

**A CLOSE EYE ON SCOPA**  
**A SOUTH AFRICAN CASE STUDY ON PARLIAMENTARY**  
**OVERSIGHT AND SCRUTINY**

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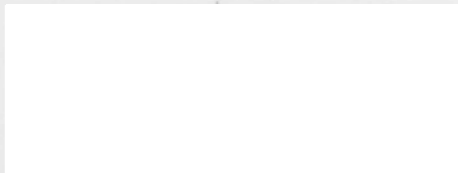
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**December 2006**



## Declaration

I, the undersigned, hereby declare that the work contained in this assignment is my own original work and that I have not previously, in its entirety or in part, submitted it at any university for a degree.



Date: 09 - 10 - 06 .....



## **Abstract**

Parliamentary scrutiny and oversight can be seen as the most important tool to hold the executive, and therefore government, to account. It enforces an effective system of checks and balances in order to ensure that taxpayers are receiving value for their money, and that their needs are being catered for. This thesis will analyze the oversight framework in South Africa by examining the structures and functions of the Standing Committee on Public Accounts (SCOPA) in contrast to other strong oversight frameworks such as exist in the US Congress and Scandinavia. Dominant factors that affect the manner in which the executive is held to account, such as the role of the Chapter Nine Independent Institutions (the Auditor General and the Public Protector) and their respective Constitutional mandates (versus the committee system which has not been included as a section in the Constitution), will be brought into the spotlight. Also, the effect that a dominant party system (ensuring an ANC majority) has on parliamentary oversight will be compared with the Westminster system, which fails to effectively separate governing party interests from the respective mandates of the three spheres of government (the judiciary, legislature and the executive). This can degenerate into feckless pluralism. An examination of these actors and factors will help determine the extent to which SCOPA has been successful in enforcing the accountability of organs of the state. By determining the strengths and weaknesses of SCOPA, this thesis will determine whether the committee can be seen as the potent watchdog of parliament, or the friendly 'Goofy-dog' of government. Important findings rest on the assumption that SCOPA is not isolated from party politics, and an interdependent and complementary relationship between Parliament, Parliamentary Committees and the Chapter Nine Independent Institutions have not been consolidated.

### **Opsomming**

Parlementêre ondersoek en oorsig kan beskou word as die belangrikste meganisme waardeur die uitvoerende gesag en derhalwe die regering verantwoordbaar gehou kan word. Dit versterk 'n effektiewe stelsel van kontrole om sodoende te verseker dat die belastingbetalers waarde vir hul geld ontvang en dat hul behoeftes na wense bevredig word. Hierdie tesis analiseer die oorsigraamwerk in Suid-Afrika deur die strukture en funksies van die Staande Komitee vir Openbare Rekeninge (SCOPA), in teenstelling met ander strenger oorsigraamwerke soos dié in die VSA Kongres en Skandinawië te vergelyk. Dominante faktore wat 'n invloed het op die wyse waarop die uitvoerende gesag verantwoordbaar gehou word, insluitend die rol van die Hoofstuk Nege Onafhanklike Instellings – die Ouditeur-Generaal en die Openbare Beskermer – sowel as hul onderskeie grondwetlike mandate (teenoor die komitee sisteem wat nie ingesluit is as 'n seksie in die Grondwet nie), sal ook in oënskou geneem word. Verder sal die uitwerking wat 'n dominante partystelsel (behoudend 'n ANC meerderheid) op die parlementêre oorsigfunksie het, in verband gebring word met die Westminsterstelsel wat nie daarin slaag om die belange van die regerende party te skei van die onderskeie mandate van die drie sfere van die regering (wetgewend, reggewend en uitvoerend) nie. Dit kan lei tot futlose pluralisme. 'n Ontleding van hierdie rolspelers en faktore sal help om die omvang van die sukses van SCOPA te bepaal in terme van die implementering van die verantwoordbaarheid van die verskeie dele van die regering. Dié tesis sal deur middel van 'n analise van die sterk- en swakpunte van SCOPA bepaal of hierdie komitee inderdaad beskou kan word as die streng waghond van die parlement of as die vriendelike “Goofy-hond” van die regering. Belangrike bevindinge steun op die aanname dat SCOPA nie geïsoleerd is van party politiek nie, asook dat 'n interafhanklike en 'n komplimentêre verhouding tussen die Parlement, Parlementêre komitees en die Hoofstuk Nege Onafhanklike Instellings nie gekonsolideerd is nie.

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## **LIST OF ACRONYMS AND ABBREVIATIONS**

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<b>ACDP</b>	<b>African Christian Democratic Party</b>
<b>ADS</b>	<b>African Defence Systems</b>
<b>AGSA</b>	<b>Auditor-General South Africa</b>
<b>AGUSTA</b>	<b>Founder of SAAB</b>
<b>ALFA</b>	<b>Advanced Light Fighter Aircraft</b>
<b>ANC</b>	<b>African National Congress</b>
<b>BAE</b>	<b>British Aerospace</b>
<b>COSATU</b>	<b>Congress of South African Trade Unions</b>
<b>DA</b>	<b>Democratic Alliance</b>
<b>DDG</b>	<b>Deputy Director General</b>
<b>DOD</b>	<b>Department of Defence</b>
<b>DOH</b>	<b>Department of Housing</b>
<b>FF+</b>	<b>Freedom Front Plus</b>
<b>GNU</b>	<b>Government of National Unity</b>
<b>GSC</b>	<b>German Submarine Consortium</b>
<b>HSRC</b>	<b>Human Sciences Research Council</b>
<b>ID</b>	<b>Independent Democrats</b>
<b>IDASA</b>	<b>Institute for Democracy in South Africa</b>
<b>IFP</b>	<b>Inkatha Freedom Party</b>
<b>JIT</b>	<b>Joint Investigations Team</b>
<b>LIFT</b>	<b>Lead In Fighter Trainer</b>

<b>MF</b>	<b>Minority Front</b>
<b>M&amp;G</b>	<b>Mail &amp; Guardian</b>
<b>MP</b>	<b>Member of Parliament</b>
<b>NA</b>	<b>National Assembly</b>
<b>NAR</b>	<b>National Assembly Rules</b>
<b>NCOP</b>	<b>National Council of Provinces</b>
<b>NDOH</b>	<b>National Department of Health</b>
<b>NNP</b>	<b>New National Party</b>
<b>PAC</b>	<b>Public Accounts Committee</b>
<b>PAC</b>	<b>Pan Africanist Congress</b>
<b>PetroSA</b>	<b>Petroleum South Africa</b>
<b>PFMA</b>	<b>Public Finance Management Act</b>
<b>PMG</b>	<b>Parliamentary Monitoring Group</b>
<b>PP</b>	<b>Public Protector</b>
<b>SAAB</b>	<b>Svenska Aeroplan Aktiebolaget</b>
<b>SACP</b>	<b>South African Communist Party</b>
<b>SANDF</b>	<b>South African National Defence Force</b>
<b>SCOPA</b>	<b>Standing Committee on Public Accounts</b>
<b>SIU</b>	<b>Special Investigating Unit</b>
<b>UDM</b>	<b>United Democratic Movement</b>

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## Chapter 1

### INTRODUCTION

#### **1. Background: Why SCOPA?**

Good governance is crucial to mobilising South Africa's Constitutional<sup>i</sup> aspirations in our twelfth year of democracy. As indicated in the Constitution, as well as in most Parliamentary research and review reports to date, Parliament should work in a transparent way, ensuring the oversight and accountability of the executive in all spheres of government.

Within the structures of the South African Parliament<sup>ii</sup>, SCOPA (the Standing Committee on Public Accounts) was established to provide assistance in facilitating Parliamentary oversight and accountability<sup>iii</sup>. This committee, consisting of members from the National Assembly, functions on a national basis and can be seen as unique, compared to other Parliamentary committees. The committee focuses on the oversight of the financial management of government resources in order to assure that the taxpayers are receiving value for their money (Idasa, 2003), rather than on policy issues. According to the Rules of the National Assembly, SCOPA must consider the financial statements of all executive organs of State, including Constitutional institutions, when those statements are submitted to Parliament<sup>iv</sup> (Corder et al, 1999: 29). It is within this context that the importance of SCOPA and its future impact on transparent and accountable government should be assessed.

Within the South African Parliament, section 57(1)(a) of the Constitution (1996) empowers the National Assembly to determine and control its own internal arrangements, proceedings and procedures. Section 57(1)(b) states that Parliament is also empowered to make rules concerning its business, with due regard to representative and participatory democracy, by enforcing means of accountability, transparency and public involvement. Therefore, the National Assembly (not the committees, since they are not specified) has the responsibility to provide for the establishment, composition, powers, functions, procedures, and duration of its committees (The Constitution, 1996: 57(2)(a)). It is important to note that all committees' powers are subject to the discretion of the National Assembly, since they are not specifically described in the Constitution as separate or independent entities.

SCOPA was established in terms of the National Assembly's standing Rules, and falls under the authority of the Speaker.

In order to understand the significance of the oversight role that SCOPA is responsible for, it is necessary to examine how all committees are equipped institutionally with the necessary powers and functions. Section 55(2) of the final Constitution (1996) deals with the powers of the National Assembly, describing its responsibility to construct competent committee structures. This section specifically states that the National Assembly should "ensure that all executive organs of state in the national sphere of government are accountable to it". In addition, they should "maintain oversight of the exercise of national executive authority, including the implementation of legislation [and] [of] any organ of state" (The Constitution, 1996: 55(2)). It therefore emphasises the importance of Parliamentary oversight and the instituted channels responsible for Parliamentary oversight. Rule 52(1) of the National Assembly's Standing Rules outlines the functions of the portfolio committees as

*"[to]consider or deal with bills or other matters which are referred to it by the Speaker under these Rules, or by or under a resolution of the house.... [and to] monitor, investigate, enquire into and make recommendations relating to any aspect of the legislative programme, budget, rationalisation, restructuring, functioning, organisation, structure, personnel, policy formulation or any other matter it may consider relevant, or the government department or departments falling within the category of affairs consigned to the committee".*

Therefore, these committees (inclusive of standing committees, portfolio committees, select or joint committees, performing on either an ad hoc or permanent basis) facilitate public participation in the Parliamentary decision-making processes (of the respective government departments), and although they form part of the Assembly, they do not perform independently from the Assembly. Rule 53 of the National Assembly elaborates on the specific powers portfolio committees are equipped with:



*“(Committees may) summon any person to appear before it to give evidence on oath or affirmation... [and] summon any person to appear before it to produce any documents required by it”*

One can therefore conclude that institutionally the committees are “given legal teeth” in Rule 53 of the National Assembly and Section 58(2) of the Constitution (Macozoma, 1996: 112). For the purpose of this thesis, it is necessary to note that SCOPA was created with the Parliamentary objective of having a specialised committee on public oversight and scrutiny, managing oversight of a broad spectrum of interests, departments, and public organs of the state.

Apart from SCOPA there are at least two other independent institutions of relevance here. As structured within the Constitution, the independent Chapter nine institutions were designed to be complementary to the National Assembly and the National Council of Provinces in assisting Parliament in its oversight function of the executive, specifically as far as reports of the Auditor-General and Public Protector are concerned. According to section 18(1) of the Constitution (1996), these independent institutions are responsible for strengthening our Constitutional democracy. In a Parliamentary system, a Parliament has a mandatory role to keep executive power in check. Therefore, these Chapter nine institutions should be seen as complementary to Parliament’s oversight function, when the official reports and competence of the relevant state organs are assessed, by providing it with information that is not derived from the executive (Corder et al, 1999: 27).

In short, SCOPA was assigned the task of enhancing Parliamentary oversight over all state organs, in order to hold the executive accountable to Parliament. Therefore, they have the responsibility to identify, and make recommendations for proper action, when financial misconduct has taken place within any organ of the state, essentially so that taxpayers receive public services that resemble value for their money. The focus of this thesis goes wider than Parliament, as it will also investigate how SCOPA reacts to cases of financial misconduct within private and public entities. The latter issue will be discussed in the context of committee systems, which are still a new phenomenon in most modern democracies, South Africa being one of the examples where the convention is barely developed. General comments by authors such as Heywood (1997), and Hague & Harrop (2004), will serve as a basis for developing

the structure of this thesis. Work done by Kotzé (1996), February (2006), Calland (1997), and the Report by the Ad Hoc Joint Sub-Committee on oversight and accountability (2002) - in the specific South African context - are used for further refinement.

### **1.1 Problem statement**

In order to understand the challenges SCOPA is faced with, it is necessary to understand the structures of the South African Parliament and the Constitution. Although one could learn from other existing models such as the American or Scandinavian models (Hague & Harrop, 2004:252), one must not simply rely on best practice elsewhere, but also on local experience, since these models apply in different contexts. Also, as mentioned by Heywood (1997: 295), although the British Parliament has been described as the 'mother of all Parliaments', many democratic systems in place today do not follow this Parliamentary model, while others that can be described as Parliamentary have not fully adopted the Westminster system. In these cases, one could argue that Parliamentary systems have often failed to live up to the high expectations of effectively incorporating a committee system to assist the Parliaments in their oversight of the executive. The latter point still applies to South Africa since the committee system is a work-in-progress, as evidenced by the fact that a chapter on committee systems has not been structured in the South African Constitution. Therefore, even though there are many competing models, the most functional model for South Africa is yet to be explored.

A powerful assembly needs a well-developed committee structure if it is to develop the detailed expertise needed for real influence (Heywood, 1997: 305; Hague & Harrop, 2004: 250). In the US Congress, legislative and scrutinizing responsibilities are vested in standing committees, whereas in the UK Parliament, separate select or supervisory committees are set up to perform as watchdog committees. Heywood (2002: 324) provides the reasons for the partial failure of these committees in the UK, despite their authorisation to perform oversight functions. Most significant in his study is the observation that the hoped-for less partisan character of committees is not assured in all cases. The UK system of committees failed to materialise because "the government ha[d] ensured that party disciplines intrude into the work of committees" (Heywood, 1997: 305). The apparent reason for this (since no alternative career



structure has developed around the committees), is that MPs tend to be more sensitive to party pressures than Parliamentary ones (Heywood, 1997: 305). Chapter Two will highlight these difficulties as experienced within SCOPA, given that we have a Parliamentary system consisting of many opposition parties where a ruling party is dominant, but consensus is often sought.

In contrast, Hague and Harrop (2004) make reference to the United States and the Scandinavian countries, where committee systems work well. The committees in these countries, like SCOPA, can examine government papers, and cross-examine ministers and senior civil servants of the state organs if deemed necessary. More particularly, Hague & Harrop (2004) argue that, apart from the party system, the key to the influence of committees lies in three factors: expertise<sup>v</sup>, intimacy<sup>vi</sup>, and support<sup>vii</sup>. Therefore, these key elements will feature in analysing the outcomes of SCOPA, where a brief comparison will be drawn between the prominent features found in the American and Scandinavian models, and those found in SCOPA.

As mentioned, according to the Rules of the National Assembly, SCOPA must consider the financial statements of all executive organs of the State, and Constitutional institutions, when those statements are submitted to Parliament (February, 2002:3). The Auditor-General has identified at least six hundred public bodies, which according to the Rules of the National Assembly, SCOPA would be responsible for overseeing. Currently SCOPA oversees two hundred, and are already finding it demanding to revise and react on these reports efficiently (Corder et al, 1999). In South Africa, as in the UK, the proceedings are further complicated by the inability to ensure that questions made to the accounting officers, civil servants, or ministers are fully answered, or that they attend the hearings. Therefore, Heywood (2002: 324) states that, thus far, most committees have proved to be inadequately resourced, and have limited powers (Heywood, 2002: 324). A survey conducted by the Commonwealth (Survey of Public Accounts Committees in the Commonwealth, 2001) indicated that public account committees have eleven members on average. Here it can be noted that SCOPA currently has seventeen members. The question to be answered is whether the quantity of work that has to be done is being done efficiently, given the size of the committee and its utilization of all possible resources.

These factors therefore arguably act as capacity constraints that feature in the composition of the committee, which could be changed if deemed necessary.

It is significant to note that the American Congress has been unique in the impact of its committees. There, the committee system has succeeded in becoming the 'Congress at Work' (Hague & Harrop, 2004: 251). Lees & Shaw (1979: 387) found that the "committee system in the American Congress is not only the strongest system... it is by far the strongest". The committees are uniquely well-supported, employing over 3 500 *policy specialists*, in deciding the "fate and shape of most legislation" (Hague & Harrop, 2004: 251), and are even active in creating effective subcommittees. Why is this scenario not similarly triumphant in the UK and South Africa? Hague & Harrop (2004: 252) provide the argument that committees have less influence on legislation in party-dominated legislatures (such as in the British House of Commons), since these committees do not challenge executive dominance in framing legislation, unlike those of the Congress. With respect to this argument, it can be observed that Scandinavia provides the best example of influential committees in combination with strong parties, since, in these countries, influential standing committees negotiate the policies and bills on which the whole Parliament later votes. The dominant factor inhibiting the success of this system in South Africa is the lack of strong parties, since only the main opposition seems to be influential, but still functions as a minority vote. In addition, conflicting interests within committees, as a result of opposing party interests (as will be discussed by means of case studies in chapter four), should also be taken into account.

It is therefore necessary to evaluate the current structures and functions of SCOPA. This is required in order to determine its effectiveness within a multiparty system where proportional<sup>viii</sup> representation leaves the governing party with a big majority vote, thereby influencing the mandate for the committee's actions in a big way. If the Assembly continues to rely on oversight assistance from SCOPA in order to keep the executive accountable to Parliament, and for government to maintain its vote of confidence, it needs to acknowledge that committees will reflect ruling party interests, which might compromise the oversight function. One can argue that the inflexibility of a party-dominated representative structure removes the focus from compromise for what could be the common good, to demand for what the different parties lobby for.



Murray and Nijzink (1999: 103) raise their concern about the Constitutional obligation to hold the government accountable. They are of the opinion that this obligation is complicated by the loyalty demanded by the party system in any Parliamentary model worldwide, not just in South Africa. Some people regard oversight solely as a challenge to the ruling party, and some members of the ruling party are not certain that oversight is their responsibility. These complexities will be dealt with in chapters Two and Three.

Since SCOPA has the task of scrutinizing government administration and overseeing the exercise of executive power, it has been established as a permanent and specialized committee. However, as will be shown in Chapter Three, it has sometimes been the case that the detailed knowledge and expertise has not always been present in South Africa.. The chairperson of this committee, as part of a long-standing tradition in many Parliaments, is usually from the opposition (this principle is adhered to in two-thirds of existing public accounts committees in the Commonwealth) (Wehner, 2002:21). The appointment of SCOPA's current chairperson on 2 November 2005 (Mr T Godi: PAC) has provided reason to doubt the motive for having a member from such 'weak opposition' (the PAC is a party with dwindling support, whose political future is regarded as doubtful) chair SCOPA. As opposed to upholding the principle of having a member from a convincing opposition fill this significant position. The latter concern is relevant because the chairperson is responsible, in consultation with the committee and the Auditor-General, for setting the agenda of the committee, (Strengthening accountability and oversight of key Parliamentary committees in Kenya, 2001: 7). Chapter Three will explore the reasons for members and chairs having resigned from SCOPA in the past, explaining some of the implications of these for ensuring the future success of SCOPA.

In South Africa, as well as in the Congress of the United States and in Scandinavia, the oversight responsibilities are mainly vested in the Standing Committees (Heywood, 2002: 323). However, this has proved to be one of the weaknesses of the system. Experts propose that the reason for this weakness is that, as has been found to be the case in South Africa, Australia, New Zealand and the United Kingdom (all with Westminster Parliamentary systems), countries have been subject to committees who have been driven by loyalty towards the government of the day (Heywood, 2002:



324). According to Kotzè, (1998: 16) the horizontal separation of powers within the executive is neutralised by having the Cabinet and the executive consist of the same members. Heywood (2002: 318) also explores the idea of MPs compromising their traditional loyalty to constituents by the growing influence of business interests. This idea will be discussed more in-depth in the case studies in Chapter Four.

For the purposes of this thesis, the US Congress, which operates within a presidential system, provides good examples where the use of qualified staff to advise committees (by means of expert researchers), and the small size and stable membership of committees (with specialised responsibilities and expertise within permanent committees), have outbalanced the difficulties many other countries have battled with (Hague & Harrop, 2004: 251). In South Africa it seems that, as in many other cases (as evident from other Westminster models), with the price of the committee system came the tag of strict party loyalty and discipline (Heywood, 2002: 317). However, in contrast, Scandinavia has succeeded in having influential standing committees, with their governing style sometimes being called the “committee Parliamentarianism” (Hague & Harrop, 2004: 252). What lessons are there for SCOPA to learn?

This thesis will argue that the committee system in general is an essential institution within the South African democracy, provided that it includes the ‘best practices’ as understood from local experience, and lessons learned from successful models such as in the USA and Scandinavia. Firstly, South Africa will gain from experiencing diversity within a multiparty system, where representatives from many minorities may contribute as members. Secondly, committee members need a shared enthusiasm for accountable governance by combining expertise, and maintaining the capacity to perform effective oversight, irrespective of party politics. If not, Richard Calland (Idasa, 1997), on the transformation of the South African Parliamentary committee system, has noted that the increasing influence of parties has, in the past, caused the legislature to lose control of the executive (particularly in Westminster systems, where the same ruling party is always in charge of both the legislature and the executive). In such cases the major task of holding the executive accountable in public affairs, lies in the hands of the “whistle blowers” and a vigilant media. These issues, however, fall outside the scope of this thesis.

### 1.1.1 The Westminster-based heritage

The Westminster-based system is based on a tripartite division of powers ('trias politica'), but is not as divided as in typical presidential systems such as practised in the USA. In Westminster-based systems, the executive is elected from members of the strongest party in Parliament: it is a system of government in which the executive is drawn from, and accountable to, the assembly or Parliament (Heywood, 1997: 31).

According to Heywood (2002: 318), the prime function of the assembly in a Westminster-based system has been to uphold and support government, since the majority of the members of the assembly belong to the governing party. Therefore the need was created to ensure better communication between the branches of government by means of a horizontal separation of powers, as supported by an effective committee system<sup>ix</sup>, which can perform independently of unconditional loyalties to the government of the day. But, as indicated above, this ideal is often compromised, resulting in a weakening of the oversight role as part of an extended system of checks and balances.

Heywood (1997: 304) labels the rise of committee systems as the 'powerhouses' of assemblies, since they become a central part of the legislative process. Committee systems first originated, in 1979, as an attempt to strengthen Parliament in the UK against the executive. They were later modelled on the example of the US. This original system wanted to promote open government by allowing for cross-examination of ministers and senior civil servants, as well as the examination of government papers (Heywood, 1997: 305). The aim of these attempts was to let these committees become effective *watchdogs* that would be able to influence government policy effectively. The same reasoning resulted in the rise of a committee with similar goals in South African Parliament. However, as already mentioned, the experiment has not been foolproof in all instances: there remains much to be learned in order for committees to become more effective in the management of their portfolios.

In South Africa, with the rise of committee systems (as in other Westminster systems), there are common areas within its practises that still remain unsatisfactory. Since all the members of the executive are also members of Parliament, it becomes problematical to assess whether the agenda of committees (especially in oversight and



scrutiny functions) are non-partisan in nature. One model that has been widely pursued as a gesture of transparency and non-partisanship is that the chairpersons of these oversight committees have traditionally been from opposition parties (Heywood, 2002: 318). This is also the case in South Africa.

### 1.1.2 Constitutional requirements

As identified in the Constitution of the Republic of South Africa (Act No 108 of 1996), one of Parliament's core Constitutional responsibilities is to conduct oversight of the executive, as set out in section 92(2) and 55(2) and the PFMA (Public Finance Managing Act) (Act 1 of 1999). However, no draft or formal section on the specific functions and structures of these committee systems, which constitute a fundamental part of Parliamentary oversight and its other core responsibilities, has been introduced into the Constitution. Parliament has to date not compiled a document that clearly connects the inter-related themes of non-partisan oversight, accountability, transparency, and responsiveness. Therefore no broad understanding of the oversight role and purpose thereof exists. The existence of such a document is crucial in order to guide the increasing importance of the role that oversight committees, such as SCOPA, need to play in the near future. Currently, section 55(2) of the Constitution (Act 108 of 1996) reads as follows:

*"The National Assembly must provide for mechanisms-*

- (a) to ensure that all executive organs of state in the national sphere of government are accountable to it.*
- (b) To maintain oversight of-*
  - (i) the exercise of national executive authority, including the implementation of legislation; and*
  - (ii) any organ of state."*

Therefore, the responsibility falls upon the National Assembly to hold organs of state accountable. However, no reference is made to the support from committees on public accounts, or what bodies can be seen as organs of state. Parliament has not yet commissioned an audit of the various bodies exercising public powers, or specified which departments are responsible for the various organs of state. It is for this reason that portfolio and select committees within Parliament have consequently assumed the

necessary oversight responsibilities (Final Report of the Ad Hoc Joint Sub-committee on oversight and accountability, 2002: 9).

Within the scope of this thesis, it is relevant to note that the Constitution (1996) only makes provision for Parliamentary oversight in general, and not for a *watchdog* committee. There is no provision made for SCOPA, even though it can be seen to be the main executive oversight committee of Parliament, in collaboration with the Auditor-General and the Public Protector. The only effective committee discussed in section 78(1) of the Constitution (1996) is the Mediation Committee which consists of members from the NA and NCOP, but only in the case of disputes between the houses. Therefore, according to the Constitution (1996), the executive is, strictly speaking, only obliged to comply with the requirements of the legislature, and this can be enforced by the “legal teeth” given to committees in Rule 53 of the National Assembly and section 58(2) of the Constitution (Kotzé, 1997: 112). The only Constitutional power SCOPA has is that given to it by the National Assembly, and the acknowledgment of its legitimacy by its committee members and members of the state organs.

The Constitution (1996) does not list any of the permanent and more prominent committees amongst the state institutions that support our Constitutional democracy in section 195(1), other than the Chapter nine institutions. As already mentioned, it is especially important to analyse SCOPA’s relationship with the Auditor-General and the Public Protector, because both provide independent information on the executive. Therefore, these institutions legitimately and independently serve and implement their powers, and even though SCOPA may call for accounting reports from these institutions, SCOPA is not recognised as an independent institution. This fact limits SCOPA’s powers to the extent that they work in collaboration with these Chapter nine institutions, or claim further assistance from these institutions based on their respective expertise. Therefore they can also differ in opinion and findings, in some instances undermining each other’s legitimacy<sup>x</sup>, as will be discussed later in the case studies - more specifically, within the Oilgate report.

### **1.1.3 Broad-based recognition for oversight**

It is crucial to demonstrate our Constitutional democracy by advancing an underlying culture of accountability in all spheres of government. It is therefore necessary not



only to embed a culture of oversight via the Constitution, but also to enforce it through the existing oversight bodies of Parliament, thereby creating broad awareness. This need is supported by the Ad Hoc Joint Sub-Committee, which reported on Parliamentary oversight in 2002 that “the mere existence of oversight mechanisms will do little to enhance the practice of oversight, if there is a lack of appreciation of the role and function of oversight by MPs and the broader South African Community” (Final Report of the Ad Hoc Joint Sub-committee on oversight and accountability, 2002:5).

With respect to SCOPA, it is therefore necessary to focus on the conditions that could contribute to a culture of public accounts committees being more effective. As mentioned previously, if the interaction amongst committee members and the relationship between the executive and legislative is politicised (examples of such cases will be provided in chapters Three and Four), it cripples the efficiency of enforcement strategies. The problem with non-compliance (and the prevalence thereof in a committee such as SCOPA) is that civil servants evade any strict precaution or rectifying actions, without any real consequences (Dreyer, 2005).

The contributing conditions that could enhance a culture of broad-based recognition for oversight were identified in a report on the Workshop for Select Committees dealing in finance as:

1. strong media coverage on the committee’s reports;
2. an active civil society that puts pressure on government to implement recommendations;
3. networking with committees in other Parliaments in order to develop new basic financial systems and to share experience on how to fight financial malpractices;
4. submissions of accounts which is timely, and sanctions applied to any delay.

Crucial to all of the above is the recruitment of a strong chairperson, well-trained staff, and researchers who are collectively transparent to the public (Strengthening accountability and oversight of key Parliamentary committees in Kenya, 2001: 12). These pre-conditions will help guide the analysis of the findings in chapter four, in order to identify the possible areas of concern.



In addition, chapters Three and Four will try to determine what can arguably be seen as the biggest disadvantage of the committee system. This disadvantage can be spotted in cases where committee members are manipulated by fellow members of the same political party (mostly the party with proportionally more seats in Parliament), consequently narrowing the range of views or interests that are taken into account in the decision-making process. This behaviour encourages partisanship and the centralisation of decision-making. However, this problem is usually addressed by having a chairperson from the opposition party chair the proceedings (Heywood, 1997: 304). As will be discussed later in this thesis, one should recognise that cases in which this remedy has been applied in South Africa have been increasingly criticised. The recent appointment of Mr T Godi (PAC) as chairperson of SCOPA in 2005, for example, received much criticism. In this instance, it would appear that having a member from “weak opposition” as chairperson (rather than disobeying the principle of electing a member from the most influential opposition party) still provides an easy way for the ruling party to be influential in the committee proceedings.

On the other hand, the most noticeable advantage of the public account committees that SCOPA will be weighed against is the opportunity they provide for detailed discussions, with a variety of expertise presumably sharing specialist knowledge. Although the chairperson is expected to encourage discussions to be made more efficient by restricting the range of opposing opinions, the complexity of this arguably *catch twenty-two*<sup>xi</sup> situation will be analysed.

In summary, Saki Macozoma has argued that, in our National Assembly, “...the executive and the bureaucracy have not yet fully embraced the new paradigm of effective Parliamentary supervision (as is the argument for the committee system)... [t]his disjuncture between what Parliament wants done and what the executive and the bureaucracy are willing to do has generated considerable tensions between certain portfolio committees and the departments they are supposed to oversee.” (Macozoma, 1996: 113).

## **1.2 The Purpose and Significance of Study**

This thesis describes the complexity of the intertwined problems raised thus far, as a first step to determine whether they weaken the capacity of Parliament to deliver on

its oversight responsibility. This thesis will analyse whether the oversight watchdogs (specifically SCOPA in collaboration with the Auditor-General and the Public Protector) maintain a complementary, co-operative relationship, without being weakened by the possibility of the executive authority (made up of members of the ruling party) pushing a mandate for the governing party.

Consequently, this thesis will assess SCOPA's role in Parliamentary oversight and accountability by focussing on the structures and functions of SCOPA within Parliament. By discussing the selected case studies and the relevant observations made by members of Parliament and other selected authorities, this will help determine the strengths and weaknesses of SCOPA. The final assessment will therefore determine the outputs and attributes of SCOPA, in order to conclude whether or not the watchdog's teeth have been pulled and if an alternative oversight structure for the South African Parliament could be more feasible.

Questions that will contribute to this analysis and inform and form the subject of this thesis are: what are the future prospects of SCOPA within an increasingly one-party-driven state-structure (which arguably has taken root within committee structures as well) that could threaten its credibility? How can SCOPA ensure that they are taken seriously in order to prevent the expectation that financial misconducts and debts be written off, but rather are acted on? How can a new culture of political accountability and oversight amongst all organs of state and all state powers (including the leading and opposition parties) be implemented with an agenda that, above all, supports the demands of our democracy? These questions identify possible areas of concern within SCOPA's strategies and organizational structures, which need to be addressed in order to improve on the areas that question their own integrity and credibility.

The issues these questions address will aid the analysis of whether or not the limited rectification procedures that exist for the testing of unqualified public accounts, and the treatment of unauthorised expenditures, have become more lenient towards writing off debt or unsatisfactory behaviour, rather than on following strict recovery procedures. This could prove significant, since this issue has not been dealt with formally within the Constitution, and neither has it led to effective alternative structures for oversight and increased government accountability.



Ultimately, as one of the outcomes of this thesis, Addendum A provides a detailed project proposal, with relevant recommendations, in order to assist in creating an alternative inter-connected oversight structure for Parliament.

### **1.3 Methodology**

This thesis uses a combination of approaches for both the collection and analysis of the relevant research material that are within the scope of the qualitative method to achieve its objectives.

A critical review of existing literature and research reports was done in order to grasp the full context of the problem this thesis attempts to address. Interviews were used, reporting on the attitudes and dispositions of MPs (both from the ruling and leading opposition party), as well as statements made by some of SCOPA's previous chairpersons. The analysis of these discussions focuses on the performance of the oversight institutions of the Constitution in collaboration with the oversight functions of SCOPA, deliberating on their successes and failures, in order to make further recommendations.

An assessment of the minutes of meetings held between SCOPA and the accounting entities (of the relevant case studies) was also made. These relevant minutes (as taken by the Parliamentary Monitoring Group in Parliament), including all media articles that provided reports on these meetings, provided additional research material to the case studies.

The case studies that were analysed are:

- (a) The Arms Deal
- (b) Oilgate: PetroSA and Invume
- (c) State Housing Subsidies

These case studies analysed how managerial bad practice (within government departments or public organs of the state) can be connected with the government (such as corruption and illegal party funding). These case studies were chosen due to their complexity, and also because they enjoyed much media coverage, receiving



widespread critique that provided reason to doubt both the integrity and the transparency of SCOPA, the Chapter Nine Independent Institutions, and Parliament.

<sup>i</sup> Constitutionalism can best be explained as the practice of limited government, ensured by the existence of a Constitution. Therefore, government institutions and political processes are constrained by Constitutional rules. It can also be seen as a set of political values and aspirations that reflect the desire to protect liberty by means of internal and external checks on government power. It is a typical example of political liberalism in practice. Finally, it is typically expressed in the form of support for Constitutional provisions that achieve this goal: such as the codified Constitution, a bill of rights, a separation of powers, bicameralism, and federalism (Heywood, 2002: 297).

<sup>ii</sup> The basic functions of Parliament are central to understanding the essential role that SCOPA has to play. According to Polsby (1975: 22), a Parliament is a group of individuals that operate on behalf of the general public in a binding and legitimate manner, making collective policy decisions and overseeing all activities of the governing executive.

<sup>iii</sup> Accountability consists of both answerability and enforcement (Schlemmer in Diamond, Plattner, and Schedler, 1999: 14-16).

<sup>iv</sup> These reports include Audit Reports, Reports by the Auditor-General, Reports by a Constitutional institution or public body, financial statements, or financial reports.

<sup>v</sup> Expertise emerges over time from committees with specialised responsibilities and a clear field of operation. Expertise is most likely to develop in permanent committees with continuity of operation and membership (Hague & Harrop, 2004:252).

<sup>vi</sup> Intimacy emerges from small size, and is reinforced by stable membership. Particularly when meetings take place in private, a small-group setting can encourage co-operation and consensus, overcoming any initial hostility between members from competing parties (Hague & Harrop, 2004:252).

<sup>vii</sup> Support refers to the use of qualified staff to advise committees. Expert researchers can enable busy politicians to produce well-founded recommendations (Hague & Harrop, 2004:252).

<sup>viii</sup> In South Africa, this means that the committee consists proportionally of the members of parties, as represented by their number of seats in Parliament. In this case, one could argue that a model such as used for the Zambian Parliament's Public Accounts Committee could be feasible and successful in South Africa. This model ensures inclusiveness by giving each party (because there are only as many members as there are parties represented in the house), one representative on the committee (Wehner, 2002: 7).

<sup>ix</sup> Even though these committees would still be proportionally represented as mentioned in the previous footnote, the goal would be to still maintain diversity of inputs, but within a committee as a whole, with a shared purpose, and not based on the agendas of the different political parties that are represented.

<sup>x</sup> Even though healthy tension between the legislative and executive generally can be seen as essential, non-compliance with the requirements for government accountability means the end of oversight, which is a crucial building stone for our Democracy.

<sup>xi</sup> On the one hand it is important for the committee to be consistent with their values and findings within the reports they handle, but on the other it is important for the chairperson to recognise that it is a fair version of all the members' contributions, and that it in no instance simply reflects on what would contribute to a untarnished image of government actions. This can be related to Gavin Woods (IFP) resigning as chairperson of SCOPA in 2001, partly due to his disapproval of the committee's 14<sup>th</sup> report (on the Arms Deal case study). This issue will be raised again in chapters Three and Four.

## Chapter 2

### **GOVERNMENT ACCOUNTABILITY AND PARLIAMENTARY OVERSIGHT**

#### **2. Background**

With the opening of the third democratic South African Parliament in 2004, the ANC's Chief Whip proclaimed that the focus of Parliament would be on strengthening committees and their oversight over implementation of legislation and policy. February (2006: 140) argues that thus far, it would appear that there was little to suggest that this was anything more than rhetoric, or 'hot air'. However, this chapter will shed light on the interconnected framework of government accountability and Parliamentary oversight, introducing the broad spectrum of actors who contribute to maintaining an effective oversight climate in our Constitutional democracy.

In theory, much of the expertise surrounding the exercise of oversight exists within Parliament (particularly in the form of the committees and committee chairpersons). Conversely, according to the Ad Hoc Joint Sub-Committee on oversight and accountability (2002: 11), there is no consistent understanding or approach to the exercising of the oversight role within the South African Parliament. This, in contrast to the ANC Chief Whip's proclamation, would arguably weaken committees in their oversight role.

In order to provide a true measure of how successful Parliament has been in exercising oversight, one needs to understand the origins of Parliament's oversight facilities. Since 1994, Parliament has been faced with a lack of institutional memory by not maintaining detailed records, or structuring a long-term plan, of oversight and scrutiny of the executive. Parliament's attempts to exercise public scrutiny have therefore been hampered by the absence of detailed minutes or debates on the reports received. Given the nature of Parliament thus far, it is to be expected that the expertise acquired during the first and second democratic Parliaments will largely have been lost over time, since the new crop of MPs were only elected into their seats for the third democratic Parliament. It is crucial to develop an institutional memory, to ensure that future



Parliamentarians will continue to build a strong foundation for Parliamentary oversight in years to come. One suggestion that could effectively be applied to the South African context, as mentioned by the Ad Hoc Joint Sub-Committee on oversight and accountability (2002:69), requires that Parliament takes measures to develop a Best Practice Guide which will capture inter-alia the best oversight practices of committees, and the experiences of chairpersons of the various Select and Portfolio committees. This document would contribute to the institutionalisation of a working structure, thereby preventing Parliamentary committees from making the same blunders twice.

On the other side of the spectrum, the strengths of the oversight role have been its flexible nature, and the fact that Parliament has been able to adapt its oversight work to fit the particular oversight contingency. "Oversight is a developing practice in our nascent Parliament particularly now as it shifts gears from legislating to implementation mode" (Ad Hoc Joint Sub-Committee on oversight and accountability, 2002: 13). This has been key to making oversight measurable, in order to create the basis for a record-keeping administrative structure. The transformation has been from a "part-time, cynical rubber-stamp into a full-time, vibrant place of work" (February, 2006: 1). This transformation process has provided the right incentives for future Parliamentary oversight structures, although this thesis holds that it has not been without serious problems, or that challenges remain.

Calland (1997: 4) argues that, within Parliamentary systems based on the Westminster model, committees of the Lower House always have to contend with two challenges:

1. The strong demands of the government for control of the business of Parliament;
2. The desire of opposition parties and government alike to continue the electoral battle in both the house and its committees.

In this chapter, the 'principle-agent' theory will be of relevance (Rommetveldt, 1998: 129). This theory specifies that assemblies pressurise committee members to behave as agents of the party. This can be described as "an analytic expression of the agency relationship, in relationship with another, the agent, in the expectation that the agent will subsequently choose actions that produce outcomes desired by the principle" (Moe, 1984:



756). These circumstances make it difficult for Parliamentary committees to find a role for themselves - as a cohesive body performing independently of both government and party politics. Ideally, their mission should be recognised collectively by committee members, government, political parties and the media (Franks, 1997: 199). Oversight committees should uphold the general interest of Parliament, and the public, in overseeing the activities of government. To some extent, they should also participate in the governance of the country, independent of party loyalties.

In May 2005, Parliament released a strategic plan entitled *Mapping the Future 2004-2008* (South African Parliament, 2005). Judith February (2006: 124) notes that central to this plan is the notion of a 'people's Parliament', which is responsible and open to engagement and interaction with citizens, and which will have as a priority the function of 'scrutinising and overseeing executive action'. The question remains: how well are these engagement structures developed and do they ensure effective public participation, or are there more advanced oversight alternatives which should be given preference? It is necessary to integrate civil society in public scrutiny so that one builds an interconnected and co-operative oversight structure. Such a structure could arguably enhance the political will of members of committees and public trust in government accountability, thereby ensuring higher levels of legitimacy in oversight committees such as SCOPA.

Another factor to be noted, in addition to the influence of the party-governance structure on the committees, is the influence of lobbyists on members of Parliament. A case study in Norway found the corporate functional channel to be more important than the territorial election channel. Rommetvedt found that "leaders of all the interest organisations reflected their preference for the corporate channel" (Rommetvedt, 1998: 78). Therefore, power could in some cases be moved towards the bureaucracy and the interest organisations when contacts are formed between organisation representatives and MPs (Olsen, 1983). Although the MPs are not necessarily members of the oversight committees, when such contacts are formed between MPs of the local government and an organisation from the corporate sector - in order to promote certain interests or to receive funds for the governing political party - it still falls within the jurisdiction of the oversight

committees to hold MPs accountable. This issue will be further discussed when considering the Oilgate (PetroSA-Imvume) case study.

A third factor is that of consensus seeking. In agreement with the perspectives from Heywood (1997) and Hague & Harrop (2004), Calland (1997) sees the committee system as the 'engine room'. More specifically with regards to the South African Parliamentary renaissance, they see the committee system as the driving force behind the implementation and management of the decision-making-process. Politics, as 'rule by the many' (Heywood, 1997: 5), ideally resembles consensus-seeking by most members of Parliament which includes participation from all parties represented in the Assembly and committees, by means of proportional representation. Consensus amongst all parties on a specific issue, or 'consensus' won by a majority vote, is necessary in order to make authoritative decisions. Such decisions go towards forming a plan of action to represent the will of the people in the community as a whole, without directly imposing the agenda of each party above the values and goals of the specific committee. However, this chapter argues that the hands-on, face-to-face political realities of the Parliamentary committees should not be accepted as the only model that unconditionally succeeds in maintaining a separation of powers within the Parliamentary executive structures when forming consensus. It forms part of a more complex interaction between various actors, influenced by many independent factors. These structures must be understood when reviewing SCOPA as the responsible watchdog committee in South Africa.

It is within this context, that we can define government accountability as a principle that is not merely applicable to the administrators of our public services, but is fundamental to our entire political system and therefore binding on us all (Simey, 1985:21). Simey notes that it is not only the executive who has to be held accountable for their activities, because the elected members to whom they are accountable are themselves under an obligation to submit to scrutiny and, if need be, control by the people who elected them. In this light one can view Parliament as the institutional centrepiece of democratic governance in theory and in practice (Calland, 1997:1), being dependent on a well-functioning committee system for effective implementation.



## 2.1 Conceptualisation

### 2.1.1 Parliamentary oversight and accountability

The committee system within Parliament plays a central role in the transformation and development of the institutions of the country. As the third branch originating from the concept of separation of powers, it plays a key role in mobilising the executive to both perform and actively oversee Parliamentary actions. The critical question is therefore: when and how does Parliament engage in oversight interventions? Parliament promulgates laws on the one hand, while on the other it oversees the action of the executive in implementing those laws (Nhleko, 2002).

Oversight can best be described as an extensive concept that refers to the crucial role of legislatures in monitoring and reviewing the actions of the executive organs of government. To 'oversee' implies scrutinising, surveying, reviewing or looking carefully at how something is being done or achieved. The term is used to describe a large number of activities carried out by legislatures in relation to the executive (Corder et al, 1999: 4). In the case of Parliamentarians this would involve examining whether there is adequate delivery of services on the part of the executive, and furthermore whether such delivery is efficient, widespread, economical and of good quality. Oversight is generally conceived in terms of the implicitly proactive 'watchdog' role to be played by an elected legislative assembly towards the activities and functions of the executive and administrative arms of government. In addition, oversight refers to the invaluable role of legislatures in monitoring and reviewing the actions of the executive organs of government. The term oversight traverses a far wider range of activity than does the concept of accountability (Ad Hoc Joint Sub-Committee on oversight and accountability, 2002: 2). However, oversight is not only about holding government accountable: it also carries with it a historic responsibility to co-operate with the rest of society.

Accountability is intrinsically a quality, and extrinsically a policy, whereby government ministers and officials are made subject to both a moral and a legal obligation to report, explain, and justify their decisions to Parliament in respect of how they implemented policies, legislation and other responsibilities conferred on them through various legal

instruments. Accountability can therefore be understood in two senses. In a narrow, technical sense, it firstly refers to the duty of the head of a department to account as 'accounting officer' to his or her Minister, the Auditor-General, and finally the Public Accounts Committee (Corder et al, 1999: 4). Accountability, "...at the basic textual level... means to give account of actions or policies, or to account for spending and so forth." (Ad Hoc Joint Sub-Committee on oversight and accountability 2002: 8). Therefore, accountability requires a person to explain and justify their decisions or actions. More importantly, accountability requires that the decision-maker compensates for any misconduct, and takes steps to prevent its recurrence in the future. This requirement is supported by The Constitution (1996), under the condition that the administration or executive is checked by being held accountable to an organ of government distinct from it (Ad Hoc Joint Sub-Committee on oversight and accountability, 2002: 8). Secondly, accountability refers to enforceability: SCOPA is equipped to make recommendations concerning changes that should be made when reports seem unsatisfactory, or to recommend that members responsible for malpractice should be held accountable accordingly.

When implementing these seemingly rational concepts of Parliamentary oversight and government accountability in practice Corder et al (1999: 5) raise concerns about difficulties arising from the separation of powers in Parliament. The research teams' report learned that while our Constitution gives expression to the principle of separation of powers by recognising the functional independence of the three branches of government, our Parliamentary system of government does not give full expression to this notion because of the close links between the legislature and the executive. Our executive is not only chosen from the legislature but also from the leadership of the majority party. In the US, there is a true separation of powers, in the sense that the administration is separate from Congress (Idasa, n.d). South Africa, like Scandinavia, operates through a strong party-based system, where the executive consists of members from the assembly. There is therefore a specific need for constructive oversight to be encouraged, by being pro-active and dependent on impartial cross-party co-operation. In what manner does our Constitution provide for these priorities and how do committees specifically contribute do these democratic ideals?



Within South Africa's bicameral Parliamentary structure, one needs to define the respective roles of the two Houses of Parliament (the NA and the NCOP) in Parliamentary oversight, in order to understand the NCOP's complementary role to the NA). The focus of the NCOP's oversight role is determined and limited by its Constitutional role, as are its committees. The role of the NCOP is to represent the provinces, and to ensure that provincial interests are taken into account in the national sphere of government (The Constitution, 1996: 42(2)). Its oversight role is therefore restricted to matters concerning local and provincial government, as well as those special cases where a decision in national government affects provincial and local matters. The Constitution (1996) does not specifically mention a general oversight role for the NCOP, unlike for the National Assembly (The Constitution, 1996: 42(3), 55(2)). However, the executive is accountable to the NCOP, since section 92(2) (The Constitution, 1996) unequivocally states that members of the cabinet are responsible to Parliament as whole and not only to the NA (Corder et al, 1999: 11).

A widespread concern linked to growing committee structures, is the observation that many legislative committees are behaving as if oversight is a secondary, as opposed to a primary, responsibility (Rosen, 1982: 54). There is no clarity between who should take on the responsibility of Parliamentary oversight or in which circumstances, and what the formal links are between the relevant oversight actors. Rosen (1982: 55) comments only on the expertise of the standing committees, mentioning a number of useful tools to their benefit in order to achieve effective oversight. Their oversight powers include: the right to conduct investigations in order to determine the competence with which programmes are being administered; holding hearings to look into specific allegations by reviewing a nominee's qualifications; and examining the adequacy and effectiveness of programmes. Most significantly, Rosen (1982: 54) notes that these processes can lead to provisions being written into law concerning establishment of systematic reporting and evaluation requirements to be fulfilled by the agency in order to facilitate program review by the standing committee. In South Africa, this could contribute to building institutional memory as referred to previously.

South Africa has several existing mechanisms already in place to ensure accountability. These include:

1. The budget vote<sup>i</sup>;
2. The power to summon members of the executive and the public to appear before Parliamentary committees;
3. Parliamentary question time (Corder et al, 1999: 19).

The annual budget vote is potentially one of the most direct tools that Parliament can use to enforce accountability, recognising that the budget process in any Parliament is an important tool. It brings the full scope of Parliament's oversight role to bear on government's priorities. However, there is neither a full evaluation of the current practice in our Parliament, nor a comparative analysis of the budget process in other Parliaments. Parliament's role in the budget process is inseparable from its oversight work - Parliament should draw from its oversight experience to inform and influence the budget (Ad Hoc Joint Sub-Committee on oversight and accountability 2002: 39). However, the focus of this thesis is the other two mechanisms of oversight as practised by SCOPA, namely the power to summon members of the executive and the public to appear before Parliamentary committees, and Parliamentary question time.

In context, the Ad Hoc Joint Sub-Committee on oversight and accountability (2002: 9) stresses that effective and efficient oversight of the executive in South Africa, requires members of a) Parliament, and b) the executive, to understand the Constitutional justifications and rationale behind accountable government, and the purpose it serves. Accountability and oversight can be at their most effective if recognised by those in power as the central organising principle of our Constitution.

### **2.1.2 Constitutional democracy: Oversight framework**

Essentially, Parliaments' oversight role originated from, and continues to be shaped, by the Constitution. Section 55 (The Constitution, 1996) stipulates that the legislature's role is: to pass, initiate or prepare legislation (except money bills); to ensure executive accountability; and to exercise oversight over organs of state. Section 92(2) (The Constitution, 1996) states that "Members of the Cabinet are accountable collectively and



individually to Parliament for the exercise of their powers and the performance of their functions". Oversight mechanisms have been employed with the aim of building a strongly entrenched democratic culture operating within the underlying values and spirit of the Constitution. It is against this that all oversight mechanisms or practices should be measured. Parliament is yet to landscape the Constitutional provisions relating to the interconnected themes of oversight, accountability, transparency and responsiveness, learning from practical experience and international trends (more specifically the USA and Scandinavia).

The design of a Constitution is dependent on the composition of the governmental structures, which are unique to each country. Within democracies, the composition of an executive varies within presidential (such as the USA) and Parliamentary (such as South Africa and Scandinavia) systems. Both have their strengths and weaknesses, as applicable in their different contexts. However, what these systems do have in common is their well-structured committee systems, even though they have not formally been tabled within their Constitutions. It is therefore still a process of learning, as much to understand the oversight committee's specific role within the legislature as to create guidelines for effective committee practices in the relevant contexts, so as to learn from different countries and from own experience.

Consequently, Constitutional provisions in South Africa still represent challenges in their implementation. The Ad Hoc Joint Sub-Committee on oversight and accountability (2002: 11) mentions that section 55(2) of the Constitution (1996) presents problems of interpretation. It requires the National Assembly to provide mechanisms (most likely in the form of committees and procedures for the passing of legislation), firstly, to ensure accountability, and secondly, to maintain oversight of the exercise of the national executive authority and all organs of state. The Committee argues that section 55(2) sets an obligatory minimal standard of accountability for executive organs of state in the national sphere of government. Therefore this section of the Constitution does not adequately deal with all of the Constitutional provisions relating to oversight. It is therefore, according to the Committee, necessary to develop an understanding of the

entire oversight theme in the Constitution, in order for all members of the Executive to act without hesitance.

Strom (1998: 23) introduces the theme of institutionalisation, by identifying committees as a separate and sub-group of legislators, a group entrusted with specific organisational tasks within the broader context of governmental organisation. Strom labels committees as one of the 'privileged groups', arguing that legislative organisations generate two forms of differentiation: hierarchy and specialisation. It is within these terms that SCOPA should be recognised: as an entity specialised in Parliamentary oversight within the Constitution, enhancing its powers as an important link in the general oversight structure. However, as a means to ensure proper checks and balances by the separation of powers, committees have less power than other privileged groups (such as decisive groups, veto groups or dictators<sup>ii</sup>), and for this reason are arguably considered with less idolisation (Strom, 1998: 24). The legislative institutionalisation, as explained by Strom (1998), is brought into context by the organisation theory of Norton (1998). The organisation theory, and work on legislative institutionalisation, suggests that institutionalisation occurs at two levels (Norton, 1998: 143). The first and most basic level is in terms of specialisation within the legislature, namely the delegation of tasks to particular bodies, usually committees. Legislatures may be arrayed on a spectrum, from chamber-oriented legislatures which make little or no use of committees at one end, to legislatures which are committee-oriented, to the extent of giving committees power to enact legislation, at the other (such as the American Congress) (Norton, 1998:144). The second level is that of institutionalisation within committees. Committees may themselves be arrayed on a spectrum: those with highly developed procedures and norms, continuity in membership, and some degree of corporate ethos at one end; and those with few developed procedures, practices and membership continuity at the other (Norton, 1994: 15-32).

Norton (1994: 149) therefore stresses the following aspects within the term institutionalisation: the permanence of committees; small membership facilitating; detailed investigation; jurisdictions paralleling those of the main government agencies, with little scope for overlapping jurisdictions; agenda setting and evidence-taking



powers; and lastly, the use of specialist advice. South African committees have increasingly been institutionalised since 1994, with the aim of gaining institutional memory for future reference. As mentioned, in South Africa, the institutionalisation process has not been successful in all regards, and much remains to be learned from other Parliamentary experiences - especially when taking the specific factors that contributed directly to the success of the American model, into account. In the American model, most of the above factors flourish effectively, and this appears to be because the committees have so much power and therefore freedom to act effectively (enhancing time- and cost efficiency of all programs) (Norton, 1994: 150).

Within the organisational structures of Parliament, it is crucial to take into account that “[p]arties and committees are a contradictory and even mutually exclusive means of internal organisation [in the legislature]...The importance of each is inversely *proportional* to the other...The more important the committees, the less important the parties” (Olson, 1980: 269). In South Africa it seems that party politics plays a predominant role within committees’ agendas and decision-taking procedures, as opposed to the American Congress’ committees that are immensely resilient and strong regardless of party politics. They are well supported with policy specialists, and are highly influential in the passing and shaping of legislation. Hague & Harrop (2004: 251) make a statement that supports Olson (1980: 269), by noting that committees have less influence on legislation in party-dominated legislatures (such as in the British House of Commons, Scandinavia and South Africa). The British committees, unlike the Congress, do not challenge executive dominance in framing legislation. “They are unpopular, unspecialised and under-resourced” (Hague & Harrop, 2004: 251). However, if committees are a natural arena in which to seek compromise and consensus, influential committees can and should coexist with strong parties. In this instance, Scandinavia provides the best example of influential committees combined with strong parties (Hague & Harrop, 2004: 252).

What South Africa can and does thrive on are the Constitutional Chapter 9 Institutions (The Constitution, 1999), which enjoy independence from the executive and form an integral part of the overall oversight framework. However, the question has increasingly

been: how can Parliament ensure the accountability of these institutions, listed in Chapter nine, in co-operation with SCOPA, without infringing their financial and administrative independence? Although the President appoints these institutions, this is done on the recommendation of the Assembly (The Constitution, 1996: 193(4)). Effectively, these Chapter nine institutions are held accountable to the Assembly, and predominantly have two roles in relation to Parliament. Firstly, together with Parliament they act as watchdog bodies over the government and organs of state. Secondly, they support and aid Parliament in its oversight function, by providing it with information that is not derived from the executive (Ad Hoc Joint Sub-Committee on oversight and accountability 2002: 57).

Therefore, the independence of the Chapter nine institutions is vital for many reasons. These institutions must be respected by the public as independent and free from possible influence or pressure from the executive branch of government. However, they must also be held accountable and be placed under scrutiny when their own reports on malpractice by other entities seem unsatisfactory. The Public Protector, for example, has as its main function the investigation of improper conduct in state or government affairs and in the public administration, which also forms a crucial part of Parliament's oversight role (The Constitution, 1996: 182(1)). The Auditor-General must audit and report on the accounts, financial statements, and financial management of all national and provincial state departments (and administrations), all municipalities, and any other institution or accounting entity as required by national or provincial legislation (The Constitution, 1996: 188(1)). The Auditor-General also "has the additional powers and functions prescribed by national legislation" (The Constitution, 1996: 188(4)). At present, the role of the Auditor-General extends beyond pure compliance auditing. Section 3(4) of the Auditor-General Act 12 of 1995 states that: '[t]he Auditor-General shall reasonably satisfy himself or herself that:...satisfactory management measures have been taken to ensure that resources are procured economically and utilised efficiently and effectively" and on these premises provide SCOPA with the necessary reports (Corder et al, 1999: 23).



Specifically in relation with SCOPA, the most important contribution to oversight by the Public Protector and the Auditor-General, is the invaluable information they provide that is not derived from the executive, ideally ensuring its objectivity. However, the nature of the interaction between the Chapter nine institutions and the various committees in Parliament is not adequate in all regards, since “there is no tangible or visible follow up of matters raised, or of the recommendations made in reports” (Ad Hoc Joint Sub-Committee on oversight and accountability 2002: 59). This problem is also a result of not having formalised the working structure between committees and the Chapter nine institutions.

Finally, one is left with a query regarding the separation of powers in our Constitution: not whether the separation of powers is weak or strong, but whether or not the fact that the executive is drawn from the legislature weakens the oversight role of the legislature. (The Ad Hoc Joint Sub-Committee on oversight and accountability, 2002: 10). The Sub-Committee (2002: 42) proposed a noteworthy recommendation for an “Accountability Standards Act”, which would compliment the Public Finance Management Act (PFMA). This proposed act would bind the executive to comply with its specific provisions or face judicial sanctions. Even though this could be seen as pre-mature, Parliament should develop systems to address these issues, in order to determine whether or not they should be housed in legislation.

The proposed Act would serve the following purpose;

- i. *to fulfil the NA’s Constitutional obligations for establishing accountability mechanisms*
- ii. *to set a broad frame work and minimum requirements for accountability; and*
- iii. *to provide an authoritative and mandatory framework within which committee members can perform their oversight task.*

These requirements could help strengthen the impact of existing Constitutional provisions for Parliamentary oversight, thereby ensuring that the legislature does not only become

an extension of the executive, but that strong checks and balances remain central within the implementation of Constitutional oversight measures.

## 2.2 The Committee system in the Oversight Framework

Within weeks of the opening of the first session of the new Parliament on 26 May 1994, the committees were flourishing. Today there are a total of over fifty committees: twenty seven portfolio committees of the National Assembly which shadow departments of state, fourteen select committees of the National Council of Provinces (NCOP), seven joint standing committees, two joint committees and a number of ad hoc committees (Calland, 1997: 7). Committees consist of 15 to 25 members and are composed of the various parties within Parliament according to a system of proportional representation. This entails that committees are established either by the Constitution or an Act/Rules of Parliament.

If one had to put a specific date to the formal recognition of the important role committees need to play in the oversight framework, it can arguably have been on a National Constitutional Conference held from 31 March to 1 April 1995, where the ANC considered and passed the following proposal:

*The ANC proposes to use the Parliamentary committee system, structured to ensure executive accountability to an informed Parliament, a role for minority parties through such committees, and greater and informed public debate on legislation and to suggest new legislation to the relevant ministry. The committees shall have the necessary powers to conduct public inquiries into matters within their area of jurisdiction". (Macozoma, 1996: 112).*

It is against this background and other contributing factors, as will be discussed below, that the powers and functions of oversight committees in South Africa should be considered.

According to Zajc (1997: 490), committees are seen not only as key to the efficient dispatch of Parliamentary matters, but as arenas of specialist expertise - developed over a period of time - in which the back bench member of Parliament can find a useful role for



him or herself. They form an integral component of the wider institution, with connections beyond to the 'real world' of interest groups and expert knowledge. While the world-wide trend towards the development and institutionalisation of Parliamentary committee systems appears uniform, according to Calland (1997: 4) it should not be allowed to mask the very substantial differences in style, powers and format. February (2006: 129) argues that while the structure, powers and duties of Parliament are spelt out unambiguously and ambitiously in the Constitution, there remains a gap between the Constitutional aspirations for Parliament and how Parliament and its committee structures have fulfilled its mandate. She proceeds to argue that Parliament as an institution has played its role "patchily, unevenly and sometimes hesitantly." The validity of this statement will be measured within the case studies in chapter four.

### **2.2.1 Powers and functions of Oversight Committees**

As mentioned above, Constitutionally, committees are given "legal teeth" in Rule 53 and Section 58(2) of the Constitution (Macozoma, 1996: 112). More specifically, Rule 52(1) of the National Assembly's Standing Rules outlines the functions of the portfolio committees as follows:

*"...a portfolio committee shall...*

- (a) consider or deal with bills or other matters which are referred to it by the Speaker under these Rules, or by or under a resolution of the house...;*
- (b) monitor, investigate, enquire into and make recommendations relating to any aspect of the legislative programme, budget, rationalisation, restructuring, functioning, organisation, structure, personnel, policy formulation or any other matter it may consider relevant, of the government department or departments falling within the category of affairs consigned to the committee..."*

Whilst Rule 53 states that the powers of portfolio committees shall include the power to:

- "(a) summon any person to appear before it to give evidence on oath or affirmation;*
- (c) summon any person to appear before it to produce any documents required by it..."*

Based on these premises, Professor Christina Murray (in Calland, 1997: 10), once an advisor to the Constitutional Assembly, believes that the final Constitution gave the legislature and its committees more power than any comparable Constitutional/political system in the world. That is why Calland (1997: 10) sees the South African Parliamentary committee system as ‘all dressed up’, asking whether it has ‘anywhere to go?’

In attempt to explain why our committee system might be geared to go, but struggles to institutionalise accordingly, February (2006: 127) argues that it is necessary to take into account how Parliament as an institution has changed since 1994. The old Apartheid Parliament lacked many facilities the post-1994 Parliament is equipped with today, such as: no email connectivity; only one fax machine per floor; and a library with limited holdings and virtually no support or research staff complement. February (2006: 128) emphasises that the post-1994 Parliament has an “efficient operational infrastructure with good library facilities, large numbers of researchers and other administrative support staff.” In this sense, Parliament has grown and improved extensively in order to adapt to the enormity of demands it is faced with.

Providing background on committees in general, Hague & Harrop (2004: 250) defined committees as small workgroups of members created to cope with the volume of Parliamentary business, particularly in the larger and busier lower chamber. These committees traditionally became known as standing committees who consider bills and financial proposals together with conference or mediation committees, in order to reconcile differences in bills passed by the two houses of a bicameral assembly. Hague & Harrop (2004: 250) argue that the more recent development has been the strengthening of select committees, which “scrutinise government administration and investigate matters of concern, drawing on external witnesses as needed.” As mentioned in section 2.1.1, committees have the power to enforce executive accountability by means of the budget vote, the power to summon members of the executive and the public to appear before Parliamentary committees, and Parliamentary question-time (Corder et al, 1999: 19). While summoning members of executive bodies to explain their policies or actions represents a less direct method of enforcing oversight than budget approval, the value of



public exposure can be a significant tool to impose sanctions or influence policy. In order for this type of enforcement to be applied effectively, committees must be proactive about holding public hearings or requesting presentations from executive bodies (Corder et al, 1999: 32).

The growing status of select committees has reflected the increasing importance of the scrutiny function to contemporary legislatures. Hague & Harrop (2004: 250) argue that a strong committee system defines a working<sup>iii</sup> (committee-oriented) as opposed to a talking (chamber-oriented) assembly. Therefore it lies within the domain of the committees to take the responsibility of scrutinising bills, overseeing government, and exploring policy options. Heywood (1997: 305) mentions that committees which are set up to scrutinise government administration and oversee the exercise of executive power must be permanent and specialised, since they have to rival the executive in terms of detailed knowledge and expertise. The US Congress has the most powerful committees to be found anywhere in the world, and these provide a model that many other assemblies have tried to adopt. Heywood (1997: 305) argues that their power stems from their specialist responsibilities, permanent membership and lavish support in terms of funding and access to advice.

Committees' different powers include: the committees' right to initiate legislation and rewrite bills, their control of the committee's timetable, and their methods of obtaining information (specifically the rights to summon witnesses and documents). Significantly, Strom (1998: 47) mentions that these formal powers are likely to have an important impact on the committees' ability to influence legislation independently of such external actors as party leadership, chamber majorities, and the government. On the other hand, Baerwald, (1979: 345-6) is of opinion that committees and "their authority is a chimera and their accomplishments largely meaningless." Which of these characteristics is most identifiable within the South African context? Is it already safe to accept that the nascent South African Parliamentary oversight committees have adequate means of enforcing the necessary recommendatory or rectifying measures to accounting entities, irrespective of other factors that might hamper its impartiality in its decision-making process?

In order to place this discussion into context, consider the following observations. Within Cabinet, government is dependent on consensus seeking in order to make decisions or to pass legislation. Consensus does not necessarily involve a search for agreement on all issues, but rather a “search for maximum common ground among governing parties by means of negotiation, bargaining and trade-offs” (Kotzé, 1998: 3). Kotzé argues that the restructuring and extension of the committee system has important advantages for the legislative process. It creates a more informal forum where members can debate with one another since members of the committees have a great degree of political independence. Also, submissions from independent experts create the opportunity to test the views of civil servants that serve in the committees (Kotzé, 1998:5). Committees therefore play a vital role in drafting legislation by making it a widespread, participatory process, bringing the process much closer to the citizens.

Strom (1998: 26) is of opinion that committees must enjoy some institutional advantages within their respective jurisdictions, such as proposal powers or gate-keeping powers, restrictive amendment rules, and effective oversight functions. As mentioned in Chapter one, Hague & Harrop (2004: 252) argue that, apart from the party system, the key to the influence of committees lies in three factors: expertise, intimacy and support (of which all three factors are present in the American Congress but not necessarily in South Africa). It is in the light of these criteria that South Africa’s oversight committees need more experience and resilience in order to perform on a more independent basis. However, by keeping a close eye on SCOPA, the public should continue to probe its actions and thereby ensure that the committee is on the right track.

Bearing the consensus-seeking principle in mind, our executive is not only chosen from the legislature but also primarily from the leadership of the majority party. South Africa’s strong party-based system ensures that the majority party has the most votes within any Parliamentary committee. This can hamper effective oversight, as members of SCOPA may be reluctant to call to account a government that is made up of leaders of their party. This is further exacerbated by the electoral system of proportional representation because members of Parliament presently retain their seats through their membership of political parties. South Africa arguably displays the traits and biases of



its membership and structure within the national legislature. By being bicameral, with each chamber retaining separate electoral and procedural customs, many competing geographic interests are involved, complicating even the simple groundwork that committees are faced with.

In the case of the US Congress, leaders and committees of both chambers attempt to control the legislative agenda, especially in the absence of unified party control of both the House and the Senate (Campbell & Davidson, 1998: 138). While a less strong party-based system (such as in the USA) is probably a feature of a totally unconstrained legislature, South Africa (as in Scandinavia) needs a Constitutional dispensation that provides for a system of checks and balances within the ambit of a strong party-based system. Members of the majority party in particular may be “unwilling to subject the government to rigorous scrutiny for fear of being perceived as disloyal or even expulsion from the party” - and the obvious resulting loss of their Parliamentary positions (Ad Hoc Joint Sub-Committee on oversight and accountability 2002: 8,9).

Therefore, even though the South African Constitution (1999) gives expression to the principle of separation of powers (between the legislature, executive and judiciary), our Parliamentary system of government does not give full expression to the notion of separation of powers because of the close links between the legislature and the Executive. South Africa’s electoral system, and the role of the party leadership in compiling election lists, also threatens to have a real impact on the ability of Parliament to exercise effective oversight. Patricia de Lille (Corder et al, 1999) took a dim view of this:

*“Parliament has become...useless because we are controlled by the Executive and have to hold the Executive to account...The reason for that is the way that the majority party [the ANC] is structured, with all senior members of the party in the Executive as Ministers and all the junior members are members of Parliament, and the juniors will not challenge the seniors. And most of the seniors are also on the national Executive of the party [which, in turn, compiles the final version of the party’s candidates list]”*

And according to Nathi Nhleko (the former Chief Whip of the ANC), “The area of oversight...by Parliament over the Executive...is an area that must be sharpened” (Corder et al, 1999). These statements will be taken into account in chapters Three and Four.

In the context of global patterns, why are American committees seen as exceptional? In seeking an explanation, Shaw (1998: 228) is of opinion that one should first turn to the party system. American parties normally exert sufficiently loose control over House and Senate committees that this circumstance provides an important explanation as to why US congressional committees can function as they do. One should take into account that there are parties that exert weak control over committees in the legislatures of a number of other countries, yet their “committees do not conduct themselves like American ones” (Shaw, 1998: 228). However, there seem to be sensible explanations for what distinguishes American-style committees from those found in South Africa and elsewhere. Firstly, American committees support the values of anti-statism. The “American public has indicated in opinion polls that it continues to favour a divided government and a weak state” (Shafer, 1991). This is where the committees of Congress come in. Complying with public preferences, their job is to hold the executive in check by exposing and excising misguided policies, incompetence, and venality. Secondly, unspoken arrangements exist whereby neither the White House nor Congress (which would be the committees and the assembly in the South African context) interferes with the other’s staffing arrangements. Therefore, in practice, Congress has a relatively free hand to acquire the financial resources needed to operate a committee-driven counter-bureaucracy. Shaw (1998: 229) is of impression that this is where other Parliaments do not enjoy comparable resource autonomy.

Whether in America or elsewhere, it is widely agreed that the impact a legislature has is crucially dependent on its committee arrangements. Mezey (1979: 64) notes that if a legislature is to have strong policy-making power, it also has to have a highly developed committee system generating policy expertise. More specifically, the Norwegian Parliament in Scandinavia has been characterised as one of the stronger Parliaments in that region, due to their highly developed committee system that answers to the country’s



demand for policy expertise. What magic ingredient in the committee-success-recipe is South Africa short of?

Scandinavian party politics is characterised by strongly organised and future-orientated parties, *decentralised* and relatively non-hierarchical legislatures (where the opposition can be effective), and competitive elections. These conditions induce political parties to defer the gratification of holding office and thus facilitate minority government formation (Strom, 1986: 583-605). Within South Africa, February (2006: 140) argues that reconciling tensions between the executive and the legislature will always be difficult, particularly where government is headed by a powerful chief executive who appears to dominate a party with an overwhelming majority in the legislature. The US Congress has a relatively weak party system, which allows its committees considerable *independence* from the presidency (Heywood, 1997: 305). Stricter party discipline (as in the UK and Australia) has been proved to neutralise committees, because the majority of their members are loyal to the ruling party (Heywood, 1997: 305). South Africa seems to be a victim of the same deficiencies.

After reviewing the powers of parties and committees in eight national legislatures, Strom (1998: 27) concludes that they are inversely related: 'Where the committees are strongest... one finds the lowest level of party control over the committees'. However, as in Scandinavia, they are also found in Parliamentary systems where no single party dominates the legislature and opposition functions effectively. Also, some Parliaments restrict minority rights by not permitting them to submit reports (such as the United Kingdom, Denmark and France). In these Parliaments, the majority party and the government have important prerogatives regarding agenda control and legislative initiatives (Strom, 1998: 45).

One can conclude that committees are of critical importance within the oversight framework, as they constitute the deliberative powers of Parliaments. They carry out a variety of time-consuming but highly significant tasks in the legislative process, such as scrutinising bills, collecting information, proposing amendments, and recommending final decisions to the floor. Strom (1998: 62) acknowledges that from time to time even

committees have showdowns (by having to decide by a majority vote). However, Satori (1987: 214) argues that if the recourse to the majority principle is not an exception but becomes the rule, this means that a committee no longer works. Hence, we may say that, in such a situation, a committee ceases to be a committee. Therefore Satori is of opinion that what matters most is to understand why the majority principle represents the watershed between committees and non-committees (or between functioning and malfunctioning committees). Strom (1998: 47) explores the same concept by stating that committee power can be negative and positive. Negative committee power is the ability to defend the status quo despite the pressure for change from other actors, whereas positive power is the ability to influence policy changes.

The Public Accounts Committee has traditionally occupied a heightened status over other committees in the legislature. In many countries, it is the oldest Parliamentary committee (Wehner, 2002: 3). Let us now examine the specific nature of South Africa's Standing Committee on Public Accounts.

### **2.2.2 The specific and significant purpose of SCOPA**

The Standing Committee on Public Accounts' mandate is found in Rule 206(1) of the National Assembly (Annual Report: Standing committee on Public Accounts, 2005: 4). According to the Rule the Committee is expected to consider:

- (a) the financial statements of all executive organs of state and Constitutional institutions when those statements are submitted to Parliament;*
- (b) any audit reports issued on those statements;*
- (c) any reports issued by the Auditor-General on the affairs of any executive organ of state, Constitutional institution or other public body;*
- (d) any other financial statements or reports referred to the Committee in terms of the rules.*

The National Assembly Rule 206(2) determines that the Speaker must refer the financial statements and reports mentioned in paragraph (a)(i), (ii) and (iii) to the Committee when they are submitted to Parliament, irrespective of whether they are also referred to another committee (February, 2002: 3). The NA Rules are very broad and make it possible for



SCOPA to consider almost anything it wants, should it relate to “ensuring effective and efficient financial management of public funds by departments, Chapter nine institutions and public entities...” (February, 2002: 3). Generally, the major source of SCOPA’s work has been derived from the Auditor-General’s reports which have been referred to it, even though the committee may also initiate any investigation in its area of competence.

It is especially important to take SCOPA’s mission into account, given that it determines the manner in which the committee engages with its oversight activities. The committee’s mission is to:

*“[p]romote effective and efficient financial management of, and the accountability for, all matters concerning public finance. To this end it will exercise a rigorous oversight role to ensure maximum value for each taxpayer rand in such a way that it contributes towards the improvement in the quality of life of all South Africans.”* (Annual Report: Standing committee on Public Accounts, 2005: 4).

In accordance, SCOPA set out four broad goals in order to complement the mission of their committee proceedings;

- (a) to cover a greater volume of work which is of relevance to its mission. This in terms of the number of state related bodies and finance-related issues it actively exercises oversight over.*
- (b) To strengthen the qualitative aspects of its investigative work. This in order to more fully understand and more fully respond to existing areas of financial management weakness and under-performance*
- (c) To increase the consistency, regularity and assertiveness of follow-up actions where corrective action has been deemed necessary*
- (d) To more assertively and creatively influence improvements in financial management, wherever this might be necessary in the broader public sector.*

Rule 122(2) of the National Assembly Rules makes provision for a committee to assign a task to one or more of its members for an internal or administrative purpose. In line with this rule SCOPA divided itself into two workgroups/sub-committees to facilitate its work

better. Each work group has a convenor that is elected by the Committee. Both workgroups consider Auditor-General reports which are allocated to them, and make recommendations to the plenary during their weekly meetings (Annual Report: Standing committee on Public Accounts, 2005: 20).

Regarding their direct sphere of influence, SCOPA has to attend to more urgent needs. This includes the following: to properly understand their relationship to the Assembly, and for all MPs to understand SCOPA's role; and to co-ordinate its oversight activities and objectives with the decisions made and projects considered, therefore not allowing them to be determined by their respective political parties' interests. SCOPA should also bear in mind that it is the executive that is accountable to them, not departmental officials or departmental accounting officers. The committees currently tend to engage with departmental accounting officers most of the time. This is not necessarily inappropriate, since, in the Commonwealth, 97 per cent of public accounts committees normally summons departmental officials and only 31 per cent summons Ministers as a matter of course (Murray & Nijzink, 1999). However, public accounts committees do need to remember that the accounting officer is there to provide information and answer questions on behalf of the Minister or MEC. They are accountable to their political heads who, in turn, are accountable to the legislature. Thus, serious concerns should be raised with the Minister or MEC who is responsible for the performance of the department, and not with the accounting officer alone.

In short, SCOPA should conduct public hearings, by means of written or oral reports and Parliamentary question time, in order to hold the accounting entities liable for all expenditures undertaken that were considered unqualified. They should also conduct oversight visits to government departments and agencies (as a tool to measure compliance with financial legislation) on a regular and well-scheduled basis (Annual Report: Standing committee on Public Accounts, 2005: 3). When first identifying SCOPA as the watchdog of Parliament, high standards for the committee to comply with were created. SCOPA must be held responsible and commit themselves wholeheartedly to ensure that any financial malpractice within all accounting entities are restored by responsible and efficient alternative practises.



## 2.3 Summary

What is a strong committee? Shaw (1998: 237) is of opinion that a strong committee in a legislature is one that has a significant independent impact on public affairs. He concluded his own study on “Parliamentary Committees: A Global Perspective” by arguing that “...domination of Parliamentary committees by the leadership of a single governing party has tended to mean a constricted impact by the committees, as in Japan and Britain. In general, partisan co-ordination, Washington style, does not seem to provide a widespread example”. Therefore, we are left with the understanding that it is indeed best for the relevant legislatures to learn from other good practise, but also from their own experience within their unique context and history.

Due to a strong one-party state in the old South African regime, Parliament today is synonymous with a vibrant party system, comprising of various opposition parties structured as single or coalition parties, including various minorities. Therefore, members of Parliament, as proportionately represented within the assembly, are also proportionately represented in the committees of our Constitution. The discontinuity of our committee system (due to the assembly being radically restructured since becoming a democracy) has counted to our disadvantage. This has become both a motivational driving force within Parliament for reconstruction and transformation, as well as a challenge to our committee system, in order to institutionalise effectively before the fourth democratic Parliament is elected.

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<sup>i</sup> Each year Parliament must approve the annual budget of the government. All financial reports must adhere to the requirements of the Public Finance Management Act (Act 1 of 1999), serving as one of the relatively new methods for ensuring structured oversight. The PFMA demands financial accountability from a range of listed entities in different forms in its schedules. It is due to replace the Reporting by Public Entities Act 93 of 1992. The use of budget approval power by the committees gives them the power to make sure that executive reporting is useful and meaningful in the future (Corder et al, 1999: 20).

<sup>ii</sup> Dictators are referred to as groups that can unilaterally impose their will on the legislature. They can make legislative policy at will and they can similarly prevent any change in the status quo. In other words, their consent is both necessary and sufficient for a legislative decision (Strom, 1998: 23).

<sup>iii</sup> In a working assembly, such as in the American Congress, the core activity takes place in committee rooms. There, legislators shape bills, authorise expenditure and scrutinise the executive (Hague & Harrop, 2004: 251).

### Chapter 3

## THE STRUCTURES AND FUNCTIONS OF SCOPA

### 3. Background

According to Johns (1997: 85), if party pre-selection is the 'secret garden' of politics, then the operation of Parliamentary parties is the magic pudding. As discussed in Chapter Two: South Africa is a multi-party democracy, and therefore it is only logical to assume that our democracy is based on the parties. The proportional system of representation in South Africa makes provision for party lists, thus placing enormous power in the hands of the party management in deciding the lists of candidates. Section 47 of the Constitution (1996) adheres to the principle of the imperative mandate, which might reduce the freedom of MPs permitted in previous South African Parliaments (inherited from the British tradition). However, this Chapter argues that the party system in South Africa has encouraged MPs to become party delegates who follow the agenda of the leadership in all the spheres of government which they participate in, including the respective committees (Venter, 1998: 73).

What could be the root of all challenges in maintaining an interdependent multi-party Parliament in South Africa? Increasing critique from the media, the SACP and COSATU, has been raised against the ANC, stating that the appearance of consensus-seeking hampers critical debate, and the ANC dominance has been condemned as an emerging *de facto* one party state, (DA, 2004c: 5) irrespective of its coalition arrangements with both the SACP and COSATU. The essential problem of a dominant party system is that there are few autonomous voices in Parliament. The ANC has a large majority (279 out of 400 MPs) consisting of members that are restrained from scrutinising the executive (DA, 2004: 5). The ANC has proved itself capable of becoming an independent party since the NNP was eventually absorbed after Marthinus van Schalkwyk accepted an ANC membership card. And if earlier speculations made by the media are anything to go by, the PAC will be absorbed into the ANC in the near future (PAC's Phoko Under fire, 2004), which would defy the principle of having a member of the opposition party chair SCOPA.

In the context of the oversight functions of the Public Accounts Committees, the DA (2004c: 5) argues that the "hegemonic aspirations" of the ANC, combined with a largely



co-opted opposition, seriously hinder the abilities of Parliament to call the executive to account. Under South Africa's closed-list proportional representation electoral system, ANC MPs are essentially appointed by their party bosses, usually Ministers in the Cabinet. The Ministers (subject to scrutiny from the oversight committee) therefore determine the political survival of the respective ANC MP's that represent the ANC in the oversight committee. The electoral system would be more effective if it were similar to Britain, where MPs are elected directly by their constituency and their political survival depends on voters who assess their performance in Parliament (DA, 2004c: 6). The problem is summed up best by one of the ANC's own MPs:

*"Obviously if you have a constituency system then you have a greater degree of latitude to challenge your party leadership...but we are a new regime...we feel we cannot confront our own leadership because it exposes us as a party and a movement...an attack on the executive is an attack on blacks by whites. We are very sensitive about this: perhaps too sensitive about it...it is more difficult for backbenchers in the majority party to raise questions of their own ministers than it is for opposition parties."* (Carrim, 1999: 120).

In addition, the ANC's policy of cadre deployment dictates that all ANC cadres are loyal first and foremost to the ANC leadership. The ANC's national deployment committee deploys these cadres (Lodge, 2003: 37). The reason why the latter might be relevant in terms of party politics within committees, can best be expressed in the words of a 1998 ANC discussion document:

*"[the] national liberation movement needs to extend its influence to all levers of power: the army, the police, the bureaucracy, intelligence, the judiciary, parastatals, and agencies such as the regulatory bodies, the public broadcaster, the central bank and so on"* (ANC, 1998).

The entrenched tradition of democratic centralism, and the development of a cadre policy, compound the problems of the party list system and the dominant party system, seriously undermining the ability of individual ANC MPs to hold the executive to account (DA, 2004c: 8). ANC MPs are for the same reasons less likely to call their comrades in state agencies to report to SCOPA, and are also less inclined to cause an uproar that could damage the status quo.

In order to bring this into context with the transformation of the committee system, consider the following. The National Party used the Constitutional negotiations to create a plural executive (Mattes, 1994: 2-3) which meant that until May 1996, it was a partner in a government of national unity (GNU), along with the Inkatha Freedom Party (IFP) and the ANC. It has been suggested that the NP failed to foresee the importance of the committees in the new Parliamentary dispensation, and that it should have insisted upon a sharing of the committee chairpersonships. Section 58 of the Interim Constitution was also silent on this specific issue (The Constitution, No 200 of 1993).

In addition, February (2006: 136) notes that Parliament did not have a central database on which all the submissions made since 1994 could have been captured. There is “no formal record of who has been accessing Parliament and making submissions”. This has led to the groups who would participate, in terms of making submissions and attending public hearings of committees, being limited to “better-resourced NGOs and private-sector business interests” (February, 2006: 136). However, these private actors do not enjoy the legitimacy such as Parliamentary institutions do, and valuable inputs may either be rejected or labelled as invalid by Parliamentarians (depending on the specific case). In some cases it appears that critique is restricted as the core responsibility of the opposition parties or non-governmental actors, since the majority party can then easily deny it, if they see it as uncomplimentary to the status quo.

Therefore, prior to 1997 Parliament operated under the interim Constitution, which did not clearly outline Parliamentary oversight functions. When the committees first began to expand their work in 1994, there were no researchers and no secretaries to serve either the chairperson or the committee itself (Calland, 1997: 10). There were no *Hansard*-verbatim-records of committee meetings, and the minutes taken were thin, recording only the basic decisions taken. SCOPA, like the other committees, also initially struggled with young and unskilled employees receiving no training, supervised by ‘old’ bureaucrats. Another observation regarding the skills indicated that:

*“Skills may be the more significant issue, as opposed to infrastructure. Those who were skilled recognised their need for infrastructure and went out and...hired, borrowed and scrounged equipment and staff and researchers. They worked with volunteers and rapidly learned to use NGO capacity in the*



*area of research. Those who were not sufficiently skilled in office work, paper management, public speaking and legislative process found themselves disempowered by the system. That adequate steps around training were not taken is the single biggest criticism that I have.*" (Tilley, quoted in Calland, 1997: 11).

The cost of transformation was that a great majority of MPs (who entered Parliament in 1994) were new to Parliament. There was an immense amount of inexperience. Parliament, as an institution, was not prepared for this, and had not prepared any sort of induction course. New MPs had to sink or swim (Calland, 1997: 11). The resultant effect of this situation was that it caused committees to lack expertise. This lack was first demonstrated by the fact that the material used by opposition MPs in their questioning of the Minister was almost entirely derived from the press; secondly, the most material documents were sought at the meeting itself, and not in advance (Calland, 1997: 12).

According to Heywood (2002: 319); there exists, generally speaking, a formal education gap in the preparation of politicians. He argues that assemblies corrupt the politicians by socialising them into norms and values that distance them from the needs of the taxpayers. This chapter explores his opinion that "...committees have increasingly been perceived to provide legislatures with a more efficacious *modus operandi*" (Senay & Besdziek, 1999: 8). This opinion is evaluated critically in the subsequent chapters. As explained in Chapter One, it is important to note that this concern strongly correlates with South Africa's Westminster heritage.

The question that therefore arises considers whether or not oversight is the role of the opposition only. The Final Report of the Joint Ad Hoc Sub Committee on Oversight and Accountability (2002: 22) noted that a legislature has an inherent function to oversee the executive organs of state and hold it accountable. It is a function of the Legislature as whole, and not of individual parties. The Joint Ad Hoc Sub Committee (2002: 22) sanctioned the following:

*"The oversight role is often seen as that of the opposition parties alone, designed to police and expose mal-administration and corruption. Such a view is limited and deficient. Oversight and accountability help to ensure that the executive*

*implement laws in a way required by the legislature and the dictates of the Constitution. The legislature is in this way able to keep control over the laws that it passes, and to promote the Constitutional values of accountability and good governance”.*

These elements of opposition and party politics form an inherent component of the committee structures, when taking South Africa’s history and Parliamentary structures into account. These elements cannot be done away with by undemanding recommendations within the Constitution. They rather form part of an established culture that needs to be transformed as the committee structures become stronger, in order for members of Parliament to prioritise the requirements of SCOPA as their primary concern. The following sections consider the structures and functions of SCOPA specifically, in order that a clear idea can be formed of how the committee needs to be equipped to cope with the requirements of the Rules of the Assembly.

### **3.1 Structures of the committee**

This section will provide an introduction to the organisational structures within SCOPA, so as to provide the reader with an understanding of the complexities that arise from the composition of, and compliance within, SCOPA. Initially, it will consider the complex issue of party politics within the functioning of SCOPA, thereby providing a better understanding of the road the Committee has embarked on, and what challenges remain to influence the oversight and decision-making processes within the Committee. The other sub-sections will stress the importance of chairpersons and their influence within SCOPA, following by a discussion on the organisation of the Committee in compliance with other actors and factors.

According to Sherman (1997: 148), one major criticism of Parliamentary committees is that they often lack the back-up research resources to conduct full and comprehensive inquiries. Another criticism is that they tend to be *political* in the sense that they split on party lines, with government members’ defensive of the government, and opposition members looking for political points to score. In the case of the latter, Sherman (1997: 149) argues that it is the role of oppositions to scrutinise and criticise government. However, this thesis argues that it is the duty of all members of SCOPA, irrespective of the party they represent, to oversee the executive impartially. In any event, there is a



good deal of bi- partisanship in Parliamentary committees.

According to Kotzè (1998: 59), there are a number of institutional phenomena in South Africa, which inhibit the mobilisation and expression of opposition, both amongst and within the respective parties. These include the coalition nature of the Government (with associated uncertainty about where co-responsibility, and loyalty and opposition begins), and the indefinite state of local government (since the absence of transformation could be the result of lack of local democracy). The latter is identifiable with the criticism the ANC has been receiving from its tri-party alliance members - the SACP and COSATU - who have argued that the ANC is harnessing a dictatorship (News 24, 2006). The same tensions can be seen within committees, where fine lines of political divide amongst MPs of the same parties have provided tensions within consensus-seeking. Kotzè (1998: 69) affirms that intra-ANC opposition is manifested within the following spheres: the Parliamentary Caucus, the Parliamentary Committees, SACP, ANC Youth, Women And COSATU Influence In The ANC, the Provincial Governments and lastly, the individual ANC politicians.

Two concepts are of concern in this section: consensus-seeking and majority-rule. The one is an ideal, while the other is a reality. Even though minorities within the committees should contribute to the overall agenda and decision-making process, the majority still has the power to veto or mandate their responses within the committee as a whole (which was partly the cause for Gavin Woods' resignation). As mentioned before, consensus in this context does not mean agreement by all parties on all issues all of the time, however it should aim to represent the institutionalisation of a search for maximum common ground among governing parties by means of bargaining, negotiation, and trade-offs (Kotzè, 1998: 104).

### **3.1.1 Chairpersons of the committee**

According to Hahndiek (2005: 17), the political weight that individual members and particularly chairpersons wield within their respective parties is arguably more significant than the issue of continuity for committee oversight capabilities. This is true in the South African context, given the electoral system of proportional representation and the uncontested strength of the majority party (both factors which independently

weaken the Parliamentary committees). Murray & Nijzink (2002) support this assumption by noting that: “[o]nce (their) representatives are elected, parties need to manage and support their members in a way that enhances their ability to represent the electorate”.

According to Engel, committee chairs are “all important” in terms of their conception of the role of the committee, and in terms of their political outlook and ambition: “some treat it as an individual crusade; whilst some make massive empowerment efforts with their colleagues on the committee; some see themselves as ‘second deputy minister’; others, as leaders of a different estate” (in Calland, 1997: 16). The fact that as many as four committee chairpersons were promoted into government in the first six months of 1996 tends to support this contention (Calland, 1997: 16).

The chairperson has to ensure the smooth and effective running of the committee. Therefore, stability and long-term membership are important cornerstones to the success of the committee. In particular, Public Accounts Committee chairpersons are responsible for setting the committee’s agenda, usually in consultation with the committee and the Auditor-General. This should indicate the flow of reports to be released, which would allow the committee to plan ahead reasonably well. The chairperson is also crucial in fostering a culture of consensus in the committee, by guiding the committee away from political divisions as far as possible (Wehner, 2002: 7). This underlined the need for an unbiased chairperson from preferably a strong opposition party.

Another way to look at this is as follows. Calland (quoted in Corder et al, 1999: 31), in the Report on Parliamentary Oversight and Accountability, notes that the role each committee plays is essentially linked to how active its chairperson is. However, Calland concluded his observation by stating that it is an indication of institutional failure when committee efficacy is determined by the will of the committee chairs. Their position requires them to direct debates, prepare agendas, manage the committee’s budget and organise meetings with impartiality. At the very least, a requirement exists for chairpersons to balance their political convictions with the specifications of their office. Chairpersons’ leadership qualities, and their ability to perform their function independently and without interference from party superiors, directly affect their ability



to sustain the effectiveness of their committee's oversight capacity (Besdzick & Senay, 1999: 13). Understandably, due to the centrality of the chairperson to the oversight function, a tradition has developed in a number of foreign legislatures that accords the chairpersonship of crucial oversight standing committees to opposition party members. "...[I]f the committee is shadowing a minister from a different party then the level of oversight tends to be greater" (Calland quoted in Besdzick & Senay, 1999: 13).

A quick overview of some of the chairpersons who have headed SCOPA in the last 6 years provides some illustrations regarding the problems discussed above. It is argued that SCOPA has been weakened in the past four years as a result of the Arms Deal. Not only did the Arms Deal provoke conflicting opinions within the committee, but it also led to the resignation of then chairperson Gavin Woods (IFP). According to February (2006: 134), the first blow was struck in 2001 when Andrew Feinstein was removed as the head of the ANC study group within SCOPA and replaced by an ANC MP, Vincent Smith, whom February (2006: 135) claims to have been an effective handmaiden of the ANC Whips. Smith apparently frustrated the investigative efforts of Woods into the Arms Deal. Woods held onto his position as chair, until the ANC majority on SCOPA, led largely by Smith, pushed a report through to Parliament on its investigation, which, according to Calland and February (2001), was less than satisfactory and left several questions unanswered. These are the circumstances under which Woods resigned.

Prior to releasing the results of the investigation on the arms deal, the Auditor-General South Africa (AGSA) passed the report to Cabinet, which had made the procurement decision, on the basis that it was a special report. According to Woods, there were allegations that Cabinet changed, or at least had privy to the content of the report prior to SCOPA, which was an example of Executive intervention designed to weaken the oversight power of Parliament, (National Integrity Systems, 2005: 36). He found support in these concerns from ANC member Andrew Feinstein, who also resigned from SCOPA in protest on 1 September 2001. The result, some MPs argue, is that SCOPA, far from being the independent-minded body it once was, became more susceptible to the wishes of the executive, and less rigorous in its investigations. It was accepted that, should another controversy like the Arms Deal surface, it would lead to the final ruin of the legitimacy of SCOPA. Fears were brought to light during both the Travelgate and Oilgate cases that had to be scrutinised by SCOPA. Most recently, February (2006:

135) noted that SCOPA is rarely heard from these days, and that even the reports of a scandal involving the “use of public funds by a state-owned corporation in the form of PetroSA appears not to have sparked any activity on the part of what was once, albeit briefly, a fiercely independent oversight grouping”.

Gavin Woods’ replacement was Francois Beukman, an NNP MP. His appointment continued the practice of appointing opposition party MPs to chair SCOPA. Although this meant that the ANC upheld its tradition of appointing a member of the Opposition to the position of Chair, it selected a party, with whom it was developing a close working relationship, leading to questions regarding the impartiality of the new Chair. At the time, the NNP’s recent signing of a co-operation pact with the ANC undermined the tradition, and Beukman was widely seen as a footman of the ruling party (DA, 2004c: 14). Woods asserts that: “Francois Beukmann knew the least about finances. So he could be managed [by the ANC]. He is a lawyer, and he may be a brilliant lawyer, but he knows precious little about finances. With the emergence of sub-committees [chaired by the ANC] the work has been taken out of the hands of the Chair, leaving him basically to do administrative work” (National Integrity Systems, 2005: 37).

In May 2004, the ANC appointed Vincent Smith, an ANC ‘super-loyalist’ as head of SCOPA’s research committee. According to the main opposition, the DA claimed that this was arguably the turning point that indicated that SCOPA would act in a partisan manner (DA, 2004a). In November 2005, Mr T Godi (PAC) was appointed as the new chairperson of SCOPA, and together with credible allegations from the media and opposition, the question of whether or not the PAC will be absorbed into the ANC, provides reason to doubt the impartiality of the chairpersonship.

Nevertheless, SCOPA faces many other challenges as well. A close examination of the organisation of the committee will be of valuable assistance. As will be demonstrated, in accordance with oversight committee practices elsewhere, the requirement of expertise and specialisation remains central to the execution of good practice.

### **3.1.2 Organisation of the committee**

Each Committee is composed according to the proportion of seats held in the National Assembly. This entails that smaller parties have greater difficulty in spreading their members across all the Committees. SCOPA consists of one manager, 4 clerks and 2



administration staff, one researcher and one legal advisor, and support from the Auditor-General's office. The committee consists of 17 members who face many challenges, consequently indicating the need for expertise in all the areas that have to be overseen (Annual Report: Standing committee on Public Accounts, 2005: 18). As mentioned previously, in the majority of Parliaments, and as tends to be the case in most other committees, the proportion of government and opposition members reflects the proportions in the House. SCOPA consists of ten ANC members, two DA members, two members from the IFP, and one from the UDM, MF and the PAC respectively (PMG, 2006). It is especially relevant to note that the only representative from the PAC is also the chairperson, and not a member from the DA or the IFP, which are stronger opposition parties. Generally speaking, the system of proportional representation also depends on the size of the committee, and the number of parties represented in the house. While the size of a Public Accounts Committee varies, it has on average 11 members (Wehner, 2002: 7). In the US Congress, however, a typical committee could have as many as between 50-100 staff, but also from Congress' own position in relation to the executive arm of government.

With regards to specialisation, an early study within the South African context suggested that MPs were spreading themselves too thinly by having some MPs be members of at least seven committees and sometimes, in the case of the smallest parties, as many as 15 (PIMS Record, 1995). It is important that members are developing genuine interest in the particular subject area, something which has remained a challenge to date. It is therefore logical to assume that SCOPA needs to build sustainable expertise and capacity amongst its members. There are certain instances where assistance from NGO's and other organisations may be harnessed to conduct research needed, but SCOPA should be sure to incorporate diverse views from a range of organisations and most definitely from all its committee members (February, 2002: 14). Keep in mind that each committee member does not have their own researcher, which stresses the workload (Corder et al, 1999).

Wealthy legislatures (such as the US Congress) can call on legislative research teams to verify some of the material that was presented to them by government. They also schedule research projects at predetermined stages in the implementation of new policies (Murray & Nijzink, 2001). This ensures that implementation of policy is on track and

helps to prevent unintended consequences. South African legislatures, like their counterparts in many Commonwealth countries, are unlikely to have this level of research support in the near future.

One comment regarding SCOPA's research competence, by the UDM's former MP, Annelise van Wyk (now a member of the ANC) pointed out that "[their committee] ha[s] one researcher serving 17 members and he (the researcher) is also the speech-writer for the leader (of the party). [They] are in need of independent research" (National Integrity Systems, 2005: 41). This could indicate the necessity for a window period in Parliament, in order to introduce an independent expert research panel. Such a panel could better co-ordinate the existing oversight structures and introduce independent reports. Such complaints as the one lodged by Annelise van Wyk appear to be legitimate because, while reports make MP's aware of problems, they do not necessarily empower MP's to ask the correct questions thereby enabling them to properly discharge their oversight responsibility (February, 2002: 4). Although SCOPA is still better supported than other Public Accounts Committees, the main problem area is still to be found in the research capacity. Currently, there are about 600 public bodies which are accountable to SCOPA, and according to the Corder Report (Corder et al, 1999) only 200 lodge their reports, a workload which SCOPA is already struggling with.

In terms of time allocated for committee meetings, the only available time for discussions and preparations in Parliament are Tuesday, Wednesday and Friday mornings. During these sessions, SCOPA's committee members have to do preparations in their workgroups and in plenary, while ensuring that they are not overlapping any work and that they are performing efficiently. The responsibility to ensure that all members are well-informed, prepared, and that they are participating productively, is solely dependent on the capacity and willingness of the committee members.

The departmental reports SCOPA is responsible for overseeing have, due to certain factors – not excluding the quantity thereof - delayed the committee's efforts to independently verify the information presented to it. In order to assist the committees by broadening their capacity, Parliament currently employs and pays a research division situated at Regis House. However, the direct relationship between this research facility



and Parliament's committees is unclear. This could either be due to its lack of appreciation by committee members, or an ineffective working relationship that lacks active communication concerning the direct priorities for research. Nijzink and Murray (1999: 90) quote a study, which found that few MPs are aware of their oversight powers - few "knew that they could and may even have a responsibility to demand the presence of a Minister in a legislative committee". This causes a diversion from the purpose of the committee: while government departments are theoretically obliged to report to committees and committees have the power to summon Ministers, reporting may not take place at all.

At present, SCOPA's organisational structure relies heavily on the Auditor-General for the bulk of its work. The quality of the oversight work of SCOPA therefore depends on the quality of the reports tabled by the Auditor-General. MP's should demand reports that they can engage with and that will put them in a position to properly fulfil their oversight responsibilities (February, 2002: 11). The Auditor-General did offer to assist SCOPA in strengthening its ability to follow up audit reports, thereby ensuring that departments have taken the corrective action. SCOPA needs to make use of such offers. However, members of SCOPA have often complained that the reports of the Auditor-General sometimes do not offer much assistance to them in performing their oversight role. What are the Constitutional provisions that empower the committee to expand its capacity?

Rule 122(2) of the National Assembly Rules makes provision for a committee to assign a task to one or more of its members for an internal or administrative purpose. In line with this rule, SCOPA divided itself into two workgroups to facilitate its work better. Each workgroup has a convenor that is elected by the Committee. The workgroups consider Auditor-General reports allocated to them and make recommendations to the Committee. The workgroups usually meet every Tuesday morning between 09:00-12:00, whilst plenary meetings are held on Tuesdays between 12:00-13:00 and Wednesdays between 09:00-13:00 (Annual Report: Standing committee on Public Accounts, 2005: 20). The subcommittees roughly consist of between nine and eight members respectively (with the majority members representing the ANC and only three or four members, one from each minority party, represented in each group).

Essentially, the organisation of the committee should strive towards stable committee membership, in order to conduct effective oversight. SCOPA has been relatively stable in maintaining most of its members, although it does have a high turnover rate for chairpersons. The latter statistic is not optimal, since chairpersons play a central and influential role in determining the agenda and coherence of the committee while attending to the relevant MPs' questions and needs impartially. Compromise and consensus are easier to obtain when members develop relations with their colleagues from all the relevant parties (Hahndiek, 2005:16). For consensus to have substance, the chair has to acknowledge the opinions of minority parties within all reports and sessions and be homogeneous in his/her actions and decisions. This has been difficult: from 1994 to 2004, as a total of twenty-six committee chairs (mostly from the ANC) have departed from their respective committees in that time period (Hahndiek, 2005: 17). This is also demonstrated within the Final Report of the Ad Hoc Joint Sub Committee on Oversight and Accountability (2002): "experience acquired during the First and Second Parliaments will largely be lost as a new crop of (Members) get elected into their seats. It is therefore critical to develop institutional memory..."

Whips were appointed strategically as part of support initiatives for greater stability within the structures of political parties and committees. They are tasked more specifically with arranging and informing Members of Parliamentary business, securing attendance at meetings, and acting as intermediaries between party leaders and ordinary representatives (Hahndiek, 2005: 19). The numbers of whips are also proportionally allocated to the number of seats held by the party, with one whip for every 8.69 members (formula agreed to by the Assembly Rules Committee in June 1999). However, the majority party has an additional Chief Whip and deputy Chief Whip and the Head of Opposition party also receives a Chief Whip, which is not brought into account in this formula. In 1997, the ANC introduced a policy according to which one whip was appointed to each Assembly committee (Hahndiek, 2005: 19). The chief Whip at the time, Max Sisulu, explained: "By appointing a whip to each committee, the ANC has placed a strategic political manager in every committee, able to support the work of the Chairperson...and to provide a crucial link between backbenchers and the executive (party leaders)" (Transformation and Communication, 1997). In spite of this, the whips have not been adequately successful in securing attendance of members at the meetings, a situation which impinges on the decision-making process when there is no



quorum. According to Hahndiek (2005: 19), part of the problem can be attributed to the multiplicity of the demands placed on members, with many having to sit on a range of committees.

To conclude this part of the discussion, Hahndiek (2005: 18) noted that the responsibilities of political parties in terms of supporting the work of committees are “not limited to judicious nominations”. In order to be effective, parties develop their policy positions on all substantive issues before the Assembly and communicate it to their members. When parties in the Assembly have their weekly caucus meetings (and portfolio-specific study groups), they provide co-ordination and support to the members.

The functioning of the committee is to a large extent determined by the abilities of its members, and the external influences that steer their decisions and motivations. On the one hand, political parties nominate their representatives with due consideration given to members’ experience, knowledge, and political influence, while on the other hand, these members are expected to act according to the best interests of the specific committee they serve in. In the oversight function exclusively, in which SCOPA falls, the latter is the predominant factor that would determine the success or failure of the committee in ensuring government accountability. Only then will the framework of activities the committee is faced with start to be addressed effectively.

### **3.2 Functions of the committee**

According to February (2006: 129), while the structure, powers, and duties of Parliament are spelt out unambiguously and determinedly in the Constitution, there remains a gap<sup>1</sup> between the Constitutional aspirations for Parliament and how Parliament and its committee structures have fulfilled its mandate. This section outlines some of the ways in which Parliament has been undermined, with specific reference made to the preparation and training of members of SCOPA, oversight of written and oral reports, and committee question time. This section will start by giving a brief outline of actors and factors (which will not be included in detail in the sub-sections) that should assist SCOPA in its oversight functions.

Significantly, the Constitution provides an opportunity for citizens to be involved in the law-making process, and institutional mechanisms exist for public participation in the legislature. Section 59(1) states that the “National Assembly must facilitate public

involvement in the legislative and other processes of the Assembly and conduct its business in an open manner” (The Constitution, 1999). It is important to include the citizenry in the structures and decision-taking process of the Assembly/committee system, by including their opinions. Therefore, MPs are assigned a constituency and are expected, particularly during recesses, to visit their constituencies and listen to the concerns of citizens (February, 2006: 135). According to February (2006: 136), committees often give outside bodies too little notice for them to prepare effective or detailed submissions, and also often set aside “too little time for full and proper hearings and debate...[t]he ways in which committees deal with the submissions and how these are integrated into the committee’s activities on a Bill also differ”. Habib and Herzenberg (2004: 174) support this statement by mentioning that no “uniform rules apply... to the weight attached to or the treatment of submissions (by the public)”.

Section 56 of the Constitution (1996) grants committees considerable powers: “The National Assembly or any of its committees may summon any person or institution to report to it (and may) receive petitions, representations or submissions from any interested person or institution”. The National Assembly Rule 138 also permits any committee member to “conduct public hearings, determine its own procedure, meet at a venue determined by it (and) confer with other committees”. National Assembly Rule 206(1)(a) states that SCOPA must consider the financial statements of all executive organs of State and Constitutional institutions when those statements are submitted to Parliament: any audit reports issued on those statements, any reports issued by the Auditor-General on the affairs of any executive organ of state, Constitutional institution or other public body; and any other financial statements or reports referred to the Committee in terms of National Assembly Rule 206(1)(d)<sup>ii</sup> and Rule 206(2)(a)<sup>iii</sup>. February (2002: 3) notes that the National Assembly Rules are very broad and make it possible for SCOPA to consider almost anything it wants, should it relate to ensuring effective and efficient financial management of public funds by departments, Chapter nine institutions and public entities.

Ideally, SCOPA would consider all reports that have been referred to it in terms of the Parliamentary Rules, and also everything that members would want to add to the list. Currently, there is barely enough time in the year to consider the reports that are referred to it in terms of Rule 206 of the National Assembly, regardless of matters of public



importance that members might have wanted to deal with, which are not considered (February, 2002: 3). This stresses the issue of capability versus constraints.

In supporting the heavy workload carried by SCOPA members, secretaries and clerks are responsible for providing procedural advice, record proceedings and draft reports. As part of the process of institutionalising committees, the maintenance of detailed records of all committee proceedings, including: programmes, attendance, decisions reached, and papers and submissions received and tabled, ensures that documentation is easily accessible both to the membership and to other interest groups (Hahndiek, 2005: 21). As an indication of the problems relating to record keeping, it is noteworthy that the governmental organisation involved in tracking committee proceedings, the Parliamentary Monitoring Group (PMG), is frequently dependent on the media, and other groups, for information - instead of the Parliamentary records.

Lastly, one should keep in mind the function of the opposition within committees. According to Kotzé (1998: 17), the opposition strives for change in government, criticises governmental action, monitors government, and designs political alternatives. The question is - how seriously are these actions and alternatives, as presented by the opposition, being taken into account? According to Kotzé (1998: 18), the greatest disadvantage of monitoring by the opposition is that it lacks the Parliamentary strength and measures to enforce necessary consequences, such as interpretations and motions of no confidence that can pinpoint responsibility. Taking into account that the government of the day is lead by such a powerful party (ANC), and that it has increasingly being criticised for running a one-man show, how will opposition survive from being overpowered by their fellow ANC MPs upholding the status quo? It is necessary to maintain a thorough balance of power in all decisions taken by SCOPA, even though the truth is not always pleasant. This will contribute to ensuring higher levels of public trust, and a higher degree of political will to perform in the light of transparency.

### **3.2.1 Preparation and Training for Members of SCOPA**

Keeping in mind that SCOPA is responsible for reviewing financial reports, Murray & Nijzink (2001) noted that oversight of the budget in Parliament is "totally inadequate: Committees don't know what the departments are doing or what they are meant to be doing. They are not familiar with the policies and don't know the budgets. Before a

committee can have hearings, it needs to get to grips with what it is that the department is meant to be doing". In other words, proper scrutiny of the budget requires an understanding of the primary issues affecting the department concerned, and knowledge of how to translate the budget documents into policy terms. According to Murray & Nijzink (2001), many members do not have these skills. It is for these reasons that the committee members should be trained, and equipped, to handle an efficacious *modus operandi* within the available support structures Parliament offers.

Although Parliament has provided training programmes ('induction sessions') for members, after both the 1999 and 2004 elections, which covered financial management, matters of Parliamentary procedure - including those applicable to committees etc., critics claim that the training has not been adequate in all respects. According to an Human Science Research Council (HSRC) report on these Training and Support Programmes (EUPSP: Human Science Research Council and Tsimeni Consulting: Members' Training and Support Programmes, 2002), a number of shortcomings exist. Hahndiek (2005: 23) mentions that the design of the induction itself was criticised for not offering effective training to Members entering legislatures between elections, and that there was no comprehensive mentoring system to sustain and reinforce the training.

The information and research facilities provided to members do contribute to the preparation of members, as they assist committees in verifying information supplied by the executive, and conduct specialised research into government performance (Hahndiek, 2005: 22). The Parliamentary Research Unit (as referred to earlier), which was established in 1997 in order to support the committees, has been criticised for their lack of capacity. As one committee chair noted: "I don't think the research is adequate, it's (the unit) much too small; there should be at least one researcher per committee. I am absolutely convinced that until we have that situation, we will spread those we do have too thin..." (EUPSP Research Evaluation Report, 2001). Although the Unit's research team has expanded to 25 members (originally consisting of only 13 members) in 2001, there should be a more co-ordinated approach, which could be attained by having an independent research team assist all oversight and research units (view the proposal in Addendum A).

The combination of the Committee's weekly meetings, the cluster system (splitting the



committee into the two workgroups), and the introduction of oversight visits to the government agencies, has produced some challenges. The Committees' weekly planning meetings, which involve the Secretariat, Auditor-General's Office, Researchers, and Convenors (along with the presence of the Parliamentary Legal Advisor in the committee meetings), are vital for SCOPA to ensure that activities take place in a co-ordinated manner (Annual Report: Standing committee on Public Accounts, 2005: 2). The cluster system was intended to encourage productivity and specialisation amongst members, but it was not successful in all regards once conflicting interests emerged. In addition, the introduction of oversight visits to government departments and agencies as a tool to measure compliance with financial legislation, was initiated in the term of 2004 (Annual Report: Standing committee on Public Accounts, 2005: 3), in order to enhance the Committee's efficacy. Although this introduced new channels for obtaining insight on comparative practices, it would appear (on perusal of SCOPA's 2004 and 2005 annual reports) that their budgets and opportunities have not been utilised to the maximum affect in this regard.

It should be kept in mind that SCOPA battles with a common problem found throughout Parliament: the inadequate amount of time that is available to complete the year's work. This problem is compounded for SCOPA by the late submission of financial statements. Even though the Auditor-General has tried to facilitate the time-management of SCOPA by providing in advance a list of matters and reports that will come before the Committee during a year, it is apparent that the Committee has, in the past, relied solely on reports from the Auditor-General as opposed to those from other non-executive actors. February (2002: 7) mentioned that, as illustrated by the list provided in 2002, and the business plan of SCOPA, there were many matters that were carried over to the next year, as is usually the case. This has hampered the efficiency of SCOPA in both structuring and reviewing recommended modifications.

Currently, after receiving a report from the Auditor-General, hearings are the principle mechanisms by which officials from departments, agencies, or other relevant bodies, answer to SCOPA. This is the reason for SCOPA planning its programme carefully in consultation with the Auditor-General, in order for the release of reports to be synchronised with Parliamentary hearings.

According to Wehner (2002: 13), a quality hearing requires preparation by committee members as well as witnesses. In some Public Accounts Committees, individual members are asked to scrutinise separate sections of a report. In others, each member is responsible for every audit report. An audit report is, in many systems, accompanied by a briefing document from the Auditor-General, which is then circulated prior to a hearing. Such a briefing document may suggest areas in a report that warrant particular attention. In addition, individual members sometimes conduct their own research on issues of their interest to supplement the available information (Wehner, 2002: 13). However, in the case of SCOPA, all members are not fully equipped with these competencies, which have led to much critique on the manner in which reports have been overseen.

### **3.2.2 Oversight of written and oral reports**

Until recently, the year-end oversight mechanisms in Parliamentary committees have been relatively poor, typically being limited to financial oversight as exercised by SCOPA. Certain types of oversight activity, such as comments on current issues or developments, are sometimes exercised only through oral presentation (Ad Hoc Joint Sub-Committee on Oversight and Accountability, 2002: 26). One advantage of using oral reports during question time is its efficiency in covering a much broader range of categories than written reports on financial management do. These categories can include “policy development, structural issues, and current issues or events” (Ad Hoc Joint Sub-Committee on Oversight and Accountability (2002: 27). In addition, historically the question time for hearings within Parliament originated from the Westminster practice, with the aim of playing a key role in making Parliament a dynamic and relevant debating forum, in order to exercise greater oversight on the executive.

When SCOPA receives a written report from the Auditor-General on possible fiscal irresponsibility, it must call the implicated parties to give evidence into the matter. Following the conclusion of hearings, the Committee prepares a report of its findings, which is then tabled in Parliament. Implicated parties must reply to the Committee’s report within sixty days, at which point the Committee reviews the replies and arranges further follow-up if necessary. The entire procedure is highly structured and organised, with a system of status reports used to track developments in the process (Corder et al,



1999: 19).

The Constitution (1996) clearly intends departmental reports to assist oversight. Regular, Constitutionally mandated reports allow MPs and members of the legislature to keep track of departmental activities. While it is important that SCOPA considers the independent advice of the Auditor-General, the Committee should not be constrained in its choice of which aspects of an audit report should be further investigated. The Report on Parliamentary Oversight and Accountability (Corder et al, 1999:20) identified several problems that national Parliamentary committees have in dealing with these reports. Logistical problems surround a) the overload of reports, and b) late distribution of reports which leaves too little time to prepare responses. These problems arise partly because there is such a wide range of bodies that should be held accountable via reporting to Parliament, which in turn stretches resources even further. A proposed solution could be to streamline the procedure for the receipt of reports. However, improved procedures alone will not guarantee effective oversight: the legislative environment and members themselves must be geared towards oversight (Murray & Nijzink, 2001).

According to the Final Report of the Ad Hoc Joint Sub-Committee on Oversight and Accountability (2002: 38), there is also an undeniable infrastructural constraint to effective enforcement of Parliamentary oversight:

*“There are no official procedures or requirements for committees to respond to reports that are submitted to them- a constraint that... limits the value of written reporting. Without an established venue for submitting official responses, Parliamentary committees cannot effectively transmit decisions they have made either to the executive body in question or to Parliament as a whole.”*

As the above quote indicates, there are currently no formal or official structures through which committees can respond to the reports submitted to Parliament. The process is therefore at the discretion of the individual committee clerks, who may or may not have specific instructions from their committee chair on the handling of reports. The committee clerk distributes copies of the report to committee members. There are no official procedures or policies for recording, indexing, or tracking submissions (Corder et al, 1999: 17).

One should also take into account what Members of Parliament themselves have identified as the shortcomings of the current structures, both in terms of submission and compilation of reports. These shortcomings were listed within the Final Report of the Joint Ad Hoc Committee on Oversight and Accountability (2002:40). Firstly, the six-month timeframe for the tabling of annual reports can be seen as somewhat inappropriate. Committees are expected to review departmental budget votes during the first few months of the year without access to the departments' performance records of the previous year (because the departments and government entities require a reasonable period of time to compile the relevant data). The reports also have to be audited by the Auditor-General before being tabled in Parliament. It would be more practical if departments submitted their performance records to Parliament at the same time as they are sent for auditing.

Secondly, the content and presentation of annual reports are not always helpful in explaining performance: they must be instructed via standard report guidelines (Public Service Commission, 2005). The failure to hand in reports on time (in 2004/05 eleven national departments had not submitted their reports on time and provided no explanation) should be addressed by SCOPA placing political pressure on the relevant departments and public entities that fail to table the necessary documentation.

Lastly, the report also indicated that inadequate committee resources (to verify the information contained in reports) have undermined their usefulness as oversight mechanisms. The report proposed that independent sources of information are crucial in order to ensure that committees do not solely rely on the data provided by the departments and accounting entities, without being critical.

In order to prevent the late submission of financial statements by the accounting entities (and to empower SCOPA to act accordingly), section 40(4) of the PFMA (Act 1 of 1999) should be enforced. This section imposes an obligation on the accounting officer of a department to issue monthly reports on actual revenue and expenditure to the relevant treasury, which are then gazetted and available to members for scrutiny. A mechanism to monitor compliance with this provision should be in place, as it may impact on the submission of the annual financial statements. If this provision is fully complied with, there would be no reason for late submission, which could enable



SCOPA to stay on track with their tight schedule.

As mentioned in SCOPA's report, the committee acknowledges that they must execute a developmental agenda without fear, favor or prejudice in its enforcement strategies, regardless of the political differences that might surface (SCOPA Report for 2003). However, Murray & Nijzink (1999) noted that committees appear unprepared when reports are presented and that debates tend to be shallow because members raise non-contentious issues. Members rush through reports without asking substantive questions (such as the relationship between plans and deliverables). Therefore, in some cases at least, MPs are mistaken if they interpret their role as always requiring them to defend (or even protect) MECs from their party (Murray & Nijzink, 2001).

Since SCOPA conducts its business on behalf of the Assembly, it must report on its own activities. National Assembly Rule 137(1) requires that: "A committee must report to the Assembly on any matter referred to the committee...". Rule 137(2) further stipulates that "[a] committee must report to the Assembly on all other decisions taken by it...and inform the Assembly on its activities at least once a year". Patricia de Lille has expressed fears that "SCOPA has become another compliance committee, stamping reports of government" (National Integrity Systems, 2005: 37). In addition, a trend that is of concern appears to be developing within SCOPA's own reports. For the term of 2004, fourteen of the sixteen reports that were tabled by SCOPA, were given unqualified audit opinions. However, all of them were tabled and adopted by the House, requesting no further interaction with the accounting authority for the financial year under review, or only requesting some information to be provided within two weeks of tabling the resolution (Annual Report: Standing committee on Public Accounts, 2005: 7-12). In no way did SCOPA report that they found themselves performing inadequately when viewing the results of their meetings. The committee held 18 plenary meetings for the whole term of 2004 and 15 meetings each for both group one and two (therefore a total of 48), which on average is satisfactory, but while the numbers look good the results have not been remarkable.

### 3.2.3 Committee Question Time

Question time (along with the committee system) is the best practical example of

accountability, and is often seen as vital to the success of Parliamentary oversight procedures. It gives ordinary MP's the opportunity to question the President, the Deputy President, and Cabinet Ministers, on matters of importance (February, 2006: 137). Members of the executive are obliged under the principle of 'explanatory accountability' to explain their actions through answering questions. However, since 2000, alterations made to the rules of question time have diminished the usefulness of question time as an oversight mechanism, an effect which will be discussed in the following sections (DA, 2004c: 8).

Murray & Nijzink (1999) project question time as a public event providing an opportunity for committee members to engage in party-political competition. They are both of opinion that this is the reason members of the opposition (rather than the government) has used question time almost exclusively in the National Assembly. The format of the question time (usually short questions and short answers), and the timing (relatively short notice of questions is required), potentially provide an attention-catching opportunity for politicians to challenge and defend the government's records (Murray & Nijzink, 2001).

Between 1994 and 2000 question time revolved around three mechanisms: interpellations, questions for oral response, and questions for written reply. In 2000, the rules of question time were altered. Firstly, the interpellations provided for 15 minute 'mini-debates' in order to ensure robust interchanges between a Minister and the questioner.

Secondly, between April 1994 and 2000, questions for oral reply were placed on the order paper in the National Assembly in the order in which they arrived. This first-come-first-served rule ensured that question time was an opportunity for proactive MPs to engage Ministers. Between 1994 and 1998, the NNP, DP and the IFP put a combined total of 5 105 questions to Ministers compared to the ANC's 588 (Nijzink, 2001).

In April 2000, the ANC (as discussed at a number of meetings of the Chief Whips' Forum) used its majority in the Joint Rules Committee to introduce a rotational system whereby parties were allocated questions for oral reply dependent on the strength or size of the party. The question time was increased from 30 minutes to two hours per week, interpellations were abolished and the rotational system, as described above, was



introduced. Some of the reasons provided for these changes were: interpellations were not seen as an effective form of interaction between Ministers and members; there was insufficient time to answer the large number of oral questions on the Question Paper each week, and; the first-come-first-served basis of tabling questions did not always allow for a fair spread of opportunity to ask questions (Murray & Nijzink, 2001).

The new rules are not necessarily more effective. The old rules provided for an unlimited number of supplementary or follow-up questions relating to a main question. This gave the questioner a greater chance of eliciting a satisfactory response from the Minister. Under the new rules, the number of follow-up questions has been reduced to four (DA, 2004c: 10). In addition, the new rules state that questions must be submitted to the question office some two weeks before they are answered, which makes it very difficult for MPs to question departments or Ministers on current issues. There is currently no National Assembly Rule that can be invoked to enforce a Minister to answer a question that requires them to explain their actions satisfactorily. Another problem is that, although the custom exists that Ministers have ten working days to respond to a written question, since there is no hard and fast rule concerning this issue, for example, in 2004 there were still 142 questions (120 written and 22 oral) for which answers should have been provided, but were still outstanding (DA Press Statement, 2004b). The inability to ensure that all questions are answered is a weakness in the system.

As explained, under the new rules interpellations have been abolished, and question time has become party-based and not member-based as it was in the past, which expands the level of party dedication within the committee. The order of the questions is determined on the same basis as motions in the House. Ministers' portfolios are grouped in clusters, with a different cluster being the subject of question time each week. Provisions have been made for urgent questions, and questions to the President - on a quarterly basis, whilst questions to the Deputy President are scheduled for every second week. (Murray & Nijzink, 2001). The ministerial quota of four questions per department has been increased to eight, and committee members are allowed to ask five supplementary questions and express an opinion. It is too early to draw definite conclusions about the effect of the changes to question time. However, one of the motivations for the ANC proposal was to encourage government MPs to use the available question time

industriously.

When assessing the success of these changes, attention will have to be paid to the type of questions asked: if the new process is intended to encourage government MPs to fulfil their oversight role, questions will need to be directed to issues of policy implementation (Murray & Nijzink, 2001). However, question time should not serve as a mechanism for party-political competition only. Above all, it should be valued for its information-seeking aim. In this regard, questions for written and oral reply share a common problem: the danger of not being answered. Ultimately, it is a political matter whether or not unanswered questions are to be tolerated. However, the way in which question time is managed and planned may reduce the problem of Ministers or the President failing to attend question time (Murray & Nijzink, 2001).

One cannot assume that question time, as an oversight instrument has been successful in all regards, partly because the media has shown little interest in the broadcasting of SCOPA's meetings- aside from exceptional cases such as the PetroSA or Oilgate cases, where some controversial issues were addressed. The fact that not much 'newsworthy' footage is taken from the meetings is arguably because of 'question dodging' (February, 2006: 137). SCOPA continues to be faced with the probability that Cabinet members fail to answer questions appropriately. This is reflected in the fact that few questions floored in the National Assembly in the past 11 years have opened up a national debate, or ignited even a degree of controversy. In order for our democracy to be vibrant and inclusive, greater transparency and bold debate is a necessity.

### 3.4 Summary

According to February (2006: 140), the strength of the legislature will ultimately be a question of political will, and thus far it would appear that this has been lacking. This thesis agrees with this statement, although by peeking at the roots, it tends to indicate that the lack of critical self-review by members of SCOPA (amongst themselves and towards all members of the committee), fails to question the true efficacy of oversight procedures. All procedures will ultimately fail if they do not adjust to the requirements of our Constitution, and if they are attempted without clear political will and purposeful, co-ordinated, and planned directives.

Some legislatures are allocating more resources to oversight and establishing procedures



to ensure that oversight is systematic, and not ad hoc. Greater resources and improved procedures on their own will not guarantee effective oversight - the entire legislative environment must be geared towards oversight. For instance, the heavy workload that SCOPA faces clearly suggests that they could benefit from additional expertise and resources. However, with their competing political priorities and an absence of a common understanding of the oversight responsibility amongst members and legislative staff, the complexity of the problem is compounded.

Calland (1997: 17) argues that minority parties within committees will need to create, consolidate and entrench an institutional culture that will enable the new political elite to apply a strong collective, and individual, mind to the task at hand, imbued with a defiant political will that is willing to take on and, where necessary, “vigorously and expertly” criticise the leadership of the ANC-in-government. If they fail to do so, they face a very real danger that both the work of the committees, and their legal and Constitutional authority, will be undermined and rendered relatively meaningless. This, according to Calland (1997: 17), within the rapid transformation of the system as whole, will come to be regarded as an “ultimately disappointing chimera”.

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<sup>i</sup> One such example is the confusion between oversight powers and appropriate oversight processes. In many legislatures, it is the departmental accounting officer and other officials who the politicians seek to hold accountable, rather than the relevant Minister or MEC. This misunderstanding is widespread and undermines the ability of the legislature to ensure proper political accountability. In South Africa, it appears to stem from a misreading of the Public Finance Management Act (Act 1 of 1999). The Act does spell out the responsibilities of accounting officers and in effect contains important elements of the employment contract of the accounting officer directly accountable to a legislature (Murray & Nijzink, 2001).

<sup>ii</sup> SCOPA must perform any other functions, tasks or duties assigned to it in terms of the Constitution, legislation, these Rules, the Joint Rules or resolutions of the Assembly, including functions, tasks and duties concerning Parliamentary financial oversight or supervision of executive organs of state, Constitutional institutions, or other public bodies.

<sup>iii</sup> The Speaker must refer the financial statements and reports mentioned in paragraph (a)(I), (ii) and (iii) to the Committee when they are submitted to Parliament, irrespective of whether they are also referred to another committee.

## Chapter 4

### CASE STUDIES: THE ROAD TRAVELLED

#### 4. Background

The previous chapters of this thesis have dealt with the fact that oversight is complex, and yet is central to the effective functioning of the South African legislatures. It requires a delicate balance between party loyalties and enforcing accountability, which takes effort and wisdom to obtain. This is further complicated by the inadequate oversight procedures that MPs and members of the Legislature are faced with. The challenge remains to translate the SCOPA committee agenda item into political practice. Although there are many examples of good practice, the overall record on oversight desires much improvement.

Maintaining the status quo can, in some instances, lead to greater political stability and maybe public support. If government performs well, oversight need not overwhelm opposition or unnecessarily delay investigative intervention. But maintaining the status quo (and all its aspects) has at times required government to be less transparent. For example, late submissions of financial statements by departments, public entities, and even by SCOPA itself are just cause for concern, and should not be dismissed as a consequence of 'too much to do in too little time'. The possibility of some information being concealed should always be considered when holding public entities to account for unsatisfactory financial reports.

On the other hand, as mentioned in Chapter Two, lobbyists' influence can be used to push an agenda of a more partisan nature. The Norwegian Parliamentary system in Scandinavia offers an excellent example of a system exposed to many of the challenges the South African Parliament and its committees are vulnerable to. According to a study done by Rommetvedt (1998: 80), Norwegian MPs reported that they were contacted on a regular basis by specified types of lobbyists<sup>i</sup> - business organisations, trade unions, environmental organisations, idealistic and other organisations, private and state owned companies and other state institutions. Yet the committee on Scrutiny and



Constitutional Affairs was the least 'popular' committee amongst lobbyists.

When reviewing the case studies below, it will become apparent that SCOPA is vulnerable to such influences. This can partly be ascribed to its unique history, allowing that its Parliamentary practices differ significantly from Scandinavian countries'. Scandinavian countries have influential committees (in terms of determining legislation) in combination with strong parties. As mentioned in Chapter One, South Africa lacks strong parties (since it tends to feature as a strong single-party system, having a large majority vote, thereby influencing all Parliamentary and committee decisions) and entertains conflicting private interests within the committees. These lobbyist influences, as in the Arms Deal and Oilgate cases, have been connected with alleged bribes to members of the executive and secret party-funding schemes to the governing party, or personal favours (for contract work and personal financial security, as in the Arms Deal). By taking South Africa's unique history and context into consideration, one can assume that 'corporate favours', more specifically by Black Economic Empowerment (BEE) companies, where procurement is prescribed, might take place in this context.

This chapter will assess three case studies that have connected managerial bad practice (within government departments or public organs of the state) with the government (such as corruption and illegal party funding). These cases put the investigations and reports<sup>ii</sup> of the Auditor-General, the Public Protector and SCOPA in the open, either judging their manner of conducting oversight, or reinforcing it. The findings and reports varied between the cases, a fact which has been attributed to the complexity of each case study and critique received from the public and media, providing reason to doubt both the integrity and the transparency of these entities.

This chapter will present the following case studies:

Section 4.1 The Arms Deal

Section 4.2 Oilgate: PetroSA and Imvume

Section 4.3 State Housing Subsidies

#### **4.1 The Arms Deal**

The Arms Deal can be seen as one of the biggest blows to Parliament's credibility in its 12 years of practice. It impacted on the image of the Public Protector, the National Prosecuting Authority, the Auditor-General's office, SCOPA and the judiciary (February, 2006: 133).

Between 1995 and 1996, the Ministry of Defence conducted a Strategic Defence Review of the capacity and requirements of the South African National Defence Force (SANDF) concerning the possible need for large capital expenditure. However, Parliament did not foresee (or intentionally approve) the considerable budget increase that followed. This caused tensions to develop between the executive and the legislature with regards to how their relationship is defined Constitutionally. The result was that this undermined the principle of accountability, in that the executive is accountable to Parliament and not the other way around.

This case study will analyse whether SCOPA "promote[d] effective and efficient financial management of, and the accountability for, all matters concerning public finance...[in order to] exercise a rigorous oversight role...[to] contribute towards the improvement in the quality of life for all South Africans" (Annual Report: Standing committee on Public Accounts, 2005: 4).

##### **4.1.1 Chronology of the Arms Deal**

According to Calland and February (2001: n.p), the problem surrounding the Arms Deal began as early as the approval of the Review (by Parliament), as presented by the Department of Defence (DOD), in 1996<sup>iii</sup>. As mentioned, the underlying issue was the Constitutional provisions defining the relationship between Parliament and the Executive (more specifically regarding oversight and accountability). Did the DOD operate within its Parliamentary mandate in constructing the Strategic Arms Procurement Package, and was the Cabinet's decision to approve the package consistent with national policy approved by Parliament? Parliament did not approve the Defence Review as to mandate an increase in defence spending. It rather expected that "its budget [would] remain constant over several years at R9,7 billion in 1998 rand value"



(Calland and February, 2001: n.p).

Parliament approved the provisional budget in April 1998, which provided details of new arms and equipment, which would be bought at the cost of R29,9 billion over a period of 12 years (February, 2006: 133). However, Calland and February (2001: n.p) reported that by 2001 the costs had already exceeded R50 billion. Many critics believed that this expenditure was unnecessary, since the money could have been better utilised elsewhere.

In December 1999, the Executive entered into five contracts: the sub-marine contract was awarded to GSC; the helicopter contract was awarded to AGUSTA; the lead-in fighter trainer ("LIFT") contract was awarded to British Aerospace (these were Hawk aircraft); the corvette contract was awarded to the German Frigate Consortium-Thomson; and the light fighter aircraft ("ALFA") contract was awarded to British Aerospace (these were Gripen aircraft) (Calland and February, 2001: n.p). These contracts attracted allegations of corruption, which are discussed in the analysis of this case in Section 4.2.1.2.

In September and October 2000, the Auditor-General and SCOPA respectively published their reports on aspects of the arms transactions. No concerns about the corruption allegations mentioned above were raised in these reports, but both entities recommended that further investigations be undertaken regarding areas of concern (February, 2006: 134). February (2006: 134) emphasises the mandatory role of SCOPA to perform a "non-partisan oversight role to ensure the effective management of fiscal resources"

On February 2003, Deputy President Jacob Zuma's executive office denied the allegations of malpractice in the Arms Deal, and stated that "the continuing allegations and rumours linking him to corruption and bribery are *ridiculous, malicious, insulting and defamatory*" (Van Vuuren, 2005: n.p). Again, on 12 March 2003, in a written reply to a question posed in the National Assembly, Zuma denied the allegations. He said he had not discussed the issue of protecting any company or individual from the Joint

Investigating Team's probe into the Arms Deal with anyone. Zuma added that he had heard from media reports about the allegations that he "*requested money in return for support or protection*" to a company (Van Vuuren, 2005: n.p). However, he blatantly denied being involved with any acts of corruption or bribery.

Towards the end of March 2003, allegations began to surface claiming that the final report given to Parliament, under the authority of the Auditor-General, Public Protector and the Prosecutions Authority, was heavily edited. The allegation threatened to re-open the Arms Deal case, and promised further damage to the key players' credibility. Allegedly, the final report presented to Parliament omitted a section entitled "Inaccuracies in the presentation to SCOPA". In this section were details, uncovered by investigators, that highlighted the dubious connection between winning contractor African Defence Systems (ADS) and the brother of Chippy Shaik (former arms acquisition chief), Shabir Shaik. This section also highlighted inaccuracies in the DODs presentation to SCOPA, where the said Department apparently failed to make the connection public (Van Vuuren, 2005: n.p). On 5 June 2003 the Auditor-General submitted a letter to the Business Day denying that he came under political pressure to materially change his office's report on the Arms Deal.

Eventually, on 11 June 2003, Parliament issued statements regarding its role in the re-investigation of the Arms Deal and its final report. The Speaker of the National Assembly, Frene Ginwala, confirmed that it was within SCOPA's mandate to conduct the investigation. Committee Chairperson for SCOPA, Francois Beukman, confirmed that the Committee would need to focus on the extent of editing applied to the report. He also stated that his approach would be 'to run an open and transparent process and to place huge emphasis on the legal opinion' (Van Vuuren, 2005: n.p). On 18 June 2003 the Committee decided to wait for the Auditor-General to present a special report in response to the allegations; *instead of calling him directly* to account to the Committee. However, SCOPA did notice that the media allegations regarding the substantial editing, by the executive, of the draft Auditor-General's Report on the Arms Deal investigation held much truth.



At this stage, Zuma still referred to media reports as ‘*unacceptable and despicable*’ and denied any misconduct on his behalf. He also levelled criticism at the Directorate of Public Prosecutions office stating that their conduct was inappropriate. In his statement to the media Zuma highlighted his unhappiness about the way in which the investigation had progressed:

*"Having pledged my co-operation fully in the interests of justice, I now find myself having a serious problem with the manner in which the Directorate is conducting the investigation. ... I find it totally unacceptable and despicable that questions that they sent to me have appeared in a Sunday newspaper. This is a serious breach of confidentiality and is contrary to the spirit and terms of the National Prosecuting Authority Act, relating to the confidentiality of information received and disseminated. ... I am now consulting with my lawyers with regard to the conduct of the (National) Directorate (of Public Prosecutions) and the nature of my response to this situation."* (Van Vuuren, 2005: n.p).

On 30 July 2003, President Mbeki called for a speedy resolution of the Scorpions’ probe into the allegations of corruption by Zuma. The President announced that he could not comment on the possible political motives behind the investigation, but he would let the investigation run its course. Yet Mbeki remained concerned about the corruption allegations:

*"Of course I am concerned about this. I am concerned about the mere fact of the allegation. (But) I do not know who is right and who is wrong."* (Van Vuuren, 2005: n.p).

On 19 August 2003 the ANC top leadership decided to enforce silence in its ranks regarding the corruption charges allegedly involving Deputy President Jacob Zuma, and in effect ensured that the arms row received limited coverage in the media. On 21 August 2003 the Auditor-General was caught off-guard by SCOPA when Democratic Alliance MP Nigel Bruce presented a letter showing that a winning bidder in the Arms Deal changed its price a day after the tender closed - and after having access to details of a rival offer (Van Vuuren, 2005: n.p). Auditor-General Shauket Fakie would not

comment on this matter until he examined the letter's contents - which referred to a document that C2I2 MD Richard Young had secured from Fakie's office in terms of the Promotion of Access to Information Act. Richard Young was an SA arms contractor who had lost a contract for one of the 'combat suits' in the Arms Deal. On 22 August 2003 Fakie's only response was to use the Joint Investigation Team's report to argue that irregularities in the bidding process were thoroughly investigated and adequately dealt with (Van Vuuren, 2005: n.p).

In January 2005, further fuel was added to the Arms Deal controversy when Richard Young used access to information legislation to wrestle earlier drafts of the 'Arms Deal Report' (the Joint Investigation Team's report) into the open. The document appeared to refute earlier claims by Fakie that the report was not edited in any material way. Some of the omissions from the final report include that:

1. there were fundamental flaws in the selection of BAE/SAAB as the suppliers of training and fighter jets;
2. former Defence Minister Joe Modise "caused" the more expensive Hawk fighter jets to be selected despite the South African Airforce traditionally supporting an Italian aircraft;
3. the award of contracts to supply new engines for military helicopters was irregular; and
4. the so-called off-set programme favoured certain parties such as BAE/SAAB and in the case of the submarine purchase the off-set evaluation process was 'materially flawed' (National Integrity Systems, 2005: 37).

#### **4.1.2 Analysis of the Arms Deal**

Generally speaking, widespread allegations of corruption plagued the Arms Deal. These allegations prompted the government to appoint three agencies to investigate, thereby forming the Joint Investigation Team. The National Director of Public Prosecutions, Bulelani Ngcuka; Auditor-General Shauket Fakie; and Public Protector Selby Baqwa, headed these investigations (Sunday Times, 2001: n.p). SCOPA's initial report, based



on the findings of the Auditor-General, was published on the AGSA (Auditor-General South Africa) website.

The Arms Deal was complex, and so this analysis will consider each of the different aspects of the Deal in turn.

#### **4.1.2.1 Appointment of the Special Investigating Unit**

Much of the heat of the Arms Deal controversy derived from the question of whether or not it was the express intention of SCOPA that the Special Investigating Unit (SIU) be included in the multi-agency investigation (as recommended by SCOPA in its October 2000 14<sup>th</sup> report) (Calland and February, 2001: n.p). The executive was reluctant to involve the SIU in the investigation, and the pre-existing controversy around the role and abilities of the SIU's head, Judge Heath, fanned the flames at the start of 2000. The majority resolution presented by SCOPA (as agreed to in their committee meeting held on 28 February 2001) stated that the correct interpretation of their 14<sup>th</sup> Report (as adopted by the National Assembly on 3 November 2000), did not make provision for the definite inclusion of the Special Investigative Unit headed by Judge Heath (Calland and February, 2001: n.p).

#### **4.1.2.2 The decision-making process**

The impartiality of the decision-making process in awarding the contracts for arms, and the selection of tenderers, was later questioned because the basis of evaluation (in order to award the contract to British Aerospace specifically) was changed from a costed to a non-costed basis (Calland and February, 2001: n.p). Allegations were made that the role the ADS company (mostly owned by Thomson) played in the Corvettes contract was connected with Thomson being a partner with the German Frigate Consortium. The dubious role ADS played in the helicopter contract (awarded to AGUSTA) was also brought to light. Apart from the ADS allegations, Shabir Shaik was also accused of improperly influencing the awarding of the contract due to nepotism, and this included Deputy President Jacob Zuma's involvement, who was, according to allegations, bribed into protecting business interests (though these allegations against him are as yet (mid

2006) untested in court) (Calland and February, 2001: n.p).

#### **4.1.2.3 Declaration of personal interest**

The Executive Ethics Code states that members of the executive; “must declare any personal or private financial or business interest that they may have in a matter a) that is before the Cabinet or an Executive Council; b) that is before a Cabinet Committee or Executive Council on which the member serves; or c) in relation to which the member is required to take a decision as a member of the Executive”. (Van Vuuren, 2005: n.p). Despite the notable exceptions involving the former Minister of Defence, Joe Modise, and Deputy President Zuma, there appears to be a general awareness, particularly at national level, of the risk posed by public scrutiny of such interests (Van Vuuren, 2005: n.p).

If the Constitution requires the executive to be accountable to Parliament, what exactly does accountability mean in practice, within the context of the proceedings of the Arms Deal? Calland and February (2001: n.p) argue that, although Parliament has the theoretical authority to hold the executive accountable, it is rarely taken up in reality. They conclude this matter of the complexity of the relationship between the executive and Parliament, stating that “the executive must explain itself to Parliament (account to), not the other way around”.

However, as mentioned in Chapter One, Westminster Parliamentary democracies complicate this relationship by ‘allowing’ a strong majority party to be in charge of the legislature and the executive, causing an Executive-Legislative divide (in cases having resulted in political divide within the same political party). Westminster Parliamentary democracies have a ‘fusing’<sup>iv</sup> effect on the majority party, which “straddles” the Executive-Legislative divide (Calland and February, 2001: n.p). For example, this confusion was part of the reason the contents of the letter<sup>v</sup> written by Deputy President Jacob Zuma to SCOPA on his ‘involvement’ in the Arms Deal was inappropriate at that time, and did not respect the provision that “the executive must explain itself to Parliament (account to), not the other way around” (Calland and February, 2001: n.p).



#### 4.1.2.4 Independence of the Auditor-General

Although the independence of the Auditor-General is guaranteed by the Constitution, it is argued that this was severely compromised during the investigation into the Arms Deal. The Auditor-General made the findings of his investigation known to the executive (who were, in part, the subject of the investigation) prior to informing SCOPA, to whom he was to report. This happened despite the Auditor-General's important role as a Constitutional oversight body. The lack of political will to act and point out errant departments is worrisome (Van Vuuren, 2005: n.p).

#### 4.1.3 Conclusion

February (2006: 134) concluded her study of the Arms Deal with blaming it for "[ripping] SCOPA apart". Having minutes of meetings and reports being tampered in the ANC Whip's office, and the Deputy President involved in charges of corruption and partisanship (February, 2006: 134), indicated patterns of inappropriate executive intervention. In the context, these interventions cannot be seen as coincidental, but rather as a weakness in the system. This weakness is located in the vulnerability of ministers to react to corporate influence (such as bribes or unacknowledged business interests) before performing their obligatory ministerial responsibilities under the 'close eye' of the legislature.

Should a ruling party be able to use its majority to protect its political interests when performing an oversight function? Within this case study, it is clear that the executive, legislative and Constitutional actors who participated in the investigations and reporting on the Arms Deal, proved that there is no room for pushing an agenda other than one true to the democratic-Parliamentary codes of conduct. They showed maintaining the status quo, and tampering with the Constitutional mandate attributed to each level of government, harms the credibility these entities usually have in the eyes of the public, and therefore harms the democratic ideals underlining the purpose of these entities.

SCOPA acted hesitantly in executing their share of the investigation. When performing a function of scrutiny and oversight, the committee should remain committed to its independent mission, which is to "exercise a rigorous oversight role (over the executive)

to ensure maximum value for each taxpayer rand..." impartially (Annual Report: Standing committee on Public Accounts, 2005: 4). A lack of political will would appear to be part of the reason why members of SCOPA did not perform their oversight functions fiercely, resulting in less effective performance. The problem in this case is that irregularities between the branches of government hampered the route of oversight. More specifically, having discovered that the Executive participated in the process of making significant changes to the Arms Deal report, with the aid of the supposedly independent Auditor-General, SCOPA was forced, by the ANC majority (who were party to the Executive's role in the report) within the committee, to disregard some aspects of the case in its investigations. This gave rise to doubts about the integrity of the Executive and consequently the capacity of the Legislature.

As mentioned in Chapter Three, having Gavin Woods (IFP) resign as chairperson of SCOPA, because he disapproved of the initial report handed over to Parliament regarding SCOPA's investigation on the Arms Deal, emphasises the complexity and secrecy involved. Calland and February (2001) noted that, in their own view, the report was less than satisfactory, and left several questions unanswered. The view that Woods held was to some extent shared by former PAC MP, and now leader of the Independent Democrats (ID), Patricia de Lille, who remained critical of aspects of the arms procurement throughout the process: "I am proud of the institution (Parliament) but I think I am also duty bound to say where it has failed. With the Arms Deal it failed hopelessly, absolutely hopelessly" (National Integrity Systems, 2005: 36).

#### **4.2 Oilgate: PetroSA and Invume**

There are two factors of significance to be noted in this case. Firstly, the nature of the conflicting reports released by SCOPA and the Public Protector, and secondly, political party funding to the governing party by means of underhanded negotiations between the executive and a public entity. The questions that the latter issue raises include, amongst others: How will such parties be held accountable and what are the limits for such 'funding projects'? Are there rules on political party funding?

Currently, there is no effective regulation of the private funding of political parties in



South Africa. The basis for public funding of political parties is found in the Constitution<sup>vi</sup> (1997), stating only that only parties that are represented in the National Assembly or any provincial legislature may receive public funding<sup>vii</sup>. This sets the context wherein the watchdogs in the media publicly questioned the respective agendas of PetroSA, Imvume Management, and the Government.

The so-called Oilgate scandal was first pointed out to the public by the Mail and Guardian in 2005. The ANC came under pressure regarding allegations related to financial dealings between the energy company, PetroSA, Imvume Management (a BEE grouping) and a Swiss firm, Glencore (February, 2006: 125). These allegations centred on a R11 million donation made by Imvume Management to the ANC in 2003, which was drawn directly from an advance payment of R15 million made by PetroSA to Imvume Management for the purchase of oil condensate (Davies, 2006: n.p).

In January 2004, Glencore sought payment for its supply of condensate, which was allegedly again paid by PetroSA. What this means is that PetroSA (a public entity) had to pay twice for the oil condensate, since Imvume had transferred the advance to the ANC instead of using it for its intended purpose (Davies, 2006). The possibility that public money was effectively used to finance the ruling party led to a storm of events, which will be discussed below.

During the first hearing held between SCOPA and PetroSA, the questions posed by the committee were directed at the PetroSA Chairperson, Dr Popo Molefe. Ms A Dreyer (DA) sought clarity on the actual request, for the advance payment, made by Imvume Management to PetroSA (PMG, 2005: n.p). Dr Molefe replied that Imvume Management requested an advance payment from PetroSA as it was experiencing cash-flow problems for that month. The contract had already been entered into with Imvume Management, and monies were due to be paid, as the delivery of the condensate was to be effected “in a matter of days” (PMG, 2005: n.p). When asking whether PetroSA had any idea of the close working-relationship between Imvume Management and the ANC, Dr Molefe denied any knowledge of the subject. He stated that he only joined PetroSA in September 2004 and was thus not intimately familiar with all the details of the Imvume

Management transaction (but the records did not indicate such a disclosure by Invume Management). There was thus no indication that the PetroSA Board had any knowledge of the kind of relationship referred to (PMG, 2005: n.p).

What was brought to light within that meeting was that the request to PetroSA by Invume was unusual in two respects. Firstly, it was a request for advance payment and secondly, Invume Management requested that the funds be deposited into an account *different* to the one used for normal business purposes. However, PetroSA stated that the advance requested was received in the form of a pro forma invoice, which was 'standard practice' (PMG, 2005: n.p), and Invume nominated a different account from the one used for the previous payments allegedly because the request was made to address their temporal cash flow problem – so that they could pay end-of-year bonuses (PMG, 2005: n.p). This marked the beginning of the challenging road that lay ahead for proving substance in the allegations made against PetroSA, Invume Management, and the Public Protector.

As mentioned in Chapter Three, SCOPA's relies heavily on the Auditor-General and Public Protector for the bulk of its work, but members have often complained that the reports thus provided are usually of little assistance. The Auditor-General raised queries relating to the audit of PetroSA, which should have been actioned by SCOPA but the committee had, at the time of writing, provided no indication it would do so, or at least not as a matter of urgency (February, 2006: 126).

Reports that were later released by SCOPA and the Public Protector differed substantially in their findings. According to DA MP Anchen Dreyer, SCOPA's report on the Central Energy Fund and its subsidiaries, and the 2005 report from the minerals and energy portfolio committee on the Public Protector's investigation into the Oilgate, were in "stark contrast" (Davies, 2006: n.p). Dreyer mentioned that SCOPA found the decision to pay the advance into a separate account as "irregular", whilst the Public Protector found the transaction to be "in terms of the legal and policy prescripts that applied to PetroSA" (Davies, 2006: n.p). SCOPA also found there was "a lapse in terms of monitoring on the part of PetroSA with regard to the advance payment", while the



public protector found the transaction was “well-founded and properly considered” (Davies, 2006: n.p). Another contrast evident on comparison, was that SCOPA found PetroSA “misled by Imvume”, while the Public Protector did not protest against “the decision to approve Imvume’s request, as it was presented to PetroSA, [because] an advance was not unreasonable” (Davies, 2006: n.p).

However, a further and more in-depth investigation into the matter was launched after a complaint lodged by the Freedom Front Plus (FF+), in connection with the advance payment (Mail & Guardian reporters and Sapa, 2005a: n.p). It was alleged that, during her term as minister of minerals and energy, Deputy President Phumzile Mlambo-Ngcuka had improperly influenced PetroSA's decision to make the advance payment to Imvume. The Public Protector's report stated, concerning this issue, that such allegations made against Mlambo-Ngcuka were not substantiated by evidence, and were therefore without merit (Mail & Guardian reporters and Sapa, 2005a: n.p). Therefore the FF+ wanted the case re-opened in order for Public Protector Lawrence Mushwana to revise his report truthfully. Mushwana’s response to this accusation was that, on the available evidence, he had not seen any offence and, although the National Prosecuting Authority (NPA) was an independent body, if he were to recommend that it opened a case, he would have nothing to show the said Authority. (Mail & Guardian reporters and Sapa, 2005a: n.p)

Significantly, the focus of Mushwana’s report was rather on Imvume repaying PetroSA the R15 million it received in advance. The report made several recommendations in relation to the outstanding payments to PetroSA. “It was recommended that the board of PetroSA, in consultation with the CEO and its legal advisers, take urgent steps to ensure that the outstanding amount due to PetroSA, by Imvume, [was] recovered without delay,” Mushwana said. (Mail & Guardian reporters and Sapa, 2005a: n.p). According to Mushwana “[t]he ANC and Imvume are not public entities, they do not perform public functions and are not part of any level of government... [therefore] [t]he state has no shareholding in Imvume” (Mail & Guardian reporters and Sapa, 2005c: n.p). Mushwana declared that “the alleged payment was clearly made by one private entity to another and could therefore not have had any bearing on state affairs.” (Mail & Guardian reporters

and Sapa, 2005c: n.p). However, according to the Mail & Guardian, the Public Protector's report conveyed all the hallmarks of a whitewash. "In fact, it is little more than a restatement of the government's version of events... [t]he thrust of the report [was] to find excuses for the government rather than getting to [the] bottom of the investigation", which the Mail & Guardian at that time saw as "the misuse of public money to benefit the ANC before [that previous] year's election." (Mail & Guardian reporters and Sapa, 2005c: n.p).

According to the Mail & Guardian (2005c: n.p) "[t]he Public Protector dodge[d] the relationship between Imvume and the ANC, as well as the R11 million 'donation' that passed between them, on the spurious grounds that this was a private matter which [fell] outside his jurisdiction." Even though opposition parties questioned Mushwana's report on the Oilgate scandal and pledged to take up the issue with the National Prosecuting Authority (NPA), the ANC said it accepted his findings (Mail & Guardian reporters and Sapa, 2005b: n.p)

The FF+, on approaching the NPA to reopen the case for further investigations) specifically stated that "[t]he law is a double-edged sword. If PetroSA did not do anything wrong by making a non-owed payment to Imvume Management, then Imvume most certainly acted incorrectly by convincing PetroSA under false pretences to make the payment" (Mail & Guardian Reporters and Sapa, 2005b: n.p). Willie Spies (FF+: party MP and spokesperson on minerals and energy) concluded that, "[i]f you ask for money for a specific purpose and you use that money for something else, that would constitute fraud...[w]e hope this is part of a process to get to the real truth, even if it takes five years" (Mail & Guardian reporters and Sapa, 2005c: n.p).

In January 2006, the Mail & Guardian filed a court challenge against Mushwana's findings on the Oilgate scandal, seeking to have his report of June 2005, which avoided probing areas related to the scandal – and excused government and the parastatals involved, overturned and rewritten (Brummer, 2006: n.p). Mail & Guardian editor Ferial Haffajee said: "Mushwana tried to bury important allegations unearthed by the M&G, and he smeared us in the process...[t]he public is entitled to unbiased and diligent



action by an institution as crucial to democracy as the Public Protector. His Oilgate investigation and report failed on both accounts" (Brummer, 2006: n.p). Later reports made by Brummer (2006: n.p) stated that Mushwana's "categorical absolution" of government bodies was in stark contrast to criticism made of PetroSA by both the Auditor-General and Parliament's Standing Committee on Public Accounts.

Regarding the 'quiet diplomacy' of President Mbeki, which is being "practice[d]...at home as well", Tony Leon (DA) stated that "he (the president) has been completely silent on Oilgate and he has been completely silent on Travelgate ... we have Oilgate, Travelgate, Zumagate and Gravyplane-gate. Where is investigate?" (Mail & Guardian, 2006b: n.p). President Thabo Mbeki's "failed promises" in finance, service delivery and health were the focus of opposition Democratic Alliance leader Tony Leon's allegations (Mail & Guardian Reporters and Sapa, 2006b: n.p)

At the time of writing, PetroSA has recovered R8 million of the R17,7 million total owed by Imvume Investments. PetroSA chief financial officer Nkosemntu Nika has confirmed that the money is being repaid by Imvume at R500 000 a month, with just under R10 million outstanding (Le Roux, 2006: n.p). Nika added that interest is being charged on the outstanding amount at the prime rate plus two percentage points, and that they are also recovering the money through a court order, since a provision for bad debts relating to Imvume was created in 2004 (Le Roux, 2006: n.p). However, who is being held accountable for the series of allegations made on behalf of SCOPA and the Mail & Guardian? Does paying off debt to PetroSA provide enough reason to hush any further investigations?

The conflicting remarks found in the reports emphasise the reckless attempts made to conceal the truth – mainly on the part of the Public Protector, especially since the case concerns allegations against government for accepting money for political party funding. Parliament must be seen to be both consistent and effective in enforcing accountability by means of the chapter nine institutions and SCOPA. When Parliament falls short of performing its required watchdog function, it decreases its credibility and tarnishes the image of government (as occurred in the case of 'Travelgate'). In this case, however, it

would appear that SCOPA did ask the right questions, but did not pursue the matter further in order to enforce accountability. Instead, meetings that followed considered the issue as closed. Although some of the opposition parties within SCOPA (mainly the DA) continuously wanted to raise the issue again in the subsequent meetings and direct the relevant questions (which they felt remained unanswered), neither Imvume, nor PetroSA or the Public Protector have given satisfactory accounts of the issues surrounding Oilgate.

Who then should be held accountable to whom? This section argues that SCOPA failed to hold the Public Protector, Imvume and PetroSA accountable, because the proceedings lacked enforceability and most importantly political will, since ANC members in SCOPA primarily associate themselves with their political party before committing themselves to the committee's agenda of impartial Parliamentary oversight. Again, the 'complimentary' roles that the Public Protector, the Auditor-General, and SCOPA should play would appear to be unreliable. This should not become a reason for SCOPA to neglect its oversight role. Moreover, having the Public Protector 'watch over the governing party' (despite its reports being in stark contrast with reports from SCOPA and the media), complicates the process of oversight, and belittles SCOPA's public image. SCOPA seems to be tormented by the inconclusive links amongst the relevant actors performing Parliamentary oversight and more specifically by dubious reports presented by the Public Protector on its investigations. The main concern when considering the mandate of SCOPA (as mentioned earlier) is that the committee does not seem to be taking any active responsibility within its disposition.

#### **4.3 State Housing Subsidies**

This case study concerns covert acts of corruption within many state departments, which have left SCOPA to attend to an enormous amount of unsatisfactory financial reports, as presented to them by the Auditor-General. Consequently, this study will provide an example of how government departments do not spend their respective budgets adequately (as referred to in the previous chapters), referring to the Department of Housing (DoH) specifically.



According to the Business Report (2006: 3), more than R2,5 billion in housing subsidies have been handed out since the inception of the state housing subsidy scheme in 1994. During his investigations, Mr Shauket Fakie (Auditor-General) identified R323 million in irregular applications that was used to conceal acts of fraud. From these subsidies;

*“money was granted improperly to government employees earning salaries in excess of the subsidy threshold, as well as to government pensioners; approvals were given to people after they had died and to people with invalid identity numbers; duplicate subsidies were given to the same individual or to the same household; duplicate subsidies were given for the same property; and applicants aged under 21 were given grants.”* (Business Report, 2006: 3).

Even though separate reports on audits conducted at the nine provincial housing departments were submitted to the respective provincial legislatures, most of the findings originated from deficient management measures that were generic throughout. It is for this reason that this case study will focus on the summarised findings that were presented to Parliament by the Auditor-General (AGSA, 2006: n.p).

On 31 March 2004, focus areas were approved for a full performance audit at all nine provincial housing departments, focusing on the application and approval process pertaining to housing subsidies (AGSA, 2006: n.p). The following subsidies are available to applicants: Individual Subsidies; Project-linked Subsidies; Consolidation Subsidies; Institutional Subsidies; Relocation Assistance; Discount Benefit Scheme; Rural Subsidies; the People’s Housing Process; and Home Owner Allowance (AGSA, 2006: n.p). All grants are subject to a strict selection process, in order to allocate the grants efficiently within the boundaries of the allocated budget. Therefore, the number of approved beneficiaries reflects specific beneficiaries for whom a subsidy has been approved. And beneficiaries are only identified after funding has been made available for an approved housing project and if the project has commenced (AGSA, 2006: n.p).

According to the DoH, a total of 167 162 subsidies were approved by provincial housing departments during the 2003-2004 financial year, bringing the total number of subsidies approved by the departments since the inception of the housing subsidy programme to

2 436 404 (the information presented in the Auditor-General's report was extracted from the House Subsidy System (HSS) as well as other databases) (AGSA, 2006: n.p). Furthermore, the number of instances of [what] identified represented only 3,6 per cent of the 1,4 million beneficiaries. However the exception report only focused on government employees earning salaries in excess of R42 000 per year/month, and not on the entire working population (AGSA, 2006: n.p). It must be noted that approvals in any year will result in houses being completed in subsequent years, as projects can take between 18 to 24 months to reach completion.

Therefore, within the Auditor-General's report, the housing applicant data on the HSS was compared to the government's payroll data, in order to identify instances of subsidy approvals to government employees who earned more than R42 000 per year (as at July 2003), and were employed by government prior to the submission of their applications. The exception report indicated 7 353 relevant applicants. According to the selection process's preconditions, these applicants should have received either a reduced subsidy or no subsidy at all, since their income was in excess of the R42 000 annual threshold for qualifying beneficiaries (AGSA, 2006: n.p). However, this was not the case.

SCOPA requested both National and Provincial Departments of Housing to attend hearings and explain the issues raised by the Auditor-General in his Report based on the performance audit (PMG, 2006: n.p). These issues included problems with personnel, filing systems, processing systems, failure to comply with Division of Revenue Act and the PFMA, inability to produce files, and fraudulent transactions. The Report analysed and compared the National and Provincial responses (PMG, 2006: n.p).

During the hearings, firstly, members of SCOPA directed their questions at the Portfolio Committee on Housing and the SCOPA Chairs of Provinces. Questions included reference to the current capacity levels, whether capacity referred to numbers or ability, the methods for processing and allocating subsidies, new measures to improve systems, the loss of documents, the link between databases to check the applications, and the supervisory role of the national department. (PMG, 2006: n.p). Many questions were posed regarding the fraudulent applications, the reasons why problems persisted after



1994, and on the monitoring systems used by the national department. It became apparent that non-managers were able to override the system, thus avoiding the checks and balances that had been set in place, and several questions were asked about who was able to do so, whether there were records kept, how many overrides were linked to fraud, and the number of investigations and prosecutions arising from the fraudulent transactions (PMG, 2006: n.p). Mr T. Godi (PAC: SCOPA Chairperson) expressed the Committee's concern about the Auditor-General's Report and the manner in which questions had been answered at the hearing, and stated that SCOPA would draw up a resolution for tabling in Parliament on the basis of the answers provided (PMG, 2006: n.p).

In the hearing held between the National Department of Housing (NdoH) and SCOPA, Mr T Bonhomme (SCOPA) pointed out that the Report of the Auditor-General (AGSA, 2006) had raised some very serious issues. He asked for an explanation on how the allocation of salaries was implemented, as there seemed to be far too many loopholes. When asking for an explanation on how the loopholes had appeared, and why they were not detected during the pilot phase (in order to ensure protection of taxpayer's money) (PMG, 2006: n.p), Mr Mziwonke Dlabantu (Deputy Director General (DDG): NdoH) replied that he felt it necessary to 'explain the context'. According to Mr Dlabantu (PMG, 2006: n.p), the HSS system was introduced in terms of the Housing Act, when the NDoH was to manage the administration of subsidies. Initially the Provinces were allowed to use their own systems, and these developed simultaneously with the implementation of the programme, including manual systems, spreadsheets and other methods. Because of the manual systems it was not easy to detect misrepresentation of facts. This would not be possible until one overarching system was set up and implemented nationally (PMG, 2006, n.p).

In response, Mr Vincent Smith (ANC: SCOPA) stated that most of the comments by the provincial SCOPA chairs had been directed towards skills. However a bigger issue was at stake: subsidies worth about R30 million had been awarded, post-2004, to government officials who should not have received them. By this stage the new systems had been implemented and should therefore have identified the fraud (PMG, 2006: n.p).

He asked whether this was merely picked up on a random sample, whether this was prevalent, whether the figures were accurate, and why these problems, which clearly arose from administrative fault, had occurred. Mr Dlabantu again blamed the occurrence of these deficiencies on the lack of skills, and failed to answer the question directly. He argued that the post-2004 policy adjustments were significant and therefore the position would not have been the same as pre-2004 (PMG, 2006: n.p). The post-2004 policy caused the bands of subsidy to be removed as qualifying criteria, and after 2004 there would need to be a further analysis to determine whether an applicant would be excluded or whether he would qualify. Mr Dlabantu concluded that there were two broad issues that caused the deficiencies: firstly the policy, and secondly, the skills problem (PMG, 2006: n.p). However, one should bear in mind that training was provided on the use of these systems, and assistance was provided to the provinces in training when the systems changed (PMG, 2006: n.p).

What is of significance in this case study is that any member of Parliament who had access to the housing subsidy system could take part in the scheme, because they could override any objections from the system. Anchen Dreyer (DA: SCOPA) commented that “these overrides take [the public] to the heart of the problem. It’s not a problem of capacity, it’s not a problem of the system, it’s *attitude* (political will). It is designed for corruption” (Business Report, 2006: 3).

Mr T. Godi subsequently stated that “[o]verrides are allowed in such a way that it allows a lot of wrong things to happen” he blamed it on the “senior managers (from the housing department officials)...[who] [were] not doing their job, not by accident, but deliberately...either [they] [didn’t] see it, or [they] [were] shielding [those that had to be held accountable]” (Business Report, 2006: 3). Not surprisingly, and in contrast to the questions he posed during the hearings, Mr Vincent Smith objected to any criticism by stating that “[there are] people there who are incapable of doing their work”, thereby relying on the same excuses as Mr Dlabantu, who focussed on the ‘skills problem’. According to the Business Report (2006: 3), Mr Dlabantu tried turning the tables by accusing SCOPA of not doing their own job, by being a long way off from meeting the deadlines for handing in finalised reports on the housing scheme (deadlines were set out



for November 2005 and March 2006).

Most importantly, Mr T. Godi stated that the 'skills problem' answers were worrisome, especially because the lack of capacity was linked with corruption, and that SCOPA had regrettably not received the impression that NDoH appreciated the severity of the problem. The indication that some of the employees were deliberately overriding systems was critical, and needed urgent attention (PMG, 2006: n.p). The Committee was not completely satisfied with the answers given; they had been too generic and some basic questions had not been addressed, either because the 'Director General was too new in the post', or because other members had not been adequately prepared or had not fully appreciated the existence and severity of the problems. At its most recent hearing (at time of writing) on 14 June 2006, SCOPA requested that the NDoH perform in the light of transparency at all times, as the State machinery must serve the interests of the people, in order to spend the tax payers' money efficiently. If the subsidies allocated for housing projects became self-serving, it was not aligned to the broader political vision of the country (PMG, 2006:n.p).

#### **4.4 General trends: Pulling the watchdog's teeth?**

These case studies have aimed to provide an in-depth analysis of the most common problem areas found in Parliamentary oversight, and the many challenges attached to enforcing the accountability of 'organs of the state'. Weaknesses in the system, which allow doubtful and underhanded negotiations between the executive and public entities, or between members from the governing party in the legislature and the executive; and for serious acts of corruption and fraud to be taken so lightly (linking 'lack of skills' with corruption), are both alarming and disturbing. Both the Arms Deal and the Oilgate left a skewed image of how SCOPA performed its oversight powers over the executive, and how it challenged cases of dubious reports received from the Auditor-General and Public Protector.

Have the rectification procedures followed by SCOPA (in assistance with the Auditor-General and the Public Protector) become more lenient towards writing-off debt, or unsatisfactory behaviour, rather than on following strict recovering procedures? It

would appear to be a question of political attitude and will, which directly influence SCOPA's ability to deliver severe oversight measures when holding the 'state organs' to account. It does not seem as though the government has been challenged in any material way by the oversight measures undertaken thus far. If SCOPA does not frighten the postman and his challenges energetically and scrupulously, the committee might become a friendly 'Goofy' rather than a devoted and respectful watchdog.

#### **4.5 Summary**

The Arms Deal was the most obvious case study illustrating the failure of SCOPA, as well as the constraints that it works under. The temptation that attracted the ruling party, and made its appearance public, was the use of its majority representation within the executive and legislature to its own advantage (in protecting its political interests and the status quo). This became apparent in the oversight and investigative efforts undertaken by SCOPA and the Public Protector. The lesson learnt was that maintaining the status quo and tampering with the Constitutional mandate attributed to each level of government harmed the credibility of these entities, and did not comply with the democratic ideals ascribed to these entities.

The Oilgate scandal, in its turn, appears to emphasise the loopholes within the political party funding system as supposedly manipulated by PetroSA, Imvume and the ANC, to the public's disgust. The inability of these entities to account for any dubious connections amongst each other emphasised the secretiveness of their transactions within the Oilgate scandal. The 'complimentary' roles played by the Public Protector, the Auditor-General, and SCOPA were brought into question. Having had the Public Protector include the governing party in the construction of its report (causing its reports to be in stark contrast with reports from SCOPA and the media), counted to the disadvantage of SCOPA, since the committee failed to prove itself substantial on the findings of its reports.

On the other hand, the oversight of the State Housing Subsidies scheme has proceeded well, considering the progress SCOPA has made on holding the NDoH accountable to the Auditor-General's findings (as published in his summary report). However, one



remains sceptical, when viewing SCOPA's lack of effective oversight to date. Corruption and fraud are serious allegations against government departments, and if not dealt with accordingly, oversight will become a mere smack on the fingers. Normatively speaking this is unacceptable, since the incentive that should be created by SCOPA should prevent state organs from acting in a manner that does not represent their respective Constitutional mandates. One viewpoint this thesis strongly supports is that SCOPA must enforce the necessary rectification procedures vigorously when holding state organs to account and not simply direct watchful questions or passively accept the accounting entities' lack of participation.

Without doubt, this chapter introduces complex and unpopular questions. Is there a need to isolate SCOPA from party politics? Has the ANC undermined the Constitution by its current approach towards SCOPA? What is the proper relationship between Parliament, its committees, and the chapter nine institutions? Is it a case of "feckless pluralism"?

The essence of the problem, as derived from the case studies, is whether or not the majority of the members of SCOPA are now solely focussed on party political interests, and if this issue has become more embedded since the Arms Deal. "Institutions of democratic governance are only as strong as the extent of their capacity to withstand the weight of the most serious political challenge", while staying impartial (Calland and February, 2001: n.p). The executive must be held accountable to the legislature, not only be challenged or questioned by it. Investigations and hearings probed by the Public Protector, Auditor-General and SCOPA, have become clouded by the recent development of 'partnership' between 'Private Political Interests (political will)' and 'Loopholes in the System'.

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<sup>1</sup> 'Lobbying', in this context, means to influence government policy by making representations to ministers, members of Parliament and government officials. It is about avoiding or achieving legislation or other government action that regulates activity and getting a share of resources. It is also about having one's view prevail over the views of others in the community (Tongue, 1999: 119).

<sup>2</sup> Sherman (1999: 151), on his study of secrecy in democracy, found that one of the areas that is becoming more and more secretive, is the growing reliance on the private sector for providing services and infrastructure. This has resulted in commercial confidentiality being maintained over documents recording

dealings between the government and the private sector (as was the case with Oilgate). In such a case, the Promotion of Access to Information Act (The Constitution, Act 2 of 2000) was created to prevent such incidents from happening, and with the intention of giving the public the power to gain information on dubious dealings concerning the use of public money. However, there are many occasions when this is not possible, arguably being a further incentive to partake in such dealings secretly.

<sup>iii</sup> The DOD expected its budget to remain constant over several years at R9,7 billion in 1998 rand value (Calland and February, 2001: n.p).

<sup>iv</sup> It would be naïve to think that Ministers of the ruling party should not communicate with party members serving on Parliamentary committees and to jointly strategise in relation to political issues. The DA criticised the ANC for permitting its Ministers (Manuel and Erwin) to communicate with its members of SCOPA; the accusations extend to saying that the ANC's proposal for a second report on the Arms Deal was drafted by the ministers rather than the members of SCOPA and that the ministers met behind closed doors with the ANC study group before appearing in front of SCOPA at the end of February 2001 (Calland and February, 2001: n.p).

<sup>v</sup> Zuma posed questions to SCOPA in his original letter, and on 31 January 2001 in his response to the Speaker's letter. There is nothing wrong with the Executive posing questions to Parliament, since it encourages open debate, but there is no compunction on the side of Parliament to respond, whereas the Executive is obliged to respond to Parliament (Calland and February, 2001: n.p).

<sup>vi</sup> Section 236 provides for the enactment of legislation governing political party funding, and consequently the Public Funding of Represented Political Parties Act (103 of 1997) was established in order to regulate the process.

<sup>vii</sup> The IEC (Independent Electoral Commission) is responsible for managing the Fund, which is credited by monies appropriated by Parliament and donations from any source. Section 6 of the Act makes it a requirement for political parties to account for the monies they receive from the Fund and empowers the AGSA to audit any political party's financial records relating to monies received from the Fund. If there are any irregularities, especially where money was spent on activities that are not compatible with the functioning of a political party (see Section 5 of the Act), the accounting officer of the party is liable to repay the money to the IEC, which is then credited back to the Fund (Van Vuuren, 2005: n.p).



## Chapter 5

### CONCLUSION: FOCUSING ON THE ROAD AHEAD

#### 5. Background

There are a number of popular notions prevailing, mostly stating that politics should be 'cleaned up' or 'reformed'. History does not end with the achievement of some finite stage of Parliamentary institutionalisation, but rather enters into new phases of a never-ending process of institutional evolution, in the process of consolidation. South Africa has had almost twelve years to effectively institutionalise the mandate of the democracy. By developing the latter, committees (as argued by Strom, 1998: 47) can either practice positive or negative power in their given context. The South African Parliament includes elements of both. This thesis has revealed aspects of 'negative committee power' (Strom, 1998: 47) in Parliament, as evident from the cases studied, where government used the available oversight structures (by using their executive power and their power over party-members in SCOPA) to defend the status quo.

This thesis has analysed the oversight structures in the light of theoretical assumptions. The consensus-seeking theory (Chapter Two, page 35) is significant when contextualising the specific challenges South Africa faces, due to dominant party pressure. The ANC has been criticised for using its big majority vote to influence policy- and Parliamentary decisions in a steamroller way when seeking 'consensus'. Checks and balances should therefore be installed in such a manner as to effectively limit any governing party's power in all spheres of government, since it has been possible to become a dominant party within a procedural democracy.

In contrast, the powerful legislative committees in the US Congressional Committee system have proved themselves capable of coping with a complex, ever-growing workload despite the committees' policy hegemony. There the committees have increasingly been challenged by strengthened party leaders and by the growth of broad, cross-cutting issues (Davidson & Longley, 1998: 13). Within the American system, the 'Congress at Work' initiative performs independently from the presidency, which implies

an effective separation of powers.

In the case of Scandinavia, it would appear that the secret of their success lies in its strong political parties, a situation that forestalls the dominant ruling party challenges South Africa is faced with. South Africa is increasingly being challenged by a weak Parliamentary opposition which extends to all spheres of Parliament: in the decision-making procedures, policy agenda setting, and committee proceedings. As soon as party politics become the prime driving force behind national governance, the mandate and independence of the legislature (and its legitimacy) is brought into question. On a global perspective, Shaw (1998: 15) supports this view, stating that, "whether established, new or future democracies are considered, pressures to enhance legislative authority can be seen at the committee level throughout the world". For South Africa, there has been lack of conformity between what Parliament wants and what the bureaucracy is willing to do – the dilemma of good legislation but bad implementation. Parliament has to put on its boxing gloves for the challenge, and put the committees into the ring:

*"strong committees...are at least a necessary condition for effective Parliamentary influence in the policy-making process...When parties exert only a weak control over legislative committees, the committees are free to develop a life of their own and to make a strong contribution to the outputs of the legislature...Parties and committees are...contradictory and even mutually exclusive means of internal organisation [in a legislature]" (Strom, 1986, 303).*

The increasing prevalence of dominant ruling party versus weak opposition conditions has weakened the ability of committees to perform independently and efficiently. Members of SCOPA are no exception in this regard, as was the argument in the deliberated case studies. Heywood (2002: 319) even describes this generally as a 'corrupt culture': where assemblies corrupt the politicians by socialising them into the norms and values that distance them from the needs of the taxpayers. The absence of accountability through Parliamentary constituencies is part of the problem.

### **5.1 Weaknesses of SCOPA**

Graham Richardson, the Hawke-Keating government's own local Machiavellian



equivalent has argued, “[y]ou can’t expect on every occasion that a politician will tell the truth...He’s not allowed to and it wouldn’t be sensible to do it” (Johnson, 1997: 176). Perhaps one could argue the same for a committee on scrutiny and oversight (having the power to influencing the public image of the government in such a big way): that you cannot expect on every occasion that SCOPA is holding state organs to account for financial malpractice – controlled by the same caucus, or without any prospect of a political agenda other than its mandate.

Generally, there is no consistent understanding or approach to the execution of the oversight role in Parliament. The dominant party-based system has hampered effective oversight, as members of the Legislature are reluctant to call to account a Government that is made up of leaders of its own party. This attitude towards oversight has created a platform for other interests and influences (such as lobbyists and private interests) which influence committee members’ perspectives and oversight measures in a big way, by restricting their political will to act according to the mandate of the Constitution. Sometimes the working relationship between SCOPA and the departments are so close that the required separation of powers is not maintained. This also appears to be the case between the Executive, the Auditor-General, and the Public Protector respectively. Housing such a wide variety of interests between the independent institutions, the Legislature (the committees), and the Executive is contradictory with the mandate prescribed to each actor by the Constitution.

Not having tabled a formal section on the committees within the Constitution has forced the question: have committees become an effective extension of the ruling party’s interests? This issue was brought into context with regards to the ‘principle-agent theory’, discussed in Chapter Two, explaining how members in committees (from the governing party) effectively act as agents for the governing party. As argued in previous chapters, provisions should be written into the law establishing systematic reporting and evaluation requirements to be fulfilled by the agency in order to facilitate program review by the standing committee (which could ultimately contribute to institutionalising committees into the democratic structures more efficiently) (Rosen, 1982: 54). The institutionalisation theory (Strom, 1998: 23) also emphasised the need to institutionalise committees

effectively by making provision for committees, and SCOPA in particular, in the Constitution: as a specialised committee in Parliamentary oversight and scrutiny specifically. The latter would regulate the formal recognition of the powers and functions of SCOPA more effectively amongst all accounting entities.

As alluded to by the organisation theory (Norton, 1998: 43), the specialisation of all actors in the Legislature, including the specialisation of the committee structures, needs to be incorporated into the Constitution in order to enrich organisational capacity. The organisational capacity of SCOPA is not prescribed by the Constitution, only limited by the powers given to it by the National Assembly Rules and by the political will of the representatives from the various political parties. Lack of consensus on the basis of the Committee's mandate, and being compromised by political party interests, constrains effective oversight. As argued, the tendency towards a dominant party political system weakens committees, since it subjects committees to single party dominance. SCOPA is victim to this structural 'deficiency' within the South African Parliament, since the Executive is also drawn from the Legislature. However, it would be more efficient in a party system such as in Scandinavia, where single party dominance is discouraged by means of strong, competitive, and future-orientated political parties in a decentralised and non-hierarchical setting.

SCOPA has not been gathering independent information, other than from the Public Protector and the Auditor-General. The Committee therefore relies too heavily upon information from the departments themselves (as presented by the Auditor-General), or investigations by the Public Protector. This is especially of significance since both these independent institutions have allowed the Executive to influence their reports and public statements (as with the Arms Deal and the Oilgate). Having the Executive succeed in pushing the mandate of the governing party has been problematic. As the case studies argued, these independent institutions do not always present independent information, and therefore SCOPA must undertake a more investigative approach. Failure to do so has tarnished the public image of SCOPA, and will continue to do so unless the Committee acts more fiercely on its oversight responsibilities.



Alternatively, there have been structural constraints within Parliament, such as: lack of resources (skills, researchers and expertise), to implement and execute effective record-keeping and oversight practices. However, as became apparent from the State Housing Subsidy scheme, Government sometimes relies on using the 'lack of skills and resources' excuse to dodge accountability. This cannot be tolerated, and SCOPA should consider these loopholes, but not let them prohibit the Committee's oversight and enforcement powers.

It seems that the broad factor prohibiting efficient oversight, in the case of SCOPA, is the absence of strong political will within an embedded culture of accountability. It also seems to be the cavity in SCOPA's teeth, since it prevents strong enforcement of rectification procedures in cases of financial misconduct. The polarisation of interaction (due to political interests) amongst Committee members influences the relationship between the Executive and the Legislature in a negative way. This can be compared with the existing enforcement strategies which are rather weak, since they lack material intervention where necessary. Considering the fact that the chairperson arranges the committee agenda and proceedings, it is daunting to admit that Mr T. Godi (PAC: SCOPA chairperson) can easily become a mere puppet in the strings of the majority party (ANC), since party politics has become the dominant factor in Parliamentary proceedings. It is in the light of this challenge, that the proposal (Addendum A) suggests an alternative oversight structure.

## **5.2 Strengths of SCOPA**

SCOPA allows detailed discussions on a wide variety of important issues, while giving members from all parties represented in the House a chance to participate in the Committee proceedings. It appears to have built the necessary foundation for public and political debate, by completely restructuring the remains of the Apartheid regime. Considering the widespread reform inventions and implementations Government had to deal with since 1994, while trying to institutionalise a liberal Constitution and vibrant democracy, the results have been impressive. However, it seems that 'bad habits' have been institutionalised too: in the context of this thesis, Parliamentary oversight and accountability have become normative terms, which have not been sufficiently practised

according to definition.

Finn (1991) asserts that the law has two vital but limited roles to play in securing integrity in government. Firstly, a normative role provides the foundations for ethical regimes by setting the minimum irreducible standards that are to be expected of officials. Secondly, a Constitutional role provides the framework in which the ethical enterprise is to be prosecuted both by imposing *Constitutional limitations* on government, and contriving the general institutional arrangements and accountability mechanisms that hold government and its officials in check (in Caldow et al, 1997: 27). It seems evident that the focus of Parliament should turn more to the second role as presented by Caldow.

SCOPA receives support from the independent Chapter Nine institutions (Auditor-General and Public Protector), by collecting independent information for their hearings and investigations from these entities. The reports range from investigations of conduct in state affairs, or the public administration in any sphere of government (The Constitution, 1996:182(a)), to audits on the accounts, financial statements and financial management of all state departments, municipalities and any other institutions or accounting entities (The Constitution, 1996: 188(a)(b)(c)). These alternative reports (rather than having to conduct their own private investigations in all instances) are timesaving and ensure that SCOPA can use their time more efficiently. A problematic consequence of the latter is that SCOPA tends to rely on the judgement and thoroughness of the Auditor-General and Public Protector, which can influence SCOPA's own reporting and operations in a restrictive way. However, if these independent institutions hold themselves accountable to their Constitutional mandate, and SCOPA acts according to the National Assembly Rules, their relationship can be seen as complimentary to the functioning of the committee.

SCOPA also creates the opportunity to hold ministers and the President directly accountable to Parliament, and for state organs to comply with certain requirements or face the consequences of strict rectification procedures. If SCOPA can create an embedded culture of accountability and fuel the incentive for honest action (against underhanded negotiations between Government and the public-private sphere, as in the Oilgate scandal): it will provide reason enough to ensure its embodiment in future



Constitutional drafts for committee specialisation.

### **5.3 Final Assessment: Outputs and Attributes of SCOPA**

The structures and functions of SCOPA have provided it with the mandate to oversee a large variety of organs of the state, in order to identify (and rectify) instances of financial malpractice, where taxpayers' money is not utilised strictly according to their provisional budgets. SCOPA has the opportunity to become an effective watchdog of Parliament, but by having a closer look (as attempted by this thesis) it seems that it is on the verge of becoming 'a friendly Goofy'. Even though accounting entities are faced with the 'challenge' of being held accountable to Parliament, it seems that strict rectification procedures are not enforced. Unqualified financial reports are being written-off without deeper investigative efforts, and the Public Protector and Auditor-General have not been held accountable in cases of conflicting reports where Executive intervention has been obvious (such as in the Arms Deal and the Oilgate, and perhaps to a lesser degree in the State Housing Subsidies scheme). Where will the line be drawn? It seems easy to bypass the questions put by the Committee during hearings and to make empty promises for the 'next annual report'.

This thesis argues that, apart from the party system, the key to the influence of committees lies in three factors: expertise<sup>i</sup>, intimacy<sup>ii</sup> and support<sup>iii</sup>. Essentially, SCOPA has not complied with either of these factors to their utmost potential, even though it is equipped with the necessary mandate. According to Calland (1997), SCOPA is "all dressed up with nowhere to go". South Africa could benefit from similar support to its oversight committee as in the UK, where qualified staff advise committees by means of expert researchers. The Addendum offers an alternative proposal.

In conclusion: the underlying challenge, loyalty to the governing party, remains embedded in the adopted Westminster system, which might not be as effective as hoped for. The horizontal separation of powers between the judiciary, legislature and the executive is problematic in the sense that the governing party predominantly 'owns the floor'. In the case of South Africa, this means that the ANC has the upper-hand on all decisions taken in all three branches of government, since members primarily associate themselves with their

political parties, rather than with Parliament or the Executive separately. This issue has raised questions (as mentioned in Chapter Four), which have become controversial statements: there is a need to isolate SCOPA from party politics, the ANC has undermined the Constitution by its current approach to SCOPA, and the proper relationships between Parliament, its Committees, and the Chapter Nine institutions have not been consolidated. In the light of these statements, when reviewing it in terms of the oversight structures specifically, this thesis argues that the South African democracy and its ideals have come to resemble a system of “feckless pluralism”.

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<sup>i</sup> Expertise emerges over time from committees with specialised responsibilities and a clear field of operation. Expertise is most likely to develop in permanent committees with continuity of operation and membership (Hague & Harrop, 2004:252).

<sup>ii</sup> Intimacy emerges from small size and is reinforced by stable membership. Particularly when meetings take place in private, a small group setting can encourage co-operation and consensus, overcoming any initial hostility between members from competing parties (Hague & Harrop, 2004:252).

<sup>iii</sup> Support refers to the use of qualified staff to advise committees. Expert researchers can help busy politicians to produce well-founded recommendations (Hague & Harrop, 2004:252).



**Addendum A: PACRAT – A Proposal for Parliament**

**PACRAT**

**Public Accounts Committee Research Assistance Team**

**-INCREASING THE EFFICIENCY OF PARLIAMENTARY OVERSIGHT-**

**Project to be effective from January 2007[8] – January 2009[10]**

**A LOGISTICAL FRAMEWORK**

## **6. Executive summary**

In order to assist parliament, hereby a proposal for a complimentary research structure to Parliament's Standing Committee on Public Accounts. This proposal aims to develop an alternative structure that will enhance the level of public participation in the parliamentary oversight structure (including proper research and departmental or public/private entity oversight visits). Consequently, this would result in reasonable workloads for different task teams (in assistance to the current oversight structure as already commissioned within Parliament), but with a more expansive and inter co-ordinated approach.

Therefore, the appointed task team would contribute to SCOPA maintaining a positive image in the public eye, by complementing its credibility and legitimacy. This public body would ideally consist of 12 experts, membership being divided between academics from 4 different universities, 4 members from two different NGOs and 4 members from the independent, Chapter nine institutions (two members from the Public Protector- and two from the Auditor General institutions). They could subcontract others on an ad hoc basis if deemed necessary. The budget would make provision for an extra research panel (appointed by these experts), consisting of 20 members. The research panel will consist of 45 (9 members per province) in total, since the other 25 (of the available 26) members are from the Parliamentary Research Unit (since 1997). Primarily they would meet with SCOPA and the Parliamentary Appointed Task Team on a monthly basis in order to discuss the schedule, priorities and findings. This public body will be known as PACRAT (the Public Accounts Committee Research Assistance Team).



## **6.1 Project Identification: Purpose and Significance**

PACRAT proposes a project in support of a more effective parliamentary oversight and accountability structure (via continuous evaluation and recommendations). This could be effective in addressing possible problem areas at an early stage, and provide a strong support framework to the National Assembly and Committee system. More specifically, it will also broaden the capacity of SCOPA in providing for more in depth and widespread evaluation structures.

Therefore, PACRAT, if approved by parliament, aims to become the leading expert in research; acting as the guide dog for parliamentary watchdogs, by assisting in the planning, structuring and effective execution of all parliamentary oversight programmes. PACRAT will be the first expert team consisting of such a variety, with the purpose of combining all existing parliamentary programmes more efficiently, in order to assist SCOPA in its research and oversight role.

## **6.2 Project Plan Configuration Status**

### **6.2.1 Background: Implementing Agency**

PACRAT has no previous experience, but based on the findings of the thesis, this project will specialise on assisting government accountability and parliamentary oversight. The members of PACRAT will consist of a wide variety of field-specialists, in partnership with members of Parliament. This project aims to succeed during its trial time framework of two years, in order to continue its existence independently and efficiently, as an established organisation that enjoys continuous support and approval by government.

## **6.3 Project Origin**

### **6.3.1 Need: Problem Identification**

Why could SCOPA benefit from additional assistance? Currently, there are about 600 public bodies that have to account to SCOPA, and according to the Corder Report (1999), only 200 bodies report. The fact that SCOPA meets only three times a week limits their time to effectively evaluate reports, in order to hold these bodies to account. Parliament employs and pays a research division situated at the Regis House, however their direct relationship with Parliament and its committees are

unclear. The Report on Parliamentary Oversight and Accountability (Murray and Nijzink, 1999: 136) identified several problems that national parliamentary committees have in dealing with the reports they receive. There is a logistical problem with a general overload of reports and late distribution thereof, leaving too little time to formulate responses. Many reports are simply ignored rather than used to hold the executive accountable.

In addition, SCOPA consists of one manager, 4 clerks and 2 administration staff, with support from the Auditor General's office. The committee consists of 17 members, facing the challenge of needing expertise in all the areas that has to be overseen. Also each committee member does not have its own researcher, which stresses the workload. Even though it is considered to be better supported than other Public Account Committees, the biggest challenge still remains to be found in its the research capability (in order for MPs to be informed and make widespread and relevant recommendations). SCOPA's public image has been scarred by negative media coverage on cases such as the Arms Deal, Travelgate and Oilgate (which has brought the public to question their practises and openly have asked questions whether lobbying is taking place amongst MPs and the ruling party). The latter also provided reasons for three of SCOPA's former chairpersons resigning.

Amongst the structural challenges that Parliament faces, are the lack of resources to implement and execute effective record-keeping practices. The absence of official procedures or structures for handling written submissions contributes to this difficulty. There are also other difficulties in using written reports to gain an understanding of the level of parliamentary oversight activity. There is often no way to tell if a given report was ever presented to a committee, or that it was simply distributed for members to read on their own. The level of detail may be excessive, making it hard for committee members to find useful information, or the report may be very general, lacking detail on areas that are important to the committee (Corder, et al, 1999, p13).

As summarized by Senay and Besdziek (1999) the main challenges for SCOPA are "insufficient expertise and knowledge to allow them to undertake in-depth analyses and mount constructive challenges to the members of the executive and



administration.” This skill shortage seriously erodes the prospects for a successful proactive committee oversight strategy and ultimately affects the ideal of a constructive oversight relationship between standing committees and the executive and administration.

Therefore, based on the presumption that the latter is true, PACRAT aims to address these problem areas by effectively combining expertise from the relevant state organs and independent institutions.

#### **6.4 Related Projects**

Existing research facilities include the Parliamentary Research Unit (since 1997). In 2001 the European Union funded a study into the research facilities of South Africa and found that the Parliamentary Unit had, since its inception, experienced a variety of problems. The latter were identified as “the lack of clear direction and focus, the lack of job security and competitive salaries for researchers, and the lack of researchers” (EUPSP Research Evaluation Report, 2001). In 2001 the Unit had 13 staff members serving 40 committees. Even though the staff has increased to 25 permanent members, it still faces overwhelming challenges in effectively supporting SCOPA while providing assistance to all the other committees as well.

In 2004, five years after the Corder Report was completed, a task team has been established to implement some of the recommendations of the report in order to assist parliamentary oversight. The task team consisted of 20 members of the NA and the NCOP. It included the Chief whips of the ANC, DA and IFP, the House Chairs, the Chairperson of the Committees of the NCOP, Chairs of the Joint Budget Committee, three DA MPs and one MP each from the IFP, UDM, ID, NNP and the ACDP. This task team, together with the Parliamentary Research Unit, should be guided by a committee of experts, by means of recommendations that chart a more interconnected approach for the road ahead. Currently there are no other projects that provide for the same project purpose as suggested by PACRAT.

## 6.5 Project Purpose

### 6.5.1 Objectives

This project aims to provide an expert team that will help to co-ordinate the parliamentary oversight structure, in order to effectively include all parliamentary oversight bodies (as recognised within the constitution or as prescribed by the National Assembly Rules) and members from the public.

PACRAT would meet with members of SCOPA, members of the Parliamentary Research Unit, the Parliamentary Appointed Task Team, the Public Protector and the Auditor General as well as members from Non Governmental Organisations and academics from universities (as mentioned in the executive summary). The latter would contribute to ensuring public participation in our democracy, with the broad aim of enhancing parliamentary oversight and scrutiny.

This would provide parliament with an early intervention strategy in order to escalate human and financial costs manifested by:

- late submissions of financial reports by the accounting entities
- insufficient time to evaluate all reports, or to visit the respective departments and to implement recommendations
- overlapping of functions by members of SCOPA, the Public Protector or the Auditor General
- lack of clear and collective objectives when addressing public hearings, in order to ensure that committee members are acting on behalf of the committee's interests and not on behalf of their political party's interests

### 6.5.2 Beneficiaries

PARLIAMENT	Parliament will receive enhanced credibility and legitimacy if PACRAT succeeds in providing a more inter-connected oversight framework with more effective public participation and combined expert guidance.
SCOPA	SCOPA will be motivated to share the burden of their workload with other government appointed task teams and will also benefit from recommendations and guidance from experts independent



	from the constitution or government of the day.
THE PUBLIC	Members of the Public are also beneficiaries of our democracy that promotes public participation. Therefore they are safeguarded by the aims of the project proposed by PACRAT, to better ensure that they are receiving value for their tax money.
INTERNATIONAL COMMUNITY	The international community could learn and benefit from experimenting with projects similar to PACRAT, if the latter proves to be essential to an effective parliamentary oversight framework.
THOSE WITH THE POWER TO AMEND THE CONSTITUTION IN THE NEAR FUTURE	By being provided with a framework that illustrates the importance and widespread influence of the committee system, this project could inspire the writing of a section on committees in the constitution, underlining the exact extent of their powers and functions (in correlation with other state institutions and public bodies).

## 6.6 Indicators of success

The following indicators would verify the success of the project:

- ❖ An integrated approach to parliamentary oversight programmes and effective co-operation between the relevant actors.
- ❖ Increased public support and trust would be visible in the media, by means of positive feedback on the activities of SCOPA.
- ❖ The decreased workload of SCOPA members would lead to better preparations by committee and therefore more efficient public hearings.
- ❖ Increased public support (by being included in the expert panel) in parliamentary oversight will help strengthen the channels of public participation for the future (being complimentary to the mandate of the democracy).
- ❖ Positive feedback on the activities of PACRAT would lead to international recognition and possibly serve as a model for other democratic countries.
- ❖ It would benefit a transparent relationship between PACRAT, SCOPA and the Parliamentary Appointed Research Team, the government and the public.
- ❖ It could lead to extended communication channels between SCOPA and every one of the 600 public bodies that have to account for their financial programmes

annually, within five years of implementation (and thereby enhance the capacity and level of oversight).

- ❖ Draft legislation (that proposes a section on committee functions and structures within the constitution) could be formally structured within five years.

## **6.7 Implementation Strategy**

### **6.7.1 Project Activities: Throughputs**

The throughputs include monthly e-newsletters to the media and subscribed members that will comment on the projects and findings that PACRAT has worked on. The latter will also be accessible from PACRAT's website. A debate column on the website will create the opportunity for any member of the public to raise his/her concerns regarding the practises of PACRAT, or to make helpful recommendations.

An introductory conference will also be held in Cape Town, including all the participating members from SCOPA, PACRAT and the Parliamentary Appointed Task Team. The budget also makes provision for additional guests, such as other experts from the field and members of the judiciary. This will stipple the role each of the bodies has to play in order for PACRAT to achieve its goal of enhanced public oversight, and to increase SCOPA's legitimacy.

In addition, monthly meetings will be held between SCOPA and the Parliamentary Appointed Task Team, in order to discuss the problem areas and projects that need to be dealt with, and in order to prevent the overlapping of functions. This will strengthen the communication structures and ensure that there are no misunderstandings regarding what has to be done in the given timeframe.

Two public debates will be held: one before PACRAT starts its contract (August 2006[7]), in order to raise public awareness and increase the level of overall support for this project. The second debate will be held at the end of the first year (November 2007[8]), in order to get more inputs from the public and to take any concerns into account, but also to give feedback on the activities that PACRAT had participated in to that point and what the outcomes were.



### 6.7.2 Project Outcomes

Therefore, within the two years of its trial performance, PACRAT will provide the following outcomes;

- ❖ Monthly e-Newsletters to the media
- ❖ One introductory Conference with all participating actors
- ❖ Monthly meetings with SCOPA
- ❖ Monthly meetings with the Parliamentary Appointed Task Team
- ❖ Two public debates
- ❖ Two printed annual reports (20 published per annum).

### 6.8 Budget

Hereby a short summary of the provisional budget for the years 2007[8] – 2009[10] (the detailed budget is attached at the end of this document).

<b><u>PACRAT</u></b> <b><u>Proposed Budget for 2 years (24 months)</u></b>	
	<b><u>Line-Item Totals</u></b>
<b>SALARIES/TECHNICAL SUPPORT</b>	3 172 000
<b>SKILLS AND TRAINING</b>	0
<b>DIALOGUE AND PUBLIC DEBATE</b>	60 940
<b>TRAVEL AND TRANSPORT</b>	286 800
<b>ADMINISTRATION/COMMUNICATION</b>	60 600
<b>ACCOMMODATION</b>	567 000
<b>SUB GRAND TOTAL</b>	4 147 340
<b>ADMINISTRATION COSTS (7,5%)</b>	311 051
<b>CONTINGENCY COSTS (5% of total cost)</b>	207 367
<b>GRAND TOTAL</b>	<b>4 665 758</b>

### 6.9 Timeframes

<b>August 2006[7]</b>	<b>Introductory Conference with participating actors</b>
<b>September 2006[7]</b>	<b>Public debate</b>
<b>January – December 2007[8]</b>	<b>Monthly newsletters to Media Monthly meetings with SCOPA Monthly meetings with Parliamentary appointed Task Team Public Debate: November Annual Report: December</b>
<b>January – December 2008[9]</b>	<b>Monthly newsletters to Media</b>

	<b>Monthly meetings with SCOPA</b> <b>Monthly meetings with Parliamentary appointed Task Team</b> <b>Annual Report: December</b>
<b>January 2009[10]</b>	<b>Final Newsletter to Media</b> <b>Final meeting with SCOPA</b> <b>Final meeting with Parliamentary appointed Task Team</b>

## 6.10 Project Organisational Structure

<b>Experts</b>	The Experts' Headquarters will be situated in Parliament (the Parliamentary Research Unit). From there they will organise their meetings with SCOPA and the Parliamentary Appointed Task Team, as well as with the rest of the members from PACRAT. This expert panel consists of 12 members; applications for these positions will be carefully revised in order to select members with the most experience and extensive expertise in government oversight and accountability.
<b>Researchers</b>	The Researchers (those already employed by Parliament (25) and the other 20 employed by the expert panel) will be situated In Regis House, from where they will organise their reports, public visits and correspondence with the expert panel.
<b>Researchers from Parliamentary Unit</b>	As mentioned, the Researchers from the Parliamentary Unit will be situated in Regis House with the other selected researchers. In order to ensure no duplication of work, their storage and filing of reports will be done in PMG's offices (Parliamentary Monitoring Group), being effectively filed with other parliamentary committee meetings' reports. Their work will be complimentary to the documents that PMG receive from SCOPA within the meetings (since PACRAT will be ensuring that more in depth analysis and documentation are made of all their additional visits to the accounting entities as well as reports on the recommendations and outputs' results).
<b>Administrators</b>	The administrators will be divided in order to have one assisting the researcher-



	team and the other assisting the experts in their respective administrative duties. The latter includes updating the website, sending through the monthly e-newsletters and keeping track of events and other filing necessities.
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The organisational structure and facilities therefore consists of the following actors and factors:

- ❖ 12 leading experts
  - 4 Senior Researchers from different Universities
  - 4 members from different NGOs: IDASA (PIMS)(2) and Black Sash(2)
  - 4 members from the Chapter 9 Institutions
  - 45 researchers: 20 independent researchers and 25 from the Parliamentary Research Unit serving on an ad hoc basis
- ❖ 2 Administrators
- ❖ Offices – Already Equipped
  - PMG (Parliamentary Monitoring Group): Storage and Filing
  - In Parliament (Parliamentary Research Unit): Expert Headquarters
  - In Regis House: Appointed Researchers
- ❖ Stationary & Supplies - Extra
  - Writing material: Pens, pencils, permanent markers, white board markers, staplers, hole pressers, binding materials for conference notes, 6 laptops, 2 printers and miscellaneous (administration and contingency costs).

### 6.11 External Dependencies

In order for this project to be successful, it is highly dependent on Government agreeing to subcontract their current venues and researchers to PACRAT as a partner in oversight functions. Therefore Regis House, the Parliamentary Research Unit and the 25 researchers that are already employed by parliament, should continue to be parliament's responsibility in terms of maintaining the facilities and paying its researchers (and not adding that to PACRAT's proposed budget responsibilities).

Also, it should be agreed that any additional skills and training conferences will be presented by the Tsimeni Consulting agency that is already paid and contracted by government. This project is also dependent on the unconditional commitment of the

appointed experts to this project, in spite of their existing work responsibilities, by signing a contract that they agree to form part of this independent public body, that will adhere to certain rules and responsibilities. In addition, this project is dependent on excellent co-ordination of the different fields of expertise and the different contributes each of the participating actors have to add. It is also dependent on members of SCOPA being transparent in their needs and limitations, in order for PACRAT to be of valuable assistance.

The success of this project is also dependent on excellent reporting, well presented newsletters, the success of the public debates and the introductory conference (in order to assure the public and government that PACRAT is managing its responsibilities proficiently).

### **6.12 Reporting**

Except for PACRAT reporting to the public, internal reporting is also crucial between PACRAT, and members of SCOPA and the Parliamentary Appointed Task Team. Even though PACRAT meets with both of the latter monthly, members of PACRAT meet on a two-weekly basis. It is the responsibility of the Researchers to give qualified reports (verbal and written submissions) on their findings and deliverance (on the basis of the constructed agenda, timeframes and requirements), to the expert panel.

Also, the expert panel will meet weekly, in order to discuss the quality of the reports and findings up to that moment, in order to ensure efficiency. The two Auditor Generals and Public Protectors will be in charge of the proceedings, having agreed amongst themselves who will chair the meetings and take overall responsibility as the head accounting personage for the team.

Also SCOPA and the Parliamentary Appointed Task Team will be held responsible to report on their own findings and recommendations monthly to SCOPA, in order to follow an integrated approach at all times.



### 6.13 Monitoring

The Chairperson (and any member(s) from the team he needs to assist him) will monitor the reporting structure in order to ensure that it works efficiently (in order for the members to deliver on their respective responsibilities according to schedule).

The categories that will be monitored are:

- ❖ Compliance with the timeframe
- ❖ Adherence to the shared agenda and different responsibilities
- ❖ Documentation of oversight and oversight projects
- ❖ Presentation and filing of written reports
- ❖ Levels of participation from the accounting entities
- ❖ Interaction of PACRAT with parliamentary structures and visa versa
- ❖ The nature of results and arrangements produced by meetings

### 6.14 Evaluation

Evaluation will broadly take place by means of the annual reports, which takes into account the reports and findings of all the responsible oversight entities, as well as the comments retrieved from the public debates (and the public's expectations) and feedback from the media. These reports and summarised findings will be presented objectively; ensuring that PACRAT is adhering to its stated purpose and objectives. These evaluations will also take into account the results of the performance delivered on the categories that were monitored.

### 6.15 Assumptions and Risks

#### 6.15.1 Assumptions

Certain assumptions are made in order for this project to be successful. These include:

- ❖ The continuous funding by government for the duration of this project.
- ❖ The agreement for the available facilities to be used by members of PACRAT, such as the offices, researchers and skills and training facilities.
- ❖ That the respective expertise are willing to commit themselves to this project for at least a period of four years, since this will ensure that if this project gets contracted for another two years by parliament, it has experienced staff that can train others.

- ❖ This project also assumes that parliamentary oversight needs a more integrated approach and that SCOPA and the Parliamentary Appointed Task Team will benefit from co-ordinating assistance from PACRAT, in order to become more efficient.

### 6.15.2 Risks and abatement strategies

Risks	Abatement Strategy
That the public might be hesitant towards government allocating tax money for such a project	The Introductory Conference for the participating actors scheduled for August 2006 and the Public debate scheduled for September 2006, will raise awareness of the importance of the project PACRAT proposes, in order to gain approval and support. The latter could result in financial support from international or local organisations.
That government might be hesitant to employ an independent institution to co-ordinate parliamentary oversight	By having members from the Public Protector and Auditor General institutions chair this project, it complies with requirements of our constitution. Also, by working in close contact with members of parliament and the Parliamentary Appointed Task team, this project rather proposes to support the current institutions, by focussing on its efficiency.
Lack of funds available from government to fund this project	A sponsor will be sought as a backup to government funding, by both subsidising the amount and letting government pay back by means of monthly payments without interest. Or the sponsor will pay a percentage of the total amount.
Initial lack of response and correspondence from the different government departments in the provinces	A detailed description of this project and the dates and times of both the visits to be made to these departments by the experts or researchers will be handed to the relevant head accounting entities after the Conference to be held in August 2006. The latter will include the dates that reports have to be submitted to PACRAT, with clear reference to penalties that these accounting officers and departments face when they do not collaborate.



## 6.16 Human Resource Strategy

Human resources will therefore effectively consist of;

- ❖ oversight specialists of government, by including members of SCOPA
- ❖ a Parliamentary Appointed Task team that strive to implement recommendations that have been made in order to enhance government accountability
- ❖ informed academics from universities that follow different schools of thought
- ❖ members of independent institutions, as structured in Chapter 9 of the constitution, more specifically sharing the responsibility to hold state organs accountable
- ❖ members from non-governmental organisations that advocate what is best for the public's interest, considering all requirements of being a sustainable democratic society
- ❖ Parliamentary appointed researchers as well as other independent researchers that contribute to objective analysis and collection of the relevant material

Therefore the strategic importance of the composition of human resources relevant to the organisation of PACRAT, will be complimentary to a more co-operative approach to oversight (by the relevant actors), by ensuring a 'hands on approach' on all aspects this project addresses.

## 6.17 Procurement Strategy

All vacancies for PACRAT will be advertised in the Rapport, die Burger and Mail & Guardian, with the applications being sent to the project manager, to be considered by a panel consisting of influential members of SCOPA (2), members of the Parliamentary appointed task team (2), an Auditor General and a Public Protector.

**ADDENDUM A: DETAILED BUDGET**

<b>PACRAT</b>			
<b>Proposed Budget for 2 years (24 months)</b>			
	<u>Working Column</u>	<u>Sub-Totals</u>	<u>Line-Item Totals</u>
<b>SALARIES/TECHNICAL SUPPORT</b>			<b>3172000</b>
<b>Experts</b>		1728000	
Salary per Expert	6000		
#Experts	12		
#months	24		
<b>Researchers</b>		1440000	
Salary per Researcher	3000		
#Researchers	20		
#months	24		
<b>Researchers from Parliamentary Research Unit</b>		0	
Salary per Researcher	0		
#Researchers	25		
<b>Administrators</b>		4000	
Salary per Administrator	2000		
#Administrators	2		
<b>Offices- fully equiped</b>			<b>0</b>
		0	
In Parliament (Parliamentary Research Unit): Expert Headquarters	0		
In Regis House: Appointed Researchers	0		



Storage and Filing: PMG (Parliamentary Monitoring Group)	0		
<b>SKILLS AND TRAINING</b>			<b>0</b>
Tsimeni Consulting	0		
<b>DIALOGUE AND PUBLIC DEBATE</b>			<b>60940</b>
<b>Venue and catering</b>		37500	
Introductory Conference: Cost per person	200		
#people	100		
Monthly meetings with SCOPA: Cost per meeting per person	70		
#meetings/months	10		
#people	25		
		13440	
Monthly meetings with Parliamentary appointed Task Team: Cost per person			
#meetings	6		
#people	32		
		10000	
Public Debates: Cost per public meeting	5000		
#meetings	2		
<b>TRAVEL AND TRANSPORT</b>			<b>286800</b>
<b>Airline tickets</b>		86400	
Travel for expert panel: Cost per person per ticket (return)	1200		
#number of experts	12		
#trips for the total period	6		
		54000	
Travel for research panel: Cost per ticket (return)	1200		
#researchers	45		

#trips for the total period	1		
<b>Public Transport/Shuttles</b>			
		38400	
Travel for expert panel: Cost per person per semester	800		
#number of experts	12		
#semesters	4		
		108000	
Travel for research panel: Cost per person per semester	600		
#researchers	45		
#semesters	4		
<b>ADMINISTRATION/COMMUNICATION</b>			<b>60600</b>
<b>Computers</b>		51600	
Computers: Cost per Lap Top	5000		
#Laptops	6		
maintenance per month	600		
Printers: Cost per printer	3000		
#printers	2		
Stationary and supplies	3000		
Annual Reports: Cost per Report for two years	300		
#Reports	40		
<b>Advertisements</b>		9000	
Cost per advertisement (three advertisements for two weeks)	1500		
#Advertisements	6		
<b>ACCOMMODATION</b>			<b>567000</b>
<b>Hotel</b>		324000	



Protea Hotel: Cost per person per night	200		
#nights (experts)	3		
#people (experts)	12		
#nights (researchers)	1		
#people (researchers)	45		
<b>Private/other</b>		243000	
Other: Cost per person per night	150		
#nights (experts)	3		
#people (experts)	12		
#nights (researchers)	1		
#people (researchers)	45		
<b>SUB GRAND TOTAL</b>			<b>4147340</b>
<b>ADMINISTRATION COSTS (7,5%)</b>	0.075		<b>311051</b>
<b>CONTINGENCY COSTS (5% of total cost)</b>	0.050		<b>207367</b>
<b>GRAND TOTAL</b>			<b>4665758</b>

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