RELATIONSHIP BETWEEN THE EXECUTIVE AND LEGISLATIVE AUTHORITY IN SOUTH AFRICA WITH REFERENCE TO THE ROLE OF THE LEADER OF GOVERNMENT BUSINESS IN THE LEGISLATIVE AND OVERSIGHT PROCESSES

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DEDICATION

To former President Nelson Mandela, late Minister Steve Tshwete (Leader of Government Business 1995 – 1999), Dr Frene Ginwala, Speaker of the National Assembly 1994 -2004) and Rev Arnold Stofile (Chief Whip ANC 1994 – 1996) for the wisdom and vision shown in 1994 in setting up an office in Parliament to be the link between the Executive and Parliament. To Jacob Zuma who, since 1999, has shown great leadership as the Leader of Government Business in promoting the accountability of the Executive and advocating respect for the separation of powers, appreciating the role that the legislature has to play in the legislative process to strengthen South Africa's democracy.

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DECLARATION

I, the undersigned, hereby declare that the work contained in this Thesis "*RELATIONSHIP BETWEEN THE EXECUTIVE AND LEGISLATIVE AUTHORITY IN SOUTH AFRICA WITH REFERENCE TO THE ROLE OF THE LEADER OF GOVERNMENT BUSINESS IN THE LEGISLATIVE AND OVERSIGHT PROCESSES*" IS my own original work and has not previously been submitted at any tertiary institution for a degree.

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VY Calvert 1 November 2011

ABSTRACT

RELATIONSHIP BETWEEN THE EXECUTIVE AND LEGISLATIVE AUTHORITY IN SOUTH AFRICA WITH REFERENCE TO THE ROLE OF THE LEADER OF GOVERNMENT BUSINESS IN THE LEGISLATIVE AND OVERSIGHT PROCESSES

The relationship between the executive and the legislature in South Africa is determined by the Constitution. The study focuses on the separation of powers in a single party-dominant system and examines the role of the Leader of Government Business in parliamentary processes.

The Leader of Government Business is appointed by the President in terms of Section 91(4) of the Constitution. The role is outlined in the terms of National Assembly Rule (150), while the functions have been developed over time since 1994. Though an executive function an office in parliament was established to act as conduit between the executive and the legislature on matters relating to the legislative and oversight processes.

The office mainly fulfills its role by monitoring government's legislative programme and ensuring that government's priorities are achieved. Over the past 15 years, the office of the LOGB has developed into one that performs a dual function supporting both the executive and the legislature. Parliament relies more and more on this office in executing its oversight responsiblities with regard to the functions of programming in ensuring the availability of the executive, tracking matters of executive compliance and tracking vacancies in institutions that support democracy.

The study employed a combination of research methods. It used a desk top study approach by consulting relevant literature on the subject matter.

Interviews were conducted with both politicians and relevant officials in the South African Parliament and the House of Commons in Britain to gauge their perceptions, knowledge and experiences in respect of the role of the executive and the legislature in the legislative and oversight processes. Reports of Portfolio and Select Committees on deliberations during the legislative and oversight processes were consulted.

KEYWORDS OR PHRASES

1. Cabinet
2. Executive
3. Legislature
4. Parliament
5. Separation of Powers
6. Executive Dominance
7. Legislative Process
8. Parliamentary System
9. Oversight
10. Accountability

TABLE OF CONTENTS

TABLE OF FIGURES

ABBREVIATIONS

ANC	African National Congress
ATC	Announcements Tablings and Committee Reports
CODESA	Convention for a Democratic South Africa
COPA	Committee on Public Accounts
LOGB	Leader of Government Business
MP	Member of Parliament
NA	National Assembly
NEDLAC	National Economic Development Labour and Council
NCOP	National Council of Provinces
PC	Portfolio Committee
RDP	Reconstruction and Development Programme
RSA	Republic of South Africa
SCOPA	Select Committee on Public Accounts
SLA	State Law Advisors
UK	United Kingdom
US	United States

CHAPTER ONE: INTRODUCTION, BACKGROUND AND CONTEXT

1.1. INTRODUCTION

The relationship between the executive and the legislature[1] in the legislative and oversight processes is complex, yet dynamic and robust, with interdependent responsibilities and power-sharing among these two arms of government. The Constitution bestows on the Executive the responsibility to draft policy in the context of a legal framework, which in essence gives effect to a 'draft bill' which is then referred to Parliament for consideration and deliberation. Likewise, the Constitution bestows on the Legislature the responsibility to pass legislation which the Executive must implement.

The legislature is part of the 'State' and share in the responsibility to ensure that sound policy and laws are passed. Parliament's role is to represent the people and to ensure government by the people under the Constitution. This is done through facilitating public involvement in the legislative process and having political oversight over the Executive. The extent to which the legislative arm of government effectively fulfils this role depends on the balance of power between itself and the executive. This balance of power can also shift, depending on the political will on the part of both the legislature and the executive. The factors that impact on the power relations are complex and dynamic.

The thesis examines the relationship between the Executive and the Legislature with specific reference to the legislative process and investigates how the 'power-relations' are managed to enhance good democratic governance. The study focuses on the role of the Leader of Government

[1] In the context of the separation of powers the term legislature is used. The doctrine of the separation of powers refers to the distinct but related roles, responsibilities, and functions of the three arms of government, namely the executive, legislature and judiciary. Parliament depicts the way in which the doctrine is applied and interpreted, it depicts a particular system that influences the way in which politicians are elected to positions;policies and laws are made; and structures, practices and processes are designed

Business in the parliamentary processes, while taking cognisance of the legislature's constitutional mandate, and highlights the separation of political power and legislative oversight over the executive.

The chapter is organised into 6 sections. Section 1 provides an introduction to the thesis, Section 2 provides the background and context, Section 3 discusses the problem statement, Section 4 deals with the objectives, purpose and significance of the study. Section 5 outlines the methodology in terms of the scope, design and its limitations and Section 6 provides an outline and the structure of the thesis.

1.2. BACKGROUND AND CONTEXT

The South African Parliament has achieved much over the past 15 years of democracy. Since its inception in 1994 the democratically elected Parliament has undergone fundamental transformation in shaping itself into an institution that can effectively play its constitutional role in meeting the needs and expectations of the electorate. Mr Sindiso Mfenyana, the Secretary to Parliament 1996 to 2004, described his first encounter in the new Parliament (National Assembly Guide to Procedure: 2004: 1)

> "*When the new Democratic Parliament was opened on 9 May 1994, more than half of the members sworn in had never set foot in the South African Parliament, let alone understand the procedures to be followed. The form of address varied from 'Honourable' and 'Comrade' and the dress code was simply defined as 'clean and decent' in keeping with the prevailing weathe.r*"

Before the advent of a democratic Parliament in 1994, the Office of the Leader of Government Business did not exist. Rather, it was the Chief Government Whip, Venter's Notes (1983: 575 (20)) who played a strategic political role, liaising between the executive and parliament in ensuring that the government's programme was given priority in Parliament. In addition there

was a Leader of the House, who was responsible for the day-to-day business of the House, which included private members' legislation and requests from opposition parties for debates. Venter's Notes (1983: 575 (30)) indicates that business of the executive was indeed referred to as Government Business and debated in the House on a day specified for Government Business.

Dr. Frene Ginwala, former Speaker of the National Assembly from 1994 to 2004 described the concerns that confronted the newly incumbent Members of Parliament in forging a new and more appropriate role for the first democratically elected parliament (Budget Vote debate: 10 June 2003).

> "*In 1994, for those of us, and it was the majority, who had never previously entered these buildings and had no experience of governance, the concern would have been; how would we be able to cope with the responsibilities and tasks, whose dimensions, scope and detail we are unaware. It is inevitable, that faced with the day-to-day difficulties of functioning with inadequate resources, inappropriate facilities and systems, and poorly managed support systems, we may be overwhelmed by frustration, and fail to see the considerable achievements of this Parliament.*"

Prior to 1994, the Government Chief Whip attended Cabinet meetings whilst also being the second most senior Member of Parliament after the Speaker (Venter's Notes: 1983). In the new dispensation the Chief Whip of the Majority Party is the most senior among all whips and is not a member of the Cabinet. The LOGB is responsible for ensuring that government priorities are met in Parliament (National Assembly Rule 150).

Legislatures throughout the world are continually evolving, taking into account best practice, Constitutions, socioeconomic issues and political power. South Africa is no exception. Most liberal democacies have adopted some form of parliamentary government. The South African Parliament is largely based on the British Parliamentary System (incorporating the House of Commons and the House of Lords) also known as the Westminster system (Heywood: 2007: 337).

In the Westminster system the Leader of the House is appointed by the Prime Minister to ensure that the government's legislative programme is achieved. In terms of the South African Constitution, the President appoints the LOGB to ensure that government's legislative priorities are achieved in the legislature.

South Africa pre- and post-1994 to a greater or lesser degree adopted much of what was Commonwealth practice and tradition. In both the Westminster and the South African systems, parliamentary committees mirror State Departments. The committee system is used to call members of the executive to account, individually and collectively, to Parliament on matters under their responsibility. The opportunity for Members of Parliament to put questions to the executive is an oversight tool that is relished in both systems of government. Some practices such as the Leader of Government Business (LOGB) in South Africa was modified from Leader of the House to give this position a broader area of responsibility in terms of government priorities. The LOGB not only deals with matters relating to programming, but also facilitates communication on other aspects of government priorities, for example, ensuring that Parliament and the Executive have a common understanding on issues relating to the filling of vacancies on the SABC Board (June 2009), and other statutory bodies. Although the South African Parliament has borrowed extensively from the Westminster system, certain parliamentary practices and procedures, as illustrated above, were modified and adapted to meet South Africa's requirements.

In South Africa the powers and functions of the Executive and the Legislature are enshrined in the Constitution. The Constitution is itself a product of a protracted struggle and multi-party negotiating process (Parliament Since 1994: 2006: 18). The Constitution-making process started before 1994 with the CODESA process. The Convention for a Democratic South Africa, commonly known as CODESA, was a forum that brought together the widest cross-section of political groups in South African history. CODESA endorsed a declaration of

intent committing all parties to support an undivided South Africa whose supreme law would be its Constitution. The declaration reflected an initial vision for the country's legislative authority. It envisaged a sovereign Constitution – an immediate shift from the Sovereign legislative arm that could act unchecked under apartheid. The separation of powers between the legislature, the executive and the judiciary, with appropriate checks and balances was also agreed to (Parliament 2006: 15).

The interim Constitution agreed to by the multiparty negotiators, and subsequently adopted by Parliament, was a compromise document scripted by negotiators from different political backgrounds and persuasions. The interim Constitution was adopted in December 1993 and became operative on 27 April 1994.

The implementation of the new Constitution on 8 May 1996 meant more change for Parliament and the way it operated. The principles of co-operative governance, the participation of the nine provinces through the National Council of Provinces (NCOP), which has been in existence from 1997, the stronger oversight role of the legislative authority and a revitalised committee system signalled a break with the pure Westminster system inherited from the past.

A central feature of South Africa's democratic Constitution is the doctrine of separation of powers, autonomous yet interdependent between the three spheres of government. The constitutional provisions enshrine the independence of the arms and enable it to act as checks and balances against one another, signifying a clear break from the apartheid past, in which the judiciary was not protected from the executive and the legislature and had no meaningful autonomy from Cabinet. Thus the Constitution provides for the legislature to play an oversight role over the executive arm, in addition to its legislative functions. While the principle of separation of powers acts as an

important constitutional guide, there are areas in which the three spheres overlap. Members of Cabinet retain their seats in Parliament and are therefore members of the legislature and the executive. Members of the judiciary are appointed by the President with the participation of the legislature and the judiciary through the Judicial Services Commission, established in terms of the Constitution.

The founding provisions of the Constitution (1996) state that: "*This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled*." For this reason all legislation is subject to the test of constitutionality. The President may thus not assent to and sign a bill if he/she has reservations about its constitutionality. The final test of the constitutionality of legislation lies with the Constitutional Court. The President may refer a bill to the Constitutional Court for a decision on its constitutionality. Members of the National Assembly may apply to the Constitutional Court for an order declaring that all or part of an Act of Parliament is unconstitutional.

1.3. PROBLEM STATEMENT

Although a plethora of literature exists on the legislative authority, very limited literary and other information exists on the role and function of the Leader of Government Business. The system of proportional representation, with single-party dominance in both the legislature and the executive, impacts on the separation of powers, often resulting in a blurring of roles and responsibilities of the three spheres. The executive influences the legislature in the legislative and oversight processes. As Ministers are members of the study groups of the governing party, they often intervene at this level by discussing what is non-negotiable or by indicating what they are open to amending in respect of legislation. It is difficult to identify a clear and definite line between what is an executive function and what is a function of the legislature

as the executive must be involved in the parliamentary procedure of processing legislation.

The relationship between the executive and the legislature within the legislative and oversight processes is skewed in favour of the executive, thus impacting on the legislature's constitutional obligation of passing legislation and conducting oversight over the executive and holding government accountable to it.

1.4. OBJECTIVES, PURPOSE AND SIGNIFICANCE OF THE STUDY

The primary objectives of the study are to focus on the doctrine of 'Separation of Powers' and the role played by the Leader of Government Business in the legislative and oversight processes.

The secondary and more specific objectives of the thesis include:

- doing a literature review on the approaches, doctrine and philosophy of the separation of political power and legislative oversight over the executive
- providing appropriate examples of how these approaches are practiced by drawing on international experiences
- outlining and explaining the functions and role of the Leader of Government Business (LOGB) in relation to the legislative and oversight processes at the political level
- examining the powers and responsibilities of the National Assembly in the legislative and oversight processes
- reviewing the practices between the executive, legislature and the Leader of Government Business by highlighting relations that are in harmony or in conflict with one another

- conducting an analysis of the findings and identifying the factors that facilitate or constrain democratic practices in the legislative process and oversight processes
- drawing conclusions and making recommendations for future best practice.

The study is significant in that it outlines and discusses the role played by the executive authority through the Leader of Government Business in ensuring that the legislative priorities of government are achieved. All too often, however, one has had the sense that the administrative role of the office ventured into the sphere of the political arena, without a definite separation of administrative and political roles, the one complementing the other, with political imperatives being translated into the arena of administration.

The study represents an attempt to provide a comprehensive analysis to promote effective communication between the legislature and the executive, especially around legislative and oversight issues and programming of government business in Parliament.

1.5. METHODOLOGY

The study employs a combination of research methods. It is essentially a qualitative study including participatory observation[2]. It uses a desktop study approach by consulting relevant literature on the subject matter. Interviews were also conducted with both politicians and relevant officials in the South African Parliament to gauge their perceptions, knowledge and experiences in respect of the roles of the executive and the legislature in the legislative and oversight processes.

[2] The writer is a member of the South African LOGB

1.5.1. Scope

The study focuses on the relationship between the executive and the legislature in the National Assembly of the South African Parliament, and the influential role played by the LOGB in facilitating the legislative and oversight processes as areas of collaboration and contestation.

1.5.2. Design

In its design secondary data is gathered by reading the literature on comparative studies of other government systems and manuals of other selected Parliaments around the world. The reports of Portfolio and Select Committees on deliberations during the legislative and oversight processes are consulted. This secondary data is the main source of information used in the context and background of the study.

Primary data was collected by conducting 30 semi-structured direct interviews with Members of Parliament and senior officials on their experiences relating to the role of the executive in the legislative oversight processes. The selection of the sample interviewed is based on the following categories: rank, seniority i.e. years' experience or post occupied, and party affiliation/membership and gender, taking into consideration the representation of the parliamentary population.

The examples of cases used in chapter 3 are representative of cases in the category where there was harmony or discord. Some are examples of the legislative process and others of the appointments of persons to statutory positions. These examples are analysed by a critical application of the framework approach based on the doctrine of the separation of powers referred to in Chapter 2. These examples comment on how the role of the LOGB enhances or constrains democracy.

1.5.3. Limitations of methodology

The Study is limited as not much is written on the politically nuanced role of the LOGB within the parliamentary landscape. Transforming political imperatives into administration is an important role of the office of the LOGB, these processes have been developed over time since 1994. The findings are limited only to the South African experience and cannot be generalised as the context and details may differ.

1.6. STRUCTURE AND OUTLINE OF THESIS

The thesis is organised in 5 Chapters. Chapter 1: Provides a general introduction to the study. Chapter 2: Focuses on the approaches, doctrine and philosophy of the separation of political power and legislative oversight over the executive. It also provides examples of how these approaches are practiced by means of international experiences. Chapter 3: Provides an empirical overview of the current legislative and oversight processes in Parliament as well as providing an overview of the interaction and relationship between the executive, the legislative authority and the Leader of Government Business in Parliament. Chapter 4: Provides an outline of the findings of the study and an analysis of the findings of the study in identifying the factors that facilitate or constrain democratic practices in the legislative and oversight processes. Chapter 5: Concludes the study and makes recommendations for further study and practice.

CHAPTER TWO: LITERATURE REVIEW AND THEORETICAL FRAMEWORK OF THE SEPARATION OF POWERS

2.1. INTRODUCTION

The doctrine of separation of powers - *trias politica* – is regarded as one of the oldest constitutional principles in politics and in constitutional law. It refers to the threefold separation of powers among the legislative authority, the executive authority and the judicial authority. The historian W.A. Rubson wrote in his well-known publication Justice and Administrative Law that the "*divisions of labour between the legislature, executive and the judiciary is a necessary condition for the rule of law in contemporary society and therefore for government itself"* (Wade and Bradely 1991: 50).

This separation of powers among state institutions is significant in that it creates institutionalised mechanisms to balance the power relations between the three arms of government. The responsibility of the legislature to oversee government activities and government's accountability is at the base of the doctrine of the separation of powers. The separation of functions and powers promotes, enhances and strengthens democracy. The relationship between the executive, the legislature and the judiciary should nevertheless be complementary in achieving the objectives of the government as society was promised in an election, rather than being adversarial. Ideally they all wish to accomplish the same objective and that is to deliver an effective and efficient service to the electorate.

The diversity of models incorporating the separation of powers is recognised in most academic writing on the subject. The systems developed in each country depend on a host of factors, including the system of democracy adopted in that country, its sociopolitical and economic factors. Generally, there appears to be agreement among the various scholars that the accumulation of all power in

the same institution may lead to an abuse of power and eventually tyranny. In South Africa, the model of relationship between the executive and legislature closely resembles that of the Westminster system rather than that based on the Presidential System found in France and the United States of America.

This chapter is important in that being able fully to appreciate and understand the role and functions of the LOGB vis-**à**-vis the Legislature in the South African context, one must have the theoretical knowledge in respect of the doctrine of separation of powers as well as the value added to the debate and thoughts on the subject by various scholars in the field.

This chapter is organised in four sections. Section one is the introduction; section two provides a background and general overview of the doctrines, approaches and philosophy in respect of the separation of powers and legislative oversight over the executive. Section three discusses the different approaches to the separation of powers, i.e. the American Presidential System, the British Parliamentary System and both the South African apartheid and constitutional system of democracy (post-apartheid). Section four provides a summary of the chapter.

2.2. GENERAL BACKGROUND AND OVERIEW OF THE DOCTRINE AND PHILOSOPHY OF THE SEPARATION OF POWERS

As alluded to earlier, the separation of powers among the different spheres of government is one of the oldest constitutional principles in politics. According to Labuschagne (2004: 85) the fundamental value of the separation of powers lies in its constitutional 'checks and balances' to promote the constitutional control of state authority and to avoid the arbitrary exercising of powers. This role is in keeping with the ideal of a constitutional state (Basson1994: 144).

The doctrine of separation of powers entails that the freedom of citizens within a state can be protected only by a division of central institutionalised power, because the centralisation of power can potentially lead to abuse of power (Devenish 1998: 2). This division of authority is achieved by structural and functional separation of government's authority into legislative[3], executive[4] and judicial[5] branches. These functions are then exercised by different personnel (Rautenbach & Malherber 1996: 68) (Van der Vyver 1973: 177). The constitutional principle of separation of powers is a very important component of the maintenance of constitutional order. Almost all discussions of the trias politica doctrine start with reference to the two influential philosophers of the 'Age of Reason' who made fundamental contributions to the development of this doctrine, namely John Locke and the Baron de Montesquieu. Although the concept of separation of powers was first mooted in the early 1600s by the Levellers movement in England, a substantial part of the credit for further development must go to Locke and Montesquieu.

The First modern design of the doctrine of separation of powers was to be found in the constitutional theory of Locke. In his *Second Treatise of Civil Government*, (1632 – 1704) he noted that the temptations of corruption exist where "*the same persons who have the powers of making laws also have in their hands the power to execute them ...*". Locke's views were part of a growing English radical tradition, but it was French philosopher, Baron de

[3] The Legislature is voted in by the citizens of the country at an election, which, in South Africa, is held every five years. It has the primary responsibility to pass legislation. The legislature also provides a national forum in which the public can participate in issues and it also watches over the Executive arm of government, thereby fulfilling its oversight and accountability functions. Members of Parliament, including the Deputy President, Ministers (except two) and Deputy Ministers (except two) constitute the legislature /Parliament.

[4] The Executive has the responsibility to run the country and to make policies in the best interests of its citizens in terms of the Constitution. The Executive develops and initiates legislation linked to government policies. Importantly, it implements legislation passed by Parliament. The President, Deputy President, Ministers and Deputy Ministers constitute the executive. However, Deputy Ministers are not members of Cabinet.

[5] The Judiciary is the system of courts which interprets and applies the laws of the country. Under the doctrine of separation of powers, the judiciary generally does not make laws. Instead it interprets the law and applies it to the facts in each case. The Chief Justice, Constitutional Court Judges, Supreme Court Judges, High Court Judges and Magistrates constitute the Judiciary.

Montesquieu (1689 – 1755), who articulated the fundamentals of the separation doctrine as a result of visiting England in 1729.

In his *The Spirit of Laws* (1748), Montesquieu considered that English liberty was preserved by its institutional arrangements. He saw not only 'separation of powers' among the three main branches of English government, but within them, such as the decision–sharing power of judges with juries; or the separation of the monarch and Parliament within the legislative process (Labuschagne: 2003: 86). In Britain the Queen, as the Head of State, presents the government's legislative priorities in her annual address to the House of Lords, but these priorities are developed by the Prime Minister as the Head of Government and presented to the Queen.

Locke's and Montesquieus' ideas found a practical expression in the American Revolution in the 1780s. Motivated by a desire to make impossible the abuse of power they saw as emerging from the England of George III, the framers of the Constitution of the United States adopted and expanded the doctrine of the separation of powers. In an effort to ensure the preservation of liberty, the three branches of government were both separated and balanced, as suggested by (Labuschagne: 2003: 86), whilst Madison (Federalist papers 303 on the British philosophy of the separation of powers) observed that "*there was no watertight compartmentalisation of the three arms of government in Britain*", suggesting a co-existing and power-sharing relationship between the arms of government.

Power thus divided should prevent absolutism, as in monarchies or dictatorships, in which all branches of government are concentrated in a single authority, or corruption arising from the opportunities presented by unchecked power. Sunstein (2001: 98), observes that the separation of powers also helps to energise government and to make it more effective by creating a healthy division of labour.

The doctrine can be extended to enable the three branches to act as 'checks and balances'[6] over each other. The independence of each branch helps to prevent the other from exceeding its power, in so doing promoting the rule of law and protecting individual rights. The separation includes the extent to which the executive can control the legislative branch, or the extent to which the legislature can control the executive and hold it accountable and have oversight over it and the extent to which the legislative branch controls the capacity to legislate.

Esau (2004: 42) theoretically articulates this relationship,

> "*The doctrine of separation of powers is not aimed at an imbalance of power between the legislature and the executive, but at the balance of power between them. Any policy that the executive may want to implement is subjected to the approval of the legislature. In this manner the legislature exercises oversight over the powers of the executive.*"

Oversight[7] is a term that is used to describe "supervision" of the Executive. The American Heritage Dictionary (2003: 420) describes oversight as a 'watchful' care or management; supervision. What emerges from the wide spectrum of literature consulted on the subject, is that the doctrine of separation of powers in many Westminster constitutional arrangements contain a variety of principles which are often in tension with one another. According to O'Regan (2005: 25) the doctrine of separation of powers rests on a functional understanding of the powers and requires that each institution's character and competence be protected in order to perform these powers. Indeed, the principle of separation of powers within any constitutional arrangement requires not only the need to protect against the abuse of state

[6] Checks and balances: Internal tensions within government that result from institutional fragmentation. (Heywood: 2007:339)

[7] Oversight (author's emphasis) can thus be defined as a crucial role of Parliament in monitoring and reviewing the actions of the executive organs of government. Oversight is an instrumental mechanism used by Parliament to oversee executive action and is crucial in ensuring in particular that democracy is strengthened. It is a proactive interaction initiated by Parliament to ensure that services are delivered to the citizens of the country.

power, but should also ensure the effectiveness, efficiency and institutional integrity of each of the three arms of government.

2.3. DIFFERENT APPROACHES TO SEPARATION OF POWERS

2.3.1. The American Presidential System

FIGURE 1: American Presidential System

Source: http://www.magazineusa.com/us/info/show

The **Figure 1** above illustrates the American Presidential System The constitutional drafters considered the American Presidential System as the best expression of the Separation of Powers. In this system of government the President is elected separately from Congress[8], thus making a clear distinction between the separateness of the President (executive) and the Congress (legislature). The fact that there are clearer lines of separation between the

[8] The terms Congress and Legislature are used interchangeably in relation to the American Presidential System.

arms of government in Presidential systems does not naturally imply that the legislature is more effective in exercising oversight over the executive. There are no political party Presidents in the USA, however, political parties do support Presidential Candidates.

The American President is both the Head of State and Head of Government, as well as the commander-in-chief of the military. The Constitution bestows on the President the responsibility to ensure that all laws are faithfully executed. To carry out this responsibility, the President presides over the executive branch of the federal government. The President appoints Cabinet Secretaries (Ministers), who are not Members of Congress. This is done under the watchful eye of the Congressional committee that oversees the appointment of these persons to ensure their suitability for these positions.

In addition, the President has important legislative powers. The President directly engages Congressmen and Women so that legislative compromises can be 'struck' when necessary, in which case the President may address Congress or the Senate to motivate that legislation be approved. The President will use the support of certain Congressmen and Women to ensure that he receives the vote to assist with the passage of legislation. The President also has the power to veto legislation passed by Congress. Where the President vetoes legislation, it can only be overridden by a two-thirds majority vote in Congress. The President may not dissolve Congress or call special elections.

According to Melissa Merson (Director: Communications Congressional Budget Office: 13 August 2010) on the President's submission of his annual budget proposals to Congress for approval.

> "*The Congress has 'equal power' with the President. The concept of equal power creates 'natural tensions' between the executive and the legislature. Almost all of the time Congress votes down the President's budget requests. In essence, telling the President*

> *that they have the 'power' and will use it. Congress raises the taxes to spend and thus develops the budget*."

The above quotation demonstrates the veto powers of Congress. Generally, Congress utilises these veto powers, but in the end they support the budget. President Obama's Budget request of 2011/12, was not approved until the very end of the process due to the Republican resistance to the President's jobs programme. (New York Times 15 02 2011)

A two-thirds majority in Senate and a simple majority in Congress gives these instutitions the power to impeach[9] and remove the President from Office in the event of allegations of treason, bribery, or other high crimes and misdemeanours. The Presidential System, however, allows the President the power to force the legislature to act on legislation within a certain period. This 'power' is used rather persuasively, as in the case of President Obama addressing Congress to support the Health Care Reform Bill (2008) (Washington Post 5 10 2009), which is described in further detail on page 20.

The potential for congresstional legislative assertiveness is greater in presidential systems. Congress has the function to draft legislation and to pass its own bills. Congress drafts legislation often in close co-operation with the executive branch. Congress has the responsibility to monitor and influence aspects of the executive branch. Congress's oversight functions are efforts to prevent waste and fraud, protect civil liberties and individual rights, ensure executive compliance with the law, gather information for making new laws and educating the public, and to evaluate executive performance.

Oversight mechanisms of Congress include the following:

- Committee inquiries and hearings;
- Formal consultations with and reports from the President;

[9] Impeachment: A formal process for the removal of a public official in the event of personal or professional wrongdoing.

- Senate advice and consent for Presidential nominations and for treaties;
- House impeachment proceedings and subsequent Senate trials;
- House and Senate proceedings under the 25th Amendment in the event that the President becomes disabled, or the office of the Vice President falls vacant;
- Informal meetings between legislators and executive officials;
- Congressional membership on governmental commissions;
- Studies by congressional committees and support agencies such as the Congressional Budget Office, the Government Accountability Office, and the Office of Technology Assessment, all of which are arms of Congress.

Congressional oversight is an implied rather than an enumerated power in the American Constitution. The Constitution does not explicitly grant Congress the authority to conduct any of the above-mentioned mechanisms to investigate the executive, or to issue subpoenas for documents or testimonies. Historian Arthur M. Schlesinger Jr. noted that 'no provision in the American Constitution gave Congress express authority to conduct investigations and compel testimony. He added that the power to make laws implies the power to see whether they were executed. The legislature's authority to appropriate funds, enact laws, raise and support armies, declare war, and impeach the President could not be done without knowing what the executive was doing, how programmes were being administered, by whom and at what cost. Oversight by the legislative branch over the executive branch is necessary for Congress to ensure that the executive conducts its business in an accountable manner.

American Presidents have great control over their cabinet appointees, who serve at the President's pleasure, and are usually selected for reasons other than the extent of their congressional support (as in parliamentary systems). This means that the President can appoint key persons within the country to be Cabinet Secretaries, who act as his advisors (Heywood 2007: 362). This may imply that the President appoints individuals who might have been key financial donors during the election campaign. In theory, having an executive

branch that is separate from Congress creates the notion that the doctrine of separation of powers is entrenched. This does not imply that the Presidential system is absolutely free of influence or interference by the branches. Whilst depicting separation, branches are dependent on one another for decision-making.

A recent example illustrates the interdependence of the executive and legislative branches during the protracted process of the proposed Health Care Reform Bill (introduced in 2008), which was finally approved on 23 March 2010. During the American Presidential Election campaign in 2008, Barack Obama promised that one of his key priorities on becoming President would be to provide free health care to all citizens who could not afford to pay for this basic service. The Republicans as the main opposition party did not support the view as they argued that it would be too costly for the taxpayer. After many months of negotiations, which included an unprecedented approach by President Obama to address Congress on the issue, and the President lobbying members to support the reform legislation, the Health Care Reform Bill was eventually passed by Congress in March 2010.

Political parties in Presidential Systems tend to be less rigid than parties in Parliamentary Systems. Mphaisha (2000) highlights that failure to vote with one's party in the presidential system does not threaten to bring the government down. Whether Republican, or Democratic, members of the legislature have more freedom to identify with regional, ethnic, economic or other divisions when considering policy issues. An American President has to lobby hard for the support of interest groups whenever necessary.

Balutis (1979: 54) articulates the relationship between the Executive and the Legislature in focusing more on relationship-building rather than formal processes. 'Lobbying' in the presidential system, could be the term that best describes the processes of ensuring that government priorities are met.

Furthermore, Balutis (1979: 43) observed that whilst it is by now accepted that constitutions separate authority among the three spheres of government, there is a good deal of overlap among the institutions and that in fact they share power and responsibility. Freeman (1955: 1) noted, '*It is in the relations of the Executive and the Legislative branches to each other and to their political environment that one's attention is drawn to the most crucial public decisions of the day that are made'*. In this regard Griffith (1954) alerted scholars to the importance of focusing upon the actual operation of the governmental process rather than the formal, legal structures that condition it. Furthermore, he suggests that 'Networking or lobbying' between the branches of government are both key elements to ensure that government programmes are delivered.

> "*One bridge between the branches is formed by the professional staff of the legislature and their counterparts in the executive (Ministries and State departments). In this study it is suggested that staff has become a well-travelled bridge between the legislature and the executive branches of government; his study describes the network of the interrelationships and communication.*"

2.3.1.a. The Leader of the House in the US Presidential System

In the American Presidential System the Speaker acts as the Leader of the House and combines several roles: the institutional role of presiding officer and administrative head of the House , the role of the leader of the majority party in the House, and the representative role of an elected member of the House.
The leader of the House is elected by the House of Representatives and the majority party in that House will support its candidate. The majority Leader determines the legislative agenda of the House, he/she oftens confers with the President and the Senate, and if they and the President are from the same party, he or she becomes the spokesperson for the administration. The role of the leader is to expedite the legislative business of the House. As described earlier, legislation could be introduced by any member of that House and is

drafted by a centralised structure that is independent of political affiliation. Legislative requests normally eminate from requests of constituents.

The majority party in the House could be different from the political party to which the President belongs. The legislative priorities of government are therefore unlikely to be the same as that of the House of Representatives. This is due to the nature of opposition politics and the legislative imperatives of each party being different. In this regard, if the President and the majority membership in the House of Representatives were from the same party the government's legislative prioirities would not be subjected to the vigorous scrutiny that was described earlier, where the President addresses the House to defend government's legislative programme in order that the House may consider his request favourably.

Following the political party senario, the Leader will unite the House to reject the government's legislative proposals that are not in line with his/her party's policy. In this way the leader focuses on his party's policy, or his party's election promises. Since 2011, the leader of the House majority has worked to make the legislative process more open and to ensure the priorities of the citizens are reflected in the priorities of the legislators. In this regard the leader has iniated a process whereby bills are posted online at least three days before a vote in the House to gauge public opinion and in this way influence the decision of the House. In addition, party policy committees generally discuss party positions on pending legislation. Party caucuses may decide to appoint 'task forces' to perform research on new policy proposals, or to assist the leadership with developing a party position on important legislation.

The separateness of the imperatives of government and the House of Representatives is reflected in the strong opposition by the House to the passing of government bills, as described earlier. The role of the leader in the

US system of government is powerful in that he/she can influence and change the direction of government policy iniatives as introduced by the President.

In 2011, Leader Boehner focused on removing government barriers to private sector job creation and economic growth, cutting government spending and reforming Congress. Furthermore, the thrust was to build the bonds of trust between the American electorate and their representatives in Washington.

The congressional oversight role is amplified in the legislative process as no bill is passed without being subjected to an intensive scrutiny process, during which the public is also consulted. In the US Presidential system the 'power' of the leader is not tilted in favour of the Executive and the President where they are not from the same political party.

2.3.2. British Parliamentary (Westminster) System

Unlike a presidential system, the central feature of a parliamentary system is a 'fusion of powers' between the executive and legislative branches. (Heywood: 2007: 338, Wade and Bradley 1991: 53). In referring to the separation of powers in the parliamentary system, Rautenbach and Malherbe (1996: 68) observe that Montesquieu developed his doctrine on the basis of a somewhat erroneous interpretation of the Westminster System*, and* they argue that: *"the system is characterised by its extremely limited separation between the three branches of government"*. This 'fusion' or limited separation is due to members of the executive maintaining their seats in the legislature. The Prime Minister is elected in the same way that all other members of the Legislature are elected. The Prime Minister is the leader of the party that wins the majority of votes. The Prime Minister appoints Cabinet Ministers. However, different from the presidential system, they are members of the Legislature from the ruling party. Thus, in a parliamentary system, the constituency of the Executive and the Legislature are the same. If the ruling party is voted out of

the Legislature, the Executive also changes. Continued co-operation between the Executive and Legislature is required for the government to survive and to be effective in carrying out its programmes.

Britain represents the strongest form of parliamentary system – the Westminster system, often portrayed as the 'mother of parliaments' (Heywood: 2007: 337). Most Commonwealth countries have also adopted this approach, but with minor adjustments. In parliamentary systems, the Executive controls the legislative agenda, and individual legislators have little political power to introduce their own legislative initiatives. The Prime Minister and Cabinet initiates legislation affecting the budget or revenue. In the UK's Westminster system the legislature can only amend legislation on narrow, technical terms, not on policy matters, as these will have financial / budgetary implications which could lead to implementation constraints.

In parliamentary systems there are significantly fewer committees with relatively few professional staff to help draft and review legislation. There are exceptions though. Germany's semi-parliamentary system has relatively strong committees where legislation can be initiated, reviewed and amended by individual members.

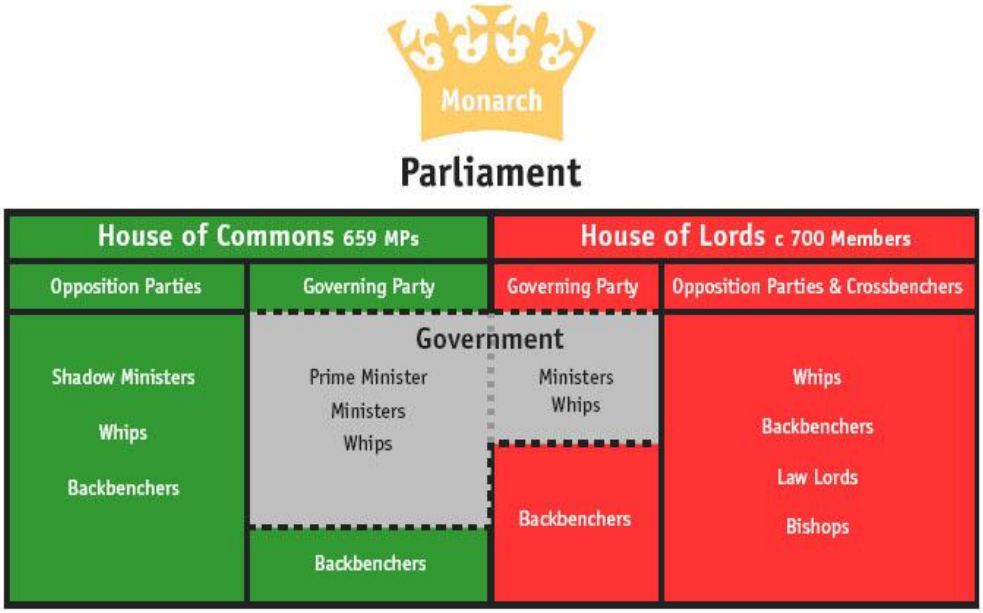
The Prime Minister can be removed from office in two ways. The first is through a 'no-confidence' motion, which is filed by the opposition or a coalition of opposition parties. The no confidence motion calls for a vote in the Legislature to demonstrate that the Legislature no longer has confidence in the Prime Minister and his Cabinet of Ministers. If the vote is passed by a majority, the Executive, including the Prime Minister, is forced to step down. Since the Prime Minister and his Cabinet of Ministers are members of the Legislature, this necessitates new parliamentary elections. The term of the Prime Minister, therefore, is generally linked to that of the rest of the Legislature. However, the Prime Minister can be removed by his/her own party members, in a setting

outside of the Legislature. For example, Prime Minister Margaret Thatcher was removed by party vote and replaced by John Major during the Conservative Party caucus. Such a removal, whereby the party decides to change its leader, does not force parliamentary elections. This also happened in the case of Gordon Brown replacing Tony Blair, who resigned to take up a diplomatic post, in 2008. Likewise, in South Africa, when the African National Congress (ANC) recalled President Thabo Mbeki in September 2008, and he was replaced by Kgalema Motlanthe, except that this recall sparked a number of resignations by Cabinet Ministers who were closely linked to President Mbeki.

Parliamentary Systems in developed countries are characterised by parties that are highly structured and tend toward unified action, bloc voting and distinct party platforms (Wade & Bradley 1991: 3). This party discipline is required in parliamentary systems primarily because deviation from the party line could result in bringing down the government. Heywood (2007: 338), suggests that *"parliamentary systems of government are often associated with the problem of executive dominance."* Parliamentary Systems require that the executive and legislative members come to an agreement on issues lest disagreement force the dissolution of the government. In addition, majority parties in parliamentary systems are perceived by voters to have a mandate to run the country. Therefore, each party may develop a system of punishment and reward. Individual members of the Legislature who deviate from a party vote may be punished by exclusion from their party within Parliament or may not be nominated by the party in the subsequent election.

The following diagram illustrates the structures and functioning of the British Parliamentary system.

FIGURE 2: The British Parliamentary System



Source: http://payvand.com/news/08/feb/British -Parliament1.jpg

2.3.2.a Legislative drafting in a Parliamentary System

In a parliamentary legislative system, the drafting of laws is situated in each Ministry. Every ministerial department employs its own legislative drafters. The Minister proposes a certain law to the Cabinet, and after Cabinet's approval, the Minister discusses the proposed law with the state law advisor, who will then start the drafting process. Each Ministry has its own drafters who are responsible for drafting and interpreting laws for that individual department or Ministry.

The evolution of every bill is politically influenced, from the conceptual stage to adoption and finally the implementation stage. In a parliamentary system of government, the evolution of a law starts with the political party's campaign promises. At every step in the evolution of a bill, the drafter's personal and political agendas exert an unavoidable influence on the conceptual aspects. Not only does a drafter's 'political agenda' influence priorities, but personal

considerations may also infiltrate the drafting process. It is therefore crucial for the drafter to understand the political agenda or campaign promises of the ruling party and the Ministry that he or she is working for. Seldom will the proponent for whom the drafter is preparing legislation or a rule have more than a rough idea of what it should include, or of its implications. Even less likely is that the proponent has considered its detail.

It is also important to note that legislative drafters do not operate in a political vacuum. The legislative process and its essential derivative, the drafting process, are inherently political in nature. The choices made within such a context are inescapably political advocacy choices. Legislative drafters are always confronted by the same question and one with obvious ethical and political implications, which is, "*how much is to be left to the drafter's discretion*?" The answer depends to a considerable extent on how aggressively a drafter probes the client for guidance on this question. The drafter who less frequently inquires about the client's desires will have greater latitude to exercise discretion and can accordingly play more of an advocacy role in shaping legislation. Such a situation has unfortunate ethical implications, tending to undermine two important and related professional responsibilities. The unscrupulous drafter who does not explain matters sufficiently to let the client make informed decisions not only subverts the ethical obligation to consult with clients, but also sidesteps a second duty, to 'abide by a client's decisions concerning the objectives of representation'. The drafters should also bear in mind that when they draft laws they should do so within the constitutional framework, thus eliminating all bias.

2.3.2.b Leader of the House in the British Parliamentary System

The Leader of the House of Commons is a key figure in both the executive and the legislature. The leader is both a member of Cabinet and a member of parliament chosen by the Prime Minister. Although the leader has collective

Cabinet responsibility for defending the government's policies in the House, he or she has the wider task of upholding the rights and interests of the House. With the Chief Whip, the Leader is responsible for the arrangement of government business in the House of Commons and for planning and supervising the effective execution of government's legislative programme. The leader chairs the Cabinet committee on the legislative programme. It is here that government's policy imperatives are discussed in relation to the legislative timeframes for passing such legislation. The leader is the conduit between the House of Commons and No 10 Downing Street, which is the headquarters of the executive, and communicates all government priorities to the Commons and vice versa.

The leader of the House is normally refered to as the 'prime-minister's man' ensuring that all government priorities are dealt with swiftly by the Commons. The leader has an extensive power base in government through membership of some of the most important Cabinet committees, including those on domestic affairs, economic affairs, environment, local government, public services, international terrorism and European issues. The leader of the House is normally the President of the Privy Council, which advises the Queen on various prerogative functions, and deals with the affairs of some 400 bodies. When Peter Hain was appointed leader of the House in 2003, he maintained his position as Secretary of the State of Wales, also a very powerful position. The participation of the leader in various Cabinet portfolios gives him/her a broad perspective of the imperatives of government and the timeframes for implementation of certain policy imperatives.

In order to be invited to form a government the prospective Prime Minister must have control of the House of Commons, for his or her party to have enough of a parliamentary majority to be certain of getting approval for the legislative programme, as announced in the Queen's Speech, and for government taxation and spending, through the Finance Bill and Estimates. The

Queen's Speech is the parliamentary core of the state ceremony. The speech is drafted by the government and approved by Cabinet. The speech normally refers to any recent or forthcoming royal events or state visits, and it contains some very broad policy intentions. The 2003 speech began: 'My Government will maintain its key commitment to economic stability and growth', a sentence that tells the Commons that they have financial authority, that financing the public services will be laid before them. The government's day-to-day control of the Commons is much more extensive.

Perhaps the most evident symptom of that control is the fact that every Thursday the Leader of the House announces what the business will be, namely what items will be taken on each day for the next fortnight. The House of Commons is primarliy for the government of the day to propose and to dispose. The Commons time, which is not ring-fenced, is at the disposal of the government of the day. In the 150 to 160 sitting days in a parliamentary session, only twenty (20) days are allocated 'opposition' days. Having said that, even then it is for the Leader of the House to decide when the opposition's days will be.

The main thrust of the Queen's speech is the legislative programme for the coming session, but the bills are usually described in very broad terms, only referring to policy imperatives that the government will introduce during that year.

In terms of the business of the House nearly 90% is iniated by government and is steered through the Commons by the Leader of the House, making government business the main thrust of the work of the Commons. Even though government business provides debating opportunity for the opposition the extent of the power of initiative is considerable. The vast majority of legislation passed by the legislature is government legislation. Even private

members' legislation stand almost no chance of enactment unless there is government support for it.

The British have an 'uncodified constitution', in which they are guided by conventions and laws that can be changed at any time by the legislature. In Britain the legislature is supreme. Legislation is not subject to constitutional scrutiny, but is guided by conventions instead. This gives the legislature immense power in the legisative process. However, the legislature is mindful of the conventions that guide its law-making. The government of the day has the power to change any law or policy to address its election promises. In this regard the Leader of the House is instrumental in ensuring that government's policy imperatives are achieved in the legislature.

The leader reports to Cabinet on forthcoming parliamentary business. The leader controls the arrangement of business in the House while the programme and details are settled by the Government's Chief Whip who, in the Westminster system, is a member of the Cabinet. Each week after a programme of business has been arranged, the Leader of the House states the business for the following week, (and, where possible, for a further week. The Leader presents government's proposed business to the House, during which time any member may ask him/her questions on any topical matter relating to either national or international issue or matter of public importance. He or she may also move procedural motions relating to the business of the House. This event clearly emphasises the control of the government over the way that time in the Commons is spent. In the absence of the Prime Minister, the leader moves motions of thanks or congratulation. The leader advises the House on government priorities as they arise.

The Leader of the House in the Commons, has an office in the Commons. The office supports the leader in carrying out the administrative functions relating to the legislature in respect of the executive. The location of an executive

function in the legislature is strategic in ensuring that government's views are networked in the Commons.

The conflicts and tensions between the leader as the executive representative in the Commons and other political parties seem to be greater when a coalition government is in power. This tension is natural as opposition parties are generally not supportive of the government's position on policy regardless of whether it is in the best interests of society. This seems to be the nature of opposition politics.

The 'usual channels' is vague language for the informal discussion that takes place between the Leader of the House, the government and the opposition chief whips. It includes discussion on day-to-day and minute-to-minute conversations and arrangements between whips on both sides. A key player is the private secretary to the government Chief Whip, who, although a civil servant and under the Chief Whips' direction, plays a highly political role as a go-between.

The usual channels deal with a wide range of business, from issues such as the amount of time the Commons will spend processing legislation in committee. Discussions through the usual channels are private. Were they to be made public, the effect is very likely to be less effective.

In the UK system, it might appear that little stands in the way of the government doing precisely what it wants, but the reality is a little more subtle than that. There is an expectation that the government, having won a mandate in an election, with a majority in the Commons can get its business through the House. However, in pratice this depends on a number of factors. These are, firstly, that the government must ensure that it has the support of its back benchers in order to maintain its majority in the Commons. The

government also ensures that it keeps the media opinion benign (Rogers & Walters :2004:84).

The government's working relationship with opposition parties ensures that government's legislative priorities are met. In House terms this means that there is general agreement on the arrangement and timing of business. An effective working relationship on the part of the opposition means that the opposition will have a chance to lodge priorities for debate.

INTERVIEWS

In an ***interview*** with a clerk in the House of Commons (March 2004) , he stated that, 'since 1997, the work of the modernisation committee led to the programme arrangements having been fine-tuned. In the early days of programming, the system operated on a fairly consensual basis, even when applied to very controverisal bills as the devolution measures, but from 2000 onwards programming had increasingly become a matter of contention, indeed bitter contention, between the two sides in the Commons.' In a debate in 2001, Eric Forth, the then shadow leader of the House, said: 'The government seemed determined to minimise or dispose of all opportunities for proper scrutiny of legislation', and in April 2003, he referred in the House to the 'systematic, routine and vicious timetabling of bills', while former Chancellor Kenneth Clark discribed programming as 'pernicious.' (Rogers and Walters: 2004:180)

There are various reasons why programming of bills is a source of strong disagreement in the Commons. The modernisation committee recommended that the constraints on time should be balanced by the more effective means of scrutiny of legislation, and that this could be done through the use of special standing committees. However, In the four sessions between 1998 and 2002, there were 48 programme motions, but only one bill was sent to the special

standing committees. This illustrates that although procedures and rules exist they could be tweaked without committing any violation to ensure a favourable outcome for the government.

In the UK experience, as mentioned earlier, a certain amount of time is allotted to some business proceedings in terms of the rules and conventions of that House. Although programming offers the prospect of more effective use of time, it can do nothing to increase the total time available, the pressure of government's legislative programme on the legislature remains the same. Government's legislative priortities remain the main focus of the House of Commons.

2.3.3. The South African Approach

2.3.3.a (i) Pre -1993

The discussion highlights that during the period 1910 -1993, the South African government was characterised predominantly by the dominance of a fused executive and legislature in a parliamentary system of government in which parliament was supreme. (Labuschagne: 2004: 84). In essence, the constitutional arrangement which was in effect at the time of parliamentary sovereignty[10] deliberately inhibited the separation of powers between the three arms of government so that the state could pass and enforce its Apartheid policies and programmes. The period 1910 -1993 was marked by the dominance of legislative supremacy in the parliamentary system of government. The impact of legislative dominance on the separation of powers was compounded by the fact that the legislature was sovereign and unrestrained in its unlimited power to pass legislation (Devenish: 1998: 8). This over-concentration of power in the legislature prevented the judiciary from exercising review of the laws passed by Parliament. The courts could only

[10] Parliamentary sovereignty refers to the absolute and unlimited authority of the legislature.

interpret the statutes and not question their validity. However, this constitutional arrangement, including the Apartheid state, changed profoundly after the adoption of South Africa's interim Constitution in 1993 and the subsequent democratic Constitution in 1996.

South Africa has come a long way from a system based on 'Parliamentary Sovereignty' under the Apartheid dispensation to one based on the principle of Constitutional Supremacy. The Constitution is the supreme law and even the legislature and the executive, including the President, must abide by and uphold the values enshrined in the Constitution.

The National Assembly[11] is elected to represent the people and to ensure government by the people in terms of the Constitution. It does so by electing the President, by providing a national forum for public consideration of issues, by passing legislation and by scrutinising and overseeing executive action. The NCOP, on the other hand, represents the provincial interests at a national level.[12]

2.3.3.a (ii) Post-apartheid

Constitutional Principle V1, of the constitutional principles negotiated at the multi-party negotiating process in the early 1990s and annexed to the interim Constitution, provided that:

> "*There shall be a separation of powers between the legislature, executive and the judiciary, with appropriate checks and balances to ensure accountability, responsiveness and openness*."

When certifying the 1996 Constitution, the Constitutional Court had to consider whether the new Constitution did indeed comply with this principle of

[11] Constitution Section 42 (3)
[12] Constitution, Section 42(4)

separation of powers indicated above. In responding to some of the challenges raised in respect to the text of the Constitution, the court responded as follows:

> "*There is, however, no universal model of separation of powers, and in a democratic system of government in which checks and balances result in the imposition of restraints by one branch of government upon another, there is no separation that is absolute. While in the USA, France and the Netherlands members of the executive may not continue to be members of the legislature, this is not a requirement of the German system of separation of powers. Moreover, because of the different systems of checks and balances that exist in these countries, the relationship between the different branches of government and the power or influence that one branch of government has over the other, differs from one country to another.*"

And-

> "*The principle of separation of powers, on the one hand, recognises the functional independence of branches of government. On the other hand, the principle of checks and balances focuses on the desirability of ensuring that the constitutional order, as a totality, prevents the branches of government from usurping power from one another. In this sense it anticipates the necessary or unavoidable intrusion of one branch on the terrain of another. No constitutional scheme can reflect a complete separation of powers: the scheme is always one of partial separation.*"

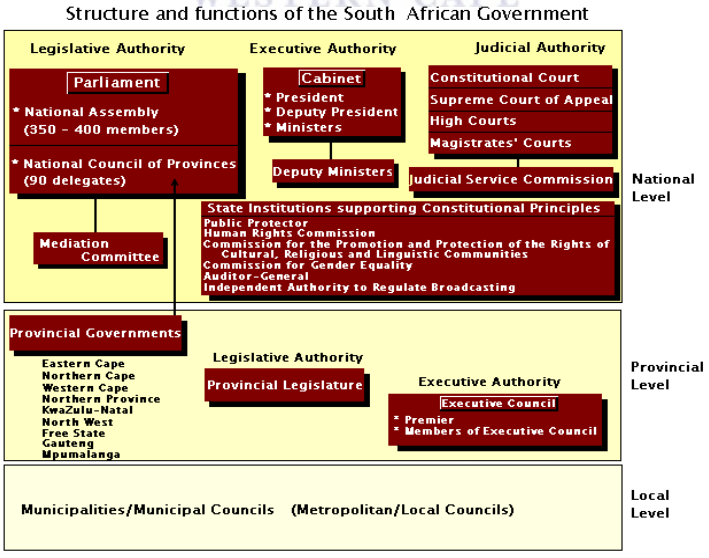
In Justice Frankfurter's words, *"the areas are partly interacting, not wholly disjointed"* (Constitutional Court Judgement: 1996). The court held that the Constitution did in fact comply with Constitutional Principle V1 in recognising both a separation of powers and "*appropriate checks and balances*" between the three branches of government to "*ensure accountability, responsiveness and openness*" (O Regan: 2005: 2).

Although the doctrine of the separation of powers allows for the three branches of government to have separate and distinct primary roles and

functions, they have shared roles and functions at the same time. They are interrelated and interdependent. This applies to representation, law-making, oversight and accountability, policy-making and dispute resolution (Gutto: 2007: 6). In relation to this, Rautenbach & Malherbe (1996: 69) observe that so much overlap of power exists that the Westminster Parliamentary System is described in terms of partial separation of powers. The practice that has developed in South Africa with regard to the relationship between the legislature and the executive gives credence to this theory. The Constitutional Court further noted that: *"No constitutional scheme can reflect a complete separation of powers: the scheme is always one of partial separation"* (1996:10 BCLR 1253 (cc) para 109.). With regard to the certification of the Constitution, Rautenbach & Malherbe (1996: 69) further highlight that *"no system exists in which a total and absolute separation of government authority can be found."*

The diagram below illustrates the structures and functioning of the three pillars of government within the three spheres of government.

FIGURE 3: Structure and function of the South African Government



Source: http://www.jyu.fi/viesti/verkkotuotanto/kp/sa/soc_government.shtml

Legislative drafting is essentially the domain of the executive. Each department has a legal department tasked with the responsibility to develop and draft bills in accordance with government's policy imperatives.

In terms of the Constitution the executive develops the laws and policies for the country, the legislature passes the laws but also has the power to initiate laws. Similarly, Section 85(2)(d) of the Constitution empowers the courts to develop common law and customary law, i.e. Sections 8 and 39, which implies that the courts also have the power to make laws, apart from interpreting and applying the law. In its legislative and oversight role the legislature also contributes to policy evolution, which is normally considered to be the domain of the executive. Since 1994, only one Private Member's Bill of substance was passed by Parliament, that is the Correctional Services Amendment Bill, 1996, proposed by Mr Carl Niehaus, an ANC MP. The National Assembly also pioneered the Floor-crossing legislation (2000) and drafted the Money Bills Amendment Procedure Act (2008), in line with constitutional provisions.

It is important to note that the National Assembly plays the important role of electing the President, the Head of State, from amongst its members. The Chief Justice presides over the proceedings of the election of both the Speaker and the President. It is on this occasion that all three arms of government participate in the proceedings of the National Assembly. (National Assembly Minutes: 6 May 2009). In this case it signifies that although they are separate arms of government, they co-operate on formal occassions to make decisions. Once elected, the President then relinquishes his/her seat in Parliament and selects his Cabinet[13], also from amongst Members of Parliament. The Constitution provides that the President can select two Ministers and two Deputy Ministers who are not Members of Parliament.

[13] Cabinet: A group of senior Ministers that meets formally and regularly, and is chaired by the President/Prime-Minster. Deputy Ministers are not members of Cabinet.

Importantly, Gutto (2007: 6) observes that the Head of State, Ministers and Deputy Ministers are also elected representatives of the people. Thus, the separation of powers needs to be understood as co-existing with power-sharing, more especially between the legislature and the executive. The balance of power between the branches could be a matter of concern within the South African context. From a Constitutional angle, the executive could be viewed to hold the balance of power simply because the executive is constituted by the Head of State, who is also the Commander-in-Chief of the Armed Forces, and the symbol of a sovereign nation in the international community (Gutto:2007: 6). Cabinet is the political executive of government and has a more direct role in the regulation of the economy, including the generation of the revenue that all the other branches depend on.

Theoretically, the power that the legislature has to amend the budget may seem to tip the balance of power in its favour. The Money Bills Amendment Procedures Act allows for processes and steps to be followed by the relevant Portfolio Committees in the recommendation process before any amendments to a money bill can be agreed to. The extent to which the legislature effectively fulfils its role in passing legislation lies in the power relations between the both the legislature and executive. This balance of power is dynamic and can shift either way depending on the political will in both the legislature and the executive (Gutto: 2007: 6).

2.3.3.b Leader of Government Business (LOGB) in South Africa

Similarly to the UK System, South Africa also has a 'leader'(see Chapter 3). Consistent with the Constitution Section (91) 4, the President appoints the Leader of Government Business (LOGB)[14] in the National Assembly when

[14] The Leader of Government Business (LOGB) is appointed by the President. The key responsibility of the Leader is to ensure that government's legislative programme is prioritised by Parliament. The Leader's office forms the conduit between the executive and the legislature. Although the leader is an executive

appointing Cabinet. The 'leader' is in the service of the executive. This position was held by senior Cabinet Ministers in the past, Trevor Manuel was appointed as the first Leader of the House in 1994, until 1995, when he was succceeded by Steve Tshwete, while the name of the office changed to the Leader of Government Business in 1996. Jacob Zuma was appointed to this positon in 1999. The leader is required to speak on government's behalf on a range of issues. "*The constructive manner in which Jacob Zuma and, under his leadership, Parliament began to benefit from a structured relationship with the executive. The way Jacob Zuma conducted this relationship earned him the accolade 'friend to parliament" (SA Parliament since 1994:41).*

The primary role of the LOGB, as developed over time, is being the interface between the executive and the legislature. The Leader provides strategic political input effectively to programme government priorities, while considering the legislature's constitutional role in processing legislation, with regard to public involvement. That being said, the LOGB is responsible for approaching the legislature to hasten the legislative process at any stage of a bill as is required by government, which is called fast-tracking. Since 1994, the LOGB has played a significant role in ensuring that executive priorities are responded to by the legislature.

The interface between the two branches is necessary to promote and strengthen accountability and effective exercise of oversight of the executive. The dynamic interaction between opposition Members of Parliament and members of the executive in the National Assembly is facilitated in a manner that promotes transparency and robust debate.

The legislature has the responsibility to pass legislation and to oversee its implementation. Included in this is the function of approving the Budget, or

appointment, he/she through his/her parliamentary office has a strong presence in parliament, ensuring that government priorities are given precedence in the legislature.

Main Appropriation Bill, which includes the Budget Votes of individual departments. The LOGB plays an instrumental role in ensuring the scheduling of bills and Budget Votes in accordance with government's priorities, whilst considering Parliament's programme timeframes. Much of the LOGB's influence is exerted behind the scenes through discussions with the Chief Whip and chairpersons of committees.

The above is practically illustrated through the Interaction with other political parties, for example, with a view to developing and enhancing co-operation, the LOGB has quarterly meetings with all party leaders to build and maintain good relations between all parties and party leaders. The LOGB briefs party leaders on various policy issues and government initiatives. Parties may raise issues of importance that they may feel the government should address.

The Chief Whips' Forum, which comprises of whips and senior party representatives of all parties, is a communication facilitation forum for parties. This Forum meets weekly to discuss, among other things, programme matters and to ensure the smooth operation of Parliament in relation to problems experienced by members. If there are issues that the Chief Whips' Forum cannot resolve and it requires government intervention, then such issues are raised with the LOGB at a separate meeting.

Over the years the LOGB has forged good relations between all parties, which has generated a positive response from parties in accommodating requests from government relating to programming matters. All parties are kept abreast of matters relating to the parliamentary programme, for example, parties are informed timeously of the availability of Ministers on Question day in the Assembly.

2.4. SUMMARY

This chapter presented an overview of the doctrine and philosophy of separation of powers. It was pointed out that the separation of powers among the different spheres of government is probably one of the oldest constitutional principles in politics. It is a generally accepted principle that the fundamental value of the separation of powers lies in its constitutional 'checks and balances' to ensure that state authority is constitutionally controlled and regulated so as to ensure that it is not exercised arbitrarily. In essence, the doctrine of separation of powers entails that the freedom enjoyed by citizens of the state can be ensured only through a division of central institutionalised power. There were many scholars who contributed to the body of knowledge on separation of powers, but notable among these were the philosophers John Locke and Baron de Montesquieu. Although they are not credited with developing the concept, they did add considerably to the debate at the time and are even credited with its further development.

The chapter also focused on the different approaches to separation of powers, reviewing the American Presidential system, the Westminster of Parliamentary system and the South African systems, as experienced prior to 1993 to the present. In the American system there is a clear distinction between the executive and the legislature, which is Congress. The President appoints Cabinet Secretaries, who are not members of Congress, although their appointment may require the advice and consent of a congressional committee. The President has important legislative powers and also has power to veto legislation passed by Congress. The President and his Ministers are accountable to the electorate.

Unlike the American Presidential system, the Westminster system is a 'fusion of powers' between the legislative and executive branches. In the latter system, the Prime Minister and his/her Cabinet Ministers are part of the legislature.

The executive dictates the legislative agenda, and individual members have little political power to introduce their own legislative initiatives. Parliamentary systems, more especially in developed countries, are characterised by parties that are highly structured and tend toward unified action, bloc voting and distinct party platforms. Strict party discipline is required in parliamentary systems primarily because deviation from the party line could result in bringing down the government.

With regard to the South African experience, the discussion highlighted that during the period 1910-1993, the South African government was characterised predominately by the dominance of a fused executive and legislature in a parliamentary system of government in which Parliament was supreme. In essence the constitutional arrangement which prevailed at the time inhibited the separation of powers between the legislature, executive and the judiciary. However, with the demise of Apartheid and the adoption of the final Constitution in 1996, the constitutional landscape changed dramatically.

In South Africa Members of Parliament are not directly accountable to their constituencies; they are accountable to their party. South Africa's party-dominant electoral system plays a major role in direct accountability to the party at the expense of the electorate.

The constitution-drafters in democratic South Africa recognised and entrenched the principles of separation of powers and made provision for the appropriate checks and balances between the three arms of government to ensure accountability, responsiveness and openness. The separation of powers that exists between the executive and the legislature in South Africa is not as clear-cut as that which theoretically exists in the American Presidential system. In the United States Cabinet Secretaries are not members of Congress, as in parliamentary systems, therefore creating the perception of complete separation (Verney 1992:115). This clear separation between the executive and

the legislature does not imply that legislative oversight and executive accountablity are more effective.

It is widely accepted that there is no universally accepted system for achieving the separation of powers between the different branches of government. In practice, the three branches have separate and distinct roles and functions, but they also have shared roles and functions. Herein seems to lie the problem, because some commentators argue that the balance of power is tilted in favour of the executive.

The chapter is rounded off with the discussions of the role and functions of the Leader of Government Business (LOGB) in South Africa. The office is not unique to South Africa, but has evolved over the years and has acquired unique attributes. The theory of the South African approach constitutes the model that is to be used to analyse Chapter 3.

CHAPTER THREE: PARLIAMENT LEGISLATIVE AND OVERSIGHT PROCESSES

3.1. INTRODUCTION

27 April 1994 marked the beginning of a new era in South African law-making. The first term of the new Parliament, 1994 - 1999, is significant in that both the executive and the legislature had the enormous task of rewriting statutes dominated by oppressive apartheid laws.

Parliament is elected to represent the people and to ensure government by the people in terms of the Constitution, the electorate thus 'handing over' its power to Members of Parliament. Parliament represents the people through its public consultation process in processing legislation. The legislature must, among other things, ensure that democracy is strengthened by passing legislation in a democratic process. In this regard, public participation in the legislative process is an important factor that contributes to strengthening democracy.

This chapter uses, firstly, the process of passing legislation and, secondly, the process of oversight to examine the separation of powers and the relationship between the executive and the legislature. In so doing it highlights and examines the role played by the Leader of Government Business (LOGB).

The chapter outlines the relationship between the executive and the legislature as it plays out with regard to the legislative process showing more examples of harmony than of discord. The chapter is organised in five sections. Section one introduces the chapter. Section two provides an overview of the process of passing legislation. Section three provides an overview of the laws that were passed. Section four discusses the oversight process and section five summarises the chapter.

3.2. OVERVIEW OF LEGISLATION PASSED

Parliament has had an extraordinary legislative load since its establishment in 1994. The table below illustrates the number of bills[15] that Parliament has passed since 1994. Many discriminatory Apartheid laws have been either amended or abolished. It was no surprise therefore that a total of 998 new laws were enacted during the first nine years of democracy in South Africa.

FIGURE 4: Number of bills passed (1994-2010)

Year	Bills	Acts
1994	60	55
1995	108	89
1996	108	108
1997	116	108
1998	142	137
1999	66	60
2000	70	70
2001	85	69
2002	70	75
2003	74	61
2004	25	40
2005	42	39
2006	35	28
2007	51	45
2008	82	77
2009	8	16
2009 (4th parliament)	16	8
2010	47	26

Source: Legislation and Bills Office in Parliament: December: 2010

[15] Bills: proposed legislation in the form of a draft statute; if passed, a bill becomes an act

The overwhelming majority of the laws are passed without incident, which demonstrates the balance of power and synergies between the executive and the legislature. Determining the relationship between the executive and the legislature, the way it ultimately plays out in the legislative process is a consequence of the party-dominant system.

There are however some instances when the process of passing legislation is less harmonious. It is these incidences that allow us an opportunity more closely to examine the relationship between the executive and the legislature and illustrate perhaps more clearly the principle of the separation of powers between the executive and the legislature in a democracy.

3.3. THE RELATIONSHIP DEFINED BY THE CONSTITUTION

The Constitution provides the framework in which the relationship between the executive and the legislature[16] is played out with regard to the legislative process. In this regard the Constitution places an obligation on the National Assembly (Section 55(2)) to provide for mechanisms through which the National Assembly ensures oversight. These mechanisms are the executive being summoned to appear before portfolio and select committees, the questions procedure, parliamentary debates, statements by members and ministerial responses. Section 42 of the Constitution ensures that both the National Assembly and the NCOP are national forums for public[17] consideration of issues.

The importance of the Constitution and the legislature is perhaps best summed up by former President Nelson Mandela's final speech to the National Assembly in 1999

> "*Because the people of South Africa finally chose a profoundly legal path to their revolution, those who frame and enact the*

[17] Public Participation Process: Constitution provides that Parliament must engage the public by holding public hearings on legislation.

> *constitution and law are in the vanguard of the fight for change. It is in the legislature that the instruments have been fashioned to create a better life for all. It is here that oversight of government has been exercised. It is here that our society with all its formations has had an opportunity to influence policy and its implementation.*" (Hansard: 26 March 1999)

Parliament's rules provide substantive powers to its committees, through which it may summon any person, including a member of the executive. This similar provision is also provided by the Constitution with regard to the NCOP (Section 66(2)) who may require a member of the executive to attend a meeting of the Council or a committee of the Council. In this regard the Constitution forms the framework for the relationship between the executive and the legislature.

The Executive, meaning the Deputy President, Ministers and Deputy Ministers, holds 65 seats in the National Assembly. They are key drivers of national policy and are responsible for the lion's share of the work generated in the National Assembly. This mainly relates to Bills introduced by the Executive and various reports, policy papers and strategy documents whose passage through Parliament is facailitated by the LOGB (NA Guide to Procedure 2004: 135). The Leader of Government Business plays a key role in co-ordinating government's legislative programme, which must take place within the required deadlines[18] set by Parliament and, where necessary, requests Parliament to "fast-track[19]" a bill.

As described in chapter two, although the Constitution does allow Parliament the power to iniate bills (55,1(b)), the South African Parliament has not often utilised this mechanism to iniate major policy changes. One such example is in the case of the floor-crossing legislation (2000). This practise is historical in

[18] **Deadlines for submission of legislation: F**or each quarter the Joint Programme Committee (JPC) determines deadlines for the introduction for legislation by the Executive.

[19] **Fast-Tracking** is a process whereby a Joint or House rule or rules are dispensed with in order to expedite the prompt passage of an urgent bill through Parliament. A request for fast-tracking may only be made by the Leader of Government Business, in the case of a bill initiated by the Executive.

nature as most legislatures in parliamentary systems have limited responsibility for drafting legislation, except in the case of the German Parliament as described in chapter 2.

To deal with the work generated by the executive, the legislature established 54 Committees that are all chaired by ANC Members, with the exception of the Public Accounts Committee. It is an international convention in democratic states, also confirmed by the Inter-Parliamentary Union, of which the South African Parliament is a member, that committees overseeing government expenditure is chaired by an opposition party member. In following this convention, Mr Themba Godi of the African People's Convention has been appointed to the chairpersonship of the Committee.

Although the decision-making power is 'handed over' to Members of Parliament, consultation with the electorate plays an important role in the democratic legislative process. Public Participation in the legislative process is an important constitutional imperative to ensure that the views of all interest groups are considered so that democracy is strengthened. Political parties are the main vehicle for representing different interest groups, which is due to the electoral system in South Africa, in terms of which voters cast their votes for parties of their choice rather than for individual Members of Parliament.

The legislature has the responsibility to ensure that the legislation is fully debated in an open public forum. The legislative process involves several categories[20] of bills, each of whom is subject to a different procedure.

[20] **Section 74: Constitutional Amendments:** Amending the Bill of Rights requires a vote of two-thirds of the National Assembly and the support of six provinces in the National Council. Amendments must be passed by the NCOP. All amendments affecting the provinces must be passed by both Houses. **Section 75: Ordinary Bills not affecting provinces:** These Bills can only be introduced in the National Assembly and once it is passed it is sent to the NCOP. A Bill is passed when there is a majority vote by delegates of the NCOP present. **Section 76: Ordinary Bills that affect provinces** The Bills are introduced in either the NA or NCOP and must be considered by both Houses. Votes are made by provincial delegations and for this reason there are nine votes. Bills are usually considered by a provincial committee, which may hold public hearings on the bill for comments and suggestions. And **Section 77: Money Bills (budget, taxes,**

3.3.1. The Pre-Parliamentary Legislative Process

The original ideas for government legislation come from various sources. Party policy is derived from Luthuli House, the headquarters of the ANC, which is approved through maintaining the mandate of the elections. Apart from the policy being tested by the ANC it is also tested in general elections, where the ANC gets its mandate.

Politics shapes laws, economics and society in many ways, for example, as Johnson (2000:147) articulates, *"reform is mainly driven by the executive"*.The party system is mainly influenced by the policies and mandates of the majority party. Policy may also arise from submissions by and pressure from interested citizens, parties and groups in the community or from suggestions by Members of Parliament.

Bills are drafted by departmental officials, although often experts are contracted to assist in the drafting of specific Bills. According to Parliament's Training Manual (2009)[21] Cabinet[22] is involved in the legislative process not only by initiating legislation but also at its conclusion since the bill only becomes an Act of Parliament and therefore binding law in the Republic once it has been assented to by the President. The President may only return a bill to Parliament for reconsideration on the grounds of unconstitutionality. The Leader of Government Business (LOGB) informs Parliament at the beginning of each year of government's legislative priorities. The intention is to allow Portfolio and Select Committees to plan its work for the year ahead.

levies or duties) Money Bills allocate public money for a particular purpose or imposes taxes, levies and duties. They can only be introduced by the Minister of Finance in the National Assembly. In terms of the Money Bills Amendment Procedure and Related Matters Act, 2009 (Act No 9 of 2009), Parliament has the power to amend money bills.

[21] Parliamentary Training Manual 2009: Guide produced for new Members of Parliament.

[22] Deputy Ministers are not Members of Cabinet – Section 91(1)

3.3.2. Green and White Paper Process

The Green and White Paper process is a public consultation process whereby government[23] consults with various stakeholders during the drafting stage of a bill. This often includes consultation with various communities that are affected by the proposed legislation as well as NEDLAC[24], where proposed legislation relating to labour market policy is fleshed out before it is introduced in Parliament, and where all significant changes to social and economic policy are considered.

This discussion document gives an idea of the general thinking that informs a particular policy. It is then published in the Government Gazette for comment, suggestions or ideas. This leads to the development of a more refined discussion document, a White Paper, which is a broad statement on government policy.[25] The White Paper is again published for public comment in the Government Gazette, if any further comments are received they are considered. The White Paper is further refined into a draft bill.

Deputy President Kgalema Motlanthe, at the 15th NEDLAC Annual Summit 11 September 2010, articulated the importance of the relationship between government and labour in ensuring that legislation takes into account issues that affect workers' rights:

> *"Whilst this consultative forum demonstrates a commitment by government towards recognising consultation with all sectors in legislative development, by the late 1990's, however, labour began to complain that government and business were not taking Nedlac seriously enough and that they saw Nedlac as a compliance requirement, rather than an integral part of a state committed to a social partnership path to economic development."*

[23] Government also refers to the Executive
[24] National Economic Development and Labour Council
[25] Training Manual for Members of Parliament

3.3.3. Cabinet Process

The Minister in charge of the bill submits the draft bill together with an explanatory memorandum to the Cabinet Committee for comment. Subsequent to recommendations by the committee, further drafting may occur. Liaison between the Cabinet Committee and the relevant State Department often takes place before that committee takes a decision on the bill. The recommendations of the Cabinet Committee are submitted to the full Cabinet, chaired by the President. After Cabinet has given its approval[26], which may include further recommendations, the bill is published for public comment in the Government Gazette (NA Rule 241)[27]. Immediatley after receiving Cabinet approval, it is important to note that the Bill is published for public comment three times by the executive before it is introduced in Parliament. The Minister in charge of the bill informs Parliament of the proposed legislation to comply with Joint Rule 159[28].

The LOGB informs the respective department to refer the Bill to the State Law Advisors (SLA) who finalise its drafting and check that it does not conflict with existing laws, including the Constitution. After the SLAs have certified the Bill it is referred to Parliament. The LOGB informs Parliament of its urgency or importance as soon as the bill is certified. The same applies to normal procedural statutes that do not require implementation by a required date.

The state law advisors transfer the certified bill to Parliament. The Bill is edited for language, printed and given a Bill number, B4-2011, for example. The Bill is referred to the relevant Portfolio Committee by the Speaker.

[26] Bills to be introduced by a member of the executive must be approved by Cabinet, as Cabinet is 'collectively' accountable in terms of the Constitution.
[27] NA Rule 241Bills must be published in the Government Gazette after receiving cabinet approval.
[28] Joint Rule 159:After Cabinet approval parliament must receive the draft bill and an explanatory memorandum before certification

3.3.4. Parliamentary Committee Process

Committees are the main platform where the legislature engages with legislation or any matter introduced by the executive. Committees are often referred to as the 'engine room' of the legislature. It is here that civil society is given an opportunity to express its views and may try to influence the outcome of legislation. At the beginning of the parliamentary process the respective committee to which the bill is referred engages with state departmental officials, who go through each clause of the Bill, keeping in mind the imperatives and implications that the bill will have on society once implemented. Committees represent all political parties; this is the stage where everyone is given a voice. Committees play a very important role in processing legislation and overseeing the work of the executive. The committee must ensure public participation before approving the Bill as provided for by the Constitution. The committee must advertise in various media sources for comment from the public. Public hearings are normally conducted at Parliament, but in cases where rural communities are consulted, the hearings are held in that area to make the process accessible to the public.

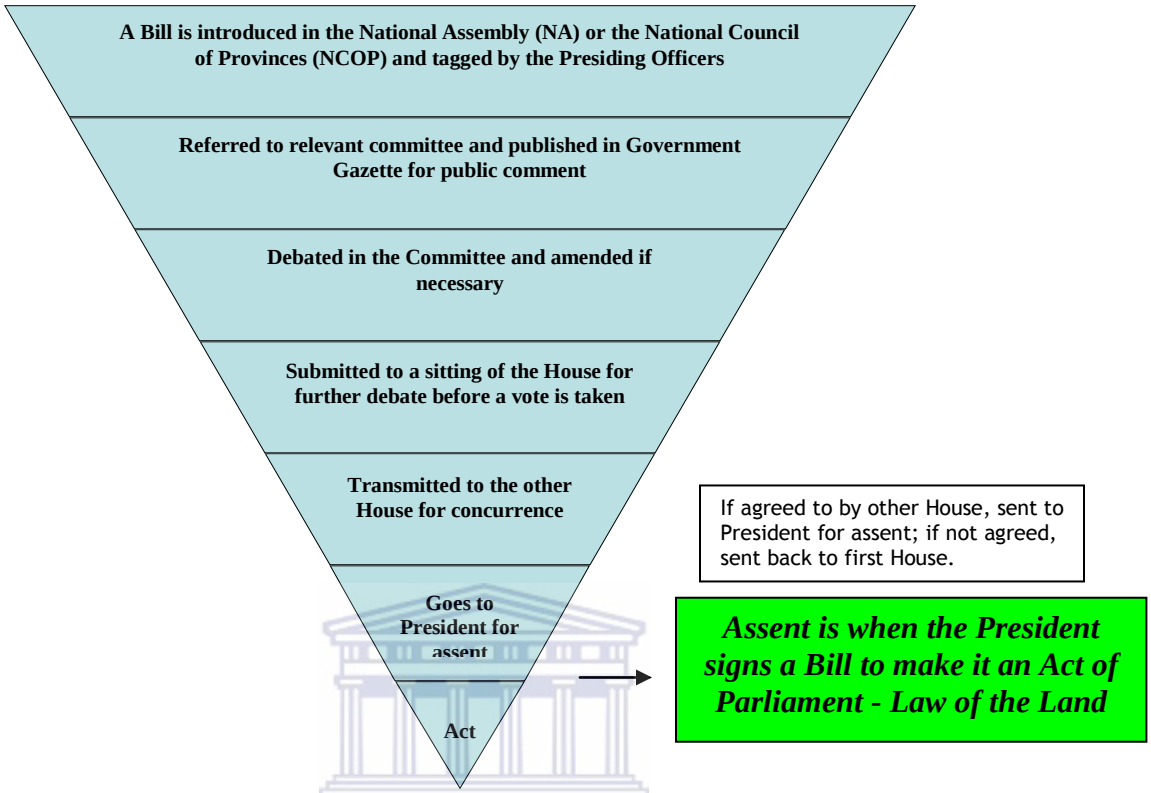
There is uaually a formal closure of the public participation process, however, nothing prevents a committee from receiving and distributing further written representations until the voting stage in the committee. After the Adoption of Motion of Desirability, the motion to accept the principle of and the need for the legislation, the committee considers the bill formally. Each clause is formally put, and every amendment formally proposed, and decided. The committee then formally considers and adopts the report, recommending passing or rejecting of the Bill (Parliamentary Training Manual: 2009).

Depending on the nature of the Bill, this process of engaging the public could be quite extensive and could have an influence on the outcome of a bill. The 'Protection of Information Bill' has changed as a result of the public's

interaction with the legislature on a bill initiated by the executive. The name of the bill was also changed to the 'Protection of State Information'. Due to the huge public opposition to the bill, the majority party, the ANC, subsequently reopened the public consultation process to consider further issues raised by various stakeholders, although parliament had already finalised its process of deliberation. The *ad hoc* committee dealing with the bill had voted, or reported, on the bill on 13 September 2011, thus formally closing proceedings on the bill. In terms of parliamentary procedure this means that the bill is no longer in the committee arena, but already before the National Assembly for consideration.

This example highlights the fact that the legislative process can potentially be relegated to 'rubber stamping'. The executive managed to influence the committee to proceed with passing the bill despite huge public and civil society opposition to the legislation. Some Constituional Court judges had declared the legislation unconstituional before it was passed. Despite the parliamentary procedures being followed, including a public participation process on the bill, the legislature had not considered any of the concerns raised by civil society. In this case civil society had continously exerted pressure on Parliament to ensure assertiveness in the legislative process. In theory the legislative processes were followed, but the public's dissatisfaction with and objection to the bill were not considered. On 20 September 2011, The Protection of State Information Bill was removed from the 'Order Paper' by the ANC Parliamentary Caucus until further consultation with civil society had taken place. Civil society had been instrumental in ensuring parliamentary dominance over the executive in this regard.

FIGURE 5: Legislative process after introduction of the bill



Source: Paper presented at a Parliamentary Monitoring Group Training Workshop, Mandy Taylor 1998, How a bill becomes law.

To facilitate government's legislative programme through Parliament, the office of the Leader of Government Business was established in 1995, and is located in Parliament. The office has a dual accountablity, with the staff accountable to the Leader for line-function responsiblities, ensuring that government priorities are met, and they are accountable to Parliament administratively, for managing the budget, managing leave, and reporting.

3.4. THE ROLE OF THE LEADER OF GOVERNMENT BUSINESS

The Joint Rules outline the responsibilities of the Leader of Government Business in Parliament (Parliament RSA, Joint Rule 150). This administrative interface between the executive and the legislature has been developed over

time since 1994, and is continually evolving. The LOGB is an executive function, and it also has an administrative function based in Parliament.

The responsiblities of the LOGB include:

- taking charge of the affairs of the National Executive in Parliament;
- the programming of Parliamentary business initiated by the National Executive, within the time allocated for that purpose;
- arranging the attendance of Cabinet, as appropriate, in respect of parliamentary business generally; and
- performing any other function provided for by a Joint Rule or a resolution of the Assembly or the Council, or Resolutions adopted in both Houses.

3.4.1. The role and functions of the Leader of Government Business

The administrative liaison function between the executive and the legislature in supporting the role has been developed over time. The office of the Leader mainly fulfills its role by monitoring the legislative programmes of the different Ministries and by ensuring that the flow of legislation is a smooth one. The related function is to provide strategic political input so as to effectively programme government priorities, while considering parliament's constitutional role in processing legislation. The LOGB is thus responsible for approaching Parliament to hasten the legislative process at any stage for any bill as is required by Government, which is also called fast-tracking, in terms of. Joint Rule 216 (1)(a)[29].

The office in Parliament is strategically placed and has well-established links with Ministries, the Chief Whip of the ANC, Chairpersons of Committees in

[29], The Leader of Government Business makes a request for the fast-tracking of a Bill..

Parliament, the Speaker's Office and all parliamentary functionaries in the 'procedural family'.

- The LOGB determines which legislation is forthcoming for a specific term of Parliament and its urgency and, where necessary, fast-tracking of a bill;
- facilitates the passage of all draft legislation through its various stages, from State Departments through State Law Advisors into Parliament;
- deals with bottlenecks in the legislative process to ensure that government priorities are met - appropriately raising and communicating issues with Ministers, State Officials, State Law Advisors, Portfolio Committee Chairpersons, the ANC Caucus, etc.
- monitors the progress of legislation within the Committee phase and taking the necessary action to facilitate progress; and
- liaises with Committee Chairpersons regarding government priorities, ensuring the political prioritisation of legislation.

It is evident that throughout the parliamentary processes the Leader of Government Business, through the office in Parliament, plays a significant role in ensuring that government's legislative priorities are met.

The office has now developed into one that performs a dual function, supporting both the executive and the legislature. Parliament relies more and more on this office with regard to the functions of programming, availability of the executive, tracking matters of executive compliance and tracking vacancies in institutions that support democracy.

3.4.2. Political management of the parliamentary programme

During the period 1994 to 1999 the parliamentary programme was a purely political function and was accommodated in the Office of the Leader of Government Business (LOGB), which provided support to the ANC in developing the parliamentary programme. By 1997 this function was removed from the political management and brought largely under the management of the National Assembly Table (NA), which reports directly to the Speaker. In this regard a Programming Office and a Technical Committee were established under auspices of the National Assembly Table. This location has largely proven problematic as there is no central point of co-ordination linking the political imperatives and objectives of the programme to those of administration.

INTERVIEWS

In interviews conducted at Parliament, a Senior MP (**Interview A)** stated that **"***The change in the location of the programming function was largely due to the personality and power of Speaker Ginwala, as she wanted to have control over every aspect of parliamentary work; this gave her power over what was happening in the institution.*" Another senior MP **(Interview B)** argued that "*The negative that resulted from this was that programming has become a mechanical process where slots are being looked for to insert programmes and bills without regard for the political impact and influence it has both in- and outside of the institution. In some instances this manner of programming results in unnecessary embarrassment and difficulties for the executive and the majority party in parliament.*" Furthermore, another MP (**Interview C)** argued: *"That which is largely a political process in which political management was intended to direct the parliamentary programme in accordance with the mandate of the majority party has now fallen into the hands of bureaucrats and administrative functionaries who may not always*

have the sensitivities generated in closed political discussions and meetings of the majority party."

3.4.3. 'Fast-tracking' Legislation

Fast-tracking is a process whereby a Joint or House Rule or Rules are dispensed with in order to expedite the prompt passage of an urgent bill through Parliament (National Assembly Guide: 2004:145). The Leader of Government Business chairs the parliamentary sub-committee of the Joint Programme Committee, which considers requests from the executive to fast-track a bill. The LOGB presents to parliament a 'political motivation' for legislation to be approved by Parliament within a specific period of time. Often these requests centre around financial implications for government.

The decision to fast-track[30] can only be made by the sub-committee of the Joint Programme Committee (JPC) when both the Speaker and the Chairperson of the Council are present. The decision must be ratified by both Houses on the first sitting day after the decision, National Assembly Guide (2004: 147). Consideration must then be given to the four-week legislative cycle[31] of the Council, which is required in order to inform the provincial legislatures and obtain voting mandates.

In all cases of 'fast-tracking', the Bills were passed without any opposition at the Sub-Committee of the Joint Programme Committee (JPC) level, as this Committee is constituted of Majority Party Members, and only one member of the Opposition. The Chief Whip of the Largest Minority Party in Parliament is the only member of the Opposition who forms part of the membership of this Committee. Speaker, Chairperson NCOP, Chief Whip ANC and House

[30] Section 74 Bills (Constitutional Amendments) – Time limits are constitutionally determined and therefore cannot be fast-tracked

[31] Consideration must be given to the 4-week legislative cycle of the Council, required to inform the provincial legislatures and obtain voting mandates.

Chairperson are all members of the Majority Party. Whilst very little opposition within Parliament was received by parties on any of the Bills 'fast-tracked', civil society, through Cosatu, raised some concerns, although these areas of concern could not be tabled, as fast-tracking does not provide for a public participation process.

The SAA Unallocatable Debt Bill (1999) is an example of a fast-tracking request. The opposition to the bill being passed came from the trade union movement, and not from political parties within Parliament.

3.4.3.a. Example of the South African Airways Unallocatable Debt

Government agreed that a phased approach be adopted with reference to the sharing of the Transnet debt burden between Transnet and government. R4.05 billion[32] was the gross debt attributable to South African Airways. Of this amount, R3.057 billion were deemed unallocatable debt to SAA, which had to be shared between government and Transnet. The Act enabled government to pay R1.333 billion to discharge a portion of Transnet's debt attributable to SAA at its incorporation. Cosatu opposed this and proposed that an alternative be found to deal with the Transnet debt that did not involve the transfer of public funds.

The request from government was that Parliament should pass the bill within in the same fiscal year (1999/ 2000), as this bill was necessary to enable government, in particular the Ministry of Finance, to appropriate R1.333 billion for taking over or sharing the debt burden (Confindential correspondence: A letter to LOGB: 21 October 1999). The LOGB requested Parliament to 'fast-track' the Bill, as Transnet immediately needed to swop the debt to allay the fears of the relevant lenders about the reduction of assets, meaning the sale of SAA. All parties in Parliament agreed that the Bill had to be 'fast-tracked'. As

[32] Confidential correspondence A Letter to LOGB, 21 October 1999

mentioned earlier 'fast-tracking' allows for rules to be suspended. Hence, public participation was suspended, and therefore the views of labour organisations were not carried.

In interviews conducted a senior Member of Parliament (**Interview D)** stated that: *"The power relations between the executive and Parliament are nuanced and changes to simple procedures often have a substantial impact on the outcome of processes. Fast-tracking of legislation may be necessary but often it impacts substantially on the public participation process; it impacts on the level of scrutiny of the legislation by Committees."*

It would be important to note that during the period 1999 to 2006, 30 bills were fast-tracked through the fast-tracking mechanism. The fast-tracking mechanism has been used since 1999. Prior to 1999 Ministers introduced bills without deadlines for the passage of legislation being set. Since the 2004 elections, the then LOGB, Mr Zuma, was reluctant to agree to any 'fast-tracking' requests from Ministers unless it was absolutely required and necessary, in essence recognising Parliament's constitutional obligation in passing legislation. The majority of Bills fast-tracked had financial implications, or had a deadline as set out in the Constitution. (List of all bills fast-tracked 1999 – 2006) (Appendix : 4))

According to a senior parliamentary official (**Interview E)** *"It could be argued that the reluctance to fast-track was due to the Constitutional Court rulings on The National Health Practitioners Act (35,2004) and the Termination of Pregnancy Act (38,2004)."* These bills had generated great public interest, but the majority of provinces did not hold public hearings because of insufficient time. Parliament has since acted with caution to avoid any further judgements. The Court ruled that the public participation process was compromised at the level of the National Council of Provinces (NCOP), as they were tagged Section 76 in terms of the Constitution and for that reason impacted extensively on the

provinces (Doctors for Life International vs Speaker of the National Assembly and Others 17 August 2006).

The Committee Chairperson **(Interview F)** observed that: *"In moving away from the actual processes outlined in the rules, the term 'Prioritisation' of legislation is a term that is being used to an increasing degree to move away from blatantly fast-tracking legislation. This, in essence, does not compromise the process outlined in the Constitution but can speed up the parliamentary process as the need arises. Bills that government wants passed by Parliament at a certain date are prioritised.It follows the normal legislative process, but is expedited through Parliament, without sidestepping any of the processes."*

The Companies Amendment Bill is one example of priority legislation. The amendment was introduced in late October 2010, prior to adjournment, and when Parliament reconvened in February the committee was requested to complete its work to ensure that the legislation could be implemented by 31 March 2011, just on the start of government's new financial year. The committee practically had six weeks to complete a very comprehensive piece of legislation.

The Electoral laws Amendment Bill was introduces in September 2010, and followed a speedy process. All the steps in the legislative process were adhered to and the Bill was passed by both Houses in November 2010. The Leader of Government Business advised Parliament of the importance of implementation of the legislation by the end of 2010. He requested the parliamentary committee to work towards meeting this deadline to allow the Independent Electoral Commission sufficient time to prepare for the local government elections.

3.4.3.b. Example of the National Environmental Management Act

The National Enviromental Management Act is used to illustrate an example of dominance through the process of delegated legislation. Delegated legislation is legislation enacted by the executive to regulate matters provided for by the original Act in greater detail. In its submission to the Panel for the Assessment of Parliament, the Legal Resources Centre cited one such example. Amended bill B36B-2007 changes a number of important requirements for environmental impact assessments, which are mandatory in terms of the present National Environmental Management Act (NEMA), to ***use discretionary provisions***[33] for all activities listed in terms of the Act, in line with the new section 24(4)(b).3: *"These previously mandatory requirements include mitigation of impacts to keep adverse impacts to a minimum, the consideration of alternatives and disclosure of gaps in knowledge. Thus the Minister can exercise discretion in future to allow any environmental impact assessments."*

Legislation with delegated authority gives the executive the power to pass regulations as in the case of environment impact assessments [EIA]. This puts the executive in a very powerful position. The executive decides if it wants to have an assessment on the impact of mining on the environment. According to a Committee Chaiperson (**Interview G), concerns were raised about** …*"impacting on the independence of the legislature is the extent to which the Executive is able to undermine legislature and the intent of the law-makers through delegated legislation".* This view is also expressed by a Senior Member of the ANC (**Interview H):** *"It is during the Committee stage that Parliament exerts its influence, if any, on legislation, and there are cases where an effective chairperson has been able to ensure that amendments proposed by civil society or interests groups are accommodated. It is also at the Committee level where there has been quite rigorous oversight of executive decisions.*

[33] Writer's emphasis

The extent of rigour in the debates on legislation and oversight reports differs in each Committee."

According to a Committee Chairperson **(Interview I),** "*The relationship between the executive and the committee are impacted by multiple factors which include the experience and skill of the Chairperson; and the Minister's commitment to seriously respond to the Committees' concerns. However, usually these amendments and oversight of executive decisions are 'allowed' by the executive as long as these do not challenge fundamental political positions and resolutions of the ANC; if so, the executive will intervene to ensure party policy, which becomes government policy, is achieved."*

3.5. CASE STUDY EXAMPLES OF DOMINANCE

The relationship between the executive and the legislature as it plays out during parliament's engagement in the legislative process is illustrated by the following examples:

3.5.1. Policy on HIV/AIDS

A classical example of executive dominance over the legislature is that of the Mbeki era executive's position on the roll-out of antiretroviral drugs. The Mbeki government's policy on AIDS and HIV has been contested terrain and strains in government's thinking around the issue of drugs for HIV/AIDS continued to be evident. Not all members of the majority party agreed with the views of the former President that the provision of Nevirapine will not assist in lowering the risk of mother-to-child transmission of HIV. Subsequently, research has shown that if Nevirapine is administered, it could lower the risk of mother-to-child transmission (Report of Health Systems Trust:2001). At the time the executive's view was that dispensing the drug designed to prevent mother-to-child transmission had to be piloted until enough research proved that the drug

would assist in lowering the infection rate. This decision was not based on medical research, but rather on 'political science'. In 2010, research reports reflect that mothers who are HIV positive and undergo the treatment can have healthy babies. Although majority party members who served on the Portfolio Committee on Health at the time did not agree with the views of the executive, they never raised their concerns in the public domain, and supported government's position in committee meetings.

In 2000, the Treatment Action Campaign (TAC) brought a Constitutional Court challenge against the Minister of Health, based on government's failure to administer antiretroviral drugs to HIV positive persons. The Court ruled in favour of the TAC and the judgment concluded that the executive cannot act with impunity as the executive is bound by the Constitution, for the reason that the executive could not exempt its citizens from enjoying access to health care as a basic human right. This example shows executive dominance. Although some ANC Members raised their views at the Caucus meeting, none of them was considered. This suggests that civil society and the courts have essentially been the main opposition to executive dominance in the principle of separation of powers. Hopkins (2002: 24) gives credence to the role of the courts as the most effective checks-and-balances mechanism, as courts act as a watchdog over the other organs of government. In the above experience the courts and civil society prevailed over executive dominance.

3.5.2. Promotion of Access to Information Act (2000) (PAIA)

The Promotion of Access to Information Act (PAIA) was passed by Parliament in 2000[34]. At a Justice Portfolio Committee meeting in February 2010, where the Department of Justice and Constitutional Development had been presenting its Key Performance Indicators (KPIs), it transpired that one of its KPI's was to

[34] Parliamentary Monitoring Group: February 2010

ensure government compliance in terms of PAIA. It emerged from the Chairperson of the Committee, honourable Llewellyn Landers,

> *"that the reason why there were problems with the compliance of this Act from government departments was that when it emerged during the implementation of the said Act that government departments could be brought before court for not providing requested information, the Directors-General issued directives to their departments to the effect that no PAIA applications should be granted [35]. Theses directives remain."*

He went on to clarify that, "*if the directives were not in written form, then such sentiments as to information not being made available had been expressed verbally to officials by DGs. He went on to say that for the Act to be practically effective all that needed to happen was that all the DGs had been called in and were told that PAIA was an Act of Parliament and they had to comply with it*," one could not just have mute refusal. Labour unions raised concerns about the state witholding information that could be utilised by civil society to hold government to account, for example: How[36] do farmworkers wanting information about a planned buy-out of a farm which threatens their jobs respond and prepare for this if the information is not available? Until recently many people in these situations faced enormous frustration in compelling state organs to make such information available. The Access to Information Act should not be circumvented to escape the disclosure of information that affects the monitoring of service delivery.

It appears that the committee tried to assert its power over the executive by using the legal apparatus that Parliament had itself passed, but again Parliament's power was restrained when it called the executive to account.

[35] COSATU Parliamentary Bulletin, 1 February 2001, page 5.
[35] The Committee on Public Accounts was formerly know as the Standing Committee on Public Accounts.
[36] The Committee on Public Accounts (COPA) formerly known as (SCOPA) the Standing Committee on Public Accounts.

3.5.3. SCOPA Arms Deal Investigation (2001)

The SCOPA[37] Arms Deal illustrates the difficulties in holding the executive to account (Esau 2004: 48). The Committee on Public Accounts (COPA), as the public accounts oversight Committee in Parliament, had taken the decision to commission four agencies to investigate the acquisition of arms for the South African National Defence Force (SANDF). These agencies were the Heath Special Investigating Unit (SIU), the Auditor-General (AG), the Public Protector (PP) and the Investigating Directorate: Serious Economic Offences (IDSEO). In a letter to the then Chairperson of SCOPA, Mr Gavin Wood, the then Deputy President and Leader of Government Business, Mr Jacob Zuma, questioned[38] the wisdom of including the SIU and Willem Heath in the investigative team in light of the Constitutional Court judgment *South African Association of Personal Injury Lawyers vs Heath, Willem Hendrik 200, in which* it was adjudged that Judge Heath's involvement with the SIU contravened the separation of powers rule and that Proclamation R24 of 1997, which appointed him as head of the SIU, was invalid. The letter also questioned the interaction of SCOPA with the Executive as it had decided to proceed with the investigation without having met with the Ministers of Finance, Trade and Industry, Public Enterprises and Defence and also solicited the views of Cabinet. The letter also questioned the authority of Parliament to appoint the four investigative bodies, which did not report directly to the Committee (Letter from LOGB to Speaker Ginwala: Appendix: 2).

In a subsequent letter the Speaker of the National Assembly, Dr Frene Ginwala, acknowledged that the legislature could only recommend to the executive that it appoint the investigative bodies, as its power was persuasive only. This was also later acknowledged by Mr Woods. Esau (2004: 50) highlights the change in attitude of the COPA Chairperson, an IFP member, after being reprimanded by

[38] Parliamentary Monitoring Group: Report 2000

the Speaker and called to apologise to the Ministers for the accusations he had made in the (Cape Times: March 29: 2001). (Letter from Speaker to LOGB: appendices: 10).

During a Parliamentary media briefing following his resignation Gavin Woods claimed that, "*the executive had inordinately influenced ANC members of the committee and interfered in the committee's oversight role, thereby hampering Parliament's role of holding the executive accountable to the people's public representatives*"– (Cape Times: February 26: 2002).

In the context of defining the respective roles (Murray: 2002: 90), Dr Frene Ginwala further admits that:

> *"We are still all developing our understanding and trying to give effect to the Constitutional relationship between the Executive and the legislature. We need to continuously review and improve the communication and relationship between the Executive and legislature."*

The Constitution clearly sets the stage for the relationship between the executive and Parliament, and the Rules provide Parliament's committees with substantive powers to call to account any person, including members of the executive. Despite these powers, Speaker Ginwala was reluctant to implement this constitutional provision.

As described in chapter 2, the LOGB is the representative of the executive in Parliament, mainly acting as the President's 'man' in Parliament, and not on his, own but rather 'on behalf of'. Richard Calland (Mail & Guardian: July 18: 2011), highlights that, *" Mbeki had decided that the ANC needed to control the investigation and so SCOPA was informed by a letter signed by Jacob Zuma, who was the then Leader of Government Business in Parliament - but written by Mbeki and his chief henchman, Essop Pahad - that it, SCOPA, had made a mistake and Heath should be taken off the joint investigating team."*

3.5.4. Controversy over National Conventional Arms Control Bill (2002)

In 2002 the Committee on Defence deliberated on the National Conventional Arms Control Bill. The original version of clause 23(c) of the said Bill had made it mandatory for the National Conventional Arms Control Committee (NCACC) to make quarterly reports to the Committee on "all pending export applications" and consider any recommendations by the said Committee that a permit ought to be denied in a particular application on the grounds that the export would be inconsistent with section 15. The minutes of the meeting, documented by the PMG[39], reflect that: In a subsequent redraft, the aforementioned requirement was removed altogether, prompting the then Chairperson, Ms Thandi Modise, to state that, "*it was [a dismay] that the amendments to the Bill supported by the Committee had been overruled, and that the Bill has been reworked by the Ministry of Defence.*"

The Minister of Defence at the time, Mr Mosiuoa Lekota, defended the redrafting of clause 23 by explaining to the Committee that the NCACC was a Cabinet Committee of Ministers, and to provide that this body should receive recommendations from a Parliamentary Committee would be tantamount to an infringement on the doctrine of separation of powers. Ms Modise maintained that the new clause 23 would provide no recourse for Parliament to perform proper oversight of the export of arms at the time of the conclusion of transaction. Eventually the ANC's parliamentary position was to agree to the deletion of clause 23(c), with the DA opposing this. This suggests that the Executive had dominance over Parliament.

[39] Parliamentary Monitoring Group: Minutes 2010

3.5.5. Selection of candidate to the SABC Board (2008)

There are numerous examples[40] of how the legislature was expected to rubber stamp the decisions taken by the executive. The period that provides the strongest possible examples of executive dominance of the legislature is during the Mbeki era. During the height of this Executive dominance over the legislature, De Vos (2008: 2) explains how ANC MPs were ordered to accept a list of 'new' SABC Board appointees that differed from the list agreed to by the portfolio committee after the process of public participation. De Vos further refers to the public broadcaster becoming the state broadcaster. During the period of the Mbeki demise resurgent MPs were keen to fire the Board that was 'illegally' foisted on them, and did so by passing the Broadcasting Act Amendment Bill. The amendments to Section 15 of the Act gave the National Assembly the power to remove the SABC Board, a power that was previously vested exclusively in the President. Opposition party MP's have argued that these amendments may be unconstituional as they interfere with the executive powers of the President to appoint and remove members of the Board. Whilst it could be argued that the public broadcaster should play an important role in providing information to assist the electorate in making political choices, the public broadcaster has not always provided the electorate with unbiased views. The media often reflects more the views of minority interest groups, while the majority views that have been endorsed in consecutive elections find no expression. Hence, it may have been necessary to ensure that people are strategically placed. In this instance Parliament claimed its dominance over the executive.

[40] 1996 Amendment to the Companies Act. Department of Trade and Industry – used the National Council of Provinces (NCOP) to make textual amendments. 1996 - Intellectual Property Bill was substantively amended by the department when the bill was already in Parliament

3.5.6. Defence Ministry versus Portfolio Committee on Defence (2010)

The Portfolio Committee on Defence and Military Veterans had had a dispute with the Minister of Defence over the release of the Interim National Defence Force Service Commission report, which the committee felt was necessary for processing the Defence Amendment Bill. The Minister refused to release the report on the basis that it had to be submitted to Cabinet first, which would approve and then release it to the committee. The Minister had also assured the committee that the contents of the Interim National Defence Force Service Commission report were not necessary for processing the Bill. The standoff between the committee and the Defence Ministry resulted in the committee postponing the processing of the Bill until such time that the Interim National Defence Force Service Commission report had been made available and a 30-day period within which this had to be done had been announced. The LOGB met with the Speaker, Minister of Defence and the Chairperson of the Committee to resolve the matter. The Speaker of Parliament subsequently intervened in the matter and requested the committee to process the Bill in spite of the reports not having been received. The committee, on a vote, decided to continue with the Bill. During President Zuma's reshuffle of Parliament and Cabinet, the then Chairperson of the Portfolio Committee on Defence, Mr Nyami Booi, was replaced. The portfolio committee tried to assert its dominance over the executive, but failed.

3.5.7. Money Bills Amendment Procedure Act 2008

The Constitution imposed on Parliament the imperative to pass legislation to amend the budget as introduced by the executive. At the ANC's Polokwane Conference in 2007, calls were made for greater parliamentary oversight over the budget process. This is a clear and direct move away from the 'Pre-Polokwane', or 'Mbeki era' take on executive dominance, towards a more consensus-driven process between the executive and the legislature to ensure a

better life for all, which is in keeping with South Africa's commitment at the Millennium Summit in 2000 to ensure that Members of Parliament are held accountable for the development goals being achieved.

The first attempt to address the constitutional demand to allow Parliament the power to amend the budget was in 1997 when the National Treasury, Minister Manuel, produced a draft Money Bills Amendment Procedure Bill. The draft bill required the Finance committee to give seven days' notice of any proposed amendments, while the Minister of Finance would have the right to address the committee before it tabled any amendments (Gumede 2010: 27). These proposals by the executive sent out the clear signal that the executive at the time had no intention of allowing the legislature the power and oversight to propose amendments to the budget. DBSA (2010: 4) concludes that Parliament, in terms of the proposal by the executive, was not allowed to alter the rate the or base of time for imposing a tax, thus undermining the effectiveness of Parliament in the process, in so doing reducing Parliament to a 'rubber stamping' exercise.

The trade union movement, civil society and Members of Parliament vehemently opposed the 'executive's' draft bill, and as a result the draft was withdrawn and not formally tabled (People's Budget Campaign (2 December: 2008). Cosatu decided to boycott the parliamentary hearings on the budget until Parliament received meaningful powers of amendment and went ahead to, together with the SA Council of Churches and the South African NGO Coalition, form a People's Budget Campaign in 2000. Over the following years they released budget proposals and continued to call for legislation to allow Parliament to amend money bills. Parliament's passing the Money Bills Amendment Procedure Bill in March 2009, prior to the National Election in May 2009, is a consequence of the Polokwane calls for the power to be conferred on Parliament to amend the budget.

The Act gives the legislature the power to amend the budget, but the legislature cannot amend it willy-nilly. Theoretically, the legislature has the power. The Act spells out a procedure that must be followed to effect amendments. The Act determines this relationship as developing the budget rather than proposing amendments. The legislature provides input into the budgetary process together with the executive on developing the budget prior to the introduction of the executive's budget proposal. The legislature's responsibility, for which the Act makes provides for, is co-operation before the amendments are proposed, taking into account the state of the economy before making any changes.

The Money Bills Amendment Procedure Act changes the way the legislature conducts its business. Since the budget is an economic expression of the political imperatives, election promises often inform budget priorities. Hence government must be held accountable to the electorate by the legislature in ensuring that these promises are delivered on. The passing of the Money Bills Amendment Procedure Act suggests that the legislature asserted dominance over the executive. It sent a clear signal to the executive that the legislature had taken its constitutional authority seriously by implementing its mandate. This legislation was passed during the transitional stage of executive dominance.

The case study examples highlighted incidences of initial discord between the executive and the legislature, which were later resolved by the leadership through greater political management of the process. The majority of bills over the past 15 years of democracy had been passed in a harmonious fashion due to the common objective of both the executive and the legislature in order to reverse the Apartheid statutes so as to reflect a constitutional democracy. However, after the establishment of the 2nd Parliament, the legislation introduced by the executive reflected new policy imperatives and this required

greater consultation with the electorate, often highlighting more areas of conflict.

The 4th Parliament in 2009 has since shifted the focus away from passing legislation to oversight. The number of bills introduced by the executive has decreased considerably. Hence the focus is on strengthening the oversight responsibilities by holding the executive accountable to the people. Examples of oversight mechanisms are highlighted below to show how the relationship between the executive and the legislature plays out in the oversight processes.

3.6. PARLIAMENTARY OVERSIGHT PROCESSES

On assessing Parliament's oversight role, constitution-makers were well aware of the difficulties of holding the executive to account in a strong party-parliamentary system (Murray 2004: 87). For this reason, Section 55 spells out Parliament's oversight role.

Oversight can only be effective if Parliament asserts its independence and embraces the authority conferred on it by the Constitution. There are various mechanisms that Parliament uses to hold the executive to account. These are: questions, committee investigations, fact-finding exercises, debates, members' statements, submissions of strategic plans and oversight visits by committees.

In an interview with Speaker of the NA, Baleka Mbete, and Chairperson of the NCOP, hon Johannes Mninwa Mahlangu *(*Report on the Assessment of Parliament: 2008: 28), they emphasised that-

> *"the shift in the legislative workload of Parliament has iniated a new focus in Parliament: beyond passing Bills, Parliament must now focus more closely on assessing the impact of legislation on people, programmes and service delivery."*

In this regard the Presiding Officers initiated an Equality Review Campaign in 2006, to assess the impact of legislation that has been passed since 1994.

The three committees dealing with gender and disability issues were requested to assess the impact of legislation on these groups. The review process included extensive public hearings, which enabled Parliament to gain a clear picture on the impact of legislation on our communities (Report of the Joint Monitoring Group: 2007).

Although Parliament has in past years developed the mechanisms highlighted above to hold the executive to account, oversight is still largely viewed as the responsibility of the opposition. In this context oversight has become very adversial. If oversight is seen in the context of Parliament working with and assisting the executive to deliver much-needed services to the poor, then oversight would have achieved its objectives.

INTERVIEWS

Below are views expressed by Members of Parliament during interviews conducted with regard to Parliament's relationship with the executive in the context of oversight. In an interview with a committee chairperson (**Interview J**), it was noted that: *"Oversight should be recognised as an element of good governance. In most cases the obligation or methods to solicit certain information becomes confrontational, or tends to be the case. Tensions between the executive and Parliament are sometimes inevitable and should be managed properly."*

In the case, in May 2010, the Minister of Defence neglected to furnish the committee with a report, as requested, stating the reason as being that Cabinet had not been privy to the report and therefore she was unable to give the information to Parliament. This developed into tensions between the

committee and the Minister and required the intevention of the LOGB and the Speaker to resolve the conflict.

According to **(Interview K):** *"We must ensure that government meets its obligations as promised at the United Nations, the attainment of the Millennium Development Goals is important for Africa's survival."* "*Effective oversight essentially ensures that government delivers on its election promises. Parliament has passed laws over the past 15 years that link up directly with the delivery of services in achieving the attainment of the MDGs.*" The Equality Review Campaign, highlighted above, was used as a tool to assist government in attaining targets."

A Senior Member of Parliament (**Interview L)** states that: *"MPs are well aware of the difficulties of holding the executive to account in a proportional representation system*..He also stated that: *"Parliament has not necessarily been active overseers of the implementation of the legislation that it has at times been forced to pass."*

Murray (2002:89) concurs that despite the constitutional imperatives, the legislatures have not been particularly active as overseers of government action. A Committee Chairperson (**Interview M)** observed that: "*It is essentially a matter of power and whose views should prevail. In my experience - at least I've been here in Parliament since 1999 - it tends to be the view of the executive that prevails."*

At a meeting of Chairpersons of Committees, the panel was struck by the frankness with which some committee chairpersons admitted to their lack of influence over the executive. A senior Member of Parliament was quoted (Report of the Independent Panel Assessment of Parliament 2008: 40) as saying:

> *"I think when we look at the issue of the relationship between the committees and the executive, it's essentially a matter of power. We should not complicate this matter; it's about power and whose views prevail. According to my experience … it tends to be the view of the executive that prevails. For instance, when I came to Parliament, I served in one committee for six years. I left it because I was sick and tired of wasting my time because the Minister would not listen* [to me] *as senior Member of Parliament. We do not have power … we are not taken seriously."*

De Vos (2008: 2) describes how the party-dominant system affects Parliament. Because members of the executive are usually senior members of the governing party and also serve in Parliament, more junior members of the governing party are often required to oversee and hold to account members of the executive, who are also party leaders. Owing to a tradition of strict party discipline requiring Members of Parliament to toe the party line, it may be difficult for Parliament to exercise its oversight mandate over the executive. According to (**Interview N**): *"Consensus is generally reached at the study group level."*

In the case of the Defence Amendment Bill 2010, the Minister refused to provide the committee with a report on the state of the Defence Force prior to the bill being passed in spite of Section 55's enabling Parliament by means of the power to summon a member of the executive. Initially the portfolio committee insisted that the legislation could not be approved unless the committee had had insight into report, this issue was resolved at ANC study group level and the committee proceeded to approve the bill without being given the report.

According to a senior opposition MP **(Interview O):** *"One of the most valuable of the committee activities is when members undertake oversight visits; there are far more of these oversight visits and I think that's something good that should be encouraged. My experience is that I learnt a lot from visiting police stations and various communities. These visits are very worthwhile and gives*

us a sense of what the reality is in the lives of the people that we represent, and the impact of legislation that we pass." Another Senior office bearer (MP) (**Interview P),** agreed with the opposition member, saying: *"I think the way South Africans see oversight is unique. It brings a human element to a very sophisticated kind of system, because really we want to see whether or not legislation has an impact. Has it improved the lives of people?"* Furthermore, the Senior office bearer (MP) (**Interview Q),** argued as follows about the importance of the oversight function: *"When I visit households in the rural areas, I ask about water and sanitation, and if they say, no, we don't have water and sanitation, then there's a problem. It's the quality of life, issue and it's important on our continent. So it's not so much about the high-flying political oversight, it's about bread-and-butter issues. That's the humane touch to our oversight function."*

It is at this level of engaging with communities that the reality of the impact of the legislation that Parliament passes is experienced. Oversight is indeed a very important function and cannot be left to opposition parties only. The majority received its mandate from the people of South Africa and should take collective responsibility for ensuring that basic services are delivered by holding government accountable for the implementation of service delivery as both the legislature and the exectuive are accountable to the people. In reality the electorate sees these two arms as one entity responsible for service delivery.

The Implications of the Money Bills Amendment Act

In an attempt to further strenghten Parliament's existing oversight mechanisms of holding the executive to account, Parliament passsed the Money Bills Amendment Procedure Act in 2009, prior to the national elections. Depite the Constitutional provision that Parliament had to pass legislation to give it the power to amend the budget, it had taken 15 years for such legislation to be

passed. The Act spells out clear processes to be followed giving parliament powers to amend the budget as introduced by the executive. This is a radical departure from the precedent of 'rubber stamping' Cabinet's budget proposals.

The implications for the executive are that the budget will be scrutinised in more detail, and greater accountability and transparency will be required. Whilst the budget is not merely an economic, but instead a political expression. It is indeed political imperatives, and often election promises, that inform the budget. If government promises to build 50 000 houses, then that would be a political imperative influencing the budget. Parliament must then be allowed to conduct proper oversight over the executive to ensure that this promise is kept.

The Act prescribes a new approach to the budgetary process in South Africa as it enables Parliament to interrogate the strategic deployment of resources by the government, fFurther providing Parliament with the tools to monitor whether budgetary expenditure is achieving the developmental objectives of the country. The Money Bills Amendment Procedure Act, imposes greater public involvement on the budget process.

*A s*enior MP (**Interview R)** argued that, *"The irony of the passing of this Act is that the ANC MPs who were instrumental in drafting the bill are currently all members of the executive. The dificulties in implementation for Parliamentares more constraining in terms of the deadlines set in the Act. The Act sets dates within which timeframe Parliament must conduct certain investigations. Parliament should then participate in developing the budget."*

In reality the Act gives too much detail with regard to timeframes that Parliament must adhere to, and has a rather constraining effect on Parliament with regard to committees being in the position to complete its work. A Member of Parliament (**Interview S)** highlighted that: *"An effective Parliament*

is an essential aspect of the quality of democracy. We must ensure that these promises are kept." She further highlighted that: *"This mechanism gives members more insight into how government prioritises its spending and, coming from a rural community, I would want my community to benefit from my position as a member,"* thus giving Parliament the power to influence the budget process.

In an interview with a Committee Chairperson **(Interview T),** it emerged that: "*The budget is a key instrument for ensuring political and economic transformation. The budget is a very powerful tool for social transformation. In fact, politics and economics are two sides of the same coin; they are not separate issues, they go together. Parliament asserted itself by passing this Act and therefore we should use it as an oversight tool to hold government to account."*

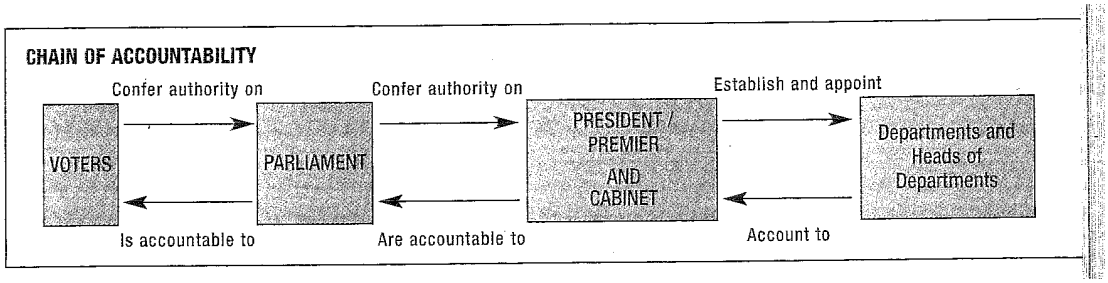
Speaking on government's progress in respect of the Millennium Development Goals (MDGs), Minister Manuel illuminated the important role of Parliament in holding the executive to account as far as ensuring that goals and promises to the people are achieved. In referring to the importance of the budget as an oversight mechanism, Minister Manuel challenged parliament to ensure oversight, basically laying down the gauntlet before Members of Parliament:[41]

> *"These tools should serve to empower Members of the legislatures and provide a good basis for being able to interrogate priorities as well as outcomes of government spending."*

The diagram below illustrates the relationship between the executive and Parliament. Parliament, through its mandate at an election, is tasked with holding the executive to account. In this regard Parliament is ultimately responsible to the electorate.

[41] Trevor Manuel – Minister of National Planning. "Overview of South Africa's Progress: Millennium Development Goals (MDG) Legislative Sector, Parliament, 16-18 March 2011

FIGURE 6: Chain of accountability



Source: Murray, C and Nijzink, L. 2002, Building Representative Democracy: South Africa's Legislatures and the Constitution, 89

3.6.1. Role of the LOGB in facilitating oversight processes

In an effort to facilitate effective oversight, the office of the LOGB has developed administrative communication mechanisms to assist Parliament in ensuring the participation of the executive in parliamentary processes as required. The existing mechanisms of questions and ministerial statements, Ministers appearing before committees to defend their budgets, tabling of reports and strategic plans are all mechanisms that require the assistance of the office of the LOGB. An effort has been made to outline how these processes give effect to Parliament's holding the executive to account.

3.6.1.a. Questions

To ensure that the executive is answerable to Parliament, the questions procedure inherited from the Westminster System is one of the mechanisms used to hold the executive accountable. In order to focus rigorously on interrelated matters, parties prioritise questions to Ministers in a particular cluster based on the availability of the Ministers. The LOGB facilitates the attendance of the executive in both Houses during oral question time, which includes the attendance of the President and Deputy President. Political parties are informed timeously of the non-availability of a Minister to respond

to an oral question to allow the party to reprioritise the question to a Minister who is available. This process enables parties to utilise the opportunity to put supplementary questions.

The LOGB furthermore, reports to Cabinet at its fortnightly meetings on outstanding questions. Ministers are informed through this mechanism of all unanswered questions. Ministers report to the LOGB on delays in replies and what constraints their departments experienced in preparing responses. The Speaker requlary informs the LOGB of delayed replies. These are communicated to the parliamentary liaison officers and also to the Ministers at the Cabinet meetings. These mechanisms assist Parliament with ensuring that questions are replied to within the allocated time period.

3.6.1.b. Ministerial Statements

A Minister could request the Speaker for an opportunity to make a statement on a matter of public importance. A statement normally relates to government policy, any executive action or other similar matter of which the Assembly should be informed (NA: Rule 106). The Rules provide that, whenever possible, a copy of the statement should be provided by the LOGB to the leader of each party when or before the statement is delivered. The office of the LOGB ensures that party leaders are given hard copes of the statement at 11h00, prior to the sitting of the House starting at 14h00, on a particular day. This allows parties adequate time to prepare their responses.

3.6.1.c. Ministers' Participation in Committee Meetings

The Minsters are the policy drivers in government; they are the political heads of their departments and it is indeed government policy imperatives that inform a budget. These policy imperatives should be presented to the committees and defended by the Ministers. Ministers should be cognisant of the

power given to Parliament in terms of the Money[42] Bills Amendment Procedure Act, and therefore should work with committees to ensure that policy imperatives are achieved. The mechanisms to facilitate formal interaction between committees and Ministers have not been implemented and should be highlighted as a potential mechanism for accountability.

The Oversight and Accountability Model: (2008) further highlights potential mechanisms for further strengthening the role of the LOGB in ensuring executive accountability:

- tracking and monitoring executive compliance in respect of issues that an individual Member of Parliament raised arising from constituency work, ensuring a more co-ordinated, integrated and holistic approach to parliamentary oversight;
- assisting with co-ordinating all oversight-related information gathered through Parliament's public participation activities;
- assisting with monitoring and tracking executive compliance with House resolutions;
- assisting with monitoring and tracking of government assurances and commitments that emanate from the floor of both Houses;
- monitoring and analysing debates, discussions and comments made by the public and participants in the sector parliaments, with a view to advising the Houses on issues for consideration.

The Oversight Model: (2009) illuminates the tracking of 'House Resolutions with Executive Compliance' as a crucial tool in Parliament's oversight function. In this regard the office of LOGB and the National Assembly Table are in the process of developing systems on how to track executive responses to ensure that they are complied with. The model further highlights potential mechanisms to strengthen Parliament's oversight role by recommending that a

[42] A Bill is a Money Bill if it appropriates money and imposes taxes, levies and duties. Only the Minister of Finance can introduce a Money Bill in the National Assembly.

Governance Assurance Committee be established to govern the work of other parliamentary committees, to ensure that parliament pursues all assurances and undertakings made by Ministers on the floor of the National Assembly. However, experience suggests that compliance remains a problem. A senior parliamentary official (**Interview U)** stated, *"to date none of these potential instruments such as the super-committees for conducting oversight in a systematic way has been developed. Parliament has over the years spent vast amounts of time and money on delivering reports on how effectively to oversee government, but has not implemented many of these proposals."*

3.7. SUMMARY

The chapter provided an overview of the legislative and oversight processes in Parliament. With the advent of democracy in 1994, the new cadre of legislators were faced with the daunting task of having to rewrite the Statute Book to reflect the spirit and intent of the new constitutional order. These processes are imposed on Parliament by the Constitution. The Constitution outlines the legislative process in detail, thus binding Parliament legally to ensure that the provisions in the Constitution are upheld, with a view to strengthening democracy.

A detailed discussion of the legislative process was provided, focusing on the different categories of bills, the legislative processes followed and the passage of a bill through Parliament. Whilst the legislative process, as outlined in the Constitution, is adhered to, the system of proportional representation, with its strong party dominance, provides the opportunity for controversial legislation to be approved.

A key feature of the legislative process is the involvement of the public, an aspect which is prescribed by the Constitution. Public participation in the legislative process plays a crucial role in providing a forum for the public to participate in law-making. Lately civil society has been playing a more dominant role in raising objections to some pieces of legislation. Opposition parties have used the courts to raise their opposition to legislation rather than using Parliament as a vehicle for raising these objections. In this way the public and civil society exert their control over the executive by means of the courts.

Following the discussion of the legislative process, the chapter proceeded to discuss oversight. It was pointed out that over the last couple of years, there has been a shift away from passing legislation to one of exercising oversight of the executive, thereby ensuring that the government is accountable to the public. Although the South African Constitution imposes an obligation on Parliament to hold the executive to account and to conduct oversight, in most instances the majority party members are reluctant to call their own Ministers to account as this is mainly seen as being the role of the opposition parties.

The Assembly and Council are still clarifying their oversight roles, in particular the Council, as the Constitution appears to have given it a limited role. Parliament recently concluded work on the oversight model. The model highlights mechanisms to strengthen oversight and accountability. However, it is still early days and the real test will come with the implementation of the model. The legislature has been widely praised in respect of the number of bills passed to date that seek to amend apartheid laws. All eyes are once again focused on the legislature to see if it will live up to its promise of exercising effective oversight and ensuring accountability of the executive.

The lack of effective oversight can ultimately hamper the delivery on or achieving the Millennium Development Goals. Very often these power relations are nuanced and changes through simple procedures, which often have a substantial impact on processes and outcomes. Despite the provisions in the Constitution to ensure oversight of executive action, including the firm proposals outlined in the Oversight and Accountability Model, the legislature has not been particularly active as overseers of executive action. In practice the recommendations outlined in the oversight model have not been implemented. To date none of the super-committees has been established to oversee the executive in a systematic manner. At this stage, in the absence of the establishment of the oversight advisory section and the Government Assurance Committee to oversee the executive, the Money Bills Amendment Procedure Act has, since 2009, changed the way the legislature conducts its business in overseeing the executive. The Act prescribes a new approach to the budgetary process in South Africa as it enables the legislature to interrogate the strategic deployment of resources by government. The Act also imposes greater public involvement in the budgetary process.

CHAPTER FOUR: THE RELATIONSHIP BETWEEN THE EXECUTIVE AND THE LEGISLATURE IN THE LEGISLATIVE AND OVERSIGHT PROCESSES

4.1. INTRODUCTION

The chapter analyses the findings in Chapter 3, explaining the actions, implications and the impact in the context of separation of powers. The relationship between the executive and the legislature is complex and dynamic, and cannot be understood in isolation of party-political dominance. The level of political contestation among the executive, legislature and judiciary depends on how power is distributed among these spheres of government and civil society. The practice is, in many instances, different from the theoretical construct and doctrine of separation of powers.

The contest for power between the executive and the legislature is not only limited to the legislative process, but also occurs between the executive, the legislature and the judicary. In the case against government's HIV policy, the courts ruled in favour of civil society, as represented by the TAC. The contest between government parties and civil society is also evident when appointing people to key positions, as in the case of the appointment of the SABC Board. These appointments are referred to as deployment by the political party as it means placing people in strategic positions.

The information is organised into four sections. Section one deals with the party-political dominance in Parliament. Section two explains executive dominance, section three deals with parliamentary dominance and section four summarises the chapter.

4.2. PARTY-POLITICAL DOMINANCE

The synergies between the executive and the legislature are in most cases due to the fact that most Members of Parliament belong to the same political party, the ANC. The ANC has an almost two-thirds majorty vote. The executives of government are all drawn from the most senior and influential members of the ANC. The parliamentary backbenchers are often beholden to these senior party members for the positions they hold in terms of the proportional representative system.

The South African Constitution, adopted in 1996, provided for an electoral system that was based on Proportional Representation (PR). There are currently 13 political parties that are represented in the National Assembly, which is an increase from 7 in 1994, 13 in the 1999 elections and 15 in 2007, after floor-crossing. A feature of this proportional representation system is the representation of one-member parties. The increase in the number of political parties came as a result of floor-crossing legislation adopted in 2002, for which Parliament amended the Constitution to allow elected representatives to change their political affiliations without losing their seats at national and local government levels.

The National Assembly has a membership of 400 women and men. After the 2009 elections, the African National Congress (ANC) attained 264 seats, the Democratic Alliance 67, the Congress of the People 30, and the Inkatha Freedom Party 18 seats, followed by the smaller parties with 4, 3, 2 and 1 seat each. The ANC is three seats short of a two-third majority, which is comprises 267 seats. A two-thirds majority would put the ANC in a very powerful and dominant position when it comes to amending the Constitution, for which such majority is required. (See appendix: 3)

The current party-dominant system, in which Members are chosen from party lists rather than by means of direct election, makes Members of Parliament accountable to their party rather than to the people. As long as there is no disjuncture between the executive and the leadership of the majority party in Parliament, the executive will influence and exert its power on and control over the legislature. The party has absolute control over MPs' careers in the proportional representation system.

The influence of political parties on the ability of members to freely express themselves is strengthened by the unconditional power of the political parties to remove their members from Parliament. Section 47(3)(c) of the Constitution specifies that a person loses his or her membership of the National Assembly if that person *"ceases to be a member of the party that nominated that person as a member of the Assembly"*.

Members of Parliament retain their seats through their membership of their political parties. The fact that the executive is drawn from the legislature tends to weaken the oversight role of the legislature. Oversight generally seems to be the responsibility of opposition parties.

The Independent Panel Assessment Report (2006), which to assessed whether Parliament was honouring its constitutional mandate, focused extensively on the impact of single-party dominance in a system of proportional representation. They contended that:

> The convergence of party leadership and the executive undermined the independence of the legislature. The party leadership, who were in effect the executive, determined the agenda and outcomes of processes in the legislature, thus effectively undermining the independence of the legislature.

One could argue that this situation is inevitable in a proportional representation system in any democracy where the party has a large controlling majority, and where members of the legislature may be reluctant to call to account a government that consists of the leaders of their party.

The proponents of the electoral change argue that Members of Parliament are more accountable to their political parties in the PR system, therefore eliminating the basic tenet of accountability in democracy. One could argue that this situation is inevitable in a proportional representation system in any democracy.

4.3. EXECUTIVE DOMINANCE

Ministers and committee chairpersons are all from the majority party. Chairpersons would rather consult with Ministers on the proposed legislation tabled before Parliament and work through areas of concern than air views in public. In most instances the executive seems to win the turf battles, as the legislation is, almost always, approved as the executive proposes. Consensus is generally reached at study group level. Esau (2005: 46) highlights how, through regular party caucuses, members of political parties speak with one voice in the larger setting of Parliament.

Ministers are members of the study groups. Very often Ministers intervene at this level, either by discussing non-negotiables or by indicating what they are open to amending. or by identifying areas that require strengthening. Very often the portfolio committees, chaired by the majority party, take on board the suggestions made by the Minister at the study group meetings. Study group meetings are in the main platforms to discuss ANC or government policy imperatives.

It is during the parliamentary deliberations on legislation that the executive is in constant interaction with members of the majority party who serve on the various portfolio committees. Parliamentary liaison officers, who are officials of the Ministers, attend all portfolio committee deliberations on legislation and other matters to ensure that all matters affecting the executive are communicated to the Minister and to the office of the LOGB. This provides government with a 'bird's eye view' on matters that are being considered by Parliament.

In the case of the Defence Amendment Bill 2010, the Minister had refused to provide the committee with a report on the state of the Defence Force prior to the bill being passed. Initially the portfolio committee insisted that the legislation could not be approved unless the committee had had insight into the report. However, the matter was resolved at ANC study group level and the committee proceeded to approve the bill, without having beenbeing given the report by the department.

The evidence in chapter 3 contradicts Esau's theory in Chapter 2, of the 'balance of power', and the theory of the 'separation of powers'. Certainly approval by the one arm is required to ensure enactment and implementation of government policy, but how this approval is achieved is not by means of the 'balance of power'. The theory is different from the practice. In practice the power is tilted unequally in favour of the executive.

The example of the investigation by SCOPA into government's arms purchases highlights how Parliament's role was undermined by the executive and that Parliament's leadership, i.e. the Speaker, did not defend its committee. SCOPA was informed by the executive that it should operate within the ambit of the legislative authority and that calling to account a special investigative body was venturing into the domain of the executive, this is testimony that the theory is different from the practice. The practice corroborates Rautenbach

and Malherbe's theory, outlined in chapter 2, that Montesquieu erroneously misinterpreted the separation of powers doctrine in the parliamentary system.

The Access to Information Act further illuminates executive dominance, in this instance it was not the Minister, but rather state department officials, who did not comply with the portfolio committee's requests to provide it with certain information. In this case the committee chairperson was reluctant to hold the officials accountable, although they were in violation of the law by not providing Parliament with the relevant information. Members of the majority party in particular were unwilling to subject the government to rigorous scrutiny for fear of being perceived as being disloyal to their party. The largest factor that contributes to executive dominance is single-party dominance and the party representation system.

Balutis (1979: 43) observed that while constitutions separates authority among the three spheres of government, there is a good deal of overlap among the institutions and that, in fact, they share responsibility. Parliament must pass legislation that is implementable. It would be short-sighted to pass legislation that actually cannot be implemented by the executive. It is at the implemetation level that civil society is affected, and where it benefits from the laws passed by Parliament. Hence it is imperative that legislation seeks to provide realistic implementation processes.

The overwhelming single-party dominance, with a strong executive, does not necessarily mean that democracy is constrained and that the only views that inspire legislation are those of the executive and Cabinet. The party views and policies are developed through the party's consultation with its members and branches at grassroots level. This consultation with party branches happens at the ANC's policy conferences. This is where policy is debated, linking it to the Bill of Rights as set out in the Constitution, and the ideals of a better life for all as set out in the (RDP 1994).

The Mbeki government's HIV /AIDS policy was in conflict with the Constitution and the culture of human rights. Many ANC MPs opposed the rationale behind that policy. Despite their speaking out at caucus meetings, they were unable to influence the executive. After years of executive dominance challenged by civil society, the courts eventually pronounced that the executive's views on the matter were unconstitutional. In this regard the courts have been the major opponent to executive dominance in the context of the 'separation of powers', giving credence to South Africa's democracy. Whilst the overwhelming majority of bills were passed without any discord between the executive and Parliament, this does not reflect that democracy is constrained, as it is important for both Parliament and government to ensure that the Statutes reflect a culture of human rights and constitutional democracy.

4.4. PARLIAMENTARY DOMINANCE

Parliament has not necessarily shown willingness to assert its independence from the executive. In instances of conflict Parliament has proved more willing to allow the executive to win the turf battles. In the view of some commentators Parliament has been relegated to playing a 'rubber-stamping' role for executive decisions. One such example is the dissolution of the Directorate of Special Operations, known as the Scorpions, together with the tabling of the SA Police Services Amendment Bill, which reflects how the relationship is skewed in favour of the executive.

There are a few incidences of Parliament drafting its own bills. The two examples below reflect the most discord between the executive and Parliament in the legislative process. There are other examples, such as the floor-crossing legislation, that reflect less tension.I In this case the legislation was drafted by the executive and pioneered by the Justice portfolio committee. There were nevertheless members of the ANC who did not support the idea, who referred to the legislation as 'political expedience', arguing that

the legislation was not based on the principles of the ANC. The floor-crossing legislation was also referred to as "*crosstitution*" by Cassie Aucamp of the Afrikaner Eenhiedsbeweging (AEB), (Parliament since 1994 (2006:88))

The Broadcasting Act and the Money Bills Amendment Procedure Act are two examples of where the legislature was able to challenge the executive and approved bills independent of executive interference. In such instances the legislature will only be able to challenge the executive in so-called transitional periods, such as the short period during which the leadership change at the ANC's national conference in the now infamous Polokwane took place. Former President Mbeki lost the ANC Presidency, but still had government and executive power, when the new party leadership moved to regain control over the executive.

At that juncture the legislature was given the space, and indeed MPs were encouraged to take on, to undermine, the 'old' executive as part of the power play to remove them, in so doing allowing the new, emerging party leadership to gain control of the executive. At such times the ANC members of the legislature are "allowed" to attack their very own Ministers, not because they are courageous, but because they are very aware that ultimately the party leadership will prevail. In essence they remain servants of the party, and they know that their careers depend on their loyalty to the party. At the first parliamentary caucus of the ANC after the Polokwane Conference, it was Gwede Mantashe who addressed MPs as the newly elected Secretary General. This was the first time that a Secretary General of the party addressed a parliamentary caucus. It never happened during the Mbeki Presidency of the ANC. In this instance the party line was laid down to the MPs by the Secretary General.

Soon after the party leadership managed to gain control of the executive, the space that MPs were granted to take on the 'old executive' was slowly but

surely removed. This corroborates with views expressed by De Vos (2008:2) in chapter 3, highlighting that the party has absolute control over MPs.

The examples used in chapter 3 mainly highlight discord and executive dominance, but the overwhelming majority of bills are passed without incident, therefore reflecting a harmonious relationship. The procedure outlined in the legislative process is not circumvented, and Parliament engages with civil society during the public particiption process to enhance the concept of participatory democracy. If any of the recommendations by the opinion-makers are not considered by Parliament, then these opinions are raised via the courts. the courts have thus become the counterweight to executive dominance, as in the example of the Treatment Action Campaign vs the Minister of Health with regard to the roll-out of antiretroviral drugs to HIV positive mothers. There are the examples of the Termination of Pregancy Bill and the Health Care Practitioners bill, which were referred back to Parliament for reconsideration due to the lack of proper public consultation processes.

The process of the executive drafting legislation must be balanced with Parliament asserting itself during the parliamentary engagement on legislation. This can mainly happen at the committee stage of the legislative process. The executive developes the budget, Parliament approves the budget but Parliament should hold the executive to account for the way that the budget is implemented.

4.5. LEADER OF GOVERNMENT BUSINESS

It is evident that throughout the parliamentary processes the office of the LOGB plays a significant role in ensuring that government's priorities are met. The LOGB is an executive function and has an administrative function based in Parliament, but has a more substantive role for the executive. It entrenches the power of the executive, and contributes to executive dominance in

ensuring that government priorities are achieved. The LOGB is not a neutral role, it is tilted in favour of the executive and intervenes on behalf of the executive in the legislative process.

In addition, the office is tilted towards Parliament and weighted in favour of Parliament in matters relating to Parliament in terms of its oversight function. This position is a balance between the executive and Parliament. It supports each arm of government in exercising its functions. The LOGB plays a role in assisting Parliament with exercising its oversight function with regard to ensuring that Ministers are available to respond to questions in both the National Assembly and the National Council of Provinces. Furthermore, the office of the LOGB ensures the participation of Ministers in debates, and to make statements in the House on matters of public importance in terms of the Rules.

The office thus plays a dual role in supporting both Parliament and the executive, ensuring that both roles of both oversight and accountability are played in achieving the constitutional mandate of each of these two arms of government. The role of the Leader of Government Business becomes one of the peace-maker role in cases of tension between these two arms of government, where he often has to intervene at study group level between the Minister and the committee, and also at the level of the Speaker, when consensus must be reached with the opposition parties.

The factors that impact on the power relations between Parliament and the executive are complex. In a vibrant constitutional democracy it is important to manage the tensions between the different branches of government, where it is normal to have tensions. It is the manner in which these tensions are managed that is important. The management of the disagreement must reflect the values enshrined in the Constitution and respect the theoretical and functional understanding of the separation of powers. In cases such as these,

where tensions were resolved between Parliament and the executive, former Speaker Ginwala referred to Jacob Zuma, when he was the LOGB, as a *'friend to Parliament'*.

During the Jacob Zuma era, the LOGB was instrumental in developing mechanisms to faciltate communication with other political parties. The LOGB convened regular meetings with leaders of opposition parties. This platform provided parties with the opportunity to engage the executive through the LOGB on matters that affected plitical parties inside and outside of Parliament. This platform is very similar to the Leader of the House in Britain, where the leader takes questions in the Commons on days allocated for that purpose on matters relating to executive proposals.

The office of the LOGB mainly serves as the Leader's principal point of contact with all Directors-General, the Cabinet Secretariate, presiding officers, the majority party chief whip, chairpersons of committees, MPs, non-governmental organisations (NGOs) Ambassadors, and parliamentary officials. In linking up with various stakeholders both in and outside of Parliament, the office conveys political and procedural concepts and ideas in terms of parliamentary processes. These are mainly based on the political strategy of the day, ensuring that the mandate of the majority party is delivered.

4.6. SUMMARY

The relationship between the executive and the legislature is shaped by the electoral system of proportional representation.This has a major impact on how this relationship plays itself out in legislative and oversight processes. The executive dominance, where Ministers and chairpersons of committees are all from the same party, determines the outcomes of major decisions in Parliament.

The period 1994 to 2004 mainly focused on passing laws that were in line with the contitutional democracy and eradicating oppressive Apartheid laws from the Statute Book. In this regard the realtionship between the executive and Parliament depicted a more harmonious synergy, as the objectives were mutual. There were, however, occassions of discord during the same period, and these were identified and analysed.

Parliament's oversight power is increasingly being questioned as it seems that conducting oversight is in the main the responsibility of the opposition parties in Parliament. Oversight should be recognised as a mechanism to assist the government to deliver to the people who elected it. Through conducting oversight, the areas of concern relating to delivery are highlighted by Parliament to ensure that the government makes good on its election promises.

The party-dominant system, with single-party dominance, in theory seems to constrain democracy. In this regard, having one party with a close to two-thirds majority, presents the notion of "ruling with an iron fist" and is likened to a "dictatorship". In reality Parliament has, over the years, been able to stamp its authority on matters that required Parliament's showing it can assert its dominance.

In summary, the synergies and regular agreement between the executive and the legislature is not because of the balance of powers, but single-party dominance. The next chapter provides conclusions and recommendations to strengthen the support lent to the Leader of Government Business in the effort to honour the political mandate.

CHAPTER FIVE: CONCLUSIONS AND RECOMMENDATIONS

5.1. REVISITING THE OBJECTIVES

The primary objective of the study was to examine the concept of the separation of powers between the executive and the legislature and the impact on the relationship between the executive and Parliament in the legislative process.

Theoretically, the separation of powers exist, but empirical evidence contradicts the theory. There is no Chinese wall that separates the two arms of government, because political party members have representation in the different spheres of government in the same proportion as their political support. As described in chapter 2, there is no watertight compartmentalisation of the arms of government. They are interdependent and interlinked; they have a symbiotic relationship. Government requires Parliament to pass its legislative proposals and the budget that is required to implement government policy and to reform the country.

The relationship between the executive and the legislature is dynamic, and is very complex. It is mainly determined by the proportional representation system. The power is weighted heavily in favour of the executive, although the relationship is not stagnant, with the legislature waiting for the executive to determine the outcome of decisions. The relationship changes daily depending on the issues, while the legislature will assert it's authority if the executive ventures too far into its terrain.

Secondly, the role of the LOGB was examined in relation to the legislative and oversight processes and its impact. The LOGB plays a significant role in the legislative process, monitoring government's programme and hastening the progress by consulting various role-players within Parliament. In this way the

LOGB ensures that government priorities area are achieved. Translating political imperatives into administration is an important role of the office of the LOGB.

The LOGB is an executive function based in Parliament. Importantly, the office is the interface between Parliament and the executive. It provides Parliament with information to assist in ensuring the participation of the executive in parliamentary proceedings. It supports the executive in relation to ensuring that Parliament passes government's legislative priorities.

The LOGB is weighted in favour of the executive on matters relating to the achievement of government's legislative priorities and is weighted in favour of Parliament on matters relating to Parliament in terms of its oversight functions. This position is a balance between the executive and Parliament. It supports each arm of government in exercising its function.

The LOGB recognises Parliament's constitional obligation in the legislative process and works alongside Parliament, ensuring that fewer bills were fast-tracked during the past six years. The period 1994 to 2004 focused extensively on ridding the Statute Book of discriminatory Apartheid legislation. It is therefore no surprise that the fast-tracking mechanism was introduced in 1999. Prior to that the executive could introduce legislation without having to comply with any administrative deadlines. In some cases bills were passed speedily, depending on the nature of the amendment, while obviously technical amendments were passed very swiftly. It could therefore be argued that the fast-tracking mechanism assisted both Parliament and the executive.

The LOGB is required to speak on behalf of government on a range of issues. The examples highlighted in chapter 3 show how the LOGB was instrumental in communicating legislative matters to Parliament for consideration. The LOGB plays a key role in ensuring that government's legislative priorities are met in

Parliament. The executive develops the legislative agenda of Parliament; the majority of parliamentary business is government business. Due to the 'fusion of power' appropriate 'checks and balances' between the arms of government ensure accountability and openness. Ministers can be summoned to appear before any committee to account on matters relating to their respective departments.

5.2. SEPARATION OF POWERS

The central feature of the doctrine of separation of powers is that there must be effective checks and balances and that the excessive concentration of power in a single organ or person is an invitation for abuse. The doctrine is highlighted as the system that helps to energise government, and to make it more effective by creating a healthy division of labour.

In Westminster-like democracies such as South Africa, the separation of powers is complete in so far as the judiciary is concerned. The courts have to be beyond political interference from Parliament or government, but the executive and legislative powers are not as separate as they are in non-Westminster systems.

The role of the courts in terms of the South African Constitution is to protect individual rights. At times, in asserting this function, the courts will have to intrude to some extent on the terrain of the executive and the legislature. However, in doing so the courts must remain sensible to the constitutional interest of the other arms of government and seek to ensure that the intrusion is based on constitutional principles and not on power over the other arms of government. The courts have played a pivotal role in ensuring that executive dominance in the legislative process is overturned.

The separation of powers between the President, Cabinet and Parliament in the parliamentary system is not as clearly separated. The President is elected by Parliament on the outcome of a parliamentary/national election. The Ministers are also Members of Parliament, so the separation between these two arms of government is not very clear and separate. The President appoints his/her Cabinet from Members of Parliament. Members of Parliament form the government, and they vote in Parliament to support their own legislation and serve on party study groups, where they discuss and exert influence on major policy decisions of the party. In chapter 2, it was observed that there was no watertight compartmentalisation of the three arms of government .

In theory, the arms have separate roles and functions, but in practice they are interlinked and co-operate as required. Members of the judiciary are appointed by the President with the participation of the legislature and the judiciary through the Judicial Services Commission. In the case of the Chief Justice, he presides over Parliament when the President is elected.

The mechanisms to ensure the 'checks and balances' are highlighted through the Public Protector keeping a 'watchful eye' for any perceived wrongdoing. In recent times the opposition parties have used the Public Protector to highlight certain areas governance and administration with which that they were not happy. The Public Protector's reports were submitted to the President for action, these reports also give dates for the required response from the President.

In the American Presidential system, the President is elected in a separate election from the congressional election. This separation seems more distinct in that system of government. The President selects Ministers from outside of Congress, theoretically signifying the separation. When certifying the Constitution, the court recognised that there is no universally accepted system for achieving the separation of powers.

In practice the clear and distinct roles outlined in the theory are not entirely separate asthey overlap and are interlinked. There is a healthy interaction between the executive and Parliament; Ministers respond to questions, and also brief committees as required. The separation of power is part and parcel of the constitutional future of South Africa.

The sharp contrast between the Westminster and Presidential systems is that Ministers in Westminster systems are accountable to Parliament, but in Presidential systems Ministers don't account to Parliament for what they do as they are not members of Congress.

5.3. LEGISLATIVE PROCESS

The Constitution outlines the legislative process in detail, thus binding Parliament legally to ensure that the provisions of the Constitution are upheld to strengthen democracy. Whilst provisions of the Constitution are adhered to, the system of proportional representation, with strong party dominance provides the opportunity for government's legislative programme to be implemented without too much resistance. Public participation is a key feature in the legislative process. This process is outlined in the Constitution and recognises the important role that communities and civic organisations play in ensuring that the voice of the people is recognised in the legislative process. The LOGB is cognisant of Parliament's important responsibility to provide a platform for the public to engage on legislation before Parliament, and has not requested Parliament to fast-track legislation recently.

The legislative process during committee engagement is indeed the actual stage where the relationship between the executive and Parliament is played out. The convergence of party leaders and the executive determines the outcomes of processes. This relationship, which is determined by the the Proportional Representation system, does not reflect negatively on democracy.

The majority is mandated at the polls in an election. In this, the electorate hands over its power to the majority. Therefore the majority's views are carried through the development of policy reform led by government. Parliament provides a platform for minority views to be considered, and this is done through the committee's processing of legislation in the public participation process.

Prior to the introduction of legislation, the executive consults extensivley with civil society during the Green and White Paper processes. Often considerable networking takes place. Public comment is invited before the executive introduces a bill.

In the legislative process in South Africa, democracy is not constrained by the large single-party dominance. Public consultation on proposed policy takes place from inception to the final passing of the bill. A recent example is the proposed 'toll roads'. Although consultations had taken place at the beginning of the process, government reconsidered the matter due to the huge public interest at the concluding stage prior to implementation. The example of The Access to State Information Bill further highlights how civil society is not restricted in making their voices heard, even up to the last minute. The bill is being reconsidered by the committee, taking into account the concerns raised by civil society.

5.4.OVERSIGHT PROCESSES

Parliament has, in terms of the Constitution, installed mechanisms to ensure that the executive is answerable to Parliament for its actions. These mechanisms have been outlined in chapter 3, holding the executive to account and should best be utilised to achieve the priorities and promises made in an election. Oversight should be seen as a vehicle to ensure that government implements legislation passed by Parliament, and delivers services to the

people. Parliament is in the process of strengthening the committee support system to ensure that committees are adequately resourced to exercise more effective oversight. Hence meaningful oversight requires that the interaction between Parliament and the executive is guided by the goal of ensuring effective governance and service delivery to the people.

The responsibility of holding the executive to account in parliamentary systems of government is often perceived as the role of opposition parties. Since the opposition parties are the main drivers of oversight it tends to make oversight more adversial. This aspect of opposition politics focuses on apportioning blame to the executive rather than finding solutions to meeting the needs of the people.

5.5. RECOMMENDATIONS

The NA Rule focuses strongly on linking the role of the LOGB to the executive only. However, the office of the LOGB has developed into one that performs a dual function supporting both the executive and the legislature. Parliament relies more and more on this office in executing its oversight responsiblities with regard to the functions of programming by ensuring the availability of the executive, tracking matters of executive compliance and tracking vacancies in institutions that support democracy.

The first 15 years of democracy were mainly dedicated to passing laws and eradicating the statutes of discriminatory Apartheid legislation. In order for Parliament effectively to shift energies and resources into developing a more strategic approach to delivering on oversight, a number of factors must be considered that may allow committees to perform the oversight function satisfactorily.

The following recommendations outline mechanisms to assist the office of the LOGB in developing a parliamentary programme that links legislative oversight to the work of committees, being the engine room of Parliament, in order to perform the oversight function and to promote executive accountability:

1. A shift in the idea of what parliamentary work is should be highlighted. Parliamentary work should include committee work, constituency work, and plenaries. It should no longer be narrowly confined to the plenary of the two Houses only. Oversight should form the bulk of parliamentary work. Parliament should raise public awareness that parliamentary work is not only done when debates take place in the Assembly. The public perception created by the media is that when the House is not sitting Parliament is not working.

2. The majority party should utilise the parliamentary programme to present itself and account through the programming function in a way that speaks to the people and keeps them informed of progress in creating that better quality of life. Every year an overall theme must be developed that threads throughout to bind the entire programme. This will, for example, allow for some measure of focused debate, questions, etc. It will also assist with monitoring to ensure that Parliament systematically applies itself to the focused consideration of issues in order to unlock the resources and deliver. The programme should also be flexible to accommodate *ad hoc* issues, which should preferably be kept to a minimum. The location of the programming office under the auspices of the NA Table sits uncomfortably with the nature of the parliamentary programme, and reconsideration of the location of this function is required. In 1999, former Speaker Ginwala removed the programming function from the office of the LOGB. The NA Table reports directly to the Speaker, meaning that the Speaker has control over what is in fact a political function. This location has given the Speaker the power to control the programme of the government.

3. The Oversight and Accountability Model, as elaborated on in chapter 3, should be implemented as it spells out clear systems to enhance oversight and to promote a culture of accountability.

4. The Electoral System of Proportional Represention (PR) should be reconsidered and a Constituency-based Parliamentary system should be considered. This is a mixed system that still considers party lists, but promotes greater accountability of MPs to their constituencies.

5. Parliament should promote monitoring and evaluation as mechanisms to promote the speedy implementation of legislation that affects service delivery.

6. Parliament should evaluate the impact of legislation with delegated authority and should at best minimise the passing of legislation with such authority. Government should provide Parliament with the social and budgetary consequences of such legislation before it is tabled.

7. The parliamentary programme should be developed in a way that promotes the regular attendance of Ministers in sessions of the National Assembly as they are Members of the National Assembly in addition to being members of Cabinet.

8. Parliament must introduce mechanisms to ensure that Members of Parliament are at the constituency offices on days allocated for constituency work. Parliament funds the budget to run these offices and should hold MPs accountable for the use of the offices.

The research revealed that the courts played a significant role as overseers of executive dominance, mainly in cases where the legislature was unable to

assert its authority over the executive. The research was confined to the topic and recommends that further study be conducted on the role of the courts as overseers of executive dominance in the legislative process. This could contribute to further enlightenment of the relationship between the spheres of government.

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APPENDICE

APPENDIX 1: LETTER

FIGURE 7: Parties represented in National Assembly 1994

PARTY		*VOTES RECEIVED*	*SEATS*
African National Congress	*ANC*	*12 237 655*	*252*
National Party	*NP*	*3 983 690*	*82*
Inkatha Freedom Party	*IFP*	*2 058 294*	*43*
Vryheidsfront Freedom Front	*VV-FF*	*424 555*	*9*
Democratic Party	*DP*	*338 426*	*7*
Pan Africanist Congress of Azania	*PAC*	*243 478*	*5*
African Christian Democratic Party	*ACDP*	*88 104*	*2*
TOTAL		*19 533 498*	*400*

Source: Independent Electoral Commission: www.iec.org.za *(proper references Independent Electoral Commission: www.iec.org.za)*

FIGURE 8: Parties as at 11 June 2004

PARTY		*VOTES RECEIVED*	*SEATS*
African National Congress	*ANC*	*10 878 251*	*279*
Democratic Alliance	*DA*	*1 931 201*	*50*
Inkatha Freedom Party	*IFP*	*1 088 664*	*28*
United Democratic Movement	*UDM*	*355 717*	*9*
Independent Democrats	*ID*	*269 765*	*7*
New National Party	*NNP*	*257 824*	*7*
African Christian Democratic Party	*ACDP*	*250 272*	*7*
Freedom Front Plus	*FF Plus*	*139 465*	*4*

United Christian Democratic Party	*UCDP*	*117 792*	*3*
Pan Africanist Congress of Azania	*PAC*	*113 512*	*3*
Minority Front	*MF*	*55 267*	*2*
Azanian People's Organisation	*Azapo*	*41 776*	*1*
		15 499 506	

Source**: RSA Parliament, National Assembly (April - December 2004): Procedural Developments Issue 10, Item 19, p8* ***(place this in footnotes -AFTER ORDER BY ELECTORAL COURT)

FIGURE 9: State of Parties after floor crossing as at 16 September 2007

PARTY		*SEATS BEFORE FLOOR-CROSSING*	*SEATS GAINED*	*SEATS LOST*	*SEATS AFTER FLOOR-CROSSING*
African National Congress	*ANC*	*293*	*4*	*-*	*297*
Democratic Alliance	*DA*	*47*	*-*	*-*	*47*
Inkatha Freedom Party	*IFP*	*23*	*-*	*-*	*23*
United Democratic Movement	*UDM*	*6*	*-*	*-*	*6*
Independent Democrats	*ID*	*5*	*-*	*1*	*4*
African Christian Democratic Party	*ACDP*	*4*	*-*	*-*	*4*
Freedom Front Plus	*FF Plus*	*4*	*-*	*-*	*4*
National Democratic Convention	*Nadec*	*4*	*-*	*-*	*4*
United Christian Democratic Party	*UCDP*	*3*	*-*	*-*	*3*
Minority Front	*MF*	*2*	*-*	*-*	*2*
African People's Convention	*APC*	*-*	*2*	*-*	*2*
Pan Africanist Congress of Azania	*PAC*	*3*	*-*	*2*	*1*
Azanian People's Organisation	*Azapo*	*1*	*-*	*-*	*1*
Federation of Democrats	*FD*	*1*	*-*	*-*	*1*
National Alliance	*NA*	*-*	*1*	*-*	*1*
United Independent Front	*UIF*	*2*	*-*	*2*	*-*
United Party of South Africa	*UPSA*	*1*	*-*	*1*	*-*
Progressive Independent Movement	*PIM*	*1*	*-*	*1*	*-*

***Source**: RSA Parliament, National Assembly (January – December 2007): Procedural Developments Issue 13, Item 15, p6*

FIGURE 10: State of parties as at 28 April 2009 [43]

PARTY		*VOTES RECEIVED*	*SEATS FROM NATIONAL LIST*	*SEATS FROM REGIONAL LISTS*	*TOTAL NO OF SEATS**
African National Congress	*ANC*	*11 650 748*	*126*	*138*	*264*
Democratic Alliance	*DA*	*2 945 829*	*32***	*35*	*67*
Congress of the People	*Cope*	*1 311 027*	*16*	*14*	*30*
Inkatha Freedom Party	*IFP*	*804 260*	*9*	*9*	*18*
Independent Democrats	*ID*	*162 915*	*3*	*1*	*4*
United Democratic Movement	*UDM*	*149 680*	*3*	*1*	*4*
Freedom Front Plus	*FF Plus*	*146 796*	*3*	*1*	*4*
African Christian Democratic Party	*ACDP*	*142 658*	*3*	*-*	*3*
United Christian Democratic Party	*UCDP*	*66 086*	*1*	*1*	*2*
Pan Africanist Congress of Azania	*PAC*	*48 530*	*1*	*-*	*1*
Minority Front	*MF*	*43 474*	*1*	*-*	*1*
Azanian People's Organisation	*Azapo*	*38 245*	*1*	*-*	*1*
African People's Convention	*APC*	*35 867*	*1*	*-*	*1*
		17 549 115	*200*	*200*	*400*

***Source**: RSA Parliament, National Assembly (May – December 2009): Procedural Developments Issue 15, Item 5, p4*

[43] **Each seat in the NA represents 44 201 votes*
***The DA has no national list, so all its members are designated from its regional lists in accordance with item 9 of Schedule 1A to the Electoral Act*

APPENDIX 2: LETTER #

Below is a letter from the then Leader of Government Business to the Chairperson Public Accounts (SCOPA). This is an example of executive participation in the parliamentary oversight in the Defence procurement process

January 19, 2001

Dear Mr Woods,

l write to you about the issue of the defence acquisition, which, unfortunately and unnecessarily has become a matter of controversy.

In this regard, I thank you for your letter to the President dated 8 December, 2000, with whose authorisation I am sending this communication to you.

The Executive has no desire to fuel controversy. However, we are obliged to defend the integrity of government.

I enclose for your information two documents, these being:

1. The January l2, 2001 Government Statement of the Defence Acquisition; and
2. The January 15, 2001 letter to the President of the Minister of Justice on the issue of the "Heath Unit".
From these documents, you will see that the Government contests the conclusions arrived at by the Auditor General and SCOPA.

Furthermore, we are convinced that, in addition to the requirement for us to respect the decision of the Constitutional Court, there is no need for the "Heath Unit" to be involved in any "investigation" of the defence acquisition.

We do not understand why you, presumably on behalf of your parliamentary committee, suggest that we should ignore the decision of the Constitutional Court on the "Heath Unit".

The reasons for granting the Executive and the Legislature a period of a year to sort out this matter are clearly set out in the Constitutional Court judgement.

Throughout the judgement, the Court makes it clear that by granting a one year 'grace' period, it wishes to protect the Unit's work that is "being done". t refers to "persons being investigated". It further stated that Judge Heath "continues temporarily to be head of the Unit until appropriate arrangements are made for his replacement."

With regard to this last point, the President of the Constitutional Court, speaking on behalf of the Court, said:

"Although there may be reasons for allowing sufficient time for all matters to be dealt with simultaneously, there are good reasons for the first respondent's (Judge Heath) position as the head of the SW to be regularised without undue delay."

In other words, the Constitutional Court required of us that Judge Heath be relieved of his duties without undue delay
You will also have seen that during the course of his judgement, the President of the Constitutional Court makes the following observation, concerning the uncompleted work of the SIU:

"The SIU is currently engaged in investigations into approximately 100 organs of state said to involve 22l580 cases. The investigations extend over all 9 provinces and include 12 national investigations."

By any account, this is a very considerable volume of work that is currently being handled by the SIU. As Minister Maduna has indicated, it would clearly be absurd and illogical for additional work to be given to this Unit, if this was legally possible.

In the light of everything we have said above, we find it very odd indeed that the Auditor General, according to your letter, is also keen that we act without reference to the decision of the Constitutional Court.

Let me also mention that we find it strange that a parliamentary committee (SCOPA) considers expenditure for the acquisition of defence equipment as a "major diversion of public resourcesâ€¦" requiring to be balanced by a "social payback".

As parliamentarians you must surely be aware of our common Constitutional obligation to maintain a national defence force, which, according to the Constitution, shall have the "primary object":

"to defend and protect the Republic, its territorial integrity and its people, in accordance with the Constitution and the principles of international law regulating the use of force."

In addition, this expenditure was considered by the parliamentary Defence Committee and approved by parliament

I would also like to deal with other matters of grave concern to our Government, including the President,

The first of these arise from the Report of SCOPA which was accepted by the National Assembly on November 2, 2000.

The critical issue in this regard is that SCOPA states that it is interested to carry out an investigation because our Government, foreign Governments and the prime contractors, major international companies, are prone to corruption and dishonesty.

If this is in fact the starting point for SCOPA, it seems that the investigation you seek is tantamount to a fishing expedition to find the corruption and dishonesty you assume must have occurred.

To illustrate these assertions, let me quote some passages from the SCOPA Report.

"By many accounts the international arms trade industry experiences a high incidence of malpractice, with purchasing countries often having been the victims of very costly exploitation. With this in mind, the Committee has considered the transactions and the broader financial and fiscal implications pertaining to the recent South African arms purchases."

Who gave what accounts to SCOPA?
Further the Report states:

"With international armaments markets havingâ€¦recovered, the Committee fears that the large commitments by suppliers might now be resisted and even reneged upon. With South Africa unlikely to be a serious arms purchaser over the next few decades, this possibility needs to be watched closely.

What study has SCOPA done which shows the recovery of the international armaments markets and the possible response of the 'suppliers' to this development?

Further the Report says:

"Because of the possibilities of improper influence having been exerted in certain of these selections, further investigation is considered necessary."

What assessment did SCOPA carry out to establish the existence of these 'possibilities', which are these selections and why them and not others?

Further, again, the Report states:

"The Committee is concerned about the possible role played by influential parties in determining the choice of subcontractors by prime contractors."

What work was done by SCOPA to establish that there was a possible role by which influential parties? Do these include members of the Government? Which prime contractors and which subcontractors would have been influenced by these influential parties?

Further still, the Reports asserts:

"The government-to-government agreements, which make references to NIPs commitments, while noble in intent and of some influence in official international communications, have questionable contractual or legal standing."

What is questionable about these agreements? What is meant by "some influence in official international communications"? Is the suggestion being made that the Governments entered into meaningless agreements only for propaganda purposes? If this is so, on what basis is this allegation being made?

The seriousness with which you take your assumption that our Government, the trans-national corporations and foreign Governments are prone to corruption and dishonesty, is illustrated by the steps you have taken to ensure that investigations take place.

As you know, the acquisition process was led by a Ministerial Committee, which was chaired by the then Deputy President. The committee reported to the Cabinet. The Cabinet gave final approval for the acquisition.

This Committee dealt with the prime contracts and not the subcontracts which are a matter between the prime contractors and whoever they subcontract to.

The members of the Cabinet Committee were the then Deputy President, Thabo Mbeki, and Ministers Joe Modise, Trevor Manuel, Alec Erwin and Stella Sigcau.

The prime contractors are Blohm + Voss, Thompson CSF, Ferrostaal AG, Thyssen Nordseewerke GmbH, Agusta un'Azienda FINMECCANICA S.p.A, British Aerospace, British Aerospace (SAAB) and others, all of which are well-known and prestigious international companies.

The foreign governments involved are those of the UK, Sweden, Germany and Italy.

Your assumption of corruption and dishonesty is therefore specifically directed against these personalities, governments and corporations.

Natural justice demands that you both substantiate the allegation that the persons, governments and corporations we have mentioned are prone to corruption and dishonesty and provide even the most rudimentary or elementary evidence that any or all of these acted in a corrupt and dishonest manner.

I believe that it is a most serious matter indeed for our parliament or any section of it, to level charges of corruption against foreign governments and corporations without producing evidence to back up such allegations.

All of us have a duty to build friendly relations with the peoples of the world. We cannot achieve this by arbitrarily and falsely presenting these in the negative light that some have defined as being their duty with regard to our Government and country.

Least of all can it be the task of our Parliament to act in this manner.

As we have said, it is clear from your Report to parliament that you have a significant amount of written information in your possession and, presumably, other evidence.

This should enable you to present the information and evidence we suggest you present, substantiating the extremely damaging assumptions you state in your Report to parliament.

Obviously, should you have any evidence indicating possible criminal misconduct on the part of any of the individuals and corporations I have mentioned, you should hand it over to the Police Service.

In this regard, I also believe that any information you may have on Members of parliament, including Ministers who are members of the National Assembly, should immediately be brought to the attention of the Speaker.

The rules, I believe, prescribe that any investigation pursuant to this information would not fall within the competence of SCOPA.

You may also wish, as you inform the Speaker, to request her to take steps to ensure that the country is influenced about the alleged misconduct, provided that this is legal. We would have no problem with that to the extent that it relates to members of the Executive.

The next matter I would like to raise concerns the interaction between SCOPA and the Executive on the issue of the defence acquisition.

SCOPA has proceeded to reach conclusions on this matter without having heard the Cabinet. This is despite the request the Ministers made to meet SCOPA.

As you can see from the documents we have enclosed, we are of the firm view that because this meeting did not take place, SCOPA has seriously misdirected itself and thus arrived at decisions that are not substantiated by any facts.

It is difficult to understand how SCOPA could have gone as far as it has, investigating a decision taken by the Cabinet, without asking the people who took the decision any questions that SCOPA might have felt they should ask.

We hope this strange manner of proceeding was not driven by a determination to find the Executive guilty at all costs, based on the assumption we have already mentioned, that the Executive is prone to corruption and dishonesty.

It might be necessary that both the Legislature and the Executive try to draw the necessary conclusions from this experience, to ensure that we do not repeat the obviously wrong things that have happened during the handling by parliament of the defence acquisition issue.

In the meantime, I believe that those who occupy positions of leadership in parliament, including yourself, will have to make the matter clear to parliament as a whole, why it is that at least SCOPA believes that the Executive is prone to corrupt and dishonest practice.

As you are aware and as Minister Maduna indicated in his letter to the President, in her public statement issued on 27 December, 2000, the Speaker of the National Assembly, the Hon Frene Ginwala, makes the following comments:

"The Speaker is not aware of any resolution of Parliament or the National Assembly instructing the President to issue any Proclamation regarding the work of the Heath commission. Any such action would be of dubious legal and constitutional validity."

Further:

A Committee of the National Assembly has no authority to subcontract its work to any of these (investigative) bodies, or require them to undertake any particular activity, or to report directly to the Committee. Nor are Chairpersons expected to act on major issues without the agreement of the Committee. Such direction as the Assembly may wish to give would require specific referral by a resolution of the National Assembly, and be subject to the procedures provided in relevant legislation."

In his letter to the President, Minister Maduna reports that you informed the investigative units that SCOPA was in contact with a foreign "forensic accounting facility" that could draw up the terms of reference of the investigation you seek.

We must therefore include this unnamed "facility" among the bodies which, according to the Speaker, cannot be subcontracted by SCOPA.

From the statement of the Speaker it is clear that your letter to the President was ultra vires. This is true of any action you might have taken to cause any investigative unit to carry out any investigation.

This has put the Executive and its organs in an embarrassing situation, to the extent that you, and others, have conveyed the false information that the National Assembly had requested that various organs should carry out an investigation.

It is therefore necessary that specific steps be taken to correct this situation, to ensure that all of us, including SCOPA and you, respect the rule of law.

There is an additional matter I would like to raise with regard to your communication dated 21 November, 2000, to the "Joint Investigating Initiative", in which you mention the "international forensic accounting facility".

In this letter you say:

"Against uncertainties created through the media last week, of possible interference in the investigation by government, it was felt appropriate to mention this offer as a possible means through which SCOPA could assure the public of a comprehensive investigation."

According to this statement, because of what the press said, you became so fearful of possible government interference that you felt that you should accept the offer made by some "international facility".

Seemingly, this "facility" made its offer just on time to provide a way out of the "uncertainties created through the media"!

You were quite happy to accept the judgement of the media about the intentions of the Government. This was presumably because, as we have said, you know that the Government is prone to corruption and dishonesty.

Accordingly, according to this view, the Government must be assumed to have acted corruptly with regard to the defence acquisition, and would therefore, naturally, seek to cover up its misdeeds!

Whatever you say about our own investigative units in your letter to then, you also felt that they did not enjoy sufficient credibility with "the public" to be able to reassure this "public" of the integrity and honesty of the investigation, if the foreign "facility" was not involved in the investigation.

On what information do you base this assessment of the Auditor General, the Public Protector and the National Director of Public Prosecutions, all of whom have been confirmed in their positions by parliament?

I am certain that all these matters will need to be explained, including who this "facility" is, with whom they have discussed and when, why they felt that they should set the terms of reference for the inquiry you seek, who felt it appropriate to mention the offer to the investigative units, and so on.
I am not raising these questions so that you should report to the Executive. I mention them because they cause grave concern to the Executive, which is interested to hear straightforward answers.

Parliament will have to deal with these and other questions, as we have to respect the principle contained in our Constitution of the separation of powers.

In your 8 December, 2000 letter to the President, urging the involvement of the "Heath Unit" in the investigation, you say:

"SCOPA's reasons for including a role for the Special Investigations Unit (SIU), as one of the investigating parties, related to the SIU's particular powers and areas of competence and its relevant experience. It was apparent to us that the comprehensive investigation advocated would be weakened by its absence - mainly due to its authority in civil type actions and the role which could be played by its special tribunal arrangement."

I am certain that you are aware of the fact that in his letter to Minister Maduna, dated November 22, 2000, the Public Protector said:

"With regard to the application for a proclamation by the SIU, I am of the opinion that such a proclamation is not necessary at the present juncture.

"There is no evidence of any unlawful appropriation or expenditure of public money and accordingly no need for the SIU to recover any assets or public money;

"The application by the SIU, is based primarily on the Special Review by the Auditor-General and does not raise any new evidence.

"I believe that such a proclamation by the President, is not necessary at this stage and that the application be pended for consideration by the President at a later date, if necessary."

I am also certain that you are familiar with the decision of the Constitutional Court, which contained the following view:

"The functions that the head of the SIU (Judge Heath) has to perform are executive functions, that wider our system of government are ordinarily performed by the police, members of the staff of the National Prosecuting Authority or the state attorney."

It is clear that you disagree with the views both of the Public Protector and the Constitutional Court, believing that there are public funds to be recovered and that neither the police, nor the Prosecuting Authority nor the state attorney have the same competence to act as does the SIU.

Accordingly, with regard to the paragraph of your letter to the President quoted above, it would help us enormously if you favoured us with a response to the following questions:

(a) what are the particular powers, areas of competence and relevant experience to which you refer, distinct from the powers, area of competence and relevant experience of our judiciary?

(b) in what way are the competencies mentioned under (a) above especially relevant to the determination of the truth about the defence acquisition, which determination of the truth would be weakened by the absence of the SIU?

We have publicly indicated our desire and willingness to have some of our Ministers meet SCOPA. I trust that, this time, this will actually take place.

Further, to enable us to give the proper and necessary direction to the National Director of Public Prosecutions and the South African Police Service, I request that SCOPA indicates to me the specific matters it wants investigated and why, providing the prima facie evidence which it believes justifies this investigation.

As of now, we do not have this prima facie eyidence and are completely at a loss as to what the loudly proclaimed wrongdoing consists in.

Parliament is, of course, at liberty to interact with the Public Protector and the Auditor-General as it wishes.

Let me reiterate the commitment contained in the attached statements, that the Executive would co-operate fully with any investigation necessitated by information that suggests that corruption might have occurred in the process of the defence acquisition.

Whoever has such information should make it available to any investigate unit of their choice, the Executive, as well as the general public, if they so wish.

The Government will also act vigorously to defend itself and the country against any malicious misinformation campaign intended to discredit the Government and destabilise the country.

I would like to inform you that copies of this letter and the enclosures will be sent to:

(a) the Speaker of the National Assembly;
(b) all members of SCOPA;
(c) the heads of the investigative units, including the SIU;
(d) the Chairpersons of the Defence, Trade and Industry, Finance and Public Enterprises parliamentary portfolio committees, as well as the parliamentary Audit Committee;
(e) the principal contracting companies;
(f) the relevant foreign governments; and
(g) the media.

The President has asked me to assure you that he did, indeed, give urgent attention to your request, as you asked.

Similarly, he and I respectfully request that you give urgent attention to all the matters raised in this letter.

Yours sincerely,
JACOB G. ZUMA
Leader of Government Business.

Response

29 January 2001
To: Hon. Mr Jacob Zuma
Leader of Government Business

Dear Colleague

I acknowledge receipt of a copy of your letter dated January 19th addressed to the Chairperson of the Standing Committee on Public Accounts. The Report to which you refer is a document of the National Assembly after it was adopted on November 3rd, and I am responding to you as the responsible Presiding Officer.

Your letter raises issues of procedure on the conduct of relations between the Legislature and the Executive, as well as specific concerns of substance, and I will take the opportunity to address both matters.

I was pleased to note that in the President's broadcast, the statement by the Director General, and in your letter there are expressions of support for Parliament's constitutional responsibilities.

However, I am perturbed by the concerns you raise, and the National Assembly will need to consider them very seriously and rectify any problems. I would like at this stage to make some preliminary comments on some of the issues.

1. The Special Review by the Auditor General of the Selection process of Strategic Defence Packages for the Acquisition of Armaments at the Department of Defence was correctly referred to SCOPA which has the responsibility to consider such reports and enquire into the issues that are raised and report to the National Assembly

In the Report adopted by the Assembly, SCOPA indicated it intended to pursue a number of issues on which it had yet to report. The Committee is continuing its work on these and will also consider and report to the National Assembly on the matters raised by the Executive that are within its competence.

2. On December 27th, I issued a statement on the Report as submitted by SCOPA and adopted by the National Assembly. [This statement is attached for your information.]

The Report adopted by the Assembly explicitly recommends "an independent and expert forensic investigation" for which the Committee will prepare a brief, and further "an exploratory meeting convened by the Committee" to which four named and "any other appropriate investigative body" should be invited. The Report does not recommend that any or all of these bodies must

be included, nor does it refer to the procedural and constitutional issues that would arise should Parliament wish to involve or instruct either independent or executive agencies or organisations in its inquiries. [The opinion of the Law Advisor after we re-examined the Report is attached for your information.]

Had there been a recommendation that the Executive authorise the Special Investigative Unit or any other organ of the Executive, I would have immediately drawn the attention of the relevant Minister as has been our practice for over a year.

However, it is now evident that there are differences among members of SCOPA on what the report was intended to convey. If it deems it necessary, the Committee may pursue this and make a specific recommendation to the Assembly.

I want to take the opportunity to express my view, that it is within the competence of the Legislature after due consideration of the legal and procedural requirements, to make a recommendation to the Executive on areas within its jurisdiction, which the Executive may choose to accept or reject. Parliament's authority is persuasive. The Legislature cannot instruct the Executive, except to the extent that legislation it enacts defines and sets the legal framework within which the Executive undertakes its constitutional responsibilities. Parliament retains oversight over the manner in which the Executive and state organs perform their functions.

3. You have raised a number of serious concerns on the methods used by SCOPA, the perceived assumptions and the information on which conclusions have been based. I have no doubt that the Chairperson of SCOPA to whom your letter was addressed will have tabled it for consideration by the Committee. However, as the report was adopted by the Assembly, I am referring your letter to SCOPA and requesting the Committee to report to the Assembly on those issues that are within their competence and in particular on their investigations

I had previously drawn the attention of the Chairperson of the Committee and Mr. Feinstein to Rule136 which states:

"If any information charging an Assembly member comes before a committee, the committee may not proceed upon that information, but must report it to the Speaker without delay."

Subsequently, the Chairperson sent me some documents submitted to the Committee in which reference is made to current and previous members of the National Assembly, but indicated that he did not consider that in themselves these provided evidence of misconduct. I have studied these, and agree that the allegations are not substantiated. Accordingly, I did not consider that there was a basis for referral to the disciplinary committee nor to an ad hoc committee of the House. Should evidence of misconduct by any member be submitted in future, I will act on it immediately, and as is customary, the House will be informed.

5. I can assure you that the Assembly, and all Members of Parliament are fully aware of their responsibility to provide the Police Service with any information on possible criminal activities. You have also requested SCOPA to provide you with particular information that it might have or acquire.
However, except where information and documents are submitted to a Committee when it meets in public, disclosure is governed by particular rules. If the public was excluded from a meeting of the Committee the evidence or a report or summary thereof may not be published or disclosed, except with the permission of the Committee, or by order of the Speaker, or by resolution of the Assembly. Further the permission, order or resolution authorising the publication or disclosure may provide that specific parts of, or names mentioned in, the document in question may not be published or disclosed.

If the evidence has not been made public, the committee could in its published report to the Assembly merely make reference to the type of evidence without providing names or details, and indicate whether it wishes to make this available to any other body for purposes of investigation. It is therefore possible to proceed without premature disclosure and compromising police investigations. The Law Advisors will work with the Committee on this matter.

6. Your concerns regarding directions to the National Director of Public Prosecutions and the South African Police Service are valid. However, the Chairperson is now fully aware that SCOPA cannot instruct any of the Investigating Agencies and has already informed the "Joint Investigating Initiative" of this. [Letter of 21 November attached.] Any requests for specific investigations required by the Assembly will be submitted through the appropriate channels.

7. I do not know what the view of the Committee has been on the offer of assistance to SCOPA by "an international accounting agency". However, when I learnt of this I informed the Chairperson of a decision of the Joint Rules Committee that all offers of support from outside of Parliament or the Executive, or requests for such support should be made through the Presiding Officers. No offer to SCOPA has been received or referred to my office.

I trust, Deputy President, that I have been able to clarify some of the issues, and assure you that the Assembly will address all the matters raised in your letter.

In order to facilitate communication with the Executive and ensure that recommendations of the Assembly are considered timeously, I have for the past year been writing to specific members of the Executive drawing attention to reports and particular recommendations concerning their portfolios, and requesting that the Assembly be advised of action that is taken. This is in addition to the previous practice where the Secretary to Parliament sent reports and resolutions adopted by the Assembly to the Director General in the Presidency. The responses to the recommendations made last year are currently being reviewed and we will be following up on them.

We are all still developing our understanding and trying to give effect to the constitutional relationship between the Executive and the Legislature. We have appreciated the role you have played since assuming the responsibility of Leader of Government Business.

However, as recent events have emphasised, much still remains to be done, and we need to continuously review and improve the communication and relationship between the Executive and Legislature.

As your letter was widely distributed and made public, I will do the same with this response.

Yours sincerely
F.N. Ginwala
Speaker

BILLS FAST TRACKED SINCE 1999

1999
South African Sports Commission Second Amendment Bill
Municipal Structures Amendment Bill
South African Airways Unallocatable Debt Bill
Administrative Justice Bill
Promotion of Equality and Prevention of Unfair Discrimination Bill
Preferential Procurement Bill
Education Laws Amendment Bill

2000
Chiropractors, Homeopaths and Allied Health Services Professions Amendment Bill
National Lotteries Amendment Bill
Municipal Electoral Amendment Bill
Municipal Structures Second Amendment Bill
Cross Boundary Municipality Bill
African Renaissance
Housing Amendment Bill
National Health Laboratory Services Bill
South African Rail Commuter Corporation Limited Financial Arrangements Bill
Termination of Integration Intake Bill
Demobilisation Amendment Bill (Integration Bill)
Constitution of South Africa Amendment Bill (Constitutional Amendment Bill)
South African Sports Commission Amendment Bill

2002
Loss and Retention of Membership of National and Provincial Legislatures Bill
Local Government Municipal Structures Amendment Bill
Constitutional Amendment Bill
National Environmental Management Amendment Bill

2003
Electoral Laws Second Amendment Bill

2004
Division of Revenue Bill

2005
Division of Revenue Bill
Constitutional Matters Amendment Bill

2006
Division of Revenue Bill
2010 FIFA World Cup South Africa Special Measures Bill