

LEGAL AND INSTITUTIONAL MEASURES: KEY REQUIREMENTS FOR EFFECTIVE MUNICIPAL BUDGET OVERSIGHT

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(MPhil), the Faculty of Law, University of the Western Cape.



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Declaration

I, Samuel Thabo Khaile, do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not previously, in its entirety or in part, been submitted to any other university for degree or diploma. Works of others cited or referred to are accordingly acknowledged.

Signed:

Date:



Acknowledgement

First and foremost, I wish to express my sincere appreciation to my supervisor, Prof Jaap De Visser. His support and criticism, patience, insistence on academic writing and knowledge of local government law has helped me complete this thesis.

My thanks also go to my boys, Lebohang and Lutho for their understanding through the process of writing this thesis.

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ABSTRACT

In South Africa, municipal councils are accorded a legal status and authority of a deliberative legislative body. This is considered critical for the municipal council to establish appropriate structures, processes and systems for effective oversight, particularly, oversight of budget execution. However, indications are that, the current legal and institutional measures need to be strengthened to enable municipal council to exercise oversight of the budget execution.

Literature review conducted in this study highlighted executive dominance, lack of technical capacity, lack of access to relevant information and partisan attitude as key factors constraining elected representatives in general from exercising oversight of budget execution. In addition, the review identified institutional and behavioural criteria as the normative framework within which to evaluate the effectiveness of the current legal and institutional measures for oversight of budget execution in South African municipalities.

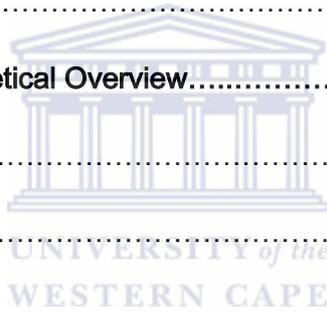
An extensive review of the relevant local government legal provisions highlighted the authority of the municipal council, internal rules, reporting processes, council committees and the research capacity, as key aspects of the institutional measures required for oversight of budget execution. Equally, the review accentuated the ability and willingness of non-executive councillors to exercise oversight of budget execution as key behavioural factors.

The study contends that the municipal council must use its legal authority to reinforce mechanisms for effective oversight of budget execution. In addition, the municipal council needs to provide an enabling leadership and governance environment that encourages and support non-executive councillors to actively engage in budget oversight processes and activities.

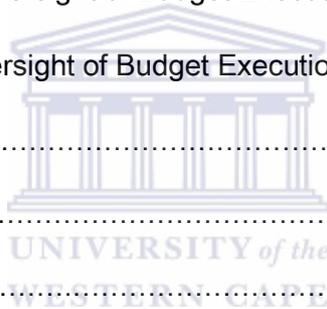


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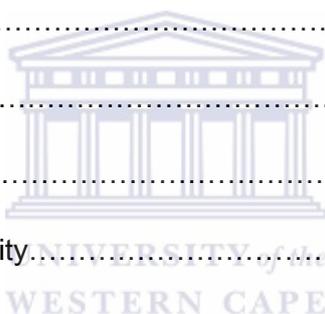


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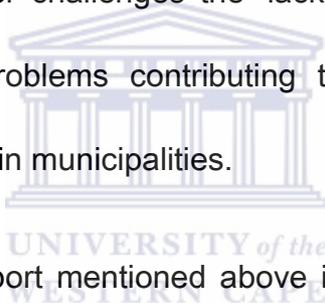
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CHAPTER 1: INTRODUCTION

1.1 BACKGROUND TO THE STUDY

The 2009 State of Local Government Overview Report compiled by the Department of Cooperative Governance and Traditional Affairs indicates that for the year ended 2008, more than a third of the 283 municipalities obtained either disclaimers of adverse opinions.¹ This overview report also indicates that a further 57 municipalities received qualified audit opinions in 2007/08, which brings the total of municipalities with qualified, disclaimer and or adverse opinion to 152 (54%). This report highlighted among other challenges the 'lack of controls and accountability systems' as some of the problems contributing to the lack of sound finance governance and management in municipalities.



Furthermore, the overview report mentioned above indicates that 35 municipalities overspent their total adjusted budgets to the total amount of R2.6 million while 182 municipalities under-spent to the amount of R19,1 billion. Likewise, 177 municipalities under spent to the amount of R7.3 billion and 32 municipalities overspent to the amount R350 million of their adjusted capital spending.²

One of the reasons given for the fiscal problems affecting municipalities is a lack of effective budget oversight. It is generally accepted that effective budget oversight

¹ Cooperative Governance and Traditional Affairs *State of Local Government Review Report* National State of Local Government Assessment (2009) 55.

² Cooperative Governance and Traditional Affairs (2009) 62.

has the potential to minimise incidents of corruption, wasteful expenditure, under-spending on capital expenditure, unauthorised expenditure and over-expenditure.

As the legislative authority in the municipality, the municipal council has the responsibility to ensure that municipal resources are utilised effective and efficiently. Equally, by vesting the budget oversight responsibility in the municipal council, the Municipal Finance Management Act 56 of 2003 confirms the status of the municipal council as “the highest authority in the municipality” that must ensure that the budget is properly executed.³

In the South African context, the responsibility placed on ‘non-executive councilors, as elected representatives of the community’ to exercise effective budget oversight is generally considered as essential to improve municipal fiscal accountability and discipline.⁴

The enhanced status of the municipal councils created an expectation that they will utilise their amplified role to engage effectively in the planning and budgeting, revenue and expenditure management, reporting and oversight processes of the municipality. It was also anticipated that municipal councils will now be in a position to play a meaningful role in ensuring ‘improved budget execution, reporting on performance and obtaining value for money’.⁵

³ National Treasury *Local Government Budget and Expenditure Review* (2008) 7.

⁴ National Treasury *Local Government Budget and Expenditure Review* (2008) 159.

⁵ National Treasury *Local Government Budget and Expenditure Review* (2006) 7.

However, indications are that the current budget oversight processes of the municipal councils have not yielded the desired outcomes and therefore need to be strengthened. Efforts to strengthen the municipal councils to exercise budget oversight must be comprehensive and address factors such as whether the municipal councils are (a) 'legally empowered to intervene in the budgeting processes, (b) endowed with the required technical capacities, (c) committed and have the necessary political will, and (d) governed within an environment that is conducive' to effective oversight of budget execution.⁶

In addition, deliberate attention must be paid towards further consolidating the legal and institutional measures contemplated by the Constitution,⁷ the Municipal Finance Management Act, the Municipal Structures Act⁸ and the Municipal Systems Act,⁹ to promote democratic, accountable and developmental local government.

⁶ Santiso C 'Legislatures and Budgeting Oversight in Latin America: Strengthening Public Finance Accountability in Emerging Economies' *OECD Journal on Budgeting* 4 (2) (2004) 53.

⁷ Constitution of the Republic South Africa Act 108 of 1996 (hereafter Constitution).

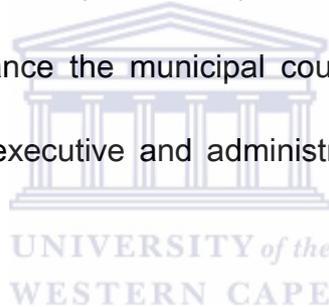
⁸ Local Government Municipal Structures Act 117 of 1998 (hereafter Structures Act).

⁹ Local Government Municipal Systems Act 32 of 2000 (hereafter Municipal Systems Act).

1.2. STATEMENT OF THE PROBLEM

Indications are that the current legal and institutional measures in place to strengthen the municipal council to exercise effective budget oversight are inadequate. The 2009 State of Local Government Overview Report and a number of local government audit reports have suggested the need to strengthen measures to enable the non-executive councillors to exercise budget oversight.

The study focuses on how to enhance the existing laws, policies and practice to enable municipal councils to ensure that the implementation of the budget conforms to the adopted budget. Specifically, the study will look at what laws, policies and practice are required to enhance the municipal councils' processes and activities designed to ensure that the executive and administrative structures adhere to the approved budget.



1.3. FOCUS OF THE STUDY

The focus of the study will be on oversight of the budget execution. The study will not be extended to the role played by external structures such as the national and provincial treasuries, Auditor-General and the provincial standing committees on public accounts (SCOPAs).

1.4. METHODOLOGY

The study is based on a desktop research. Acts of Parliament, case law, academic journal articles, reports, circulars and manuals are used extensively. The internet is also used. In addition, the study draws from previous relevant studies conducted in other countries especially in developing countries. Considerable reference is drawn from research materials on national legislatures as there is currently limited data available specifically on municipal budget oversight.

The author also used his own experience in matters of budget oversight in local government. The author has conducted training programmes on municipal finance and budgeting. He has also trained councillors on issues of governance and democracy.



CHAPTER 2: LEGISLATIVE OVERSIGHT: THEORETICAL OVERVIEW

2.1 INTRODUCTION

The concept of legislative oversight has been a critical feature of debates on the doctrine of separation of powers. Even though it is often conflated with terms such as accountability, monitoring and scrutiny of the executive and administrative structure, legislative oversight has developed as a sovereign concept that describes the nature of the legislature's activities in ensuring that executive behaviour is in accordance with legislative intent.

The concept as well as the vocabulary of legislative oversight is interpreted in different ways. It is therefore imperative that the concept of legislative oversight is explored to enable an understanding of the topic of study and the approach taken in it. In addition, this chapter reflects on how the available literature describes the meaning, methods and the purpose of legislative oversight.

2.2 DEFINING OVERSIGHT

The literature is replete with different definitions of oversight.¹⁰ Oleszek defines oversight as 'supervision or watchfulness' which denotes authority to oversee, monitor, review, or evaluate performance and or operations.¹¹ Another useful

¹⁰ Rockman B 'Legislative–Executive Relation and Legislative Oversight' *Legislative Studies Quarterly* 9 (3) (August 1984) 390.

¹¹ Oleszek J *Congressional Oversight An Overview Congressional Research Service* (2010) 4.

definition of oversight is provided by Lemos.¹² According to Lemos, oversight describes the nature of the relationship between the legislature and the executive in terms of the former having the right to monitor, supervise and control as well as the latter having an obligation to subject itself to scrutiny.

2.3 LEGISLATIVE OVERSIGHT

Taking the definition of Lemos forward, this study uses the legislative as an adjective to oversight. The term legislative is often used synonymously with terms such as political or parliamentary when discussing the notion of separation of powers.

In general, the term legislative connotes the authority of the legislature to act in the interest and on behalf of the public. This authority provides the legislature with implied legal and political justification and legitimacy to speak and act on behalf of the public.

As a concept, legislative oversight has evolved progressively from being a neglected function of the legislature to one positioned at the core of its functions. The notable prominence of legislative oversight can be attributed to the growing levels of distrust between the legislature and the executive, as well as the complex nature of government administration.

¹² Lemos L *Legislative Oversight of the Executive Branch in Six Democracies in Latin America A Paper Delivered at the Oxford-Princeton Global Leaders Workshop* (2010) 37.

Therefore, oversight is a distinct legislative function. The following quote attributed to Woodrow Wilson, captures very succinctly the essence of legislative oversight:

'It is the proper duty of a representative body to look diligently into every affair of government and to talk much about what it sees. It is meant to be the eyes and the voice, and to embody the wisdom and will of its constituents. Unless Congress has and uses every means of acquainting itself with the acts and the disposition of the administrative agents of government, the country must be helpless to learn how it is being served'.¹³

2.4 DEFINITIONS OF LEGISLATIVE OVERSIGHT

Legislative oversight is a loosely defined concept that covers a wide variety of obligations and responsibilities of the legislature.¹⁴ According to Lemos, legislative oversight entails a process of holding the executive and other administrative structures accountable for their actions, or for their failure to act.

Swartz and McCubbins define legislative oversight as deliberate 'attempts to detect and remedy executive-branch violations of legislative goals'.¹⁵ Lemos also defines 'legislative oversight as activities that encompass any kind of control performed by

¹³ Pearson B 'Oversight: A Vital Yet Neglected Congressional Function' *University of Kansas Law Review* 23 (Winter 1975) 277-88.

¹⁴ Lemos L *Horizontal accountability in Brazil Congressional oversight of the executive branch* (2006) 17.

¹⁵ Schwartz and McCubbins *Congressional Oversight Overlooked Police Patrol versus Fire Alarms* (1984) 169.

an intra-state set of institutions designed to constrain illegitimate or arbitrary power and to discourage abuses and illegalities perpetrated by the state itself'.¹⁶

Authors define legislative oversight from different perspectives. For example, Fölscher defines legislative oversight as a mechanism for assessing government initiatives and approving, amending or rejecting them before the fact or *ex ante*.¹⁷

On the other hand, Pelizzo and Stapenhurts refer to legislative oversight as the obvious follow up on activity linked to decisions approved by the legislature.¹⁸

Schick defines legislative oversight as the 'review after the fact', and puts emphasis on 'investigatory activity of past administrative activity'.¹⁹ Similarly, Harris refers to oversight as 'inquiries about policies that are or have been in effect, investigations of past administrative actions, and the calling of the executive officers to account'.²⁰

Lyons and Thomas define legislative oversight as 'encompassing all activities undertaken to influence administrative behaviour, during programme implementation as well as afterwards'.²¹

¹⁶ Lemos (2006) 5.

¹⁷ Fölscher A 'A Balancing Act: Fiscal Responsibility, Accountability and the Power of the Purse' *OECD Journal on Budgeting*, 6 (2) (2006) 18.

¹⁸ Pelizzo R & Stapenhurts R *Tool for Legislative Oversight An Empirical Investigation* World Bank Institute (2004) 47.

¹⁹ Schick A *The Federal Budget: Politics, Policy, and Process* Washington (1995) 25.

²⁰ Harris J *Congressional Control of Administration* Washington D.C (1964) 38.

²¹ Lyons W & Thomas L 'Oversight in State Legislatures, Structural-Attitudinal Interaction' *American Politics Quarterly* (1982) 10.

Ogul defines legislative oversight as “the behaviour of legislators, individually or collectively, formally or informally, which results in an impact on bureaucratic behaviour in relation to the structures and processes of policy implementation”.²²

The key distinction between the above definitions relates to the question when legislative oversight is exercised. Is oversight exercised prior approval or authorisation of executive proposals, or during implementation of what was enacted or during the auditing stage. In some instances, the definition is more encompassing and applicable to the entire continuum of legislative activities.

For the purposes of this study Ogul’s definition is preferred. This is because it highlights that the behaviour of the legislature is important in order for it to supervise and control the behaviour of the executive in policy implementation. In addition, the reference to the structures and processes in the definition highlights the significance of the role of relevant structures and processes in effecting the behaviour of the legislature.

2.5 THE AUTHORITY TO EXERCISE LEGISLATIVE OVERSIGHT

This section deals with the authority of the legislature in oversight processes and activities. It assesses the authority of the legislature over the executive. It specifically highlights how the authority of the legislature in financial matters enables the need for legislative oversight.

²² Ogul M *Congress Oversees the Bureaucracy Studies in Legislative Supervision Pittsburgh* (1976) 7.

Strom states that the essence of parliamentary democracy is that 'constitutional authority is delegated through a single chain of command' whereby the legislature delegates to the executive.²³ Consequently, the authority for legislative oversight emanates from the legislature being the supreme institution over all the constituent aspects of law making powers.

Strom further suggests that ultimately legislatures serve as the 'locus of executive decision making'.²⁴ As a result, the legislature is often granted political and legal mechanisms to subject government activities to scrutiny in order to enable participation in all aspects of law-making and the implementation of government decisions.



The authority to exercise oversight over the executive and administrative structures is either granted or implied in the legal and or political configurations of the relevant state or government. The authority for oversight is mostly applied through legislative processes such as law making and budgets and often takes the form of authorisation, investigations and general inquiries of the executive.²⁵

The authority for oversight is also influenced by principle such as power of the purse that is mostly located in legislatures. The concept of the power of the purse is explored in more detail below.

²³ Strom K 'Parliamentary Agenda Control and Legislative Outcomes in Western Europe' *Legislative Studies Quarterly* 26 (1) (1995) 145.

²⁴ Strom (1995) 150.

²⁵ Rosenberg (2007) 4.

2.5.1 THE POWER OF THE PURSE

The principle of the power of the purse which is the core subject of this research is a concept used to describe the authority of the legislature in approving, rejecting and amending budget proposals from the executive as well as monitoring the authorised appropriations.

To highlight the power of the purse as a critical aspect of the authority of the legislature, Wehner states:

'This power over the purse may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure.'²⁶

Stith states that 'no money shall be drawn from Treasury, but in consequence of appropriations made by law'.²⁷ This grants the legislature the authority to control the financial matters and activities exercised by the executive and administrative structures.

The authority to exercise oversight as inferred from the principle of power of the purse, presupposes the ability to enforce compliance. Accordingly, legislative

²⁶ Wehner J 'Assessing the Power of the Purse: An Index of Legislative Budget Institutions' (2006) *Political Studies* 54, 767-785.

²⁷ Stith K. 'Congress Power of the Purse' *Yale Law Journal* (1998) 1344.

oversight requires 'absolute authority to construe and to effectuate' the authorisation requirements.²⁸

2.6 PURPOSE OF LEGISLATIVE OVERSIGHT

The above discussion described the various definitions of legislative oversight. It also highlighted the overarching intention of oversight as the way of ensuring that the behaviour of the executive and administrative structures is supervised and controlled in order to guarantee compliance with legislative intent.

The purpose of oversight is to determine the effectiveness of policy implementation, prevent waste and dishonesty in the use of public resources by the executive and administrative structures. The legislature also exercises oversight for the purpose of assessing the performance of the executive and administrative structures.²⁹

In addition, legislative oversight enables the legislature to access relevant information from the executive and administrative structures so that it can inform and enable the public to hold the entire government accountable.³⁰

2.7 TYPES OF LEGISLATIVE OVERSIGHT

There are various types of legislative oversight. Lemos indicates that 'legislative oversight is a complex and dynamic activity that can hardly be understood under a single aspect'.³¹

²⁸ Stith (1998) 1344.

²⁹ Kaiser M Oleszek J & Tatelman B *Congressional Oversight Manual* Congressional Research Service (2011) 41.

³⁰ Rosenberg (2007) 1.

Legislative oversight can be exercised formally or informally and at different stages of law making, implementation and auditing. Santiso has developed a structured approach to distinguishing between various dimensions and forms of legislative oversight.³² According to him legislative oversight takes place in three approaches, namely '*ex ante* oversight, concurrent oversight and *ex post* oversight'.

2.7.1 EX ANTE OVERSIGHT

Ex ante legislative oversight is defined as the assessment of 'expected effects and side-effects of a proposed legislation'.³³ *Ex ante* oversight entails the legislature providing consent to the executive proposals by approving and delegating accordingly. It takes the form of scrutiny of a subject before a decision is taken by a legislature.

It therefore, offers an opportunity for the legislature to determine and prescribe the behaviour of the executive from the outset.³⁴ In addition, it enables a common understanding on the issue and minimises deviations from the legislative intent.

The logic of *ex ante* oversight is that a legislature 'defines procedural features of policy implementation in order to limit the range of executive and bureaucratic

³¹ Lemos (2006) 47.

³² Santiso (2004) 28.

³³ Verschuuren J *The Impact of Legislation A Critical Analysis of Ex Ante Evaluation* Leiden and Button MA (2006) 3–4.

³⁴ Bar-Ilan A 'Justice: When Do we Decide'? *Connecticut Law Review* 39 (3) (2007) 923.

choice'.³⁵ An important feature of *ex ante* legislative oversight is the power of the legislature to approve, reject or amend the executive proposal. This 'power of prior authorisation' which is inherent in the process and activities of *ex ante* legislative oversight facilitates the ultimate legitimacy and authority of the legislature in directing the behaviour of the executive.

Ex ante legislative oversight is critical in prescribing the nature of delegation and accountability. Once an issue has been subjected to *ex ante* oversight, the executive structures have the required certainty and legislative consent that can be adhered to. They have been appropriately empowered in advance to plan, execute and account to the legislature.



2.7.2 CONCURRENT OVERSIGHT

Santiso identifies concurrent oversight as the legislative oversight approach that focuses on the behaviour of the executive during the 'execution stage' of policies, laws, programmes and or any other delegation by the legislature.³⁶

It refers to the activities of the legislature utilised to maintain continuous surveillance on how the executive is behaving towards the delegation or legislative intent. Therefore, concurrent legislative oversight is informed by the realisation that the

³⁵ See, Gerber J Maestas C & Dometrius C 'State legislative influence over agency rulemaking The utility of *ex ante* review'. *State Politics and Policy Quarterly* 5 (1) (2005) 24-46.

³⁶ Santiso (2004) 28.

legislature's work does not end with approval or authorisation, it has the responsibility to ensure that decisions are brought to fruition.³⁷

Concurrent legislative oversight facilitates the deliberate in-year tracking and monitoring of financial and non-financial executive activities. The strategic relevance of concurrent legislative oversight is that it 'provides a mechanism for early detection and the immediate institution of remedial measures against executive and administrative deviations'.³⁸ As a result, the legislature is able to institute immediate corrective measures against any executive behaviour which deviates from the approved delegation or mandate.

2.7.3 Ex Post Oversight

Unlike the *ex ante* type legislative oversight and concurrent oversight, *ex post* oversight is conducted at the end of the implementation phase.³⁹ *Ex post* oversight is exercised to examine whether performance is in accordance with the goals of enacted policy or approved programmes.

The focus of *ex post* oversight is on the outcomes and impact of legislative decisions as well as on the executive behaviour in implementing them. Consequently, effectiveness and efficiencies are mostly utilised as the measure of performance. The quality of goods, the outcomes achieved and resources utilised serve as the basis for the legislature to evaluate the performance of the executive.

³⁷ Strom K (1995) 155.

³⁸ Salceda J *Lecture on oversight experience of the House of Representatives* (2001) 37.

³⁹ Santiso (2004) 2

2.8 CONCLUSION

This chapter presented a variety of definitions of oversight and legislative oversight. It highlighted the authority of the legislature. Most importantly, it accentuated the power of the purse as the foremost source of authority for legislative oversight.

The chapter also identified the specific purpose of legislative oversight as being able to prevent, detect and correct the behaviour of the executive and administrative structures that is not in accordance with the legislative intent.

Lastly, the three types of oversight were discussed. *Ex ante* oversight was described as being able to facilitate the ultimate legitimacy and authority of the legislature in directing the behaviour of the executive before legislative authorisation is granted. Concurrent oversight on the other hand was enabling the in-year tracking and monitoring of the activities of the executive and administrative structures. *Ex post* oversight is used to assess the outcomes and impact of legislative decisions as well as on the executive behaviour in implementing them

Having defined the concept of legislative and its inherent authority for oversight, the next chapter reviews the literature of oversight of budget execution and the role of the legislature exercise its concurrent oversight in budget execution. The chapter assess how the legislative authority and its related measures are used to exercise concurrent oversight during budget execution. It looks at what the legislature does to ensure that the executive collects and spend finances according to the approved budget.

CHAPTER THREE: LEGISLATIVE OVERSIGHT OF BUDGET EXECUTION

3.1 INTRODUCTION

The previous chapter highlighted legislative oversight as an essential element of good governance. It also indicated that oversight ensures that the executive governs in accordance with the legislature's intent. Equally, it was indicated that depending on the law, there are different types of oversight to supervise, control and monitor the executive.

In an effort to develop an understanding of the legislative oversight of budget execution as the topic of the study it is essential that it is situated within a broader context of the role of the legislature in the budget process.

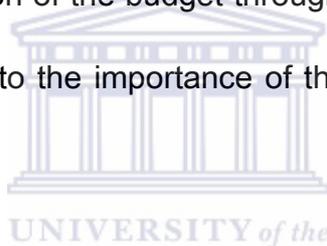
This chapter reviews the literature that examines the structures, process and issues involved in oversight of the budget execution stage. The main aim of this chapter is to provide a normative framework for legislative oversight over the execution of the budget.

3.2 BUDGET GOVERNANCE

The public budget is the nucleus of public finance. It has emerged as a key requirement for good governance and is an inevitable legal and operational requirement for governments to play a meaningful role in the changing political, social and economic environment.

The budget is viewed as an instrument for achieving fiscal objectives and discipline. It is widely regarded as the *sine qua non* for good governance and an effective instrument for anchoring fiscal discipline. Furthermore, it is regarded as a distinct and a complex process involving diverse stakeholders with different responsibilities to ensure the best possible way of collecting, utilising and accounting for public financial resources.

Governments engage in budgeting as a process and to the budget as an outcome. As a process, the budget is navigated through formulation, approval, execution and auditing stages. The navigation of the budget through these various institutions and mechanisms bears testimony to the importance of the governance of the budget in government.



Schavo-Campo and Tommasi argue that the concept of budget governance is used to 'capture the dynamic aspect of the budgetary cycle, the institutional dimensions of public budgeting, and the political economy of public finance'.⁴⁰ This is an important shift away from the traditional emphasis on collecting and spending money to a focus on the interaction of processes and structures shaping budget outcomes. The shift has also elevated value for money and financial stewardship as important considerations with regard to public budgeting.

The shift underscores the need to see the budget as both a technical exercise and a democratic process creating opportunities for the legislature and its related

⁴⁰ Schavo-Campo & Tommasi (1999) 11.

institutions to supervise, oversee and control the budget.⁴¹ In the same vein, the emergence of principles such as accountability, transparency, efficiency and participation in budgeting can be attributed to the abovementioned shift.

3.3 DEFINING THE BUDGET PROCESS

The term process suggests a series of actions taken to achieve a particular goal. Therefore, the budget process is about a predictable flow of events and activities aimed at deciding on the collection and allocation of financial resources to achieve government objectives.⁴²

In most countries, the budget process is a cyclical and annual exercise consisting of activities that encompass drafting, approval, execution and audit.⁴³ The cyclical nature of the budget process provides for key generic stages to take place in a distinct, sequenced mode. While the application of these generic key stages differs across countries due to their respective legal and political environments, they generally comprise of the drafting stage, an approval stage, execution stage and an auditing stage.

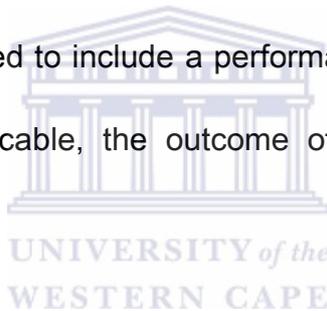
- The drafting stage marks the beginning of the budget process. It is about forecasting and estimating revenue and expenditure as an activity that is dominated by the executive and administrative structures of government.

⁴¹ Santiso (2004) 3.

⁴² Santiso (2004) 5.

⁴³ Santiso (2004) 7.

- The approval stage is largely a legislative activity. During this stage, the executive tables revenue and expenditure proposals to the legislature which it considers and approves. The approval of the budget proposal is considered as a significant manifestation of the authority of the legislature.
- The execution stage, which is the focus of the study, follows the approval of the revenue and expenditure estimates. The budget execution stage is the exclusive terrain of the executive structures.
- The audit stage takes place after the financial year. This stage is in essence a financial audit of government budgeting process. In some instances the audit activity is expanded to include a performance audit. Depending on the legal prescription applicable, the outcome of the audit is reported to the legislature.



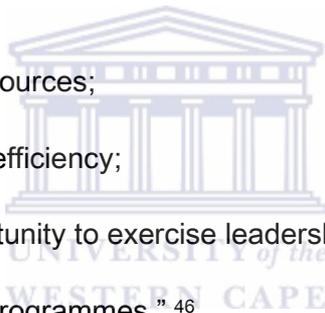
In most countries, the budget process as outlined above is approached as a collaborative exercise involving the legislature, the executive and internal and external independent audit institutions. This collaboration is key to providing the necessary legitimacy to the budget process. An effective budget process requires a division of responsibilities between the legislature, executive and the administration.⁴⁴ The essence of this division of responsibilities is that it encourages constructive and democratic contestation between the legislature, the executive and administrative structures.

⁴⁴ Allen & Tommasi *Managing Public Expenditure A Reference Book for Transitional Countries* (2001) 49.

The budget process facilitates an environment for the setting of priorities, political approval, control by the legislature and audit by external bodies. Ideally, this environment promotes good principles of budgeting, namely, 'comprehensiveness, predictability, contestability, transparency and periodicity of the budget'.⁴⁵

Santiso points out that, as the operational heart of the system of democratic governance, the budget process is fundamental in realising the fiscal, administrative, financial and governance objectives. Santiso identifies the following specific objectives:

- I. Financial control;
- II. Allocation of scarce resources;
- III. Improving programme efficiency;
- IV. Creating political opportunity to exercise leadership; and
- V. Legitimising the state programmes."⁴⁶



3.4 THE LEGAL FRAMEWORK FOR THE BUDGET PROCESS

The budget is a legally regulated process. As a creature of statute, the budget process will thus differ from country to country. In some countries, the budget legislation originates from the constitution, while other countries regulate it with the use of statutes rather than the constitution.⁴⁷ The constitution is sometimes

⁴⁵ Fölscher A 2006 'Introduction: African Experience with Budget Reform' *OECD Journal on Budgeting* 6 (2).

⁴⁶ Santiso (2005) 2.

⁴⁷ Santiso (2004) 2

supplemented with other ordinary finance or budget laws and the legislature's procedural rules to consolidate the legal framework for the budget.

An emerging trend in democratic countries is that the budget laws govern the roles and responsibilities of the executive and the legislature in the budget. Here, the predominant role of the executive is to prepare and execute the budget whilst the legislature exercises oversight throughout the formulation, and implementation of the budget.

In most developed countries, independent bodies such as the external audit have been established to exercise financial accountability and oversight. The powers and responsibilities of these external audit institutions complement those of the executive and the legislature.



The main purpose of legal framework on the budget is to provide a clear set of legal rules for the various steps of the budget process as well as specifying the roles and responsibilities of the various actors in the process.⁴⁸ The legal framework also assists in ensuring that the budget principles are embodied in law rather than in less formal and temporary arrangements. Most critically, the law is used to constrain the abuse of powers by key role players in the executive and legislature.⁴⁹

⁴⁸ Lienert & Jung 2004 'The Legal Framework for Budget Systems An International Comparison' *OECD Journal on Budgeting* 4 (3) (2004) 61.

⁴⁹ Lienert & Jung (2004) 61.

For the benefit of this study, it is important to note that a legal framework is critical in clarifying the powers and the role of the legislature in the budget process and the extent to which the legislature can be involved in the execution stage of the budget process.

3.5 OVERSIGHT OF BUDGET EXECUTION STAGE

As indicated, the budget execution stage commences after the legislature has authorised or approved the budget. It is defined as the expression of activities undertaken by the executive and the administration to collect and spend financial resources as contained in the approved budget. It involves a variety of administrative functions, accounting operations, treasury management, and control mechanisms.

The approved budget is a duly enacted statute which cannot be changed or varied arbitrarily by executive or administrative structures. Hence, the executive and administrative structures have a legal obligation to implement the budget as approved and changes on the appropriations can only be made by the legislature.⁵⁰

The budget execution stage is subjected to management and administrative procedures that entail, 'planning, apportionment of expenditure authority, commitment, acquisition and verification and payments'.⁵¹ It consists of the phases outlined below.

⁵⁰ Lane (1985) 248.

⁵¹ Allen & Tommasi (2001) 211.

- a) Apportionment of appropriations.
- b) Commitment stage.
- c) Acquisition and verification stage.
- d) Payment stage.

The apportionment of the appropriations entails the release of funds to spending units. It can include mechanisms such as notification of cash limits and funds transfer. The commitment stage is where the future obligation to pay is incurred. It is about an order to award a contract for specified goods and services to be delivered and an obligation to pay the third party in terms of the contract. The acquisition and verification stage is when goods are delivered and services are rendered and their conformity with the contract is verified. Finally, the payment stage involves making payments through various instruments such as cheques, cash disbursed and electronic transfers.⁵²

3.5.1 THE ROLE OF THE EXECUTIVE IN BUDGET EXECUTION

The executive is usually the key structure responsible for ensuring that other government departments or spending agencies adhere to the budget execution phases.⁵³

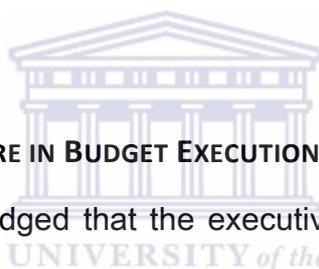
The monitoring of budget execution is predicated on the notion that effective internal mechanisms for spending controls are critical for maintaining fiscal discipline. The finance departments establish or provide for the establishment of centralised or

⁵² Allen & Tommasi (2001) 211.

⁵³ Schick (1999) 65.

internal control mechanisms to ensure that public financial resources are being used effectively and efficiently.⁵⁴ The internal control mechanisms are more than just checking the accuracy of financial transactions. They are used as mechanisms for ensuring effective stewardship of public financial resources.⁵⁵

The effective stewardship of public financial resources requires that control mechanisms should be underpinned by effective monitoring of budget execution. Peters defines monitoring of budget execution as ‘analytical activities examining whether money is spent for the right purpose, at the right time, and by the right entity’.⁵⁶



3.6 THE ROLE OF THE LEGISLATURE IN BUDGET EXECUTION

While it is generally acknowledged that the executive as the dominant structure in the budget execution stage should devise internal expenditure control mechanisms during budget execution, it is equally accepted that these internal control mechanisms within the executive can be applied arbitrarily. Accordingly, the executive is not in the best position to exercise effective self-control.

Therefore, the oversight exercised by the legislature is equally important. This is mainly because executive discretion requires effective legislative oversight to ensure

⁵⁴ Schick (1999) 65.

⁵⁵ Schick (1999) 65.

⁵⁶ Peters L *Sound Budget Execution for Poverty Reduction* A background Paper for the World Bank Institute Programme of Fiscal Policy for Poverty Alleviation Module on Budget Execution (2002).

compliance with approved appropriations. Failure to exercise effective legislative oversight often results in perilous and fiscal ill-discipline.⁵⁷

3.6.1 CONCURRENT LEGISLATIVE OVERSIGHT OF BUDGET EXECUTION

As indicated in Chapter Two, the nature of oversight that takes place during implementation is referred to as concurrent oversight. Concurrent legislative budget oversight as it occurs during budget execution is specifically about in-year control, supervision and monitoring of the executive behaviour with regard to the implementation of appropriations. In-year supervision, monitoring and control denote a continuous process throughout the financial year.

Similarly, in-year legislative oversight of budget execution is ideally about activities that highlight issues such as why the expenditure is different from the appropriations. Furthermore, anomalies such as leakages, dishonesty, over-or-underspending, wasteful, irregular and unauthorised expenditure are identified and addressed early within the financial year.

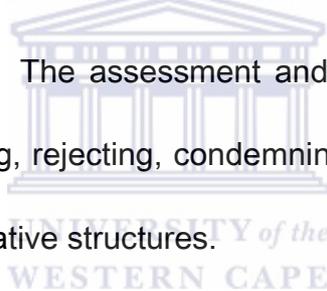
3.7 THE PURPOSE OF LEGISLATIVE OVERSIGHT OF BUDGET EXECUTION

The authority vested in the legislature to approve the budget imposes the duty to oversee the implementation of approved budget. The overall responsibility for stewardship of public financial resources obligates the legislature to not only approve appropriation but to also exercise control over these resources.

⁵⁷ Santiso & Belgrano (2004) 3.

Legislative oversight of budget execution establishes a 'win-win situation' for both the legislature and the executive.⁵⁸ The executive structures provide the necessary expertise and cohesive policy-making capacity while the legislature on the other hand enhances the accountability and helps the executive to access the diverse constituencies that are affected by budget decisions.

Legislative oversight of budget execution highlights the intention of the legislature to be informed of what is happening as well as to make the executive and the administrative structures account for their actions. Similarly, it indicates a deliberate effort by the legislature to monitor and assess actions or inactions of the executive and administrative structures. The assessment and monitoring could result in the legislature approving, changing, rejecting, condemning, and restraining the behavior of the executive and administrative structures.



The legislative oversight of budget execution activities endows the legislature with relevant information to ensure that the executive does not behave in a manner that strays beyond or outside of the approved appropriations.⁵⁹

Effective oversight of budget execution should ensure a budget that is implemented with few significant derivations from plan and low level of corruption in public expenditure.⁶⁰ The high transparency in budget execution ensures that public funds

⁵⁸ Posner P & Park C 'Role of the Legislature in the Budget Process Recent Trends and Innovations' *OECD Journal of Budgeting* 7(3) (2007) 99.

⁵⁹ Fölscher (2006) 7.

⁶⁰ Schick (1999) 65.

are spent for authorised public purposes; and reported expenditure corresponds to actual expenditure.⁶¹

3.8 CHALLENGES FOR LEGISLATIVE OVERSIGHT OF BUDGET EXECUTION

The above discussion indicated that the legislative oversight over the execution of the budget has a clear and critical purpose. However, the legislative oversight of over budget execution is experiencing challenges. These challenges can be categorised into executive dominance, lack of technical advisory capacity, weak legislative institutions, the lack of access to relevant information and partisan attitude.⁶² These challenges, both individually and collectively have the potential to negatively affect legislative oversight over the execution of the budget.

3.8.1 EXECUTIVE DOMINANCE

Unrestrained executive dominance tends to relegate the legislature to a mere rubber-stamp.⁶³ Equally, executive dominance in the budget process has the tendency to allow for unmitigated executive discretion in budget execution. The unmitigated executive discretion results from the legislature's lack of active involvement in the drafting and execution stages of the budget. Therefore, the executive dictates on the key aspects of the budget process. This creates a challenge for the legislature to play a significant role in the budget process and consequently, its oversight responsibilities are marginalised.

⁶¹ Schick (1999) 65.

⁶² Santiso & Belgrano (2004) 8.

⁶³ Santiso & Belgrano (2004) 8.

3.8.2 TECHNICAL ADVISORY CAPACITY

Members of the legislature are generally not appointed on the basis of their knowledge or expertise on issues such as the budget or public finance.⁶⁴ Therefore, the lack of technical capacity on the part of members of the legislature and research and other relevant advice and information, constitutes a critical challenge for effective oversight over the execution of the budget.

3.8.3 WEAK LEGISLATIVE INSTITUTIONS

Committees and the speaker are some of the institutions in the legislature that play an important role in budget oversight. If they are weak, this impedes the legislature to exercise budget oversight. Legislative committees as the main vehicle for legislatures to exercise oversight over the execution of the budget are often weak due to the lack of information and technical capacity.⁶⁵ In addition, the Speaker's inability to assert the authority of the legislature and its committees undermines its ability to ensure the equilibrium between the executive and the legislature.⁶⁶

3.8.4 ACCESS TO RELEVANT INFORMATION

The lack of access to independent and relevant information on the budget and related financial reports is detrimental to oversight.⁶⁷ Furthermore, delayed and unprocessed information is also inadequate for the purposes of oversight of budget execution. Equally, the lack of access to relevant and timely information by

⁶⁴ Santiso & Belgrano (2004) 24.

⁶⁵ Santiso & Belgrano (2004) 24.

⁶⁶ Santiso & Belgrano (2004) 24.

⁶⁷ Santoso (2004) 64.

members of the legislature perpetuates the unmitigated dominance of the executive in the budget process.

3.8.5 PARTISAN ATTITUDE

It is generally observed that when the interests of the legislative majority and the executive branch coincide, the majority has little incentive to oversee the executive resulting in weak oversight of the budget.⁶⁸ There is tendency to strictly prescribe the manner in which the members of the legislature from the ruling coalition relate to the executive structures. This partisan attitude is mainly shaped by political values, groupings and caucus directives

Therefore, the attitude of the members of the legislature towards oversight is often influenced by the political parties.⁶⁹ Members of the legislature, often those from the ruling parties or coalitions operate under stringent party discipline systems or coalitions arrangements which are often 'detrimental to the effective exercise of legislative budget oversight'.⁷⁰

3.9 CRITERIA FOR LEGISLATIVE OVERSIGHT OVER THE EXECUTION OF THE BUDGET

Legislatures need to address the above challenges by deliberately strengthening institutional powers, structures, processes and attitude to address these challenge that inhibit effective oversight over the execution of the budget.

⁶⁸ Santiso (2004) 70.

⁶⁹ Calland R *Building a House of Integrity Parliamentary Ethics in the Case of the new South Africa A Paper Presented to the International Conference on Corruption IACC Lima Peru* (1997) 34.

⁷⁰ Santiso (2004) 69.

This section will discuss the criteria for legislative oversight over the execution of the budget. Since the focus of the thesis is to strengthen the institutional and behavioural measures for the oversight over the execution of the budget, the criteria prescribed in this section form the normative framework for the study. The study uses the institutional and behavioural criteria to inform responses to the institutional and behavioural deficiencies identified in challenges for legislative oversight over the execution of the budget. Therefore, this normative framework will be used to assess the effectiveness of oversight over the execution of the budget within the local government system of South Africa.

Institutional criteria provide a reference point against which the appropriateness of the legal powers, structures and processes can be reviewed. Likewise, the behavioural criteria provide an established set of rules guiding the conduct of the members of the legislature in exercising effective oversight over the execution of the budget.

3.9.1 THE INSTITUTIONAL CRITERIA

Institutional criteria require the presence of statutory instruments laid down in a constitution, statutes, regulations and standing rules. These statutory instruments inform the legislature's authority and processes in exercising oversight over the execution of the budget.

3.9.1.1 AUTHORITY

The statutory instruments must explicitly prescribe for the legislature to ensure that all government expenditure is based on law or approved appropriations.⁷¹ According to Lienert and Jung, it must be clearly stated in all or some of the statutory mechanisms that the executive must respect the authority of the legislature in terms budget execution and cannot therefore commit public money for expenditure without the knowledge of the elected representatives.⁷²

3.9.1.2 INTERNAL RULES

In addition to providing for the authority of the legislature to ensure that public expenditure is based on the approved appropriations, these statutory instruments should further establish internal rules to fortify the legislature's role in the budget process and specifically, in budget execution. Internal rules must complement other instruments to ensure that the legislature exercises budget oversight in a manner that is effective as well as comprehensive.

Many legislatures use a variety of instruments for budget oversight in general which include debates, hearings and questions.⁷³ These instruments include:

- a) Debates in the plenary: Debates on the budget execution provide a valuable opportunity for the legislature to get information on how the executive is realising the objectives approved budget.

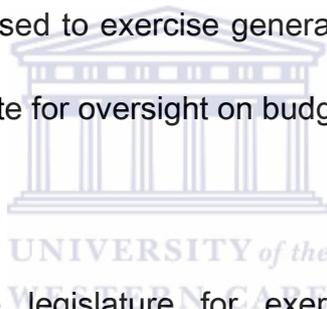
⁷¹ Lienert and Jung (2004) 134.

⁷² Lienert and Jung (2004) 134.

⁷³ Inter-Parliamentary Union *Tools for parliamentary oversight* (2007) 31.

b) Interpellation: This is a parliamentary procedural act of demanding an explanation usually from the member of the executive. It is used by members of the legislature to exercise control over the executive or a member of the executive. An interpellation has two features, it gives rise to a general debate and it carries a political sanction which can lead to a vote of no confidence.⁷⁴ These features highlight the force of the interpellation as compared to a plenary debate. Accordingly, an interpellation is a critical instrument that that can be used to force a member of the executive to account.⁷⁵

While these instruments are used to exercise general legislative oversight, they are equally relevant and appropriate for oversight on budget execution.



3.9.1.3 REPORTS

Reports are critical for the legislature for exercising its oversight function. Accordingly, the law must specify 'the scope and contents of the budget execution reports and financial accounts'.⁷⁶ The law must also prescribe the frequency and the process of submitting and discussing the reports.

The frequency of reports can be phased into monthly, quarterly, mid-year and year-end reports. Lienert and Jung propose that quarterly reports must contain detailed information on the revenue and expenditure. The mid-year report must be a comprehensive update on budget implementation and it should be released at the

⁷⁴ Inter-Parliamentary Union (2007) 78.

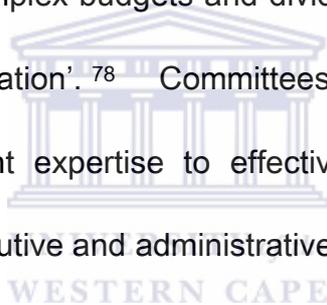
⁷⁵ Inter-Parliamentary Union (2007) 78.

⁷⁶ Lienert & Jung (2004) 143.

end of the mid-year period. Lastly, accounts and annual report should show compliance with the budgeted levels of revenue and expenditure authorised by the legislature. The format of the accounts should be identical to the budget presentation.⁷⁷

3.9.1.4 COMMITTEES

Legislatures structured after the Westminster system generally establish committees for exercising oversight. Committees are often regarded as the most effective means of underpinning the authority of the legislature with regard to oversight. They 'help to deconstruct large, complex budgets and divide the labour of reviewing such massive amounts of information'.⁷⁸ Committees also encourage constituent members to acquire sufficient expertise to effectively compare with and, when necessary, challenge the executive and administrative structures.



The ability of the committee to among other things, undertake in-depth investigations or conduct inquiries, summon political executives and senior bureaucrats and access information, determines the potential to exercise budget oversight. Sometimes the law requires that specific legislative committee such as a budget committee or equivalent must be established for the exercise of budget oversight.

⁷⁷ Lienert & Jung (2004) 145.

⁷⁸ Posner & Park (2007) 81.

Legislative committees should have the following features to be effective:

- Independence - is the committee able to function independently of the executive and administrative structures?
- Power – does the committee have the appropriate power to call for and examine witnesses and papers?
- Information – does it have access to the information needed to render the executive and administrative structures accountable?
- Resources – are resources available to support committees to perform the oversight function.⁷⁹

3.9.1.5 RESEARCH CAPACITY

Individual members and committees of the legislature need to have access to independent information on budget to effectively oversee the execution of the budget.⁸⁰ To this end, there is need for members and committees of the legislature to have access to independent research capacity to minimise the reliance on the executive structures.

Independent research capacity will enhance the credibility and accuracy of information. In addition, members and committees of the legislature will receive the necessary support and capacity in terms of quality and impartial scrutiny of budget and financial information.

⁷⁹ Ahmed (2000) 30.

⁸⁰ Santiso (2004) 64

The institutional criteria discussed above reflect the centrality of the legal instruments, processes and structures as the foundation that shape legislative oversight over the execution of the budget.

3.9.2 BEHAVIOURAL CRITERIA

The presence of instruments adopted and used by legislatures does not guarantee effective budget oversight. As indicated, these instruments enhance the legislature's legal authority to scrutinise and monitor the executive and administrative structures during the entire budget process. However, the ability of the legislature to exercise oversight does not depend only on legal and structural factors.

The behaviour and attitude of members of the legislature are also crucial in oversight processes and activities. This ensures that there is no divergence between what is statutorily prescribed and actual behaviour of members of the legislature.⁸¹

There are a variety of behavioural factors that can influence whether the legislature's tools for exercising oversight over budget execution are effective. These factors centre around capacity and willingness.⁸² Willingness is about the motivation of members to participate in oversight activities while ability is their level of competence.⁸³ Ability is a critical requirement for a member/s participating in the exercise of budget oversight.

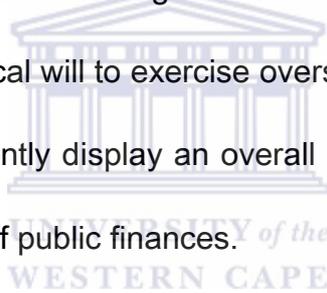
⁸¹ Ahmed (2000) 31.

⁸² Ahmed (2000) 30.

⁸³ Ahmed (2000) 31.

To engage confidently with budget data, financial statements, reports and audit reports, members of the legislature or any of its committees require the necessary capacity. Capacity enables members of the legislature to conduct independent research and analysis. Only then, members will be able to match the skills levels within the executive and the bureaucracy.

Willingness and ability are influenced by internal and external factors.⁸⁴ Internal factors are personal characteristic of members, their orientation to their role and responsibilities. In addition, willingness complements the legal authority and capacity for effective oversight. Willingness is the most important behavioural indicator that reflects the political will to exercise oversight. Accordingly, members of the legislature should consistently display an overall attitude that promotes effective stewardship and the integrity of public finances.

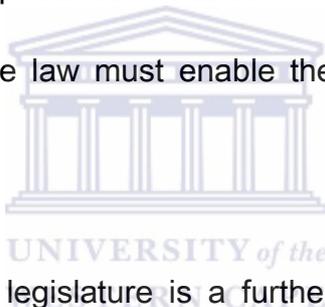


⁸⁴ Ahmed (2000) 31.

3.10 CONCLUSION

This chapter outlined the budget process. It discussed the role of the legislature in the budget process during the execution stage. The legal and institutional measures required for effective legislative oversight on budget execution were discussed.

The chapter indicated that for budget oversight to be effective, it must adequately respond to an institutional and behavioural normative framework. Addition, the law must also endow the legislature with adequate authority to exercise oversight over the execution of the budget. Equally, the law must enable the legislature to independently establish appropriate committees which will assist the legislature to exercise oversight. Lastly, the law must enable the legislature to receive regular reports from the executive.



Research capacity within the legislature is a further requirement for the effective exercise of oversight over the execution of the budget. Lastly, the legislature must be able to develop adequate standing rules to enable effective oversight over the execution of the budget.

The capacity and willingness of the members of the legislature to use the legal instruments for exercising oversight over the execution of the budget is at the core of the behavioural criteria. Together with the institutional aspects, the behavioural aspects endow the legislature with the required structural and behavioural characteristics for effective budget oversight.

CHAPTER 4: LEGAL MEASURES FOR LEGISLATIVE OVERSIGHT OVER THE EXECUTION OF THE BUDGET IN SOUTH AFRICAN MUNICIPALITIES

4.1 INTRODUCTION

The preceding chapter highlighted the need to anchor the oversight over the budget execution in the legal framework. The relevant statutory and non-statutory mechanisms must be established to fortify the role of the legislature in exercising oversight over the execution of the budget.

It is against this background that this chapter identifies the legal provisions in the South African local government system that respond to the institutional criteria discussed in Chapter Three. In Chapter Three, the authority of the municipal council, reports, committees, standing rules and research capacity were highlighted as key to institutional criteria for effective budget oversight.

The aim of this section is to identify and discuss the relevant legislative measures for budget oversight. This section does not review of these legal provisions as that is attended to in Chapter Five.

4.2 LEGAL FRAMEWORK OF LOCAL GOVERNMENT

In the South African context, local government is a sphere of government provided for in terms of Chapter 7 of the Constitution of the Republic of South Africa.⁸⁵ The inclusion of local government in the Constitution represents a significant

⁸⁵ Constitution of the Republic of South Africa 1996.

enhancement of the legal status of local government which was hierarchically subservient to other levels of government before 1994.⁸⁶

The current constitutional and legislative scheme has endowed municipalities with a constitutionally defined status, constitutional objectives and constitutional powers. As indicated by the Constitutional Court in *Fedsure Life Assurance and Other v Johannesburg Transitional Metropolitan Council*.⁸⁷ Local government derives its existence directly from the Constitution and accordingly enjoys the legal status and authority to determine its own character without being just an administrative arm of the other spheres of government.

Another significant aspect of the current status of local government is the identification and requirement to fulfil the objects of local government in the Constitution. These objects of local government are to:

- (a) provide democratic and accountable government for local communities;
- (b) ensure the provision of services to communities in a sustainable manner;
- (c) promote social and economic development;
- (d) promote a safe and healthy environment; and
- (e) encourage the involvement of communities and community organisations in the matters of local government.⁸⁸

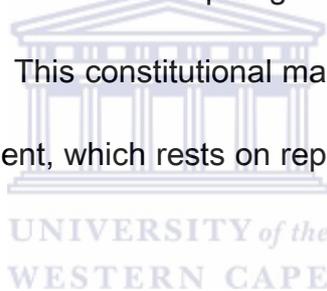
⁸⁶ Steytler & De Visser (2009) 5-8.

⁸⁷ *Fedsure Life Assurance Ltd and others v Johannesburg Transition Metropolitan Council and Others* 1998 (12) BCLR 1458 (CC) (hereafter *Fedsure Life Assurance*) para 26.

⁸⁸ S 152 (1) (a) to (e) Constitution.

The above objects of local government have two basic purposes, namely, (a) 'development and promotion of democracy; and (b) ensuring that government is efficient and effective in the rendering of services and the promotion of social and economic development'.⁸⁹ The infusion of the purpose of development and democratic with efficient and effective service delivery purpose provides an important transformative goal that is indispensable to the enormous task of reconstructing society.⁹⁰

These objects of local government, particularly section 152 (1) (a) and (e) of the Constitution envisage a type of a municipal governance which is democratic, accountable and participatory. This constitutional mandate establishes a democratic dispensation for local government, which rests on representation and people-centred governance.⁹¹



The other important aspect of the new dispensation of local government is its developmental agenda. The developmental agenda of local government has its foundation in the Constitution. In terms of this constitutional provision, a municipality 'must structure and manage its administration and budgeting and planning processes to give effect to the basic needs of the community and to promote the social and economic development of the community'.⁹²

⁸⁹ *Democratic Alliance and Another v Masondo NO and Another* 2003 (2) SA 413 (CC) (hereafter *DA v Masondo* para 16.

⁹⁰ *DA v Masondo* para 16.

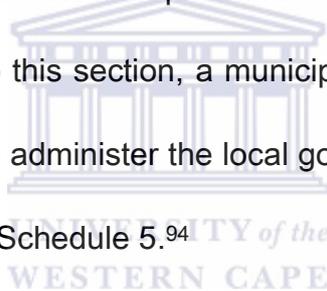
⁹¹ Steytler & De Visser (2009) 5-8

⁹² S 153 (a) Constitution

At the core of the notion of developmental local governance lies the requirement for a collaborative relationship between local citizens, elected representatives and municipal officials to collectively contribute towards addressing the social and economic challenges facing communities.⁹³ Equally, this notion of developmental local governance is reflected in section 2 of the Municipal System Act which defines the municipalities as consisting of the council, the administration and the community.

4.2.1 POWERS OF LOCAL GOVERNMENT

The developmental mandate of local government contemplated in section 153 is given effect by the powers and functions provided for in terms of section 156 (1) of the Constitution. According to this section, a municipality has executive authority in respect of, and has the right to administer the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5.⁹⁴



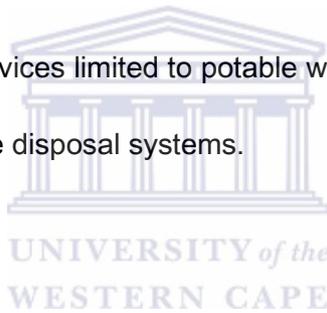
The Schedule 4B matters are:

- a) Air pollution;
- b) Building regulations;
- c) Child care facilities;
- d) Electricity and gas reticulation;
- e) Fire-fighting services;
- f) Local tourism;
- g) Municipal airports;

⁹³ S 153 (a) Constitution.

⁹⁴ S 156 (1) Constitution.

- h) Municipal planning;
- i) Municipal health services;
- j) Municipal public transport;
- k) Municipal public works only in respect of the needs of municipalities in the discharge of their responsibilities to administer functions specifically assigned to them under the Constitution or any other law;
- l) Pontoons, ferries, piers and harbours, excluding the regulation of international and national shipping and matters related thereto;
- m) Storm-water management systems in built-up areas;
- n) Trading regulations; and
- o) Water and sanitation services limited to potable water supply systems and domestic waste-water and sewage disposal systems.



The Schedule 5B matters are:

- a) Beaches and amusement facilities;
- b) Billboards and the display of advertisement in public places;
- c) Cemeteries, funeral parlours and crematoria;
- d) Cleansing;
- e) Control of public nuisances;
- f) Control of undertakings that sell food to the public;
- g) Facilities for the accommodation, care and burial of animals;
- h) Fencing and fences;
- i) Licencing of dogs;
- j) Licencing and control of undertakings that sell food to the public;
- k) Local amenities;

- l) Local sport facilities;
- m) Markets;
- n) Municipal abattoirs;
- o) Municipal parks and recreation;
- p) Municipal roads;
- q) Noise pollution;
- r) Pounds;
- s) Public places;
- t) Refuse removal, refuse dumps and solid waste disposal;
- u) Street trading;
- v) Street lighting; and
- w) Traffic and parking.



The original powers listed above are constitutionally entrenched and may be qualified or constrained by law but only to the extent the Constitution permits.⁹⁵ In addition to the original powers, the Constitution also envisages that additional powers and functions may be transferred to municipalities through assignment.

Assignment is the secondary source of power for local government and the most important instrument for transferring additional functions to local government in general and also to individual municipalities.⁹⁶ The Constitution provides that a

⁹⁵ *City of Cape Town v Robertson* 2005 (3) BCLR 199 (CC) para 60.

⁹⁶ Steytler & De Visser (2009) 5-41.

municipality has authority over matters assigned to it by national or provincial legislation.⁹⁷

National and provincial legislatures can assign any of their legislative powers to specific municipal councils.⁹⁸ Equally, the Constitution allows Cabinet members to and provincial MECs to assign executive powers to specific municipal councils.⁹⁹ The assignment of legislative power to the municipal council allocates 'discretionary powers' whereas the assignment of executive power allocates a 'duty to do something'.¹⁰⁰

The assignment of power to municipalities is concluded through an agreement. This indicates that national and provincial governments are not compelled to assign powers and functions to municipalities and neither is a municipality compelled to accept the assignment of such powers and functions.¹⁰¹ Therefore the agreement reflects consensus on the assignment which is accordingly terminated when the parties withdraw from the agreement.¹⁰²

Therefore, the nature of the assignment of powers and functions to municipalities is discretionary and informed by the principle of subsidiarity. Assignment is made

⁹⁷ S 156 (1)(b) of the Constitution.

⁹⁸ S 44 (1) (a) (iii) & 104 (1)(c) Constitution.

⁹⁹ S 99 & 126 of the Constitution.

¹⁰⁰ Steytler & De Visser (2009) 5-42.

¹⁰¹ Steytler & De Visser (2009) 5-42.

¹⁰² Steytler & De Visser (2009) 5-42

compulsory if the matter concerned would be most effectively administered locally and the municipality has the capacity to administer it.¹⁰³

National and provincial government must assign the administration of matters listed in Schedules 4A or 5A to a municipal council if the following four conditions are met:

- a) 'the matter in question necessarily relates to local government;
- b) the matter would most effectively be administered locally;
- c) the municipality has the capacity to administer it; and
- d) the municipal council agrees to the assignment'.¹⁰⁴

4.2.2 THE LEGAL NATURE AND STATUS OF THE MUNICIPAL COUNCIL

The municipal council has been elevated to a 'deliberative legislative body' for the municipality.¹⁰⁵ This entrenchment of the municipal council as the primary and critical structure of the municipality has elevated it to the same status of other legislatures such as Parliament and provincial legislatures. Accordingly, the municipal council has the requisite legal status to exercise oversight over the executive.

One of the key provisions with regard to the legal status of the municipal council is the vesting of the 'the executive and legislative authority of the municipality' in the municipal council.¹⁰⁶ This provision entrenches the status of the municipal council at

¹⁰³ Steytler & De Visser (2009) 5-42

¹⁰⁴ Steytler & De Visser (2009) 5-42

¹⁰⁵ *Fedsure Life Assurance* para 41.

¹⁰⁶ S 151 (2) Constitution.

the core of the municipality's decision making processes regarding law making, planning, implementation, monitoring and evaluation of municipal plans and budget and services delivery processes.

The vesting of the municipality's executive and legislative authority in the council indicates that the municipal council has the inherent constitutional powers to determine its relationship with the executive and administrative structures. The Constitution provides for the municipal council to 'make all the decisions concerning the exercise of all the powers and performance of all the functions of the municipality'.¹⁰⁷ As a consequence of this constitutional provision, all municipal processes implemented by the executive and administrative structures must have the consent of the municipal council, authority, approval and ultimate supervision. This imposes significant limitations on the executive and administrative structures by requiring the municipal council to approve decisions on key municipal processes.

4.2.3 MUNICIPAL FISCAL AUTHORITY

It was highlighted in Chapter Two that legislatures usually have and exercise authority on the public purse. Local government in South Africa is also endowed with fiscal powers to collect and or receive the requisite financial resources. As indicated in *Fedsure Life Assurance*, a municipal council is constitutionally empowered to collect its own revenue and receive a share of revenue collected nationally as part of their equitable share and other conditional allocations.¹⁰⁸ ,

¹⁰⁷ S 160 (1) Constitution.

¹⁰⁸ *Fedsure Life Assurance para 44.*

Specifically, the Constitution reinforces the formative influence of the municipal council on municipal finances.¹⁰⁹ The municipal council is an exclusive authority for

- (a) the passing of by-laws;
- (b) the approval of the budgets;
- (c) the imposition of rates and other taxes, levies and duties;
- (d) the raising of loans.¹¹⁰

The municipal council's fiscal powers are its exclusive competency and accordingly cannot be delegated to any other structure of the municipality.¹¹¹ This authority signifies the constitutional intention to fortify the municipal council as a supreme structure in the budget process, especially in the adoption stage.

Since the authority to approve the budget is vested in the municipal council, it follows that it has the inherent power to influence the budgetary activities of the executive and administrative structures. Similarly, the responsibility to approve the budget places an obligation on the municipal council to ensure that revenue and spending measures are fiscally sound, match the needs of the community with available resources, and that they are implemented effectively and efficiently.

Section 160 (2) highlights that the power of the local purse should be more than the routine and ritualistic authorisation of the annual budget but a conscious and deliberate effort to legislate and control municipal finances. In this instance, the

¹⁰⁹ S 160 (2) Constitution.

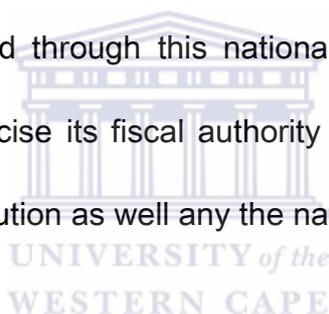
¹¹⁰ S 160 (2) Constitution.

¹¹¹ S 160 (2) Constitution.

municipal council is expected to establish appropriate mechanisms to enable it to exercise effective oversight on municipal financial resources.

It must however be noted that the Constitution grants the National Treasury the power to develop national legislation that prescribes measures to ensure both transparency and expenditure control in each sphere of government.¹¹² To this end, the National Treasury must introduce generally recognised accounting practice, uniform expenditure classifications, and uniform treasury norms and standards.¹¹³

The National Treasury also has the constitutional obligation to enforce compliance with the measures established through this national legislation.¹¹⁴ Therefore, the municipal council should exercise its fiscal authority in a manner that is consistent with section 216 of the Constitution as well any the national legislation established by national treasury.



Specifically, the municipal council must exercise its fiscal authority in line with the Municipal Finance Management Act 56 of 2003, the relevant sections of the annual Division of the Revenue Act, the Municipal Fiscal Powers and Functions Act 12 of 2007 and the Preferential Procurement Policy Framework Act 5 of 2005.

Furthermore, the municipal council should also assist the national treasury in enforcing compliance with the Municipal Finance Management Act by ensuring

¹¹² S 216 (1) Constitution.

¹¹³ S 216 (1) (a) to (c) Constitution.

¹¹⁴ S 216 (2) Constitution.

compliance with the budgeting processes in their respective municipalities. The council should assist the national and provincial treasuries in ensuring that regulations, circulars and guidelines are implemented.

4.3 MEASURES FOR MUNICIPAL BUDGET OVERSIGHT

The preceding section highlighted the constitutional provisions pertaining to the authority of the municipal council over the budget and oversight functions. To give effect to the constitutional provisions, various statutes and related regulations have been enacted to enable the municipal council to exercise budget oversight. These are the Municipal Structures Act¹¹⁵, the Municipal System Act¹¹⁶ and the Municipal Finance Management Act.¹¹⁷



4.3.1 MUNICIPAL STRUCTURES ACT

The Municipal Structures Act provides for the processes of establishing municipalities and municipal executive structures. The provisions that are most relevant to this study are the municipal objectives, decisions and business of municipal council as well as those on the establishment of committees.

¹¹⁵ Municipal Structures Act 117 of 1998.

¹¹⁶ Municipal Systems Act 32 of 2000.

¹¹⁷ Municipal Finance Management Act 56 of 2003.

4.3.1.1 MUNICIPAL OBJECTIVES

The Structures Act instructs the municipal council to strive within its capacity to achieve the objectives as set out in section 152 of the Constitution. In terms of this section, a municipal council must annually review its overall performance in achieving the objectives outlined in section 152 of the Constitution.¹¹⁸

The above section confirms the role of the municipal council in reviewing the performance of the municipalities in achieving its objectives. This role is a critical aspect of oversight including budget oversight. Accordingly, the municipal council is obligated to establish performance measures that will inform the behaviour of the other structures of the municipality in realising the municipal objectives.



4.3.1.2 DECISIONS OF MUNICIPAL COUNCIL

Key decisions of the municipality require the approval of the municipal council. The Structures Act provides that before a municipal council approves of the integrated development plan and any amendment to that plan; and the appointment and the conditions of service of the municipal manager and a head of a department of the municipality, the executive mayor or the executive committees must first submit to the council a report and recommendations.¹¹⁹

4.3.1.3 BUSINESS OF MUNICIPAL COUNCIL

Chapter Three indicated that legislatures should establish internal procedures to define their rules for exercising oversight. Accordingly, the Structures Act prescribes

¹¹⁸ S 19 (1) (d) Municipal Structures Act.

¹¹⁹ S 30 (5) Municipal Structures Act.

that 'a municipal council may make by-laws and prescribe rules of orders for "its internal arrangements; its business and proceedings and the establishment, composition, procedures, powers and functions of its committees'.¹²⁰

4.3.1.4 COMMITTEES OF THE MUNICIPALITY

One of the criteria for effective oversight over budget execution discussed in Chapter Three is the ability of the legislature to establish committees. It was also indicated in Chapter Three that committees are the most effective means of underpinning the authority, mechanisms and tools available to the legislature with regard to oversight.

In that regard, section 33 of the Structures Act makes provision for the municipality to establish committees. This section provides that the establishment of committees must take into account the extent of the functions and powers of the municipality; the need to delegate the powers is to ensure efficiency and effectiveness in their performance; and the financial and administrative resources of the municipality available to support the proposed committee.¹²¹

Section 79 of the Structures Act also refers to the establishment of committees. In particular, section 79 of the Municipal Structures Act makes provision for the establishment of municipal council committees or non-executive committees. In terms of this section, a municipal council may establish one or more committees necessary for the effective and efficient performance of any of its functions or the

¹²⁰ S 31(2) Municipal Structures Act.

¹²¹ S 33 (b) (i) to (iii) Structures Act.

exercise of any of its powers. The council may appoint the members of such committees from among its members and dissolve the committee at any time.¹²²

Furthermore, the municipal council must determine the functions of a committee and may delegate duties and powers to them.¹²³ This section also provides for the municipal council to appoint the chairperson and authorise the committee to co-opt advisory members who are not members of the council within the limits determined by the council. The municipal council may also determine a committee's procedure.

One of the council committees assisting the municipal council to exercise budget oversight is the Municipal Public Accounts Committee (MPACs). The departments of Cooperative Governance and Traditional Affairs and National Treasury have issued joint guidelines on the Municipal Public Accountants Committees (MPACS).¹²⁴ In terms of the guidelines, the MPACs may be established by the municipal council in terms of section 79 of the Municipal Structures Act.¹²⁵ As a section 79 committee it performs an oversight function on behalf of the council. According to the guidelines for their establishment, MPACs report directly to the council through the Speaker of

¹²² S 79 (1) (a) to (c) Structures Act.

¹²³ S 79 (2) Structures Act.

¹²⁴ Cooperative Governance and Traditional Affairs & National Treasury *The guideline for the Establishment of Municipal Public Accounts Committees* (MPACs) issued jointly by department of Cooperative governance and National Treasury (2011).

¹²⁵ Cooperative Governance and Traditional Affairs & National Treasury *The guidelines for the Establishment of Municipal Public Accounts Committees* (MPACs) (2011).

the municipality and interface with other committees of council through the Speaker.¹²⁶

The primary functions of the MPACs are to consider and evaluate the content of the annual report and to make recommendations to council when adopting an oversight report on the annual report. MPACs must also review recommendations and implementation of the annual report. According to the Guidelines, the MPACs should be empowered to recommend or undertake any investigation in their area of responsibility and to perform any function assigned to it through a resolution of the council within its area of responsibility.¹²⁷

MPACs should consist of non-executive councillors. Any councillor serving as Executive Mayor or Deputy Executive Mayor, Mayor or Deputy Mayor, Speaker, Chief Whip, a member of the Mayoral Committee, a member of the Executive Committee, are excluded from being members of the MPACs.¹²⁸

The Guidelines provide that the MPACs should be able to invite representatives of the community and co-opt members of the public who have expertise in relevant specific fields to assist and advice in the deliberations.¹²⁹ Furthermore, the

¹²⁶ Cooperative Governance and Traditional Affairs & National Treasury *Guidelines for Establishment of MPACs* (2011) 6.

¹²⁷ Cooperative Governance and Traditional Affairs & National Treasury *Guidelines for Establishment of MPACs* (2011) 7.

¹²⁸ Cooperative Governance and Traditional Affairs & National Treasury *Guidelines for Establishment of MPACs* (2011) 9.

¹²⁹ Cooperative Governance and Traditional Affairs & National Treasury *Guidelines for Establishment of MPACs* (2011) 9.

Guidelines provide that the Chairperson of the Committee is to be appointed by council resolution and that the council may appoint a Chairperson from parties other than the majority parties in Council.¹³⁰

4.3.2 MUNICIPAL SYSTEMS ACT 32 OF 2000

The Municipal System Act represents another milestone in the processes of building an efficient, effective and transparent local public administration that conforms to constitutional imperatives. It provides for systems that ensure collaborative relations between municipal councils, administrations and local communities. In addition, it provides for a system of local government that is capable of exercising its constitutionally prescribed functions and powers.

4.3.2.1 RIGHTS AND DUTIES OF THE MUNICIPAL COUNCIL

The Municipal Systems Act reiterates the authority of the municipal council by providing that it has the right to govern on its own initiative the local government affairs of the local community and to exercise the municipality's executive and legislative authority.¹³¹

Section 4 (1) (c) (i) and (ii) of the Municipal Systems Act reiterates that the municipal council has the power to finance the affairs of the municipality by charging fees for services, imposing surcharges on fees, rates on property. In addition, the municipal council is required to exercise its legislative and executive authority to use the

¹³⁰ Cooperative Governance and Traditional Affairs & National *Treasury Guidelines for Establishment of MPACs* (2011) 11.

¹³¹ S 4 (1) (a) to (c) Municipal Systems Act.

resources of the municipality in the best interest of the local community as well as in a democratic and accountable manner.

Fourie and Opperman state that the municipal council has, within the municipality's financial and administrative capacity and having regard to the practical consideration, the following duties:¹³²

- a) to ensure that municipal services are provided to the local community in a financially and environmentally sustainable manner;
- b) to consult the local community about the level of, quality, range and impact of municipal services provided by the municipality, either directly or through another service provider, and about the available options for service delivery;
and
- c) to give members of the local community equitable access to the municipal services to which they are entitled.¹³³

4.3.2.2 DELEGATION

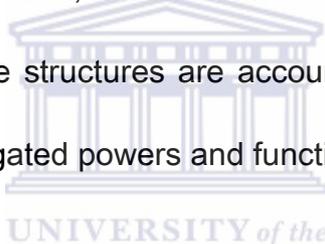
Another fundamental element that illustrates the authority of the municipal council as referred to in Chapter Three is the concept of delegation. The Municipal Systems Act authorises the municipal council to delegate its functions. Provision is made for the municipal council to 'develop a system of delegation that will maximise

¹³² Fourie & Opperman (2007) 43.

¹³³ Fourie & Opperman (2007) 43.

administrative and operational efficiency and provide adequate checks and balances in accordance with that system'.¹³⁴

The municipal council's authority to delegate indicates its ability to shape and influence the chain of command.¹³⁵ From the perspective of the municipal council being the 'delegator of power to perform a particular function' the functioning of the executive and administrative structures are manifestations of the delegation authority of the municipal council.¹³⁶ This implies that the delegation arrangement effectively subordinates the executive and the administrative structures to the municipal council. Therefore, the executive structures, i.e. Executive Mayor, or the Mayor, Executive Committees and administrative structures are accountable to the municipal council for how they exercise the delegated powers and functions.



Equally, there are reporting obligations by the executive and or the administration to whom the delegating authority has delegated a power or duty. The executive and the administrative structures must report to the municipal council at such intervals as the council may require, on decisions taken in terms of the delegated power or duty.¹³⁷

¹³⁴ S 59 Municipal Systems Act.

¹³⁵ S 59 (1) (a) to (c) Municipal System Act.

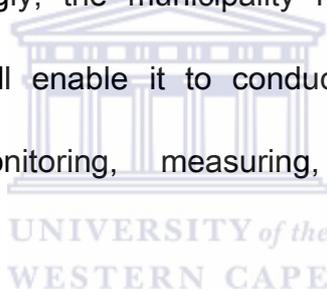
¹³⁶ *Mputumi Camaron Manana v King Sabata Dalindyebo* SCA 2010 ZASCA 144 (25 November 2010) para 16.

¹³⁷ S 63 Municipal Systems Act.

A delegation of a power of all or some of its executive power does not ordinarily divest the delegator of the power to perform the particular function itself.¹³⁸ The authority to delegate thus establishes an oversight obligation on the municipal council to ensure that the implementation is in accordance with the purpose and intent of the approved decisions including the budget

4.3.2.3 PERFORMANCE AUDIT COMMITTEE

A municipality is required to promote a culture of performance management among the municipality's political structures, political office-bearers, councillors and the administration.¹³⁹ Accordingly, the municipality must establish a performance management system that will enable it to conduct, organise and manage the performance planning, monitoring, measuring, reviewing, reporting and improvements.¹⁴⁰



In developing its performance management system, a municipality must ensure that the system:

- a) complies with all the requirements set out the Municipal System Act;
- b) demonstrates how it is to operate and be managed from planning stage up to the stages of performance review and reporting;
- c) clarifies the roles and responsibilities of all stakeholders, including the local community.

¹³⁸ *Mputumi v King Sabata Dalindyebo Municipality* para 16.

¹³⁹ S 38 (b) Municipal Systems Act.

¹⁴⁰ Steytler & De Visser (2009) 7-19.

- d) clarifies the processes of implementing the system within the framework of the integrated development planning process;
- e) determines the frequency of reporting and the lines of accountability for performance;
- f) relates to the municipality's employee performance management processes; and
- g) provides for the procedure by which the system is linked to the municipality's integrated development planning processes.¹⁴¹

A municipality must have a performance audit committee which must be appointed in terms of the Regulation 2 (a) of the Municipal Planning and Performance Management Regulations. The performance audit committee is appointed annually and consists of at least three members, the majority of which may not be in the municipality as councillors or an employee.¹⁴²

The chairperson of the performance audit committee is appointed by the municipal council and must not be an employee or a councillor of the municipality and if the chairperson is absent from a specific meeting of the committee, the members present must elect a chairperson from the members present to act as a chair for that meeting.¹⁴³

¹⁴¹ Reg 7 (2)(a) to (g) Municipal Planning and Performance Management Regulations.

¹⁴² Reg 14 (2)(a) Municipal Planning and Performance Management Regulations.

¹⁴³ Reg 14 (2)(d)&(e) Municipal Planning and Performance Management Regulations.

The key functions of the performance audit committee are to review the quarterly reports submitted to it by the internal auditors.¹⁴⁴ The committee must also review the municipality's performance management system and make recommendations in this regard to the council of that municipality. At least twice during the financial year submit an audit report to the municipal council concerned.¹⁴⁵

In reviewing the municipality's performance management system, the committee must focus on economy, efficiency, effectiveness and impact in so far as the key performance indicators and performance targets set by the municipality are concerned.¹⁴⁶

The committee has the powers to communicate directly with the council, municipal manager or the internal and external auditor of the municipality concerned.¹⁴⁷ The committee may also access any municipal records containing information that is needed to perform its duties or exercise its powers.¹⁴⁸ Additionally, the committee may request any relevant person to attend any of its meetings, and if necessary, to provide information requested by the committee.¹⁴⁹ The committee may also

¹⁴⁴ Reg 14 (2)(d)&(e) Municipal Planning and Performance Management Regulations.

¹⁴⁵ Reg 14 (4)(a)(ii) & (iii) Municipal Planning and Performance Management Regulations.

¹⁴⁶ Reg 14 (4)(b) Municipal Planning and Performance Management Regulations.

¹⁴⁷ Reg 14 (4)(c)(i) Municipal Planning and Performance Management Regulations.

¹⁴⁸ Reg 14 (4)(c)(ii) Municipal Planning and Performance Management Regulations.

¹⁴⁹ Reg 14 (4)(c)(iii) Municipal Planning and Performance Management Regulations.

investigate any matter it deems necessary for the performance of its duties and the exercise of its powers.¹⁵⁰

The performance audit committee performs *ex post* oversight. Its focus on the impact of the key performance indicator and targets makes the performance audit committee more concerned with evaluation at the end of the financial year.

4.3.3 MUNICIPAL FINANCE MANAGEMENT ACT 56 OF 2003

The Municipal Finance Management Act is the primary statute regulating the finances of the municipality. The Municipal Finance Management Act is aimed at securing sound and sustainable management of the fiscal and financial affairs of municipalities and municipal entities by establishing norms and standards and other requirements.



In general, the Municipal Finance Management Act gives effect to the constitutional provisions on fiscal and budgetary issues.¹⁵¹ It specifically regulates transparency, accountability and appropriate lines of responsibility in the fiscal and financial affairs of municipalities. In addition, the Municipal Finance Management Act governs the management of revenue, expenditures, as well as the budgetary and financial planning processes.

The Municipal Finance Management Act delineates the roles and responsibilities of the mayor, councillors and officials. The executive as represented by the mayor is

¹⁵⁰ Reg 14 (4)(c)(iv) Municipal Planning and Performance Management Regulations.

¹⁵¹ S 215 (1) Constitution.

responsible for providing political leadership and overseeing the implementation of policies, the officials on the other hand are the implementing agent of the decision of the municipal council.¹⁵²

The Municipal Finance Management Act positions the municipal council as the highest authority responsible for approving the budget.¹⁵³ It can therefore be argued that the authority to approve the budget places an obligation on the council to ensure that its execution is in accordance with its intent. Accordingly, it is envisaged that the non-executive councillors will perform oversight functions as contemplated by the Municipal Finance Management Act.

Fourie and Opperman state that the issues of strengthening accountability, oversight, transparency, communication and empowerment are central to the Municipal Finance Management Act.¹⁵⁴ They further state that councillors now have a greater responsibility of financial oversight and are required to exercise greater diligence in the financial affairs of the municipality through regular reporting to communities on issues such as service delivery and financial performance.¹⁵⁵

¹⁵² S 21 (1) (a) Municipal Finance Management Act.

¹⁵³ S 15 (a) and (b) Municipal Finance Management Act

¹⁵⁴ Fourie & Opperman (2007) 9.

¹⁵⁵ Fourie & Opperman (2007) 9.

4.3.3.1 ANNUAL BUDGETS

The Municipal Finance Management Act provides for the municipal council of a municipality to approve an annual budget for each financial year before the start of the financial year.¹⁵⁶ The approval process requires an obligatory tabling of annual budget at a council meeting at least 90 days before the start of the financial year and if there is any delay in the tabling of the budget, the mayor must promptly report the matter to the council and the MEC for finance.¹⁵⁷

The Municipal Finance Management Act stipulates that the mayor of the municipality must coordinate the preparation of the budget.¹⁵⁸ The mayor must present to the municipal council the schedule outlining the key deadlines of the budget at least 10 months before the start of the financial year.

Following the tabling of the budget by the mayor of the municipality, the municipal council must consider the views of key stakeholders such as the local community, the National and Provincial Treasury or any other organ of state.¹⁵⁹ In addition, the municipal council is expected to give the mayor an opportunity to respond to submissions as well as revise the budget and table amendments for consideration by the council.¹⁶⁰

¹⁵⁶ S 24 (1) Municipal Finance Management Act.

¹⁵⁷ Steytler & De Visser (2009) 11-27.

¹⁵⁸ S 21 (1) (a) and (b) Municipal Finance Management Act.

¹⁵⁹ S 23 (1) (a) and (b) Municipal Finance Management Act.

¹⁶⁰ S 23 (2) (a) Municipal Finance Management Act.

The budget must be approved by the resolution of council supported by a majority of the members of council.¹⁶¹ Once approved, the budget is binding and must be enforced through mechanisms provided for in section 32 of the Municipal Finance Management Act. These mechanisms must generally prevent or impose disciplinary proceedings against any person or persons who breach the Municipal Finance management Act by committing an unauthorised expenditure, overspending, expenditure unrelated to a vote, and expenditure for a purpose other than the approved purpose.¹⁶²

The annual budget facilitates opportunities for the municipal council to exercise *ex ante* budget oversight. The requirement for the council to approve the budget signifies its legislative authority as well as affords the municipal council the opportunity to direct the behaviour of the executive regarding the approved budget.

4.3.3.2 ANNUAL REPORT

The annual report is considered as a key instrument for transparent governance and accountability and must be used to report on performance for the year.¹⁶³ Together with annual financial statements, the annual report facilitates effective oversight.¹⁶⁴

¹⁶¹ Steytler & De Visser (2009) 11-27.

¹⁶² Steytler & De Visser (2009) 11-27.

¹⁶³ National Treasury (2011) 85.

¹⁶⁴ National Treasury (2011) 85.

There is a requirement for the accounting officer to attend the council and committee meetings at which the annual report is being considered in order to respond to questions emanating from the report.¹⁶⁵

Every municipality must for each financial year prepare an annual report which must be dealt with by the municipal council within nine months after the end of the financial year.¹⁶⁶ The Act outlines the purpose of the annual report as follows:

- a) to provide a record of the activities of the municipality during the financial year to which the report relates'
- b) to provide a report on performance against the budget of the municipality for the financial year;
- c) to promote accountability to the local community for the for the decisions made throughout the year by the municipality.¹⁶⁷



The annual report of a municipality must include the following content:

- the annual financial statements;
- in addition, where a municipality has sole or effective control of a municipal entity, the consolidated annual financial statements
- the Auditor-General's report on the financial statements
- any explanations that may be necessary to clarify issues in connection with the financial statements;

¹⁶⁵ S 129 (2) Municipal Finance Management Act.

¹⁶⁶ S 121 (1) Municipal Finance Management Act.

¹⁶⁷ S 121 (2) Municipal Finance Management Act.

- an assessment by the accounting officer on any arrears on municipal taxes and service charges;
- particulars of any corrective action taken or to be taken in response to issues raised in the audit reports;
- any information as determined by the municipality or entity;
- any recommendations of the audit committee, and
- any other information as may be prescribed.¹⁶⁸

It was indicated that the annual report of the municipality must include the annual financial statement. The role of the municipal council in approving the annual financial statement is not clearly articulated by the Municipal Finance Management Act. Fourie and Opperman argue that although the Municipal Finance Management Act does not spell out the role of the municipal council in approving the annual financial statement, 'the logical inference is that the accounting officer approves these statements'.¹⁶⁹

4.3.3.3 OVERSIGHT REPORTS

The council of the municipality must consider the annual report of the municipality and any entity under the municipality's sole or shared control, and by no later than two months from the date on which the annual report was tabled in the municipal

¹⁶⁸ S 121 (3) Municipal Finance Management Act.

¹⁶⁹ Fourie & Opperman (2007) 9.

council, adopt an oversight report containing the council's comments on the annual report.¹⁷⁰ The council comments must include a statement whether the council has:

- (a) approved the annual report with or without reservations;
- (b) rejected the report; or
- (c) referred the annual report back for revision on those components that can be revised.

4.3.3.4 OVERSIGHT COMMITTEES

The preceding section indicated that an annual report is a requirement placed on all municipalities and municipal entities as a key reporting instrument for municipalities to report against performance targets outlined in their strategic plans. The municipal council uses its committee or committees to inform consider the annual report and make the necessary recommendations. An oversight committee is usually used for the purpose of considering the annual report and making a recommendation to the council.

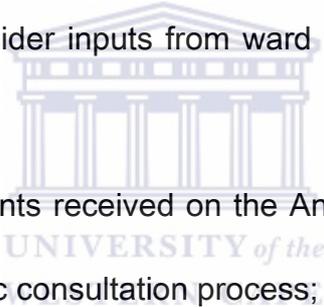
An oversight committee is one of the council committees established in terms of section 79 of the Municipal Structures Act. The decision to establish the oversight committee is the prerogative of the municipal council. The establishment process which includes the composition, powers and functions of oversight committees are provided through the Guidelines from the National Treasury.¹⁷¹

¹⁷⁰ S 129 Municipal Finance Management Act.

¹⁷¹ National Treasury MFMA Circular No 32 of 2006.

The guidelines provide that the oversight committees should consist only of the non-executive councillors. An oversight committee is established for the 'detailed analysis and review of the annual report and the drafting of an oversight report that may be taken to full council for discussion'.¹⁷²

A suggestion is made that 'at the same time that the oversight committee is analysing the report in detail, other councillors should also be conducting their own review of the report'.¹⁷³ It is envisaged that this would encourage councillors to actively undertake the following activities:

- 
- invite, receive and consider inputs from ward committees and other relevant stakeholders;
 - consider written comments received on the Annual Report from stakeholders participating in the public consultation process;
 - conduct public hearing(s) to allow the local community or any organs of state to make representations on the Annual Report; and
 - receive and consider councils' Performance Audit Committees views and comments on the annual financial statements and the performance report.¹⁷⁴

The oversight committee exercises ex post oversight. The focus of the oversight committees is the annual report which is an oversight activity taking place at the after the end of the financial year.

¹⁷² National Treasury MFMA Circular No 32 of 2006.

¹⁷³ National Treasury MFMA Circular No 32 of 2006.

¹⁷⁴ MFMA Circular No 32 of 2006.

4.4 SERVICE DELIVERY AND BUDGET IMPLEMENTATION PLAN (SDBIP)

The accounting officer of a municipality is responsible for the implementation of the municipality's approved budget.¹⁷⁵ The accounting officer is also responsible for taking all the reasonable steps to ensure that the spending of funds is in accordance with the budget appropriations and that revenue and expenditure are properly monitored.

Section 69 (3) (a) and (b) of the Municipal Finance Management Act instructs the accounting officer to, no later than 14 days after the approval of the annual budget, submit to the mayor a draft Service Delivery and Budget Implementation Plan (SDBIP) for the budget year together with the draft annual performance of the municipal manager and all senior managers.

To facilitate the monitoring of the execution of the SDBIP and performance agreements, the mayor of the municipality must ensure that monthly projections of revenue and expenditure and the service delivery targets and performance indicators are published.¹⁷⁶

The Municipal Finance Management Act instructs the municipal manager to ensure that the funds are spent in accordance with the approved budget and take overall responsibility for proper monitoring of revenue and expenditure.¹⁷⁷ The municipal manager is required to report to council in writing, any impending shortfalls in the

¹⁷⁵ S 69 (1) (a) and (b) Municipal Finance Management Act.

¹⁷⁶ Steytler & De Visser (2009) 11-37.

¹⁷⁷ Steytler & De Visser (2009) 11-37.

budget revenue or overspending of the budget as well as any steps taken to prevent or fix the shortfall or overspending.¹⁷⁸

The SDBIP serves as a tool to ensure that appropriate information is circulated internally and externally for the purposes of monitoring the execution of the budget.¹⁷⁹ The SDBIP is also described as a document that gives meaning to in-year reporting.¹⁸⁰

The National Treasury Guide to Municipal Finance and Management for Councillors describes the SDBIP as a tool that gives meaning to in-year reporting based on the monthly projections of revenue and expenditure that is aligned to the annual budget approved by council.¹⁸¹

Most importantly, the Circular provides that the SDBIP is 'essentially the management and implementation tool which sets in-year information, such as quarterly service delivery and monthly budget targets, and links each service delivery outputs to the budget of the municipality'.¹⁸²

The Circular emphasises that the SDBIP enables the council to monitor the performance of the municipality against quarterly targets on service delivery. The SDBIP is not a policy and therefore does not require to be approved by the municipal

¹⁷⁸ Steytler & De Visser (2009) 11-37.

¹⁷⁹ National Treasury MFMA Circular No.13 (2005) 2.

¹⁸⁰ S 71 Municipal Finance Management Act.

¹⁸¹ National Treasury, *A Guide to Municipal Finance for Councillors* (2006) 77.

¹⁸² National Treasury MFMA Circular No.13 (2005) 2.

council.¹⁸³ The approval of the council on the SDBIP only becomes necessary when there are changes to the budget and the performance agreements of senior managers.¹⁸⁴

4.4.1 MONTHLY BUDGET STATEMENTS

As indicated, the municipal manager must submit a budget statement on the state of the municipal budget to the mayor and the provincial treasury by no later than ten working days after the end of each month.¹⁸⁵ Budget and financial information must be presented in a prescribed format to reflect the following:

- a) actual revenue, per revenue source;
- b) actual borrowings;
- c) actual expenditure per vote;
- d) actual capital expenditure, per vote;
- e) the amount of any intergovernmental transfers received; and
- f) the expenditure against these transfers.¹⁸⁶

The Act requires that the municipal manager must submit the monthly budget statement to the mayor and that the mayor must determine whether the budget is being implemented in accordance with the implementation plan.¹⁸⁷ If there are problems, the mayor must instruct the municipal manager to ensure that the budget

¹⁸³ National Treasury MFMA Circular No.13 (2005) 3.

¹⁸⁴ National Treasury MFMA Circular No.13 (2005) 3.

¹⁸⁵ S 71 (1) Municipal Finance Management Act.

¹⁸⁶ S 71 (4) Municipal Finance Management Act.

¹⁸⁷ Steytler & De Visser (2009) 11-38.

is implemented in accordance with the implementation plan and that the expenditure and revenue collection proceed in accordance with the budget.¹⁸⁸

4.4.2 QUARTERLY REPORTS

The mayor must within 30 days of the end of each quarter, submit a report to the council on the implementation of the budget and the financial state of affairs of the municipality.¹⁸⁹ The quarterly reports which must be presented in a prescribed format in term of the Budget and Reporting Regulations must be consistent with the monthly budget statements.¹⁹⁰

4.4.3 Mid-Year Budget and Performance Assessment Report

The mid-year report and performance report is more extensive as it covers both the budget and the general performance of the municipality.¹⁹¹ The municipal manager must report in a prescribed format on the performance of the municipality during the first half of the year, taking into consideration the following aspects:¹⁹²

- a) the monthly budget statements;
- b) the municipality's service delivery performance, and its targets and performance indicators set in the implementation plan; and
- c) the past year's annual report and progress on resolving problems identified in the report.

¹⁸⁸ S 54 (1) (c) Municipal Finance Management Act.

¹⁸⁹ S 52 (d) Municipal Finance Management Act.

¹⁹⁰ Regulation 31 (1) (a) Budget and Reporting Regulations.

¹⁹¹ Steytler & De Visser (2009) 11-39.

¹⁹² S 72 (1) (a) Municipal Finance Management Act.

The mid-year assessment must be done by 25 January each year and the report must be submitted to the mayor, the provincial treasury and the national treasury.¹⁹³

The mid-year report provides an opportunity for the municipal manager and the mayor to assess and if necessary table budget adjustments and revised projections for the revenue and expenditure.¹⁹⁴

4.4.4 AUDIT COMMITTEE

The Municipal Finance Management Act provides that every municipality must have an audit committee that serves as an independent advisory body.¹⁹⁵ The audit committee is independent because the majority of its members must come from outside the municipality.¹⁹⁶ The main function of the audit committee is to advise the council on the proper financial management of the municipality¹⁹⁷.

The audit committee is appointed by the municipal council and must consist of at least three persons, the majority of whom may not be municipal employees. No councillors may serve on the audit committee.¹⁹⁸ The chairperson of the audit committee is appointed by the council and must be one of the outside members.¹⁹⁹

¹⁹³ S 72 (1) (b) Municipal Finance Management Act.

¹⁹⁴ Steytler & De Visser (2009) 11-40.

¹⁹⁵ S 166 (1) Municipal Finance Management Act.

¹⁹⁶ Steytler & De Visser (2009) 11-47.

¹⁹⁷ Steytler & De Visser (2009) 11-47.

¹⁹⁸ S 166 (4) (a) Municipal Finance Management Act.

¹⁹⁹ S 166 (5) (a) Municipal Finance Management Act.

The audit committee has the following functions:

- a) advise the municipality, both the council and its office bearers and the relevant officials, on all matters relating to the financial management of the municipality;
- b) review the annual financial statements to provide the council with an authoritative and credible view of:
 - the municipality's financial position;
 - the municipality's efficiency and effectiveness; and
 - its overall level of compliance with the MFMA, the annual Division of Revenue Act and other applicable legislation.
- c) attend to the issues raised by the Auditor-General in the audit report and respond to the council in respect of these issues;
- d) investigate the municipality's financial affairs at the request of the municipal council.²⁰⁰

Considering that the object of the audit committee is to provide an external, objective review of the municipality's finances, members of the committee must have appropriate experience for the task at hand.²⁰¹

²⁰⁰ S 166 (2) (a) Municipal Finance Management Act.

²⁰¹ Steytler & De Visser (2009) 11-47.

4.5 CONCLUSION

This chapter presented an overview of the legal system of local government in South Africa. The chapter identified and discussed various municipal legal provisions relevant to oversight. These are the legal provisions that inform the authority of the municipal council regard the fiscal matters of the municipality, the authority of the municipal council in determining its own standing rules, the establishment of committees and the reporting requirements. The discussion on these issues was intended to facilitate a review of the legal framework against the institutional criteria established in Chapter Three.

Having identified the relevant legal provisions, the next chapter conducts a review of how these legal provisions enable or inhibit oversight over the execution of the budget. The review in the next chapter focuses on the institutional and behavioural aspects that are important to ensure that the municipal council is able to exercise effective oversight over the execution of the budget.

CHAPTER 5: A REVIEW OF THE INSTITUTIONAL AND BEHAVIOURAL MEASURES FOR OVERSIGHT OVER THE EXECUTION OF THE BUDGET

5.1 INTRODUCTION

The effectiveness of the municipal council in exercising oversight over the execution of the budget will be determined by the presence of the institutional and behavioural criteria. The institutional criteria include the legal measures that enhance the municipal council's ability to exercise oversight over the execution of the budget. The behavioural criteria include the issues of capacity and willingness of the members of the municipal council and its committees in exercising budget oversight.

This chapter is the focus of this thesis. It investigates the extent to which the legal authority of the municipal council, the adequacy of the reporting requirements of the executive, the appropriateness of the internal rules and the legal provisions for the council committees, enable the municipal council to exercise oversight over the execution of the budget. Furthermore, it looks at how the issues of capacity and willingness as they are prevalent in municipalities respond to the behavioural criteria established in Chapter Three.

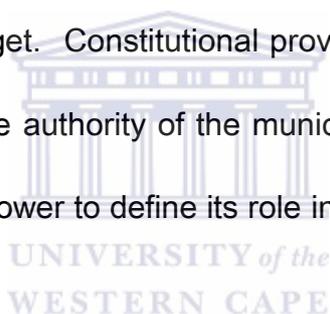
The Service Delivery and Budget Implementation Plan (SDBIP) as a monitoring tool for the implementation of the budget and the integrated development plan will be reviewed separately. This is because the SDBIP is a critical monitoring tool that facilitates concurrent oversight over the execution of the budget.

5.2. THE AUTHORITY OF THE MUNICIPAL COUNCIL

Chapter Three indicated that legislative budget oversight over the executive is a function of the legislature. The effectiveness of the municipal council to exercise this function depends on the constitutional powers of the legislature in relation to the executive. The question therefore is whether the legal framework asserts the supremacy of the municipal council in the fiscal governance and related matters of municipalities.

5.2.1 MUNICIPAL COUNCIL

The municipal council has the authority to define and shape the council oversight over the execution of the budget. Constitutional provisions pertaining to the vesting of the legislative and executive authority of the municipality in the municipal council provides the council with the power to define its role in municipal processes including the budget.²⁰²



The Constitution states that a municipality has the right to government on its own initiate the local government affairs of its community.²⁰³ The Municipal Systems Act locates this right in the municipal council.²⁰⁴ Thus, the authority of the municipal council in terms of taking overall responsibility for governance is adequately addressed.

²⁰² S 151 (2) Constitution.

²⁰³ S 151 (3) Constitution.

²⁰⁴ S 4 (a) Municipal System Act.

The constitutional authority of the municipal council is also established by the provision that a municipal council makes decisions concerning the exercise of all the powers and performance of all the functions of the municipality.²⁰⁵ The Municipal Structures Act gives effect to this provision by requiring the executive structures to first submit a report to the municipal council before a council takes a decision on the by-law, budget, integrated development plan and the appointment of the municipal manager and a head of department of the a municipality.²⁰⁶

The municipal council's power of the purse, which is fundamental in leveraging the council's authority to dictate and influence the fiscal agenda municipality, is adequately entrenched. This constitutional authority can be used to define the role of the municipal council in the authorisation, scrutiny of budget allocation and the *ex post* review of public accounts and performance. Equally, the constitutional instruction prohibiting the delegation of the passing of the budget, imposition of rates and taxes and the raising of loans represents the ultimate fortification of the authority of the municipal council in fiscal and budgetary matters of the municipality.

The exclusive vesting of the fiscal and budgetary control powers in the municipal council and the need for the council to make decisions concerning the exercise of all the power and performance of all the functions of the municipality is effectively empowering the municipal council to exercise or establish appropriate measures to exercise oversight over the execution of the budget.

²⁰⁵ S 160 (a) Constitution.

²⁰⁶ S 30(5) Municipal Structures Act.

The other area reflecting the authority of the municipal council is its power to delegate to the executive and administrative structures. Through the system of delegation that is contemplated in terms of the Municipal Systems Act,²⁰⁷ the municipal council is able to initiate and exercise control mechanisms to ensure that the executive and administrative structures behave in accordance with the objectives of the municipal council.

Further, local government legislation provides for a number of measures to strengthen oversight. In particular, the legal framework has managed to separate and clarify roles and responsibilities of the mayors, executive councillors, non-executive councillors and officials.²⁰⁸

Accordingly, the legal framework has allocated the mayor the role of providing political leadership and development of the budget.²⁰⁹ The municipal manager on the other hand holds the primary legal accountability for financial management and together with the other senior managers is responsible for the implementation and output.²¹⁰ To complete the oversight and accountability chain, the legislative framework identifies the non-executive councillors, as the elected representatives responsible for oversight.

²⁰⁷ S 59 (1) Municipal Systems Act.

²⁰⁸ National Treasury Local Government Budget and Expenditure Review (2011) 74

²⁰⁹ National Treasury Local Government Budget and Expenditure Review (2011) 74

²¹⁰ National Treasury Local Government Budget and Expenditure Review (2011) 74

The Municipal Finance Management Act however fails to complement the Constitution and the Municipal System Act in terms of entrenching the role of the council in the budget execution stage. Instead, the Municipal Finance Management Act elevates the involvement of the executive structures in the budget execution stage.

The vaguely expressed authority and participation of the council in the budget execution stage has resulted in the lack of focused oversight which has contributed to current high level of financial challenges in municipalities.²¹¹

In addition, the conflation of the legislative and executive authority of the municipality in the municipal council presents a challenge for budget oversight in general. It is often argued that because this conflation exists within a context of a dominant executive, the executive is therefore allowed to overwhelm and relegate the municipal council to the periphery of the budget process.

5.2.2 INTERNAL RULES

The Constitution and other national and provincial legislation do not provide for the specific role for the municipal council beyond the approval of the budget. To the extent that the legal framework is silent, it becomes necessary for the municipal council to assume the responsibility for determining and regulating the role of the municipal council in the budget processes beyond the approval stage.

²¹¹ Cooperative Governance and Traditional Affairs (2009) 55.

The above determination of the role and responsibilities of the municipal council in the budget execution stage can be effected through a proper determination of the terms of reference as provided for in section 53 of the Municipal Systems Act. According to this provision, the municipal council can ‘specify the role and area of responsibility for each political structure and political office bearer of the municipality’.²¹²

The municipal council can use its authority to determine the terms of reference as well as the internal rules to clearly prescribe the role for itself and that of its committees in the exercise of oversight over the execution of the budget. The terms of reference and the internal rules should assist in determining the nature of the role of the non-executive councillors during budget execution.

However, it would appear that there is lack of clarity on the role of different structures in the municipality including the non-executive councillors. For example, the report of the Parliamentary Service Delivery Ad Hoc Committees indicates that in most municipalities in Mpumalanga and Eastern Cape there is lack of clarity on which structures must perform which role.²¹³ This report indicates that this lack of clarity has impacted on governance and delivery of services.

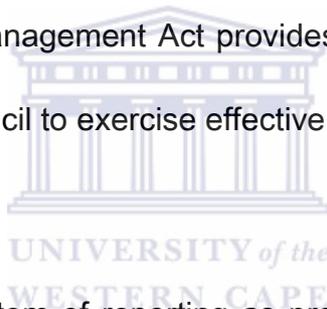
5.2.3 REPORTING PROCESSES

²¹² S 53 (b) Municipal Systems Act.

²¹³ Parliamentary Monitoring Group Committee Service Delivery Ad Hoc Committee Feedback on Oversight Visit (2011)

Chapter Three highlighted the significance of a legal framework obligating the executive structures to provide regular reports to the legislature. The Municipal Finance Management Act makes provision for the different types of report to be submitted to the municipal council. The list of reports includes the annual report, the oversight report, quarterly reports and the mid-year report.

The nature, quantity and content of the financial and non-financial reports that must be submitted to the municipal council have the potential to exponentially enhance the exercise of oversight over the execution of the budget. It can therefore, be argued that the Municipal Finance Management Act provides for adequate reporting that is required by the municipal council to exercise effective oversight over the execution of the budget.



It was envisaged that the system of reporting as provided by various provisions of the Municipal Finance Management Act will ensure that municipalities produce reliable and timely information that would provide the council with appropriate information needed to realise its oversight function.²¹⁴

Despite what is considered a comprehensive reporting framework, municipalities have experienced challenges in complying with prescribed deadlines, formats and the accuracy of information.²¹⁵ Equally, the quality of the information is still uneven

²¹⁴ National Treasury *Local Government Budgets and Expenditure Reviews* (2011) 83.

²¹⁵ National Treasury *Local Government Budgets and Expenditure Reviews* (2011) 76.

and unreliable.²¹⁶ The Auditor-General's report on the audit outcomes for 2009/10 indicates that municipalities do not have officials specifically charged with the responsibility of collecting, verifying and regularly compiling reports.²¹⁷ This report also indicates that the reported targets, goals and objectives are often not consistent with planned performance information.²¹⁸

The reporting challenges in municipalities have resulted in the National Treasury developing a range of diagnostic and process checks to improve the quality of the information. These challenges are also being addressed by initiatives such as the Municipal Budget and Reporting Regulations of 2009. The main objective of the Municipal Budget and Reporting Regulations of 2009 is to regulate the format and content of the annual budget, adjustment budgets and in-year reports to promote greater transparency.²¹⁹



5.2.4 COUNCIL COMMITTEES

As indicated in Chapter Three, the council committees like those of other legislatures are regarded as the core of the financial accountability mechanisms. Depending on the delegated authority, committees are able to cover the broad spectrum and different aspects of financial and budget oversight activities of the municipality.

Chapter Three also indicated that for the committee to be effective, they must be sufficiently independent, have appropriate powers, have access to information, be

²¹⁶ Auditor-General *Consolidated General Report on the local government audit outcome* (2011) 34.

²¹⁷ Auditor-General *Consolidated General Report on the local government audit outcome* (2011) 34.

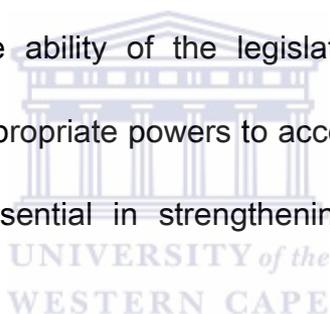
²¹⁸ Auditor-General *Consolidated General Report on the local government audit outcome* (2011) 34.

²¹⁹ National Treasury *Local Government Budgets and Expenditure Reviews* (2011) 76.

adequately resourced and be able to undertake in depth and continuous scrutiny of the executive.

Council committees are those established in terms of section 79 of the Municipal Structures Act. The oversight committee and Municipal Public Accounts Committee, are the two most relevant committees of the council that are required to assist the council to exercise budget and financial oversight.

The nature and role of committees contemplated in section 79 of the Structures responds and corresponds with the criteria for established in Chapter Three. As stated in Chapter Three, the ability of the legislature to establish independent committees delegated with appropriate powers to access information and to hold the executive accountable, is essential in strengthening the legislature to exercise budget oversight.



The requirement in terms of the guidelines that only the non-executive councillors and no officials can serve on the two committees could make committees sufficiently independent from the executive and administrative structures. In addition, the accountability of the committees to the municipal council helps to insulate the work of the oversight committees and the MPACs from executive influence.

Committees entrusted with the responsibility for oversight must have the necessary powers. With regards to the enabling powers and functions relating to the oversight over the execution of the budget, the Guidelines propose adequate powers for the

MPACs. The Guidelines provide that MPACs should have the power to have permanent referral of documents relating to in-year reports and financial statements of the municipality. MPACs also have as their primary functions the responsibility to recommend and undertake any investigation in their area of responsibility, review any investigation report already undertaken by the municipality.²²⁰ In addition the MPACs can also perform any function assigned to it through a resolution of council within area of responsibility.²²¹

Given the complexity of the work of these committees, it is imperative that they have adequate access to relevant information. Accordingly, these committees must be empowered with relevant powers to access information. As indicated in Chapter Three, information is the lifeblood of oversight. In this instance also, the MPACs should be empowered with access to information from different structures of the municipality.

Despite the power to realise their objectives, there are challenges that impact negatively on the functions of these committees. In particular, the oversight committees have structural limitations that make them not to be effective in exercising their general oversight role.

²²⁰ Cooperative Governance and Traditional Affairs & National Treasury *Guidelines for Establishment of MPACs* (2011) 7.

²²¹ Cooperative Governance and Traditional Affairs & National Treasury *Guidelines for Establishment of MPACs* (2011) 7.

A critical limitation of the oversight committees is that the Municipal Finance Management Act does not make it obligatory for the municipal council to establish the oversight committees, neither does it provide for uniform powers and functions for the oversight committees.

While the lack of uniform powers and functions for the oversight committees can also be an opportunity for the municipal council to define such in terms of their own context, it can also lead to the improper use of these committees resulting in their failure to realise their core objectives.

The oversight committee's limited role in the annual report makes it less relevant in terms in the exercise of concurrent or in-year budget oversight. The scope and functions of the oversight committee is mainly focused on the annual report after the end of the financial year. This kind of oversight is *ex-post* and only takes place long after the financial year has ended. Therefore, its relevance to the concurrent oversight envisaged in the execution of the budget is non-existent.

Unlike the oversight committee, the MPACs can play a critical role in the concurrent oversight and by application in the oversight over the execution of the budget. The Guidelines on the MPACs proposes sufficient measures that can make the MPACs effective exercising oversight over the execution of the budget.

However, there are limitations imposed by the lack of an obligation on the part of the municipal council to establish the MPACs. The Auditor-General reports that MPACs are not yet fully functional and that only 103 MPACs have established.²²²

The other major shortcoming of both the oversight committees and the MPACs is that in practice they lack independent capacity and support. The reliance of these committees on the executive and administrative structures for capacity and administrative support in order to undertake in-depth scrutiny compromises the committees' effectiveness.

5.2.5 TECHNICAL ADVISORY CAPACITY

Chapter Three indicated that members of the legislature are generally not appointed on the basis of their knowledge or expertise on issues such as the budget or public finance. Therefore, the lack of technical capacity on the part of members of the legislature and research and other relevant advice and information, constitute some of the critical challenges for effective oversight over the execution of the budget.

While it is appreciated that reports generate useful information for the purposes of oversight of budget execution, it is equally acknowledged that information on its own is not sufficient. Being part-time, the non-executive councillors have limited time and other responsibilities competing for that time.

²²² Auditor-General *Consolidated General Report on the local government audit outcome* (2011) 56.

The Cooperative Governance and Traditional Affairs Operation Clean Audit, indicates that local governments are beset by inadequate skills on planning, budgeting, public financial management and expenditure management.²²³

Additionally, municipalities are plagued by serious challenges of poor interface between financial and non-financial information (in-year-monitoring and quality annual reporting) and inadequate systems with regard to corporate governance and accountability.²²⁴

Budget oversight activities are very intense in that they entail meticulous research, studying and analysis of financial information as well as making sense of highly technical and onerous information. Consequently, the skills challenges outlined in the clean audit documents are likely to have a serious impact on the ability of non-executive councillors from exercise oversight on the budget.

This is likely to be compounded by the fact that non-executive councillors generally do not have dedicated independent technical capacity support to assist them in understanding budgets and financial reports which are often constructed in technical formats and language that is inaccessible to ordinary councillors.

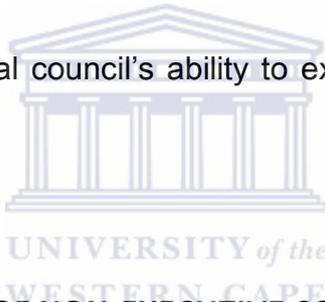
²²³ Cooperative Governance and Traditional (2009) *Affairs Operation Clean Audit 2009-2014* (2009) 1.

²²⁴ Cooperative Governance and Traditional 2009 *Affairs Operation Clean Audit 2009-2014* (2009) 1.

5.3 BEHAVIOURAL CRITERIA

The institutional criteria discussed above do not necessarily translate into effective exercise of the execution of the budget. The available legal measures grant the municipal council the requisite authority and instruments to enable the council to exercise effective oversight over the execution of the budget, but there must be willingness and ability on the part of the non-executive councillors to perform the budget oversight.

This section discusses how the partisan behaviour of non-executive councillors, lack of technical capacity and executive dominance of the budgeting processes and SDBIP impact on the municipal council's ability to exercise effective oversight over the execution of the budget.



5.3.1 PARTISAN BEHAVIOUR OF NON-EXECUTIVE COUNCILLORS

Oversight over the execution and the administration should be the concern and interest of all the municipal elected representatives irrespective of their political party allegiance. Non-executive councillors are essentially the touch bearers for oversight in municipalities and they therefore have the duty to question, scrutinise and investigate the behaviour of the executive structure irrespective of their political party affiliation. In addition, the non-executive councillors have the responsibility to act as the guardians of communities to constrain the excesses of the executive and administrative structures.

However, the relationship between the ruling majority party in the municipality and its councillors often negatively affects the proper functioning of the municipality.²²⁵

According to De Visser *et al*, political party structures other than the council shape the behaviour of councillors and this is effected through a very strict culture of party discipline.²²⁶

The Overview Report on the National State of Local of Local Government Assessment indicates that 'party political factionalism and polarisation of interests have indeed contributed to the progressive deterioration of municipal functionality.'²²⁷

This assessment report goes further to state that 'the lack of values, principles or ethics in party political contestations indicates that there are officials and public representatives for whom public service is not a concern, but rather accruing wealth at the expense of poor communities is their priority'.²²⁸

Inevitably, non-executive councillors and council committees are influenced by the political values, groupings and caucus directives rather than the debate in the council processes. In some instances, political parties hinder the efforts to discipline officials who have failed to committed offence.²²⁹

²²⁵ De Visser Steytler & May *A Study into the Functionality of Municipal Governance Arrangements* (2009) 34.

²²⁶ De Visser Steytler & May *A* (2009) 34.

²²⁷ Cooperative Governance and Traditional Affairs (2009) 10.

²²⁸ Cooperative Governance and Traditional Affairs (2009) 10.

²²⁹ De Visser, Steytler & May (2009) 35.

This has the potential to hinder the efforts of overseeing the effective execution of the budget. Accordingly, non-executive councillors perform budget oversight activities as directed by their party leadership. This inevitably results in the opposition parties carrying the burden of oversight exclusively.

5.3.2 LEADERSHIP AND CAPACITY

Chapter Three identified weak legislative institutions as a challenge to effective oversight. Weaknesses can be attributed to lack of capacity and political leadership on the part of the Speaker, the council itself and council committees.

The Local Government Budget and Expenditure Review indicates that there are dysfunctional councils which results in distrust among councillors and that important decisions such as the budget get delayed or are not taken.²³⁰

The National State of Local Government Assessment also identified lack of sound political leadership, strong organisational capacity and good governance practices as some of the factors impacting on non-executive councillors to performance their oversight role.²³¹

De Visser *et al*, state that the calibre of councillors is a problem.²³² The impact of this on their ability to exercise oversight over the execution of the budget is compounded by the fact that non-executive councillors do not have dedicated

²³⁰ National Treasury (2011) 24.

²³¹ Cooperative Governance and Traditional Affairs (2009) 23.

²³² De Visser, Steytler & May (2009) 45.

research support and they are also part time councillors. Accordingly, councillors lack the capacity and the time required to distil what is often technically and quantitatively excruciatingly onerous information,

The Local Government Budget and Expenditure Review also indicates that the lack of adequate institutional capacity is a significant challenge impacting on the municipal councillors to exercise their budget oversight roles and responsibilities.²³³

The Local Government Budget and Expenditure Review further states that 'most municipal performance failings are due to the lack of capacity, whether it be individual, organisational or environmental capacity.'²³⁴ Additionally, the Local Government Budget and Expenditure Review conclude that efforts to strengthen capacity have not encompassed the broad range of issues, such as policies, and procedures and organisational ethics.²³⁵

5.4 SERVICE DELIVERY AND BUDGET IMPLEMENTATION PLAN

The SDBIP has been identified as perhaps the most important instrument for exercising oversight over the execution of the budget. It was also indicated in the preceding section that the SDBIP is the primary process through which the non-executive councillors are able to exercise actual oversight over the execution of the budget. Accordingly, the SDBIP is the central focus of this section. The SDBIP is

²³³ National Treasury (2011) 110.

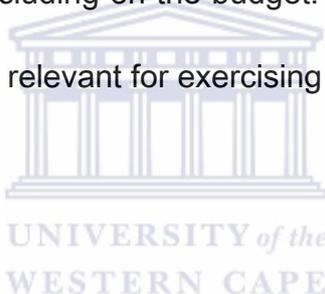
²³⁴ National Treasury (2011) 111.

²³⁵ National Treasury (2011) 111.

the key municipal implementation and monitoring tool designed to be used by a range of stakeholders including non-executive councillors for the purposes of exercising oversight over the execution of the budget.²³⁶

The SDBIP's focus on the implementation of the budget creates an opportunity for the non-executive councillors to direct their oversight efforts to the execution of the budget.

It must be noted that the preceding sections identified the broad legal measures that are applicable for oversight, including on the budget. However, this section focuses on the measures that are most relevant for exercising oversight over execution of the budget.



The aim of this section is to review how the current the institutional and behavioural measures constrain the municipal council and its committees from utilising the SDBIP as the key tool for exercising oversight over the execution of the budget.

5.4.1 EXECUTIVE DOMINANCE IN THE SDBIP

It was indicated in Chapter Three that executive dominance is a key challenge for the legislature to exercise oversight over the execution of the budget. The impact of this executive dominance is that the executive behaviour in the execution of the budget is not adequately supervised and monitored, resulting in the legislature being marginalised.

²³⁶ National Treasury (2006) 78.

The planning and budgeting processes which give effect to the SDBIP in municipalities are extensively dominated by the executive and administrative structures. The fact that the SDBIP is a management, implementation and monitoring tool and not a policy of the municipality limits the authoritativeness of the municipal council in using it. In addition, the SDBIP does not require the approval of the municipal council. What is often observed is that the quarterly presentations by the mayor before the municipal council are mere informative sessions that are unlikely to result in significant and meaningful scrutiny by the municipal council.

The above practice insulates the SDBIP from the municipal council and its committees. Consequently, the council does not have the authority over what can be regarded as the only explicit municipal concurrent budget oversight instrument.

The National Treasury compounds this problem by failing to elevate in-year monitoring in the Guidelines. According to the National Treasury, in-year monitoring in the SDBIP is meant to be a light form of monitoring and that the council should reserve its oversight role for the annual performance at the end of the financial year when the mayor tables the annual report of the municipality.²³⁷ Inevitably, this confinement of the budget oversight tool to the annual report further weakens concurrent oversight during budget execution.

²³⁷ National Treasury MFMA Circular No 13 (2005) 4.

As indicated in Chapters Three and Four, the unconstrained dominance of the executive and administrative structures results in information asymmetry that relegates the municipal council to the margins of the budget process. As a result, the non-executive councillors are effectively marginalised in budget execution stage.

5.4.2 THE SDBIP AND THE MUNICIPAL COUNCIL

The Municipal Finance Management Act does not create an explicit link between the council and the SDBIP. It is very specific that the SDBIP must be approved by the mayor within 28 days after the approval of the budget.²³⁸ There is no explicit mention of the council being involved in the approval of the SDBIP. In terms of the Municipal Finance Management Act, the council's involvement is only required when the mayor must report to council on delays in the tabling of the SDBIP or the signing of the annual performance agreements.²³⁹

The consequence of this requirement is that the municipal council or its committees have no defined role in the approval of the SDBIP as a key concurrent budget oversight instrument. Accordingly, the council will have difficulties in using an instrument that had no role influencing. Inevitably, concurrent budget oversight will be ineffective.

²³⁸ S (53) (1) (c) (ii) Municipal Finance Management Act.

²³⁹ S (53) (2) Municipal Finance Management Act.

5.4.3 REPORTS ON THE IMPLEMENTATION OF THE SDBIP

Section 54 (1) (c) of the Municipal Finance Management Act provides that the mayor must consider the reports submitted by the accounting officer in terms of section 71 and 72 of the Municipal Finance Management Act and if necessary, make revisions to the SDBIP and performance indicators in the plan. The revision to the SDBIP may only be with the approval of the council due to the revision's impact on the adjustment budget.

The reports contemplated in terms of section 71 and 72 of the Municipal Finance Management Act contain information related to the SDBIP. Again the Act does not expressly provide for the municipal council or any of its committees to subject these reports to some form of scrutiny in order to either approve or reject.

The National Treasury provides that during the quarterly reviews, non-executive councillors should assess whether “the SDBIP is on track and whether the mayor and the municipal manager are taking appropriate action to correct any significant deviations.”²⁴⁰ However, neither the Municipal Finance Management Act nor the Guide to Municipal Finance Management for Councillors, nor the MFMA regulations and Circulars provide a clear guidance on how the non-executive councillors should participate in the quarterly review. Mostly importantly, none of the guidelines provide opportunities for substantive scrutiny of the monthly and or quarterly reports mentioned above.

²⁴⁰ National Treasury (2006) 84.

5.5 BEHAVIOUR OF EXECUTIVE AND ADMINISTRATIVE STRUCTURES

The behaviour of the executive and the administration has an impact how the council exercise its oversight role in the SDBIP. If the executive fails to comply with legislative requirements relating to the SDBIP, the municipal council oversight role is accordingly adversely affected.²⁴¹

For example, when the mayor fails to approve the municipality's service delivery and budget implementation plan within 28 days after the approval of the annual budget, the council's oversight role of the SDBIP is negatively impacted.²⁴²

A culture of municipal performance is critical to the effective exercise of oversight in over the SDBIP and its related activities. As indicated, the legal framework with regard to performance management requires municipalities to complement it with adequate procedural rules and particular behaviour councillors.

According to the Local Government Budget and Expenditure Review, municipal performance in most municipalities is inadequate, despite many of them having developed sophisticated scorecards to assist in the measuring of organisational performance.²⁴³ The Review points out that the actual translation of the scorecards into individual performance agreements for senior managers is often weak.²⁴⁴

²⁴¹ Consolidate General Report on the local government audit outcome (2011) 34.

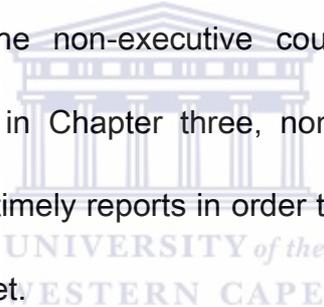
²⁴² Auditor-General *Consolidated General Report on the local government audit outcome* (2011) 33.

²⁴³ National Treasury (2011) 120.

²⁴⁴ National Treasury (2011) 111.

Equally, the inability of the administration to not fully meet their responsibilities impacts on the council and its committees to exercise oversight on the SDBIP. The Auditor-General states that too often senior managers in municipalities exercising financial management responsibilities did not take reasonable steps within their areas of responsibility to 'ensure that the system of financial management and internal control established for the municipality is followed diligently and that all information required by the accounting officer for compliance with the provisions of the MFMA is submitted timeously to the accounting officer'.²⁴⁵

This negatively impact on the non-executive councillors from exercising their oversight role. As indicated in Chapter three, non-executive councillors require accurate, comprehensive and timely reports in order to be able to exercise oversight over the execution of the budget.



5.5.1 THE ADMINISTRATIVE STRUCTURES

The Local Government Budget Expenditure Review states that 'there is a general lack of technical and knowledge necessary for the performance of key duties in financial management from an operational perspective'.²⁴⁶ According to the Local Government Budget and Expenditure Review, this is a major constraint and one of the biggest challenges facing municipalities.²⁴⁷ This inadequate capacity has inevitably resulted in a lack of appropriate financial management in municipalities.

²⁴⁵ Auditor-General *Consolidated General Report on the local government audit outcome* (2011) 33.

²⁴⁶ National Treasury (2011) 87.

²⁴⁷ National Treasury (2011) 87.

The Local Government Budget and Expenditure Review states that 'of concern is that even when a municipality has an opportunity to appoint new staff to the budget and treasury office, very often people within inappropriate experience and qualifications get appointed.'²⁴⁸

5.6 CONCLUSION

This chapter indicates that the municipal councils are characterised institutional problems that prevent them from exercising oversight over the execution of the budget. The municipal council does not assert its constitutional authority to effectively subordinate the executive structures and the budget processes under the authority of the council. In addition, the chapter indicated that the council does not also use its authority to determine internal procedures of the municipality to control the behaviour of the executive in the budget execution processes.

The chapter also highlighted the institutional weaknesses that impact on the ability of the oversight committee and the MPACs to investigate, scrutinise and influence the behaviour of the executive and administrative structures during the execution stage of the budget.

In addition, the municipal council needs to establish a culture of governance that will encourage non-executive councillors to exercise stewardship of municipal resources.

²⁴⁸ National Treasury (2011) 89.

In addition, this culture of municipal governance must promote institutional and behavioural changes to ensure that poor performance is reduced or eliminated.

The chapter also identified the limitations of the institutional behavioural aspects that prevent the municipal council to utilise the SDBIP in exercising oversight over the execution of the budget.



CHAPTER 6: GENERAL CONCLUSIONS AND RECOMMENDATIONS

6.1 INTRODUCTION

The municipal fiscal challenges, especially with regard to corruption, unauthorised expenditure, under-spending and perpetual negative audit outcomes have necessitated the need to strengthen oversight over the execution of the budget.

This thesis assessed how the current legal framework for local government enables or constrains the municipal council and its committees to exercise oversight over the execution of the budget. This was accomplished by assessing the current municipal legal-structural factors and the behavioural factors against the established normative framework for effective oversight over the execution of the budget.

The aim of this chapter is to present a summary of the findings. The chapter also make recommendations on possible structural and behavioural factors that can strengthen the municipal oversight over the execution of the budget.

6.2 SUMMARY OF FINDINGS

Chapter One outlined the background to the study. It identified the current budget and financial challenges as the consequence of lack of adequate of legal and institutional measures for oversight over the execution of the budget. The chapter identified the focus and objective of this study as contributing towards to strengthening the legal and institutional measure for the municipal council to exercise oversight over the execution of the budget.

Chapter Two of the study introduced a variety of definitions of oversight. In particular, it contextualised the role of the legislature in oversight. Of significance to this study, this chapter clarified the purpose, authority and the different types of legislative oversight a key role of the legislature in modern democracy. The Chapter also found that the authority for legislative oversight is either granted or implied in the legal and or political configuration of the relevant structure of government. It is mostly grounded in the power to pass laws and to approve budgets.

Having established the conceptual framework for legislative oversight, Chapter Three discusses the role of the legislature in the budget process with the intention of identifying the oversight functions during the budget execution stage. In this regard, the study highlighted the need for the legislature to put in place specific legal-structural and behavioural factors in order to ensure effective oversight of budget execution.

This Chapter also identified the challenges to legislative budget oversight. The uncontrolled executive dominance, lack of technical and advisory capacity, weak institutions of the legislature and lack of adequate access to relevant budget information were identified as challenges for oversight over the execution of the budget. The chapter then outlined the institutional criteria required to ensure effective oversight over the execution of the budget as being the authority of the legislature, reporting requirements, internal rules, committees of the legislature, and research capacity.

While the legal framework identified above is critical, the behavioural factors such as capacity and willingness are equally important and should constitute part of the comprehensive measures required to ensure effective oversight over the execution of the budget.

Chapter Four provided an overview of the local government system of South Africa. It presented and discussed the key legislative provisions elevating the authority of the municipal council. It provided clarity on the municipality's legislative and executive authority to the duty and responsibility to exercise oversight.

The Chapter identified the authority of the municipal council to exercise oversight of budget execution. It also identified relevant provisions that enable the municipal council to establish internal rules and procedures. In addition, the Chapter identified and discussed the annual budget process and related reports for budget oversight. The Chapter also discussed oversight committee and the MPACs as council committees can be used to assist the municipal council in exercising budget oversight, including oversight over the execution of the budget.

Most importantly, the Chapter identified that one of the obstacles inhibiting effective oversight is the lack of appropriate Rules of Order. This has denied the municipal council internal mechanisms through which the council can assert its authority by subjecting the executive to different forms of oversight.

Chapter Five provided a review of the legal provisions relevant to budget oversight. It assessed whether these legal provisions are responding to the normative framework established in chapter three. This assessment found that the identified legislative provisions were generally adequate in facilitating municipal council oversight.

Chapter Five also found that the statutory mechanisms are insufficient in entrenching the municipal council ability to exercise oversight over the execution of the budget. It therefore highlighted the need to complement this legal authority with appropriate internal municipal rules and procedures.

In addition, Chapter Five exposed the partisan behaviour of the non-executive councillors, the lack of capacity as impacting on the council's ability to exercise effective oversight over the budget execution.

Overall, the study found that the institutional and behavioural measures condition the ability of the municipal council to exercise oversight over the execution of the budget. It appears that a critical constraint for non-executive to exercise oversight over the execution of the budget is the council's ability to define appropriate internal rules. This deficiency in the internal rules also impact on the organisation and effectiveness of committees to exercise oversight over the execution of the budget.

Overall, this study found that the current legal and institutional measures for oversight of budget execution are adequate but need to be anchored in formidable

internal mechanisms and behavioural practices. In this regard, the municipal council must observe its obligations and use its legislative and leadership role to strengthen the will and capacity of non-executive councillors as well as amplify the legal and institutional measures for budget oversight.

If left unattended, the existing formal-structural and behavioural challenges will remain complicit to the current financial challenges experienced by municipality. Governance, service delivery and local democracy will then remain the main causalities.

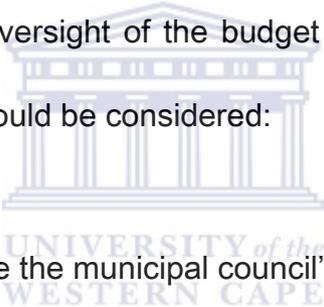


6.3 RECOMMENDATIONS

In light of the above section, this study found that the current legal and institutional measures for the municipal council to exercise oversight on budget execution should be approved. Accordingly, the following recommendations are made:

6.3.1 INSTITUTIONAL MEASURES

It was highlighted that, in general, the current legal framework, including the Constitution does not identify a role for the municipal council during budget execution. While the legal framework is very clear in terms of *ex ante* oversight that is required as part of the municipal council's authorisation process, the same is not formalised in the concurrent oversight of the budget execution. In this regard, the following recommendations should be considered:

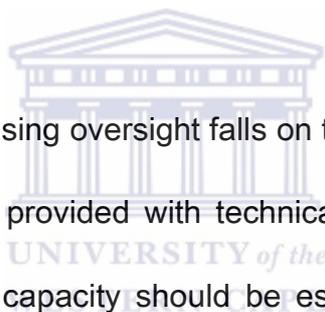
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- a) The law should articulate the municipal council's oversight role more clearly.
 - b) The authority of the municipal council on the budget should be expanded to include oversight of the budget during its execution and *ex post*. This can be achieved through the Municipal Finance Management Act directing the municipal council to initiate appropriate mechanisms to consider, debate and approve or rejects reports from the executive structures.
 - c) The municipal council should assess areas that constrain the council or any of its committees to exercise effective budget oversight. The municipal councils should specifically assess the system of delegation to ensure that the authority and the ability of council and its committees is clearly and adequately intensified.

- d) The municipal council should adopt institutional measures or strengthen existing ones to introduce fiscal discipline principles such as transparency, accountability and value for money.
- e) As part of the institutional measures, the municipal council should adopt a focused by-law to regulate the participation of the council and its committees in the budget process. The following issues should be covered in the by-law:
- The role of the council and its committees in the municipal budget process should be clearly specified.
 - The roles and responsibilities of the executive in relation to the council should be prescribed in the by-law.
 - Appropriate provisions for the role of the council in the budget execution should be covered in the by-law.
 - A list of sanctions that the municipal council can impose for lack of compliance should be included in the by-law.
- f) To ensure that MPACs have the necessary jurisdiction to investigate and scrutinise the behaviour of the executive and administrative structures with regard to budget activities, the municipal council with the support of the Department of Cooperative governance and Traditional Affairs and the National Treasury should strengthen the current Guidelines to address the current ambiguity with regard to the powers and functions of council committees.

The MPACs also require the municipal council to provide for adequate powers, leadership and clear organisational and procedural systems to enable them to exercise oversight in an effective manner.

- g) The municipal council through the Speaker's office, should use the council committees and other committees such as the audit committee to facilitate an integrated approach to budget oversight. This integrated approach in the work of committees should enable the council to assess whether the policies of the council are being implemented effectively to enable the council to investigate allegations of unauthorised, irregular, and fruitless and wasteful expenditure incurred during the year.
- h) The authority of the municipal council and its committees must be strengthened to include the power to subpoena documents and individuals (internally and externally) and force them to appear before the council or any of its committees. This effort to enable the council to subpoena should be mindful of the Bill of Rights enshrined in the Constitution.
- i) The Municipal Finance Management Act should also instruct the municipal council to establish processes and mechanisms to enable the MPACs to adequately participate in the SDBIP. When establishing these mechanisms, the council must delegate appropriate *ex ante*, concurrent and *ex post* oversight powers to the MPACs.

- j) There is a need to mitigate the exercise of power of the executive in the SDBIP. As indicated, unbridled discretionary powers of the executive in the SDBIP allows both the executive and administration to dominate and marginalise the non-executive councillors in the budget execution process.
- k) The Municipal Finance Management Act should be amended or alternatively the council's rules of order to provide that reports contemplated in terms of section 71 and 72 of the Municipal Finance Management must be subjected to detailed scrutiny by the council committees before being adopted by the municipal council.
- l) Since the onus of exercising oversight falls on the non-executive councillors, it is crucial that they are provided with technical and advisory capacity. The technical and advisory capacity should be established through a dedicated and competent oversight unit in the Speaker's office to provide support to councillors.



6.3.2 BEHAVIOURAL MEASURES

The municipal council should address the behavioural factors of its members to ensure meaningful performance of its oversight function. The following recommendations must be considered to address the behavioural factors impacting on the oversight of the execution of the budget.

- a) The municipal council must promote the exercise of oversight over the execution of the budget through promoting and encouraging active involvement of the non-executive councillors in the budget process. It is envisaged that when the non-executive councillors take a keen interest and participate actively in all the stages of the budget, the oversight over the execution of the budget can be enhanced.
- b) The municipal council and its committees responsible for exercising oversight over the execution of the budget must conscript all the non-executive councillors to a relevant training programme. The municipal council must also ensure that members of the MPACs and the oversight committees attend the training programme. The training of non-executive members and council committees must aim specifically at strengthening capacities for budget oversight.

Capacity building initiatives should also include creating a clear understanding and knowledge of the municipal internal accounting systems. Non-executive councillors can benefit from a basic understanding of the system of Generally

Recognised Accounting Practices (GRAP) as the financial and accounting data is presented using the GRAP system.

- c) The municipal council should establish a dedicated unit for supporting the non-executive councillors with research and other duties related to oversight. This will ensure that non-executive councillors have the necessary access to technical capacity and support.
- d) The municipal council should establish a culture of good governance. The establishment of a culture of good governance should promote accountability and access to information in municipalities. This has the potential to entrench oversight including budget oversight.
- e) The municipal council must utilise or establish through the Rules of Order appropriate oversight instruments such as questions, debates and interpellations to allow the council to raise budget issues during the meetings of the municipal council.
- f) The Speaker of the municipal council should provide leadership that fosters a culture of honesty, ethical practices and good governance. The speakers of the municipal council should also undertake visits to Parliament to observe how the parliamentary portfolio committees and the Standing Committee on Public Accounts operate in order to learn more about oversight.

It is believed that the implementation of the recommendations will go a long a way in improving the institutional and behavioural measures for oversight over the execution of the budget.



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