

# **ADOPTING THE PUBLIC ACCOUNTS COMMITTEE MODEL FOR FINANCIAL OVERSIGHT IN SOUTH AFRICAN MUNICIPALITIES – A CASE STUDY OF THE PUBLIC ACCOUNTS COMMITTEE IN THE CITY OF CAPE TOWN**

**COBUS BOTES**

Thesis presented in fulfilment of the requirements for the degree of Master of Public  
Administration (School of Public Management and Planning) at  
Stellenbosch University



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**March 2011**

## **DECLARATION**

In submitting this thesis electronically, I declare that the entirety of the work contained therein is my own, original work, that I am owner of the copyright thereof (unless to the extent otherwise explicitly stated) and that I have not previously submitted it at any university for obtaining any qualification – neither in its entirety nor in part.

**March 2011**

## **ABSTRACT**

Since its inception in 1861 when the first public accounts committee was established in the United Kingdom, this oversight mechanism has developed into a model for non-executive financial oversight and accountability at the national and provincial levels of government throughout the Commonwealth and beyond.

A few municipalities in South Africa have also established public accounts committees, but they are a few isolated cases. The hesitance on the part of South African municipalities to establish a good governance mechanism with a proven track record is a cause of concern, especially in view of the poor financial management that prevails throughout the local sphere of government.

In this case study of the public accounts committee established in the City of Cape Town in 2006, the researcher explores the feasibility of the implementation of the public accounts committee model within the local government sphere in South Africa. Twenty internationally recognised public accounts committee practices were identified and used to probe the selected case to gain in-depth knowledge of the extent to which the committee adheres to these recognised practices. Where the committee deviated from accepted practices, the reasons for the deviation and its impact on the effectiveness of the committee were analysed. Finally, the key lessons learnt from the experience of the public accounts committee in the City of Cape Town are used in order to make two sets of recommendations: Firstly, recommendations on how the public accounts committee of the City of Cape Town can become more effective than it currently is – recommendations which are also relevant to any municipality wishing to establish a public accounts committee. The second set of recommendations is addressed to the national authorities in charge of finance and local government, as the challenge of establishing improved governance systems in local government is of national importance, and it is within the power of these authorities to remove a few key obstacles in the way of establishing municipal public accounts committees.

## **ACKNOWLEDGEMENTS**

I wish to thank the following persons for their support: My wife and daughters for their patience and understanding, and especially their encouragement towards the end of the project.

Many thanks to my supervisor, Prof. Woods, for his advice and guidance, but especially for his encouragement to complete the project.

I also wish to thank two of my colleagues, Warda Benjamin, who assisted in many ways, and Nthabiseng Ngoswana, for sharing her wisdom and time despite her own work pressures.

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## LIST OF ABBREVIATIONS

<b>AC</b>	Audit Committee
<b>AG</b>	Auditor-General
<b>AFS</b>	Annual financial statements
<b>AGSA</b>	Auditor-General of South Africa
<b>APAC</b>	Association of Public Accounts Committees
<b>CCPAC</b>	Canadian Council of Public Accounts Committees
<b>CoCT</b>	City of Cape Town
<b>CoCT PAC</b>	City of Cape Town Public Accounts Committee
<b>COGTA</b>	Department of Cooperative Governance and Traditional Affairs
<b>CPA</b>	Commonwealth Parliamentary Association
<b>HoC</b>	House of Commons
<b>MFMA</b>	Local Government: Municipal Finance Management Act
<b>MM</b>	Municipal Manager
<b>MPAC</b>	Municipal Public Accounts Committee
<b>MSA</b>	Municipal Systems Act
<b>MStr</b>	Municipal Structures Act
<b>NCOP</b>	National Council of Provinces
<b>PAA</b>	Public Audit Act
<b>PAC</b>	Public Accounts Committee
<b>PFMA</b>	Public Finance Management Act
<b>PPIPPL</b>	Powers, Privileges, Immunities of Parliament & Provincial Legislatures Act
<b>RSA</b>	Republic of South Africa
<b>SADCOPAC</b>	Southern Africa Development Community Organisation of Public Accounts Committees
<b>ToR</b>	Terms of reference
<b>UK</b>	United Kingdom
<b>WBI</b>	World Bank Institute

# CHAPTER 1

## INTRODUCTION AND RESEARCH PROBLEM

### 1.1 Introduction

The Republic of South Africa (RSA) is a country faced with vast socio-economic challenges, especially poverty and the challenge of bringing quality public services to all its citizens. The RSA Constitution requires that all spheres of government, and all organs of state, provide effective, transparent, accountable and coherent government for the Republic.

There are three spheres of government in the RSA, viz the national, the provincial and the local or municipal sphere of government. The executive and legislative authority of a municipality is vested in the municipal council. The municipal sphere is where the bulk of service delivery takes place and, as such, where a major portion of public funds are spent and where effective oversight over the spending of public funds should be in place. However, the municipal sphere faces serious challenges as far as governance, accountability and financial management systems are concerned. The unacceptably high number of qualified audit reports annually issued by the Auditor-General of South Africa (AGSA) illustrates the serious financial management deficiencies in local government. For example, in respect of the 2007-08 financial year the AGSA was able to provide a clean bill of health for only 22% of municipalities. There have also been a number of instances of civil unrest in a number of municipalities recently that have been ascribed *inter alia* to perceived service delivery failures within municipalities. These challenges point to a compelling need for corrective action to be taken, which may include the establishment of oversight mechanisms, including oversight mechanisms that will enable and facilitate

effective management of public resources, improved accountability and generally better governance in municipalities. The Minister of Cooperative Governance and Traditional Affairs is convinced that the establishment of municipal oversight committees in all municipalities will go a long way towards improving the governance situation in municipalities (Shiceka, 2009).

A non-executive oversight mechanism such as a public accounts committee (PAC) has the potential to play a key contributing role in determining the success with which public funds and other resources are applied or managed in order to successfully deliver quality public services.

Internationally, legislatures in the national and sub-national spheres appoint committees as their main instruments of oversight. And as far as financial oversight is concerned, legislatures appoint the public accounts committee as their key financial oversight committee. The main objective of *ex post* oversight (oversight after the event) by a PAC is to hold to account those charged with the use of public funds to implement annual plans and priorities, and to look back in order to have an informed perspective and insight for purposes of future planning. Although PACs have been functioning with varying degrees of success, the PAC has built up a reputation as one of the more successful legislative oversight mechanisms.

It is not surprising, therefore, that PACs carrying out financial oversight on behalf of the national and provincial legislatures have been playing an important role since the start of the democratic dispensation in the RSA. Since 1994, PACs have existed at Parliament and at the legislatures of the nine provinces in the RSA.

In the municipal sphere of government in South Africa thus far, however, the appointment of PACs has been limited. Sixteen years after the birth of democracy in the RSA only 48 (17%) of the 283 municipalities in South Africa have established MPACs.

This research study will attempt to determine what the main obstacles in the way of establishing MPACs are, and how these obstacles may be removed.

Given the key role of financial oversight as part of oversight systems in government and in relation to public sector governance, it is important to find out more about the context within which MPACs are supposed to function. It is important to also identify the challenges that should be considered when establishing an MPAC in terms of generally accepted PAC traditions as practiced at national and provincial spheres of government all over the world, and to establish which practices can be adopted for municipal financial oversight in the RSA.

## **1.2 Background to the study**

Substantial literature exists internationally in relation to the importance of PACs as a successful oversight mechanism. The literature study reported on in Chapter 2 will show that this form of financial oversight mechanism has been very successful in the national and sub-national spheres of government, especially in the 170 countries of the Commonwealth. Because of this, the researcher was expecting to find confirmation in the literature that similar committees would have been established at local authorities and with the same success. However, this was not the case.

Internationally, there is an abundance of literature about the value of PACs as oversight mechanisms, often also referred to as scrutiny mechanisms. Since the establishment of the first PAC in the House of Commons in the United Kingdom in 1861, this mechanism of oversight over the spending of public funds has developed into a world-wide model, especially in the commonwealth countries where it is uncommon to find a legislature without some form of a PAC. In 2008, a review by the same Parliament where the PAC was born over two centuries earlier, concluded that ensuring financial integrity and regularity was a key role of parliamentary oversight

and that the PAC remained the key mechanism fulfilling this role. Sub-national or state legislatures throughout the Commonwealth have therefore adopted the PAC model as its key *ex post* oversight committee.

PACs originally concentrated on the regularity of expenditure as reported at the end of any particular financial year. However, PACs in the last few decades have increasingly also started concentrating on the value received for the public funds that are spent (which is also referred to as examination of the economy, efficiency and effectiveness of expenditure) to such an extent that some PACs now focus predominantly on this aspect of public spending.

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*Ex post* (“after the event”) oversight as practiced by PACs is the key and final stage within the public sector cycle of accountability which annually commences with the granting of funds to the executive and ends with the executive having to account to non-executive public representatives for the spending of the allocated funds. (The executive is often referred to as the “government of the day” and is charged with the implementation of policy, *inter alia* by means of spending public funds. In the municipal sphere, the executive authority is exercised either by an executive mayor, or an executive committee.)

The PAC process therefore involves publicly elected representatives holding the executive and executive appointees accountable for the manner in which public funds have been used. The presence of this high-level governance process has become an important criterion that is used when countries are evaluated on the extent to which they comply with governance best practices at national and sub-national levels.

The drafters of the South African Constitution, by including provisions for legislative oversight mechanisms in respect of the national and provincial spheres of government, seem to have recognised that scrutiny or oversight of the executive by

the legislature is a recognised function of a democratic country. Sections 55 and 114 of the RSA Constitution require of the National Assembly and the provincial legislatures that they establish mechanisms that will maintain oversight of the exercise of national and provincial executive authority and organs of state. (Unfortunately, the RSA Constitution does not contain a similar provision as far as local government is concerned.) Based on the empowering constitutional provisions, the principal mechanism of oversight in the South African Parliament and in provincial legislatures since the adoption of the RSA Constitution in 1996, has been the PAC. The PACs established at Parliament and at the provincial legislatures have very similar mandates, namely to examine the annual audited public accounts at the end of each financial year, and to report thereon.

It was therefore understandable that, when new local government financial management legislation for South Africa was being drafted in 2003, it was proposed that the new legislation should provide for the establishment of municipal PACs that could fulfil a similar year-end financial oversight role within local government.

### **1.3 Research problem and objectives**

When the Municipal Finance Management Act (MFMA) was adopted in 2003, it unfortunately did not clearly and unambiguously provide for the establishment of MPACs. The only statutory provision finally taken up in the MFMA in which reference to an MPAC is made is in section 129(4)(b) of the said Act where it provides the National Treasury with the discretion to issue guidelines for functioning and composition “of any public accounts or oversight committees established by the council to assist it to consider an annual report”.

The establishment of MPACs was therefore not made prescriptive; in fact, the provision in the MFMA seems to have created more confusion about the existence of MPACs than it has provided clarity, seeing that the production of the “oversight

report” required in terms of section 129(1) of the MFMA has, in practice, become the main function of an oversight committee or an MPAC. In terms of section 129(1) of the MFMA, the council of a municipality must produce an oversight report based on the review of the annual report of a municipality. Guidelines issued by the National Treasury, as the chief financial regulating authority of the public sector, suggests that, in cases where an MPAC exists, it could also double up as the oversight committee responsible on behalf the municipal council for the production of the oversight report. This suggests that the role of an MPAC is wider than that of a section-129 oversight committee. The detailed guidelines issued with regard to the production of a municipal oversight report – a report concerned with the quality and adequacy of the annual report of the municipality – does not express any view on the functions of an MPAC, but only deals with the production of the section-129 oversight report. In October 2009, the Minister of Cooperative Governance and Traditional Affairs undertook to issue a framework for the functioning of MPACs by the end of 2009, but this did not happen. **There is, therefore, no statutory obligation or other strong policy direction available at present for the establishment of MPACs at local authority level.**

<b>Table 1.1:</b> <b>Status of established MPACs in South Africa as at August 2010</b>									
<b>Total MPACs</b>	<b>E/Cape</b>	<b>F/State</b>	<b>Gauteng</b>	<b>KZN</b>	<b>Lim-popo</b>	<b>Mpu-malanga</b>	<b>N/Cape</b>	<b>N/West</b>	<b>W/Cape</b>
<b>48</b>	0	0	13	24	1	7	0	0	3
<i>Source:</i> Written reply by the Minister of Cooperative Governance and Traditional Affairs to Question No 2185 in the National Assembly, dated 20 August 2010									

This absence of a statutory or other regulatory framework for the establishment, role and functions of MPACs may be a key reason why only 48 municipalities out of a total of 283 municipalities in South Africa have thus far established MPACs (see



Table 1.1 on the previous page), and why many of these municipalities are struggling to define the role and functions of MPACs. Another likely complicating factor is the difference in legal construct between the national/provincial and municipal spheres of government. The RSA Constitution clearly separates the powers and functions of the executive and non-executive authorities in the national and provincial spheres of government. For example, there are separate chapters in the RSA Constitution for Parliament and the national executive, as well as separate sections in respect of the provincial legislative and provincial executive authorities. The RSA Constitution does not provide for the same clear separation of powers as far as municipalities are concerned, and section 151(2) in fact states that both the executive and the legislative authority of a municipality is vested in its municipal council. The RSA Constitution also does not explicitly provide an oversight function to the non-executive component of a municipality to the extent that it provides such a function to parliament and the provincial legislatures.

The position created by the weak *de jure* non-executive oversight function in municipalities is further complicated by weak *de facto* non-executive oversight. Members of council who serve on non-executive structures of the council reportedly find it difficult to oversee their colleagues who serve in the municipal executive, but who are senior members of the same council. This provides additional challenges to the accepted PAC model, should attempts be made to apply it within local government.

Lastly, there are the challenges that any institutionalisation process is normally faced with, such as the resourcing of new structures, such as MPACs, that require additional resources and expertise.

It seems, therefore, that the introduction of MPACs as mechanisms of municipal financial oversight in South Africa is being delayed by a number of factors, even

though MPACs have been mooted as part of the solution to the problem of poor municipal governance.

Notwithstanding these difficulties, there are municipalities in South Africa that have established MPACs. The City of Cape Town (CoCT) was the first municipality to establish a PAC, and the researcher has chosen it as the subject of research. (Of the six metropolitan areas in South Africa, four others have since also established MPACs, viz the City of Johannesburg, Ekurhuleni, the City of Tshwane and Ethekwini).

#### **1.4 Topic of research and research questions**

As the CoCT took the bold step of establishing the first MPAC in South Africa in 2006, it was decided that a case study of the CoCT PAC three years into its existence would provide suitable material for exploring the research problem.

##### **Adopting the PAC model for financial oversight in South African municipalities – a case study of the PAC in the City of Cape Town**

The **specific research questions** that the researcher endeavoured to answer are the following:

- **What is the background to and history of the establishment of the PAC in the City of Cape Town (CoCT)?**
- **To what extent does the PAC in the CoCT adhere to generally accepted PAC practice?**
- **What are the key lessons to be learnt thus far in relation to the PAC in the CoCT, and how could it guide other municipalities still intending to establish a PAC?**

The insight gained from the answers to the above questions inform the challenges faced by municipalities throughout the RSA as far the establishment and effective functioning of financial oversight mechanisms are concerned. The research results were expected to hold potential significance for policy makers within the RSA as far as policy shortcomings are concerned, but also to indicate which practices support effective and efficient financial oversight.

## **1.5 Relevance of the research**

The research was regarded as relevant on the basis of the following considerations:

- Service delivery within the local government sphere is a national priority, and proper oversight within the local government sphere is weak. MPACs have the potential to strengthen oversight and governance within local government, which would have a positive bearing on financial management, the effective, efficient and economic use of scarce public resources and, ultimately, on service delivery.
- The establishment of MPACs has been very slow. This may to a significant degree be the result of poor policy direction from the relevant authorities and the absence of a clear framework to guide the composition, functions and powers of MPACs. It was expected that the research study would advise concerning the type of guidance that should be provided by the relevant authorities.
- A considered determination of the challenges faced by MPACs could enable interested parties to respond to the challenges through appropriate corrective action. Suggestions derived through the research will be made on possible ways in which to address the challenges alluded to above.

## **1.6 Research design and methodology**

This research study was commenced with a review of the available literature on the subject of financial oversight committees, especially the PAC as an internationally recognised and established mechanism of financial oversight. The researcher planned to pay particular attention to the key attributes identified in the available literature regarding the common and essential features of a PAC.

This was to be followed by a review of the legislative and regulatory framework applicable to financial accountability and oversight in the RSA as the context within which PACs operate.

The qualitative research method was selected because of its suitability to interpreting and understanding human and organisational behaviour. The research was conducted by carrying out a case study of the first MPAC to be established in the RSA by studying its regulatory framework and its key areas of operation; by observing the MPAC in question as it operated, and by interviewing members of the MPAC and other relevant role players on the basis of a number of questions mainly relating to the implementation challenges experienced, as well as operational successes. Throughout the research, the researcher was cognisant that he was the primary research instrument and that he therefore had to observe with objectivity and “without affecting that which is being observed” (Welman, Kruger & Mitchell, 2005: 8).

## **1.7 Research report sequence**

In Chapter 1 of the thesis, the research topic is introduced and its relevance explained in the context of the PAC as an effective non-executive financial oversight mechanism internationally and within the national and provincial spheres in the RSA. The research problem is developed and linked to the limited existence of PACs within

the municipal sphere of government in the RSA, and specific research questions are articulated. The research design and methodology is briefly explained.

Chapter 2 takes an in-depth look at the literature related to the study. Key concepts are defined, especially concepts relating to accountability and oversight. A major part of the literature review focuses on the PAC as the world standard for financial oversight mechanisms and on the manner in which the PAC model has been deployed throughout the Commonwealth and beyond. The literature review concludes by suggesting that there seems to be no reason why the PAC cannot function as a financial oversight mechanism within the municipal sphere in the RSA.

Chapter 3 provides an overview and an analysis of the legislative and regulatory framework within which municipalities in the RSA function, and which frames the principles of accountability and oversight.

Chapter 4 documents the design and methodology followed during fieldwork. The use of the qualitative research method is motivated as well as the choice of the case study approach. The selection of the City of Cape Town as the subject of the case is explained, as well as the data sources, data accessibility and the selection of the respondents. The main research instrument is discussed, as well as the manner in which the data were analysed and interpreted.

The research results are outlined in Chapter 5 by means of summarising and discussing the significant findings in the context of the literature, and conclusions and recommendations are provided.

## **CHAPTER 2**

### **LITERATURE REVIEW AND THEORETICAL FRAMEWORK**

#### **2.1 Introduction**

It is mostly over the last decade or two that literature has appeared on oversight by legislatures – the role of committees in this context – and in particular on the role of the PAC as a key mechanism of oversight by elected non-executive authorities. It has been reported that legislatures have in recent decades innovated and rejuvenated themselves in terms of their institutional structures, particularly parliamentary committees (Longley & Davidson, 1998:2). Since the 19<sup>th</sup> century, the PAC has played a critical role as one of the key committees of legislatures throughout the Commonwealth and beyond (Stapenhurst, Sahgal, Woodley & Pelizzo, 2005:2). The PAC is a committee that, according to Wehner, has not “outlived [its] usefulness” (2003:13); in fact, it has been pointed out that countries from outside the Commonwealth, such as Indonesia, have recently started adopting the PAC model as a good governance mechanism in their own legislatures, because of its sound reputation (Loney, 2009).

Most of the scholars who have written on the subject of oversight, and in particular on the PAC as an oversight or accountability mechanism, have done so within the context of national legislatures. It was in parliament, after all, that the imperative of oversight and the mechanism of the PAC were conceived. However, literature has recently also appeared in relation to sub-national legislatures and their utilisation of the PAC as an oversight mechanism. In Commonwealth countries with federal or semi-federal states or strong provincial structures, PACs exist as the primary financial oversight mechanism. For example, countries such as Canada, Australia, India and South Africa have all established PACs at sub-national level. However, literature about non-executive oversight in the local sphere of government is very

limited – it seems that oversight mechanisms similar to the PAC within local government only started featuring at the turn of the 21<sup>st</sup> century.

Most of the earlier literature on PACs deals with the nature and form of the PAC and its working practices. A publication central to this discourse is *The Overseers: Public Accounts Committees and Public Spending* written by the former Clerk of the New Zealand House of Representatives, David McGee, in 2001. *The Overseers* is based on a survey of a 70 Commonwealth countries, and concludes that recognition must be given to the fact that “Parliament’s most important committee in the area of oversight and scrutiny is undoubtedly the Public Accounts Committee” (McGee, 2002: IX).

Since 2002, a series of publications have cast more light on the PAC as a phenomenon of governance. Stapenhurst – often joined by Pelizzo – has consistently conducted research and written about the PAC since 2004 and is currently heading a project of the World Bank Institute aimed at a global assessment of PACs. Institutions that have added their perspective to the public discourse on the PAC as a key legislative scrutiny and accountability mechanism include the *Hansard Society* and the *Overseas Development Institute* in the United Kingdom; in Canada, the *Institute on Governance*, the *Canadian Council of Public Accounts Committees*, the *Canadian Comprehensive Auditing Foundation* and the *Parliamentary Centre*. The *Public Sector Governance and Accountability Research Centre* at La Trobe University in Australia has also started to make useful contributions since its establishment in 2005. Literature about local authority oversight and accountability mechanisms within the Commonwealth is extremely limited, however. Some research on local authority scrutiny and oversight committees has been carried out in the United Kingdom since the country’s substantial local government reforms in 2000. In South Africa, literature on municipal oversight is virtually non-existent, with only one research study being available (see par 2.8 below).

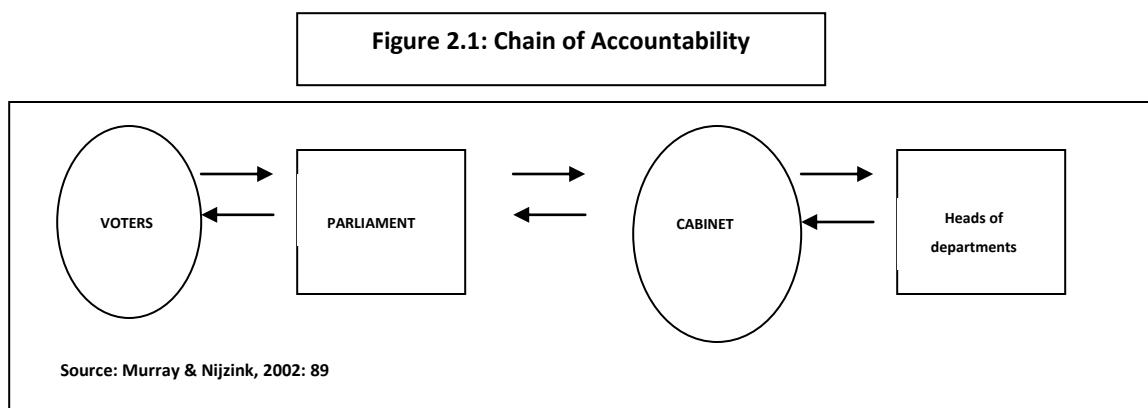
## 2.2 What is oversight and accountability?

There is general agreement that “public oversight” and “accountability” are about calling to account those entrusted with executive powers and public resources, so that they can give account of how they exercise of their powers and responsibilities. And it is the legislature, as the elected representative body of the citizenry, who must exercise this oversight. Yamamoto who carried out a comparative study of 88 national legislatures in 2003, defines legislative oversight as “the review, monitoring and supervision” of the executive government, but also of all public agencies” (2007:9). Schacter reminds us that society concedes wide powers to the executive authorities in the government of the day: “to tax, to spend and to make and enforce policies and laws” for which, in return, they expect accountability (Schacter, 2000:1). This accountability relationship is a horizontal process of relationship (Hedger & Blick, 2008:2), and is made possible because of the clear separation between the executive and the legislative authority – a core feature of democratic systems of government. In fact, McGee argues that being held accountable for the exercise of power is a “requirement for democracy” (2002:9) and Barkan, Ademolekun, Zhou, Laleye & Ng’ethe (2003:1) points out that a legislature is effective only if it takes on a “watchdog” role over the executive. Brazier, Flinders & McHugh regards the scrutiny of executive government and holding it to account for its actions as the key function of a legislature (2005:33).

The drafters of the South African Constitution of 1996 were clearly in agreement with the aforementioned authors, seeing that they included constitutional provisions that require legislatures to establish mechanisms to ensure that all executive organs of state are accountable to the legislatures – mechanisms that are to maintain oversight of the exercise of executive authority. The *Report of the Independent Panel Assessment of Parliament* produced twelve years after the promulgation of the Constitution confirms that accountability and oversight remain “crucial aspects of the representative role of legislatures” (Govender, 2008:37).



Murray and Nijzink illustrate the accountability arrangements provided for in the South African constitutional framework in the form of an “accountability chain” based on the principle that the legislatures are responsible for executive oversight. The members of the executive, in turn, have to ensure oversight of those accountable to them, such as the heads of government departments or the boards of public entities (see Figure 2.1 below).



From a stewardship point of view, the accountability obligation therefore originates from “the practical need to delegate certain tasks to others so as to distribute delivery of large and complex workloads” (Hedger, 2008:2). The oversight process entails that the delegating authority expects the executive authority to explain and defend his or her plans, actions and decisions taken in relation to an agreed accountability period. Oversight can happen before, during, or at the end of an agreed accountability period. In the case of financial oversight, the agreed period normally is a financial year, i.e. the 12-month implementation period for which public sector institutions budget and are obliged to account.

In a public sector context, the annual budget process mainly consists of four stages: (i) the drafting stage; (ii) the legislative approval stage; (iii) the implementation stage,

and (iv) oversight stage. During the audit and oversight stage, the legislature, as overseeing authority, utilises all information available to it for oversight.

Before the start of a financial year, legislatures mainly engage the executive authority on strategic plans and budgets regarding issues of prioritisation and affordability (Wehner, 2003:3). To ensure that public service delivery is as efficient, effective and economical as possible, government departments and other institutions are required to formulate strategic plans and propose the allocation of resources based on projected costs for the implementation of those plans (National Treasury, 2007:1). The legislative stage entails the examination of the expenditure plans put forward by the executive. Once satisfied, the legislature will approve the spending of public funds as presented in the documented budget by means of an Appropriation Act.

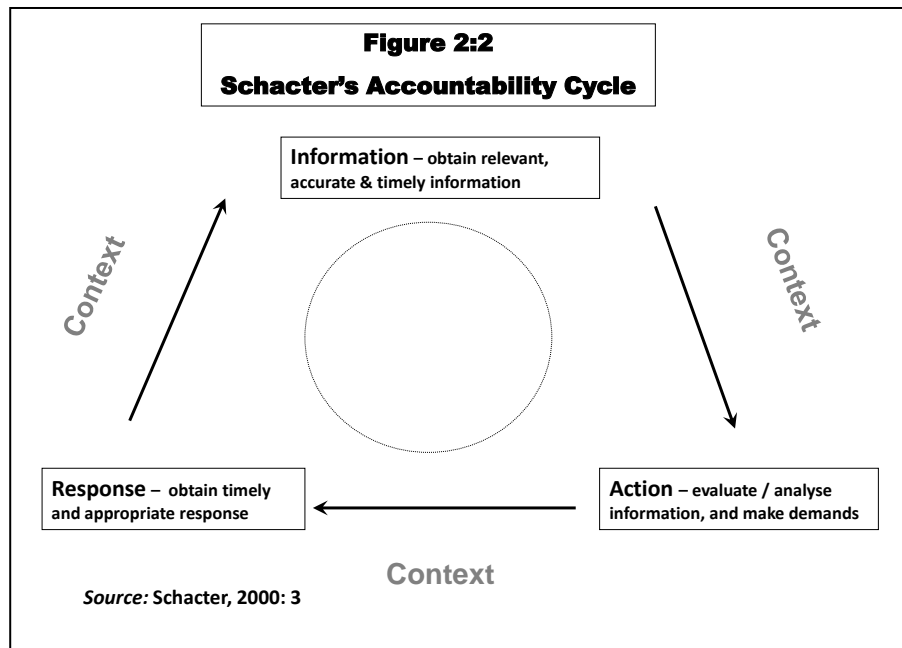
In the South African context, the implementation of budgets and strategic plans is in the hands of the managerial branch of the executive as “personified in the accounting officers (in the case of departments), accounting authorities in the case of public entities, and municipal managers in the case of municipalities” (Pauw, Woods, Van der Linde, Fourie & Visser, 2002:43). At the end of the accounting period, the accounting officer, accounting authorities and municipal managers are obliged to provide proper disclosure in an annual report on the manner in which the funds were spent. The Auditor-General (AG) as an independent attesting agency examines the public accounts and other information disclosed in order to provide the legislatures with an independent view thereon.

The documents used in the accountability process therefore include strategic plans, budgets, in-year reports, annual reports (at year-end) and reports produced by independent institutions such as the AG (PCC/WBI, 2007:5). Certain oversight systems, such as in the United States of America, predominantly focus on policies and budgets before the commencement of the financial year (Schick, 1990:46), while the established focus of Commonwealth legislatures have always been on year-end

oversight of budget implementation as informed by reports of the supreme audit institutions (Hedger & Blick, 2008:5).

Those entrusted with delegated responsibilities must be required after the fact to render an account of their actions. According to Hedger and Blick, the accountability principle potentially has two facets: Firstly there is “calling to account” – being required to explain action, or inaction, and the reasons for this, and, secondly, “holding to account”, which entails being penalised or required to institute corrective actions (2008:2). According to a representation of the accountability cycle developed by the Institute on Governance in Canada, the oversight and accountability process has at least three stages (Schacter, 2000:3): (i) the information; (ii) the action; and (iii) the response stage. During the information stage, the overseeing authority normally attempts to obtain the best possible accountability information. Information is obtained directly from the accountable executive institution, or from another source such as an independent assurance agency, for example an Auditor-General. The aim of the second stage, the action stage, is to “produce demands upon the political executive” to clarify and account for the actions they have taken. However, the success of this stage is dependent on the ability of the overseer to process the information, and on the overseer’s commitment to use the processed information as the foundation for the demands to be placed on the accountable institution. The success of the third stage, the response stage, is dependent on the appropriateness of the accountable institution’s responses and how quickly it responds (see Figure 2.2 on page 18).

However, it is important to note that the cycle of accountability does not occur in isolation – political, social and economic factors provide a context that will impact on the effectiveness of the accountability process (Schacter, 2007:4). Hedger and Blick seem to be in agreement, as they point out that a fully functioning accountability mechanism such as a PAC “can be rendered ineffective if the surrounding governance environment is not conducive and supportive” (2008:4).



A pertinent illustration of the principles underlining the model of the accountability process illustrated in Figure 2.2 (above) relates to the information improvements brought about in South Africa by reforms to the statutory framework relating to financial and non-financial performance reporting. A new statutory framework in the form of the Public Finance Management Act (PFMA) introduced best practice requirements as far as the quality and timeliness of accountability information is concerned. At the time when the PFMA was promulgated in 1999, the legislatures in South Africa in most cases received financial statements and audit reports thereon more than 12 months after the end of the financial years. The detail and quality of the information then contained in the accounts were inadequate, and virtually no information was available with regard to service delivery performance, the non-financial accountability information. Today, 94% out of a total of 505 sets of accounts of national and provincial departments and public entities are tabled within seven months of the end of the financial year in an annual report containing increasingly improved information on service delivery performance (AG, 2009). As far as the

action stage is concerned – Stage 2 of the accountability cycle in Schacter’s model – progress in South Africa, however, is not as successful. It was only in 2008 that the National Assembly in South Africa adopted a framework for improved oversight. The *Oversight and Accountability Model* includes as it is called, is aimed at improving the capacity to analyse and process accountability information regularly provided to the National Assembly and the National Council of Provinces by national government departments and public entities. None of the provincial legislatures have, however, adopted similar models to ensure effective evaluation accountability information. As far as the response stage – the third stage of Schacter’s accountability cycle – is concerned, Parliament’s oversight model also contains measures aimed at generating more responsiveness from the executive authorities in response to the concerns of the legislature. Most of the measures proposed in Parliament’s Oversight Model, however, are yet to be implemented.

### **2.3 Are oversight and accountability important?**

If democracy is the overall objective of a system of government, then oversight and accountability is important. At the final sitting of the first democratically elected Parliament, on 26 March 1999, the former president of the Republic of South Africa, Nelson Mandela, pointed out that –

*It is in the legislatures that the instruments have been fashioned to create a better life for all. It is here that oversight of government has been exercised. It is here that our society in all its formations has had an opportunity to influence policy and its implementation.*

(Sourced from the *Report of the Independent Panel Assessment of Parliament*, 2008)

Oversight and accountability are terms that have emerged as universal attributes of good governance. According to the Secretary-General of the Inter-parliamentary Union, there can be no democratic system of government without transparency and

accountability (Yamamoto, 2007:6). International lending and donor organisations such as the International Monetary Fund and the World Bank have started to consider oversight and accountability as key elements that they expect to be present in any system of government. “As commonly understood, the word (accountability) carries a simple meaning: those with power must answer to those they serve — the people. So defined, accountability is a fundamental concept in ethics, rule of law and democracy and few today would attempt to dispute the concept in principle” (PCC/WBI, 2001: 5).

Legislatures provide the legal and regulatory framework within which the executive authorities and their officials operate, and large amounts of public funds are entrusted to the executive authorities on an annual basis for the execution of the public policies that they had persuaded the legislature to endorse. According to McEldowney (2008:1), oversight by the legislature is the recognised means whereby the executive can be held to account; in addition, “the ability of the elected house to hold government to account is axiomatic to the health of the political life of the state”. Loney (2008:1) can therefore rightly state that accountability is increasingly being regarded as “the best mechanism for ensuring that executive government operates in the best interests of its citizens”. However, oversight is not an end in itself. For oversight to have significance, it has to be guided by the nation’s interests and those of all of its citizens. In exercising their oversight mandate, the overseers – the members of the legislatures – must therefore “clearly understand their role and authority vis-à-vis the Executive, and must be willing to assert this authority to improve service delivery and the quality of governance” (Govender, 2008: 35).

Legislative oversight takes place in two ways mainly: first when policies and plans are put forward for which public funds are required, also referred to as *ex ante* oversight; and after these plans have been implemented, with public funds having been spent in order to implement them, year-end or *ex post* oversight take place (Stapenhurst, Sahgal, Woodley & Pelizzo, 2005:2).

A recommendation made by the AG of British Columbia in Canada at the end of his term of office points to the importance of oversight and he encourages legislators to “strongly encourage and champion the principle that the public has the right to know how government fulfils the responsibilities entrusted to government by the public — as government touches virtually every aspect of a person’s life” (OAG BC, 2006:18).

## **2.4 Committees as primary mechanisms of oversight**

A committee is a functional extension of a legislature’s plenary structure or chamber, and is found in legislatures across the world. Committees have the obligation to keep their parent chamber informed of the outcomes of the work they do on its behalf, and this is normally done in the form of reports which generally contain preliminary findings and recommendations in relation to the matters considered.

Committees nowadays carry out a significant part of the legislature’s work (Yamamoto, 2007:15). In 2001, Pelizzo and Stapenhurst carried out a study involving 83 countries on the various oversight mechanisms being used by their legislatures. The mechanisms included commissions of inquiry; questions to members of the executive authority; interpellations; hearings in plenary sessions of the legislature; and committee hearings. Ninety-five per cent of the respondent legislatures identified committee hearings as a key oversight mechanism (2004:10).

According to Longley and Davidson, the committees of the legislatures are well suited to effective oversight. They point out that “a major – perhaps even the central – factor explaining the growing use of committees in parliamentary democracies” is the legislature’s desire to improve their oversight ability (1998:4). Organising legislatures into committees seems to serve the legislature’s need for more efficient and informed oversight, and although they are “rarely mandated by constitution, yet they almost invariably exist” (Strøm, 1998:24).

The main function of committees is to obtain detailed perspectives on the matters before the legislature in order to be in a position to advise the legislature. A committee system is also an effective mechanism to divide the resources available to the legislature, thereby providing efficient processing of the workload. As committee members have, or are able to, develop specialised skills, the quality of the work done by committees is potentially of a higher standard than larger structures. A committee's composition is normally representative of all of the political parties in the legislature (Yamamoto, 2007:16) and this is also the case in the RSA. As committees can develop work programmes based on the need that exists at any particular time, committees have the ability to cope with detailed reports or submissions (Murray & Nijzink, 2002:91). Committees have the flexibility to meet whenever and wherever necessary, i.e. outside of the legislature's precinct. In most democracies, the meetings of committees in the legislatures are open to the public. Committees are also able to process higher volumes of work than the legislature can manage in plenary sessions, and committees can co-operate with each other as, and when, required. However, it is important that the outputs of the committees – their reports containing their Preliminary findings and recommendations – be given the necessary exposure in the plenary sessions, and that they receive the endorsement of the legislature. Committees primarily are instruments of specialisation, and there seems to be agreement that they are effective in acquiring information. They provide their members with a definite advantage over non-committee members because of the superior information at their disposal, which enables their members to contribute greatly to informed discussion in plenary debates (Yamamoto, 2007:16).

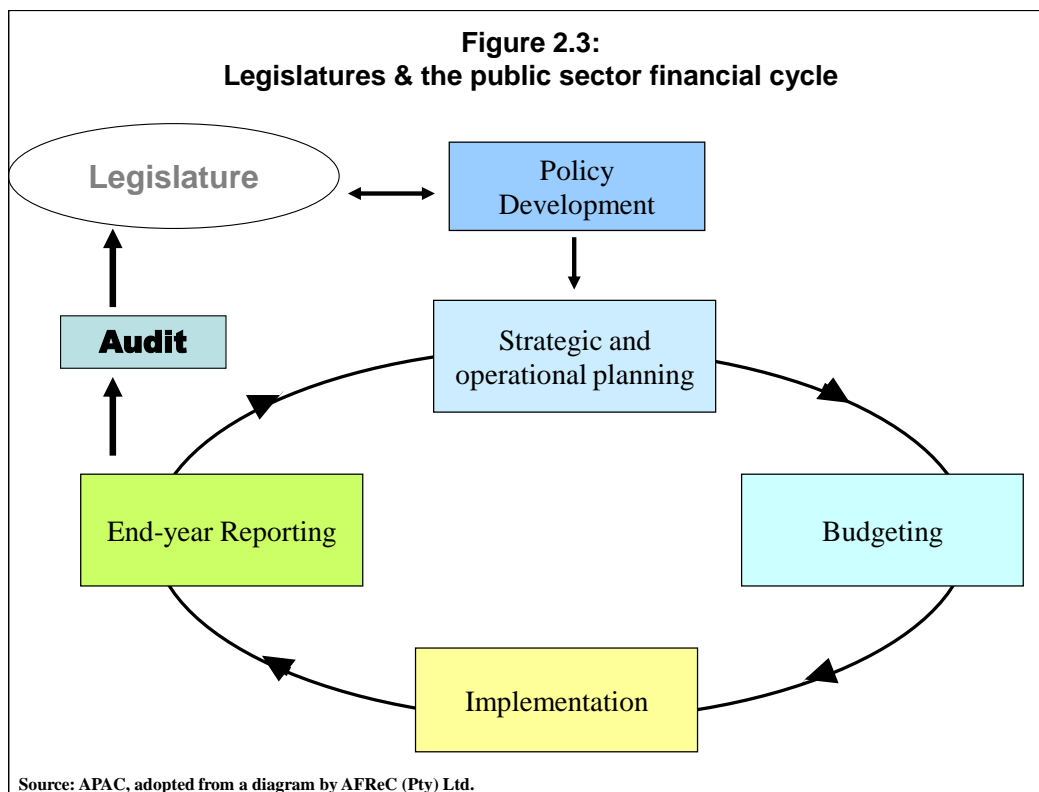
As the people's assemblies with the function to oversee, legislatures can make a difference only if they have the capability to obtain information and expertise independent of the government (Strøm, 1998:53). After all, argue Michels and Meijer, democratic accountability "can only thrive if the party to whom account is rendered has sufficient information at [its] disposal [so] as to be able to form a judgement"



(2008:170). In most countries, legislatures have therefore established independent institutions that can provide the legislature with information on which they can rely. Such “watchdog” organisations include supreme audit institutions, anti-corruption commissions, and ombudsmen (Hedger & Blick, 2008:12).

## 2.5 The Auditor-General and oversight

The supreme audit institution – in Commonwealth countries known as the Auditor-General – is the primary assurance agency in systems of government and the main source of information as far as public accounts committees are concerned (McGee, 2002:99). The main purpose of a supreme audit institution is to examine the management of public funds by the government of the day, as well as the quality and credibility of information concerning financial accountability regarding funds that government provides to the legislature.



In South Africa, the AGSA has been established as an independent institution in support of democracy. The AGSA has to audit and report to the national and provincial legislatures and municipal councils without fear, favour or prejudice. In Figure 2.3 on page 23 the position of the AGSA as an assurance agency is illustrated as the agency attesting to the reliability of the information concerning accountability that is disclosed to the legislature at the end of the financial year.

Traditionally, AGs only audited financial information, but in the case of South Africa and other progressive audit offices in the Commonwealth, the AGSA now also audits the non-financial performance information (predetermined objectives), thereby providing the legislature with more attested information than before.

## **2.6 What is a Public Accounts Committee?**

In a parliamentary democracy it is a fundamental and, in many cases, a constitutionally documented principle that the legislature has ultimate authority over the public funds. This authority is mainly exercised by authorising the raising of public revenue, as well as the appropriation thereof. The executive “should have no income which is not granted to Parliament or otherwise sanctioned by Parliament” and “have no expenditures except those approved by Parliament, in ways approved by Parliament” (CCPAC, 1989:12).

In the case of the PAC, the indisputable focus of its oversight is public funds and the control or protection of the “public purse” (PCC/WBI, 2007:7). The focus of the PAC is on the manner in which funds have been used in the implementation of agreed policy objectives (Hedger & Blick, 2008:5). The PAC draws on historical information relating to all aspects of the management of public funds and other resources as it is captured in the accounts of the State. The PAC concerns itself with administrative oversight and not policy oversight (Longley & Davidson, 1998:6), and does not investigate the spending activities of the public sector only, but also other activities

that impact on the public coffers, such as contingent liabilities or decisions that have a long-term impact on public assets (Hedger & Blick, 2008:6).

The essence of PAC oversight is that, at the end of any particular financial year, and with independent perspectives provided by the Auditor-General, the said committee requires explanations from the spending authority about their expenditure and the extent to which spending objectives were achieved or not achieved. (Wehner, 2003:3; McEldowney, 2008:4). The historical perspective acquired by the PAC provides the opportunity for past mistakes to provide lessons for the future (McEldowney, 2008:8).

The PAC traditionally seeks assurance that funds are spent with regularity and in line with the purposes for which it was initially approved by the legislature. The modern PAC, however, will also seek assurance that funds are spent economically, efficiently and effectively (Wehner, 2003:3). There are isolated instances where the PAC also oversees the development of budget policies and budget planning, but it is unlikely that this will become the norm (Hedger & Blick, 2008:9). However, if the PAC process is effective, its recommendations can also inform future budgets, creating continuous improvements in public spending (Wehner, 2003:3).

Most of the 170 legislatures in the Commonwealth have established PACs to oversee the spending of public funds (McGee, 2002:IX). The first legislature to entrench the principle of oversight of public funds was the House of Commons in 1861 when it established a “Committee on Public Accounts” as a key part of Parliament’s control over public spending (McEldowney, 2008:3). The PAC model has achieved such success that Wehner (2003:2) argues that “the protracted popularity and success of this institutional export indicate the importance of such a committee as the legislative apex for financial scrutiny in the Westminster tradition of parliamentary democracy”. He also points out that the importance of parliamentary oversight of audit reports “is being promoted by international organisations as a crucial mechanism to facilitate

transparency in government financial operations”. The popularity of the PAC can be seen from the extent to which all of the legislatures in four Commonwealth countries with federal or semi-federal systems at national and sub-national levels have established PACs (see Table 2.1 below).

<b>TABLE 2.1: National and sub-national Commonwealth PACs</b>		
<b>Countries</b>	<b>Number of Jurisdictions</b>	<b>Number of established PACs</b>
Australia	8	8
India	28	28
Canada	14	14
South Africa	10	10
<b>Source: Own research</b>		

Eighty-five per cent of PACs in the commonwealth rely primarily on the Auditor-General’s report for oversight (McGee, 2002:99), although a number of PACs now also carry out self-initiated inquiries. For example, in Australia and New Zealand 90% of the PACs reported self-initiated inquiries (KPMG, 2006:28).

The PAC normally supplements the perspective provided by the AG by summoning senior public officials to its hearings in order to obtain first-hand information. In certain countries it is an established convention for the PAC to engage the political head of the department or agency concerned (see Table 2.2 below). What is important, however, is that the PAC is formally given the power to summon any person that may be necessary for a proper enquiry, and to be able to obtain any documentary evidence that it may require.

The PAC has a strong tradition of non-partisanship and unanimous decision-making as decisions and reports are usually endorsed by all the members of the committee. The non-partisan tradition is supported by the convention that an opposition member

should chair the PAC (McEldowney, 2008:4). The arrangement regarding the leadership of the committee is important given the influence the chairperson has over the direction of the committee's examinations and the work programmes. Such an arrangement is also regarded as having the potential to promote greater independence, actual and perceived (Hedger & Blick, 2008:17). In 67% of Commonwealth countries, the chair-persons of the PAC are opposition members (McGee, 2002:97).

**Table 2.2:**  
**Persons normally summonsed as witnesses in Commonwealth Countries**

	Yes	No
Ministers	31%	69%
Departmental officials	97%	3%
AG	79%	21%
Interest groups/civil society bodies	29%	71%

**Source: McGee, 2002:98**

Meetings of the PAC predominantly take place in public as this adds to the ability of the PAC to bring pressure to bear on those whom they oversee, and the media is an important partner in this process. The House of Commons in the United Kingdom advises that a transparent process ensures that those responsible for financial decisions are certain that they will be examined thoroughly for possible mismanagement (HoC, 2008:7). It is surprising, therefore, that only 55% of PACs in the Commonwealth carry out their business in public (McGee, 2002:99).

PACs have devised different methods to capacitate themselves, including ensuring that the said committee has adequate secretariat, research and professional support. Many PACs arrange for pre-hearing briefings by the AG, or rely on the AG as an expert witness during hearings. Some PACs, when carrying out specific enquiries,

receive written evidence from relevant subject matter experts (Hedger & Blick, 2008:40).

Once the PAC has obtained adequate information to arrive at well-informed preliminary findings and conclusions, it prepares a report to be submitted to the parent chamber. The challenge is for the committee to produce its reports in a timely manner, and to get it published. In 87% of the countries of the Commonwealth, the reports of the PAC are available to the public and the media (McGee, 2002:98). It is also important to obtain the endorsement of the legislature so that the PAC recommendations can be furnished to the relevant executive authority for action to be taken in response to the PAC recommendations. It is desirable that the executive authority is formally required to respond to the committee's recommendations and does so within a prescribed period (McEldowney, 2008:12). The responsiveness of the executive to the committee recommendations is an indicator of how seriously the committee is being taken and everything possible should be done to establish work practices that would assist in entrenching such responsiveness as part and parcel of the financial governance environment within the public service (Hedger & Blick, 2008: 5; 42).

## **2.7 Can PAC practices be standardised?**

The key features of the PAC have been described and analysed quite extensively by a number of organisations and authors over the last two decades. Pioneers in this regard were the members of the *Canadian Council of Public Accounts Committees* (CCPAC). The CCPAC is an organisation made up of the 14 public accounts committees in Canada's national and provincial legislatures. In 1991, CCPAC carried out an implementation comparison of over 50 features of PACs aimed at improved accountability through PAC practices (CCPAC, 1991). The survey was based on a guideline for PACs issued by CCPAC in 1988, and covered areas such as the PAC's mandate and terms of reference; the powers of a PAC; the composition of

committees and operating style; its relationship with the AG, the executive, and the media; and the PAC's resource requirements. The majority of these practices are still recognized today as key to an effective PAC.

Then, in 2001, a study group of the Commonwealth Parliamentary Association produced a report on practices of PACs in 70 of the Commonwealth's member countries. The report was edited and published under the title of "The Overseers" in 2002 by a former Clerk of the New Zealand Parliament (McGee, 2002). The watershed McGee report presented a number of conclusions with recommendations on what was regarded as the key requirements for effective PACs. The report also made recommendations about the independence of the AG as the principal institution supporting the work of the PAC (2002: 6-8 and 11).

The McGee report was followed in 2005 by an investigation by a number of researchers led by a senior public sector management specialist of the World Bank Institute (WBI), a division of the World Bank established to support individual, organisational, and institutional capacity among developing countries. This body analysed data from 51 Commonwealth legislatures collected by the Commonwealth Parliamentary Association (CPA) in 2001. The main objective of the WBI analysis was "to deepen" McGee's 2002 analysis.

The WBI concluded that a PAC was more successful when it –

- concentrated on public sector financial activities instead of policies;
- was given the power to investigate all past and present public sector expenditure;
- had the authority to follow up on the actions taken by government in response to the PAC's recommendations; and
- had a good working relationship with the AG (Stapenhurst, Sahgal, Woodley, and Pelizzo, 2005).

This analysis also identified a number of key institutional success factors for PACs which were consolidated into a list of 17 characteristics of an ‘ideal’ PAC (see Table 2.3 below).

<b>Table 2.3:</b> <b>The ‘ideal’ PAC</b>	
1	The Committee is small; committees seem to work well with 5-11 members, none of whom should be government Ministers;
2	Senior opposition figures are associated with the PAC’s work, and probably chair the Committee;
3	The Chair is a senior parliamentarian, who is fair-minded and respected by parliament;
4	The Committee is appointed for the full term of the parliament;
5	The Committee is adequately resourced, with an experienced clerk and a competent researcher(s);
6	There is clarity on the Committee’s role and responsibilities;
7	The Committee meets frequently and regularly;
8	Hearings are open to the public; a full verbatim transcript and summary minutes are quickly available for public distribution;
9	A steering committee plans the Committee’s work in advance and prepares an agenda for each meeting to the full Committee;
10	The typical witness is a senior public servant (the ‘accounting officer’) accompanied by the officials who have a detailed understanding of the issues under examination;
11	The Auditor’s Report is automatically referred to the Committee and the Auditor meets with the Committee to go over the highlights of the report;
12	In addition to issues raised by the Auditor, the Committee occasionally decides to investigate other matters;
13	The Committee strives for consensus in its reports;
14	The Committee issues formal substantive reports to parliament, at least annually;
15	The Committee has an established procedure with the government for following up recommendations and is informed about what, if any, action has been taken;
16	In all its deliberations, the Committee uses the Auditor-General as an expert advisor;
17	Parliaments hold an annual debate on the work of the Committee.
Source: Stapenhurst, <i>et al.</i> , 2005: 25	



In 2006 the government advisory services of KPMG in Australia and New Zealand, on behalf of the Public Sector Governance and Accountability Research Centre at La Trobe University, published a study of the structures, responsibilities and working practices adopted by PACs across Australia and New Zealand as the basis for effective public sector financial accountability and governance (KPMG, 2006). The study identified a range of practices and working methods that most of the PACs in Australasia had developed and that can be regarded as better practices for any PAC.

This study was followed in 2007 by a similar survey among the ten PACs in the national and provincial spheres of government in South Africa (APAC, 2007), and by another comparable survey in 2009 of the PACs of nine countries in Southern Africa (Southern Africa Development Community Organisation of Public Accounts Committees) (SADCOPAC, 2009)). These studies indicated differences in composition, terms of reference and methods of work based on region-specific factors and challenges. However, there were also numerous corresponding features that provided useful insight into the generally accepted PAC practices in these parts of the world and revealed substantial alignment with international practices identified in the earlier literature.

As there seemed to be a high congruence between a high number of these practices, the researcher decided to compare the practices documented by the key authors and organisations since the Canadian jurisdictional survey of 1991. The result of this comparison was a list of 20 practices and attributes of PACs that at least three out of five eminent authors agreed were of decisive importance for an effective functioning PAC to comply with. For the purposes of the subject of this research, these practices provided a most useful checklist of *generally accepted PAC practices* that could be used as a 'standard' against which to measure any established PAC (see Table 2.4 on page 32).

There are a number of other practices, however, that have not been included in the list of 20 generally accepted practices referred to above, although some authors have advocated that these factors were critical. Loney, for example, proposes that PACs need to have mechanisms for self-evaluation (Loney, 2008), and Hedger and Blick suggest that PAC members should operate in terms of quasi-legal or constitutional principles of conduct (2008:40). These practices must still prove to be recognised by more than just one well-known author on the subject of PACS, before it can be regarded as generally accepted practice. The future will judge whether they become sufficiently entrenched to be regarded as the norm.

**Table 2.4:**  
**Generally accepted PAC practices**

- 1 The PAC is established by legislation or standing rules
- 2 The PAC mandate is clear (i.e. *ex post* examination of public sector finances)
- 3 A written description of the PAC mandate and terms of reference exists
- 4 The focus of the PAC is on policy implementation and not policy itself
- 5 The PAC has power to compel any person to appear before it, or to have access to any relevant information
- 6 The PAC has powers to initiate own investigations
- 7 The PAC may make recommendations to the Executive via the House
- 8 Membership is limited to non-executive members
- 9 It is preferable for the chairman to be from the opposition
- 10 The committee operates in a non-partisan manner; always strives for consensus
- 11 Public hearings are the norm, giving access to the general public and the media
- 12 Frequent or regular meetings take place
- 13 Collaboration with other oversight committees is beneficial
- 14 PAC reports are always published and made public
- 15 Primary source documents are reports of the Auditor-General
- 16 Has access to adequate resources – secretarial, research and audit
- 17 Members are exposed to specialised training/professional development
- 18 Debating on the PAC report takes place in the legislature (plenary)
- 19 Executive authority is required to respond to PAC recommendations
- 20 Records of proceedings of the committee are kept

*\*Sources used for comparative analysis:* <sup>1</sup>. CCPAC, 1991; <sup>2</sup>. CPA, 2002; <sup>3</sup>. Stapenhurst *et al*, 2005

<sup>4</sup>. KPMG, 2006; and <sup>5</sup>. Hedger & Blick, 2008

## **2.8 What about PACs in the municipal sphere?**

As set out above, there is ample evidence of the PAC having been accepted by national and sub-national legislatures all over the world as a vital oversight mechanism. The question is whether there is similar recognition of this oversight mechanism at local government level, but there is not much literature available to assist in answering this question.

Local governments in many parts of the Commonwealth have not always made a clear distinction between the executive council members and the non-executive members as the elected representatives in the municipality responsible for overseeing the actions of the executive. This represents “a major difference with the federal (national) and provincial (sub-national) levels where Cabinet represents the Executive Branch of government and is clearly accountable for the government actions” (Shah, 2007:8). There is as much reason at local government level as at other levels of government to have mechanisms to ensure that execution is consistent with the approved budget. Given the frustration with local public services in South Africa and in many other parts of the world, there is certainly also need to ensure that local government “is perceived to have robust accountability arrangements and values” (IoG, 2006: 2). Town councils have an obligation to satisfactorily discharge their responsibilities to ensure “the effective financial stewardship of the public money and assets entrusted to it” (Audit Commission, 2002: 3).

On the basis of available literature, the United Kingdom (UK) seems to be leading the way as far as non-executive oversight of executive local government in the Commonwealth is concerned. At the turn of the 21<sup>st</sup> century, local government reforms in the UK established the requirement of scrutiny committees within all local authorities. Since the *Local Government Act* of 2000, the roles and powers within the local authorities have been clearly separated, specifically the difference in roles

between the Mayor, who has an executive decision-making role and the council assembly whose function is to scrutinise. (*Note: In the UK the oversight function is referred to as the *scrutiny* function.*) The Act also requires the appointment of one or more overview and scrutiny committees whose membership may not include any member of the local authority's executive. This development is regarded as "potentially the most exciting and powerful element of the entire local government modernisation process, leading to active community leadership, and good governance" (Snape, 2002:7). The Audit Commission (AC), as the UK external audit institution for local authorities, points out that "the executive/scrutiny split separates out previously integrated processes", making improved governance possible (AC, 2002:11). In terms of these arrangements "executives are empowered, but they will need to provide a more detailed account than ever before of the use of that power and the council's resources" and the new overview and scrutiny function exists as "a means of holding the council's executive to account for the power it wields" (AC, 2002: 6, 7). However, Snape warns that for councillors to "[hold] fellow members to account in a transparent and rigorous manner is simply not part of the traditional member behaviour and culture" and therefore oversight and scrutiny can only succeed "if scrutiny councillors drive the process and provide genuine leadership" (2002: 9 and 111). Some of the other common pitfalls identified in the UK are listed in Table 2.5:

<p style="text-align: center;"><b>Table 2.5:</b> <b>Common pitfalls faced by UK local authority scrutiny committees</b></p>
<ul style="list-style-type: none"> <li>▪ Conflicting definitions of important terms such as overview and scrutiny</li> <li>▪ Under-resourcing the function</li> <li>▪ Unrealistic and unmanageable work programmes, and poor management of scrutiny processes</li> <li>▪ Lack of coordination of scrutiny committee work, and weak links to other new structures</li> </ul> <p>Source: Snape, 2002:14</p>

Concern is also expressed that, unless the scrutiny committees in the UK have the necessary dedicated officer support, they are unlikely to succeed. Secretariat support is therefore considered by many to be “the most controversial and contentious aspects of the new political management arrangements” and “effective direct officer support and management of scrutiny processes” is regarded as one of the conditions for effective scrutiny (Snape, 2002:79 and 111).

The Audit Commission furthermore points out that councils have single staff establishments, and that staff will be expected to serve both sides of the scrutiny/executive split. This may lead to uncritical and unhelpful support staff as far as scrutiny is concerned, if they are not dedicated to the scrutiny committee (AC, 2002:12).

The following are some of the other conditions identified by Snape for effective local government oversight and scrutiny:

- *A responsive executive willing to listen to and be influenced by the scrutiny committee, and making use of the power of influence ;*
- *Genuine non-partisan working, with the easing of party control being perceived as a critical success factor;*
- *Supportive senior officer culture – a factor just as important as a responsive executive, as senior officers are able to “smother the effectiveness of overview and scrutiny”;*
- *A high level of awareness and understanding of oversight and scrutiny by internal and external stakeholders – education of staff and non-scrutiny members, as well as the public and the media is therefore important (Snape, 2002:11-112).*

The need to train oversight councillors was also pointed out by the Canadian Institute on Governance, who noted the disparity in what was done for councillors in terms of training against “the growing emphasis in the private sector on the orientation and grooming of corporate directors”. (IoG, 2006:5)

## 2.9 MPACs in South Africa

In relation to South African local government, Van der Walt claims that there is statutory differentiation between the roles and responsibilities of executive councillors and officials, seeing that the executive mayor or executive committee is responsible for policy outcomes, while the municipal manager and senior managers are responsible for implementation and outputs. He further claims that “[n]on-executive councillors are expected to hold both the executive mayor or executive committee and the senior managers accountable on the basis of quarterly and annual reports” (2007:62). However, he does not explain the basis on which he makes this claim, and the statutory framework regarding executive versus non-executive roles is, in fact, quite vague. The RSA Constitution does not provide the same level of clarity regarding non-executive oversight as it does in relation to the national and provincial spheres of government – see Chapter 3 below. Although a whole series of local government Acts and regulations were passed following the 1998 White Paper on Local Government, little guidance is available in South Africa regarding non-executive municipal oversight.

It is not surprising, then, that a 2008 study, by the Gauteng Local Government Department (GLG), of seven MPACs established in Gauteng in 2007 found that there was a lack of clarity in relation to a number of aspects of MPAC operations (see Table 2.6).

<b>Table 2.6:</b>
<b>Challenges related to clarity at MPACs in Gauteng, South Africa</b>
<ul style="list-style-type: none"><li>▪ No standard method of establishing an MPAC</li><li>▪ Divergent views among stakeholders regarding the role of an MPAC</li><li>▪ A lack of clarity regarding the MPAC’s relationship with municipal committees such as the audit committee and portfolio committees</li><li>▪ MPAC support staff lack a clear understanding of the MPAC’s role</li></ul>

and responsibilities

- Lack of clarity regarding MPAC's role with regard to daily operational matters owing to the lack of a policy framework
- The general reason provided for the seven MPACs not yet operating at the expected level, was a lack of clarity regarding their function and a lack of support from their respective municipalities

Source: GLG, 2008:18-27

## 2.10 Conclusion

The literature has shown that there are identifiable PAC practices that have proven over the years to be important for this oversight mechanism to carry out its financial scrutiny work successfully. These practices are aimed at, *inter alia*, ensuring that:

- There is clarity regarding the role, functions and powers of the PAC;
- The PAC exercises its powers without political interference, whether internal or external;
- Independently verified and timely information is available to the committee;
- Information is processed efficiently by members who have had the necessary training and who are assisted by competent internal and external resources;
- The PAC operates often and with transparency; and
- Its outputs are noted and responded to.

Despite the differences and complexities of various government systems, and despite the numerous challenges that PACs are faced with, this form of oversight committee has much to offer legislatures at any level of government. In looking at the available literature on PACs throughout the world, there are no reasons why the PAC cannot be expanded to the local government sphere with the same success as in the expansion of its application to the provincial sphere in South Africa.

## **CHAPTER 3**

### **LEGISLATIVE AND REGULATORY FRAMEWORK**

#### **3.1 Introduction**

Since 1994, a concerted effort has been made to provide South Africa with a legislative framework that is aligned to the values and principles enshrined in its Constitution. Accordingly, worthy progress has been made in putting in place a legislative framework that enables good government for the public sector – in providing effective, transparent, accountable and coherent government in the interest of the South African public. Organs of state, as defined in the Constitution of the Republic of South Africa, No. 108 of 1996 (the Constitution), are required not only to be efficient and effective in serving the South African public, but to do so in a transparent, open and accountable manner.

The renewal of the legislative landscape included numerous amendments to existing legislation, as well as the innovation of new statutes in order to modernise, amongst others, the budget and financial management systems and practices. There have also been refinements to the legislative frameworks that empower the South African legislatures to carry out their important work of continuously and critically assessing the way in which the executive government performs in their pursuit of advancing and consolidating democracy and serving the public in all three spheres of government.

This chapter provides an overview of the legislative framework within which oversight and accountability mechanisms, such as public accounts committees in South Africa, have to function. The overview begins with the supreme law of South Africa, the Constitution, and from there discusses a number of statutes in the three spheres of



government which are relevant to oversight and accountability in respect of local government.

### **3.2 The RSA Constitution**

The RSA Constitution is very clear about the importance of accountability and good governance. In the first chapter, in the founding provisions in section 1(d), the RSA Constitution establishes “accountability, responsiveness and openness” as founding values. In terms of section 41(1)(c), the said Constitution requires that all spheres of government, and all organs of state within each sphere, provide effective, transparent, accountable and coherent government for the RSA as a whole. The principles of accountability and transparency are therefore established at the highest statutory level.

The RSA Constitution establishes Parliament and the provincial legislatures as the legislative authorities within the national and provincial spheres of government, and the municipal council as the legislative authority within the municipal sphere in section 43. In sections 55 and 114, legislatures in the national and provincial spheres of government are given the responsibility of having to provide mechanisms to ensure that all executive organs of state are accountable to the Constitution. It also obliges the legislatures to maintain oversight of the exercise of executive authority.

When carrying out the duties of oversight, sections 56 and 115 of the RSA Constitution provide the national and provincial legislatures and any of its committees with power to summon any person to appear before it to give evidence; to produce documents; or to report to the legislature or any of its committees.

As is the case in most democracies, the RSA Constitution establishes the legislatures as the source of executive power. Sections 86 and 128 deal with the election of the President and the premiers by the national assembly and provincial legislatures,

respectively. Sections 89 and 130 provide for the removal of such persons by the same authorities. Sections 92 and 133 set out the obligations regarding accountability of the national cabinet and the provincial executive councils – their members are individually and collectively accountable to the legislatures. Similar powers and obligations are not included in Chapter 7: Local government. The resultant lack of certainty as far as local government oversight powers will be explained later in this chapter.

Section 139 of the RSA Constitution provides for provincial supervision of local government that may, in certain cases, lead to intervention by the province in the affairs of a municipality, as follows: When a municipality cannot or does not fulfil an executive obligation in terms of legislation, the relevant provincial executive may intervene to ensure fulfilment of such obligation. A certain process must be followed, including the issuing of a directive to the relevant council, describing the extent of the failure to fulfil its obligations and stating any steps required to meet such obligations. The national government also becomes involved in such interventions, as the intervention by the provincial executive must end unless it is approved by the national cabinet member responsible for local government affairs within 14 days of the intervention. Both the provincial legislature and the National Council of Provinces (NCOP) in Parliament must be notified and it is therefore possible for them to also become involved – in fact, the intervention must end unless it is approved by the NCOP within 30 days of its first sitting after the intervention began. The NCOP is also expected to review the intervention regularly and to make appropriate recommendations to the provincial executive.

As far as transparency and public access to the legislative and oversight processes of councils are concerned, sections 59 and 118 of the RSA Constitution require of the legislatures to conduct their business in an open manner, and hold their meetings and those of their committees in public.

As previously mentioned, Parliament and provincial legislatures have ultimate authority over public funds. Sections 213 and 226 only permit the withdrawal of money from the national or provincial revenue funds in terms of an Act of Parliament or an Act of a provincial legislature. There is a National Revenue Fund into which all money received by the national government must be paid, except money reasonably excluded by an Act of Parliament or the provincial legislature. Money may be withdrawn from the national or provincial revenue funds only in terms of an appropriation by an Act of Parliament or the provincial legislature, or as a direct charge against these funds when it is provided for in the RSA Constitution or an Act of these legislatures. A province's equitable share of revenue raised nationally is a direct charge against the National Revenue Fund.

However, it is incumbent upon these legislatures to then oversee the use of the money withdrawn by determining whether the funds were spent for the purposes intended, and whether it was done in a regular manner in terms of the applicable financial management frameworks such as sections 213 and 226 of the RSA Constitution relating to the National Revenue Fund, and the PFMA.

Lastly, section 195 of the RSA Constitution sets out the basic values and principles governing public administration, including requiring that a high standard of professional ethics must be promoted and maintained; efficient, economic and effective use of resources must be promoted; and public administration must be accountable.

### **3.3 Powers, Privileges, Immunities of Parliament and Provincial Legislatures Act**

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

witnesses; the examination of witnesses; and offences relating to witnesses. For example, a person who has been summonsed and who fails to attend at the time and place specified in the summons, or who fails fully and satisfactorily to answer all questions lawfully put to him or her, or fails to produce any document in his or her possession or custody or under his or her control, which he or she has been required to produce, commits an offence. Such a person is then liable to a fine or to imprisonment for a period not exceeding 12 months or to both the fine and the imprisonment.

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

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

The aforementioned provisions are important because they empower committees of the legislatures to carry out informed and unhindered oversight, and also provide protection to witnesses who may be afraid of giving incriminating evidence. However, these powers and privileges do not apply to municipal councils or their committees, resulting in a lack of clarity regarding the roles, powers and functions in relation to municipal council oversight.

### **3.4 Local Government: Municipal Structures Act**

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

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

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

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

### **3.5 Local Government: Municipal Systems Act**

The Local Government: Municipal Systems Act, No. 32 of 2000 (MSA), makes provision for the core principles, mechanisms and processes that are necessary to enable municipalities to move progressively towards the social and economic upliftment of local communities. In section 6, the said Act sets out the duties of municipal administrations, including the requirement that the administration of a municipality must be responsive to the needs of the local community; must facilitate a culture of public service and accountability amongst staff; must take measures to prevent corruption; must give members of the local community full and accurate information about the level and standard of municipal services they are entitled to receive; and must inform the local community how the municipality is managed, of the costs involved and the persons in charge.

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

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

### **3.6 Local Government: Municipal Finance Management Act**

The Local Government: Municipal Finance Management Act, No. 56 of 2003 (MFMA), is aimed at providing secure, sound and sustainable management of the financial affairs of municipalities and other institutions and standards for the local sphere of government.

The said Act deals with numerous financially related matters, of which the following are worth mentioning: The responsibilities of Mayors regarding financial matters and

the delegations of mayoral powers and duties in relation thereto (Chapter 7); the responsibilities of municipal officials regarding financial matters, including the role of the municipal managers as accounting officers; the fiduciary responsibilities of accounting officers; and the general financial management functions (Chapter 8). Chapter 12 deals with financial reporting and auditing and Chapter 15 with financial misconduct, including disciplinary and criminal proceedings.

Section 132 of the MFMA is an important section that deals with unauthorised, irregular or fruitless and wasteful expenditure; liability for such expenditure; and the manner in which such expenditure may be condoned. The political office-bearers of a municipality are liable for unauthorised expenditure if they, knowingly, or after having been advised by the accounting officer of the municipality that the expenditure is likely to result in unauthorised expenditure, instruct an official of the municipality to incur the expenditure. The accounting officer is liable for unauthorised expenditure that is deliberately or negligently incurred by the accounting officer. Any political office-bearer or official of a municipality who deliberately or negligently committed, made, or authorised an irregular expenditure, is liable for that expenditure; or any political office-bearer or official of a municipality who deliberately or negligently made or authorised a fruitless and wasteful expenditure is liable for that expenditure.

The MFMA further requires that a municipality must recover unauthorised, irregular or fruitless and wasteful expenditure from the person liable for that expenditure, unless the expenditure, in the case of unauthorised expenditure, is authorised in an adjustments budget, or is certified by the municipal council, after investigation by a council committee as irrecoverable and written off by the council. Irregular or fruitless and wasteful expenditure can be certified by the council as irrecoverable and written off by the council after investigation by a council committee. The investigations that are required by a council committee potentially are an area of work for a public accounts committee.

Another important section of the MFMA is 129, which deals with the production of an oversight report based on a review of the annual report. The council of a municipality must consider the annual report of the municipality by no later than two months from the date on which the annual report was tabled in the council. Council is obliged to then adopt an oversight report containing the council's comments on the annual report, which must include a statement whether the council has approved the annual report with or without reservations, or has rejected the annual report; or has referred the annual report back for revision of those components that can be revised.

Subsection 129(2) requires that the accounting officer attend council and council committee meetings at which the annual report is discussed, for the purpose of responding to questions concerning the report. The accounting officer has to make public an oversight report within seven days of its adoption.

In terms of subsection 129(4), the National Treasury is given the discretion to issue guidelines on the manner in which municipal councils should consider annual reports and conduct public hearings, and the functioning and composition of any public accounts or oversight committees established by the council to assist it to consider an annual report. However, the subsection points out that no guidelines issued in terms of subsection (4) are binding on a municipal council unless adopted by the council.

Section 130 provides for council meetings to be open to the public. The meetings of a municipal council at which an annual report is to be discussed, or at which decisions concerning an annual report are to be taken, must be open to the public.

Section 131 deals with issues raised by AGSA in audit reports. A municipality must address any issues raised by the AGSA in an audit report. The mayor of a municipality must ensure compliance by the municipality with the obligation to address matters pointed out by the AGSA. To this end it is likely that a municipal



PAC would be expected to assist and advise council, although the Act does not specifically state this. Section 131 also allocates a role to another sphere of government by requiring of the MEC of local government in the relevant province to exercise a certain degree of oversight: The MEC for local government in the province must assess all annual financial statements (AFS) of municipalities in the province; the audit reports on such statements; any responses of municipalities to such audit reports; and must also determine whether municipalities have addressed any issues raised by the AGA in audit reports adequately; and report to the provincial legislature any omission by a municipality to adequately address those issues within 60 days. This provision enforces arm's-length oversight by the provincial government and, theoretically, may have relevance in the case of any consideration by the province to intervene in terms of section 139 of the RSA Constitution – see par 3.1 above.

The MFMA also provides for categories of expenditure and disclosure requirements that inform oversight mechanisms such as PACs. Section 1 defines categories such as unauthorised expenditure, irregular expenditure, and fruitless and wasteful expenditure. In terms of section 15, a municipality may, except where otherwise provided for in the MFMA, incur expenditure only in terms of a council approved budget, and within the limits of the amounts appropriated for the different votes in an approved budget. Expenditure is irregular if incurred by a municipality or municipal entity in contravention of, or not in accordance with, *inter alia*, a requirement of the MFMA which has not been condoned by the National Treasury. Fruitless and wasteful expenditure is expenditure that was made in vain and would have been avoided had reasonable care been exercised. Based on the principle that legislatures have ultimate authority over public funds – and this would include municipal legislatures in the form of the council – the legislatures are obliged to deal with instances of unauthorised expenditure. In the national and provincial government spheres in South Africa, the way to have funds approved or validated once it has already been spent, but without authority, is through a Finance Act that can only be

prepared upon recommendation from the PAC. In the case of the local government, there are no statutory or regulatory requirements or guidance for such a process.

Section 166 of the MFMA provides for the establishment of audit committees within every municipality – an independent advisory body on which councillors may not serve, but which is obliged to advise council, among others, and therefore possibly a public accounts committee of council.

Chapter 15 of the MFMA deals with financial misconduct by municipal officials, including the accounting officer of the municipality, the chief financial officer and senior management. Section 173 provides a list of the various offences, and the Act stipulates fines or imprisonment as penalties, in section 174, for a period not exceeding five years.

### **3.7 Public Audit Act**

The Public Audit Act, No. 25 of 2004 (PAA), expands on, amongst others, sections 181 and 188 of the RSA Constitution establishing the AGSA as the external auditor of all public sector institutions including municipalities. The Act requires the AGSA to submit audit reports to any legislature that has a direct interest in the audit – this includes the council of a municipality – and to any other authority prescribed by national legislation, and to make all reports public. In the case of the municipality, the public-making takes place by means of including the audit report in the annual report of the municipality concerned which is tabled in the municipal council.

The AGSA must prepare audit reports that contain an opinion on or conclusion about whether the AFS of the municipalities give a fair presentation in all material respects of the financial position at a specific date and of the results of its operations and cash flow for the period which ended on that date, in accordance with the applicable financial framework and legislation. The report must also reflect on the municipality's

compliance with any applicable legislation relating to financial matters; financial management and other related matters; and the reported information relating to its performance against predetermined objectives. In addition, the AGSA may report on whether the resources of the municipality were procured economically and utilised efficiently and effectively.

### **3.8 Statutory and regulatory guidance on oversight committees**

As is set out in par 3.1 above, the RSA Constitution provides for non-executive oversight mechanisms and principles within the national and provincial spheres of government. As far as local government is concerned, the RSA Constitution makes no mention of similar oversight powers. Chapter 7, which deals with local government, does not make mention of any separation of powers or accountability obligations concerning the executive members of councils. Section 151(2) states that both the executive and the legislative authority of a municipality are vested in its Municipal Council, but it does not clarify the subdivision of these powers. However, as 'democratic and accountable government' is the first object of local government in terms of section 152 of the Constitution, it is assumed that oversight – a core element of accountable governance – should also form part of the governance systems in the local sphere of government.

Although a whole series of local government Acts and regulations were passed following the 1998 White Paper on Local Government, there is little statutory or regulatory guidance available in South Africa regarding non-executive oversight. The strongest statutory indication of a separation between the executive and non-executive functions within a municipality is found in sections 79 and 80 of the MSA. Section 79 enables the establishment of committees to fulfil a council's functions, which presumably includes the non-executive oversight functions of a municipal council. Section 80 provides for committees that can be established for purposes of assisting and reporting to the executive committee or executive mayor in accordance with the directions of the executive committee or executive mayor, i.e. executive

committees. However, the MSA does not stipulate the powers or oversight functions applicable to the section 79 committees. More clarity in this regard will have been achieved if the powers of a section 79 committee were provided for in the same way that sections 55 and 114 of the RSA Constitution clarifies the powers of the oversight committees of the national and provincial legislatures.

The MFMA of 2003 does not provide much further clarity with regard to the powers and functions of non-executive oversight committees. For example, although the MFMA refers to the establishment of oversight committees, it does not impose the establishment of such committees. Section 129 of the MFMA merely refers to the councils having the discretion to establish public accounts or oversight committees to assist them to consider the municipality's annual report and produce an oversight report. Such discretion means that municipalities have freedom of choice whether or not to establish non-executive oversight committees, and as indicated in Table 1.1 on page 6 most municipalities have exercised this freedom of choice by not appointing MPACs.

None of the regulations issued in terms of the aforementioned Acts assist in clarifying any intended non-executive oversight or scrutiny processes, except in section 6 of the regulations issued in terms of the MFMA as it relates to oversight of supply chain management. This requires that the council of a municipality maintain oversight over the implementation of the supply chain management policy. However, there is no stipulation in the said regulations for the establishment of any non-executive oversight committee for purposes of non-executive oversight of supply chain management.

### **3.9 National Treasury Circular 32 on oversight committees**

In March 2006, the National Treasury issued MFMA Circular No 32: "The Oversight Report", with the aim of providing councillors with practical guidance in financial

governance and to assist in maintaining oversight within the broader governance context. Circular 32 was also aimed at providing practical guidance with respect to the process that councils have to follow when considering the annual report and producing the oversight report that are required in terms of section 129(1) of the MFMA. In terms of section 129 of the MFMA, an “oversight report” is required from all municipalities by the end of March every year. In this report the Council has to state whether it –

- approves the annual report,
- rejects the annual report, or
- refers the annual report back for revision.

However, no specific reference is made to scrutiny of the annual financial statements of the municipality or the review of the report of the AGSA. Section 129(4) of the MFMA assumes that municipalities will have oversight or public accounts committees as part of the financial management system, and in particular with regard to the annual report and the resultant oversight report, but there is no reference to an obligation that the municipality has to appoint such a committee. Neither does the Act differentiate between the functions of an oversight committee and an MPAC.

Circular 32 does confirm a number of important principles in relation to governance and accountability processes within the municipal sphere. For example, it confirms that –

- The mayor is accountable to council, and in turn has oversight over the municipal manager;
- The municipal manager has oversight over the administration, and is accountable to the mayor or the mayoral committee;
- The mayor or the executive committee is obliged to resolve any performance failures; and

- Ultimately the council is vested with the power and responsibility to oversee both the executive and administration.

Circular 32 also provides detailed guidance with regard to key steps in the annual reporting process within the annual accountability cycle – see Table 3.1 below.

**Table 3.1: Steps in the annual reporting processes**

Prescribed Dates	Actions	MFMA (MSA)	Responsibility of
31 August	Submit municipality's AFS to Auditor-General	S126(1)(a)	Municipal Manager
31 August	Submit municipal entity AFS to parent municipality and to Auditor-General	S126(2)	Municipal Entity Accounting Officer
30 September	Submit consolidated AFS to Auditor-General (municipalities and entities)	S126(1)(b)	Municipal Manager
31 October and quarterly thereafter	Auditor-General submits to Parliament and the provincial legislature names of any municipalities, which have failed or continue to fail to submit AFS.	S133(2)	Auditor-General
Within three months of receiving AFS (30 November or 31 December)	Audit report returned to Municipal Manager	S126(3)	Auditor-General
On receipt of audit report	Municipality must address any issues raised by the Auditor-General and prepare action plans to address issues and include these in annual report. Provide copy of report to Audit Committee.	S131(1)	Municipal Manager. Mayor must ensure compliance by municipality
31 December	Entity submits annual report to Municipal Manager	S127(1)	Municipal Entity Accounting Officer
31 January	Annual Reports of municipality and entities tabled in Council	S127(2)	Mayor
Immediately after annual report is tabled	Annual report made public and local community invited to submit representations	S127(5)(a) (MSA) - S21A and B	Municipal Manager
Immediately after annual report is tabled	Annual report submitted to Auditor-General, relevant provincial treasury and provincial department responsible for local government in the province.	S127(5)(b)	Municipal Manager
When meetings held to discuss the annual report	Attend meetings to respond to questions concerning the report	S129(2)(a)	Accounting Officer of municipality and entity
Following meetings to discuss the annual report	Submit copies of minutes of the meetings to the Auditor-General, provincial treasury and provincial department responsible for local government	S129(2)(b)	Accounting Officer of municipality and entity
Within two months of report being tabled (31 March)	Council to have considered the annual report and adopted an oversight report	S129(1)	Council
Within seven days of adoption of oversight report	Make public the oversight report	S129(3) S21A-MSA	Accounting Officer
Within seven days of adoption of oversight report	Submit to the provincial legislature, the annual report of municipality and entities and the oversight reports on those annual reports.	S132(1) & (2)	Accounting Officer
As necessary	Monitor compliance with submission of reports to provincial legislature	S132(3)	MEC for local government in the province
Within 60 days of receiving annual reports	Report to provincial legislature any omissions by municipalities in addressing issues raised by the Auditor-General.	S131(2)	MEC for local government in the province
Annually	Report to Parliament on actions taken by MEC's for local government to address issues raised by Auditor-General on municipal and entity AFS	S134	Cabinet member responsible for local government
Notes:			
<ul style="list-style-type: none"> <li>▪ MFMA section 133 provides for consequences of non-compliance with provisions relating to the submission of AFS and tabling of annual reports.</li> <li>▪ All dates shown are the latest permissible in terms of the applicable legislation, earlier compliance is preferable.</li> </ul>			

Circular 32 therefore assumes a separation of powers between councillors serving on the executive (i.e. mayor or executive committee) and non-executive councillors. This separation is proposed as vital to ensure that council maintains oversight of the performance of specific responsibilities and delegated powers to the mayor or executive committee.

Circular 32 provides a number of recommendations on how council oversight can be strengthened by the establishment of an oversight committee. (It is important to note, though, that none of the MPACs in Gauteng had identified Circular 32 as giving adequate guidance as far as their mandate and the functioning as MPACs are concerned.)

Circular 32 provides the following additional guidelines with regard to the role and functions of the oversight committee, many of which may be also relevant to the terms of reference of an MPAC:

- An oversight committee should be established under sections 33 and 79 of the Municipal Structures Act 1998;
- The oversight committee is responsible for the detailed analysis and review of the *annual report* and then drafting an *oversight report* to be taken to full council for discussion;
- The oversight committee may receive and review representations made by the public and also seek inputs from other councillors and council portfolio committees;
- The oversight committee should be made up of non-executive councillors only, and representatives of the community, and can be formed each year to deal with the annual report (officials cannot be members of an oversight committee);

- Assistance from the municipality's Audit Committee in the review process is also recommended as a major source of independent specialist advice;
- All meetings of Council and the oversight committee at which an annual report is considered must be open to the public;
- Representatives of the AGSA are entitled to attend and to speak at any meetings held to discuss the annual report;
- Timely notice of meetings should be given to enable representations to be made (making representations to the oversight committee should not necessarily preclude representations by the same individuals to the full council as this promotes transparency in the process);
- As a parallel process, other councillors should also be conducting their own reviews of the report, which can include discussions with constituents, ward committees and ward representatives to encourage inputs and comments and to prepare for the full council meeting that considers the annual report and oversight report;
- Questions raised with the administration should ideally be responded to immediately during committee meetings to avoid delays – the top management team may assist the accounting officer, if needed; if the executive or the accounting officer and administration are unable to respond immediately to questions raised at committee or council meetings, the committee or council may rightfully conclude that the executive and administration have not performed satisfactorily and may not understand the report that they have tabled;
- When enquiring on matters in the annual reports from municipal entities, issues of commercial confidence may arise – in such cases the council should form a judgement as to whether the information is essential to determine a conclusion on the annual report, or whether it may be necessary to meet in private (such a



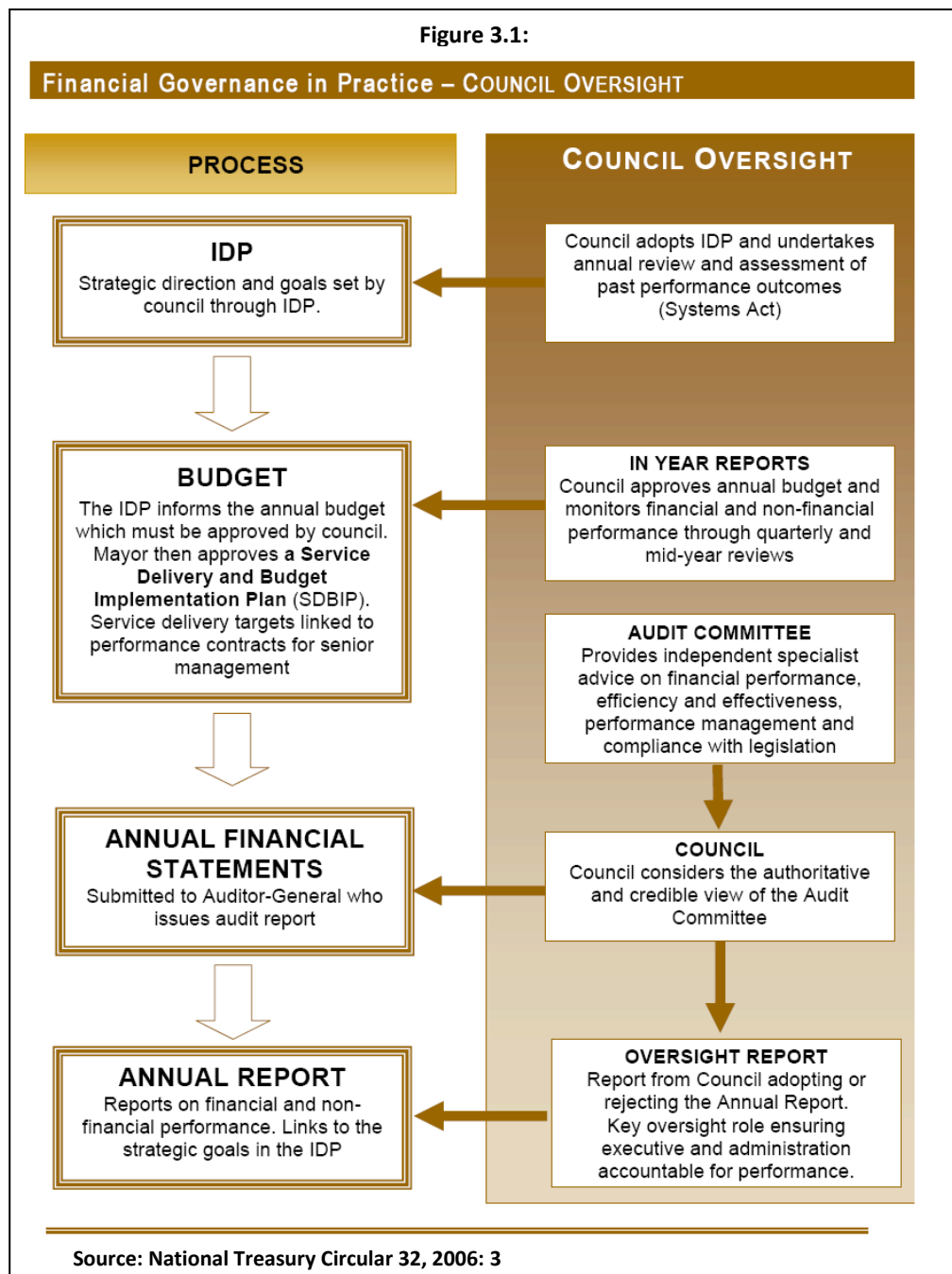
step must be taken with caution to avoid weakening the democratic and transparency objectives of the annual reporting process); and

- Municipalities should take into account all costs of the various mechanisms (oversight committee and other meetings) for reviewing the annual report and preparing an oversight report – the cost needs to be balanced against the need for transparency, good governance practice and accountability, the capacity of the municipality and the need for an effective process within the time allowed.

Circular 32 further provides an illustration of municipal council oversight as financial governance in practice (see Figure 3.1 on the next page). However, although the proposed process proposes that the municipal council should consider the “authoritative and credible view” of the audit committee – an advisory committee – no reference is made to council considering input from the oversight committee mentioned in section 129 or the MPAC.

### **3.10 Conclusion**

The RSA Constitution and other relevant legislation provide a clear and definite framework for legislative oversight of executive authority actions within the national and provincial spheres in South Africa. This is not the case as far as the municipal sphere is concerned. Although the Municipal Structures Act establishes municipal executive structures, such as executive mayors and mayoral committees, there is a weak policy framework as far as the role and functions of non-executive council structures are concerned. As the legislative and executive powers of a municipality are combined in the municipal council, a clear statutory framework indicating the differences between the executive and non-executive functions and structures within municipal councils could have assisted municipalities to deal with the financial non-executive oversight more effectively.



The MFMA introduces the concept of oversight, but is not specific about council structures that are supposed to conduct oversight. The guidelines that the National Treasury has issued in the form of Circular 32 are not enforceable. For these to be enforceable, the guidelines have to be issued as regulations, as has been done in the case of the requirements for non-executive council oversight of supply chain

management processes. As far as MPACs are concerned, national policy direction, therefore, is very weak.

<b>CHAPTER 4:</b> <b>RESEARCH DESIGN AND METHODOLOGY</b>
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#### **4.1 Introduction**

In the previous chapter it was established that any municipality that decides to establish an MPAC, will do so within the context of a weak statutory framework and with limited policy direction as far as the powers and functions of an MPAC is concerned. The establishment by the City of Cape Town (CoCT) of a committee on public accounts in 2006 as the first of its kind in South Africa took place within this limited framework. This was done with the hope that the CoCT would reap the same governance benefits as public sector oversight structures had within other spheres of government where public accounts committees had been in existence.

By the time of this study, the CoCT PAC had been in existence for more than three years. The research questions framed at the beginning of the study were therefore aimed at establishing the extent to which the CoCT succeeded in establishing an effective MPAC and what lessons it had learnt in the process.

This chapter sets out the rationale for electing to study the MPAC of the CoCT, as well as the research methodology and approach.

#### **4.2 Qualitative research method**

The research method that was followed is of a qualitative nature because of the ability of this approach to interpret or understand human and organisational behaviour (Welman, 2005:6) because of its suitability to attend to the “holistic nature

of knowledge building” and to produce knowledge “through an ongoing interplay between theory and methods, researcher and researched” (Hesse-Biber, 2006: 5).

The substantial body of theory and method associated with PACs as an oversight mechanism, as set out in the literature study in Chapter 2, served as solid background to the interchange that the researcher planned to have with the respective respondents and documentary material. This study was undertaken in order to come to an understanding of a municipal public accounts committee operating within the local government sphere in South Africa.

A large number of the studies covered by the literature are quantitative in nature, providing perspective on the extent of the various public accounts committee practices, but not always providing much perspective on the reasons for those practices. The qualitative research approach was chosen in order to not only study the committee practices, but also to learn how these practices came about and to gain insight into the underlying reasons behind the practices.

The qualitative method of research is like “working through a qualitative window into knowledge construction” and is aimed at “gaining complex knowledge directly from people with certain attributes or life experiences” (Hesse-Biber & Leavy, 2006:4). The number of observations is limited compared to quantitative research, and concern “the analysis of words rather than numbers” (Gerring, 2007:216). Qualitative research is a “descriptive form of research” useful in describing, amongst others, institutions (Welman, 2005:188 and 193) and is therefore well suited to describing the what, why and how of this municipal institution. Finally, the qualitative method is often associated with case studies (Gerring, 2007:10) and therefore is suitable to the approach adopted for this research.

### 4.3 Case study approach

A case study approach was chosen in order to gain in-depth knowledge of an individual and representative example of a municipal public accounts committee. The first established municipal public accounts committee in South Africa was chosen to achieve a deep understanding of the extent to which generally accepted public accounts committee practices had been adopted, because, as Gerring points out, a proper single case study is “more helpful than fleeting knowledge about a large number of examples” (2007:1).

The case study is described as the most flexible design for research, and useful where “relatively little previous research exists on the topic”, a case in point as far as South African MPACs are concerned. According to Hakim, the case study is also useful for research on organisations and institutions in the public sector (2000:59), and also as an approach with the potential of being used to present examples of good practice (2000: 60).

Gerring warns that the term *case study* can be “a definitional morass” (2007:17), but in this instance there is no difficulty in demarcating the study as a comprehensive study of a specific phenomenon, *viz* a standing committee in the City of Cape Town established as the first municipal public accounts committee in the South African local government sphere. The intention is that the research results will, *inter alia*, inform or enlighten the researcher about the challenges associated with the establishment of an MPAC, and the lessons learnt or possible solutions for identified shortcomings. It is intended to be a study, therefore, of a single case with the purpose “to shed light on a larger class of cases” (Gerring, 2007:20).

The case study approach was also chosen because of the potential to combine an intensive study of the CoCT MPAC with a more superficial analysis of a larger sample, i.e. some of the other MPACs established thus far in South Africa, with these

additional cases having the possibility of being brought into the study “in a peripheral way” towards the concluding stage of the study (Gerring, 2007:22).

#### **4.4 Selection of the City of Cape Town municipal PAC as case study**

The selection of the PAC of the CoCT is based on a number of factors:

- It is sufficiently representative of a broader set of cases as it is one of the six metropolitan municipalities and one of the 283 municipalities in the RSA.
- The CoCT was established within the limitations of the statutory and policy framework applicable to all non-executive oversight committees in the 283 municipalities in the RSA;
- It was the first MPAC to have been established in South Africa;
- The committee was specifically established as a *public accounts committee*, and not as an *oversight committee* – a committee referred to in the MFMA and which is often mistaken for the financial scrutiny committee);
- It is presumed that the intention for establishing the committee was that it should function in a manner similar to public accounts committees elsewhere in the world, or at least South Africa;
- The committee has been operational on an ongoing basis, meeting regularly since its establishment in 2006;
- It has built up useful records and its members have gained considerable experience; and

- The committee was easily accessible geographically, but also in terms of allowing members of the public into its meetings.

#### **4.5 Data sources and selection of respondents**

Three main data sources were used in the research, namely documentary sources, observation reports, and reports on interviews with key role players.

(a) The documentary sources included –

- the RSA Constitution and a number of Acts that apply to local government that provide the statutory framework within which the CoCT PAC was established and operates;
- *MFMA Circular 32*, a guideline on oversight reports issued by the National Treasury;
- the Terms of Reference of the CoCT PAC;
- file notes of the former chairperson of the CoCT PAC;
- various sets of minutes of the meetings of the CoCT PAC;
- various reports of the CoCT MPAC;
- material presented at the inaugural meeting of the CoCT PAC on 18 August 2006; and
- the 2008/09 Annual Report of the City of Cape Town.

(b) Observation reports consisted of –

- Reports produced by the researcher upon attending meetings of the CoCT PAC on 18 September and 16 October 2009;
- Notes from a workshop of newly established MPACs in Gauteng on 17 April; and
- Reports arising from conference discussions on municipal oversight and MPACs on 7 October 2008, and 29 & 30 September 2009.



(c) Self reporting took the form of transcripts of recordings of semi-structured, in-depth interviews and follow-up telephonic interviews.

As is often the case with qualitative research, the respondents were selected in a purposive manner, not randomly, by targeting “key informants who, on account of their position or experience, have more information” than ordinary potential respondents (Welman, 2005:204). The objective was therefore to obtain the most information-rich spread of respondents.

According to Willis, the qualitative researcher should “(e)mphasize quality over quantity” and it is therefore better to conduct “a dozen careful interviews, than simply to go through the motions in order to achieve a result that may be impressive but that is lacking in information value” (2005:259). In-depth interviews were therefore conducted with the following respondents:

- The former, and first chairperson, of the CoCT PAC;
- The current chairperson of the CoCT PAC;
- A senior member of the CoCT PAC;
- The chief audit executive of the CoCT;
- The audit manager: SCOPA (who provides full- time support to the CoCT PAC);
- The chief director in the National Treasury responsible for guidance on municipal governance and accountability systems; and
- The Western Cape operations leader of the AGSA.

Informal discussions were also held with the media representatives who regularly cover the CoCT PAC meetings. (See *Appendix 2* for more detail on the interviewees.)

#### **4.6 Access to data**

As far as access to data is concerned, the sources for primary data were easily accessible given the proximity of the CoCT and the helpfulness of the support staff of the CoCT PAC, but most importantly because of the willingness of the former and current chair-persons of the committee, as well as other interviewees, to make themselves available for in-depth interviews. A further advantage was that the researcher, owing to his occupation, was privileged to have attended workshops of the CoCT PAC and other related discussion forums on the topic of municipal PACs for observation purposes. A further advantage was that two meetings of the CoCT PAC that were held during the main fieldwork phase of the research, made it possible for the researcher to observe the functioning of the committee in detail. Documentary sources were readily accessible, again owing to the cooperation of the members and support staff of the CoCT PAC, and owing to the efficient production of detailed minutes and verbatim transcripts by the committee secretary.

#### **4.7 Research instrument**

The main research instrument used was the interview guide for the semi-structured in-depth interviews (see *Appendix 1*). The semi-structured interview approach was chosen above a highly structured approach, as it was important that the interviewees should not ‘close up’ and provide “less frank and honest feedback”, as is the tendency with structured interviews (Baily, 2007:99). Other reasons why a semi-structured approach was regarded as the best way in which to obtain a detailed and informed perspective of the case of the CoCT PAC include –

- The flow of the interview, rather than the order presented in a guide, determines when and how a question is asked;
- Interviews are scheduled in advance and expected to last a certain length of time;

- The interviewer might engage in dialogue with the interviewee; and
- Questions answered earlier can be skipped (Baily, 2007:100).

It was anticipated that important new and relevant questions could arise during earlier interviews and such questions, according to Baily, could be asked “of all subsequent interviewees” (2007:103). The need for flexibility in qualitative research interviewing was taken note of and “sometime(s) questions in the interview (were) dropped on the basis of ongoing analysis and information received from earlier interviewees” (Baily, 2007:103).

The questions in the interview guide in *Appendix 1* on page 104 were based on an analysis of 36 potential attributes of a public accounts committee. A comparative analysis by the researcher arrived at 20 generally accepted key practices of PACs across the world as identified by at least three out of five authoritative literature sources (see *Table 2.4* on page 32). Care was then taken to ensure a high level of correspondence between the research questions and the questions in the interview guide so that the questions might “elicit enough useful information” for answering the research questions (Baily, 2007:104).

The final interview guide was only arrived at after having exposed earlier iterations to subject matter experts and a fellow researcher on accountability and oversight. Care was taken in the formulation of the questions in order to ensure that no leading questions that could influence the responses were asked. For answers to be interpretable and comparable “all respondents must have the same idea of what a question is about – in other words they should define the topic in the same way” and be likely to find the question relevant (Foddy, 1993:190). The respondents were mostly well acquainted with the terminology and concepts used in the questionnaire, as no complex terminology was used in the interview guide. Double-barrelled questions were avoided, as well as ambiguous or vague questions or concepts. Lastly, care was taken to avoid asking threatening questions and questions that

could sound critical and thereby lead to the interviewees feeling that they needed to defend or justify the practices or approaches of the CoCT PAC and related systems.

The main limitation experienced during the research was the limited time available to the researcher, given his full-time career commitments. This was compounded by the time-consuming nature of semi-structured interviewing techniques. However, the results of the interviews provided very rich and useful information.

#### **4.8 Data analysis and interpretation**

As mentioned earlier, three sources of data were used: in-depth interviews; the researcher-observed committee meetings, and secondary documentary sources.

The transcripts of the interviews were typed out by the researcher himself so that he would be able to note subtle aspects such as pauses or hesitations in answering certain questions. The notes made by the researcher during the observation of the committee meetings were typed out within less than 48 hours so that as much detail as possible of the meeting could be captured.

The two main data sets, i.e. the interview transcripts, and the researcher's observation notes, supported by the secondary documents, were then reviewed in order to identify themes relevant to the research questions. This was done mainly by word analyses, i.e. identifying words that were used repeatedly, or key words in the context of the research topic and by coding. Throughout the process, the themes, words and codes were identified within the 20 generally accepted international PAC practices as main reference framework, and the broader conceptual framework provided by the literature review.

The next step was to compare the two sets of findings with one another in order to determine the degree to which the findings coincided, so that the extent of validity of

the potential findings could be determined. It was therefore possible to compare the CoCT PAC described by the interviewees with what the researcher observed while attending the meetings of the committee, and from the review of the minutes of earlier committee meetings.

Finally, the data were interpreted by formulating theories accounting for the observed patterns, to facilitate relating the results and findings to existing theoretical frameworks or models as presented in the available literature.

#### **4.9 Conclusion**

The in-depth interviews with key members of the CoCT PAC and other relevant role players, the researcher's review of the numerous documents relating to the CoCT PAC, and the researcher's reports produced while observing the said committee, provided high-quality data that enabled the researcher to reach the conclusions set out in the next chapter.

<p style="text-align: center;"><b>CHAPTER 5:</b> <b>RESEARCH RESULTS – ANALYSIS AND FINDINGS FROM A CASE STUDY OF THE PUBLIC ACCOUNTS COMMITTEE OF THE CITY OF CAPE TOWN</b></p>
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## **5.1 INTRODUCTION**

This chapter deals with the results of the field work carried out during the case study research described in Chapter 4. It provides a picture of how the CoCT PAC operates in relation to key internationally recognised PAC practices. The background and history of the CoCT PAC is described, and the function, powers, composition, key operational practices and other features of the said committee are analysed on the basis of findings delivered by the primary and secondary research.

The results will show that, although there are a number of shortcomings in the mandate documents of the CoCT PAC, the said committee in practical terms reflects many of the features of a PAC. However, a number of challenges are identified that the CoCT PAC will have to overcome in order to live up to the expectation of being an efficient and effective PAC.

## **5.2 BACKGROUND AND HISTORY OF ESTABLISHMENT OF CoCT PAC**

The City of Cape Town municipality serves a metropolis of approximately 3,4 million people. The council of 210 members employs approximately 22,000 staff and has a budget of more than R12 billion – nearly half of the total Western Cape provincial budget and more than many national government departments (CoCT Annual report 2007/08:11).

In 2006, the CoCT decided to establish its first ever public accounts committee – this was also to be the first municipal public accounts committee to be established in

South Africa. The proposal for the establishment of a PAC came from the city council, who proposed that the city should have a mechanism similar to the PAC in the National Assembly of the Parliament of South Africa. This was done *inter alia* in order to augment the work done by the CoCT audit committee, as the CoCT council was of the opinion that internal audit could not adequately deal with all the matters reported on by the AGSA. On 28 April 2006 the establishment of the CoCT PAC was formally proposed as a committee whose function it would be to hold the accounting officer and the councillors accountable for their spending of ratepayer's money and their stewardship of public assets.

Since the establishment of the CoCT PAC, technical support to the said committee has been provided by the internal audit directorate of the CoCT. As no guidelines were available for the establishment and functioning of MPACs in South Africa, and as no other municipal PACs existed elsewhere in South Africa to possibly learn from, the internal audit directorate of the CoCT was tasked with the development of an operational framework for the committee. A draft of terms of reference was developed with assistance from the AGSA in the Western Cape. A detailed draft ToR of 14 pages was presented to the newly established CoCT PAC during an inaugural meeting on 18 August 2006, but it had not yet been adopted by the CoCT council. At the inaugural meeting, orientation training was presented by staff of the AGSA. Soon after the inaugural meeting, the CoCT PAC invited the chairperson of the PAC in the National Assembly to give advice on key aspects of the work of a PAC.

Since its inception, the CoCT PAC has held numerous meetings during which it, *inter alia*, reviewed the annual reports of the CoCT for the 2006/07 and 2007/08 financial years. The CoCT PAC produced two *annual oversight reports* as required by the MFMA. The last-mentioned function was carried out on behalf of the city council, for the city council to comply with section 129(1) of the MFMA. The CoCT PAC has also conducted a number of investigations on matters referred to it by the city council or by the executive committee of the CoCT. These investigations were mostly carried

out in order to advise the city council on whether or not it should condone reported cases of unauthorised, irregular or fruitless and wasteful expenditure. Most of the investigations have taken the form of closed meetings of subcommittees of the CoCT PAC at which officials of the CoCT are required to provide information. However, the CoCT PAC also holds regular meetings – up to once a month – that are open to the public and which city officials are required to attend in order to elucidate documentation referred to the CoCT PAC by the city council. The CoCT PAC interaction with the officials mostly take the form of public hearings typical of a PAC. At face value, therefore, the committee seems to be operating like a ‘typical PAC’. However, the CoCT PAC needed to be studied in greater depth to determine the extent to which the intention to establish a PAC has succeeded.

The results of the case study research into the various practices of the CoCT PAC are presented in the paragraphs that follow.

### **5.3 ESTABLISHMENT AND AUTHORITY OF THE COMMITTEE**

Nearly every author who has written about public accounts committees has concluded, and most of the commentators on the newly established PACs in the Gauteng Province have pointed out, that it is of vital importance to have a formal and approved mandate and ToR for a PAC to succeed.

As pointed out before, there is no statutory or regulatory requirement for a municipality in South Africa to establish a PAC. The Municipal Structures Act of 1998 (MStr), however, creates the framework for executive and non-executive committees. Section 79 of the MStr enables councils to establish committees to whom it may delegate council functions. In contrast, section 80 provides for the establishment of what is clearly “executive committees” – committees that may be established to assist the executive committee or executive mayor of the municipality to carry out their executive functions.



The CoCT used the section 79 provision to establish the CoCT PAC as a section 79 committee and named it the *Standing Committee on Public Accounts (SCOPA)* in terms of the *System of Delegations* of the CoCT. Although the CoCT does not have a system of standing committees, the council decided that the committee would be named after the PAC in the National Assembly – the committee on which the CoCT PAC has largely modelled itself. In terms of the governance structure of the CoCT as set out in its Annual Report, the CoCT PAC is reflected as a ‘section 79 committee’, together with 13 other non-executive oversight committees established in terms of the Municipal Structures Act (CoCT annual report 2007/08:60).

During its public meetings, the CoCT PAC came across as having clear direction and the chairperson and members appeared to be carrying their mandate with certainty about their role and mandate. However, during interviews with senior members of the CoCT PAC, these members expressed uncertainty with regard to the committee’s mandate and its ToR. Neither the former chairperson, nor the incumbent chairperson was sure of the status of the CoCT PAC ToR – the chairperson was under the impression that the CoCT PAC ToR still needed approval by the city council. The incumbent chairperson was under the impression that the CoCT PAC could not initiate own investigations, whilst, in fact, the *System of Delegations* provided such authority to the CoCT PAC. A senior member of the majority party, who had been a member since the inception of the CoCT PAC in 2006 and from whom one would have expected more certainty, could not elucidate the CoCT PAC mandate and powers, and referred the researcher to the secretariat for clarity.

On more than one occasion, interviewees remarked that they were in need of more clarity and that they were keenly awaiting training from an appropriate subject expert to provide such clarity. A review of the CoCT PAC documentation also indicated that there was more than one version in existence of the detailed 14-page ToR first presented in 2006. The CoCT PAC therefore did not have an up-to-date guideline in

which the ToR was explained or elucidated. The production of an appropriately detailed guideline or handbook in which the role, functions and method of work of the CoCT PAC is explained would be of benefit to committee members, staff and other stakeholders.

The mandate, powers and delegated authority of the CoCT PAC is contained in paragraphs 49 and 50 of the *System of Delegations* of the council.

Paragraph 49 provides the CoCT PAC with the authority to –

1. *Co-opt advisory members who are not members of Council provided that such members may not vote on any matter;*
2. *Request a member of public to attend any meeting of the Committee to assist the Committee with the performance of its functions and duties;*
3. *Determine its own operational procedures and Rules of Order in terms of a framework approved by Council;*
4. *Investigate any matter within its terms of reference;*
5. *Seek any information from, and have access to, any councilor [sic] and or/employee, and to direct all councilors and employees to cooperate with any request made by the committee;*
6. *Have unrestricted access through the Office of the City Manager/Internal Audit to information relating to all personnel, books of account, records, assets and liabilities of the Council and to any other sources of relevant information that may be required from the Council for the purpose of its duties and responsibilities;*
7. *Request councilor(s) and official(s) to be present at any meeting for interview and input regarding items on the agenda;*
8. *Have direct access to internal and external auditors and to investigate any matter falling within the terms of reference of the committee;*
9. *Have access to all accounts and financial statements of the municipality; all reports of the Auditor-General; information in respect of any disciplinary actions taken in terms of the Municipal Finance Management Act (MFMA), and information in respect of transgressions in terms of the MFMA;*
10. *Ensure that the City's oversight report as envisaged in section 129 of the MFMA is prepared for adoption by Council;*

- 11. Consider and comment to the Executive Mayor on the reports of the AG on the accounts for the preceding financial year, and specific reports of the Auditor-General; and queries, comments and responses in respect thereof;*
- 12. Recommend on any proposals for improving efficiency, effectiveness and economy in the financial sphere of the municipality;*
- 13. Liaise with the Audit Committee and any other relevant role players;*
- 14. Promote transparency and public accountability within the terms of reference of the Committee; and*
- 15. Evaluate, direct and supervise investigations into any matters within the scope of its duties and responsibilities including projects as requested by the Executive Mayor or Council.*

In addition, paragraph 50 delegates to the CoCT PAC the responsibility to:

- 1. Obtain legal, technical and any other specialised assistance required to exercise their functions and duties within budget provided;*
- 2. Investigate the alleged misappropriation of municipal funds by Councilors and/or officials and report thereon to the Executive Mayor, the Speaker or Council as the case may be; and*
- 3. Investigate unauthorized, irregular or fruitless and wasteful expenditure in terms of section 32 (2) of the MFMA with a view to recommending to Council whether such expenditure is irrecoverable or not.*

A striking feature of the CoCT PAC mandate as set out in the *System of Delegations* is the fact that matters may be referred to the committee, not only by the council, but also by the executive mayor. In terms of the 15<sup>th</sup> subparagraph of paragraph 49 of the *System of Delegations*, the CoCT PAC has the authority to evaluate, direct and supervise investigations into any matters within the scope of its duties and responsibilities, including projects as requested by the Executive Mayor or council. This is not normal practice for a PAC as the purpose of establishing a committee on public accounts is to provide the non-executive authority – in this case council's non-executive members – with a mechanism to oversee the executive authority. A further and problematic implication of having the Executive Mayor refer matters to the CoCT

PAC is that the committee being obliged to report back to the Executive Mayor is inappropriate. Firstly, the CoCT PAC is a non-executive oversight committee that acts as an extension of the whole of council and is responsible for critically examining the results of the executive actions of the Executive Mayor, the executive mayoral committee and City Manager. The report on the findings made by the CoCT PAC should therefore be furnished directly to council, so that council may hold the executive and city management accountable, should such action be recommended.

Another significant and problematic feature of the *System of Delegation* relating to the CoCT PAC is that it is required to report to the Executive Mayor on certain issues. For example, the 11<sup>th</sup> subparagraph of paragraph 49 requires that the CoCT PAC reports to the Executive Mayor on its review of the reports of the AGSA. Although the main function of a PAC is to examine reports of the AGSA on the public accounts of its jurisdiction, such a task is normally undertaken on behalf of the parent chamber – in this case the council – in order to hold the executive accountable. Requiring the CoCT PAC to report to the Executive Mayor defeats the purpose of having a non-executive financial oversight committee.

#### **5.4 DESCRIPTION OF TERMS OF REFERENCE / OPERATIONAL GUIDELINE**

At the inception of the CoCT PAC in 2006, a document of 14 pages setting out the ToR of the newly established CoCT PAC was presented to the said committee. The purpose of the document was to provide detailed guidance to the members and staff of the CoCT PAC on the functions, powers and method of work of the said committee. The ToR also addressed the following important aspects:

- the principle that the CoCT PAC should function in a non-partisan manner;
- the convention that the committee should be chaired by a member from one of the opposition parties;
- the principle that the AGSA is a key external source of information and advice;

- a proposal that the members of the CoCT PAC should be appointed for the full five-year term of council in order to achieve continuity;
- the principle that the media plays an important role in reporting the activities of the resolutions of the CoCT PAC.

However, the draft ToR also contained a number of aspects that did not align with generally accepted PAC practices. For example, the draft ToR proposed that –

- a minimum of two meetings per year be held instead of more regular meetings;
- executive directors of the CoCT management team attend meetings while general practice determines that the accounting officer – in this case the City Manager – should be the primary member of management answerable to the CoCT PAC;
- sections from the RSA Constitution applicable only to committees of parliament and provincial legislatures also applied to the CoCT PAC; and
- the CoCT PAC should report to the Executive Mayor instead of the full council of the CoCT.

The draft ToR was never formally adopted and its status was uncertain at the time of the field work carried out in September 2009. The secretariat of the CoCT PAC indicated that they understood that the intention was for the ToR to be reviewed, but it was not clear who would be responsible for ensuring that a review was carried out, nor was it clear by whom the review should be carried out. (At the end of 2008, the committee's secretariat had tried to arrange for a subject matter expert to advise the council on the mandate and functions of a PAC in terms of best practices. The intention was that the subject matter expert would also have been contracted for purposes of suggesting refinements to the 2006 draft ToR. Unfortunately the subject matter expert who had been identified, was no longer available and another subject matter expert had yet to be contacted.)

## **5.5 THE CoCT PAC AND POLICY MATTERS**

The CoCT *System of Delegations* is silent on whether the CoCT PAC is entitled to consider matters of policy. The ToR document does point out that the CoCT PAC does not concern itself with the policies of the council or “with determining their merit” but that the CoCT PAC is concerned with how policy is carried out. It was also the understanding of all the interviewees that the CoCT PAC currently does not concern itself with policy matters, and that the other section 79 standing committees were charged with carrying out policy oversight from a non-executive perspective.

The incumbent chairperson of the CoCT PAC did, however, remark that it was not always easy to draw the line between policy oversight and implementation oversight, and that he, at times, had had to hold members back from venturing onto policy terrain. This may partly be due to the fact that, during its review of the whole of the annual report for the purpose of producing the MFMA section 129 oversight report, the CoCT PAC members on a number of occasions engaged the city management on policy matters, as reported in the annual report. (See also Table 5.1 on page 81 indicating that the majority of the CoCT PAC’s findings and recommendations related to non-financial matters and not the impact of policy implementation, as is traditionally the role of a PAC.)

## **5.6 LEADERSHIP, COMMITTEE COOPERATION AND COMMITTEE MEMBERSHIP**

As far as composition, leadership and committee membership is concerned, the CoCT PAC conforms to key features of a traditional PAC:

### **5.6.1 The Chairperson of the CoCT PAC**

The current chairperson of the CoCT PAC is a member of the official opposition. The former and first chairperson was also from an opposition party. All of the respondents, whether from the majority party or opposition parties, were of the opinion that this arrangement was appropriate, that it favoured the credibility of the CoCT PAC, and that it should continue. Over the years, many arguments have been put forward internationally in favour of having a member of the opposition chairing the PAC, and as many arguments have been made against such an arrangement. What seems certain, though, is that there is great symbolic value in a majority party supporting the principles of transparency and accountability by appointing a member of the opposition to chair such an important scrutiny committee.

A senior member of the ruling party confirmed that his party had, from the beginning, taken a very deliberate decision that the CoCT PAC should be chaired by a member of the opposition and that this was still very much their view today. The former chairperson also had no doubt about this being the best arrangement in the interest of effective oversight. The current chairperson believed that such an arrangement was appropriate as it had to do with oversight over a government which is controlled by a different party, and that a chairperson from the opposition would therefore ensure a more watchful approach to the actions of the executive. He felt that a chairperson from the ruling party would not want to probe too deeply if the matter affected members of his or her own party. He indicated that it did, however, place a lot of responsibility on the shoulders of the chairperson to lead the CoCT PAC objectively and refrain from misusing his position for political point scoring. He also pointed out that the members of the majority party on the CoCT PAC had the responsibility of acting with maturity, as they had to be prepared to own up when instances of mismanagement were revealed and they had to demonstrate that they were non-partisan in their decision making and deliberations.

### **5.6.2 Non-partisan approach**

There was a definite non-partisan approach to business by the CoCT PAC. The decisions were taken democratically and collectively; to date it has not been necessary for the members of the respective political parties to exercise their right to vote on any matter. This approach is consistent with Hedger and Blick's proposal that any PAC should have an "ethos of inter-party cooperation and bi-partisan approach by PAC members to enquiries and all activities" (Hedger & Blick, 2008:41). The incumbent Chairperson of the CoCT PAC, however, pointed out that it was necessary to hold behind-the-scenes discussions at times to ensure that the CoCT PAC reached consensus; demonstrating the importance of the role of the chairperson, whether inside or outside the committee room. All the interviewees were also of the opinion that the consensus approach was the main reason for the credibility of the CoCT PAC among other members of council, and why the full council of the CoCT never found it necessary to debate the reports of the CoCT PAC.

### **5.6.3 Membership**

In terms of its membership, the CoCT PAC is a clearly non-executive committee as all members of the CoCT PAC are non-executive members of council. Within the municipal sphere of government, this is an especially important aspect given the weak separation of powers in municipalities between non-executive and executive functions.

The CoCT PAC has nine members. This complies with the requirements of Staphenurst's 'ideal committee' of having between five and eleven members (2005:25). Attendance of meetings by the members of the CoCT PAC is high. At the meetings observed by the researcher, all members were in attendance the attendance was also very high in terms of the minutes of other meetings that were perused,. All of the interviewees were of the opinion that the number of members was



adequate for the committee to fulfil its functions effectively, including the work carried out by the subcommittees.

## **5.7 ACCESS TO INFORMATION**

As far as right of access to information is concerned, the city's *System of Delegations* provides adequate authority for the CoCT PAC to have unrestricted access to internal documents. However, interviewees reported that the CoCT PAC in practice struggled to obtain information. This is not surprising, seeing that the practice of the CoCT PAC is to request information directly from the department that deals with the matter, and not from the City Manager. It is only when the CoCT PAC does not get cooperation from departmental officials that the committee elevates the request to the City Manager, who is the Accounting Officer of the CoCT. In spite of the fact that the CoCT PAC has found that information was furnished quickly and effectively whenever requests for information were made to the City Manager directly, the CoCT PAC regards the City Manager as "the last port of call" for requests for information. In September 2009, there was no agreed or formalised protocol on the manner by which the CoCT PAC would obtain the information it requires.

## **5.8 COMMITTEE OUTPUTS**

The CoCT PAC has two primary areas of output: (i) The oversight report produced on behalf of the council after consideration of the annual report, and (ii) investigation reports arising from investigations mostly carried out by subcommittees of the CoCT PAC of instances of unauthorised, irregular or fruitless and wasteful expenditure.

### **5.8.1 The Oversight Report**

During the months of February and March, the CoCT PAC is fully occupied with the production of the oversight report on behalf of the council. The production of an

oversight report is a requirement in terms of section 129(1) of the MFMA. In terms of the aforementioned Act, the main objective of an oversight report – therefore the main function of an oversight committee – is to review the annual report of a municipality in order to recommend whether the council should adopt the annual report with or without reservations, or whether the annual report should be rejected, or referred back for revision of certain components. The main functions of a PAC entail the examination of the accounts of the municipality and the report of the external auditor thereon, plus in general the scrutiny of the spending of public funds by the municipality. Nowhere does the MFMA prescribe PAC oversight functions.

The CoCT has decided not to establish an oversight committee as other councils have done, but to assign the responsibility of the production of the oversight report to its PAC. The production of the oversight report entails (i) a review of the annual report by the CoCT PAC, and (ii) the obtaining of input from other section 79 committees of council, as well as input from the public received via the city's sub-councils. The CoCT PAC consolidates all inputs received from its own perspective and produces the oversight report, which it then presents to the council of the CoCT, "functioning as oversight committee".

To do this, the CoCT PAC is allowed two months from the date on which the annual report is tabled in the council of the CoCT. Given that the CoCT PAC is obliged to complete its own review of the annual report, as well as consider input from the other section 79 committees and the public, the time available for the CoCT PAC to scrutinise the accounts included in the annual report, or to review the report of the AGSA, is limited. The examination of the city's accounts and the report of the AGSA does not involve detailed questioning of the accounting officer or other executives, with the result that financial scrutiny by the CoCT PAC is also limited. For example, only 36.5% of recommendations made by the CoCT PAC in respect of the 2006/07 and 2007/08 annual reports were related to financial matters (see Table 5.1 on

page 81). In spite of this, however, the production of the oversight report is the primary annual output of the CoCT PAC.

Table 5.1 below illustrates that the extent of the CoCT PAC focus on matters is of a non-financial nature rather than the ‘traditional financial focus’ of a PAC. In the CoCT PAC report on “comments and resolutions in respect of the 2007/08 annual report”, as well as in the minutes providing evidence of the meeting that dealt with the annual report, the majority of matters that were raised related to non-financial issues.

Table 5.1: Ratio of non-financial vs financial matters probed by CoCT PAC			
<i>Number of <u>non-financial</u> matters reported on</i>		<i>Number of <u>financial</u> matters reported on</i>	
Resolutions and comments on 2006/07 annual report			
15	62,5%	9	37,5%
Resolutions and comments on 2007/08 annual report			
11	65%	6	35%
26	63,5%	15	36,5%

Source: Own analysis

As far as the substance and content of the oversight report is concerned, the incumbent chairperson expressed concern about the manner in which the CoCT PAC pronounced itself on the adequacy of the oversight report. In both financial years since the inception of the said committee, it recommended to the council of the CoCT that the annual report should be adopted “without reservation” as provided for in section 129 of the MFMA. The chairperson was not sure how the committee could recommend adoption “without reservation”, despite expressing concern about certain

issues reported and despite the said committee having carried out investigations into instances of unauthorised, irregular or fruitless and wasteful expenditure.

However, the CoCT PAC had been advised that it was a technical term and that, if the content of the report was correct and a true reflection of the activities of the city, the committee should recommend 'unreserved' adoption. The chairperson clearly felt uncomfortable about the advice and believed that the COCT PAC required more guidance on the matter, whether from the National Treasury or from another relevant authority.

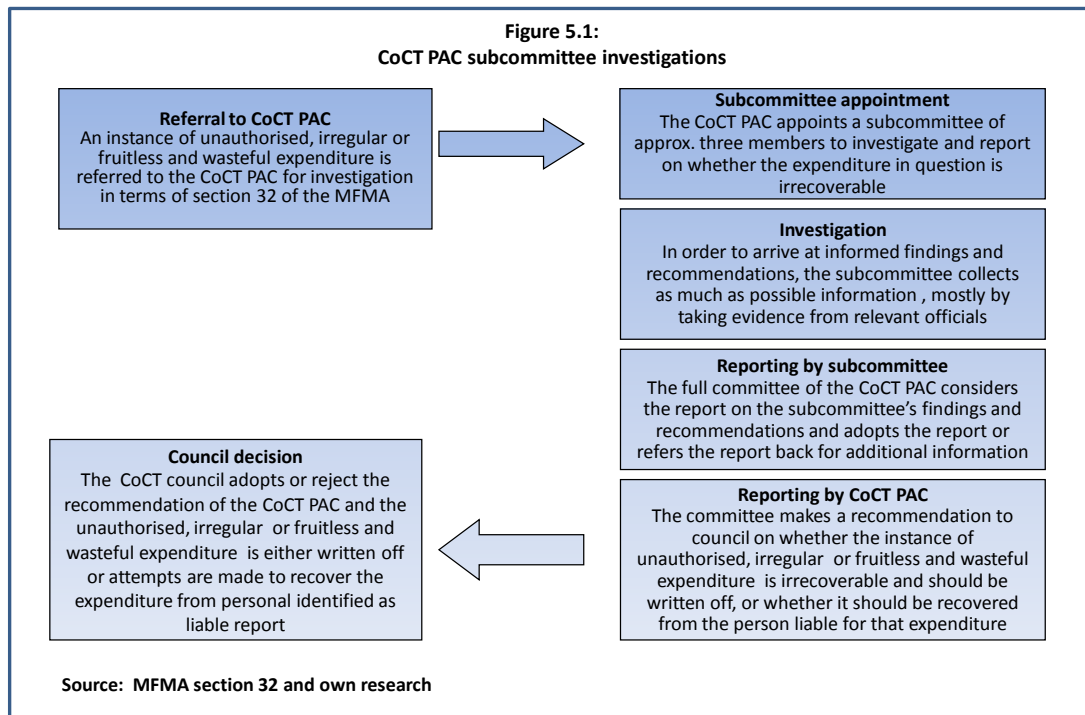
### **5.8.2 Committee investigations**

The second key output of the CoCT PAC consists of investigations carried out in terms of the requirements of the MFMA which relate to a municipal council having to obtain full details of instances of unauthorised, irregular or fruitless and wasteful expenditure so that the council may consider, after investigation by a committee of council, whether or not to certify the expenditure in question as irrecoverable and have it written off.

As in the case of the section 129 oversight report required by the MFMA, the CoCT PAC investigations of instances of unauthorised, irregular or fruitless and wasteful expenditure is a key focus area of the said committee. Section 32 of the MFMA requires that a committee of a municipal council must advise the council on instances of unauthorised, irregular or fruitless and wasteful expenditure for the council to be in a position to take informed decisions on whether or not to condone the expenditure.

A practice that the CoCT PAC has developed is to appoint subcommittees consisting of an average of three members, as and when the need arises, to investigate reported instances of such expenditure. PACs often appoint subcommittees to assist with high volumes of work. In the case of the CoCT, the subcommittees enable the

CoCT PAC to investigate the relevant matters in proper detail and arrive at well-informed conclusions and recommendations. The subcommittees carry out in-depth investigations into the matters before them, report to the full CoCT PAC committee, and the full CoCT PAC committee, in turn, reports to the council with recommendations on whether or not to condone the matters investigated (see Figure 5.1 below).



Recommendations based on the investigations of its subcommittees made by the CoCT PAC from its establishment until September 2009 have all been adopted by the council of the CoCT. Once the council of the CoCT has adopted the recommendations of the CoCT PAC they become a decision of council and are binding on the city manager.

## **5.9 COMMITTEE MEETINGS**

The CoCT PAC meets on a monthly basis unless the workflow does not justify a meeting. Meetings are scheduled well in advance and the agenda and other relevant documents are circulated at least a week in advance of meetings. The agenda of the meeting is also made available on the public website of the CoCT.

Meetings are normally held on the 6th floor in *committee room 1*, adjacent to the main Council Chamber. The committee room is well resourced in all respects: The room is large and comfortable and well-equipped as far as sound and recording facilities are concerned, with a microphone for each member; the document packs are well prepared and referenced; minutes and detailed transcripts of previous meetings are available; and four dedicated support staff attend the committee meetings (i.e. a minute secretary and three professional staff from the internal audit directorate who provide technical advice and support).

The aforementioned resourcing of the CoCT PAC reflects recognition of the CoCT PAC as an important committee of the council, compared to MPACs in Gauteng that have reported that their struggle for recognition includes having to battle to obtain committee rooms for meetings.

The meetings of the full CoCT PAC are open to the public. Public meetings are preceded, however, by closed pre-meetings – preparatory sessions attended by members of all the political parties represented on the CoCT PAC. The aim of these preparatory meetings is for all members of the committee to agree on the approach to be followed and, together with support staff, to ensure that the meetings function efficiently and effectively. This practice gives evidence of the non-partisan nature of the operating style of the CoCT PAC and differs from portfolio committee meetings where members of the committee also meet beforehand, but in their separate political parties.

Subcommittee meetings are closed to the public. Most interviewees regarded the closed subcommittee meetings as a necessary practical arrangement, seeing that this enables the committee to cover more work and because the matters investigated could affect the reputation of individuals implicated in the investigations. The incumbent chairperson of the CoCT PAC observed that, if the subcommittee meetings were open, members would be reluctant to probe deeply. He was comfortable that the situation did not comprise a completely hidden process, seeing that all the findings were tabled in the full CoCT PAC meeting at the end of the investigations, thereby bringing all members up to date and providing them with the opportunity to probe further should there be such a need. The full CoCT PAC also had the right to refer a matter back to the subcommittee if it was felt that more detail or further work was required to be done before the recommendations of the subcommittee could be adopted.

The representatives from the CoCT management at the meetings of the CoCT PAC normally are senior managers and not executive managers. The City Manager normally only attends the annual meeting, at which the annual report of the city is presented. Most interviewees did not regard it as necessary for the committee to engage at the executive management levels, seeing that they were busy with information gathering and senior managers could provide the required information without the PAC having to 'waste' the executives' time unnecessarily. However, this practice of the CoCT PAC, as reported earlier, at times resulted in delays in providing the committee with the required information.

The method of questioning officials took an information gathering form rather than the probing style common to the provincial and national public accounts committees. At both the meetings that were observed, a large number of officials were present and a variety of issues served on the agenda. The incumbent chairperson of the CoCT PAC admitted that it may be more effective to separate the items and have interaction with

individual departments for two hours or so. This, he believed, would also assist in giving sufficient and focussed attention to the annual report in the way they were expected to handle it.

#### **5.10 WORK PROGRAMME**

As indicated in paragraph 5.8, the work programme of the CoCT PAC mainly consists of two phases. The first phase is concerned with the production of the oversight report on behalf of the council of the CoCT during February and March of every year. As the oversight report has to be presented to the council of the CoCT by the end of March, the sole focus of the CoCT PAC during this time is the oversight report. A lot of work has to be covered, however during the two months between the tabling of the CoCT's annual report and the submission to the council of the CoCT of the section 129 oversight report by the CoCT PAC. This involves examining the annual report of 192 pages, receiving a briefing from the AGSA on the audit report contained in the annual report, calling the City Manager and his staff to appear before the CoCT PAC to elucidate the content of the various sections of the annual report, receiving comments on the annual report from other non-executive committees of the CoCT, considering inputs from the public, and finally drafting and submitting the section 129 oversight report.

The question is whether the CoCT PAC can do justice to its examination of the annual report and, in particular, to its examination of the AFS and the AGSA report thereon? A review of the section 129 oversight reports reflects cursory examination of matters related to financial issues contained in the annual report during this two-month period. The incumbent Chairperson of the CoCT PAC indicated that further examination of the AFS and the report from AGSA after the end of March was not feasible as members regarded the examination as having been dispensed with once the oversight report was produced and submitted to the council of the CoCT. Other interviewees also all indicated that it should be borne in mind that the members of the



CoCT PAC acted in a part-time capacity and that it would be difficult to motivate members to return to a matter already dispensed with in order to deal with it in greater depth.

The second phase of the CoCT PAC work programme consists of investigations referred to the CoCT PAC by the council of the CoCT or by the executive mayor. Planning for these investigations is difficult as it depends on the number of unauthorised, irregular, or fruitless and wasteful expenditures, as well as the number of referrals from council or the Executive Mayor. The investigations-driven work, however, takes up most of the CoCT PAC work between April and December every year.

Figure 5.2:										
Annual work programme of CoCT PAC										
Jan	Feb	March	April	May	June	Aug	Sept	Oct	Nov	Dec
<i>(Tabling of annual report of CoCT takes place at end of January)</i>	CoCT PAC reviews annual report, receives inputs from other sect.79 committees and submissions from City Manager, and produces sect.129 oversight report		Council considers oversight report for adoption or rejection ito sect. 129 of MFMA	CoCT PAC holds monthly meetings, appoints subcommittees and refers matters to the subcommittees; receives reports from its subcommittees in respect of investigations into unauthorised, irregular, or fruitless and wasteful expenditure.  Recommendations are submitted to the council of the CoCT on whether the instances of unauthorised, irregular, or fruitless and wasteful expenditure investigated are irrecoverable or not, and must be written off or not.  During its monthly meetings, the CoCT PAC also follows up on the extent of implementation of matters which it had previously reported on, and which were endorsed by the council of the CoCT.						
Source: Own research										

## 5.11 COMMITTEE RESOURCES

One of the strengths of the CoCT PAC is the administrative and professional support available to it. The minute secretary is able to produce minutes of a high standard within a week or two of the meetings. She also produces verbatim transcripts of meetings. Effective follow-up of the undertakings made by those who are accountable is a key element of an effective accountability process. The availability of transcripts of meetings therefore enables the CoCT PAC to carry out detailed follow-up on the undertakings provided by the City Manager and other officials during previous engagements, and hold them accountable.

The CoCT PAC enjoys very good technical support from the internal audit directorate of the CoCT. Two of the staff members who give support to the said committee are employed at management level, and the third staff member at executive level. One of the managers had been appointed specifically with the aim of supporting the CoCT PAC. Although she has internal audit responsibilities as well, she dedicates approximately 55% of her time to the work of the CoCT PAC. During peak periods the work of the CoCT PAC takes precedence. On request of the CoCT PAC, she sometimes also performs mini audits on matters before the Committee for which speedy additional information is required before the CoCT PAC can make informed decisions. The external auditor, therefore, is not relied on to the same extent as has been observed in other jurisdictions in South Africa. The CoCT PAC is a political structure and should remain independent.

The incumbent chairperson of the CoCT indicated that the quality of technical support would always be a key determining factor of the effectiveness of the CoCT PAC. He explained that it was unlikely that CoCT PAC members would ever be willing or able to examine the reports referred to the said committee to the extent necessary for effective scrutiny, and would therefore always be dependent on technical support in order to be effective. The incumbent chairperson of the CoCT PAC again pointed out that all the members were part-time members and did not have the capacity to carry out proper scrutiny without assistance from support staff.

The operational budget of the CoCT PAC forms part the annual budget of the internal audit directorate. However, as this arrangement has not been formalised by a council resolution, there is a risk of the funding of the CoCT PAC being affected, should the relationship between the internal audit directorate and the CoCT PAC degenerate. For example, in the event that the audit committee or the AGSA produce critical findings on the quality of the work of the internal audit directorate – which the CoCT PAC is likely to endorse – the relationship between the CoCT PAC and the internal audit directorate may become strained to the detriment of the CoCT PAC. In the case of budget cuts within the CoCT, there is the additional risk that the internal audit division may prioritise its own funding needs before allocating resources to the CoCT PAC.

However, the support and involvement of the internal audit directorate in the business of the CoCT PAC was clearly a key reason for the success of the CoCT PAC thus far at the time of the research. It will be important for the CoCT PAC to ensure that this support is retained.

## **5.12 COUNCIL DEBATE OF CoCT PAC REPORTS**

The main purpose of a PAC report is to make recommendations to the PAC's parent chamber on the basis of the findings from investigations carried out on behalf of the parent chamber. If a PAC report is discussed in the chamber and is not merely adopted without debate, it has the advantage of the findings and recommendations being aired at a higher public forum. Such public debate generates public confidence in the accountability systems of the institution in question.

The reports of the CoCT PAC have been adopted by the council without debate since its inception. The incumbent CoCT PAC chairperson expressed concern about the level of attention that the CoCT PAC reports receive from council members. He indicated that council members generally seem so disinterested in CoCT PAC reports

that they probably would prefer to agree to the adoption of the CoCT PAC reports outside of council meetings. He believed that fellow councillors should take note of the issues raised by the CoCT PAC as recommendations that were made were about serious issues. He also believed that fellow councillors should take more ownership of the recommendations and possibly use the opportunity during council meetings when the reports of the CoCT PAC are presented, to add additional perspectives.

### **5.13 FOLLOW-UP ACTIONS**

A concern raised in most jurisdictions where PAC have been established is that there is a lack of follow-up as far as implementation of recommendations is concerned. In most jurisdictions, the submission of a formal response to the parent chamber of the PAC within a prescribed period of time that generally ranges between three and nine months is generally accepted PAC practice. In practice, however, effective follow-up actions by parent chambers often seem to be non-existent.

The CoCT PAC attempts to monitor the implementation of its recommendations itself once the recommendations have been adopted by the council. The considerable assistance in this regard from the technical support staff of the CoCT PAC was acknowledged by a number of other interviewees. There is no council rule requiring a response to CoCT PAC recommendations, however, and neither is there any stipulation concerning a period within which the municipal executive or the management of the CoCT has to respond to CoCT PAC recommendations. One would expect there to be a requirement, though, for a formal response to be submitted to the CoCT PAC by the City Manager on behalf of the executive and management of the CoCT.

## **5.14 STAKEHOLDER RELATIONS**

In general, the valuable role of the CoCT PAC seems to have been accepted by the key internal stakeholders in the CoCT, but there is no significant interaction or relationship between the said committee and key stakeholders such as the Speaker, the Audit Committee, and the Finance Committee. The City Manager honours the CoCT PAC with his presence only once a year during the said committee's review of the annual report based on the MFMA requirement to this effect. The CoCT PAC does not seem to regard it as a right to have more dedicated attention from the City Manager. In fact, the members seemed quite appreciative when the City Manager afforded the committee his attention and, during the last annual report review, personally undertook to ensure that the committee was provided with information it was seeking.

There is no relationship between the CoCT PAC and the AC. This was a surprising finding, given the similarities in their respective mandates. The CoCT PAC could consider using the AC as another key source of information, seeing that the AC reviews quarterly reports of the internal auditors of the city, and should therefore have an informed perspective on the state of internal controls throughout the year. The insight and perspective of the AC would be an added source of information, seeing that the members of the AC are external independent experts, the AC could also be a credible source of advice.

As far as external stakeholders are concerned, there is always attendance by the media of the CoCT PAC meetings. In an interview with two of them, media representatives indicated that they regarded the CoCT PAC as an important mechanism and were surprised that municipal PACs had not been established at all other municipalities. Regular media articles appear in the local newspapers following meetings of the CoCT PAC. The incumbent CoCT PAC chairperson indicated that the profile of the CoCT PAC, whether as a result of the external media or the internal

grapevine, resulted in officials being quite worried when the CoCT PAC was investigating a matter and that this fact assisted in the said committee in being taken seriously.

A good working relationship with the AGSA is regarded as an important factor for success. In the case of the CoCT PAC, there is a good working relationship. Owing to the strong support from the internal audit professionals elucidated above, the CoCT PAC is not unnecessarily dependent on advice and support from the AGSA as is the case in certain other jurisdictions.

The CoCT PAC members who were interviewed regard public participation in the work of the CoCT PAC as important but a challenge, because the quality and extent of input from the public is disappointing. The CoCT PAC has also struggled to get fellow councillors – the public's representatives – to comment on the annual report for purposes of the oversight report. Although the annual report is submitted to sub-councils and wards for comment, very little feedback is received by the CoCT PAC.

## **5.15 CONCLUSION**

The CoCT PAC has been operating as a financial oversight committee for the past three years. A considerable amount of authority has been delegated to the committee and the said committee has been asserting this authority through various oversight activities that have resulted in recommendations being made to the CoCT council, thereby fulfilling the function of advising the council on matters referred to it. The extent to which the committee has done so effectively, and the factors that have hampered the committee, are discussed in the next and final chapter.

## **CHAPTER 6: DISCUSSION AND CONCLUSION**

### **6.1 INTRODUCTION**

Although no two public accounts committees can be expected to operate in a similar manner, there are certain international PAC practices that have been established over the years as generally accepted practice capable of strengthening accountability and proper financial oversight. Since 1991, when the CCPAC proposed 38 attributes for an effective PAC, international PAC practices have crystallised to such an extent that different authors are now in agreement about 20 generally accepted practices that can be regarded as fundamental features of a PAC.

Based on the evidence produced by the case study of the CoCT, this concluding chapter contains an analysis of how the CoCT PAC compares in terms of the 20 generally accepted PAC practices recognised internationally as vital to an effective PAC. In Table 6.1 on the next page, the adherence by the CoCT PAC to each of the 20 identified generally accepted practices is assessed from two perspectives: firstly from the point of view of the documented framework within which the said committee has to function and, secondly, from a practical implementation point of view. In Table 6.1, brief commentary on the reasons for adherence or non-adherence to generally accepted best practices is provided and this expanded on in detail in the remainder of the chapter. The chapter also includes recommendations to the CoCT PAC on how to address the shortcomings identified on the basis of the theoretical framework derived from the literature study and the lessons learnt during the case study.

The chapter ends with recommendations to the relevant national and provincial authorities on steps to be considered for improved guidance and support to MPACs.

<p><b>Table 6.1:</b> <b>CoCT PAC adherence to generally accepted PAC practice</b></p>					
<b>Generally accepted PAC practice</b>		<b>CoCT PAC documented framework</b>	<b>Comment</b>	<b>CoCT PAC implemented practice</b>	<b>Comment</b>
1	Established by legislation or standing rules	X	Par 49 & 50 of <i>System of Delegations</i> not adequate in all respects	X	Too much uncertainty or ambiguity about PAC role and its functions
2	Examines financial performance & stewardship at year-end	X	Mandate is ambivalent about core function	X	A mix between oversight report committee, PAC & investigating committee
3	A written description of the PAC mandate / terms of reference exists	X	Only a draft ToR exists	X	Activities of CoCT PAC not guided by ToR
4	Focus of the PAC is on policy implementation, not policy itself	√	No mandate for policy oversight	√	Focus is on financial administration
5	Has power to compel any person to appear before it, and has access to any relevant information	X	Only CoCT staff & councillors	√	No limitations thus far on requests for information
6	The PAC has powers to initiate own investigations	√	Par 49(3)(a)	X	No own investigations initiated – not clear whether authority exists
7	Obtains parent chamber endorsement for recommendations to the Executive	X	Par 49(7) requires reporting to Mayor, par 50(2) ambiguous	√	Reports tabled in council and endorsed.
8	Membership is limited to non-executive members	√	Section 79 non-executive committee	√	Clearly operates as a non-executive committee
9	It is preferable for the chairman to be from the opposition	X	A convention not documented	√	In practice opposition has chaired since inception
10	The Committee operates in a non-partisan manner; always strives for consensus	X	A convention not documented	√	In practice CoCT PAC has operated ito this convention



<b>Table 6.1:</b> <b>CoCT PAC adherence to generally accepted PAC practice</b>					
<b>Generally accepted PAC practice</b>		<b>CoCT PAC documented framework</b>	<b>Comment</b>	<b>CoCT PAC implemented practice</b>	<b>Comment</b>
11	Public hearings are the norm, giving access to the general public and the media	X	A convention not documented	√	Public meetings are the norm
12	Frequent or regular meetings take place	X	No minimum meetings stipulated	√	Meets approximately on a monthly basis
13	Collaboration with other oversight committees is beneficial	√	System of Delegations, par 49(9)	X	No effective collaboration with other committees
14	PAC reports are always published and made public	X	A convention not documented	√	In practice this has been the norm since inception
15	Primary source documents are reports of the Auditor-General	√	System of Delegations, par 49(3)(f) & (7)(a)	X	AGSA reports not the primary focus
16	Has adequate resources – secretarial, research and audit technical	√	System of Delegations, par 50(1)	√	Very efficient support in all respects
17	Members are exposed to specialised training/professional development	X	No minimum interventions documented	X	No training took place in 2008 or 2009
18	Debating on the PAC report takes place in the legislature (plenary)	X	No requirement documented	X	Adoption of reports take place without debate
19	Formal obligation for executive authority to respond to PAC recommendations	X	No requirement documented	X	Only officials respond
20	Records of proceedings of the committee are kept	X	No requirement documented	√	Minutes and transcripts are kept
<b>Totals</b>		<b>6/20 (30%)</b>		<b>11/20 (55%)</b>	

**Source: Own analysis**

## 6.2 ESTABLISHMENT AND AUTHORITY

In practice, there is far too much uncertainty in the minds of the members and support staff of the CoCT PAC. Although the establishment of the CoCT PAC is recognised in paragraphs 49 and 50 of the *System of Delegations* of the CoCT, it does not provide sufficient clarity with regard to a number of aspects (see Table 6.1). There also is ambiguity about some of the powers of the CoCT PAC, such as the said committee's power to initiate own investigations. The CoCT has established its PAC with the clear intention of it being a fully fledged, non-executive financial oversight committee and the formal mandating documents should reflect this role without ambiguity.

The function of a PAC should not be to act on behalf of the executive on any matter, but to oversee the financially related actions of the executive authority on behalf of council. The appropriate reporting line of the CoCT PAC should be to the council and the council only. Reports of the committee should concern the management of public funds by the accounting officer (City Manager) and his executive management team, and the directives provided to the accounting officer and team by the mayor and executive committee.

### Recommendations:

6.2.1 *In the absence of a national statutory framework for non-executive oversight in local government in general, and in particular for financial oversight through MPACs, the CoCT should obtain complete clarity about the role and mandate of a PAC and whether it is to function mainly as a PAC or as a hybrid committee. To this end the wording of the System of Delegations relating to the CoCT PAC needs to be revised by a legal adviser and a subject matter specialist.*

6.2.2 *The CoCT should revise paragraph 50 of the System of Delegations which deals with the specific matters delegated to the committee so that it is clear that the said committee's core function is the examination of the city's accounts and all AGSA reports thereon. (Currently the System of Delegations only deals with the investigation of unauthorised, irregular or fruitless and wasteful expenditure, and with alleged misappropriation of municipal funds.)*

6.2.3 *The terms of reference of the CoCT PAC should state clearly that matters are referred to the said committee only by the council of the CoCT, and that the CoCT PAC reports to the council only.*

### **6.3 ROLE AND FUNCTION**

The *System of Delegations* is ambivalent about the core functions of the committee. On the one hand the CoCT PAC is clearly charged with the responsibility, on behalf of the council, of producing the oversight report required by section 129 of the MFMA – to function as the section 129 oversight committee of the CoCT. On the other hand, the CoCT PAC is called a PAC and is charged with reviewing the accounts of the CoCT and the AGSA reports thereon, as well as with investigating unauthorised, irregular or fruitless and wasteful expenditure, or other matters referred to it.

However, in practice the CoCT PAC's first annual priority is to deal with the production of the oversight report stipulated in MFMA. As previously indicated, the production of the MFMA oversight report is a function that can be undertaken by any committee of council, as the main activity is to collect inputs from various sources and produce a consolidated view on the annual report. The CoCT is large enough to afford a separate oversight committee, or an *ad hoc* committee that can be appointed for the months of February and March only.

Having a separate oversight committee will enable the CoCT PAC to focus proper attention on the AFS and the AGSA report thereon, both of which are contained in the annual report, and submit its input to the separate oversight committee. Such an arrangement will also enable the CoCT PAC to examine, from a public interest point of view, important matters that currently are not receiving attention, for example:

- Long-term liabilities amounting to more than R3 billion (CoCT annual report 2007/08:93);
- Unspent conditional grants and receipts of more than R1,5 billion (CoCT annual report, 2007/08:99);
- Deviations from supply chain management regulations (CoCT annual report, 2007/08:131);
- Major capital projects and management of cost overruns (CoCT annual report, 2007/08:143).

The CoCT PAC should continue its investigation of instances of possible unauthorised, fruitless and wasteful expenditure, as this is in line with the financial watchdog role of a PAC. What is important is that the core function of a PAC, i.e. the detailed examination of the financially related year-end information, is not weakened by other responsibilities. (In the interview with the Chief Director in the National Treasury responsible for the guidelines on the production of the oversight report, this person's only concern regarding the possibility of having separate committees was that resources are limited in the case of smaller municipalities.)

#### Recommendations:

*6.3.1 As the name of the CoCT PAC suggests, the primary function of the committee should be to scrutinise the accounts or annual financial statements (AFS) of the CoCT and the AGSA report thereon. The CoCT PAC should*

*therefore preferably not double-up as a section 129 oversight committee responsible for the production of the oversight report.*

*6.3.2 The CoCT should consider appointing a special oversight committee dedicated to production of the CoCT's annual oversight report between January and March each year. This will allow the CoCT PAC the opportunity to provide input to such a separate oversight committee on the annual financial affairs of the CoCT when the other section 79 oversight committees make their input concerning their respective areas of responsibility. Such an arrangement will also enable the CoCT PAC to have an annual scrutiny programme that is not limited to the two months set aside by the MFMA for the production of the section 129 oversight report, and which allows as much scrutiny of the R12 billion budget of the CoCT as may be necessary. Such an arrangement will furthermore create the room for the CoCT PAC to examine the consolidated AFS, as well as the financial performance of each of the departments of the CoCT, separately and in detail. (See Figure 6.1 on the next page.)*

*6.3.3 If the CoCT PAC should retain the responsibility of producing the oversight report, the System of Delegations should make it clear that it is a secondary function of the CoCT PAC. The committee should furthermore allocate adequate time for in-dept scrutiny of the AFS and the AGSA report thereon, which should continue to be scrutinised after the end of March once the section 129 oversight report has been dealt with.*

*6.3.4 In order to clarify its role among key stakeholders within the CoCT, the said committee should consider developing a few high-level stakeholder actions aimed at interacting with stakeholders such as the Audit Committee and Finance Portfolio Committee. The support of the Speaker*

for the work of the CoCT PAC is important, and the committee chairperson should ensure that the Speaker supports the committee.

Figure 6.1: Proposed annual work programme of CoCT PAC										
Jan	Feb	March	April	May	June	Aug	Sept	Oct	Nov	Dec
Annual report tabled	CoCT PAC carries out a provisional review of the AFS and the AGSA report and provides input to CoCT oversight report		During its monthly meetings, the CoCT PAC runs detailed scrutiny sessions in respect of the AFS of the CoCT and all its departments and municipal entities, <i>inter alia</i> by means of a review of the report of the AGSA and the Audit Committee and by taking evidence from the City Manager and other relevant senior officials  In December, the CoCT PAC tables a detailed report to the council of the CoCT, but may table interim reports on urgent matters throughout the year.							
Throughout the year, the subcommittees of the CoCT PAC carry out investigations into unauthorised, irregular or fruitless and wasteful expenditure as and when the need arises, and report to the CoCT PAC upon completion so that recommendations can be forwarded to the council of the CoCT.										
Source: Own research										

## 6.4 DESCRIPTION OF TERMS OF REFERENCE / OPERATIONAL GUIDELINE

A detailed document describing the ToR document exists, but it is out of date and has no formal status. It also needs to be aligned to the *System of Delegations*.

There are a number of good examples of PAC guidelines that can be used as benchmarks for the CoCT PAC to produce a clear and user-friendly guideline for its members. A local example is the 2003 guideline produced by the PAC in the National Assembly called *Guidelines for Accounting Officers, Ministers and other persons appearing before the Committee*. On the international front, there is the Canadian Comprehensive Auditing Foundation's 2006 comprehensive but to the

point guideline called *Parliamentary oversight – committees and relationships: A guide to strengthening public accounts committees*.

Recommendations:

6.4.1 *As soon as the System of Delegations has been revised, the CoCT PAC should produce a guideline that can be used by its members, but also serves to clarify the role and function of the said committee among all stakeholders.*

6.4.2 *In addition, member training based on the guideline should be arranged as soon as the guideline is available and attendance should be obligatory for all members, new as well as long-serving members.*

## **6.5 ROLE IN RELATION TO POLICY**

In line with the generally accepted PAC practice, the CoCT PAC is not mandated to concern itself with policy matters, and in practice the said committee does not get involved in policy issues.

Recommendation:

*Given the importance of the credibility acquired by a PAC if it functions in a non-partisan manner and if it does not involve itself in policy matters, the committee's mandate documents should preferably stipulate that the focus of the CoCT PAC is on policy implementation and not on policy itself.*

## **6.6 ACCESS TO PERSONS AND INFORMATION**

The CoCT PAC is delegated to have access to any person and to documents within the jurisdiction of the CoCT. However, the said committee should reconsider its

practice of mainly requiring information from staff below the City Manager. In terms of generally accepted PAC practice, the committee should engage the most senior official, which, in the case of the CoCT, is the City Manager as the accounting officer.

### Recommendations

- 6.6.1 *The CoCT PAC should consider an arrangement or some form of protocol with the City Manager in terms of which complete and speedy information is provided to the committee upon first request.*
- 6.6.2 *The protocol should stipulate that the executive director of the city department under review by the CoCT PAC always is to be present at any meeting at which matters affecting his or her department are being dealt with. It should further be understood that the relevant person is in attendance as a representative of the City Manager and on the understanding that he or she will provide the CoCT PAC with all information required, and without delay.*
- 6.6.3 *The CoCT PAC should not be hesitant about demanding the presence of the City Manager at any of their meetings whenever his or her presence could assist in obtaining complete and expeditious responses to the CoCT PAC's questions for scrutiny.*
- 6.6.4 *Whenever possible, the Committee should hold separate meetings with the different heads of the respective departments so that the committee's undivided oversight attention can be focused on the department before it.*

The CoCT PAC does not have the statutory powers of access to information that the committees of the national and provincial legislatures have, and therefore cannot access information from persons or institutions outside the CoCT's jurisdiction. As far as information required by the CoCT PAC from outside sources is concerned, the



said committee has no jurisdiction over non-councillors or persons not employed by the council. The committee has, in the past, been faced with situations where it needed information from persons that had left the employ of the city, so that the required information could not be obtained. The said committee is also not authorised to place persons appearing before it under oath, should the need arise.

#### Recommendations

*6.6.5 The CoCT should consider approaching the relevant national authority, through the SA Local Government Association or another appropriate body, and propose that similar statutory powers be given to municipal committees to that enjoyed by committees of the national and provincial legislatures in terms of the RSA Constitution and the PPIPPL.*

*6.6.6 The City Manager is the accounting officer of the city, and it should be a standing arrangement that he or she should be present at all meetings of the committee to ensure that all the necessary information pertaining to the matters before the CoCT PAC is provided. For practical reasons, however, leave of absence from meetings can be with the agreement of the chairperson of the CoCT PAC.*

### **6.7 POWER TO INITIATE OWN INVESTIGATIONS**

The wording in the *System of Delegations* document is not one hundred per cent clear about the committee's power to initiate investigations. In practice, there is uncertainty in the mind of important role players like the incumbent chairperson, and the committee to date has not initiated own investigations.

#### Recommendations

*The wording in the System of Delegations document needs to be clarified when it is revised. It should empower the CoCT PAC to initiate own investigations into matters that fall within its terms of reference.*

## **6.8 PARENT CHAMBER ENDORSEMENT FOR RECOMMENDATIONS TO THE EXECUTIVE**

The *System of Delegations* of the CoCT requires the CoCT PAC to report to three principals: the Speaker, the council, or the executive mayor, and, in respect of the reports of the AGSA, it requires reporting to the executive mayor.

### Recommendations

*6.8.1 The committee should have one line of reporting only and that should be to the council. This can be done via the Speaker, but then the wording in the System of Delegations should be consistent in this regard.*

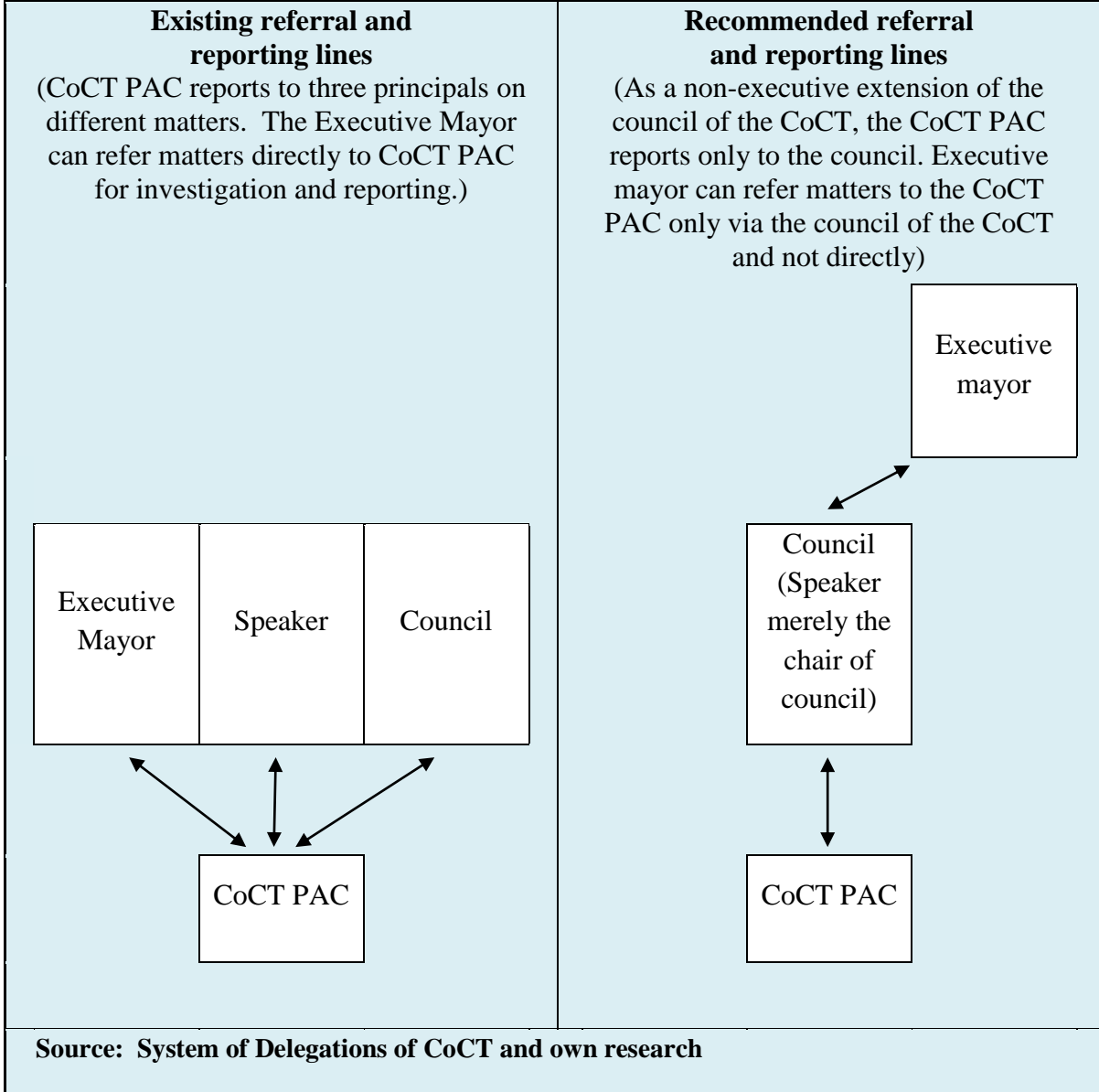
*6.8.2 The mayor and executive committee should only be able to refer matters to the CoCT PAC via the city council.*

## **6.9 MEMBERSHIP**

In practice, the CoCT PAC functions as a non-executive oversight committee, thereby complying with one of the key features of a typical PAC. However, the ToR of the CoCT PAC does not prescribe non-executive membership as a requirement. As far as the number of members is concerned, the membership of nine provides the CoCT PAC with an adequate number of members to carry out its work effectively, without membership being too large.

**Figure 6.2:**

**Reporting and referral lines of CoCT PAC**



Recommendations

6.9.1 *The System of Delegations should stipulate that membership of the committee is strictly limited to non-executive members.*

6.9.2 *Even though the CoCT PAC started with seven members in 2006, the said committee should try and maintain its membership at nine members given the extensive investigative work carried out by the subcommittees of the CoCT PAC.*

## **6.10 OPPOSITION CHAIRPERSON**

There is no formal requirement that the chairperson of the CoCT PAC is to be from an opposition party, although this arrangement has been in place since the committee's inception. The 14-page ToR presented to the CoCT PAC in August 2006 stated that the chairperson of the committee should be chosen from the opposition for purposes of "efficiency and transparency", but this was not taken up in *System of Delegations*. In the three years that the committee has existed, this arrangement has proven itself successful and there is no reason why it should not be formalised.

### Recommendation

*The CoCT PAC should consider formalising the convention of having a member of the opposition as chairperson of the committee.*

## **6.11 NON-PARTISAN OPERATIONS**

Although the CoCT PAC in practice operates with consensus and in a non-partisan manner, the principle that the CoCT PAC should operate in a non-partisan manner was never formally adopted as an accepted practice. The principle was mooted in the draft ToR document, but as the ToR document was never formally adopted, there is the risk that the principle of non-partisan operations will not become an entrenched practice of the CoCT PAC.

### Recommendation

*Although consensus decision making is a behavioural rather than an institutional factor, it would be in the interest of accountability and effective oversight if this convention could be taken up in a revised and formally adopted ToR document.*

## **6.12 PUBLIC HEARINGS**

The *System of Delegations* document does not stipulate that public meetings of the committee are the norm.

### Recommendation

*The System of Delegations should stipulate that the public meetings of the CoCT PAC should be the norm, and provide high level criteria for circumstances under which it will be reasonable and justifiable to hold closed meetings in an open and democratic society.*

## **6.13 REGULAR MEETINGS**

The draft ToR of 2006 stipulates a minimum of two meetings per year. In practice, the committee meets much more regularly. While it is difficult to predict the number of meetings required per year, a minimum of two meetings is highly inadequate. In practice, the CoCT PAC has found that it needed to meet approximately once a month.

#### Recommendation

*The committee's final ToR should stipulate that it meets on a monthly basis, but that the chairperson may cancel any monthly meeting if the workload of the committee does not justify a meeting.*

### **6.14 COLLABORATION WITH OTHER OVERSIGHT MECHANISMS**

No requirement exists for the CoCT PAC to collaborate with other structures of the council. In practice there is inadequate collaboration between the CoCT PAC and the audit committee of the CoCT.

#### Recommendation

*The committee's ToR should provide guidance with regard to its relationship with the audit committee of the CoCT. In addition, the ToR of the audit committee should require the committee to forward quarterly reports to the CoCT PAC in which it provides details on possible areas of concern that the PAC should take note of.*

### **6.15 PUBLICATION OF REPORTS**

No norm exists with regard to the minimum period within which reports have to be published. In practice, the reports of the CoCT PAC are produced quite speedily and are published widely, including on the CoCT website.

#### Recommendation

*There should be a requirement in the System of Delegations that the reports of the CoCT PAC must be printed and made public as soon as possible but no later than a month after adoption of the report.*

## **6.16 REPORTS OF THE AGSA**

It is accepted practice that a PAC focuses primarily on the AGSA report on the annual financial statements of the jurisdiction that it oversees. The CoCT PAC primarily focuses on the production of the annual oversight report and on special investigations.

### Recommendation

*The System of Delegations, as it relates to the CoCT PAC, and the ToR, should stipulate that the primary function of the CoCT PAC is to scrutinise the AFS of the CoCT and its municipal entities, and to consider the report of the AGSA thereon (see also recommendation 6.1.2 relating to the establishment and authority of the CoCT PAC).*

## **6.17 ADEQUACY OF RESOURCES**

Although the minimum resource requirements for the CoCT PAC is not documented or prescribed anywhere, it was clear during the time of the research that the CoCT PAC was very well resourced. The secretariat support ensures that timely and high quality documentation is available in respect of all meetings and that complete records of all committee meetings and decisions are available. The fact that the agendas for all meetings are available on the website of the CoCT enables members of the public to observe the meetings of the committee. The technical support provided by the internal audit directorate clearly and undoubtedly is a key reason for the adequate resourcing of the said committee up to this point. This means that professionally qualified staff is available to the CoCT PAC throughout the year and provides the said committee with the capacity for in-depth scrutiny of the matters before it. An independence risk associated with this arrangement, however, as the

CoCT PAC is dependent on the extent to which the internal audit division is able or willing to continue its support the CoCT PAC activities.

#### Recommendation

*6.17.1 The current level of resourcing of the CoCT PAC must be retained at all costs as it is unlikely that the committee will be provided with a completely independent secretariat of similar professional seniority. The support arrangements with the internal audit division should therefore be formalised by council so that the arrangement will not be dependent on the good favour of the internal audit directorate or the City Manager.*

*6.17.2 The internal audit division staff allocated to support of the CoCT PAC should administratively report to the head of the internal audit division, but should functionally report to the chairperson of the CoCT PAC.*

*6.17.3 The extent to which the CoCT PAC is entitled to request the internal audit directorate to do minor investigations on its behalf should also be clarified in the proposed support protocol.*

#### **6.18 PROFESSIONAL DEVELOPMENT FOR MEMBERS**

No annual minimum training requirement is stipulated for the members of the CoCT PAC. In practice, and partly owing to the limited external training opportunities available, as well as the inability of the CoCT PAC so far to procure subject matter experts for internal training, there has been no meaningful professional development for members.

As the first established MPAC in the RSA, the members of the CoCT have the potential of sharing their knowledge, skills and experience with the members of newly established MPACs. However, such sharing of skills should be preceded by



the training in the fundamentals of financial oversight for which interviewed senior members of the CoCT PAC have been appealing.

#### Recommendation

- 6.18.1 *A minimum number of professional development opportunities should be stipulated in the committee's ToR, with one training intervention per year being the minimum.*
- 6.18.2 *Long-term advanced planning must ensure that adequate training providers are sourced for meaningful training to take place in the medium term.*
- 6.18.3 *In view of the format improvements made annually to audit reports, the AGSA should be required to present training in changes in the format of the audit report once a year before the tabling of the annual report.*
- 6.18.4 *As the first established MPAC, the CoCT PAC should consider making itself available to other municipalities that are establishing MPACs of their own.*

### **6.19 COUNCIL DEBATES ON COMMITTEE REPORTS**

There is no formal requirement for discussion or debate on the reports of the CoCT PAC by the council of the CoCT, and in practice no such council discussions or debates take place. This is a missed opportunity to highlight important governance matters, that all of the members should be interested in or at least be aware of, to the whole of the council.

#### Recommendation

*That council should debate the reports of the CoCT PAC at least twice per year should be made a requirement. For example, a council debate should follow the tabling in the council of the CoCT PAC report on the annual report*

*and the AGSA report. At least one further council debate should take place on presentation of the committee's report on its special investigations.*

## **6.20 EXECUTIVE REPONSES TO COMMITTEE REPORTS**

There is no formal requirement for the Executive Mayor or the City Manager to respond to the committee's reports. In practice, the reports are responded to at the level of officials and not always at the level of the City Manager.

### Recommendation

*6.20.1 The System of Delegations should provide for a formal response process, including timelines and responsibilities, with a minimum requirement that all responses should formally be tabled in council for all councillors and interested members of the public to be able to take note.*

*6.20.2 The main responsibility for providing responses should be that of the City Manager, as the accounting officer of the CoCT. However, under certain circumstances the CoCT PAC can recommend that the Executive Mayor be required to respond to the committee recommendations. (For example, when the CoCT PAC has concerns regarding the performance of the City Manager.)*

*6.20.3 A minimum period of between one or two months from the date of adoption of the committee report, the council of the CoCT should be stipulated for responses to be submitted to the CoCT PAC via council.*

## **6.21 RECORDS OF MEETINGS**

The keeping of detailed minutes or transcripts of proceedings is not a formal requirement in terms of the draft ToR of the CoCT. In practice, however, high quality

minutes and transcripts of all committee proceedings are produced. It would be a misfortune if the production of transcripts of meetings is ever discontinued as has happened at a number of provincial legislatures.

### Recommendation

*The ToR of the committee should document the need for minutes of all meetings, as well as transcripts of proceedings of all hearings, to be kept. Both sets of documents should be available publicly.*

## **6.22 CONCLUSION AND FINAL RECOMMENDATIONS**

### **6.22.1 CONCLUDING REMARKS AND RECOMMENDATIONS: CoCT PAC**

The CoCT PAC is more of a PAC in practice than it is on paper. The framework documents that provide the committee with its mandate and ToR are inadequate. There is no proper guideline available to assist the members of the CoCT PAC to interpret their mandate and their ToR, and provide direction with regard to a *modus operandi*. Only six out of a potential of 20 generally accepted PAC practices have been adequately formalised. However, the CoCT PAC has managed to successfully implement eleven out of 20 generally accepted PAC practices.

There are at least two reasons why the CoCT PAC has achieved the amount of success that it has achieved on a practical level. Firstly, there was the strong leadership provided by the CoCT through initiating the establishment of an independent financial oversight committee based on the generally accepted model of a PAC. From the outset, the CoCT PAC was chaired by a member of the opposition, met in public and operated in a non-partisan manner.

A second success factor is the quality and dedication of the administrative and technical support staff. The CoCT PAC receives professionally prepared documents in advance of meetings, and detailed minutes of proceedings are produced after meetings. Technical analyses and advice is provided by the staff of the internal audit division and detailed reports are produced for tabling in the CoCT council.

The research has, however, identified a number of practices that can be improved. If attended to, these practices are bound to make the committee even more effective at a practical level. However, it is equally, if not more important to formalise all the necessary practices in order to address the lack of clarity that still prevails in respect of too many aspects of the committee's functioning. It is also important to formalise the recommended key practices so that, in the event of a change in the approach of the CoCT leadership, or in the event of external factors that are bound to negatively impact on the work of the committee, the CoCT PAC will stand a better chance to continue its important task unimpeded.

However, the CoCT PAC and all other municipalities function within a sphere of government regulated by a number of national statutes. MPACs will benefit greatly if the national statutory framework is enhanced in order to assist and facilitate the establishment and functioning of MPACs.

The recommendations should also be of use to other municipalities that operate MPACs or wish to establish MPACs.

#### **6.22.2 RECOMMENDATIONS FOR NATIONAL ACTION IN SUPPORT OF MPACs IN RSA**

The following recommendations are addressed to the relevant national authorities.

- (a) An appropriate national legal framework for the establishment, mandate and powers, as well as the key functions of MPACs should be put in place*

*as soon as possible. As it is unlikely that the RSA Constitution will be amended in order to provide the non-executive branch of municipalities with the same non-executive oversight role and powers as is the case with the national and provincial legislatures, the MPAC framework will have to be as clear as possible in the form of legislation with regard to the required functions and powers of an MPAC.*

- (b) The Municipal Structures Act offers a simpler route to enhancing the statutory framework in respect of non-executive oversight. Section 79 of the Municipal Structures Act can quite easily be augmented to include provisions stipulating the purpose and process of non-executive oversight. Such an amended section 79 should differentiate between the oversight functions of policy oversight committees and the oversight functions of the PAC as financial oversight committee that deals with policy implementation and not policy itself.*
- (c) It may be possible for municipalities like the CoCT to produce a PAC operational guideline based on own research and using own resources. However, it will be in the interest of all municipalities in South Africa if a central practice guide can be issued by a central authority in support of the national statutory framework proposed in paragraph (a) above. Such a handbook should be based on generally accepted PAC practice, but must incorporate the needs and structural and resource challenges of the various municipalities throughout South Africa.*
- (d) A central authority should initiate a change management programme to assist the establishment of municipal PACs. (Responses from interviewees during the CoCT case study, as well as feedback during the rapid evaluation study carried out in Gauteng in 2008, pointed to huge mindset challenges among most stakeholders.) The time is ripe for such as change in mindsets given the country-wide programme recently*

*launched by the Minister of Cooperative Governance and Traditional Affairs (COGTA), Operation Clean Audits.*

- (e) *Orientation, as well as basic financial oversight skills training for members of municipal PACs is required. This should be rolled out at a national level to make basic training available to all municipalities and ensure some consistency in respect of the core practices, but also to support the change management programme. It would also be most beneficial if regional training interventions could take place, possibly facilitated by the SA Local Government Association in collaboration with COGTA.*

### **6.22.3 FINAL CONCLUSION**

There is a compelling and urgent need for robust non-executive oversight within local government. Financial oversight through public accounts committees has been at the apex of non-executive oversight since the 19<sup>th</sup> century. The CoCT PAC has proven that, despite a number of challenges, oversight by a MPAC is feasible and facilitates improved management of public resources, improved accountability and generally better governance in a municipality.

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## APPENDIX I

### Interview Guide for City of Cape Town Public Accounts Committee

Name of person interviewed	Position	Contact detail
		Cell:
		Email:

#### Introduction and warm up

**Background** – Interviewer and interviewees names and brief background about what each does.

**Warm up** – brief explanation of the purpose of the interview – the fact that it is a semi-structured interview with open-ended questions; briefly explain the interview agenda – key focus areas of the interview, number of questions that will be asked and the anticipated duration of the interview.

Discussion Topics	Prompts
History and evolution of your MPAC: The CoCT had started thinking about the establishment of a PAC since 2003....  Do you know <b>why</b> the CoCT decided to establish a public accounts committee?	     <i>Is there still support for the existence of the committee?</i>
Can you please explain how the committee operates – its mandate and main focus, its relationship with Council, etc?	     <i>Your ToR refers makes reference to you being a “mechanism for oversight over the expenditure of public money” but a key focus area is the oversight report finalisation process - that may not leave time for detailed financial scrutiny?</i>  <i>How do matters get <b>referred</b> to the Committee, and by whom?</i>  <i>Public accounts committees usually do not consider matter referred by an executive structure like <b>MAYCO</b>? Do you think it problematic?</i>  <i>How successful is your committee’s relationship with the <b>Finance</b> Portfolio and the <b>Audit Committee</b>?</i>  <i>How important do you think it is for the Committee to initiate <b>own investigations</b>?</i>

Discussion Topics	Prompts
	<p><i>Do you think the committee meets regularly enough?</i></p> <p><i>How important is it for your committee to <b>hold meetings in public</b>?</i></p> <p><i>And how important is <b>media</b> coverage?</i></p> <p><i>How effectively does <b>Council</b> process your reports?</i></p>
<p>What have been the <b>achievements</b> or <b>successes</b> of the committee since you have been involved?</p>	<p><i>What impact have do you think you've had on the affairs of council?</i></p> <p><i>What is the general view in Council about the role and value of the committee?</i></p> <p><i>What is management's view of the committee?</i></p> <p><i>Which of your activities or outputs do you regard as most effective?</i></p>
<p>How the committee <b>members experience</b> their oversight responsibility and work in this committee?</p>	<p><i>SCOPA members generally complain that there is too much work involved in this type of committee</i></p> <p><i>What would assist to motivate members more as far as SCOPA work is concerned?</i></p>
<p>What effectiveness <b>challenges</b> has your committee faced in the past, or do you currently face?</p>	<p><i>Is your <b>mandate</b> and <b>ToR</b> clear?</i></p> <p><i>Do you think the <b>mandate / ToR</b> adequate?</i></p> <p><i>Does your committee have adequate <b>powers</b>?</i></p> <p><i>Do you have adequate <b>resources</b>?</i></p> <ul style="list-style-type: none"> <li>- Technical &amp; administrative support?</li> <li>- Support from the AG?</li> </ul>

Discussion Topics	Prompts
<p>How have these challenges been addressed, or how could they possibly be addressed?</p>	<p><i>Are members appointed for the <b>full term</b> of Council?</i></p> <p><i>What about <b>member skills</b> and training opportunities?</i></p> <p><i>Do operate in a <b>non-party partisan</b> manner?</i></p> <p><i>Are the <b>officials</b> with whom you engage senior enough?</i></p> <p><i>What about calling <b>members of MAYCO</b> to account?</i></p> <p><i>How effective is your committee's <b>follow up actions</b>?</i></p>
<p>Who do you think should <b>chair</b> a municipal public accounts committee, and why?</p>	
<p><b>ONLY IF TIME PERMITS</b></p> <p><i>Do you think it is an option at all for a municipal PAC to co-opt outside experts in order to bring some expertise to the committee?</i></p>	
<p>What do you think is the future of the MPAC in the CoCT?</p>	
<p><b>Closing</b></p> <p>Thank you for granting me the opportunity to discuss this important issue with you and for the valuable information and insights that you have shared. I might call you if there are any serious information gaps in my transcripts.</p> <p>Thank you</p>	

## Appendix 2

Name of interviewee	Position / function	Contact detail	Date of interview/s
Mr Piet Gouws	First and former chairperson of CoCT PAC and current member	12 Hertzog Boulevard Cape Town	9 October 2009
Mr Peter Gabriel	Incumbent chairperson of the CoCT PAC and member of official opposition	Tel: 0842290883	14 October 2009
Mr Patrick Hill	Senior majority party member on CoCT PAC	Tel: 0833806565	22 October
Ms Zulpha Abrams	Head: Internal Audit Directorate, City of Cape Town (210 councillors)	<a href="mailto:Zulpha.Abrams@cape-town.gov.za">Zulpha.Abrams@cape-town.gov.za</a>	18 September and 16 October 2009
Ms Sonja Johnson	Audit Manager: SCOPA (CoCT PAC )	Directorate Internal Audit Tel: 021 400 9374 Fax: 021 400 3367	18 September and 25 September 2009
Mr Lesley Holland	AGSA audit operations leader in Western Cape	<a href="mailto:lesleyl@agsa.co.za">lesleyl@agsa.co.za</a> Tel: 021-5484100	26 September 2009
Mr TV Pillay	Chief Director: National Treasury	<a href="mailto:tvpillay@treasury.gov.za">tvpillay@treasury.gov.za</a>	6 October 2009
Ms Anel Powell	City reported, Cape Times	<a href="mailto:apowel@inl.co.za">apowel@inl.co.za</a>	16 October 2009