordered a

provincial minister to repay taxpayers' money he was not entitled to also asserted the oversight authority of this institution (see Joubert, 2007).

Furthermore, the fact that post-Polokwane National Executive Committee (NEC) of the African National Party is concerned about the public image or perception of parliament as a rubber stamp of the executive and is prepared to correct it is also a step in the right direction (see Kgosana, 2008). Although it is premature to draw conclusions, certain developments that took place in parliament since 2008 (e.g. the disbandment of the Scorpions) however suggest that post-Polokwane ANC politics have not translated into independent legislative oversight over the executive.

4.9. Conclusion

The South African system of government is underpinned by a legislative framework and the principle of separation of powers, which provide an enabling and supportive environment for legislative oversight and executive accountability. This system includes the transparent planning and budgeting frameworks within which the executive operates, which also promotes public accountability and transparency on government priorities and public finances.

The institutional configuration of the National Assembly into portfolio committees and standing committee on public accounts is also supportive of legislative oversight and executive accountability. The practice of giving the chairpersonship of standing committee on public accounts to the opposition also augurs well for independent, impartial and credible financial oversight over the executive.

In addition to the constitutional provisions, South Africa's legislative oversight and executive accountability are also underpinned by a supportive legislative framework set out in the Public Finance Management Act and Treasury Regulations. This legislative framework promotes public accountability and transparency with regard to government planning, budgeting and reporting to parliament on both financial and non-financial performance of government departments. Parliament's approach to legislative oversight, through portfolio committees and standing committee on public accounts, and its oversight methods and instruments, which include annual

appropriation of government budget, site visits, analysis of annual reports, public hearings and parliamentary question time, compare to international comparative findings.

However, the country's electoral system appears to militate against independent and robust legislative oversight over the executive. While the electoral system promotes multi-party parliamentary democracy by affording small parties an opportunity to be represented in parliament, it has systemic flaws and weaknesses which undermine legislative oversight and executive accountability. The ownership of parliamentary seats by political parties erodes the independence of the parliamentarians and makes them beholden to their political parties, thus undermining independent and robust legislative oversight over the executive. The international comparative findings point to the importance of a constituency-anchored electoral system in making the parliamentarians responsive to the needs of their constituencies, thus promoting public accountability of the parliamentarians.

Overall, there are key areas of reform that need to be considered in order to enhance legislative oversight and executive accountability in South Africa. Firstly, South Africa could draw some key lessons from international comparative findings with regard to the benefits of a constituency-anchored electoral system. As it has already been pointed out, a constituency-anchored electoral system promotes the independence and public accountability of the parliamentarians. Although it is not a panacea to all the problems, this system would strengthen the accountability aspects of country's electoral system.

Secondly, South Africa could also learn key lessons from the U.S. congressional support machinery in order to strengthen its parliamentary oversight machinery in terms of institutional resources and professional skills and expertise. This would enhance the quality and effectiveness of its legislative oversight over the executive. Finally, the fact that the committees of the National Assembly cannot make final decisions and can only make recommendations to the plenary of the full house neutralises their effectiveness with regard to the enforcement of their oversight decisions. This also needs some reform in order to strengthen the oversight powers of these committees. The next chapter builds on this chapter by providing an empirical

analysis of key issues discussed in this chapter, using the Gauteng Provincial Government as a case study.

CHAPTER 5
LEGISLATIVE OVERSIGHT AND EXECUTIVE ACCOUNTABILITY IN THE GAUTENG PROVINCIAL GOVERNMENT

5.1. Introduction

The Gauteng Provincial Government was chosen as a case study for this research. As it has been explained in chapter 1, the rationale for the choice of this case study was informed by major service delivery challenges facing Gauteng Province and its position as the economic powerhouse of both South Africa and Africa. All these considerations make Gauteng Province an interesting case study from which key lessons and best practices could be learnt.

This chapter presents the empirical findings based on face-to-face interviews with members of the Gauteng Provincial Legislature. The interview questions were derived from the primary and secondary research questions of this study. This is in line with the research design section set out in chapter 1 of this report. The selection criterion for these interviews was based mainly on political party representation and the participation of the interviewees in oversight committees, which mainly included the portfolio committees and the standing committee on public accounts.

This criterion was used to ensure a balanced perspective and varied insights from various political parties represented in the Gauteng Provincial Legislature. At the time of the interviews in 2008, the members of the provincial legislature (MPLs) interviewed served in various committees of the legislature such as the standing committee on public accounts, finance committee, rules committee, privileges and ethics committee and portfolio committees on housing, health, social development, sports, recreation, arts and culture, public transport, roads and works. The interview findings reported below are presented with the interviewee surname, as the source, in brackets. Full details of the interviewees are presented in Appendix B at the end of this thesis.

Political parties represented in the Gauteng Provincial Legislature at the time of the interviews were the African National Congress (ANC), the majority party, Democratic Alliance (DA), the official opposition, and the minority parties Inkatha Freedom Party (IFP), African Christian Democratic Party (ACDP), Independent Democrats (ID), Freedom Front Plus (FF+), Alliance of Free Democrats (AFD) and African People's Convention (APC). Interviews were conducted with six MPLs, each from a different political party represented in the Gauteng Provincial Legislature. One political party did not want to participate in the study. In line with the research design set out in chapter 1 of this thesis, the data was analysed through categorisation of information from the interviews into themes related to the questions of the study. The researcher tracked the pattern of information from the interviews and made interpretations based on this pattern of information. The analysis in this chapter is organised into themes which directly address the key questions of this study. The also analysis relates to key issues addressed in chapter 3 and 4 of the thesis.

The chapter starts off with a brief background about the Gauteng Provincial Legislature to provide a backdrop to the analysis. The chapter then moves to the analysis of the empirical findings from face-to-face interviews with members of the Gauteng Legislature. The analysis focuses on the oversight methods and mechanisms used by members of the Gauteng Provincial Legislature, the resources and capacity of the committees of the legislature to conduct oversight, oversight experiences of the members of Gauteng Provincial Legislature, oversight achievements and weaknesses of the legislature, and the influence of party politics on legislative oversight and executive accountability in the Gauteng Provincial Government.

5.2. The structure and functions of the Gauteng Provincial Legislature

This section provides a brief background about political composition and institutional configuration of Gauteng Provincial Legislature in order to position the analysis of the empirical findings. The section also needs to be read in conjunction with section 4.4 in chapter 4, which deals with the structure and functions of the national parliament in South Africa. Like South Africa's national parliament, the provincial legislatures are also based on a system of parliamentary democracy and their members are elected on

a provincial ballot and in terms of a party-based electoral system of closed list proportional representation.

The members of the Gauteng Provincial Legislature were also elected through this electoral system to perform constitutionally-sanctioned legislative and oversight functions. In this context, the legislative powers of the Gauteng Provincial Legislature refer to the powers to make provincial laws on matters that fall within its legislative competence as set out in the Constitution. The oversight powers refer to the legislature's powers to hold the provincial executive council (provincial cabinet) accountable for the performance of its functions, including public policy implementation and management of public finances.

As already indicated, at the time of the interviews, the African National Congress (ANC) was the majority party and Democratic Alliance (DA) official opposition in the Gauteng Provincial Legislature. Minority opposition parties represented in the Gauteng Provincial Legislature were Inkatha Freedom Party (IFP), African Christian Democratic Party (ACDP), Independent Democrats (ID), Freedom Front Plus (FF+), Alliance of Free Democrats (AFD) and African People's Convention (APC). This political composition shaped the context for and the politics of legislative oversight in the Gauteng Provincial Legislature. The analysis of the empirical findings elaborates on how party politics influenced legislative oversight and executive accountability in the Gauteng Provincial Legislature.

The political parties represented in the Gauteng Provincial Legislature received funding annually from this legislature in terms of Gauteng Political Party Fund Act, No. 3 of 2007. In terms of this legislation, the overall purpose of this funding is to support political parties in promoting democracy. The funding allocation to the political parties is based on the principles of proportionality and equity. Party funding can be seen as critical to the effective participation of political parties in the oversight functions of the legislature. The issue of party funding and its relevance to legislative oversight will be further elaborated in the analysis later in this chapter.

At the time of the interviews in 2008 (and also in the subsequent post- 2009 election period), the Gauteng Provincial Legislature had a speaker and deputy speaker who belonged to the majority party. This is in line with the tradition of parliamentary democracy found in Britain and on which the South African parliamentary system is based. The speaker is the political head of the legislature and the secretary to the legislature is an administrative head who takes accountability on administrative matters of the legislature. Furthermore, the legislature had a majority party chief whip, chief whip of the official opposition and whips (party leaders) of other parties. Although the speaker is required to be politically non-partisan, whips of political parties are at the centre of party politics that shape the conduct and behaviour of the MPLs with regard to legislative oversight over the provincial executive. This is dealt with in detail later in this chapter.

The study found that, like the national parliament and parliaments in other democratic countries, the Gauteng Provincial Legislature performs its oversight functions through its portfolio committees and some standing committees such as the standing committee on public accounts. The study further found that the legislature has many portfolio committees which maintain oversight over various portfolios of the provincial executive council. The portfolios are performed by the provincial departments under the political leadership of the provincial executive council. At the time of the fieldwork, these portfolio committees exactly mirrored the portfolios of the provincial executive council. The Gauteng Provincial Legislature also had a professional support team including researchers and committee coordinators who provided technical and administrative support to committees to enable them to perform their functions efficiently and effectively. These details of the political and institutional configurations of the Gauteng Provincial Legislature, as it prevailed at the time of interview fieldwork, thus position the analysis of the empirical findings.

5.3. Legislative oversight and executive accountability in the Gauteng Provincial Government

In line with the introduction to this chapter and the key questions that drive the study, this analysis focuses on the oversight methods and mechanisms used by the Gauteng Provincial Legislature, the resources and capacity of the committees of the legislature

to conduct oversight, oversight experiences of the members of the Gauteng Provincial Legislature, oversight achievements and weaknesses, and the influence of party politics on legislative oversight and executive accountability in the Gauteng Provincial Government.

5.3.1. Oversight processes, methods and mechanisms

Section 114(2) of the Constitution of the Republic of South Africa requires the provincial legislatures to put in place mechanisms to ensure oversight over the provincial executives and to ensure that the provincial executives are accountable to them. In terms of the Section 133 (2) of the Constitution, members of the provincial executive councils are collectively and individually accountable to their provincial legislatures. For example, MECs are individually accountable for their own portfolios (departments), mainly through portfolio committees. Collectively, the executive is accountable to the legislature for collective executive decisions. This is based on the British tradition of collective ministerial accountability on which the whole South African executive accountability system is based.

The empirical analysis found that the Gauteng Provincial Legislature conducts its oversight over the executive through its various portfolio committees and standing committees. It also found that the portfolio committees mirror the executive portfolios (provincial government departments). At the time of the interviews, the Gauteng Legislature had portfolio committees covering education; health; housing; social development; community safety; sports, arts, culture and recreation; finance, economic affairs; public transport, roads and works; local government, agriculture, conservation and environment. There were also various standing committees such as standing committee on public accounts (Scopa), as well as the standing committee on gender, youth and disability. At the time of the interviews, the Gauteng Provincial Legislature's oversight cycle, processes and mechanisms worked as set out below.

5.3.1.1. Budget appropriation process

Through the research interviews, the study established, in line with the generally expected criteria, that the Gauteng Provincial Legislature conducts oversight through the budget appropriation process (Ledwaba; Meshoe, 2008). This process enables legislative oversight over public finances and expenditure of the provincial government. The study also found that the Gauteng Provincial Legislature is responsible for passing the provincial appropriation bill which appropriates money / budget to the provincial government departments. In the interviews, it was confirmed that the process involves the tabling of the provincial appropriation bill by the MEC for Finance to the full house (plenary) of the legislature every year for adoption (Ledwaba; Seloane, 2008). In simple terms, the provincial appropriation bill is a draft provincial budget containing proposed votes / budgets of various departments.

In elaboration of the details, the study found that, after the appropriation bill has been tabled before the legislature, it is referred to the Finance Committee for detailed analysis. In this detailed analysis of the appropriation bill, the Finance Committee looks at the provincial government budget in its totality to ensure allocative efficiency and overall budget alignment to the policy priorities of government (Seloane, 2008).

In the course of this process, the portfolio committees also conduct detailed analyses of their specific departmental budgets (Departmental Votes) delving into detail to the level of programme (division) and sub-programme budget allocations within the main departmental budget or vote (Seloane, 2008). In the course of this process, departments are called to justify their budgets to their portfolio committees (Ledwaba; Seloane, 2008). The purpose of the process is for the legislature to make sure that the departmental budget allocations are in line with the policy priorities and strategic objectives of the provincial government (Ledwaba, 2008).

Once this detailed process of budget analysis and consultations has been completed, all committees make recommendations to the full house of the legislature for adoption (Seloane, 2008). Once the full house of the legislature has approved or adopted the whole budget, the appropriation bill is referred to the Premier for signature to make it law (i.e. provincial appropriation act) (Seloane, 2008). Later in the course of the

financial year, departments are afforded an opportunity to adjust their budgets and these budget adjustments (appropriation adjustments) are also subject to tabling by the MEC for Finance to the legislature for adoption (Ledwaba; Seloane, 2008).

5.3.1.2. Site visits and physical inspections

The study found that site visits and physical inspections of service delivery programmes and projects are key mechanisms through which the Gauteng Provincial Legislature holds the executive accountable for actual service delivery on the ground (Ledwaba; Meshoe; Seloane; Wolmarans, 2008). This is a hands-on oversight approach to independently confirm or verify whether reports from departments reflect the actual reality on the ground in terms of service delivery (Ledwaba, 2008). Based on the findings of the field visits, departments are then called to account to the legislature for sluggish or unsatisfactory performance on the ground or to clarify aspects of service delivery which are unclear to the legislature (Ledwaba, 2008). However, concern was expressed about the fact that projects or facilities are often informed in advance about these oversight visits (Meshoe, 2008). This makes it possible for projects or facilities to prepare themselves for these visits (Meshoe, 2008), thus defeating the purpose of the visits. The MPL reckoned that unannounced site visits would provide a truer reflection of the state of the projects or facilities than announced visits (Meshoe, 2008).

5.3.1.3. Analysis of departmental annual reports

In addition to budget appropriation and field visits, the study found that the Gauteng Provincial Legislature also conducts oversight over the executive through detailed analysis of departmental annual reports (Ledwaba, 2008). At the end of each financial year, the departments submit their financial statements to the Auditor-General for auditing. The Auditor General (AG) assists Scopa in its financial oversight functions (Seloane, 2008). The AG conducts different types of audits in the departments and other government entities (Steyn, 2008). The audits include the regularity audit, performance audit and forensic audit. Regularity audit is an annual audit that looks at departmental compliance with accounting standards and principles, as well as compliance with appropriate legislation such as Public Finance Management Act

(Steyn, 2008). A performance audit looks at performance of the departments and government entities in terms of their mandates, including issues of efficiency and effectiveness (Steyn, 2008). It was indicated during the interviews that in the past the focus had been more on regularity auditing and that the AG has started focusing also on performance auditing (Steyn, 2008). The forensic audit is a special audit that often targets a specific problem (Steyn, 2008).

The interviewees reported that, after the AG has completed the (annual) auditing process, the departments, through their MECs, table their annual reports containing both performance information (non-financial service delivery report) and audited financial statements before the full house of the legislature (Seloane, 2008). Thereafter, the annual reports of all departments are referred to the standing committee on public accounts (Scopa) for detailed analysis and interrogation (Steyn, 2008). In considering the annual reports of all departments, Scopa often calls the AG for further briefings on the reports (Seloane; Steyn, 2008).

In its analysis of all departmental annual reports, Scopa looks at issues relating to under-expenditure, over-expenditure, unauthorized, irregular and fruitless expenditure and many other issues relating to financial mismanagement and transgressions within the provincial departments (Seloane, 2008). After Scopa has interacted with the AG and analyzed the annual reports, it then prepares questions to the departments for written responses (Steyn, 2008). Scopa considers the written responses from the departments and then call the departments to appear before the committee (Scopa) for further interrogation (Steyn, 2008). This process is open to the public (Steyn, 2008).

In this process, the portfolio committees also receive annual reports of their respective departments. Unlike Scopa which looks at the annual reports of all departments, the portfolio committees only look at non-financial information (service delivery report) of the annual reports of the departments that fall under their portfolios (Seloane, 2008). For an example, the portfolio committee on health only looks at the non-financial information (service delivery report) of the department of health's annual report. In considering annual reports of their respective departments, the portfolio committees also follow similar processes and procedures to those followed by Scopa.

This includes requesting their departments to respond to written questions and to appear before them for further questioning.

Once this process has been completed, both Scopa and the portfolio committees prepare their reports with recommendations and table them to the full house of the legislature for discussion and adoption (Ledwaba; Steyn, 2008). Scopa recommendations could range from instituting forensic audit, conducting disciplinary processes to pressing criminal charges against officials in the departments (Steyn, 2008). Once adopted by the full house, the reports and the recommendations of the committees become the formal resolutions of the legislature which are binding on the executive, meaning that the executive must implement the resolutions (Ledwaba; Steyn, 2008). Non-compliance with these resolutions amounts to a contempt of the legislature (Steyn, 2008).

The study further found that both the portfolio and standing committees are supported by professional support staff such as the researchers and committee coordinators. In this regard, it was found that the support staff provides technical support to members of the legislature. This includes technical analysis of information (e.g. budget information, performance or service delivery information) and advice to the committees or the MPLs for them to ask the right oversight questions to the executive (the departments) (Seloane, 2008). Sometimes the legislature uses outside consultants or experts to help with expert inputs in its oversight work (Ledwaba, 2008).

5.3.2. The resources and capacity of the committees

The availability of resources and capacity of the committees are central to the ability of the committees to conduct effective oversight over the executive. The issue of resources and capacity of the committees was explored during the interviews and the Gauteng Provincial Legislature was found to be facing the challenges of resources and capacity at both political and technical level (Ledwaba, 2008). At a political level, the MPLs were not many in relation to the number of committees and oversight workload (Ledwaba, 2008). This challenge related more to the minority parties in the legislature than the majority party (Ledwaba, 2008). For an example, the MPLs from the minority parties, more especially those with only one member, found it difficult to

participate in the activities and debates of all committees (Ledwaba; Meshoe, 2008). This meant that the MPLs from the minority parties were always required to prioritize which committees to attend. One minority party MPL indicated that this challenge could be addressed through prior consultation with the minority parties during the programming of oversight schedule / programme to ensure that oversight dates and times also suit the minority parties (Meshoe, 2008).

At a technical level, there were also challenges facing the legislature. While the portfolio committees had financial resources, they lacked human resource capacity in the form of the support staff. There were limited technical skills internally and the professional support staff members were often overworked hence the use of external consultants or experts on certain occasions (Ledwaba, 2008). In this context, the issue of capacity did not only refer to the number of support staff, but also to the quality (skills) of the support staff (Nkomo, 2008). However, the situation was said to be getting better because the legislature had more researchers than before (Ledwaba, 2008). The appointment of highly qualified and skilled support staff such as the researchers and better remuneration were seen by the MPL interviewed as part of the possible solutions to address the capacity constraints that faced the Gauteng Provincial Legislature at the time (Nkomo, 2008).

The interviews further established that Scopa needed even more resources and much greater human resource capacity (e.g. more researchers) than the portfolio committees because its scope of work was much more comprehensive than that of the portfolio committees (Seloane; Steyn, 2008). Scopa deals with all government departments and a portfolio committee only deals with one department. For instance, the portfolio committee on health only deals with health department.

The interviews also found that the legislature also needed to employ its institutional accountants (including forensic accountants) to avoid the reliance on the Auditor General (Seloane; Steyn, 2008). These accountants were required to support or advise all committees of the legislature in their oversight work, including detailed analysis of the departmental budgets and annual reports (Seloane, 2008). For an example, they would conduct detailed analysis of the departmental budgets, including analysis of

costing, models, assumptions and trends underpinning the departmental budgets, in order to advise the committees properly (Seloane, 2008).

Furthermore, more capacity and resources were required in terms of information technology such as access to strong databases to enable the MPLs to access all relevant information to inform their work (Steyn, 2008). One MPL also indicated that the committees also needed to have their own spokespersons to explain, communicate and profile the work of the committees to the public (citizens) to counter public perception that the MPLs do less work (Seloane, 2008). .

The MPL further indicated that many people do not understand the work of the MPLs or the committees and these spokespersons would serve to educate them about the work of committees (Seloane, 2008). This would augur well for democratic accountability because the citizens are entitled to know what their public representatives do. Overall, the resource and capacity constraints that faced the committees had less to do with the finances, but more to do with the limited technical skills of the professional support staff, the limited number of opposition MPLs versus numerous committee assignments and the limited capacity of Scopa in relation to its wide scope and huge volume of work.

5.3.3. Oversight experiences and lessons

The study found that much work had been done in terms of developing an oversight framework, but the implementation of oversight remained a key challenge (Nkomo, 2008). Party political affiliation and associated loyalties sometimes made it difficult for the portfolio committees to work as united teams when they performed their oversight functions (Ledwaba, 2008). For an example, it was indicated during the interviews that there had been many incidents where the political parties protected their own members (Ledwaba, 2008). This is related to the influence of party politics (party discipline) on legislative oversight and executive accountability in the legislature, which is discussed later in this chapter. It was further indicated during the interviews that there had also been other cases where the executive did not respond to the legislature's questions or submit the required reports to the legislature (Ledwaba, 2008). This demonstrates the power of the executive relative to the legislature. The

loss of continuity and institutional memory due to turnover of public representatives as a result of periodic elections every five years also came out of the interviews as the issue that sometimes affects the quality of oversight (Steyn, 2008).

The study further found that there had been serious financial challenges in the past, including many audit qualifications such as adverse opinions and disclaimers from the Auditor General, but the financial management had since improved over time within the provincial government, including asset management and audit opinions (Seloane, 2008). The improved financial management was believed to have led to improved service delivery (Seloane, 2008). However, supply chain management and budgeting (i.e. poor budget estimation) within many departments still remained a challenge at the time of the interviews (Seloane, 2008).

5.3.4. Major oversight achievements

The MPLs interviewed often struggled to identify major oversight achievements of the Gauteng Provincial Legislature and indicated that there had been minimal oversight achievements (Ledwaba; Nkomo, 2008). One of the notable achievements mentioned was that oversight had led to some improvements in financial management and public service delivery in the province (Seloane, 2008). This however does not in anyway suggest that the provincial government does not have financial and service delivery challenges.

The other important achievement was that the departments took Scopa's recommendations seriously and implemented them to improve their performance (Seloane, 2008). It was also mentioned that the Gauteng Provincial Legislature has resources and facilities, including offices, laptops and cell phones for the MPLs (Ledwaba, 2008). This could be classified as an achievement because resources and facilities are important inputs into the oversight and legislative work of the MPLs. In other words, the MPLs cannot perform their oversight and legislative work effectively and efficiently without the necessary resources and facilities.

5.3.5. Major oversight weaknesses

The interviews identified key fundamental weaknesses relating to legislative oversight in the Gauteng Provincial Legislature. The first fundamental weakness was that oversight had not been effective because many committees did not have teeth (Wolmarans, 2008). They lacked political clout, power and sanctions to conduct proper oversight (Wolmarans, 2008). Furthermore, oversight had not been effective because the ruling party MPLs were scared of holding the executive accountable (Nkomo; Meshoe, 2008). This was because many members of the executive were senior in their political party (for an example, some were members of the provincial executive committee of the ANC) and some of them were responsible for the deployment of these MPLs (Nkomo, 2008). Logically, the MPLs therefore could not bite the hands that fed them.

However, the fundamental problem with the pursuit of party loyalty was that it compromised the independence of the MPLs. It also created a conflict of interest dilemma for the MPLs in that they were expected to pursue party political positions which were sometimes in conflict with the will of the people (Ledwaba, 2008). The MPLs needed to be critical to ensure executive accountability, but quite often there was noise and poor quality of debates in the House (Nkomo, 2008). In this regard, party discipline came out a key factor that undermined effective legislative oversight. The opposition parties were the ones that probed many issues, but they were often ignored, outnumbered and neutralized by the numerical majority of the ruling party MPLs (Nkomo, 2008). For an example, the opposition motions in the House were easily outvoted and defeated by the ruling party MPLs (Nkomo, 2008). Some of the questions from the opposition were not even answered (Wolmarans, 2008). As a result, the impact of the opposition on oversight work in the Gauteng Provincial Legislature has been “negligible” (Wolmarans, 2008). Overall, this indicates strong influence of party politics on legislative oversight and executive accountability in the legislature, which is discussed later in this chapter. It also indicates the powerful position of the executive relative to the legislature.

The second most significant weakness was poor cooperation from some members of the executive who often failed to respond to written questions from the legislature and also failed to appear before the legislature and its committees to respond to questions and account for their departmental performance or non-performance (Steyn, 2008). One MPL summarized this as a "contemptuous attitude" by some members of the executive to the legislature which also extended to the official opposition (Steyn, 2008). In this regard, an example was made where some members of the executive treated the opposition MPLs with contempt and sometimes "played the man not the ball" in responding to the questions from the opposition MPLs (Steyn, 2008).

Furthermore, some of the responses from some members of the executive to the legislature were not adequate or helpful because they lacked the required detail (Steyn, 2008). The other concern mentioned was that some MECs usually sent their departmental officials to respond and account to the legislature (Steyn, 2008). This could be interpreted as another display of a disdainful attitude to the legislature. However, this was not general to all members of the executive. Other members of the executive were said to take their accountability to the legislature seriously, including availing themselves to the legislature when so requested and their respect for the views and contributions of the opposition MPLs.

The third fundamental weakness was that the Gauteng Provincial Legislature did not have effective mechanisms to monitor the implementation of its resolutions by the executive (Nkomo, 2008). As a result, most of its resolutions fell through the cracks and were not implemented by the executive (Nkomo, 2008). The fourth fundamental weakness related to the electoral system. One MPL was brutally blunt and blamed the electoral system for undermining democracy and effective legislative oversight (Nkomo, 2008). The argument was that it lacks many elements of accountability and makes public representatives accountable to their political parties and not to the people (Nkomo, 2008). Funding of smaller parties was also cited as a challenge (i.e. not sufficient) because it was based on proportional representation of parties in the legislature (Meshoe, 2008). The outcome of this funding model meant that the smaller parties got little funding allocations compared to the bigger parties (Meshoe, 2008).

The constituency-based electoral system was mentioned as a system that would promote direct accountability to the people and make oversight effective. For an example, in a constituency-based system it is possible for a public representative to lead his or her constituency in a public protest or petition, but it is quite difficult to do that in a party-based electoral system (Nkomo, 2008). Active civil society participation in legislative oversight through strong lobbying of key issues was also seen as fundamental to effective legislative oversight and executive accountability (Nkomo, 2008).

Furthermore, other fundamental weaknesses and challenges were cited during the interviews. For example, huge workload and time constraints were cited during the interviews (i.e. by MPLs who served on Scopa) as the key challenges facing Scopa (Steyn, 2008). These challenges made it difficult for Scopa to thoroughly interrogate the annual reports of all departments and this sometimes tended to affect the quality of its oversight work (Steyn, 2008). The other weakness related to the programming of the legislature's business. For example, few numbers of the plenary sittings of the legislature was cited by some MPLs interviewed as a weakness because it meant that the MPLs had limited opportunities to question the executive and hold them accountable (Steyn, 2008).

The other weakness related to the enforcement of house resolutions in the departments (Seloane, 2008). In this regard, it was indicated that part of the problem was that there were no clear guidelines for the legislature on the application of sanctions against transgressions (Steyn, 2008)). The existing sanctions at the time were considered far too vague and weak (Steyn, 2008). The point was also made during the interviews about the challenges around political management of the relationship between the legislature and the executive where the legislature's resolutions which seriously affected member(s) of the executive were not implemented because of the political standing of the affected member(s).

The technical and operational know-how and expertise of the MPLs also emerged from the interviews with the MPLs as a limitation. It was indicated that many MPLs were not experts and had limited operational knowledge compared to the executive and their departmental officials (Seloane, 2008). This sometimes limited the ability of

the MPLs to ask the right oversight questions to the executive and their departments (Seloane, 2008).

However, apart from the weaknesses and limitations highlighted above, the MPLs interviewed also mentioned some positive interventions and measures of the Gauteng Provincial Legislature. The first positive measure was that the legislature had training or capacity building programmes for both the MPLs and support staff (Ledwaba, 2008). The legislature had financial resources (budget) which included provision for party political funding, constituency funding and research funding for represented political parties in the legislature (Ledwaba, 2008). The legislature also had relatively more researchers than it had had before (Ledwaba, 2008).

Furthermore, the legislature had increased resources to the MPLs, which included an expanded organogram to ensure more human resource capacity for its committees which had huge workload such as Scopa and Finance Committee (Steyn, 2008). The legislature was also in the process of strengthening legislative oversight and executive accountability through the ministerial accountability manual which was, at the time of the interviews, in the process of finalization (Steyn, 2008). Another important positive measure related to sanctions to the members of the executive who failed to respond to the legislature's questions. In this regard, it was indicated that, if the MEC failed to answer or respond to the legislature's questions, the speaker of the legislature required the MEC concerned to provide explanation to the full house of the legislature (Steyn, 2008).

The MPLs also expressed their own views with regard to what they thought needed to be done to address the challenges and weaknesses of the legislature. The political and administrative wings of the legislature needed to work in a more integrated fashion to avoid operating in silos (Ledwaba, 2008). The need was also expressed for continuous assessment and ongoing organizational learning to ensure continuous improvement of the operations of the legislature and its committees (Seloane, 2008). In other words, this meant that the legislature needed to operate as a learning organization all the time in order to be more innovative, effective and efficient in performing its functions.

The situation that prevailed at the time of the interviews where the chairperson of Scopa in the legislature was a member of the ruling party also needed to change to keep with the tradition in many democracies where Scopa is chaired by the opposition. While the chairperson of Scopa at the time of the interviews was regarded as a man of integrity despite being a member of the ruling party, the opposition MPL interviewed indicated that the chairmanship of Scopa by the opposition should be maintained as a matter of principle to ensure that the integrity of Scopa as a non-partisan committee is not compromised (Steyn, 2008).

An example of the problem (or even conflict of interest) with the ruling party chairing Scopa was that Scopa is essentially a "corruption watchdog" and the concern was that the ruling party could not therefore objectively investigate and punish serious financial transgressions committed by its government (Steyn, 2008). Furthermore, it was mentioned that Scopa ideally needs to have its own forensic accountants and that the MPLs should have their own support structures such as their own personal assistants to help them with their duties and functions (Steyn, 2008). At the time of the interviews, the MPLs shared secretaries (Steyn, 2008).

5.3.6. The influence of party politics on legislative oversight and executive accountability

Party caucuses, party whippery and party discipline are the key mechanisms through which the political parties in parliaments and the legislatures influence the behaviour and conduct of their public representatives in performing their legislative and oversight functions. Party caucus is a party political structure in parliament or the legislature whose main purpose is to provide political leadership and direction to members to ensure their adherence to party political mandate, position and strategy in their legislative and oversight work. In other words, party caucuses ensure that their members' contributions to the committees and the full house (plenary) are in line with party policies, positions and principles (Steyn, 2008). Party caucuses are influential in that political parties go to committees and plenary sessions with caucused positions (Ledwaba, 2008).

Party whippery exists in many parliamentary democracies to ensure that members adhere to party discipline (i.e. party code of conduct), including voting in line with party positions. In parliamentary democratic practice, party discipline simply means members cannot defy and differ with their party positions. At the time of the interviews, both the ruling and opposition parties had their own caucuses and whips in the Gauteng Provincial Legislature (Seloane; Wolmarans, 2008). Each political party had weekly caucus meetings to agree on strategies and positions on issues and party members were expected to pursue the agreed strategies and positions in the portfolio committees and the sittings of the legislature (Wolmarans, 2008).At the time of the interviews, the chief whip of the ruling party was also the chief whip of the Gauteng Provincial Legislature (Wolmarans, 2008). The chief whip of the legislature had both the institutional (administrative) and political functions. The institutional (administrative) functions included ensuring the effective running and programming of the legislature's business (e.g. sittings of the legislature) (Seloane; Steyn, 2008). The programming was done in consultation with the leader of government business who was the member of the executive (Seloane, 2008).

Apart from the administrative functions, the chief whip was also responsible for political management of party members in the legislature (Seloane, 2008). In other words, the chief whip was responsible for party discipline of party members in the legislature. There was also a chief whip of the official opposition and whips of the minority opposition parties (Wolmarans, 2008). This meant that the MPLs in the Gauteng Legislature also toed party line, more especially the majority party MPLs. This also included the MPLs using their numbers to pursue party political positions (Ledwaba, 2008). This is supported by Maloka (2000: 117) who has also observed party politics as a constraint to legislative oversight in the Gauteng Provincial Legislature, especially to the majority party MPLs. The study further found that the legislature provided funding from its budget for party caucus activities, including research and training of members to empower them to perform their duties and functions more effectively (Steyn, 2008).

Furthermore, it is worth noting the influence of post-Polokwane ANC politics on the majority party MPLs in the Gauteng Provincial Legislature. In this regard, one MPL made an observation that post-Polokwane ANC politics did create a new political

dynamic among the ruling party MPLs in the Gauteng Provincial Legislature (Nkomo, 2008). An example was cited by the same MPL that the ruling party MPLs who had been known to be vocal became less vocal on issues after Polokwane conference of the ruling party (Nkomo, 2008).

Overall, party discipline is an established practice in parliamentary democratic politics. Political parties, like any other organization, have a right to have their own code of conduct to maintain their organizational discipline and cohesion. However, party discipline becomes an issue of public interest when it starts to interfere with the constitutional and public obligations of public representatives. This is a fundamental concern often expressed about a parliamentary democratic system, hence a popular call from many quarters for the introduction of a constituency-based electoral system in South Africa.

5.4. Conclusion

There are key fundamental issues that prominently stand out from this study. There are many similarities in oversight approaches and instruments across all the countries studied. These include the use of parliamentary oversight committees, budget appropriation, authorisation of taxation and hearings to hold the executive accountable for public policy implementation (public service delivery) and management of public finances.

The power politics between parliament and the executive in both the international case studies and South Africa plays out in favour of the executive due to the influence of party politics. Although parliaments in all these countries have immense constitutional powers, in practice these powers tend to be neutralised by the political power of the majority party, which enables the executive to subordinate parliament. This appears to be more pronounced in both Britain and South Africa because of the inherent systemic flaws of their parliamentary tradition, which makes the executive more powerful relative to parliament, thus undermining effective legislative oversight and executive accountability. The majority party domination in parliament also tends to neutralise the influence of the opposition parties over legislative oversight and executive accountability.

The electoral system is also a fundamental issue that frames both the context and the manner in which legislative oversight is exercised over the executive. Party-based electoral systems, as practised in Britain and South Africa, give political parties more powers, which in turn undermine the independence of the parliamentarians when it comes to the exercise of legislative oversight over the executive. This happens through the enforcement of party discipline, which compels the parliamentarians to adhere to the dictates of their party positions and decisions in parliament. On the other hand, the constituency-anchored electoral system (even if imperfect in several ways) tends to make the parliamentarians more responsive to the needs of their constituencies, as the U.S. experience suggests.

The key empirical findings from study of the Gauteng Provincial Legislature confirm the key patterns and issues coming from the literature on comparative international experience, as well as those that emerge from the South African experience. Overall, the empirical findings point to a less powerful Gauteng Provincial Legislature whose members, in particular the majority party members, are less effective in holding the executive accountable, mainly because of the constraints of party politics (e.g. party discipline) and technical challenges (e.g. capacity constraints). Therefore, the overall conclusion is that the systemic challenges, dynamics and politics of legislative oversight and executive accountability in the Gauteng Provincial Government are mainly similar to those faced by Britain, United States and South Africa at a national level.

However, post Polokwane politics of the ruling party (ANC) seems to have changed the balance of power between the executive and parliament. This however seems transitional rather than permanent, and it remains to be seen if parliament will assert its authority over the executive in the fourth term of government, which came into effect after the 2009 elections.

CHAPTER 6
CONCLUSION AND RECOMMENDATIONS

6.1. Conclusion

The overall conclusion from this study is that the challenges and politics of legislative oversight and executive accountability have certain parallels across the international case studies (Britain and United States) and South Africa, including in the provincial domain of the Gauteng Provincial Legislature. The analysis points to the influence of party politics (in particular in the form of party discipline) and electoral politics (with special reference to the electoral system) as key factors that impact on the exercise of legislative oversight and executive accountability in Britain, United States and South Africa (including the Gauteng Provincial Legislature) to varying degrees.

Party politics tend to subordinate parliaments in these countries (including the Gauteng Provincial Legislature) to the political control of both the majority party and the executive, thus undermining oversight independence of the parliamentarians and neutralising the influence of the opposition on legislative oversight and executive accountability. This is more pronounced in Britain and South Africa (including the Gauteng Provincial Legislature) due to the systemic flaws of their parliamentary tradition, which subjects the parliamentarians to the majority party and executive control, through the system of party discipline.

Party-based electoral systems, as practised in both Britain and South Africa (including the Gauteng Provincial Legislature), tend to reinforce the culture of party political control over the parliamentarians as opposed to a constituency-anchored electoral system, which promotes public accountability and responsiveness of the parliamentarians to their constituencies. These overall findings and lessons emerged from both the desktop and empirical research components of the study and are projected into the domain of recommendations in the next and final section.

It is important to note that this study is completed at the end of the third term and the beginning of the fourth term of office for both the national parliament and the provincial legislatures in South Africa following the 2009 general elections. Since this

study relates to the period before the fourth term of office, it must therefore be noted that both the dynamics and politics of legislative oversight and executive accountability which characterised the past period might change in the fourth term of government and over time in the future. By mid-2009 the post Polokwane ANC politics had already brought some changes to the oversight politics in South Africa as evidenced by the assertiveness of the parliamentarians over the executive. However, it remains to be seen if this shift will be sustained into the future. In this regard, the main challenge facing the new parliamentarians in the fourth term of government is to build parliament that aims to redeem itself, address a legacy of operating like a rubberstamp for the executive and that takes its oversight functions seriously (Taljaard, 2009: 8). This sums up the character of parliament in the past period to which this study relates and makes an appeal for the renewal and redemption of parliament in the fourth term of government.

6.2. Recommendations

Key recommendations arising from this research are as follows.

6.2.1. The reform of the electoral system

The international experience points to the fact that a constituency-anchored electoral system or an electoral system with a constituency element promotes public accountability and responsiveness of the elected public representatives (the parliamentarians). In a constituency – anchored electoral system, public representatives know that their political careers are in the hands of the electorate (constituencies) rather than political parties. In contrast, South Africa's electoral system, which is also applicable to all nine provinces, promotes accountability of the parliamentarians to their political parties.

Whilst the country's prevailing electoral system of proportional representation needs to be credited for promoting multiparty democracy, the overall electoral system needs fundamental reforms on two main fronts. The first reform required relates to the model of representation. Whilst the current principle of proportionality should be retained to maintain multiparty democratic culture in the country's democratic

politics, it is important that a constituency-based model of representation is introduced to strengthen public accountability of public representatives (the parliamentarians). This study is under no illusion that a constituency-anchored electoral system is a panacea to all the challenges of accountability, but concurs with the international comparative literature that this system promotes and incentivises direct accountability of public representatives to the electorates.

The second area of reform relates to the reform of the existing party funding dispensation. This dispensation is said to favour the majority party because it is based on proportional representation. The minority parties get very little funding, apart from the fact that those without existing representation gain no public funding. Whilst the principle of proportionality is important to ensure democratic fairness, it is equally important that the funding formula or model does not promote one-party dominance. It must ensure that the minimum funding threshold for all political parties is sufficient to enable all parties (both represented and unrepresented parties in parliament and the provincial legislatures) to compete effectively within the country's highly competitive multi-party democratic politics.

6.2.2. Investment in the institutional capacity of the legislatures

The international comparative literature points to the importance of resources in strengthening the institutional capacity of parliaments / legislatures. While efforts have been and continue to be made to beef up the institutional capacity of the legislatures, the analysis of the Gauteng Provincial Legislature indicated that more financial and human resources investment is still required to make the legislatures more effective in their oversight functions.

This includes the appointment and development of more highly skilled professional support team or technical experts such as researchers, economists, public finance specialist, financial experts and sectoral experts (e.g. health, housing, education experts, etc) to strengthen the institutional capacity of the legislatures and their committees in order to ensure effective legislative oversight over the executive. This also includes the training and development of the MPLs in the effective use of modern information technology for their oversight functions, including affiliation to online

databases to enhance the oversight information base of the legislatures and their committees.

6.2.3. Independent service delivery verification mechanisms

There is a need to strengthen independent service delivery verification mechanisms of the legislatures to ensure that the legislatures can independently verify the accuracy and quality of the information supplied by the executives and their departments on their service delivery performance. While site visits and physical inspections serve as independent verification mechanisms, there is room for more proactivity, improvements and strengthening of these mechanisms to make legislative oversight and executive accountability more effective.

6.2.4. Monitoring and evaluation systems

The legislatures need to strengthen their monitoring systems to ensure that their resolutions are systematically tracked, followed-up and properly implemented by the executives. Without proper and well-functioning monitoring and tracking systems, there is no way the legislatures can effectively monitor and track the implementation of their resolutions by the executives. In this regard, failure to follow-up, monitor and track the implementation of the resolutions means that effective legislative oversight and executive accountability are undermined.

6.2.5. Enforcement of oversight sanctions

There is a need to strengthen the application and enforcement of sanctions available to the legislatures against the members of the executive who are persistently in contempt of the legislatures by failing to honour the requests or respond to the questions from the legislatures. Without effective sanctions, the legislatures will not be taken seriously, including in their oversight functions. It is also important that the portfolio committees are empowered with further oversight powers to enhance their effectiveness in holding the executive accountable.

6.2.6. Intensive mobilisation of organs of civil society

There is a need to mobilise all organs of civil society, including the media, to participate more actively in the oversight activities of the legislatures such as public hearings. Civil society possesses valuable information, power and influence that can be brought to bear on legislative oversight and executive accountability to ensure effective public service delivery and sound management of public finances. The power and influence of civil society have been evident in many parliamentary legislative processes, but have been less visible when it comes to oversight processes. In a democracy, it is a civic duty of civil society to hold government accountable and the parliamentary oversight processes (e.g. public hearings) present a key platform for that.

6.2.7. Intensive public education campaigns

There is also a need to intensify public education campaigns and programmes to educate and sensitise the public about the importance of oversight functions of the legislatures for executive accountability with respect to public service delivery and management of public finances. This will promote public participation in the oversight processes and activities of the legislatures such as public hearings. Many people are more familiar with legislative processes, but far less familiar with oversight processes. Intensive public education campaigns have the potential to change this situation.

6.2.8. Powers to amend money bills

There is a need to implement the legislation (i.e. Money Bills Amendment Procedure and Related Matters Act, No.9 of 2009) that was adopted in 2009 in order to allow the legislatures to amend money bills. More importantly, there is a need to develop appropriate technical capacity of the legislatures to enable them to implement this legislation. For example, for the legislatures to amend the provincial money bills, they will need technical capacity and expertise (such as economists, public finance experts, etc) to perform highly specialised technical analysis such as economic analysis, modelling and projections / forecasting in order to critique and amend the provincial

fiscal frameworks and budgets. Furthermore, while it is important for the legislatures to amend money bills to ensure that fiscal frameworks and budgets reflect political and policy priorities of government, it is equally important that this legislation is exercised with care and that sufficient checks and balances are created to ensure fiscal prudence and sustainability to prevent populist and unsustainable fiscal amendments / decisions by the MPLs, especially during the election times.

6.2.9. Shift in style and approach to opposition politics

The literature on South African experience points to the fact that the weaknesses of the opposition parties in South Africa are partly related to their criticism of the ruling party without offering policy alternatives. The interview with some opposition MPLs appeared to confirm this assertion to some extent. Shift in style and approach to opposition politics is fundamental to effective legislative oversight and executive accountability. It is therefore important that opposition politics is strengthened and re-orientated from a predominantly confrontational opposition politics to a more constructive opposition politics that goes beyond the bashing of the ruling party. This will change public perception that opposition parties are only preoccupied with exposing the faults and lapses of the ruling party without offering constructive policy alternatives. This shift however requires the transformation of the broader body politic of the country's multi-party democracy, including the politics of the ruling party.

6.2.10. Shift in parliamentary politics of the ruling party

It is important to instil a culture of independence and critical oversight among the ruling party parliamentarians. Part of the solution lies in the reform of the existing party-based electoral system, but this could also be achieved through a mere respect for and appreciation of the constitutional obligations of the parliamentarians and the boundaries between the state and a political party.

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APPENDIX A

LEGISLATIVE OVERSIGHT AND EXECUTIVE ACCOUNTABILITY IN THE GAUTENG PROVINCIAL GOVERNMENT

INTERVIEW GUIDE

INTRODUCTION: The purpose of this interview is to obtain the empirical information from members of Gauteng Legislature in order to gain a better understanding of, and deeper insight into, the key issues relating to oversight and executive accountability in the Gauteng Provincial Government. In the context of this research, legislative oversight means the constitutional function of the Gauteng Legislature to oversee or supervise the performance of the Gauteng Executive Council. Executive accountability in turn means the constitutional obligation of the Gauteng Executive Council to account to the Gauteng Legislature. The interviewees will be selected mainly on the basis of purposive sampling taking into account their roles in oversight committees and political party representation. The interview is expected to take a maximum of an hour. The information will only be used for the purpose of this research, which is conducted to fulfill the requirements for a degree of Master of Management in Public Policy (MM-PP).

KEY QUESTIONS

1. How does Gauteng Legislature conduct oversight over the executive? *[Probing guidelines: explore oversight methods in use, the role of portfolio committees, the role of Scopa, the role of plenary, the role of professional support staff]*

2. From your own experience, do you think the portfolio committees have enough capacity and resources to conduct their oversight functions more effectively? Please explain the past and the current situation.

3. Since you became a member of Gauteng Legislature, what have been your experiences and lessons regarding oversight in Gauteng Provincial Government? Please start by noting when you became a member of the Gauteng Legislature.

4. What would you describe as the major oversight achievements of Gauteng Legislature since you became a member of the Gauteng Legislature? Please indicate whether you believe these have been changing over time, or whether you believe they have remained unchanged.

5. What have been the major oversight weaknesses, challenges, limitations and obstacles to the Gauteng Legislature? Please indicate both the past and the current challenges *[Probing guidelines: explore issues such as technical skills and expertise, resources and facilities for committees and individual members,*

powers of the legislature to impose oversight sanctions, the current electoral system, conflict of interest and co-operation of the executive / departments]

6. What measures are currently in place to address those weaknesses, challenges, limitations and obstacles? *[Probing guidelines: members' and staff training programmes, more resources and facilities for committees and individual members, more professional support staff, increased budget allocation, more powers of the legislature to impose oversight sanctions]*

7. In your own opinion, what measures do you think should be implemented to address those weaknesses, challenges, limitations and obstacles?

8. How would you describe the influence of party politics on legislative oversight and executive accountability within the Gauteng Provincial Government? *[Probing guidelines: explore issues such as the role of political parties, the role of party caucuses, the role of chief whips, party discipline and opposition politics]*

CONCLUSION: Thank you for your time and valuable information.

APPENDIX B

INTERVIEWS

Ledwaba, M., Member of the Gauteng Provincial Legislature, African People's Convention, Interview held in Johannesburg on 19 June 2008.

Meshoe, L., Member of the Gauteng Provincial Legislature, African Christian Democratic Party, Interview held in Johannesburg on 30 October 2008.

Nkomo, S., Member of the Gauteng Provincial Legislature, Inkatha Freedom Party, Interview held in Johannesburg on 11 September 2008.

Seloane, M., Member of the Gauteng Provincial Legislature, African National Congress, Interview held in Johannesburg on 07 August 2008.

Steyn, G., Member of the Gauteng Provincial Legislature, Democratic Alliance, Interview held in Johannesburg on 03 September 2008.

Wolmarans, F., Member of the Gauteng Provincial Legislature, Freedom Front Plus, Interview held in Johannesburg on 28 October 2008.