Examining the Oversight Role of the Republic of Botswana's Parliament

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Thesis accepted in fulfilment of the requirements for the degree

Doctor of Philosophy in Public Management and Governance

at the North-West University

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Declaration

I, **Shadreck Balisi** declare that the thesis entitled **Examining the oversight role of the Republic of Botswana's Parliament,** which I submit herewith to the North-West University, in compliance with the requirements set for the degree **Doctor of Philosophy in Public Management and Governance,** is my own work, has been text-edited in accordance with the requirements and has not already been submitted to any other university.

Signature: **Date:** 31st May 2024

Dedication

To Resego, Suzanna, Bogolo and Tawanda Balisi. We made it. It is done!

Abstract

The study attempted to examine the oversight role and function of the Republic of Botswana Parliament. Concern regarding the role and function of Parliament in ensuring accountable Executive authority required scholarly examination. Such an examination was necessary to maintain key public administration principles of realising effective and efficient public service. The ineffective execution of the principle of separation of powers, has resulted in structural, administrative, and operational limitations that hinder the effectiveness of Botswana's Parliament to hold the Executive accountable.

Therefore, this study sought to develop a framework necessary to enhance guiding of the oversight role and function of Parliament as well as to foster the separation of powers between Parliament and the Executive branches of government in Botswana. This enhancing of the oversight role of Parliament is necessary to attain an independent, strong, efficient and effective Parliament which is able to hold the Executive meaningfully accountable.

To achieve its purpose, the study used qualitative research methodologies. The first were semi-structured interviews, employed as the empirical component of the study, and allowing predetermined questions with respondents to guide the discussions. The second used a desktop review data collection approach which is highlighted throughout the study. This approach is summarised to provide a discourse and understanding of the applicable oversight framework for the Parliament of Botswana that fosters the principle of separation of powers. Participants were drawn from stakeholders relevant to this study, such as current and former members of Parliament (MPs), current and former members of the Executive, the Clerk and Speaker of the National Assembly, representatives of civil society organisations in Botswana and academic experts from the University of Botswana.

Key findings of the study are that Botswana's Parliament is limited and often ineffective in exercising its oversight responsibilities. This finding is observed owing to a number of reasons, including Parliament's lack of independence from the Executive, the dominance and control of Parliament by the Executive, the extensive executive powers of the president, a single dominant ruling party, weak opposition parties, weak civil

society organisations, insufficient support staff for MPs, the nature of the political party caucus system, lack of question time for the president, the manner in which the motion of no confidence item is structured by the Constitution of the Republic of Botswana of 1966, and undeveloped Parliamentary committee structures.

The study concludes, recommending that, in order to optimise the oversight function of Parliament, and to eliminate the dominance and control of the Executive, Parliament needs to be separated from the Executive in accordance with the classical principles of the theory of separation of powers, as highlighted in the proposed oversight framework of the study. It is considered that, once Parliament is separated from Executive control, then reforms pertaining to the operational and administrative oversight challenges may be better implemented. The study recommends an overarching and comprehensive oversight framework necessary to guide the role and function of Parliament in Botswana. It is within this framework that solutions to the aforementioned administrative and operational problems identified are provided.

Keywords

Executive, Legislature, oversight role, Parliament, Republic of Botswana, separation of powers.

Acknowledgements

All glory to God for giving me strength, wisdom, knowledge and understanding throughout my PhD journey.

I would like to express my sincere gratitude to Professor Kedibone Phago for his invaluable input, patience and constructive feedback. He has generously provided expertise, knowledge and advice on drawing up the dissertation competently.

I am grateful to Dr Tichaona Mazarire who has helped me to overcome challenges, promoted critical thinking and provided unwavering advice which helped me to complete my studies.

I could not have undertaken this journey without the generous support from the Botswana Open University who financed my study.

In addition, this endeavour would not have been possible without the support of my family members. Credit goes to my spouse and children for their untiring support throughout the journey.

Words cannot express my gratitude to all the participants who provided their time and the much-needed critical information which made this study a success.

Last, I am grateful to the library assistants and editors for their editing help, impact and inspiration. Ricky Woods deserves special recognition for her exceptional language editing work.

Table of Contents

Declaration ii
Dedication iii
Abstract iv
Acknowledgements vi
List of Figures xi
List of Tables xi
Chapter One: Introduction and orientation of the study 1
1.0 Introduction and orientation 1
1.1 Statement of the problem 12
1.2 Research questions 21
1.2.1 Primary research question 21
1.2.2 Secondary research questions 22
1.3 Research objectives 22
1.3.1 Primary research objective 22
1.3.2 Secondary research objectives 22
1.4 Central theoretical statements 23
1.5 Theoretical framework 25
1.6 Significance of the study 28
1.7 Delimitations and limitations of the study 28
1.8 Outline of the study chapters 29
1.8.1 Chapter One: Introduction and orientation 29
1.8.2 Chapter Two: Literature review 29
1.8.3 Chapter Three: Theoretical principles governing the separation of powers for Executive and Legislative authorities. 29
1.8.4 Chapter Four: Constitutional and Legislative imperatives determining a separation of powers for both the Parliament and the Executive authorities. 30
1.8.5 Chapter Five: The nature and scope of existing Executive and Legislative relations in the Republic of Botswana 30
1.8.6 Chapter Six: Accountability mechanisms and approaches for the Executive necessary for strengthening the role and function of Parliament. 31
1.8.7 Chapter Seven: Research methodology 31

1.8.8 Chapter Eight: A framework necessary to guide the oversight role and function of Parliament. 31
1.8.9 Chapter Nine: Summary, conclusion and recommendations 31
1.9 Conclusion 32
Chapter Two: Review of related literature 33
2.0 Introduction 33
2.1 Similar previous studies and their implications for this study 33
2.2 The role of Parliament in Botswana 36
2.2.1 Representative role 37
2.2.2 Law-making function 37
2.2.3 Oversight function 39
2.3 Independence of the Parliament of Botswana 43
2.4 Conclusion 45
Chapter Three: Theoretical principles governing the separation of powers for Executive and Legislative authorities. 47
3.0 Introduction 47
3.1 Defining the institutions of the State 48
3.1.1 The Executive 48
3.1.2 The Legislative 48
3.1.3 The Judiciary 48
3.2 The doctrine of separation of powers 48
3.2.1 Meaning of separation of powers. 49
3.3 Origins, development and the rationale of the doctrine of separation of powers 51
3.3.1 Plato, Aristotle, Polybius, Cicero, St. Thomas Aquinas, Machiavelli and the system of mixed regime 51
3.3.2 John Locke, Charles-Louis de Secondat, Baron de Montesquieu and the Federalist Papers 53
3.4 The rationale of the doctrine of separation of powers 58
3.5 Criticisms of the doctrine of separation of powers 59
3.6 Conclusion 62
Chapter Four: Constitutional and Legislative imperatives determining a separation of powers for both Parliament and the Executive authority. 63
4.0 Introduction 63
4.1 The modern application of the theory of separation of powers 63

4.1.1 The American presidential system 64
4.1.2 The British parliamentary system 67
4.1.3 The French hybrid system 71
4.4 Conclusion 75
Chapter Five: The nature and scope of existing Executive and Legislative relations in the Republic of Botswana 76
5.0 Introduction 76
5.1 Botswana's system of government 76
5.2 Parliament–Executive relations in Botswana 77
5.3 Conclusion 83
Chapter Six: Accountability mechanisms and approaches for the Executive necessary for strengthening the role and function of Parliament. 85
6.0 Introduction 85
6.1 Form of government and accountability 86
6.2 Internal oversight tools 86
6.2.1 Parliamentary committees 86
6.2.2 Parliamentary questions 87
6.2.3 Interpellations 88
6.2.4 Vote of no confidence 88
6.2.5 Impeachment 91
6.2.6 Missions and reports 92
6.3 External oversight tools 92
6.3.1 Office of the Ombudsman 92
6.3.2 Supreme audit institutions 95
6.3.3 Anti-corruption agencies 98
6.4 Conclusion 100
Chapter Seven: Research methodology 101
7.0 Introduction 101
7.1 The research onion model 101
7.1.1 Research philosophy 102
7.2 Research approaches 106
7.3 Methodological choices 107
7.4 Research design 109
7.5 Time horizon 111

7.6 Data collection methods 111
7.6.1 Semi-structured interviews 112
7.6.2 Complementarity of data sources 114
7.7 Population and sampling 114
7.8 Details of data collection 117
7.9 Data analysis 121
7.9.1 Thematic analysis 122
7.10 Validity and reliability 123
7.11 Ethical considerations 124
7.12 Conclusion 125
Chapter Eight: A framework necessary to guide the oversight role and function of Parliament. 126
8.0 Introduction 126
8.1 Data transcription, coding and analysis 126
8.2 Major themes identified. 127
8.2.1 Legal Parliamentary oversight challenges 129
8.2.2 Administrative Parliamentary oversight challenges 168
8.2.3 Operational Parliamentary oversight challenges 182
8.2.4 Other Parliamentary oversight challenges 218
8.3 Overall framework necessary to guide the oversight role and function of Parliament 224
8.4 Conclusion 226
Chapter Nine: Summary, conclusion and recommendations 227
9.0 Introduction 227
9.1 Summary of the study 227
9.2 Findings and results 228
9.3 Discussion 229
9.4 How the study addressed its objectives. 230
9.5 Conclusion 233
9.6 Recommendations 235
Bibliography 238
Appendices 258
Appendix 1: Solemn Declaration and Permission to Submit Form 258
Appendix 2: Checklist: Submission of Study for Examination 259

Appendix 3: Turnitin Report 261
Appendix 4: Language Editor Certificate 262

List of Figures

Figure 7.1: The Research Onion' model 102
Figure 8.1: Current legal framework of Parliament 138
Figure 8.2: Proposed legal framework of Parliament. 168
Figure 8.3: Existing administrative framework of Parliament 169
Figure 8.4: Proposed administrative framework of Parliament. 182
Figure 8.5: Existing operational framework of Parliament 183
Figure 8.6: Proposed operational framework of Parliament. 218
Figure 8.7: Existing extra-Parliamentary oversight institutions framework 219
Figure 8.8: Proposed extra-Parliamentary oversight institutions framework. 223
Figure 8.9: A framework necessary to guide the oversight role and function of Parliament. 225

List of Tables

Table 7.1: Details of study participants 117
Table 7.2: Official documents reviewed. 118
Table 8.1: Themes, categories and sub-categories 127

Chapter One: Introduction and orientation of the study

1.0 Introduction and orientation

This study sought to examine the oversight responsibilities of Parliament in the Republic of Botswana (hereinafter referred to as Botswana). This examination is necessary to maintain an independent, strong and effective Legislative authority which can hold the Executive authority accountable for their actions. The ineffective execution of the separation of powers in Botswana (Bodilenyane, 2012; Botlhale, 2012; Botlhale & Lotshwao, 2015; Dingake, 2009), resulting in structural constraints (Maripe, 2017) that limit the effectiveness (Molomo, 2002; Molomo, 2012) and institutional autonomy (Sebudubudu & Osei-Hwedie, 2006) of the Botswana Parliament, has often rendered its oversight function over the Executive futile (Sebudubudu *et al.*, 2017). Therefore, the study sought to develop a framework to enhance the guidance of the oversight function of Parliament in Botswana. It is hoped that the framework could assist in overcoming the limitations of the separation of powers between Parliament and the Executive branch of government within the context of Botswana. The framework addresses the research problem of this study by proposing changes to enhance the guidance of oversight function of the Parliament. The relations between the Legislature and the Executive authority in Botswana could be reformed to strengthen Parliament in its constitutional mandate.

To achieve its purpose, the study first examines separation of powers among the three arms of government in Botswana, those being the Legislative authority, the Executive authority and the Judiciary. It is worth noting that the nomenclature, “branches”, “arms” or “organs” denoting the three major institutions of the state (Executive, Legislative and Judiciary) will be used interchangeably throughout this study. The Executive authority is that branch of the state which is responsible for policy execution (Fombad, 2016). The Legislature is the sovereign law-making body which formulates public policy, and is a representative of the citizenry. It also plays a major role as an oversight institution, specifically by holding the Executive (Cabinet/government) accountable for its actions. The Judiciary is that organ of the state which adjudicates conflicts between state institutions, between state and individuals, and between individuals (Barnett, 2017). Its main duty is to interpret and enforce the law.

Section 86 of the Constitution of the Republic of Botswana of 1966 (hereafter referred to as the Constitution of Botswana of 1966) vests the Legislative authority in Parliament. In accordance with section 57 of the Constitution of Botswana of 1966, Parliament comprises the president and the National Assembly, where, in terms of section 58 of the Constitution of Botswana of 1966, the National Assembly consists of the president, 57 elected members of Parliament (MPs), six specially elected MPs, and the Parliamentary Counsel. The head of the Executive (the president) is a member of Parliament. Implications of the president being a member of Parliament in terms of the separation of powers and the oversight function of Parliament will be discussed in detail in subsequent sections.

On the other hand, section 47(1)(2) of the Constitution of Botswana of 1966 vests the Executive authority in the president. The president is the head of the Executive branch of government, the head of Cabinet and a member of Parliament. In accordance with section 44(1) of the Constitution of Botswana of 1966, Cabinet is an organ of the Executive, which consists of the president, the vice president and ministers. Section 42(3) of the Constitution of Botswana of 1966 requires that ministers and assistant ministers be appointed by the president from among members of the National Assembly.

The Judiciary is one of the three branches of government established by sections 95–107 of the Constitution of Botswana of 1966. It consists of the Court of Appeal, the High Court and subordinate courts such as magistrates and customary courts.

An analysis of the nature and scope of the Executive authority in relation to the Legislative authority in Botswana denotes a power imbalance between the two authorities. The balance of power is skewed towards the Executive, mainly because of a lack of strict separation of powers and the fusion of the Executive and Legislative power in one branch, the Executive. Hence, the development of a framework that can be used as a model to enhance the guidance of the oversight function of Parliament in Botswana was made possible, among other things, through the examination of the separation of powers between the Legislative and the Executive branches of government.

Seminal scholarly works exist in this context that point to the theory of separation of powers in reference to the three arms of government. Specifically, there is reference to the origins of the theory of separation of powers (Dicey, 1959; Gwyn, 1986; Knight, 1989; Vile, 1967), its meaning and significance (Gwyn, 1965; Vile, 1967), how it has evolved over time, and its application in modern-day governments (Vile, 1967). This chapter provides, among other things, for a brief outline of the theory of separation of powers, whereas a more detailed explanation and discussion of the theory is undertaken in Chapter Two of this study.

The body of literature which addresses the separation of powers and the relationship between Parliament and the Executive authority in Botswana is growing. The following authors, among others, have contributed in a different way to the debate concerning the nature and scope of Executive–Legislative relations in Botswana (Bodilenyane, 2012; Botlhale, 2012; Botlhale & Lotshwao, 2015; Dingake, 2009; Fombad, 2005; 2016; Lotshwao & Sebudubudu, 2017; Maripe, 2017; Molomo, 2000; Molomo, 2012; Sebudubudu & Osei-Hwedie, 2006; Sebudubudu *et al*., 2017). Their work is discussed in detail in Chapter Two of this study. However, it worth noting at this point that the authors named mainly address the independence of Parliament and its oversight role over the Executive authority. Common among their conclusions is that, contrary to the theory of separation of powers, there is an imbalance of power between Parliament and the Executive in Botswana.

The imbalance of power is such that Parliament is considered as weak, ineffective, often subordinate and lacking significant independence from the Executive authority (president and Cabinet). On the other hand, Botswana has a dominant and strong Executive authority which seems to be controlling Parliamentary functions. For instance, in their analysis of the role of Botswana's Parliament as well as the relationship between Parliament and the Executive, Lotshwao and Sebudubudu (2017) posit that there are structural constraints that limit the effectiveness of Botswana's Parliament, recommending that certain reforms are needed to strengthen the role of Parliament. This recommendation, inter alia, forms the basis of this study. That is, this study seeks to examine the discourse relating to the role and function of Parliament regarding their oversight responsibilities over the Executive branch of government in Botswana; thus, to develop a necessary framework to enhance the

guidance of the oversight role and function of Parliament when scrutinising the actions of the Executive authority.

The study is carried out within the broad context of public administration as a field of study which covers all three branches of government: Executive, Legislative and Judiciary, and their interrelationships (Dickinson, 2016). The interrelationships among the three branches of government are described largely in the context of the theory of separation of powers and the system of checks and balances. Hence, separation of powers in this study is undertaken from the specific lenses of public administration, new public management (NPM) and governance paradigms. The new public management (NPM) paradigm emphasises results (controlling performance), accountability and principles of responsibility. These principles are vital for the Executive, Legislative and Judicial branches of government in the exercising of their mandates. For instance, members of Parliament (MPs) are expected to account to the citizens. MPs account to the citizens through the exercise of their representation, law-making and oversight roles and responsibilities in Parliament.

Similarly, the Executive and the Judicial arms of government are expected to be responsible and accountable in their mandates. Insofar as the governance paradigm is concerned, the basic premise of good governance is accountability and responsibility of political leaders. Governance is the study of the management of a regime's relations with its citizens and multiple actors and/or institutions in the economy (Dickinson, 2016). Given the primary research questions of this study, the NPM and governance paradigms provide a framework for data analysis and interpretation of results. More specifically, the focus is on specific characteristics of the NPM and governance paradigms, such as accountability, responsibility, good governance and democratisation, which are more related to the research topic, the research question and the research problem of this study.

Parliament is the link between the people and their government. It is a supreme national representative institution of the people. It is a custodian of the interests of the electorate. It serves as an oversight body, which is expected to hold the Executive and the Judiciary accountable for their actions. In terms of sections 57–94 of the Constitution of Botswana of 1966, Parliament is the supreme Legislative authority responsible for the enactment of laws. It is empowered by the Constitution to make

laws for the peace, order and good governance of Botswana, to exercise control over public finance as well as to scrutinise and control the government (Executive and Cabinet). However, owing to its structural and operational dependence on the Executive, the Parliament of Botswana has been deemed weak and ineffective in the exercise of its oversight, representation and law-making duties (Bodilenyane, 2012; Dingake, 2009; Fombad, 2016; Molomo, 2000; Sebudubudu *et al*., 2017).

Specifically, in Botswana there is no strict separation of powers between the Executive and the Legislative branches of government. Several scholars, for example, (Bodilenyane, 2012; Botlhale, 2012; Botlhale & Lotshwao, 2015; Fombad, 2016; Molomo, 2000; Nsereko, 2010; Sebudubudu *et al.,* 2017) observe that the separation of powers notion between Parliament and the Executive is not watertight. They further describe this notion as sloppy, not purely defined, and thus creating loopholes that allow absolutism to creep in.

In particular, the requirement of section 42(3) of the Constitution of Botswana of 1966, which stipulates that appointments to the office of minister or assistant minister shall be made by the president from among members of the National Assembly, mixes Executive and Legislative powers. Nsereko (2010) rightly observes the fusion and submits that the constitutional provision (in Botswana) that requires that ministers and assistant ministers as well as the president be members of Parliament is one aspect of the constitutional set-up that breaches the wall of separation of powers. In other words, contrary to the theory of separation of powers, members of the Executive/Cabinet form part of Parliament where they are expected to account. This has often made it difficult for other members of Parliament to hold Executive/Cabinet accountable as they (Executive/Cabinet) are often senior politicians both in their governing political parties and as members of Parliament.

It is worth noting that a prominent feature in many African countries is the mixing of the Legislative and Executive functions, mainly introduced to provide checks and balances to prevent dictatorships and arbitrary government (Fombad, 2016). Nonetheless, the fusion of Legislative and Executive powers in Africa has resulted in the balance of power challenges between the two branches (Sebudubudu *et al*., 2017). To date, the balance of power between the Executive and the Legislature is a problem affecting many African countries (Maripe, 2017). The inherent weakness in the power

relations between the Executive and the Legislature is that, once a government has a majority in Parliament, members of the ruling party are often reluctant to criticise the government openly or even to vote against it (Molomo & Keorapetse, 2017). This is particularly so when the ruling party is a dominant party. Furthermore, a problem peculiar to this mixed system is the potential for disruption which mixing Legislative and Executive positions can cause. For instance, section 58(2a) and (2b) (as amended) of the Constitution of Botswana of 1966, provides for a total of 63 MPs made out of 57 elected members (section 58(2a)) and six specially elected members (section 58(2b)). Of 63 MPs, 28 are part of the Executive branch. It therefore means that the Executive effectively controls half the number of members of Parliament and the principle of collective responsibility guarantees that every motion moved by the government, regardless of the views of either the opposition or the backbench, will be approved (Fombad, 2016).

The balance of power in most African countries, and in some countries such as the United States of America (USA), France and Brazil, is weighted in favour of the presidency. Nevertheless, the power dynamics in African nations exhibit some characteristics (Sebudubudu *et al*., 2013) that have been identified previously (Venter, 2016). First, it is evident (Venter, 2016) that, in several countries, there is a limited availability of constitutional mechanisms to limit Executive authority effectively, particularly in the context of presidential powers (Sebudubudu *et al*., 2013). Second, a notable issue arises from the inadequate or insufficient separation between the Legislative and Executive branches, resulting in a potential weakening of the former.

While there are similarities in the challenges encountered by African Parliaments in their interactions with the Executive, the specific dynamics vary based on factors such as the kind of political system in place. The extent of presidential authority over the Cabinet and the division of powers between the Executive and Parliament differ throughout nations (Sebudubudu *et al*., 2013). The existence of variations between nations suggests that, while overarching trends may exhibit similarities, vulnerabilities may also be present (Venter, 2016) in distinct domains and may emerge in diverse manners. Nevertheless, the ultimate outcome remains unchanged: a Legislature that is comparatively feeble in comparison to the Executive (Fombad, 2016). Focusing on Botswana, this study attempted to examine, among other things, the extent to which

the Executive authority in Botswana undermines the effectiveness of Parliament (Legislature). The primary objective is to facilitate and/or contribute to a reconsideration of the implementation of Executive authority, with a specific focus on the African setting.

Fombad (2016) is of the view that the Botswana system provides for the relative independence of the judicial power. This relative independence is because of the fact that the president of Botswana, who is a member of the Executive, is empowered by the Constitution to appoint the Chief Justice. Nsereko (2010:45) argues that "the separation between the Judiciary and the Executive is generally pronounced". He further argues that "while the Judiciary enjoys a large measure of separation from the Legislature and the Executive, these two (Executive and Legislature) are extensively intertwined with each other, with the Executive being the dominant factor". Therefore, this study concentrated on the development of a framework necessary to enhance the guidance of the oversight role and function of Parliament to assist in scrutinising the actions of the Executive authority.

In contrast to the principles of the separation of powers, checks and balances, and the supremacy of Parliament, the Parliament of Botswana is characterised by subordination to and dominance by the Executive branch (Bodilenyane, 2012; Botlhale, 2012, Botlhale & Lotshwao, 2015). The topic at hand is extensively examined by Ray Molomo (2012), who formerly held the position of Speaker in the Botswana National Assembly. Molomo (2012) provides a comprehensive analysis of several occurrences that demonstrate effectively the extent to which the Executive branch exerts dominance over Parliament. Specifically, Molomo (2012) argues that the Executive regards Parliament as a mere instrument for endorsing its decisions and as a subservient entity.

On the other hand, according to Fombad (2016), it may be argued that the Executive exercises effective authority over Parliament. As a result, Parliament is rendered incapable of fulfilling certain tasks and functions successfully, particularly its oversight responsibilities.

Botswana is a unitary state that embraces a hybrid system of government. In this case, a hybrid system is considered to be that between the Parliamentary system, as

practised in Britain, and the presidential system, as practised in the United States (Nsereko, 2010).

Presidential and Parliamentary political systems are the two main types of government. There is however a third type – the hybrid system of government, which combines elements of both the presidential and the Parliamentary systems. In the presidential system, the executive power is vested in the president, who is both head of government and also the symbolic head of state, and generally; is in full control of the composition of the Cabinet, is directly elected by the people for a set period of time and cannot be dismissed between elections, except if impeached (Linz, 1990). In a Parliamentary system, the functions of the head of state and the head of government are separate (Nsereko, 2010). The head of state is usually ceremonial in nature, such as the king or queen, while the head of government is usually an elected politician called the prime minister. For instance, in Britain, the head of state is the monarch, while the head of government is the prime minister. Similarly, in Germany, the head of state is the president, while the head of government is the prime minister.

In Parliamentary systems, the president (or prime minister) is nominated by the democratically elected representatives in Parliament, and is therefore often the leader of the majority party, who may be removed from office through a vote of no confidence and, in most instances, is only the head of government (Modungwa, 2014). A prominent feature of a Parliamentary system of government is the concept of the supremacy or sovereignty of Parliament. The head of government is subordinate to, and is accountable to the overarching authority of Parliament, whereas in a presidential system, the presidency is the main repository of power (Maripe, 2017).

While it is commonly assumed that Botswana operates as a Parliamentary democracy (Lotshwao & Sebudubudu, 2015), a thorough examination of Botswana's form of governance would indicate that it does not adhere strictly to either a Parliamentary or a presidential model (Maripe, 2017). Botswana employs a hybrid political system that combines elements of both Parliamentary and presidential systems. The Parliamentary system is characterised by the president, who serves as both the head of the Executive branch and the Cabinet, and as a member of Parliament.

Conversely, the presidential system is distinguished by the president assuming the responsibilities of both the head of state and the head of government. To this end, scholars such as Lotshwao and Sebudubudu (2017), Maripe (2017), and Fombad (2016) have classified Botswana as a hybrid. The hybrid system in Botswana is characterised by the election of the president by Parliament, similar to the selection process of a prime minister in a Parliamentary system. In terms of section 92 of the Constitution of Botswana of 1966, Parliament possesses the authority to enact a resolution of no confidence in the government. On the other hand, the president has the discretion to dissolve Parliament if deemed necessary, as stated in section 87(4), read with section 91 of the Constitution of Botswana of 1966. In Botswana, the locus of sovereignty is vested not in the Parliament, but rather in the Office of the President. Hence, owing to the presence of significant characteristics from both Parliamentary and presidential systems, Botswana may be classified appropriately as a hybrid political system.

A unitary state refers to a political entity by which the three primary branches of government possess comprehensive jurisdiction over the whole territory and all individuals residing inside the state's boundaries. In a federal state, the Constitution allocates powers between the central or federal government and the regional or provincial administrations, which are organised within the country's subdivisions (Nsereko, 2010).

One notable aspect of the Botswana form of government is the consolidation of the head of state and head of government roles in the presidency, as well as the manner in which the Executive authority is wielded by the individual occupying this position. The practice of consolidating both ceremonial (head of state) responsibilities and Executive authority (head of government) in a single individual, often the president, is prevalent throughout several African nations.

For example, in terms of section 83(a) of the Constitution of the Republic of South Africa of 1996, the president is the head of the state and the head of the National Executive. Similarly, article 27(1) of the Constitution of the Republic of Namibia confers the positions of the head of state and the head of government to the president. In addition, the Constitution of the Republic of Kenya of 2010, in particular article 131(1), provides that the president is the head of state and government. In line with the

provisions outlined in section 47 of the 1966 Constitution of Botswana, similar to the established practice in the United States of America, the president of Botswana holds exclusive authority over the Executive power. Unlike the practice in other countries, (for instance, in Namibia), they do not share that power with anybody, not even with Cabinet (Balisi & Ramoroka, 2019; Botlhale & Lotshwao, 2015; Dingake, 2011; Molomo, 2000; Nsereko, 2010). While the Judicial and Legislative tasks are entrusted to a collective body, the Executive function is concentrated in a sole individual, namely the president. Thus, section 47 (1) and (2) of the Constitution of the Republic of Botswana of 1966 reads as follows:

> (1) The Executive power of Botswana shall vest in the President and subject to the provisions of this Constitution, shall be exercised by him either directly or through officers subordinate to him. (2) In the exercise of any function conferred upon him by this Constitution, or any other law the President shall, unless it is otherwise provided, act in his own deliberate judgement and shall not be obliged to follow the advice tendered by any other person or authority.

Fombad (2016), Maripe (2017), Molomo (2012), and Sebudubudu *et al*. (2017) have argued that section 47(1)(2) of the 1966 Constitution of Botswana has led to the dominance of the Executive arm of government over Parliament. This provision means the Executive is not required to account to Parliament. Specifically, it permits the president to use his own deliberate judgement and does not require him to take anybody's advice. Parliament represents the people, and it is to them that the exercise of power should be accounted. One of the primary responsibilities of Parliament is to oversee the Executive in its formulation and implementation of public policy, and in overseeing public spending. However, the absence of an obligation by the Executive (Maripe, 2017) to account to Parliament goes against the constitutional principles of Botswana and reflects the probable dictatorial inclinations pursued by the Executive. Consequently, the ability of Parliament to supervise properly the administration of public affairs by the Executive is limited.

The dominance of the Executive over Parliament is also exacerbated by the fact that members of the Executive are drawn from the members of Parliament. In other words, members of the Executive are also members of Parliament. For instance, in terms of section 58 of the Constitution of Botswana of 1966, 18 ministers and 10 assistant

ministers are drawn out of 63 members of Parliament. As mentioned earlier, the issue of fusion between the Executive and the Legislature is a feature prominent in many African constitutions. leading to weak Parliaments which are unable to keep an effective check on the exercise of the Executive powers. This arrangement has undermined the functioning of the Legislature and compromised the doctrine of separation of powers. Notably, this arrangement has led to a weak (Botswana) Parliament which is subject to the whims and caprices of the Executive (Botlhale & Lotshwao, 2015).

Consequently, the Parliament of Botswana has been described as a "rubber stamp" for the Executive's decisions (Molomo & Keorapetse, 2017) and as a "registration chamber" (Sebudubudu *et al*., 2013). This "refers to a situation where Parliament loses its primary functions and degenerates into a rubberstamp of decisions made elsewhere especially from the Executive" (Sebudubudu *et al*., 2013:40). Johnson (2005) makes reference to two types of Parliamentary systems, namely one being transformative and the other as a "rubber stamp" Parliament. Transformative Parliaments are those which have the ability to change policies and budgets proposed by government. They have the capacity to represent diverse interests, initiate policies of their own and shape budgets and policies. On the other hand, "rubber stamp" Parliaments, as the name suggests, simply rubber stamp (approve) decisions of the Executive branch.

Considering the weakness of Botswana's Parliament, as outlined above, there were demands by members of Parliament for a review of the Constitution, seeking to detach Parliament from the Executive. For instance, in 1988, a motion was tabled by a member of Parliament seeking to release Parliament from the controls of the Office of the President. The motion read thus:

> This House strongly urges government to take steps forthwith to ensure that Parliament as a supreme body in Botswana becomes an independent institution detached from the Office of the President where it has all the time been relegated to the lower status of a minor department (Republic of Botswana, 2003).

The motion was subsequently adopted by Parliament but, to date, the independence of Botswana's Parliament remains an unresolved matter.

Hence, a constitutional review is imperative to create, among others, a highly independent Legislature and limit the powers of the presidency. Doing so will confer the following benefits: affirm the supremacy of Parliament; enhance oversight and accountability, and burnish Botswana's democratic credentials. It is also worth noting that Botswana adopted a constitutional democracy as opposed to a Parliamentary democracy system of government. Therefore, the centrepiece of Botswana's democracy is not a sovereign Parliament but a supreme law, in the form of a constitution. The election of the president in Botswana deviates from the practice in many countries with presidential systems of government and the practice followed in some Parliamentary systems, such as Britain and India. However, the procedure for electing the president in Botswana leans more on the practice in Parliamentary than presidential systems (Nsereko, 2010).

1.1 Statement of the problem

A concern regarding the role and function of Parliament in ensuring accountable Executive authority requires a scholarly examination such as that considered in this study. Such an examination is necessary to maintain the key public administration principles of realising effective and efficient public service. The ineffective execution of the separation of powers (Fombad, 2016) results in the limited effectiveness (Molomo, 2000) and a lack of institutional autonomy (Molomo, 2012) of the Botswana Parliament, rendering its oversight function over the Executive futile (Maripe, 2017). For instance, Nsereko (2010) argues that, although the doctrine of separation of powers together with its checks and balances system would tend to imply an equilibrium between the three branches of government, Botswana does not achieve true equilibrium among its three arms of government. In Botswana, the Executive has a position of dominance in the power dynamics. While the Constitution of Botswana of 1966 does not have any express provision requiring that each organ of state be separate from each other, it makes provision for the separation of powers between the Executive, Legislature and Judiciary.

The Constitution of Botswana of 1966 does not explicitly use the phrase "separation of powers", but the theory is inferred by the establishment of the Legislative, Executive, and Judiciary branches. In other words, the fact that the Constitution apportions powers to the three organs of the state, being the Executive, the Legislature, and the

Judiciary, is incontrovertible (Dingake, 2009). Despite the principles of separation of powers, checks and balances, and Parliamentary supremacy, the Parliament of Botswana is commonly seen as being under the control of the Executive branch of government (Bodilenyane, 2012; Botlhale, 2012; Botlhale & Lotshwao, 2015; Dingake, 2009; Fombad, 2005, Fombad, 2016; Molomo, 2000; Molomo, 2012, Sebudubudu & Osei-Hwedie, 2006; Republic of Botswana, 2003; Sebudubudu *et al*., 2017). Consequently, the Parliament of Botswana has been described as weak (FES, 2011; Maripe, 2017), ineffective in the performance of its oversight role (Lotshwao & Sebudubudu, 2017), as a rubber stamp of Executive decisions (Molomo & Keorapetse, 2017) and as a registration chamber (Sebudubudu, *et al*., 2013). It is worth noting that the subordination, weakness and infectiveness of Parliament is not a problem that is peculiar to Botswana.

Several other African countries experience the same problem. For instance, there is a consensus that African Parliaments are weak (Africa Centre for Parliamentary Affairs (ACEPA), 2022; Commonwealth Parliamentary Association (CPA), 2018); Eberlei & Henn, 2003; Inter-Parliamentary Union (IPU) & United Nations Development Programme (UNDP), 2017; Inter-Parliamentary Union & United Nations Development Programme, 2022; SADC Parliamentary Forum (SADC PF), 2012; UNECA, 2005; 2006; African Center for Parliamentary Affairs, 2023; Van Rensburg *et al*., 2020). According to UNECA (2005), African Parliaments often fail to carry out their tasks and obligations efficiently and effectively, such as enacting laws, discussing national issues, and monitoring the government's operations. Therefore, international organisations and donors, such as the European Union (EU), United Kingdom Department of International Development (UK, DFID), United Nations Economic Commission for Africa (UNECA), United States Agency for International Development (USAID), and the Friedrich Ebert Stiftung Foundation (FES), consistently advocate for the improvement of African Parliaments. (EU, 2010; FES, 2011; UNECA, 2006). For instance, EU (2010) maintained that the Legislature should not be dominated by the Executive.

The Parliament of Botswana has several significant shortcomings (Sebudubudu *et al*., 2017) that greatly affect its autonomy and independence in carrying out its constitutional duties. The Parliament's lack of strength (Maripe, 2017) in Botswana is

rooted in the Constitution (legal), with further deficiencies found in its operations (Fombad, 2016), administration, and organisation. The legal configuration of the Executive compared with Parliament in Botswana is such that the Executive is a dominant and a strong actor in the power equation, whereas Parliament is subordinate to the Executive and a weak actor.

Therefore, the Executive dominance over Parliament as a result of its (Executive) legal positioning is manifested by several factors and/or problems. First and paramount is the structural positioning of the Executive (Maripe, 2017) relative to the Legislature. A feature of Botswana's Parliamentary democracy is a fusion between the Executive and the Legislative arms of government (Nsereko, 2010). There is fusion, rather than clear separation of powers between the two branches and such fusion has reinforced the dominance of the Executive while weakening Parliament (Lotshwao & Sebudubudu, 2017). The fusion often compromises the oversight function of the Legislature in that Cabinet ministers, who constitute the Executive branch of government are drawn from members of Parliament (MPs). The independence of MPs in this regard, is compromised. First, MPs position themselves to draw favour for appointments to the Cabinet. Furthermore, the collective responsibility of members of the Cabinet, party discipline, and binding resolutions of the party's Parliamentary caucus compromise the independence of legislators and further weaken Parliament.

Second, Parliament lacks an operational independence from the Ministry of the State President, in particular the Office of the President (OP). The OP is the bastion of Executive power. Among other things, the Parliament of Botswana does not have an independent budget and does not have the power to hire its own staff nor to set their terms and conditions of service. Instead, it depends on the OP and Directorate of Public Service Management (DPSM) for the budget and personnel, respectively. In accord with the principle of separation of powers, Parliament should formulate its own budget, be responsible for hiring its staff, and have a separate structure from that of the civil service. For a Parliament to create the essential independence to enable oversight and other tasks, it is often crucial to have formal control over its own budget and personnel.

However, in terms of structure and process, the Botswana Parliament is a department housed under the Ministry of the State President and falls administratively under the

Office of the President which controls its finances (Nsereko, 2010). This means Parliament functionally becomes a department within the Office of the President as it seeks to account for the use of its resources (Botlhale & Lotshwao, 2015; Dingake, 2009). In some other countries, Parliament is responsible for its own budget and personnel. This is prevalent in countries where Parliament is controlled and supervised by a corporate body in the form of a Parliamentary Commission and Parliamentary Service separate from the Executive influence and interference. Examples of such countries include the United Kingdom, Ghana, Canada, New Zealand, Zambia and Uganda.

Third, through a highly educated and skilled bureaucracy, the Executive is able to exert its influence and dominance over Legislature. Compared to technocrats and bureaucrats in the Executive, members of Parliament in Botswana are not appointed on merit basis but rather elected to Parliament regardless of their education and/or qualification status. For instance, an MP was recorded in a Parliamentary debate as having said, *"*Most bills that come before Parliament are rushed and most of us, since we are not experts, we have no legal background, we just let these bills rush through without critical examination" (Nsereko, 2010). This has severely handicapped the ability of the Legislature's oversight role over the Executive, more especially in exerting control over public finance. On this note, a member of Parliament was also recorded in a Parliamentary debate as having said:

> We are supposed to have power, Mr Speaker, to control finances of this country but in actual fact, we do not have power. We are not in control of the finances of this country although we are the highest legislative body who are supposed to be in control of the finances. We are far from it; we are merely a rubber stamp. The budget estimates are before us, and we are not going to change even a thebe of these budget estimates (Nsereko, 2010).

To buttress this argument, although it is the duty of Parliament to exercise control over public finance, since Botswana gained independence from being the Bechuanaland Protectorate, in 1966, to date, the Parliament of Botswana has not been able to change budget proposals (Maripe, 2017) brought before it by the Executive. This could not be, given the admittedly subservient status of the Legislature to the Executive.

Fourth, the president of Botswana is not constitutionally accountable to Parliament. Section 47 of the Constitution of Botswana (1997) empowers the President to 'act in his/her own deliberate judgement and shall not be obliged to follow the advice tendered by any other person or authority'. Lotshwao and Sebudubudu (2017) argue that this provision not only promotes Executive dominance but also subordinates Parliament to the Executive. Maripe (2017) posits that the power relationship between the Executive and Parliament suggests a relationship in which the servant is more powerful than the master and that is anathema to the concept of constitutionalism. Consequently, because of its relative weakness, Parliament is in a difficult position to influence public policy and has been unable to hold the Executive accountable for its actions or inactions. The president is also an ex-officio member of Parliament with the power to speak and vote in all Parliamentary proceedings. This has also largely compromised Parliament from exercising its oversight role.

Fifth, the dominance of the Executive over Parliament is exacerbated by the size of the Cabinet (which is part of the Executive) and the fact that members of the Executive are drawn from members of Parliament. In terms of the Constitution of Botswana of 1966, in particular, section 39(1) and 42(3), principal officers of the Executive, consisting of the vice president, ministers and assistant ministers, are appointed by the president and are drawn from members of Parliament. For purposes of clarity, currently, of 63 MPs (composed of 57 elected MPs and six special elected MPs), 29 (46%) MPs are members of the Executive branch of government. The Executive constitutes nearly one-third of the members of Parliament. Given its dominance, the present government rarely loses a vote and effectively controls the Legislature.

The notion of collective responsibility over Cabinet, tight party discipline and Parliamentary caucus have often led to the Executive's control over Parliament. Legislation, motions and policies initiated by the Executive pass easily, since the Executive has the support from a significant number of MPs who form part of the Executive. Nsereko (2010), posits that the ruling party in Botswana, the Botswana Democratic Party (BDP), has been able easily to pass all of its programmes and desires in Parliament without any opposition owing to its numerical strength and domination in the Legislative body.

Despite the occasional expectation for backbench members to collaborate with a small number of opposition MPs in order to oppose the Executive in Parliament, this has mostly not occurred owing to party discipline and the influential control exerted by the President through patronage. It is worth noting that the Botswana Democratic Party (BDP), the ruling party since independence (1966), has always dominated Parliament, while the opposition has experienced numerical weakness in Parliament. The numerical weakness of the opposition in Parliament and the numerical strength of the ruling BDP is, in part, a result of the first-past-the-post (FPTP) electoral system, which under-represents the opposition and over-represents the BDP, mainly because it does not take into account the share of the popular vote won by the political parties. For instance, in the 2014 elections, the BDP's popular vote dropped to 47%, while the combined opposition garnered 53% (BTI, 2022).

However, the first-past-the-post (FPTP) voting system resulted in the BDP winning 65% of the seats in Parliament (IEC Botswana, 2022), despite only receiving 47% of the national vote. On the other hand, the Umbrella for Democratic Change (UDC), received 30% of both the national vote and the seats in Parliament. The BCP obtained a 20% share of the public vote, which corresponded to a 5% allocation of Parliamentary seats. Considering these statistics, Kebonang and Kaboyakgosi (2017) contend that Botswana's election system has disproportionately favoured the BDP and disadvantaged the opposition in Parliament, and that the FPTP represents the "winner-takes-all" nature of the system which effectively marginalises other political parties (BTI, 2022).

The numerical weakness of the opposition has often led to motions and bills initiated by the opposition being defeated easily in Parliament, whereas legislation, motions and policies initiated by the Executive pass easily because of the numerical strength of the BDP in Parliament. This has limited Parliament from carrying out its oversight functions effectively.

Furthermore, Parliament derives its law-making function from the Constitution of Botswana of 1966. Particularly, section 86 of the Constitution empowers Parliament to make laws for the peace, order and good governance of the country. Although Parliament is supposed to be the supreme law-making body, the laws that are passed by the Legislature mostly originate from the government (Executive) (Maripe, 2017).

Rarely does Parliament initiate law-making on its own; instead, it merely scrutinises and approves laws initiated by the Executive branch of government (Lotshwao & Sebudubudu, 2017; Sebudubudu & Osei-Hwedie, 2006). On the other hand, Fombad (2005) argues that the law-making function of Parliament in Botswana is limited to private members' bills and the amendment of existing laws owing to the Executive dominance in the law-making function. Fombad (2016:322) succinctly summarises the weakness of Botswana's Parliament in its law-making function as follows:

> The extent of Executive influence over the Legislative branch is particularly evident in the law-making process. Although the Parliament's principal function is to make laws, as in all Parliamentary democracies, the whole of this process – especially the most decisive pre-legislative stages – is controlled and driven completely by the Executive. Almost all bills are discussed in Cabinet meetings chaired by the President, and are presented in Parliament by a Cabinet member who, along with the whips, ensures the bill goes through without significant modifications. Because of the Executive's ability to ensure that desired legislation is passed, it is fair to conclude that, to all intents and purposes, the Executive controls Parliament.

The dominance of the Executive in the law-making function, as explained by Fombad (2016), can also be attributed to the fact that the Executive relies on the knowledgeable and experienced bureaucrats and technocrats to research and initiate any form of legislation.

Furthermore, there have been instances when the Executive has consistently made strategic decisions without involving Parliament, despite Parliament's intended authority over financial matters and its responsibility to protect the interests of citizens. For instance, Botlhale and Lotshwao (2015) revealed that, in 1998, during the post-election unrest in Lesotho, President Festus Mogae did not consult Parliament when he sent troops from the Botswana Defence Force (BDF) to work along with the South African National Defence Force (SANDF) to restore stability in the country.

In terms of the concept of separation of powers, the Legislative authority is viewed as the highest national representative institution of the people in a democracy. However, in Botswana, Parliament has established several governmental institutions, with many of them, particularly the oversight ones, not being answerable to Parliament. These institutions are answerable to the Office of the President instead. Specifically, they are

accountable to the president. For example, oversight institutions like the Office of the Ombudsman, the Office of the Auditor-General, the Directorate of Corruption and Economic Crime (DCEC) and the Directorate of Intelligence Services (DIS) are statutorily required to report to the Office of the President. This reporting structure also compromises the effectiveness of Parliament in keeping in check the exercising of the Executive power. It is worth noting that these oversight institutions are not a product of the Constitution but rather, statutory entities enacted by the Parliament of Botswana as it deems it fit to do so.

Moreover, in some cases, the system of checks and balances, as provided for in the Constitution of Botswana of 1966, has some limitations and counter-effects, more especially on Parliament. For instance, in terms of section 91 of the 1966 Constitution of Botswana, the President of the Republic of Botswana has the power, at any time, to dissolve Parliament. He or she is also empowered by section 87(4) of the Constitution of Botswana of 1966 to dissolve Parliament in consequence of a motion of no confidence passed against the government of Botswana. Likewise, members of Parliament are empowered by section 92 of the 1966 Constitution of Botswana to remove the president from office through a vote of no confidence. The Constitution requires that, if Parliament successfully passes a vote of no confidence, the president shall either resign or dissolve Parliament, and call for fresh elections. Dissolving Parliament in the case of a successful vote of no confidence is a presidential element that constrains the actions of Parliament. For example, it was used by President Mogae, who threatened to dissolve Parliament if it rejected his choice of Ian Khama as vice president (Maundeni, 2011).

Dissolution of Parliament is not necessarily an advantage to the members of Parliament themselves, and the power to dissolve Parliament would invariably be viewed as Executive dominance over the Legislature (Sebudubudu, 2006; Maripe, 2017). The power of Parliament to declare a motion of no confidence in the government of Botswana has not been effective in the past, owing to the following reasons. First, if the motion of no confidence is passed, it would mean that Parliament is dissolved and therefore the decision to “commit suicide” discourages MPs from taking this step (Modungwa, 2014, Sebudubudu, 2005). The power of Parliament to pass a vote of no confidence in the government is usually counterbalanced by the

president's power to dissolve Parliament once such a motion is duly passed. Second, history has shown that motions of no confidence are not successful, mainly because the Opposition lacks numerical strength in terms of voting to sustain such motions. For instance, the 2018 motion of no confidence tabled by Duma Gideon Boko of the Umbrella for Democratic Change (UDC) and the 2021 motion tabled by Dumelang Saleshando of the UDC were all thwarted because of the numerical weakness of the Opposition in Parliament.

On the other hand, the Botswana Democratic Party (BDP), the ruling party, has always maintained a dominant majority in Parliament; hence, the likelihood of the successful presentation of such a motion is almost non-existent, mainly because of the power of patronage wielded by the Executive. Therefore, declaring a motion of no confidence has not been an effective way to check and balance the power of the Executive in Botswana.

Transparency and accountability are essential principles in a democratic government. It is the primary responsibility of Parliament to ensure accountability through its core oversight function. That is, Parliament fulfils its primary role of oversight by holding the government accountable on behalf of the citizens. This ensures that government policies and actions are effective and in line with the requirements of the public. (Yamamoto, 2007). Efficient Parliaments are desired because they promote and cultivate democracy and improve government, especially in emerging countries. However, it is widely agreed that African Parliaments have a low level of performance (Maripe, 2017) owing to their lack of efficacy (Fombad, 2016), and because they are generally weak.

The dominance of the Executive arm of government over Parliament in Botswana has rendered Botswana's Parliament weak and ineffective. It can be argued that Parliament is subject to the whims and caprices of the Executive arm of government. The problem therefore is that Botswana has an independent, weak and ineffective Parliament, which is controlled, subordinate to and dominated by the Executive arm of government. Consequently, Parliament is unable to discharge its roles and functions significantly. More especially, the role of Parliament as a custodian of the citizen's interests, as an oversight body to the Executive branch of government, and the role of Parliament to control public finance and to scrutinise and control the government. It is

therefore worth noting that serious constraints on institutional autonomy and capacity exist in the Parliament of Botswana, raising questions about the ability of the Legislature to exercise its formal powers and to act as a counterbalance to Executive authority. There must be a clear separation of powers between the Executive and the Legislature. Therefore, this study sought to develop a framework necessary to enhance guiding of the oversight role and function of Parliament. Fostering the separation of powers between Parliament and the Executive branches of government in Botswana is also critical to embed this imperative which could allow Parliament to assume its role of keeping the Executive authority accountable.

The Executive, while having authority and power to run the country on day-to-day matters, must be accountable to Parliament on both policy and operational issues. The Executive should be more embedded in, and accountable to Parliament. Thus, the research problem addressed in this study is: **What is the role and function of Parliament in keeping the Executive accountable?**

This research problem is necessary in ensuring an examination of the oversight role of Botswana's Parliament. Specifically, the study seeks to examine the discourse on the role and function of Parliament regarding their oversight responsibilities over the Executive branch of government in Botswana. This examination is necessary to maintain an independent, strong and effective Parliament which can hold the Executive branch of government accountable in their actions.

1.2 Research questions

Based on the research focus of this study and the statement of the problem, the study sought to answer the following questions:

1.2.1 Primary research question

The primary research question to be addressed in this study is: What is the role and function of Parliament in keeping the Executive accountable to foster the separation of powers? The study sought to examine the development of a framework that could be used as a model to enhance the guidance of the oversight function of Parliament in Botswana.

1.2.2 Secondary research questions

1. What are the theoretical principles governing the separation of powers for Executive and Legislative authorities?
2. What are the constitutional and legislative imperatives determining a separation of powers for both the Parliament and the Executive authorities?
3. What is the nature and scope of existing Executive and Legislative relations in the Republic of Botswana?
4. What accountability mechanisms and approaches for the Executive authority are necessary for strengthening the role and function of Parliament?
5. What framework is necessary to guide the oversight role and function of Parliament?

1.3 Research objectives

1.3.1 Primary research objective

To determine what should be contained in an oversight framework for the Parliament of Botswana to foster the separation of powers. The study sought to examine the development of a framework that can be used as a model to enhance the guidance of the oversight function of Parliament in Botswana. This is necessary for strengthening the role and function of Parliament as well as maintaining the separation of powers especially between the Parliament and the Executive.

1.3.2 Secondary research objectives

1. Analyse the theoretical principles governing the separation of powers for Executive and Legislative authorities.
2. Compare the constitutional and Legislative imperatives determining a separation of powers for both the Parliament and the Executive authorities.
3. Analyse the nature and scope of existing Executive and Legislative relations in the Republic of Botswana.
4. Critique accountability mechanisms and approaches for the Executive authority, necessary for strengthening the role and function of Parliament.
5. Develop a framework necessary to guide the oversight role and function of Parliament.

1.4 Central theoretical statements

The following statements serve as foundational arguments of the study:

- The distribution of power in the majority of African nations is heavily skewed towards the presidency. The power structure in African nations is often marked by the following characteristics, among others, as described by Cranenburgh (2009), which have been well-documented by Stultz (1968), and Munslow (1983). First, many nations still lack sufficient constitutional provisions to limit executive authority effectively, particularly the powers held by the president. Second, a deficient or inadequate division exists between the Legislature and the Executive, which has a tendency to undermine the former. While African Parliaments have comparable challenges in their interaction with the Executive, the specific variations depend on factors such as the type of government. The extent of presidential authority over the Cabinet and the division of powers between the Executive and Parliament differ among nations (Nijzink *et al.*, 2006; Van Cranenburgh, 2009). Variations among nations indicate that, while there may be similarities in overall trends, deficiencies may exist in distinct places and exhibit various characteristics. Nevertheless, the ultimate outcome remains unchanged: a feeble Legislature in comparison to the Executive (Sebudubudu *et al*., 2013).
- The classic formulation of the theory of separation of powers in its 'pure' form is based on the fundamental idea that there are three separate, distinct, and independent functions of government – the Legislative, the Executive, and the Judicial. These functions of government should be discharged by three separate and distinct organs – the Legislature, the Executive (or government), and the Judiciary (Bradley & Ewing, 2008). That is, the principle of separation of powers recognises the *functional independence* of branches of government.
- The theory of separation of powers means ordinarily that if one of the three branches of government is responsible for the enactment of rules of law, that body *should not* also be charged with their execution or with judicial decision about them. The same will be said of the executive authority: it is not supposed to enact laws or to administer justice, and the judicial authority should not enact or execute laws (Mojapelo, 2013:37).

- The accountability rationale for the theory of separation of powers is closely linked to the rule of law. For example, if the Legislature is to perform its function of calling delinquent government officials to account, these officials should not dominate (or even be in) the Legislature. Thus, they will not be judges in their own cases (Fombad, 2005:307-308).
- Although the theory of separation of powers, together with its checks and balances system, would tend to imply an equilibrium between the three branches of government, this is unfortunately not case in Botswana. The Executive seems to be the dominant actor in the power equation (Nsereko, 2010:46).
- However, separation of powers in Botswana, more especially between the Executive and Parliament, has been described by many authors as sloppy or easy, and not watertight; thus, creating loopholes that allow absolutism to creep in (Bodilenyane 2012; Botlhale 2012a; Botlhale & Lotshwao, 2015; Fombad, 2005; Molomo, 2000; Nsereko, 2010). It mixes Executive and Legislative power together. Nsereko (2010:44) observes this mix-up by arguing that "one aspect of the constitutional set-up that breaches the wall of separation of powers (in Botswana) is the requirement that the President, Ministers and Assistant Ministers be Members of Parliament".
- As a result of the Executive being intertwined with the Legislative and the Executive being a dominant actor, the Parliament of the Republic of Botswana has been deemed weak and ineffective in performing its law-making and oversight roles. Therefore, there has been a demand by Members of Parliament to detach Parliament from the Executive in order to make Parliament independent, strong and more effective in performing its mandate (Bodilenyane 2012; Botlhale & Lotshwao, 2015; Dingake, 2009; Dingake, 2011; Fombad, 2005; Molomo, 2000; Molomo, 2012; Mpuang, 2019; Nsereko, 2010).
- The new public management (NPM) paradigm emphasises results (controlling performance), accountability and responsibility principles.
- Through their representative role, members of Parliament (MPs) are expected to account to the citizens. members of Parliament can account to the people through their oversight roles and responsibilities in Parliament. Similarly, the

Executive and Judicial arms are expected to be responsible and accountable in their mandates.

- The focus of the new public management paradigm is on results, a focus on clients' outputs and outcomes, the use of management by objectives and performance measurement, the use of markets and markets type mechanisms in place of centralised command and control-style regulation, competition and choice, and devolution with a better matching authority, responsibility and accountability (OECD, 2007; Hughes, 2003:5).
- NPM advocates for empowering citizens, good governance, democracy, decentralisation, participatory management, de-bureaucratisation, deregulation and liberalisation.

1.5 Theoretical framework

The theory of separation of powers presents a classic example of how the three branches of government ought to be separated in a functional and liberal democracy such as the one in Botswana. The overarching research question of this study sought to examine the development of a framework that could be used as a model to enhance the guidance of the oversight function of Parliament in Botswana. This theory provided a perfect fit for developing the theoretical framework used to analyse data, interpret results and discuss findings in this research. The theory of separation of powers was used, among other factors, to answer the research question and to address the research problem of this study.

The origins of the theory of separation of powers can be traced back to the writings of John Locke (1632–1704), who advocated for the division of government functions into Legislative, Executive and Judicial authorities (Dicey, 1959; Gwyn, 1986). Nevertheless, the theory of separation of powers is especially credited to the French philosopher, Charles-Louis de Secondat Montesquieu (1689–1755). Montesquieu was credited with have given the theory of separation of powers its modern scientific form, and for influencing the American and the French Revolutions (Fombad, 2016). Montesquieu (1748), as cited in Fombad (2016) and Knight (1989) classified governmental functions as the Legislative, the Executive, and the Judicial, and analysed the relationship between the balance of powers in terms of checks and balances and the separation of powers (Vile, 1967). Montesquieu's principal argument

was that the condition precedent for liberty was the separation of powers among the Executive, the Legislature and the Judiciary. Hence, Montesquieu argued that if one authority exercises Legislative, Judicial and Executive powers, that would be the very definition of tyranny (Knight, 1989). Thus, Montesquieu (1748:3-6) wrote:

> Political liberty is to be found only when there is no abuse of power. To prevent the abuse of power, it is necessary from the nature of things that one power should be a check on another. When the Legislative and Executive powers are united in the same person or body, there can be no liberty. All would be in vain if the same person, or the same body of officials, be it the nobility or the people, were to exercise these three powers: that of making laws, that of executing the public resolutions, and that of judging crimes or disputes of individuals.

The theory posits that specific duties, functions and responsibilities of government are allocated to distinctive institutions with a defined means of competence and jurisdiction (Fombad, 2016). The theory is premised on the need to protect individual liberty through a system of checks and balances, to promote generality in law-making and to promote governmental efficiency through functional specialisation (Nsereko, 2010). The key emphasis of the theory of separation of powers is to prevent abuse of power by any of the three major branches of government. The principle of the theory is that the powers bestowed in the principal organs of the state, Legislature, Executive and Judiciary, should not be concentrated in the hands of any one institution (Vile, 1967). To Bradley and Ewing (2007:84) as well as Mojapelo (2013:1) the theory of separation of powers may mean three different principles:

- "That the same person should not form part of more than one of the three organs of government, for example, that Cabinet ministers should not sit in Parliament;

- that one organ of government should not control or interfere with the work of another, for example, that the Executive should not interfere in Judicial decisions;

- that one organ of government should not exercise the functions of another, for example, that ministers should not have legislative powers".

Hence, the fundamental idea that there are three independent, distinct and separate functions of government, the Executive, the Judicial, and the Legislative, which should be exercised by three distinct and separate organs, the Executive, the Judiciary and the Legislative, is based on the theory of separation of powers in its pure or classical formulation (Fombad, 2016).

In addition to the principles of the separation of powers, the system of checks and balances is also embedded in the doctrine of separation of powers. Under this system, the three arms of government exercise partial control and partial supervision over one another. The system facilitates coordination, linkages and cooperation among the three branches. It requires that each branch of government possesses the ability to check the exercise of powers by the other, either by participating in the functions conferred on them or by subsequently reviewing that power (Oseko, 2012).

Under checks and balances, there are instances when the powers of one branch overlap with those of the other, or where a member of one branch occasionally participates in the activities of the other (Nsereko, 2010:44). For example, the Chief Justice of the United States presides over the Senate during the impeachment proceedings against a president. Another example is that the President of the United States of America cannot appoint Cabinet members without the consent of the Senate. Similarly, in Botswana, although the Executive and the Judiciary are separate institutions, the president, who forms part of the Executive, appoints the Chief Justice in terms of section 96(1) of the Constitution of Botswana. Checks and balances are meant to ensure that the equilibrium in the distribution of powers is maintained.

In line with Montesquieu's philosophies, chapters IV, V and VI of the Constitution of Botswana of 1966, makes provision for separation of powers between the three major branches of government. The three main roles of the state (Executive, Legislative and Judicial) are allocated to three distinct branches of government. Parliament makes the law and formulates public policy. The Executive implements public policy, while the Judiciary interprets the law and adjudicates both civil and criminal matters. Separation of powers as a concept engraved in the Constitution of Botswana of 1966, establishes a system of checks and balances among the three branches of government for the preservation of liberty, freedom and avoidance of tyranny or absolute rule.

Nonetheless, the Executive and Legislative branches of government are not strictly separated in Botswana.

1.6 Significance of the study

The study attempted to examine the discourse on the role and function of Parliament regarding its oversight responsibilities over the Executive branch of government in Botswana. This is necessary to maintain an independent, strong and effective Parliament, which can hold the Executive branch of government accountable for their actions.

Furthermore, the study attempted to develop a framework necessary to guide the oversight role and function of Parliament within the context of Botswana. It is hoped that the framework will also be beneficial to other African Parliaments which have similar oversight challenges to that of Botswana. The study also attempted to address demands to strengthen African Parliaments either by scholars or by international donors and organisations, such as the World Bank, International Monetary Fund (IMF), European Union (EU), International Parliamentary Union (IPU), SADC Parliamentary Forum, Commonwealth Parliamentary Association (CPA)and the United Nations Development Programme (UNDP). Thus, this study will help to strengthen the Botswana Parliament as well as other African Parliaments to be effective in their oversight and law-making functions.

1.7 Delimitations and limitations of the study

Although citizens of Botswana are likely to benefit from the study, they were not included as participants. This is mainly because of the limited capacity to carry out a nationwide study on the subject matter. However, it is considered that the views and opinions of the citizens were conveyed by the members of Parliament and members of the civil society organisations who were interviewed. Members of Parliament are considered legitimate representatives of citizens and should be accepted in this study as this is often an accepted norm for representative democracies.

1.8 Outline of the study chapters

This study comprises a total of nine chapters. A brief description of the contents of each chapter is outlined below.

1.8.1 Chapter One: Introduction and orientation

This chapter covers the introductory aspects of the study, including the background/overview of the study, theoretical framework of the study, statement of the problem, research questions, research objectives, central theoretical statements, significance of the study, limitations and delimitations of the study and a brief outline of the study chapters.

1.8.2 Chapter Two: Literature review

Chapter Two reviews the related literature relevant to this study. A funnel approach to literature review is adopted in this study by considering the global, regional and the national (Botswana) trends related to the oversight role and function of Parliaments. The chapter considers both the theoretical and empirical aspects of the literature review. Concerning the empirical aspects of the literature review, the chapter reviews previous related studies to determine investigations of a similar research problem to the research problem of this study, the methodology they used, their conclusions, recommendations, and the implications of previous studies to this study. The theoretical aspects of the literature review are outlined in the chapters subsequent to Chapter Two. These chapters serve as an extension to Chapter Two to strengthen understanding of the notion of separation of powers.

1.8.3 Chapter Three: Theoretical principles governing the separation of powers for Executive and Legislative authorities.

Examining the oversight role of the Republic of Botswana Parliament requires a close look into the theory of separation of powers as a model for Legislative oversight over the Executive branch of government. In essence, Chapter Three attempts to answer the following research question: **What are the theoretical principles governing the separation of powers for Executive and Legislative authorities?** This chapter thus focuses on the meaning of the theory of separation of powers, its significance, how it

has evolved over time, its application in modern-day governments and its implications for the oversight function of Parliament.

1.8.4 Chapter Four: Constitutional and Legislative imperatives determining a separation of powers for both the Parliament and the Executive authorities.

This chapter discusses and compares the three major systems of government, being the American presidential system, the British parliamentary system, and the French hybrid system of government. The emphasis is on how these systems of government determine separation of powers between the Executive and the Legislative branches of government and their implications for the oversight function of Parliament. Furthermore, the chapter describes how the three systems of government outlined influenced the constitutions of African countries in terms of the application of separation of powers. In particular, Chapter Three attempts to answer the following research question of this study: **What are the constitutional and legislative imperatives determining a separation of powers for both the Parliament and the Executive authorities?** In principle, Chapter Three considers the global perspective and the regional (Africa) perspective and/or application of the theory of separation of powers and its implications for the oversight function of Parliament.

1.8.5 Chapter Five: The nature and scope of existing Executive and Legislative relations in the Republic of Botswana

Having considered the global and regional application of the theory of separation of powers in Chapter Four, this chapter examines the application of the theory of separation of powers in the context of the Republic of Botswana. It does so by analysing the nature and scope of the existing Executive and Legislative relations in Botswana. A particular emphasis is on the analysis of the legal and administrative structure of Parliament in relation to the Executive and its impact on the oversight function of Parliament. The chapter also describes how the Constitution of Botswana of 1966, particularly concerning the Executive–Legislative relations, was influenced by the American presidential model, the British parliamentary model and the French hybrid model of government. Chapter Five seeks to answer the following research question of this study: **What is the nature and scope of existing Executive and Legislative relations in Botswana?**

1.8.6 Chapter Six: Accountability mechanisms and approaches for the Executive necessary for strengthening the role and function of Parliament.

This chapter examines both internal and external accountability mechanisms and approaches that Parliament uses to keep the Executive in check. The chapter also provides a comparative analysis of internal and external oversight mechanisms. Chapter Six attempts to answer the following research question: **What accountability mechanisms and approaches for the Executive are necessary for strengthening the role and function of Parliament?**

1.8.7 Chapter Seven: Research methodology

This chapter focuses on the what and the how of this study. In particular, the chapter outlines the research philosophy, the research design, the methodology used, the population of the study, sampling and the sample size, data collection instruments, ethical considerations, data analysis, the reliability of the data collected, and the details of data collection.

1.8.8 Chapter Eight: A framework necessary to guide the oversight role and function of Parliament.

This chapter presents, analyses and discusses the findings of the study in accordance with themes generated from the data collection, coding and analysis exercise. The chapter addresses the core focus of the study by presenting a framework necessary to guide the oversight role and function of Parliament. The framework is mainly deduced from the opinions of the study participants interviewed as well as from the literature reviewed. Hence, Chapter Eight addresses the research question: **What framework is necessary to guide the oversight role and function of Parliament?**

1.8.9 Chapter Nine: Summary, conclusion and recommendations

This is the final chapter of the study. It summarises the whole study by providing a brief outline of the study, research methods used, key findings, implications of the findings, how the study addressed its objectives, conclusions, implications of the study, future research areas and recommendations emerging from the study.

1.9 Conclusion

This chapter outlined the research background, gave a brief theoretical framework of the study, research problem, statement of the problem, research questions, research objectives and a summary of chapters contained in this study. Chapter Two provides a critical review of the literature related to this study.

Chapter Two: Review of related literature

2.0 Introduction

Chapter One outlined the background to the study, the theoretical framework of the study, the statement of the problem, the research questions, research objectives, central theoretical statements and an overall chapter outline of the study. This chapter reviews related literature concerning the subject matter of this study, which is to examine the oversight role of the Parliament of the Republic of Botswana. The main section regarding the review of related literature is outlined in this chapter. Chapters Three, Four, Five, and Six are an extended literature review to guide the study in terms of its outlined objectives. The discussion in Chapter Two provides for brief introductory aspects of the literature related to the research problem. Specifically, Chapter Two focuses on answering some of the following guiding questions of the literature review: 1) Who else has investigated a similar research problem? 2) What are their main arguments? 3) What research methods have they used? 3) What were their conclusions and/or recommendations? 4) What are the implications of the past studies to this study?

Chapters Three, Four, Five, and Six provide a clear extension of Chapter Two on the insights regarding practices in other countries in relation to the separation of powers model. Chapter Three provides an overview of the theory of separation of powers, its meaning, rationale, origins, development, application and its implications for the oversight role of Parliament. Chapter Four compares different systems of government as practised in other countries and its impact on the oversight function of Parliament. Chapter Five provides an analysis of the Executive–Parliament relations in Botswana. Emphasis is placed on the implications of the relations between Parliament and the Executive in terms of the oversight functions of Parliament in Botswana. Chapter Six provides a critical analysis of the accountability mechanisms and approaches for the Executive that are necessary for strengthening the oversight role and function of Parliament.

2.1 Similar previous studies and their implications for this study

There is an abundance of literature which addresses the oversight function of Parliaments, the independence of Parliaments as well as the nature and scope of the

relationship between Legislative and Executive branches. In the context of the Republic of Botswana, the following are some of the authors who can be credited for writing extensively about the nature and scope of the relationship between Legislative and Executive branches of Botswana: Bodilenyane (2012), Botlhale (2012), Botlhale and Lotshwao (2015), Dingake (2009), Fombad (2005), Fombad (2016), Molomo (2000), Molomo (2012), Sebudubudu and Osei-Hwedie (2006) Sebudubudu *et al*. (2013), and Sebudubudu *et al*. (2017). The work of these authors is cited throughout this chapter and the entire study.

Specifically, the literature that focuses on the context of the Republic of Botswana mainly addresses three aspects. First, there is a focus on the relationship between Legislative and the Executive branches. Second, the literature addresses the independence of Parliament, and third, the literature analyses the oversight role of Parliament over the Executive. The relationship between Parliament and the Executive is characterised by a lack of strict separation of powers (Lotshwao & Sebudubudu, 2017; Molomo, 2012) between the Executive and Legislative authorities.

Literature posits that, owing to a lack of strict separation of powers, the Executive holds a dominant position (Fombad, 2016; Maripe, 2017) over the Legislative branch of government, while Parliament is deemed weak (Botlhale & Lotshwao, 2015; Lotshwao & Sebudubudu, 2017). With regard to the independence of Parliament, many authors have maintained that Botswana's Parliament lacks independence (Fombad, 2016; Maripe, 2017, Molomo, 2012; Molomo & Keorapetse, 2017, Sebudubudu *et al*., 2013) from the Executive. The dominance of the Executive over the Legislative branch of government and the lack of independence of Parliament has rendered the oversight function of Botswana's Parliament futile (Fombad, 2016; Molomo & Keorapetse, 2017).

An extensive examination of the literature reveals that the Executive branch's control over the Legislative branch and the lack of autonomy of Botswana's Parliament stem primarily from an inefficient implementation of the separation of powers in Botswana (Bodilenyane, 2012; Botlhale, 2012; Botlhale & Lotshwao, 2015; Dingake, 2009). In addition, the inefficient implementation of the separation of powers in Botswana has led to structural limitations (Maripe, 2017) that restrict the efficacy of the Botswana

Parliament (Molomo, 2000; Molomo, 2012), making its oversight role over the Executive ineffective (Fombad, 2016).

Structural constraints that limit the effectiveness of Botswana's Parliament include but are not limited to: first, in terms of section 42(3) of the 1966 Constitution of Botswana, the current composition of Parliament is such that members of Parliament are also members of the Executive branch of government. Hence, Maripe (2017), and Molomo (2012) maintain that there is no clear separation of powers between the Executive and the Legislative arms of government; instead, they are intertwined. Consequently, such fusion has strengthened the dominance of the Executive (Sebudubudu *et al*., 2013), while weakening the role of Parliament (Botlhale, 2012; Molomo, 2000).

Second, Parliament is a department under the Office of the President. This is so because Parliament does not have a separate budget; it depends on the Office of the President for its staffing, financial and all operational requirements. These structural constraints of Parliament have been advanced by a number of authors. For instance, in their analyses of the role of Botswana's Parliament as well as the relationship between Parliament and the Executive, Lotshwao and Sebudubudu (2017) point to these structural constraints in that they often limit the effectiveness of Botswana's Parliament. These authors recommend that critical reforms are needed to strengthen Parliament, to improve its capacity issues, and ultimately, to enhance the competence of Parliament. This recommendation, inter alia, forms the basis of this study. That is, this study sought to examine the discourse regarding the role and function of Parliament regarding their oversight responsibilities on the Executive branch of government in Botswana. This is necessary to maintain an independent, strong and effective Parliament which can hold the Executive branch of government accountable for their actions or inactions.

Although a more detailed description and analysis of the structural constraints impeding the effectiveness of Botswana's Parliament is addressed in Chapter Six, this chapter focuses mainly on the scope and nature of Executive–Legislative relations in Botswana.

It is worth noting that the authors cited above have relied on acceptable research methods to arrive at the findings that have enhanced the understanding of the

discourse regarding Executive–Legislative relations, especially in the context of Botswana. However, the authors mainly relied on secondary (desktop review) sources of data including published textbooks, journal articles, statutes, conference proceedings and an analysis of nations constitutions to arrive at their conclusions. Hence, there is an empirical gap (Miles, 2017) in much of the literature cited. That is, previous studies have hardly relied on the use of primary sources of data, more especially, by interviewing individuals in the relevant institutions, such as members of Parliament and members of the Executive. Therefore, this study provides a strong empirical approach in its investigation of the identified research problem. As part of its empirical approach, the study conducted face-to-face interviews with members of Parliament, members of the Executive, and members of the civil society organisations in Botswana. More details are given of primary sources of data in the methodology chapter of this study (Chapter Seven).

2.2 The role of Parliament in Botswana

Botswana operates according to the Westminster model of representative democracy in which the citizenry elects representatives to the Legislative Assembly (Parliament) (Molomo, 2012). Parliament is the supreme legislative authority responsible for the enactment of laws. In terms of section 57 of the Constitution of Botswana of 1966, Parliament consists of the president and the National Assembly. The composition of the National Assembly is the president (as ex-officio member), both elected and specially elected members of Parliament (MPs), the Speaker and the Parliamentary Counsel. Currently, there are 57 elected MPs and six specially elected members of Parliament. The six specially elected MPs are nominated, in accordance with section 58 of the Constitution of Botswana (1966). Effectively, all leaders of political parties represented in the House submit their nominees and the 57 members of Parliament with constituencies vote by secret ballot. Those who get more votes become specially elected members of Parliament (SEMP). There are three major roles of Parliament in Botswana: legislation (make laws), representation and oversight. Each role is explained in detail below:

2.2.1 Representative role

In Botswana, Parliament is elected every five years by the people to represent them. It is, therefore, a national representative of the people and forms an important link between the people and the polity. Specifically, Parliament represents and articulates the interests of the electorate. Not all citizens can be individually represented in Parliament; therefore, a representative system in the form of Parliament comes into existence.

2.2.2 Law-making function

Parliament derives its law--making function from the Constitution of Botswana of 1966. Particularly, section 86 of the 1966 Constitution of Botswana empowers Parliament to make laws for the peace, order and good governance of the country. However, Fombad (2016) argues that the law-making function of Parliament in Botswana is limited to private member's bills and the amendment of existing laws, owing to the dominance of the Executive in the law-making function. Lotshwao and Sebudubudu (2017) posit that, since the law-making function is dominated by the Executive, Parliament's function in law-making has been reduced to scrutinising and approving laws initiated by the Executive.

Although Parliament is supposed to be the supreme law-making body, the laws that are passed by the Legislature mostly originate from the government, that is, the Executive. Parliament rarely initiates law-making on its own (Maripe, 2017). On the other hand, Sebudubudu *et al*. (2017), and Sebudubudu and Osei-Hwedie (2006), explain succinctly the challenges faced by the Republic of Botswana's Parliament in its law-making function as follows: despite having the responsibility of law-making, the Botswana Parliament is unable to propose laws; rather, it only grants approval to government legislation. Private members' bills have been few since independence, with just one exception some years ago. This scarcity can be attributed to the fact that the writing of legislation is reliant on a single individual, the Attorney-General, who also serves as the government's legal representative. This indicates that the ability of MPs to make laws is limited by a lack of expertise in formulating legislation.

To date, the law-making function in Botswana is still faced with the challenges outlined above. Parliament is confronted by a powerful president who supports and is

supported by competent bureaucrats and technocrats. This is so because, through its advisory role to the Executive and professional expertise and knowledge, the bureaucracy dominates policy-making in Botswana. Therefore, MPs have little option but to rubber stamp laws and policies initiated and developed by the Executive branch of government. To further buttress this argument, Fombad (2016) maintains that the weakness of the Republic of Botswana's Parliament in its law-making function can be attributed to the Executive's significant influence on the Legislative branch, more especially in the process of establishing laws. While the primary role of Parliament is to enact legislation, similar to other Parliamentary democracies, the whole process, particularly the crucial pre-legislative stages, is entirely governed and propelled by the Executive. The majority of laws are deliberated over in Cabinet meetings presided over by the president, and are then introduced in Parliament by a Cabinet member who, in collaboration with the whips, ensures that the bill is passed without substantial alterations. Owing to the Executive's capacity to guarantee the passage of desired legislation, it is reasonable to conclude that, in essence, the Executive exercises influence over Parliament.

The deliberation and approval of bills is first done by Cabinet (which forms part of the Executive) before being tabled in Parliament. In Botswana, Cabinet ministers are also members of Parliament (MPs) and the Cabinet's significant numerical strength, which constitutes more than one-third of the entire membership of the National Assembly, combined with the notion of collective responsibility among Cabinet members, has resulted in the smooth passage of laws in Parliament. (Sebudubudu *et al*., 2017). Maripe (2017) concludes that Parliament has abandoned its powers to initiate and make laws; instead, it has ceded this power to the Executive and reduced itself to approving or effecting amendments. Consequently, the Parliament of Botswana has been described as a 'rubber stamp' of the Executive decisions (Molomo & Keorapetse, 2017) and a 'registration chamber' (Sebudubudu *et al*., 2013). 'Registration chamber' "refers to a situation where Parliament loses its primary functions and degenerates into a rubberstamp of decisions made elsewhere especially from the Executive" (Sebudubudu *et al.*, 2013:40). However, Botswana is not the only country experiencing a weak (rubberstamp) Parliament. Many other African countries experience the same problem, mainly because of the dominance and influence of the Executive in African democracies.

2.2.3 Oversight function

Parliamentary oversight is yet another important function of the Legislative arm of government. The oversight function of Parliament emanates from the principle of checks and balances under the theory of separation of powers. Checks and balances is a system by which the three arms of government exercise partial control and partial supervision over one another to prevent the abuse of power (Nsereko, 2010). The theory of separation of powers and the principle of checks and balances are discussed in details in Chapter Three. Parliamentary oversight is a situation in which Parliament monitors, supervises, evaluates, reviews and scrutinises activities, policies, programmes and proposals carried out by the Executive arm of government (WBI & GOPAC, 2013). The rationale behind Parliamentary oversight is to prevent acts of corruption, mismanagement of resources and misappropriation of funds by the government. It also fosters proper functioning of a democratic political system, and improves the quality of laws, programmes, laws and initiatives initiated by the Executive.

The Constitution of Botswana of 1966 establishes and empowers Parliament to carry out its oversight function over the Executive arm of government. Specifically, section 50 (1) of the Constitution of Botswana (1966) provides that "the Cabinet shall be responsible to the National Assembly for all things done by or under the authority of the President, Vice President or any minister in the execution of his office". That is, Parliament is expected to oversee the role of the Executive and to hold it accountable for its actions or a lack thereof. Sections 89, 119 and 120 of the 1966 Constitution of Botswana, particularly, requires Parliament to legislate, authorise budget appropriations and expenditures, and to provide oversight of the budget. It is through Parliamentary oversight that citizens ensure accountability from the Executive. Effective oversight of the national budget is essential to ensure good public financial accountability. Parliamentary oversight of the budget involves monitoring and review of the entire budget process; it is part of the checks and balances system that ensures there is accountability in the usage of scarce financial resources (Marata, 2013).

The Parliamentary oversight function is carried out through controls over the use of public finances. Parliament controls the budget by approving or rejecting annual financial expenditure proposed by the Executive. Through the appropriations bill

Parliament approves or rejects the budget presented by the Executive. It also approves supplementary funds through the supplementary appropriations bill. Moreover, Parliament approves loans and other financial agreements that the government of Botswana enters into (Lotshwao & Sebudubudu, 2017). The effectiveness of Parliamentary oversight is mainly dependent on the system of government in use. Marata (2013:4) posits that "between the two extremes of presidential and Parliamentary systems of government, the Executive is more dominant over Parliament in the latter system." Molomo (2012) argues that, in the case of Botswana, which operates a hybrid system, Executive dominance over the Legislature is particularly heightened during the approval of both the budget and National Development Plans.

Nevertheless, aside from Executive dominance in the budget process, the main weakness of Parliamentary involvement in the budget process often resides in its incapacity to engage decisively in the budget process. To this end, many scholars and have questioned the ability of Parliament to scrutinise the budget and to hold the Executive accountable (Kaboyakgosi, 2011; Lotshwao & Sebudubudu, 2017, Marata, 2013; Sebudubudu & Osei-Hwedie, 2006; Serema, 2000). Serema (2000) posits that parliamentarians lack appropriate budgeting skills, while Kaboyakgosi (2011) argues that there is inadequate information for proper budget analysis. Marata (2013) states that, where the information is made available, there is seldom enough time to scrutinise government budget proposals. A study on the independence of Parliament in Botswana revealed that MPs do not understand rules of Parliament and they lack the requisite technical skills to hold the Executive accountable (Republic of Botswana, 2003).

Parliament performs its oversight role over the Executive through Parliamentary committees. However, Botswana's Parliamentary committees system is underdeveloped and weak (Modungwa, 2014; Lotshwao & Sebudubudu, 2017). There are many factors contributing to their weakness. There is no obligation for ministers or any law that compels ministers to respond to questions or recommendations advanced by these committees. They can only make recommendations; they do not have the power to summon ministers to account for their ministries; nor do they have the power to take action against ministers whose actions they find reprehensible (Sebudubudu

et al., 2013). In addition, committees are unable to question and scrutinise Executive proposals adequately, since they do not have research staff to assist them in that endeavour (Keorapetse & Molomo, 2017). A study on "the Independence of Parliament of Botswana" carried out by the Parliament of Botswana in 2003, states that Parliamentary committees are not functioning effectively and recommended that the whole committee structure of the National Assembly should be reviewed in relation to the number and types of committees, their terms of reference, their budgets and their need for support to assist them function more effectively.

The Botswana Parliament committee structure is classified into four categories, namely 1) standing committees, appointed for the life of Parliament. They are established to scrutinise bills and to examine subsidiary legislation, for example, the Public Accounts Committee (PAC) and the committee on members rights, interests and privileges; 2) sessional select committees, which stand dissolved at the end of each Parliamentary session. Sessional select committees are established with specific terms of reference to deal with issues of major public concern; 3) special select committees, constituted to perform a particular function and disband; and 4) portfolio committees, which are specialised committees mandated to report on a sector, as and when necessary (Republic of Botswana, 1966).

Examples of portfolio committees include the committee on Governance and Oversight and the committee on the public service and its management. The committee on Governance and Oversight exercises Parliamentary oversight and scrutiny over government ministries, departments and agencies with portfolio responsibilities in respect of corruption and economic crime, elections, maladministration, the media and all government oversight. Similarly, the committee on the public service and its management exercises Parliamentary oversight and scrutiny over government ministries, departments and agencies with portfolio responsibilities in respect of public service management. Both committees examine government ministries, departments and agencies reports to determine the efficacy of function and delivery and to ensure due compliance with policies and statutory or legislative provisions. They report their findings and recommendations to the National Assembly (Republic of Botswana, 1966).

The Public Accounts Committee is the watchdog on government expenditure. It monitors government spending and ensures prudent use of public funds. The PAC scrutinises the Auditor-General's annual reports and summons accounting officers to answer for certain expenditures or misappropriations of funds. It then submits its report with appropriate recommendations to the National Assembly. Despite the weakness of Parliamentary committees, the PAC has been effective in its mandate. Its recommendations have often led ministers to take action against wrongdoers. Its major limitations are that Cabinet ministers are not required to appear before the PAC and this effectively means that they do not account directly to Parliament. Accounting officers in the form of permanent secretaries of different ministries appear before the PAC to account for funds allocated to their respective ministries. The other limitation of the PAC is that it can only make recommendations to Parliament but cannot enforce its decisions.

The other platform used by Parliament to exercise its oversight role over the Executive is Parliamentary question time. In terms of the Parliamentary Standing Order number 36.1 of the Standing Orders of the National Assembly of Botswana (1966), "any member of Parliament may address a question to a minister relating to a public matter for which he/she is responsible, and either seeking information on such matter, or asking for official action on it". This is one of the mechanisms that MPs in Botswana have utilised in as far as putting checks and balances on the Executive is concerned.

Parliament can also exercise its checks and balances over the Executive through a motion of no confidence. Section 92 of the Constitution of Botswana of 1966 empowers Parliament to declare that it has no confidence in the Executive. However, the power of Parliament to declare a motion of no confidence in the government of Botswana has not been effective in the past owing to the following reasons. First, if the motion of no confidence is passed, it would mean the president would have to resign or dissolve Parliament, and therefore the decision to "commit suicide" discourages MPs to take this step (Maripe, 2017; Modungwa, 2014)). This decision to "commit suicide" can be explained: in the event that the president decides to dissolve Parliament (and fresh elections held) owing to a successful vote of no confidence against the government. Technically, a successful vote of no confidence means that legislators would lose their membership of Parliament. Therefore, the power of

Parliament to pass a vote of no confidence on the government is usually counterbalanced by the president's power to dissolve Parliament once such a motion is duly passed.

For this reason, MPs are likely not to be encouraged to vote in favour of the motion of no confidence. Second, history has shown that motions of no confidence are not successful, mainly because the opposition lacks numerical strength in terms of voting to sustain such motions. For instance, ever since the Parliament of Botswana was established in 1966, the following motions of no confidence tabled by the opposition were not successful, owing to lower numbers of opposition MPs in Parliament: The 1978 motion tabled by Phillip Matante of the Botswana Peoples Party; the 1979 motion tabled by Phillip Matante of the Botswana Peoples Party (BPP); the 1995 motion tabled by Michael Dingake of the Botswana National Front (BNF); the 2018 motion tabled by Duma Gideon Boko of the Umbrella for Democratic Change (UDC); and the recent 2021 motion tabled by Dumelang Saleshando of the UDC. The Botswana Democratic Party (BDP), the ruling party, has always maintained a dominant majority in Parliament; hence, the likelihood of the successful presentation of such a motion is almost non-existent mainly because of the power of patronage wielded by the Executive. Therefore, declaring a motion of no confidence has not been an effective way to exercise checks and balances over the power of the Executive in Botswana.

2.3 Independence of the Parliament of Botswana

As outlined earlier regarding the need to maintain a proper separation of powers system among the three arms of government, sustained scholarly scrutiny is required to realise a functional democratic order. A study regarding the independence of Parliament of Botswana was commissioned by the Parliament of Botswana in 2003 as a way of making a determination to realise this important democratic imperative. A motion was tabled and passed by Parliament as far back as 1988. The motion reads:

> That this Honourable House strongly urges Government to take steps forthwith to ensure that Parliament as a supreme body in Botswana becomes an independent institution detached from the Office of the President where it has all the time been relegated to the lower status of a minor department.

Although the motion was passed by Parliament then, nothing was done to implement the motion until the Speaker of the National Assembly appointed a task force in February 2002 to draft the terms of reference for a consultancy to assist in carrying out a study on the independence of Parliament. The terms of reference for the study were:

1. To define the role of Parliament in relation to its main task as a Legislature (legislative body) by means of an Act.

2. To establish the role of the National Assembly in relation to the mandate of the Executive to rule and/or govern in as far as the National Assembly has the power to exercise its functions as a public watchdog in relation to:

    a) Good governance and/or transparency and development programmes

    b) Accountability for public expenditure

    c) Approval and oversight of the implementation of national policies

    d) Preparation and presentation of Parliamentary budget

    e) Approval of the National Budget

3. To define the role of the National Assembly in relation to powers, privileges, conditions of service and code of conduct of MPs

4. To establish the role of Parliament relating to the conduct of its day-to-day running of its management and administration by an Act establishing the Parliamentary Service and the Parliamentary Service Commission

5. To establish the types and role of Parliamentary committees in relation inter alia, to:

    a) Public Accounts Committee as well as Finance and Estimates Committee

    b) Parliamentary Ministerial Portfolio Committee

    c) Standing, select and special ad hoc committees.

6. To propose any other changes deemed appropriate" (Republic of Botswana, 2003:4).

The report of the task force concluded that Parliament was not independent from the Executive arm of government. To ensure the independence of Parliament, the report

recommended: (1) there is a need to better define the functions of Parliament; (2) the standing orders need to be amended to better equip Parliament to carry out its oversight role over the Executive; (3) there is a need to introduce a code of conduct for members of Parliament; (4) a Parliamentary Service Commission needs to be established to manage Parliament and to create a Parliamentary Service as a separate branch of the civil service, (5) the effectiveness of Parliamentary committees needs to improve; and (6) Parliament must be involved in the appointment and removal from office of certain high officers, for instance, the Auditor-General, the Ombudsman, the Director of the Directorate on Corruption and Economic Crime, and the Secretary of the Independent Electoral Commission. The oversight role of Parliament over the Executive in a Parliamentary democracy was emphasised in the report.

Nevertheless, to date, recommendations of the taskforce have not been implemented or brought before Parliament for debate and adoption. Another task force was constituted in September 2010 to review the recommendations of the study on the independence of Parliament of Botswana, and to determine whether its recommendations are still relevant (Republic of Botswana, 2011). The task force submitted its review report in February 2011 and concluded that recommendations of the 2003 task force report are still valid and relevant (Republic of Botswana, 2011). However, while the recommendations of the 2003 task force are still relevant, they did not address all the structural, legal and operational issues of the Botswana's Parliament, as highlighted above. To this end, even if the recommendations were to be implemented, the core structural, operational and legal issues result in a Parliament that lacks independence, is subordinate to the Executive branch of government and consequently, is unable to exercise its oversight role effectively. Therefore, this study seeks to examine the oversight role of Botswana's Parliament, in an attempt to provide a holistic solution to the structural, legal and operational challenges facing Botswana's Parliament, as highlighted in this study. This study, will, among other things, provide recommendations based on the study of empirical evidence.

2.4 Conclusion

This chapter has attempted to review related literature concerning the oversight role and function of the Republic of Botswana Parliament. It is worth noting that literature

which addressed Parliament–Executive relations in Botswana highlighted structural, legal and operational deficiencies that impede Parliament from effectively exercising its oversight role. The structural positioning of the Executive in relation to Parliament has led to the Executive assuming powers belonging to the Legislative arm of government. The power relations are such that the Executive is a dominant actor, whereas Parliament is subordinate to the Executive and a weak actor. Hence, Parliament is unable and/or has failed to hold the Executive accountable. Subsequently, the literature, as noted above, recommends that reforms are needed to strengthen Botswana's Parliament in order to be effective in its oversight role. It is against this background that this study seeks to examine the oversight role of the Republic of Botswana's Parliament. The study will ultimately develop a framework for strengthening the role and function of Parliament as well as for maintaining the separation of powers, especially between Parliament and the Executive. The framework will address structural, legal and operational challenges of Parliament, as highlighted, and it is hoped that this study will be beneficial to many African countries (Parliaments) which experience the same problem. Chapter Three will address the theoretical principles governing the separation of powers for Executive and Legislative authorities.

Chapter Three: Theoretical principles governing the separation of powers for Executive and Legislative authorities.

3.0 Introduction

The previous chapter provided a literature review concerning the research problem of this study. This chapter provides an overview of the theory of separation of powers, its meaning, rationale, origins, development, application and its implications for the oversight role of Parliament. The theory of separation of powers serves as the theoretical framework of this study. It is used as a framework for data gathering, presentation, analysis, discussion and recommendations for this study. The study seeks to examine the discourse on the role and function of Parliament regarding their oversight responsibilities in terms of the Executive branch of government in the Republic of Botswana. A concern regarding the role and function of Parliament in ensuring accountable Executive authority requires a scholarly examination, as considered in this study.

The weakness of the Republic of Botswana's Parliament as an oversight institution emanates from the structure of the Executive–Legislative relations. As alluded to in the statement of the problem, contrary to the doctrine of separation of powers, the Executive and Parliament are embedded together, the Executive being a dominant actor in the power equation. Consequently, Botswana's Parliament lacks operational independence from the Office of the President. In addition, this structure has led to an inefficient Parliament, which is subordinate to and controlled by the Executive arm of government. Hence, examining the oversight role of the Republic of Botswana's Parliament requires a close look into the doctrine of separation of powers as a model for Legislative oversight over the Executive branch of government. Therefore, this will help to answer the following research question: **What are the theoretical principles governing the separation of powers for Executive and Legislative authorities?**

This chapter begins with a brief description of the three major state institutions and their roles: the Executive, the Legislative and the Judiciary. It is worth noting that different literature has addressed these institutions differently, ranging from state machinery, state institutions, branches of government, arms of government and

organs of the state. Therefore, this study uses any of the above nomenclature interchangeably to refer to the Executive, Legislative and the Judiciary as three major state institutions.

3.1 Defining the institutions of the State.

The following subsection provides a brief description of the Executive, Legislative and Judiciary branches of government and their responsibilities. This is imperative for understanding the nature and scope of separation of powers and the relationship amongst the branches of government.

3.1.1 The Executive

The Executive is that branch of the state which is responsible for policy formulation and its execution. It is the most important and most powerful of the three branches of government and operates more or less as the engine of the state (Fombad, 2016).

3.1.2 The Legislative

Parliament is the sovereign law-making body and a representative of the citizens at state level. It also plays a major role as an oversight institution, specifically by holding the Executive (government) accountable for its actions or inactions.

3.1.3 The Judiciary

The Judiciary is that organ of the state which adjudicates conflicts between state institutions, between state and individual, and between individuals (Barnett, 2017). Its main duty is to interpret and enforce the law. Ideally, the Judiciary is supposed to be independent of both the Executive and Parliament. Judicial independence is the feature of the Judiciary which is significant both in relation to government according to law and in the protection of liberty of the citizen against the Executive (Barnett, 2017).

3.2 The doctrine of separation of powers

This study uses the doctrine of the separation of powers as the theoretical framework to examine the oversight role of the Republic of Botswana's Parliament. The theory serves as a basis, framework and a model for separation of powers among the three major institutions of the state.

3.2.1 Meaning of separation of powers.

The doctrine of separation of powers posits that specific duties, functions and responsibilities of government are allocated to distinctive institutions with a defined means of competence and jurisdiction (Fombad, 2005; Mojapelo, 2013). It means that governmental power is categorised into three institutions, and personnel among the institutions are separated (Vile, 1967).

Separation of powers can be understood simply to refer to the distribution of power and functions among the branches of government (Magill, 2000). It is a separation of three major branches of government, namely Legislative, Executive and Judiciary. Within the legal context the meaning of the terms Executive, Legislative and Judicial authority is paramount. Legislative authority is the power to make, amend and repeal rules of law, Executive authority is the power to execute and enforce rules of law, whereas judicial authority implies the power, if there is a dispute, to determine what the law is and how it should be applied in the disputes (Mojapelo, 2013:37). The doctrine of separation of powers advances that if a branch of government is responsible for the enactment of law, that branch is not supposed to be charged with their execution or with judicial decision about them. Similarly, the Executive authority is not supposed to enact law or to administer justice and the judicial authority should not pass or implement laws. For instance, the application of the doctrine of separation of powers in its strictest form can be evidenced in article XXX of the Massachusetts Constitution of 1780, which categorically provides:

> In the Government of the Commonwealth, the Legislative department shall never exercise the Executive and Judicial powers, or either of them; the Executive shall never exercise the Legislative and Judicial powers or either of them; the Judiciary shall never exercise Legislative and Executive powers or either of them; to the end that it may be a government of laws and not of men.

Similarly, the Constitution of Virginia of 1776 states:

> The Legislative, Executive, and Judiciary department shall be separate and distinct, so that neither exercise the powers belonging to the other;

> nor shall any person exercise the powers of more than one of them, at the same time…

These two excerpts serve to highlight the need to maintain the importance of the separation of powers principles as far back as 18th century. This was not only to ensure that the checks and balances are in place but also to institutionalise laws and principles over personalities. Some powerful personalities, such as presidents in the case of Botswana, may need such regulations to be instituted and optimised in order to realise a functional properly state. Hence, the principle of the doctrine is that the powers bestowed in the principal organs of the state, Legislature, Executive and Judiciary, should not be concentrated in the hands of any one institution (Vile, 1967). Bradley and Ewing (2008:84) wrote that the doctrine of separation of powers may mean three different principles:

- That the same person should not form part of more than one of the three organs of government, for example, that Cabinet ministers should not sit in Parliament;
- that one organ of government should not control or interfere with the work of another, for example, that the Executive should not interfere in Judicial decisions; and
- that one organ of government should not exercise the functions of another, for example, that ministers should not have legislative powers.

The quotation from Bradley and Ewing (2008) represents the classic formulation of the doctrine of separation of powers, in its purest form. The traditional articulation of the principle of separation of powers is rooted in the fundamental concept that three distinct and independent functions of government exist: the Legislative, Executive, and Judicial. These functions should be carried out by three separate and distinct organs: the Legislature, the Executive, and the Judiciary, mainly to prevent the abuse of power and to promote individual and political liberty.

In addition to the above-mentioned separation of powers principles, the system of checks and balances is also embedded in the doctrine of separation of powers. Under the system of checks and balances, the three arms of government exercise partial control and partial supervision over one another. The system facilitates coordination,

linkages and cooperation among the three branches. It requires that each branch of government is able to check the exercise of powers by the other, either by participating in the functions conferred on them or by subsequently reviewing that power (Oseko, 2012). Checks and balances serve as an oversight tool that branches of government rely on to control, monitor and supervise the activities of each other.

Under checks and balances, there are instances when the powers of one branch overlap with those of the other, or when a member of one branch occasionally participates in the activities of the other (Nsereko, 2010:44). For example, the Chief Justice of the United States presides over the Senate during the impeachment proceedings against a president. Another example is that the President of the United States of America cannot appoint Cabinet members without the consent of the Senate. Checks and balances are meant to ensure that the equilibrium in the distribution of powers may be maintained.

3.3 Origins, development and the rationale of the doctrine of separation of powers

The notion that there are separate functions, if not always distinct institutions, within a government originates from classical Greek, Roman and medieval thought (Knight, 1989). The origins of the doctrine of separation of powers can be found in the writings of Plato, Aristotle, Polybius, Cicero, St. Thomas Aquinas, and Machiavelli, who advocated for the idea of mixed government as well as John Locke and Montesquieu writings (Calabresi *et al.,* 2012). These are discussed further below.

3.3.1 Plato, Aristotle, Polybius, Cicero, St. Thomas Aquinas, Machiavelli and the system of mixed regime

The concept of mixed government focused on balancing different classes, power holders and interests. Aristotle was interested in how to organise the activities of government. He classified governmental functions into three categories: the magisterial, the deliberative, and the judicative (Fombad, 2005). Aristotle's main idea was to form a stable system of government as well as to allocate functions and responsibilities to those best suited for them (Zwingmann, 2016). As Zadeh (2007) observed, the mixed regime or polity in politics was presented by Aristotle, as a solution to the problem of discovering the best practicable form of government. He

was the first constitutional theorist to argue normatively for the idea of a mixed regime (Calabresi *et al*., 2012). In a mixed regime, elements of monarchy, aristocracy and democracy are combined to obtain the best characteristics of each of those pure regime types while avoiding the worst (Vile, 1967; Gwyn, 1965). In a mixed regime, power was shared by the one, the few, and the many, that often being the best regime that would be obtainable realistically (McGing, 2010). The great advantage of a mixed regime was that the "three social classes represented by the monarch, the aristocrats, and the commoners could check and balance one another, thereby increasing the chance that each social class would rule justly (Calabresi *et al*., 2012:530)". Power was distributed in a mixed regime rather than being fused in the hands of one social class (McGing, 2010).

Aristotle combined democracy and oligarchy (two systems of government), by concentrating political power in the middle class (Knight, 1989). He devised a way for citizens to rule in the interests of all, a combination or mixture of two classes, oligarchs and democrats, the few rich and the many poor but free (Zadeh, 2007). In the combination of classes, for instance, social power resulted in a very literal sense in an effective system of mutual checks and balances (Vile,1967; Zwingmann, 2016).

Polybius supported the mixed regime because he believed the system would prevent or make it difficult for one class to abuse the power of the government on its own. He combined the notion of the mixed Constitution, initially advanced by Plato and Aristotle, with a division of power. While Aristotle had combined oligarchy and democracy by concentrating political power in the middle class, Polybius structured government into the monarchy (the Consulate), the aristocracy (the Senate), and the democracy (the Assembly) (Knight, 1989, Zadeh, 2007:55)

Cicero, St. Thomas Aquinas, and Machiavelli also supported the idea of a mixed regime. St. Thomas Aquinas altered the initial version of the mixed regime to account for the superior status of the one (Gwyn, 1965; McGing, 2010; Zadeh, 2007). He maintained that a mixed regime structure would provide more stability for monarchies by reducing the likelihood that the few or the many would revolt (Calabresi *et al*., 2012). However, in contrast to St. Thomas, Machiavelli was interested in the situation where the power of the many was supreme rather than the power of the one; therefore, he advocated for the mixed regime.

The concept of separation of powers was therefore, influenced by the idea of a mixed regime with a system of checks and balances. Nevertheless, the idea of the mixed regime was brought to an end by the death of feudalism and the introduction of the American Revolution.

The American Revolution was constructed on the idea that all men are created equal, and it did not allow a traditional aristocracy, monarchy or any other divisions of social class (Vile, 1965). In accordance with the American Revolution, all power was supposed to be in the hands of the many. During the early 1650s and after the English Civil War, an effort was made by political philosophers (influenced by the writings of John Locke and Montesquieu) to come up with a replacement for the mixed regime, where the many ruled but where power would not be concentrated in any one institution that could be corrupted easily. The idea that emerged from this effort was to separate the functionality of the Legislative, the Executive, and the Judicial power. The emphasis was to replace the mixed regime's division of powers among the three social classes (Calabresi *et al.,* 2012:533-534).

3.3.2 John Locke, Charles-Louis de Secondat, Baron de Montesquieu and the Federalist Papers

Locke's *Second Treatise of Government* (1690), Montesquieu's *De l'Espirit des Loix (The Spirit of the Laws)* (1748) and the *Federalist Papers* by Hamilton *et al.* (2008) epitomise the evolution from medieval systems of government towards modern ones centred on constitutions (Zwingmann, 2016). These writings are credited as being theoretical underpinnings for the modern concept of separation of powers and its application within the contemporary constitutional systems.

3.3.2.1 John Locke

John Locke (1690) presented a step forward for the practical doctrine of separation of powers. He established a theoretical base for a system of lawful government by using the social contract as a framework and the concept of liberty as an anchor (Oseko, 2011). He was much concerned with the preservation of individual lives, liberties, properties and freedom. Therefore, he argued that, owing to man's being susceptible to abuse of power, state's power ought to be divided so that Executive and Legislative powers were not held by the same person or body. He contended that if all state power

were fused in one institution or in one hand, then no one would have the power to control its use or abuse (Zwingmann, 2016). For this reason, Locke argued that principal among the essential conditions for enjoying security and civil liberty under government was the separation of Legislative from Executive functions (Zadeh, 2007). He therefore divided four powers: the executive, the legislative, the prerogative, and the federative power (Vile, 1965). However, Locke overlooked the importance of the independence of the Judicial arm as it remained unseparated from the Executive branch of government. Locke argued for both the rule of the many as well as for the independence of judges (Vile, 1965). Locke also brought about the supremacy of the Legislature in constitutional theory, as opposed to the monarch or Executive (Calabresi *et al*., 2012).

Another important dimension advanced by Locke is the distinction between holding power and exercising it. Locke argued that original sovereignty lies with the people and was considered to be inseparable and inalienable. The people are then free to transfer the exercise of power to another entity, the Legislature, ranking supreme among all other government powers. The Legislature, therefore**,** could not transfer delegated power to another body and neither was any other power allowed to seize it (Zwingmann, 2016). The people would exercise their freedom by appointing the Legislature. In doing so, they provided their consent to be subjected to the rules made by this body. In turn, the Legislature appointed by the people would have the responsibility to work for the public good by ensuring that members of the society are in a good state of living. For this reason, he advocated for a temporary Legislature and a permanent Executive: a permanent Executive for the sole reason that statutes enacted by the Legislature need to be executed on a permanent basis. The execution of statutes, was, according to Locke, the main reason for separating the Executive from the Legislative powers.

3.3.2.2 Charles-Louis de Secondat, Baron de Montesquieu

Although the modern concept of separation of powers can be traced back to the writings of John Locke (1632–1704), the doctrine of separation of powers is especially credited to the French philosopher, Charles de Second at Montesquieu (1689–1755) (Fombad, 2016). Montesquieu greatly influenced the French and American Revolutions, and he is considered to have given the doctrine its modern scientific form

(Fombad, 2005). In his book (1748), Montesquieu categorised governmental roles as the Legislative, the Executive, and the Judicial; and examined the relationship between the separation of powers and the balance of powers in terms of checks and balances (Botlhale & Lotshwao, 2015; Fombad, 2005; Mojapelo, 2013). It is worth noting that Montesquieu's credit was due to his two major contributions to the doctrine of separation of powers. That is, he was the first person who classified governmental functions into the Executive, the Legislative, and the Judicial. Second, through his analysis of the relationship between the separation of powers and the balance of powers, he introduced the system of checks and balances (Fombad, 2016; Șaramet, 2018). His principal argument was that a conditional precedent for liberty was the separation of powers among the Executive, the Legislature and the Judiciary. Therefore, if one authority exercises executive, legislative, and judicial powers, that would be the very definition of tyranny. Thus, Montesquieu (1748:3-6) wrote:

> Political liberty is to be found only when there is no abuse of power. To prevent the abuse of power, it is necessary from the nature of things that one power should be a check on another. When the Legislative and Executive powers are united in the same person or body, there can be no liberty. All would be in vain if the same person, or the same body of officials, be it the nobility or the people, were to exercise these three powers: that of making laws, that of executing the public resolutions, and that of judging crimes or disputes of individuals.

Hence, Montesquieu notably stated that individual liberty can be achieved through separation of both powers and persons. He contended, therefore, that the executive, legislative and judicial functions ought to be vested in three separate governmental organs with, in each instance, different office holders. Montesquieu presented the first widely recognised articulation of the separation of powers doctrine as it is understood today (Calabresi *et al*., 2012). Unlike John Locke, Montesquieu seemed to have been promoting a 'pure' form of separation of powers; nevertheless, his theory of checks and balances shows that he was not advancing a rigid separation in which the different organs work in isolation of each other but rather a system in which they were working 'in concert' with each other (Fombad, 2016). Therefore, in Montesquieu's writings, separation of powers and balance of powers are presented as two separate, yet co-dependent principles (Zadeh, 2007).

Montesquieu concluded that the desired constitutional framework should be one created to realise and protect the citizens' political liberty. He argued that it could be achieved when the separated three branches of government are required to coordinate their activities and to cooperate in order to accomplish affairs of state.

3.3.2.3 The Federalist papers

The American revolutionaries, influenced by the authors of *The Federalist* (Hamilton, *et al.*, 2008), and writers such as John Adams, provided a high noon in the development of the doctrine of separation of powers when drafting the US Constitution (Gwyn, 1986). They were described as the greatest work of American constitutionalism (Fombad, 2016). Federalist papers are considered essential for the interpretation of the US American Constitution to this day and one of the most ground-breaking works of American political theory (Zwingmann, 2016). The authors of the *Federalist Papers* included Alexander Hamilton, James Madison and John Jay (Gwyn, 1986). They contributed a comprehensive commentary on the draft for the then new US Federal Constitution by providing counter-arguments against the anti-Federalists and also clarified in great detail the theoretical concepts underlying the draft and arguments in favour of the solutions adopted (Zwingmann 2016).

James Madison's letters 47–51 focus on the concept of separation of powers. A text considered to be the foundation for American separation of powers doctrine is Madison's direct quotes of Montesquieu's work in Federalist paper number 47 (Gwyn, 1986; Zadeh, 2007:52). The letters reflect that the Federalists considered the entire constitutional framework as being constructed around the doctrine of separation of powers, a concept they saw as an important provision in favour of liberty. Notwithstanding the major changes that had occurred in society and related to the very principles of the separation of powers doctrine, Madison still considered it an essential element of a constitutional system. To him, any constitutional framework that did not adhere to this doctrine could only be called tyrannical (Casper, 1989). In Federalist No. 47, Madison assessed state constitutions and resolved that, in reality "there is not a single instance in which the several departments of power have been kept absolutely separate and distinct," although the text of those constitutions call for "the emphatically and, in some instances, the unqualified" separation of powers (Zadeh, 2007:52). He had used the British Constitution as the model, and since it evidently did not abide by

a strict separation, his model could not possibly require it either. He argued that, although a partial overlap could be tolerable, a total overlap between two or three of the powers would not be. Madison then explained how this would be applied to the US Constitution. He argued:

> It would allow for cooperation among the three powers as long as each power involved was prevented from seizing one or both of the other powers in their entirety. The separate powers would each be able to veto essential activities of the other powers and thus create a system of checks and balances where no one single power would be able to gain a dominant influence in one particular area, as realised for example in the presidential veto against legislative bills or the requirement for senate approval for judicial appointments by the president. (Zwingmann, 2016:39).

The failure of the states to keep their institutions of government limited to their constitutionally prescribed power jurisdictions, led Madison and others to argue that some overlap of power and oversight of duty was necessary in order to maintain the overall separation of powers. (Zadeh, 2007).

In Federalist No. 51, Madison argued that the government should be designed in such a way that its different elements can maintain their respective positions through their interdependent relationships.

(Casper, 1997).

Madison believed that the principles of separation of powers did not need complete disconnection between the Legislative, Executive, and Judiciary departments.

Thus, Madison argued:

> …unless these departments be so far connected and blended as to give each a constitutional control over the others, the degree of separation which the maxim requires, as essential to a free government, can never in practice be duly maintained (Federalist No. 48).

However, Madison concluded that the structure of the constitutional framework should provide the basis for mutual control, so that the powers separated on paper did actually stay divided in practice (Casper, 1997). Through the *Federalist papers*, when the

American Constitution was drafted, the modern understanding of the doctrine of separation of powers was established with the major emphasis on the separation of functions and the separation of personnel as well as the principle of checks and balances (Chaskalson *et al*, 1996).

3.4 The rationale of the doctrine of separation of powers

Barnett (2017) posits that separation of powers is a doctrine which is central to the organisation of a state and to the notion of constitutionalism. It outlines the appropriate distribution of powers, and the parameters of those powers, to differing institutions. The primary purpose of the doctrine is that there should be, ideally, a clear separation in function between the Executive, Legislative and Judiciary in order that none should have excessive power and that there should be a system of checks and balances in place between the institutions (Barnett, 2017). Hence, the major reason behind the doctrine of separation of powers is to prevent abuse of power within the three major institutions of government. Nsereko (2010:43) states that the doctrine of separation of powers is premised on the need to promote generality in law-making, to protect individual liberty by a system of checks and balances as well as to promote governmental efficiency through functional specialisation.

Gwyn (1965) advanced five main reasons behind the concept of separation of powers, including but not limited to efficiency, accountability, balancing of interests, the rule of law and common interest. The aspect of the rule of law in the doctrine is derived from the common law principle that no man shall be a judge in his own cause (Barnett, 2017). That is, those who make law should not also judge or punish violations of it, and vice versa (Dicey, 1959). The efficiency reasoning is based on the belief that the diverse roles of government require different qualities, and must therefore be performed by different organs (Gwyn, 1965). The common interest concept of the separation of powers was established in the late 17th and early 18th centuries in England to inhibit factions or groups within Parliament from pursuing their own rather than the common interest.

Therefore, the separation of Legislative and Executive powers was thought to protect the common interest, insofar as the Legislature is more accountable to the people (Fombad, 2005). Similar to the rule of law, is the accountability basis for the doctrine

of separation of powers. For example, government officials who are expected to account for their actions or inactions before the Legislature should not dominate or even be in the Legislature. That is, they cannot be judges in their own cases. Morgan (1997) asserts that the English system of the mixed Constitution, which allocated the legislative powers jointly to the monarch, the House of Commons, and the House of Lords, influenced the balancing of interests account of the doctrine of separation of powers. Within this tripartite Legislature, checks and balances were supposed to operate within the different groups (Morgan, 1997). For example, by calling the Executive to account and approving taxes, the Legislature was able to place a check on the Executive while the royal veto of legislation was seen as an Executive check on the Legislature. (Fombad, 2005:308).

Montesquieu (1989) concluded that the resulting constitutional framework in which the three arms of government exist, should be one where the separated powers are forced to coordinate their activities and to cooperate in order to accomplish affairs of state and thus to create a constitutional framework suited to realising and protecting the citizens' political liberty. Separation of powers is very important for any country. It ensures, among other things, that the rights of people are best secured by a written constitution that entrenches fundamental human rights and freedoms and is enforced by a Judiciary composed of men and women of learning and integrity (Dingake, 2009).

3.5 Criticisms of the doctrine of separation of powers

Ivor Jennings (1963) and Geoffrey Marshall (1971) are the most notable critics of the doctrine of separation of powers**.** Jennings (1963) refutes the relevance of the doctrine. His criticism concerns the failure of the doctrine to clarify why certain tasks should be allocated to one body and not another. He points out that there is nothing that differentiates the function of the "judicial" class and the "administrative" class, even though it is arguable that the former is more independent of political control, operates in public or possesses specialist training than the latter (Oseko, 2011). Marshall argued that the doctrine of separation of powers is marred by so much imprecision and inconsistency that it may be counted as little more than a jumbled portmanteau for politics which ought to be supported or rejected on other grounds (Marshall, 1971:124). Marshall also argued that the phrase "separation of powers" is "one of the most confusing in the vocabulary of political, administrative and

constitutional thought". He came to this inference after examining the application of the doctrine within different legal branches in both physical and legal contexts. He found the basis for assigning powers in branches to be inconclusive, the notion of separation unclear, and that there was no proper justification for the differential treatment (Oseko, 2011).

Criticisms of the doctrine are mainly centred on the analysis of the difference between 'pure' (formal) separation of powers and 'partial' (functional) separation of powers. Pure separation of powers refers to a system where there is a strict distinction among the Executive, Legislative and the Judiciary in terms of their functions and personnel. Under the pure version of the doctrine there are no overlaps in personnel and function; power is being diffused among three separate bodies exercising separate functions (Barnett, 2017:107). Each organ is required to exercise only the power assigned to it and their roles are kept separate and are not complementary. An example of the pure separation of powers is the one outlined by Vile (1965:13):

> "It is essential for the establishment and maintenance of political liberty that the government be divided into three branches or departments, the Legislature, the Executive and the Judiciary. To each of these three branches there is a corresponding identifiable function of government: Legislative, Executive and Judicial. Each branch of government must be confined to the exercise of its own function and not allowed to encroach upon the functions of the other branches. Furthermore, the persons who compose these three agencies of government must be kept separate and distinct, no individual being allowed to be at the same time a member of more than one branch".

Pure separation of powers, as outlined by Vile (1965), is provided for expressly in article XXX of the Massachusetts Constitution of 1780 and the 1776 Constitution of Virginia of 1776, as cited above. Thus, the pure separation doctrine implies that the three institutions of government should operate in isolation from each other. Barnett (2017) argued that, in the modern application of the doctrine, pure separation of powers would be impracticable, particularly under a constitution dominated by the sovereignty of Parliament. Barnett (2017) is of the view that, in the contemporary, it is essential that there be a sufficient interaction between each institution of the state, positing that strict separation of the three branches could result in legal and constitutional deadlock. Barnett (2017) maintains that, in modern practice, rather than

a pure separation of powers, primary roles of the state should be allocated clearly and there should be checks to ensure that no institution intrudes significantly upon the function of the other.

Bradley and Ewing (2006) contend that strict separation of powers is impossible both in theory and in practice. Similarly, Claus (2005) maintains that strict separation, particularly between law-making and law executing, and judicial exposition of existing law functions is neither sufficient to promoting liberty nor rule of law, and is not attainable. Oseko (2011:46) states that “constitutions that attempt to follow the pure version of the doctrine have been observed to quickly discover its impracticability, in that, wherein one institution, normally the Legislature, quickly gains ascendency over the other two and with no powers to wield against the aggressor, the two weaker branches of the state are left at the mercy of the third”. Alfange (1989) is of the view that to advocate for absolute separation of powers merely for the sake of doctrinal purity could hinder the quest for a workable government adversely with no considerable gain for cause of liberty or efficiency. Some critics of the doctrine contend that it lessens the effectiveness of government and “undercuts Judicial checks on the Executive without advancing any principle other than separation for the sake of separation”, and further, that it has even lost sight of the principles underlying separation of powers (Oseko, 2011: 47, Robotti, 2008).

The ‘partial’ (functional) version of the doctrine of separation of powers implies that personnel and powers are not totally separated, but are being separated largely with checks and balances in the system to prevent abuse of power (Barnett, 2017:107). It advances that overlap beyond the primary functions is necessary and even desirable (Jellum, 2008). Each of the organs of state is given some power over the others, their functions purposefully constructed so that they overlap (Barber, 2001). It postulates that a specific function is allocated primarily to a given branch, subject to a power of restricted intervention by another organ to guarantee that each organ keeps within the jurisdiction delimited to it (Barendt,1995). The partial version of the doctrine is preferred over the pure version, specifically in the modern-day application of the concept of separation of powers. The United States, Britain, France as well as many commonwealth governments reveal a clear acceptance and adoption of the partial theory (Oseko, 2011).

3.6 Conclusion

This chapter has looked at the doctrine of separation of powers. Special focus was on the meaning of the doctrine, its origins, development, rationale as well as critics against the doctrine. The doctrine of separation of powers is an essential constitutional and administrative concept. This is so because it provides a framework for the establishment, functioning and relations of the three branches of government. Central to the doctrine is that the powers bestowed on the principal branches of the state, Legislature, Executive and Judiciary, should not be concentrated in the hands of any one institution. The objective behind such separation is to provide checks and balances on the exercise of power by each branch and to avert the potential for tyranny which might otherwise exist. The doctrine of separation of powers serves as the theoretical framework of this study. The next chapter addresses the application of this theory in the context of the US presidential, British parliamentary, and the French hybrid systems of government.

Chapter Four: Constitutional and Legislative imperatives determining a separation of powers for both Parliament and the Executive authority.

4.0 Introduction

The previous chapter provides an overview of the theory of separation of powers with a focus on its meaning, origins, rationale, development and its implications for the oversight role of Parliament. This chapter looks at the application of the theory of separation of powers in the context of different systems of government, namely the American presidential system, the British parliamentary system, and the French hybrid system of government. The impact of these systems of government on the oversight function of Parliament is also emphasised. It is worth noting that the three systems of government mentioned have largely influenced many constitutions of the world, including Botswana and the majority of African countries. Specifically, models of separation of powers adopted by the US, the British and the French governments have influenced African methods and application of the doctrine of separation of powers (Fombad, 2016; Gwyn, 1965; Venter, 2016).

4.1 The modern application of the theory of separation of powers

Contemporary application of the theory of separation of powers does not insist that there should be three branches of government each operating in isolation from each other. As noted earlier in this study, Barnett (2017) posits that strict separation of the three branches could result in a legal and constitutional deadlock. Barnett (2017) argues that, in modern practice, rather than a pure separation of powers, the doctrine insists that the primary roles of the state should be allocated clearly and that there should be checks to ensure that no institution intrudes significantly upon the function of the other.

Governments that have adopted the doctrine of separation of powers can be classified into presidential, Parliamentary and hybrid systems of government (Fombad, 2005, Gwyn, 1986). For example, the American model, which represents the presidential system of government, is generally regarded as having gone farther than any other in embodying the fundamentals of the doctrine of separation of powers (Gwyn, 1986).

Another example is the British parliamentary, or Westminster model, which appears to contradict the doctrine by fusing or concentrating powers (Fombad, 20016). The third example is the French hybrid system, which mixes the presidential and the Parliamentary system. These models have greatly influenced African constitutionalism. The application of the doctrine of separation of powers across different systems of government is examined in the following sections.

4.1.1 The American presidential system

The Constitution of the United States of America of 1787 is premised on the doctrine of separation of powers, according to which there is an institutional separation between the Legislature and the Executive, giving rise to a presidential form of government with checks and balances (Mojapelo, 2013). The doctrine of separation of powers is evidently articulated in the Constitution of the United States of America of 1787. For instance, in terms of Article I of the United States of America Constitution of 1787, the legislative powers vests in Congress, consisting of the Senate and the House of Representatives; Article II vests the Executive powers in the president; and Article III confers judicial powers in the Supreme Court and such other lower courts that may be established by Congress. The doctrine of separation of powers, as expressed in the Constitution of the United States of 1787, was based on the two general principles, that government should be separated into three branches – Legislative, Executive and Judicial, and that no one person or group should be able to serve in more than one branch simultaneously (Zadeh, 2007).

The American system is arguably the strictest when it comes to separation of powers between the different branches of government (Rautenbach & Malherbe, 2004)**.** The American Constitution of 1787 also adopted the principle of checks and balances to the doctrine of separation of powers. Checks and balances require different branches of the state to keep a check on one another in order to maintain a balance of power among them (Mojapelo, 2013). Owing to the principles of checks and balances, the American presidential system, instead of isolating each branch from the other two, provides for an elaborate system of checks and balances (Fombad, 2005). Each branch of government is able to check the exercise of powers by the other, either by participating in the functions conferred on them or by subsequently reviewing that power (Oseko, 2011). For instance, in the United States, with respect to the Executive,

the vice president is the only member of the Executive who, as president of the Senate, is allowed to vote when they are divided equally and, by so doing, they exercise limited legislative power.

However, in terms of article I, subsection 6, clause 2 and article II and III of the Constitution of the United States of America of 1787, the president and his officers are not allowed to sit or vote in Congress. The president can also exercise limited control over the legislative function through his right to veto legislation, although this can be overridden by a two-thirds vote in both Houses. However, the president cannot directly initiate bills, but may recommend legislation to Congress (Article II, subsection 3 and article I, subsection 7, clause 2 of the Constitution of the United States of America of 1787). Through his power to grant pardons and reprieves for federal offences, and the power to nominate federal judges, the president exercises control over the Judiciary (Fombad, 2005).

With regard to the legislative power, Congress controls the Executive's exercise of legislative powers to alter or revoke statutes that authorise Executive agencies (Oseko, 2011). In terms of article I, subsection 8, clause 1, and subsection 9, clause 7 of the Constitution of the United States of America of 1787, Congress controls the budget and institutes oversight hearings Furthermore, the Senate checks the Executive through its right to approve treaties negotiated by the president, as well as its right to approve appointments by the president of ambassadors, judges, and other senior officers (Article, H**,** subsection 2, clause 2 of the Constitution of the United States of America of 1787). Each House has the right to punish its own members for contempt and thus exercises some form of judicial power (Fombad, 2005). The Senate is assigned further judicial powers, holding the sole power to try impeachments. Further to these internal judicial powers, Congress has the power to establish and control the lower federal courts.

With reference to the judicial power, while the Judiciary has not been assigned precise or general controlling powers over the Executive, it may, through its general equitable authority, issue writs of mandamus against Executive officers to make sure that they execute their constitutional obligations (Article III of the Constitution of the United States of America of 1787). Fombad (2005) posits that the most significant Judicial check on Executive is the authority to impose compliance with the legal guarantees

embodied in the Bill of Rights, for instance, the rights to freedom of speech, the rights to a jury trial and the rights to due process of law. With regard to the Judicial check on Legislative action, the Judiciary has the power to declare statutes enacted by the Legislative as unconstitutional. In addition, the common law principle of judicial precedent, sometimes known as stare decisis, grants the Judiciary the authority to establish precedents that carry a quasi-legislative impact. However, congressional action has the power to invalidate judge-made legislation outside the constitutional arena.

Examples of African constitutions which were influenced by the American presidential system include Kenya and Nigeria. The Constitution of Kenya of 2010 establishes a presidential system of government similar to that of the United States, although there are some differences. For example, while the Kenya's vice president, president and ministers are not members of Parliament, the vice president in America sits in the Senate. A feature of Kenya's presidential system of government, as provided for by Kenya's Constitution of 2010 is the separation of powers between the Executive, Legislative and the Judiciary. Before the adoption of Kenya's Constitution of 2010, Kenya used to have a government structure similar to the British parliamentary system. Cabinet ministers were appointed from among the members of Parliament, and the president was an elected member of Parliament. Kenya's major reform agenda, which led to the adoption of the 2010 Constitution, was to deal with a major African problem of concentrating economic and political power in the president (Bosire, 2016).

Furthermore, the reforms were meant to attain the functional and structural independence of Parliament. Hence, the 2010 constitutional changes resulted in a higher degree of separation of powers between the Executive and Parliament with an elaborate system of checks and balances. The 2010 constitutional reforms of Kenya were also aimed at reducing Executive dominance and the control of the Legislature by the Executive (Sihanya, 2011). Presidential powers were reduced and are now subject to checks and balances by other branches of government. In addition, the president no longer has extensive and direct control over the other branches of government (Bosire, 2016). Executive members no longer form part of Parliament. Similarly, in terms of section 147(4) of the Nigerian Constitution of 1999, the same

persons cannot form part of Parliament and the Executive at the same time. This is done to avoid a conflict of interest for those holding dual positions and to enable Parliament to perform its functions effectively (Shikyil, 2016).

The Executive–Legislative relations under the 2010 Constitution of Kenya are such that Parliament has the power to review and approve Executive appointments, policies, budgets and laws. For example, in terms of article 245 subsection 2(a) of the Constitution of Kenya (2010), the appointment of the Inspector-General of Police requires the approval of both the Senate and the National Assembly. Parliament controls its agenda without any control by the Executive. Similarly, in accordance with section 147(2), read with section 231(1)(2) of the Nigerian Constitution of 1999, the appointment of Cabinet ministers, senior government and judicial officials is done by the president, subject to confirmation by the Senate.

The impeachment of the president or vice president (in Kenya) is initiated by the National Assembly, whereas the Senate carries out the actual impeachment process and makes a final decision (Sihanya, 2011). Both the National Assembly and Senate are empowered by the Constitution to approve the deployment of national forces in and outside of Kenya (Article 240(8)(a) & (b) of the 2010 Constitution of Kenya).

4.1.2 The British parliamentary system

With reference to the British system of government, the doctrine of separation of powers is said to be applicable in a limited sense (Bradley & Ewing, 2011). The British operates an unwritten constitution. It is found in statutes, legal opinions, and scholarly works (Wilson, 1990). There is an extensive degree of overlap, more especially in terms of the personnel constituting government branches (Mojapelo, 2013). The substantial overlapping and mixture between the branches of government has led many to question whether the doctrine of separation of powers is really a feature of the British constitutional system (Fombad, 2005; Wilson, 1990).

The British model contradicts the doctrine by uniting or concentrating powers. Cabinet ministers are part of Parliament, whereas the Law Lords serve in the House of Lords in both legislative and judicial roles. The Lord Chancellor, who is a Cabinet minister, acts as head of the Judiciary and also sits as a member of the House of Lords when it functions in a legislative capacity. The House of Lords is the highest judicial body

and part of the Legislative branch in the United Kingdom (Rautenbach & Malherbe, 2004). The courts do not have power to overturn laws of Parliament (Strayer, 1988, Wilson, 1990).

Parliament has ultimate authority over all business of government, including the monarch and the courts. The prime minister and the king, who are members of the Executive, form an integral part of Parliament. On the other hand, ministers who are members of the Executive must, by convention, be members of one of the two Houses of Parliament (Bradley & Ewing, 1997). Parliament exerts controls over the Executive through question time, select committees, adjournment debates, opposition days and through its power to overthrow a government by withdrawing Parliamentary support (Fombad, 2016). The Executive also exercises substantial Legislative duties through the creation of legal instruments, owing to powers conferred on it by Parliamentary acts and the power to dissolve the House of Commons (Bradley & Ewing, 1997)

Lack of strict separation of powers (Fombad, 2016) in the British system is also revealed by the relationship between the Judiciary and the Executive branches of government. For instance, the Lord Chancellor in his capacity as the head of the judiciary, is authorised to preside over the House of Lords when the latter is sitting as a court. The Lord Chancellor is also a member of the Cabinet and a member of the Legislature by virtue of being a member of the House of Lords. Consequently, the Lord Chancellor belongs to all three powers of government.

The Executive appoints members of the Judiciary, thereby exercising some control over it. The courts provide checks over the Executive by protecting citizens against unlawful acts of government and by reviewing Executive acts for compliance with the law (Bradley & Ewing, 2011). There is no strict separation of powers in Britain, compared to separation of powers under the US presidential system. Britain's structure is characterised by a partial separation of powers and limited checks and balances. However, as Mojapelo (2013), and Strayer (1988) have observed, while this appears to be contrary to the doctrine of separation of powers, Parliament is controlled by several international treaties, legal instruments, constitutional conventions and there is significant de facto independence among agents performing various functions. Fombad (2005:315) observed: "The crux of the British conception of the doctrine, however, is that Parliament, the Executive, and the Judiciary each have 'their distinct

and largely exclusive domain', and the circumstances where one exercises the functions of the other are the exception and dictated by practical necessity".

It is worth noting that the British model, which was transplanted to Africa, was adjusted and adapted to the realities of a written constitution by incorporating many features of the American model into the British model and referred to as the Anglo-American model, operating in Anglophone Africa (Fombad, 2016). For example, one of the British parliamentary model aspects which was copied by Anglophone Africa is the fusion of the Legislative and Executive functions. Examples of Anglophone African countries which adopted the British model include but are not limited to Botswana, South Africa, Ghana, Namibia and Zimbabwe.

To demonstrate the fusion of Executive and Legislative functions, as copied from the British model, examples are given below. In terms of section 39 of the Constitution of Botswana of 1966, the vice president is appointed by the president from among the elected members of the National Assembly. Similarly, ministers and assistant ministers are appointed by the president from among the elected members of the National Assembly, in accordance with section 42 (3) of the Constitution of Botswana of 1966. In South Africa, the president is also appointed from elected members of the National Assembly in terms of section 86(1) of the South African Constitution of 1996. Nevertheless, once appointed, the President of South Africa ceases to be a member of the National Assembly, in accordance with section 87 of the Constitution of South Africa of 1996. The deputy president and Cabinet ministers are also appointed from members of the National Assembly, in accordance with section 91(3) of the South African Constitution of 1996. In terms of the Constitution of Ghana of 1992, both ministers (section 78 (1)) and deputy ministers (section 79(2)) are appointed from among members of Parliament. In Namibia, Cabinet ministers are also members of the National Assembly, in accordance with article 35(1) of the Constitution of Namibia of 1990 as revised in 2010.

Although the Executive and Parliament are fused together under the British parliamentary model, many African countries (constitutions) have established a system of checks and balances between the two branches. For example, Parliament can provide a check on the abuse of power by the Executive through initiating the process of impeachment, a vote of no confidence, and approving the appointment of

senior government officials, ministers and assistant ministers. For instance, section 89 of the Constitution of the Republic of South Africa of 1996 provides for the removal of the president by a resolution adopted with a supporting vote of at least two-thirds of members of the National Assembly in the event they violate the Constitution or the law, commit any serious misconduct or they are unable to fulfil the functions of the office.

A similar provision is found in section 97 of the Constitution of Zimbabwe of 2013. In terms of the law, the South African Executive is accountable to Parliament. Specifically, section 92(2) of the Constitution of South Africa of 1996, provides that "members of the Cabinet are accountable collectively and individually to Parliament for the exercise of their powers and the performance of their functions". The major limitation of African countries in terms of Legislative oversight over the Executive is experienced when the ruling party is a dominant party (Maripe, 2017). This is so because members of the ruling party are often reluctant to vote openly against their party, or to criticise the government because of the notion of political patronage and party discipline.

The Executive also exercises checks and balances over Parliament. For instance, in almost all constitutions (Fombad, 2016), a bill adopted in Parliament becomes law only after it has received presidential assent. The president can either assent or refuse to assent to the bill. In Botswana, for example, under section 87 of the Constitution of Botswana of 1966, the president may either assent to a bill or dissolve Parliament. In such circumstances, dissolution of Parliament by the president is a form of Executive control over Parliament. Parliament may also, as is the case with section 143 of the Constitution of Zimbabwe of 2013, pass a resolution to dissolve if there is a disagreement between Parliament and the president over a certain bill. The Executive, in some circumstances, also exercises the functions of Parliament. For instance, although the law-making function is the primary responsibility of Parliament, the Executive makes subsidiary legislation in the form of by-laws, rules, regulations and proclamations. The dominant position of the Executive is manifest in subsidiary legislation (Maripe, 2017) as the bulk of legislation in Anglophone Africa in the form of delegated legislation far exceeds the laws enacted by Parliament in the form of Acts

of Parliament (Fombad, 2016). Consequently, the Executive effectively controls Parliament.

4.1.3 The French hybrid system

The French hybrid system can be traced back to the model of the French Fifth Republic Constitution of 1958. In as far as the application of the doctrine of separation of powers is concerned, the French model differs from the US presidential system and the British parliamentary system. Essentially, the French hybrid system combines elements of both the Parliamentary system and the presidential system. It provides for a close cooperation (Fombad, 2016) between the Legislative and the Executive, rather than a strict separation of powers. Features of a Parliamentary system found in the French hybrid system include a two-headed Executive (head of state and head of government), the right of government to dissolve the lower chamber of Parliament (Bosire, 2016) and the collective political accountability and responsibility of government to Parliament. On the other hand, a prominent feature of the US presidential system found in the French hybrid system include an elected and very powerful president.

The French doctrine is defined by the following distinctive characteristics. First, the system provides for a dominant Executive over the other two arms of government. For instance, besides the field of Parliament's jurisdiction, as provided for in article 34 of the French Constitution of 1958, article 37 of the Constitution empowers the Executive to legislate on all other matters. Consequently, residuary legislative power in the French system lies not with Parliament (Hoffmann, 1959), as is the case in Britain and in the United States of America (Merryman, 1996), but rather with the Executive.

Second, the dominance of the Executive is also made possible by article 64 of the French Constitution of 1958, which provides that the "President of the Republic shall be the guarantor of the independence of the Judicial authority. He shall be assisted by the High Council of the Judiciary (*Conseil Supérieur de la Magistrature* or CSM)". Since the president is part of the Executive, this provision effectively means that the Judiciary is not at the same level with the Executive but relatively below it. The Executive's dominance and the Judiciary's subordination are further strengthened by article 65 of the French Constitution of 1958, which designates the President of the

Republic as the leader of the CSM (Superior Council of Magistracy), and the Minister of Justice as the second-in-command of the institution responsible for recommending judicial appointments and enforcing disciplinary measures within the Judiciary. The Judiciary's subordination is achieved by saying explicitly that the CSM just "assists" the president. However, the constitutional amendments of 2008 incorporated several changes, including the modification of article 65, namely the removal of the Minister of Justice and the President from the High Council of the Judiciary. However, despite this amendment, the Executive dominance (Rohr, 1995) over the Judiciary remains a salient feature (Fombad, 2016) of the separation of powers under the French system.

In addition, owing to the subordinate position of the Judiciary in the French system, the French law of 16–24 August 1790, which was introduced to address the bad reputation of the royal courts or Parliaments, bars ordinary courts from interfering with the work of government (Merryman, 1996; Riesenfeld, 1938). Consequently, citizens aggrieved by any government action or inaction can only seek a remedy before the administrative courts which, to some extent, exercise not only judicial but Executive and Legislative functions as well. The French scepticism about judges has a significant effect on the regulation of the legality of laws. Prior to the 2008 constitutional revisions, this review was carried out by the Constitutional Council, which is a quasi-administrative organisation, rather than a judicial one.

In summary, the French system is arranged in such a way that the balance of power is skewed towards the Executive, it being a dominant actor among the three branches of government. The Judiciary is mostly subordinated to the Executive and the extensive law-making powers (legislative functions) are assigned to the Executive. Hence, the doctrine of separation of powers in France means little more than the distinction between the Legislative and Executive branches of government. As a form of Parliamentary democracy, this system essentially provides for close collaboration between the Executive and Legislative with no strict separation of powers between the two branches. Subsequently, that compromises any meaningful checks and balances between the two arms of government.

Just like the US and the British model, the French model has influenced African constitutionalism. The model has been adopted widely in Africa with some modifications. African countries such as, for example, Angola, Cameroon, Senegal,

Mozambique, Democratic Republic of Congo (Congo DR), Gabon, Burundi, and Benin have adopted the French hybrid model. Common among these constitutions is the notion of incompatibility. In this context, “incompatibility” refers to the prohibition of an individual to hold positions simultaneously as a member of the Executive and a member of Parliament. Furthermore, it signifies that a member of the Executive is prohibited from occupying multiple roles at the same time, for example, holding positions as both a minister and a judge, or serving as a minister while simultaneously being employed in the public or private sector. For instance, article 138(1) of the 2010 Constitution of Angola states: “The offices of Minister of State, Minister, Secretary of State and Vice-Minister shall be incompatible with the office of member of the National Assembly and with serving as a judge or public prosecutor”. Other constitutions which have a similar provision to that of Angola include but are not limited to the Constitution of Burundi of 2005 (articles 137,152 & 155), the Constitution of Cameroon of 1996 (article 13), the Constitution of Benin of 1990 (articles 54 & 92), the Constitution of Gabon of 1990 (articles 14(b) & 32), and the 2001 Constitution of Senegal (articles 38 & 54). An important aspect of the doctrine of separation of powers is that these constitutions explicitly forbid members of the Executive branch from being part of Parliament. With regard to the system of checks and balances between the Executive and Parliament, Legislative control of the Executive is through impeachment of either the president, vice president or Cabinet ministers. The impeachment process is usually enforced when there is a violation of the Constitution, corruption, or grave abuse of office. Parliamentary control is also exercised through a number of oversight tools such as questions, a vote of no confidence, motions of censure, and Parliamentary committees.

Concerning the Executive control over Parliament, the bills adopted by Parliament need to be promulgated by the president before they become law. For example, in terms of article 124(1) of the Constitution of Angola of 2010, “the President shall enact the laws of the National Assembly within thirty days of receiving them”. In accordance with article 32 of the Constitution of Cameroon of 1996, the president is required to assent to laws passed by Parliament within 15 days after receiving them unless he refers the matter to the Constitutional Court, or he requests a second reading. Similar provisions are established in article 17 of the 1990 Constitution of Gabon, article 57 of the 1990 Constitution of Benin, and article 72 of the Constitution of Senegal of 2001.

Nevertheless, in situations where there is a deadlock between Parliament and the president, the majority of constitutions (Fombad, 2016) following the French model grant the president discretionary authority to dissolve Parliament.

The system of checks and balances also implies that branches of government constantly participate in the activities (exercises functions) of each other. A good example is the law-making function, a primary responsibility of Parliament but also exercised to some extent by the Executive.

Just as under the British parliamentary model, as discussed above, the Executive under the French model is involved in the law-making function. Compared to the Executive law-making function under the British model, the Executive law-making function under the French model is extensive, in the sense that most of the African constitutions under the French model empower both Parliament and the Executive to initiate bills. For example, article 25 of the Constitution of Cameroon of 1996 states that “bills may be tabled either by the President of the Republic or by members of Parliament”, whereas article 80 of the Constitution of Senegal of 2001 expressly states that “the initiative of the laws belongs concurrently to the President of the Republic, to the Prime Minister and to the deputies”. Other constitutions which have similar provisions include but are not limited to article 167(1) of the Constitution of Angola of 2010, article 53 of the Constitution of Gabon of 1990, article 192 of the Constitution of Burundi of 2005, and article 105 of the Constitution of Benin of 1990.

A common feature in the British model and the French model, as practised in African countries, is the dominance of the Executive made possible by the following (among other things) factors. First, the powerful president (Venter, 2016) who acts as both head of government and head of state, and the Commander-in-Chief of the armed forces, has excessive executive powers including the powers to appoint Cabinet ministers as well as to appoint and fire senior government officials. For instance, the feature of being both the head of state and head of government is found in but not limited to the following African countries: Botswana, Namibia, South Africa, Ghana and Kenya. Second, the dominance of the ruling party, the notion of political patronage and party discipline, which inhibits party members from openly criticising or voting against the government. Furthermore, the dominance of the Executive in African countries is exacerbated by the wide powers it holds (Fombad, 2016) to make

secondary legislation. Therefore, in most African countries, the Executive dominates and effectively controls Parliament (Sebudubudu *et al.*, 2017). Consequently, Parliament is in a weak position effectively to hold the Executive accountable.

4.4 Conclusion

This chapter has discussed constitutional and legislative imperatives determining a separation of powers for both Parliament and the Executive authorities. Furthermore, the chapter has attempted to analyse the modern application of the doctrine of separation of powers in the context of different systems of government. For example, the American model and prototype of presidential government, is generally regarded as having gone farther away than any other in embodying the fundamentals of the doctrine of separation of powers (Gwyn, 1986). Another example is the British parliamentary, or Westminster model, which appears to contradict the doctrine by fusing or concentrating powers (Fombad, 2005). The third example is the French hybrid system, which mixes the presidential and the Parliamentary system. It is worth noting that African governments were largely influenced by either the American presidential system, the British parliamentary system or the French hybrid system. However, as mentioned in Chapter Two of this study, the balance of power in most African countries is weighted in favour of the presidency and it remains the case that in many African countries, for the most part, there are few constitutional instruments available to restrain executive power, especially presidential power.

There is weak or low separation between the Legislature and the Executive, which tends to weaken the former. Although many of the problems faced by African Parliaments in so far as their relationship with the Executive may be similar, the permutations are somewhat different depending on, among others, the system of government. However, the end result is the same: a weak Legislature in relation to the Executive. The next chapter provides an overview of the Executive–Legislative relations in the context of the Republic of Botswana.

Chapter Five: The nature and scope of existing Executive and Legislative relations in the Republic of Botswana

5.0 Introduction

The previous chapter outlined the application of the theory of separation of powers in the context of the US presidential, British parliamentary and the French hybrid models of government. It also considered the influence, adaptation and practice of these systems of government in African countries. Furthermore, with reference to the previous chapter, an analysis is made of the impact of these systems of government on the oversight function of Parliament. This chapter provides a critical and comparative analysis of the Executive–Legislative relations in the context of Botswana. The comparison is made against the practice of other countries, as outlined in Chapter Four and elsewhere else in this study. The impact of Executive–Legislative relations in Botswana on the oversight function of Parliament is also addressed in this chapter. The chapter begins with a brief outline of the Botswana system of government and how it was influenced by the US, British and French models of government.

5.1 Botswana's system of government

Presidential and Parliamentary political systems are the two main types of government. There is, however, a third type, namely the hybrid system of government which combines elements of both the presidential and the Parliamentary systems**.** In the presidential system, the executive power is vested in the president, who is both head of government and also the symbolic head of state. Generally, the president is in full control of the composition of the Cabinet, is elected directly by the people for a set period of time, and cannot be dismissed between elections except if impeached (Linz, 1994). In Parliamentary systems, the president (or prime minister) is nominated by the democratically elected representatives in Parliament, and is therefore often the leader of the majority party who may be removed from office through a vote of no confidence and in most instances is only the head of government (Modungwa, 2014).

A prominent feature of a Parliamentary system of government is the concept of the supremacy or sovereignty of Parliament. The head of government is subordinate and accountable to the overarching authority of Parliament, whereas in a presidential system, the presidency is the main repository of power (Maripe, 2017).

Botswana operates a hybrid system that mixes the Parliamentary and the presidential systems. The Parliamentary features include that the president, who is the head of the Executive branch and Cabinet is, in fact, a member of Parliament, whereas the presidential features include that the president combines the duties of the head of state and head of government (Maripe, 2017). Furthermore, Botswana's hybrid system can be explained as follows: as is the case with a prime minister in a Parliamentary system, the president is elected by Parliament in terms of section 32 of the 1966 Constitution of Botswana of 1966. While sections 87(4), 91 and 92 of the 1966 Constitution of Botswana empower the president to dissolve Parliament, Parliament is also empowered by section 92 of the Constitution of Botswana of 1966 to pass a motion of no confidence in the government. The sovereignty in Botswana lies not with Parliament but with the president (Lotshwao & Sebudubudu, 2017). Therefore, Botswana's possession of essential components from both Parliamentary and presidential systems aptly classifies it as a hybrid.

5.2 Parliament–Executive relations in Botswana

Many scholars and commentators have written about the Executive–Legislative relations in Botswana, including but not limited to: Bodilenyane (2012), Botlhale (2012); Botlhale and Lotshwao (2015), Fombad (2005), Fombad (2016), Molomo (2000), Molomo (2002), Molomo (2012), Sebudubudu and Osei-Hwedie (2006), Sebudubudu *et al*. (2017), and Sebudubudu *et al* (2013). Common arguments advanced by these scholars is that Parliament in Botswana is weak vis-à-vis the Executive. It is unable to carry out its oversight role over the Executive effectively and is mostly subordinate to the Executive branch of government. On the other hand, the Executive is considered to be a dominant actor in the power equation in as far as the relations between the Executive and Parliament are concerned. For instance, Molomo and Keorapetse (2017) posit that the Executive in Botswana possesses significant political authority, exercises control over public financial resources, oversees a highly skilled bureaucracy responsible for policy formulation and implementation, handles government contracts, and administers government projects.

The weakness of Botswana's Parliament regarding the Executive branch of government stems from a number of sources. First, and paramount, is the structural positioning of the Executive (Maripe, 2017) relative to the Legislature. A feature of

Botswana's Parliamentary democracy is a fusion between the Executive and the Legislative branches of government (Nsereko, 2010). There is fusion, rather than a clear separation of powers between the two branches and such fusion has reinforced the dominance of the Executive while weakening Parliament (Lotshwao & Sebudubudu, 2017). This fusion often compromises the oversight function of the Legislature in that ministers, who constitute the Executive branch of government are drawn from members of Parliament (MPs). The independence of MPs, in this regard, is compromised. First, because they (MPs) position themselves to draw favour for appointments to the Cabinet. Second, the collective responsibility of members of Cabinet, party discipline and binding resolutions of the party's Parliamentary caucus compromises the independence of legislators and further weakens Parliament.

Mixing of Executive and Legislative functions is a feature prominent in many African countries (Fombad, 2016), introduced as part of the process of providing checks and balances to prevent arbitrary government and dictatorships. However, mixing Executive and Legislative powers in Africa has led to balance of power problems (Sebudubudu *et al*., 2013) between the two branches of the state. To date, the balance of power between the Executive and the Legislature is a problem affecting many African countries (Fombad, 2016). The weakness in the power relations between the Executive and the Legislature is that, once a government has a majority in Parliament, members of the ruling party would be reluctant to openly criticise the government openly or to vote against it (Bradley & Ewing, 2011). This is particularly so when the ruling party is a dominant party. Furthermore, a problem peculiar to this system is the potential for disruption which mixing Legislative and Executive positions can cause. For instance, section 58 of the Constitution of Botswana of 1966, provides for 63 MPs. Of the 63 MPs, 28 are part of the Executive branch. It therefore means that the Executive effectively controls almost half the number of members of Parliament and the principle of collective responsibility (Fombad, 2016) guarantees that every motion moved by the government, regardless of the views of either the opposition or the backbench, will be approved.

The balance of power in most African countries is often weighted in favour of the presidency. In African nations, the power structure is marked by certain elements, as described by Van Cranenburgh (2009), and Venter (2016), which have been identified

previously by Stultz (1968), and Munslow (1983). First, many countries (in Africa) still lack sufficient constitutional provisions to limit executive authority effectively, particularly the powers of the president. Second, the weak or low separation between the Legislature and the Executive undermines the power of the Legislature.

While African Parliaments have comparable challenges in their interaction with the Executive, the specific variations depend on factors such as the kind of government in place. The extent of presidential authority over the Cabinet and the division of power between the Executive and Parliament differ throughout nations. Variations among countries suggest that, while there may be similarities in overall trends, deficiencies may exist in distinct regions which emerge in various ways. Nevertheless, the ultimate outcome remains unchanged: a feeble Legislature (Sebudubudu et.al, 2013) in comparison to the Executive. This study attempts to demonstrate, among other things, using Botswana as an example, how the Executive effectively can and does undermine the effectiveness of Parliament as a legislative and an oversight institution. This study is expected to facilitate a reconsideration of Executive power, specifically within the broader African context.

The dominance of the Executive over the Legislative is further propounded by the fact that the Constitution of Botswana of 1966 centralises the Executive power on the presidency. Section 47 (1) and (2) of the 1966 Constitution of Botswana provides that "the Executive power of Botswana shall vest in the President…[who] shall, unless it is otherwise provided, act in his own deliberate judgement and shall not be obliged to follow the advice tendered by any other person or authority". Lotshwao and Sebudubudu (2017) have argued that this provision not only promotes Executive dominance but also subordinates Parliament to the Executive. Maripe (2017) posits that the power relationship between the Executive and Parliament suggests a relationship in which the servant is more powerful than the master and that is anathema to the concept of constitutionalism.

Consequently, because of its relative weakness, Parliament is in a difficult position to influence public policy and has been unable to hold the Executive accountable for its actions or inactions. Section 47 (1) and (2) effectively means that the Cabinet and/or the Executive is not required to account to Parliament. The absence of an obligation by the Executive (Maripe, 2017) to account to Parliament is not only inconsistent with

Botswana's constitutional principles, but also indicative of the potentially authoritarian inclinations pursued by the Executive. Consequently, Parliament does not possess the necessary resources to supervise the Executive's administration of public affairs adequately.

Furthermore, the dominance of the Executive over Parliament is exacerbated by the size of the Cabinet (which is part of the Executive) and the fact that members of the Executive are drawn from members of Parliament. For clarity purposes, currently, of 63 MPs (composed of 57 elected MPs and six special elected MPs), 28(44%) of MPs are members of the Executive branch of government. As discussed earlier, the notion of collective responsibility over Cabinet, tight party discipline, and Parliamentary caucus have often led to the Executive's control over Parliament. Legislation, motions and policies initiated by the Executive pass easily since the Executive has support from a significant number of MPs who form part of the Executive. It is worth noting that the Botswana Democratic Party (BDP), the ruling party since independence (1965), has dominated Parliament while the opposition has been weakened in Parliament in terms of its numbers.

The first-past-the-post (FPTP) electoral system is responsible, in part, for the numerical advantage of the ruling BDP and the numerical weakness of the opposition in Parliament, as discussed in Chapter One (section 1.2) of this research. The FPTP election system disproportionately favours the BDP and fails to represent the opposition adequately owing to its disregard for the share of the public vote obtained by political parties, unlike the proportional representation (PR) voting system.

FPTP is a constituency-based electoral system in which the voters choose a particular candidate to represent them. It is a plurality or majority voting system in which the candidate who wins the most votes in each constituency (even if this is not an absolute majority [50% plus one] of valid votes) is elected (Adjei, 2013). Examples of countries which practise the FPTP electoral system include the United Kingdom, Ghana, Botswana, Zambia and Tanzania. Under the PR electoral system, a share of seats in Parliament corresponds with a party's share of national votes (Reynolds *et al.,* 2005). That is, seats gained in Parliament are proportional to votes won by parties. The PR system is used, for example, in Namibia, Angola and Morocco.

The numerical disadvantage of the opposition has resulted in the opposition's motions and measures being overpowered readily in Parliament. Legislation, resolutions, and policies proposed by the Executive are effortlessly approved owing to the BDP's significant majority in Parliament. This has limited Parliament severely from carrying out its oversight functions.

In addition, the dominance of the Executive and the weakness of Parliament emanates from the structural location (Maripe, 2017) of Parliament within the wider body politic of the country. Parliament lacks operational independence to carry out its watchdog or oversight responsibility effectively. Many authors, such as Fombad (2005), Maripe, (2017), Molomo and Keorapetse (2017), and Sebudubudu and Osei-Hwedie (2006) posit that the Botswana Parliament is a department under the Office of the President. This is so because Parliament does not have a separate budget, it depends on the Office of the President for its staffing, financial and all operational requirements. In accordance with the principle of separation of powers, Parliament should formulate its own budget, be responsible for hiring its staff and have a separate structure from that of the civil service.

However, in terms of structure and process, the Botswana Parliament is a department housed under the Ministry of State President and falls administratively under the Office of the President, which controls its finances (Nsereko, 2010). Consequently, considering the structural, institutional and organisational positioning of Parliament, it may therefore not be considered independent. This means it cannot reasonably be expected to carry out any effective responsibility of oversight.

The checks and balances between the Executive and Legislative branches of government in Botswana can be explained as follows: First, as indicated in Chapter Two of this study, Parliament is empowered by section 92 of the Constitution of Botswana of 1966 to pass a vote of no confidence against the government. Nevertheless, the vote of no confidence has consequences that impede members of Parliament from passing a vote of no confidence against the government because of the following reasons: In terms of section 92 of the Constitution of Botswana of 1966, if the vote of no confidence passes, the president either resigns or dissolves Parliament. If the president decides to dissolve Parliament, it means fresh elections will be held. Therefore, such a motion affects the life of Parliament. A vote of no

confidence is not attractive to elected MPs who would not want to lose membership of Parliament after spending a lot of resources during campaigns to be elected as MPs. On the other hand, MPs representing the ruling party will not criticise its leaders publicly because of party discipline and political patronage wielded against the president. Therefore, a vote of no confidence is not an effective way to hold the Executive accountable, at least under the current section 92 of the Constitution of Botswana

Second, although law-making is a primary function of Parliament in terms of section 86 of the 1966 Constitution of Botswana. Parliament rarely initiates law-making on its own (Lotshwao & Sebudubudu, 2017; Molomo, 2012); instead, it depends on bills initiated by the Executive (Molomo & Keorapetse, 2017). The majority of bills passed by Parliament are initiated by the Executive (Maripe, 2017). The Executive dominates the law-making function through subsidiary legislation (Fombad, 2016) and other laws. Owing to the dominance of the Executive in the law-making function, Parliament has been reduced to approving and amending legislation initiated by the Executive. To this end, Sebudubudu *et al.* (2013) describe Botswana's Parliament as a "registration chamber", while other authors such as Molomo and Keorapetse (2017) describe it as a "rubber stamp" Parliament. The weakness of Botswana's Parliament and the dominance of the Executive in the law-making function have been discussed in detail in Chapter Two of this study.

Third, the president is an ex-officio member of Parliament with the power to speak and vote in all Parliamentary proceedings. However, in terms of section 47(1)(2) of the Constitution of Botswana of 1966, the president is not constitutionally accountable to Parliament. Section 47(1)(2) of the 1966 Constitution of Botswana empowers the president to "act in his/her own deliberate judgement and shall not be obliged to follow the advice tendered by any other person or authority". This provision subordinates Parliament to the Executive and promotes Executive dominance over Parliament. Consequently, the oversight role over Parliament is compromised. Furthermore, in terms of section 91 (1) and (2) of the 1966 Constitution of Botswana, the president has the power to dissolve or prorogue Parliament at any time. He or she is also empowered by section 87(4) of the Constitution of Botswana of 1966 to dissolve Parliament in consequence of a motion of no confidence passed against government.

In addition to internal Parliamentary oversight tools (committees, questions, motions) as discussed in Chapter Two, Parliament has created various external oversight institutions; however, they are not accountable to it. Instead, these institutions are accountable to the Office of the President, specifically to the president. For example, oversight institutions like the Office of the Ombudsman, the Office of the Auditor-General, the Directorate of Corruption and Economic Crime (DCEC) and the Directorate of Intelligence Services (DIS) are statutorily required to report to the Office of the President. This reporting structure also compromises the effectiveness of Parliament in keeping the exercise of the Executive power under check. It is worth noting that these oversight institutions are not a product of the Constitution (except the Office of the Auditor-General), but rather statutory entities enacted by the Parliament of Botswana as it deems fit to do.

5.3 Conclusion

A prominent feature of the Executive–Legislative relations in Botswana is the dominance of the Executive over the Legislative. The structural, legal and operational position of Parliament in relation to the Executive has rendered Parliament a weak oversight institution. This is so mainly because of the lack of independence of Botswana's Parliament, which emanates from an ineffective execution of the separation of powers (Bodilenyane, 2012; Botlhale, 2012; Botlhale & Lotshwao, 2015; Dingake, 2009). Consequently, the ineffective execution of separation of powers in Botswana has resulted in structural constraints (Maripe, 2017) that limit the effectiveness (Molomo, 2000; Molomo, 2012) of the Botswana Parliament, rendering its oversight function over the Executive futile (Fombad, 2016). The balance of power between the two branches is in favour of the Executive, which yields a strong power against Parliament. Parliament, on the other hand, is subordinate to the Executive and emerges as a weak actor. Consequently, the oversight function of Botswana's Parliament is ineffective.

Therefore, this study attempts to provide a framework that can be used as a model for the oversight function of Parliament in Botswana. It is hoped that the framework will assist in overcoming the limitations of the separation of powers between Parliament and the Executive branch of government within the context of Botswana. The next

chapter provides a critical analysis of the oversight mechanisms, approaches and tools that Parliament uses to exercise its oversight function over the Executive.

Chapter Six: Accountability mechanisms and approaches for the Executive necessary for strengthening the role and function of Parliament.

6.0 Introduction

The previous chapter focused on the relations between the Executive and the Legislative branches of government in the context of Botswana. It also addressed how relations between the two branches often affect the oversight function of Parliament. This chapter provides a critical analysis of the accountability mechanisms, approaches and tools that Parliament relies on to exercise its oversight function over the Executive.

Mechanisms and tools of accountability can be categorised into internal oversight tools and external oversight tools (Pelizzo & Stapenhurst, 2013). Internal oversight tools are those mechanisms that are established to enhance accountability by government, which operates within Parliament, while external tools are mechanisms established outside Parliament (also referred to as extra-Parliamentary institutions of accountability). Examples of internal oversight tools include Parliamentary committees, motions, debates, interpellations, questions, vote of no confidence, impeachment as well as missions and reports (Srem-Sai, 2014). External oversight tools include supreme audit institutions, Office of the Ombudsman, and the anti-corruption agencies (WBI & GOPAC, 2013). A critical analysis and discussion of these tools will be carried out in the subsequent section of this chapter.

The oversight function is an important feature in a democratic system of checks and balances, where Parliaments are essential custodians of governmental accountability and transparency (Van Rensburg *et al*., 2020). Parliament plays a critical role in holding the Executive to account through its oversight role. In essence, the oversight role fosters accountability. The strength of the oversight function is dependent on a number of factors, including but not limited to the system of government in place (presidential, Parliamentary or hybrid), political parties in Parliament, the level of democracy, party discipline, political culture and the income level of any country (Srem-Sai, 2014). These factors will also be discussed in the course of this chapter.

6.1 Form of government and accountability

The form of government (Parliamentary, presidential or hybrid) adopted by any country has an impact on its accountability structures (Fombad, 2016). In a Parliamentary democracy, the Legislative and the Executive branches of government are fused together. The head of government and the Cabinet form part of the Legislature and depend on its confidence for existence. That is, government can only remain in power when it has the support of the majority in Parliament. The Executive (government) is accountable to Parliament while Parliament is accountable to the public. The presidential system of government is characterised by a strict separation of powers between Parliament and the Executive. The president and Cabinet do not sit in Parliament and do not require its confidence. The government (Executive) and Parliament account directly to the citizens. However, the hybrid system uses features of both the presidential and the Parliamentary systems.

6.2 Internal oversight tools

Internal oversight tools are those mechanisms that are established to enhance accountability by government which operates within Parliament. Internal oversight tools include Parliamentary committees, motions, debates, Interpellations, questions, vote of no confidence, impeachment as well as missions and reports.

6.2.1 Parliamentary committees

Parliament oversight committees are notably the main structures which Parliaments worldwide use to exercise their oversight function over the Executive arm of government. Committees place Parliament in a control, supervisory and monitoring role over government activities, policies and programmes. That is, the ability of the Legislature to scrutinise actions of the Executive depends largely on its committee system (Martin & Whitaker 2019). The committee system (in many democracies) consists of permanent committees and ad hoc committees (WBI & GOPAC, 2013). Permanent committees are established (with predetermined roles) for the whole duration of Parliament. Usually, the role of permanent committees corresponds to the activities of government ministries, departments and agencies. For instance, the Public Accounts Committee (PAC) as the most popular permanent oversight committee of the Legislature, reviews government expenditure and ensures

accountability (Pelizzo & Stapenhurst, 2013). On the other hand, ad hoc committees are created for a specific period of time to examine special issues and then to disband. They serve as instruments of accountability and provide vital information on issues of governance and responsibility.

6.2.2 Parliamentary questions

Through Parliamentary questions, many legislatures across the world allow members of Parliament formally to ask and receive answers from members of the Executive. Question time is common in Parliamentary, semi-presidential, and in presidential systems of government (WBI & GOPAC, 2013). Questions may relate to national policy issues, certain local issues, foreign policy, government programmes, projects, activities or any matter of public interest on which MPs seek clarity. Questions can either be written or asked orally during Parliamentary sessions and debates. Answers to written questions are provided in writing by the relevant Cabinet minister, whereas for oral questions, Parliaments usually have a dedicated time for questions when ministers make themselves available to answer questions asked by the legislators.

Parliamentary questions are essential oversight tools that are used mainly by opposition political party MPs to hold government to account. They assist to unearth information about past, current and future government activities. Parliamentary questions provide a basis for monitoring and reporting as well as a facilitatory role in the delivery of information that would otherwise be difficult to obtain (Martin & Whitaker, 2019). They act as a check on the performance of government and may also sensitise the government on areas of concern for corrective measures. In Britain, there is a prime minister question time, which provides the opportunity for opposition to challenge government and win political support. MPs are informed about and are able to scrutinise government practices and policies through Parliamentary questions (Otjes & Louwerse, 2018).

However, some authors argue that Parliamentary questions are often more political in nature (Van Rensburg *et al*., 2020) and are often used for political grandstanding. They are used to further political party interests and as campaign communication between parties (Otjes & Louwerse, 2018). Parties ask questions that are related to issues in their manifesto (Green-Pedersen, 2010). Political parties also use questions to defend

and maintain their ownership of issues. By targeting ministers from parties they compete with, MPs may also use questions to attract negative attention to their competitors in Parliament. In this case, questions may be viewed as tools for scoring political mileage against competitors. Parliamentary questions provide an opportunity for opposition parties to force the government to talk about their issues of interest.

On the other hand, although governments are compelled to answer questions, they are not compelled to take any action on the issues raised (Sanchez de Dios & Wiberg, 2011). Nevertheless, there are situations when Parliamentary questions produce tangible results. The effectiveness of Parliamentary questions is sometimes hampered by lack of political will on the part of MPs of the ruling party to ask questions simply because of the notion of party loyalty and discipline. In many cases, Parliamentary question time is utilised mainly by opposition parties who ask many questions compared to MPs from the ruling party (Green-Pedersen, 2010; Martin, 2011). Therefore, accountability suffers owing to party loyalty. The other issue that limits the effectiveness of the Parliamentary oversight question tool is the element of time restriction, more especially when it comes to oral questions which are often limited owing to the agenda of Parliament. The number of oral questions an MP can ask during question time is limited. However, in some Parliaments, for instance in the Netherlands, there is no limit on the number of questions an MP can ask (Otjes & Louwerse, 2018).

6.2.3 Interpellations

Just like question time, interpellations are used to obtain information from the Executive. However, interpellations differ from the question tool in that interpellations are presented by a group of MPs or a prescribed minimum number of MPs (WBI & GOPAC, 2013).

6.2.4 Vote of no confidence

Government can be removed from office through a vote of no confidence by MPs. In order for a motion of no confidence to pass, it has to be supported by the majority of MPs through voting. A vote of no confidence is an instrument used to show a lack of support by Parliament to the government of the day. Nevertheless, many Parliamentary democracies have made it harder (procedurally) for a vote of no

confidence either to be introduced or to be passed by MPs. They do so by adopting a series of restrictions on proposing a vote of no confidence: restrictions on voting for the motion or by introducing undesirable consequences in the event that a vote of no confidence is successful. For instance, a vote of no confidence may require a certain number of MPs to initiate the proposal. For example, in Sweden, Spain and Poland it is a requirement that at least 10% of MPs must support the proposal, while Hungary and Tanzania require the support of 20% of its MPs to initiate a vote of no confidence (Lento & Hazan, 2022). However, other countries, for instance, UK, Norway, Ireland and Denmark do not require a minimum threshold of MPs to initiate a vote of no confidence. It is therefore more difficult to raise a vote of no confidence when there is a minimum number required to support the vote than when there is no threshold required.

Another dimension related to restrictions on the initiation of the vote of no confidence is the limitation on the introduction of votes of no confidence in the event that the initially introduced vote of no confidence was not successful. For example, in Spain, if the vote of no confidence is not successful, its signatories are restricted from submitting another motion of no confidence during the same Parliamentary session. In Greece, the waiting period is six months, while in Poland it is three months (Lento & Hazan, 2022). The government is usually protected from being held accountable where such limitations exist.

A vote of no confidence can also be restricted by the number of voters required for it to pass. In many democracies, there is a requirement of either a simple majority or an absolute majority for a vote to pass. A simple majority requires only a majority of those MPs taking part in the vote, whereas an absolute majority requires at least 50% + 1 of all Parliamentary representatives to vote in favour of the motion for it to pass. For instance, Italy, Austria and Denmark require a simple majority for a vote of no confidence to pass, while Portugal and Greece require an absolute majority of all MPs to approve a vote of no confidence (Lento & Hazan, 2022). It is easier to vote a government out of power by a simple majority principle compared to an absolute majority principle.

Furthermore, a vote of no confidence can be restricted by the issue of regular versus a constructive vote of no confidence. A regular vote of no confidence requires the

support of a majority of MPs to pass, whereas a constructive vote of no confidence requires the support of an absolute majority of all MPs and the agreement of an alternative candidate to lead the new (alternative) government. It is therefore easier to pass a regular vote of no confidence compared to a constructive vote of no confidence. The United Kingdom, Denmark and Italy are examples of countries with a regular vote of no confidence, while Belgium, Germany and Poland are some of the countries that have adopted a constructive vote of no confidence.

Open and secret voting is yet another dimension which affects the effectiveness of a vote of no confidence. An open vote requires each voting MP to declare publicly their support or lack thereof for the motion, while secret voting gives voting MPs the opportunity to vote freely in secret without showing publicly their allegiance or lack thereof. Open voting compromises the independence of MPs since they may be restricted by party discipline and the inability to defy party caucus publicly in their voting.

With regard to the restrictive issue of undesirable consequences of the vote of no confidence once passed, a good example is the case of Botswana. Section 92 of the Constitution of Botswana of 1966 provides:

> If the National Assembly at any time passes a resolution supported by a majority of all the Members of the Assembly who are entitled to vote declaring that it has no confidence in the Government of Botswana, Parliament shall stand dissolved on the fourth day following the day on which such resolution was passed, unless the President earlier resigns his or her office or dissolves Parliament.

This provision makes the vote of no confidence a double-edged sword in that, unless the president earlier resigns his or her office, it leads to the dissolution of Parliament and the holding of a general election. The fact that a vote of no confidence leads to a dissolution of Parliament generally affects the lifespan of Parliament in a negative way and, furthermore, it offers restrictive measures against this Parliamentary oversight tool. Thus, ensuring accountability through a vote of no confidence under the current section 92 of the 1966 Constitution of Botswana is not desirable.

6.2.5 Impeachment

Commonly practised in presidential and semi-presidential systems of government, impeachment is the removal of a president from office by a mechanism other that the end of a term limit or through regular elections, owing to serious misconduct, corruption, misdemeanours, treason, high crimes, poor performance in office, governance failures, incapacity and violations of the Constitution (Ginsburg *et al*., 2021).

For instance, article II, section 4 of the Constitution of the United States of America 2004 of 2004 provides that “the President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanours”. Thus, in the United States of America, Congress may hold the president or other federal officials accountable for serious misconduct through the impeachment process. A recent example of Impeachment in the United States is the case of President Donald Trump, who survived two attempts of impeachment, in 2019 and in 2021.

Impeachment is considered an integral part of the checks and balances system. However, politically weak presidents who are unable to govern effectively can also be removed from office through the impeachment process. For example, although the South African case of the removal of President Jacob Zuma from office is technically not an impeachment, Jacob Zuma was removed from office in 2018 as a result of protracted corruption-related scandals and investigations.

Other examples of countries that use impeachment as a democratic oversight tool include Nigeria, Paraguay, South Korea and Brazil. Just like the vote of no confidence, countries around the world have different provisions about the impeachment processes and procedures, including but not limited to the basis for dismissal, the process of proposal for dismissal, and the process of approval (Ginsburg *et al*., 2021). Nevertheless, although impeachment proposals are many and/or often, its success rate is low. For example, Ginsburg *et al.* (2021) reveal that, from 1990 to 2018, only 10 presidents worldwide were removed from office through the impeachment process.

6.2.6 Missions and reports

Fact-finding missions are usually established to gather information on the efficiency and effectiveness of government policies, programmes and activities. They are also instituted to monitor the implementation and progress of government policies. With regard to reports, countries like South Korea and Cyprus, for example, have provisions that compel the Executive to submit reports to their Parliaments concerning the implementation of policies and programmes (WBI & GOPAC, 2013). These reports are then subjected to Parliamentary scrutiny and debate.

6.3 External oversight tools

These are extra-Parliamentary mechanisms of accountability which include but are not limited to supreme audit institutions, the Office of the Ombudsman, and the anti-corruption agencies.

6.3.1 Office of the Ombudsman

The Office of the Ombudsman can be traced back to the year 1809 when the Swedish Parliament established the Ombudsman institution to regulate and monitor the administrative activities of the Executive branch of government (Abedin, 2011; Batalli, 2015). It then spread to Scandinavian countries, where it was practised for a long time before it was known and adopted by the rest of the world. However, after the end of World War II, particularly in the mid-1960s, the Ombudsman institution proliferated, and was adopted by the rest of the world, specifically to promote democracy, human rights, and to act as a check on the power of the bureaucracy (Abedin, 2011).

The Ombudsman institution is a mechanism to ensure accountability, transparency and efficiency in public administration. It promotes good governance, democracy, protects human rights, rule of law, and militates against acts of maladministration and administrative injustice in the public sector. It considers complaints (from the citizens) against activities of state institutions or their officials. It handles citizen complaints against the government. After receiving complaints or reports of maladministration from citizens, civil society organisations or public sector officials, the Ombudsman investigates such complaints and/or acts of maladministration and provides some corrective measures in the form of recommendations or by providing proposals to

amend certain legislations, statutes or certain administrative procedures. The Ombudsman also provides annual reports either to Parliament or to the Executive, depending on whether the institution is a Legislative or Executive Ombudsman. Thus, the main reason behind the establishment of the Office of the Ombudsman is to make sure that public officials exercise their duties with full responsibility, honestly, and in accordance with the law. It protects the citizens against abuse of public authority, unfair decisions, violation of human rights and negligence. Its major aim is to promote democratic government, which is efficient, effective, transparent, responsible and accountable.

The Legislative Ombudsman represents the classical (Swedish) Ombudsman model. Under this model, the Ombudsman is appointed by Parliament and is given authority to monitor, check and regulate administrative activities of the Executive branch of government as well as to protect citizens' rights and liberties against administrative injustices (Abedin, 2011). Furthermore, under this model, the Office of the Ombudsman is established by the Constitution or through an Act of Parliament and is headed by a high-level public official who is independent, non-partisan and responsible to Parliament. In short, Legislative Ombudsmen are created by and are agents of Parliament. The Legislative Ombudsman receives complaints from the public, carries out investigations and recommends corrective measures. He or she (the Ombudsman) also submits annual or special reports to Parliament. The Ombudsman does not have the power to enforce their recommendations, nor do they have the power to reverse any administrative decisions. Their decisions are non-binding, and their powers are limited to guidance, recommendations as well as mediation, negotiation and conciliation. However, the success of the Ombudsman is highly dependent on the capacity of Parliament to debate its reports and act on them (Abedin, 2011). Nevertheless, the Ombudsman is a very important instrument of accountability, transparency and control over public bureaucracy.

On the other hand, the Executive Ombudsman represents a deviation from the classical (Legislative) Ombudsman, and it is sometimes referred to as a quasi-Ombudsman (Hill, 2002). It originated in the United States of America (USA) and later spread to other countries, more especially the developing countries. The Executive Ombudsman is appointed by the Executive authority, for instance, the president, prime

minister, governor or mayor. It is often an agent of the Executive, reports to the Executive, is accountable to the Executive and often lacks independence from the Executive. They are influenced, controlled and dominated by the Executive authority. Hence, the Executive Ombudsman is less effective in ensuring accountability, transparency and efficiency on activities of government compared to the Legislative Ombudsman (Abedin, 2011; Hill, 2002). Rowat (2007) is of the view that the Executive Ombudsman is inferior to the Legislative Ombudsman when it comes to holding the Executive accountable. This is because the Executive Ombudsman does not help Parliament to hold the Executive accountable or, put differently, holding the Executive accountable to Parliament is a feature that is lacking in the Executive Ombudsman.

Nevertheless, the Executive Ombudsman can be effective, depending on the resources they have, the laws governing their operations, the sociopolitical environment and the type of government they operate in. For instance, the Executive Ombudsman may be effective in democratic, developed countries with strong commitment to liberal democratic values and high level of administrative and political maturity as compared to less developed and undemocratic nations. For example, developed nations such as the Unites States operate within a broad democratic framework with strong emphasis on democratic principles such as accountability, transparency, responsibility and the protection of individual rights, freedoms and liberties. Such values are not practised in non-democratic countries; hence, their Executive Ombudsmen are less effective in holding the Executive accountable.

In Botswana, the Office of the Ombudsman is a product of an Act of Parliament, particularly the Ombudsman Act of 1995. Although the Ombudsman in Botswana is established by a Parliamentary legislation, it is technically an Executive Ombudsman rather than a Legislative Ombudsman. Section 2, subsection 2 of the Ombudsman Act (1995) empowers the president, in consultation with the Leader of the Opposition (LOO) to appoint the Ombudsman. The Ombudsman reports, and its recommendations are submitted to the president, who then causes them to be laid before the National Assembly for debate (Section 9(2) of the Ombudsman Act of 1995). That is, the Ombudsman is appointed by and accounts to the president. This legal framework compromises the independence and accountability of the Ombudsman institution in Botswana. Hence, Lebotse (2000), Maine (2000),

Mpabanga (2009) and the Parliament of Republic of Botswana (2011), maintains that the independence and accountability of the Ombudsman institution in Botswana are some of the critical weaknesses of the institution. The effectiveness of the Ombudsman is dependent, among other things, on its independence, accountability, and neutrality, and on its investigation and enforcement powers.

The Ombudsman institution operates at different levels of government. For instance, there is an Ombudsman for central, local and provincial governments as well as an Ombudsman for regional and international institutions. There is also an Ombudsman for special purposes like education, tax, business and health. It depends on whether the country is a unitary, provincial, federal or semi-federal state. For example, the United States, South Africa and Canada have general (central government) and special-purpose subnational Ombudsman institutions. Examples of special-purpose Ombudsman institutions in South Africa include health, police and military Ombudsman offices. The Ombudsman institution has been named differently across the globe. For instance, in countries like South Africa and Zambia, it is called the Public Protector; in Uganda it is called the Inspectorate of Government; in Nigeria it is called the Public Complaints Commission, while countries like Botswana, Malawi and Mauritius have kept the original name Ombudsman to refer to their Ombudsman institutions.

6.3.2 Supreme audit institutions

Supreme audit institutions (SAIs), sometimes referred to as the Office of the Auditor-General (OAG), are national agencies responsible for auditing government performance as well as government revenue and expenditure. SAIs are an integral part of the new public management (NPM) paradigm, specifically, the public management reform agenda. The audits carried by SAIs are aimed at strengthening the accountability of public service providers and at improving the performance of government ministries and departments. SAIs ensures prudent management of government financial resources, oversee the management of public funds and improve the quality of public services. Supreme audit institutions limit opportunities for abuse of public funds, financial malpractice, corruption and misappropriation of public funds. The performance audits are usually performed to improve the quality of government

services, specifically, to improve government efficiency, effectiveness and accountability.

As a result of the NPM and the rise of performance movements during the 1960s, 1980s, and early 1990s, many countries established SAIs and expanded the roles of external auditors as external controllers of public administration (Johnsen *et al*., 2019). The SAIs have assumed the roles as evaluators of government performance by assessing whether government operations are carried in an efficient, effective and economic manner (Put & Bouckaert, 2011). SAIs have also taken the roles of public accountants and consultants on performance improvement in order to improve accountability for public sector performance. SAIs are one of the pillars of a country's national integrity system.

The legal mandates, institutional structures, reporting arrangements and the effectiveness of SAIs differ from country to country, depending on the level of democracy and the administrative system of that country. The effectiveness and impact of SAIs are highly dependent on their autonomy, structure and the resources of the Office of the Auditor-General (Pierre & de Fine Licht, 2019). For instance, among other things, owing to their independence, SAIs of the Scandinavian (Denmark, Norway and Sweden) and Nordic (Finland, Iceland) countries have been considered and ranked as high-performing SAIs by the Quality of Government Institute (*et al*. 2015; Nistotskaya *et al*. 2021) and the Transparency International.

The Quality of Government (QoG) Institute is an independent research institute based in the University of Gothenburg, which carries out research on the causes, consequences and nature of good governance and the quality of government (Nistotskaya *et al*. 2021). The QoG expert survey provides a scale from 1 to 7, where 1 represents low while 7 represents high. Countries like New Zealand, Australia, Sweden and Norway score 6 or 7 in terms of the autonomy of their SAIs in relation to the Executive, the ability of the SAI to report their results to the public and the qualifications of their auditors (Johnsen *et al*., 2019).

For example, the Corruption Perception Index (CPI) of Denmark, Finland, Sweden and Norway have consistently been above 80 out of 100 (Transparency International, 2021). The CPI scores countries by their perceived levels of public sector corruption,

using a scale of 0 to 100, where 0 is highly corrupt, while 100 is very clean (Transparency International, 2023)

The appointment and reporting structures of SAIs, especially the appointment of the Auditor-General (AG), who heads the institution is critical to its effectiveness. For instance, the Auditors-General (AGs) of the following high-performing SAIs: New Zealand, Australia, Sweden and Norway, are appointed by and report to Parliament. This arrangement has a positive bearing on the independence of the SAIs, since they are independent from the Executive (government ministries and departments), which they audit.

The other important dimension to the effectiveness of the SAIs is what happens to their reports and recommendations after carrying out audits. In Sweden and Norway, for example, after the SAI reports are submitted to Parliament, Parliament submits the reports to government for comments and ministers are obliged to provide a response to the reports by stating how they plan to use the recommendations. The obligation of ministers to respond to recommendations and to critique SAIs reports fosters Executive accountability to Parliament.

In Botswana, the Office of the Auditor-General (OAG) is established by section 124 of the Constitution of Botswana of 1966. The main duty of the OAG is to audit public accounts (central and local government) and performance audits of Botswana. The Auditor-General (AG), who is a public officer, is appointed by the president in terms of section 112 of the Constitution of Botswana of 1966. They can be removed from office for inability to perform the functions of their office, for misbehaviour or by Parliament with advice from a tribunal (Section 114, Constitution of Botswana, 1966).

The AG reports to the minister responsible for finance, who then submits the reports to the National Assembly (Section 124(3), Constitution of Botswana, 1966). Once the reports are before the National Assembly, the Public Accounts Committee (PAC) of Parliament scrutinises them and calls for evidence from the accounting officers in the public service. Permanent secretaries for different ministries appear before the PAC to answer for any queries the PAC may have in relation to the AG’s reports. The PAC then reports its findings and recommendations to Parliament. In Botswana, there is no obligation for ministers to respond or to critique reports of the AG.

It is worth noting that the AG in Botswana is appointed by the Executive (president) and reports directly to the Executive (minister responsible for finance). Hence, its independence is compromised since the AG audits and reports to its appointing authority. To ensure the autonomy of SAIs, good practice dictates that SAIs are appointed by and report to Parliament. In South Africa, for example, although the Auditor-General is appointed by the president, the Auditor-General South Africa (AGSA) reports directly to the National Assembly.

6.3.3 Anti-corruption agencies

Anti-corruption agencies can be traced back to 1974 when Hong Kong established an anti-corruption agency, the Independent Commission Against Corruption (ICAC), to deal with a series of institutionalised and organised crimes in Hong Kong During the 1950s and 1960s, Hong Kong experienced institutionalised corruption in the police and among civil officers. Corruption was culturally accepted by then; the society and government were immersed in corruption, and giving and accepting bribes were regarded as a normal way to deal with government officials and to do business. Today, Hong Kong is ranked by Transparency International (TI) as one of the cleanest (corruption free) governments out of 180 countries accessed by TI. For instance, Hong Kong maintained a score of 76 and 77 out of 100 from 2017 to 2022 with a rank of between 11 and 16 out of 180 countries (TI, 2017; 2018; 2019; 2020; 2021; 2022).

Among other things, Hong Kong's success depends on the three-pronged strategy of corruption investigation, prevention and education. The three-pronged strategy has been acknowledged as a leader in anti-corruption approaches and has been adopted worldwide by countries which have established anti-corruption agencies. There are four models of anti-corruption agencies: the universal model, which represents the Hong Kong ICAC type model and its three-pronged approach; the multi-agency model, which is based on the existence of a number of distinct anti-corruption agencies across government ministries and departments established to curb corruption; the investigative model, characterised by a small and centralised investigative commission, for instance, the Singapore Corrupt Practices Investigation Bureau (CPIB); and the Parliamentary model, which includes anti-corruption agencies that report directly to the Legislature and are independent from the Executive (Pillay, 2017).

Notwithstanding the model of the anti-corruption agencies operating in any country, there are factors which are peculiar to their success, including but not limited to, adequate competent human capital, adequate financial resources (TI, 2021), operational independence (lack of political interference) political will to fight corruption, legal powers to question witnesses and to access documents, high levels of information sharing, coordination and cooperation with other anti-corruption agencies (OECD, 2007) and the ability to detect, investigate, analyse and examine information that lead to prosecutions of the corrupt (Quah, 2017)

Botswana has an anti-corruption agency, the Directorate on Corruption and Economic Crime (DCEC) which was established by the Corruption and Economic Act of 1994. Botswana adopted the universal (single) agency model, in line with the Hong Kong ICAC type model. The DCEC mandate is spelt out in section 6 of the Corruption and Economic Act, (1994) and it includes investigating allegations of corruption and economic crime, educating the public on the effects of corruption, and preventing corruption. Thus, the DCEC uses a three-pronged strategy of investigation, prevention and education to fight corruption.

In terms of structure and accountability, the DCEC is under the Office of the President. Its Director-General (DG) is appointed by and accounts to the president. Unlike the New South Wales ICAC, which is accountable to Parliament, the DG is required by section 22 of the Corruption and Economic Crime Act, (1994) to submit annual reports to the President. Section 112 of the Constitution of Botswana (1966) empowers the president to appoint, remove from office, and exercise disciplinary control over the DCEC Director-General. This arrangement compromises the independence and autonomy of the DCEC.

For example, in June 2022, the incumbent, DG Mr Tymon Katlholo was suspended by the president, following his appearance before the Public Accounts Committee in Parliament. The Office of the President stated in a press release that “the decision to suspend Mr Katlholo is necessitated by the fact that in the course of his official duties, he has misconducted himself and exhibited behaviour that is incompatible with the conduct of a public officer” (Ministry for State President, 2022). Under such circumstances, security of tenure of the DG becomes a contentious matter in that they cannot freely investigate the president or other people closely associated with the

president without compromising their stay in office. Thus, the security of tenure of the DG cannot be guaranteed if the president can remove them whenever the President deems it fit (Lekubu, 2019).

The DCEC, just like the Singapore CPIB, is empowered by the Corruption and Economic Crime Act, (1994) to arrest, search and investigate corruption suspects. However, its limitations stem from the fact that it does not have the mandate or authority to prosecute suspects. Rather, it refers suspects to the Directorate of Public Prosecutions (DPP) for a decision on whether to prosecute suspects. The DCEC needs to be empowered to initiate prosecutions on its own without referral to another body. This will limit the bureaucratic red tape of prosecuting suspects.

6.4 Conclusion

The efficacy of accountability measures depends on several aspects. These criteria may encompass the degree of democracy in a particular nation, the legal and operational structure of monitoring institutions, and the independence and autonomy of such agencies. Moreover, the efficacy of monitoring institutions is influenced by political intent, political influence, and intervention. Furthermore, the efficacy of oversight institutions is influenced by elements such as collaboration, coordination, synergy among oversight agencies, and the presence of competent human capital and enough financial resources.

The major limitations of oversight institutions in Botswana, just like in many other African countries, is lack of independence from the Executive. Botswana's Parliament (and many other African countries) and its external oversight institutions are not considered independent from the Executive. The Executive dominates and the appointment of heads of oversight institutions is performed by the president. Instead of reporting directly to Parliament, oversight institutions in Botswana (and in most African countries) report directly to the Executive. Hence, their independence and effectiveness are compromised. The next chapter addressed the research methodology of this study.

Chapter Seven: Research methodology

7.0 Introduction

The previous chapter provided a critical analysis of the accountability mechanisms, approaches and tools that Parliament relies on to exercise its oversight function over the Executive. This chapter elaborates on the research methodology adopted for this doctoral study aimed at developing a framework that can be used as a model for the oversight function of Parliament in Botswana. The framework is necessary to maintain an independent, strong and effective Parliament which can hold the Executive branch of government accountable for their actions. The chapter outlines and justifies the integral constituents of the research methodology as discussed, including but not limited to: the research philosophy in relation to the study, the research approach, strategy, choices of methods, techniques, procedures and time horizon.

The articulation of the research frame (methodological design) of this study is used as suggested by Saunders et. al (2019), who explain the research process through the "research onion" model. Considering this study's philosophical assumptions of being constructionist, epistemological, ontological and axiological, the study applied a qualitative approach. The theoretical perspective of being interpretivist, deductive, inductive and pragmatist in nature also adds to the choice of qualitative research methods as applicable to this study. The explanation and application of these philosophical assumptions in this study are described in detail in the following sections.

7.1 The research onion model

The Saunders *et al.* (2019) research onion model describes the different decisions a researcher needs to make when developing a research methodology relevant for the study. The model is intended to provide guiding principles to select appropriate research methodology overall. It presents a multi-layered diagram, represented by an onion (as illustrated in Figure 7.1), which describes how we collect and analyse data. Specifically, the research 'onion' framework consists of six levels, each representing a crucial aspect to consider while selecting a suitable approach. The six layers are arranged from the outside to the inside of the research onion, namely the research philosophy, approach, strategy, choices, time horizon as well as techniques and procedures (Saunders *et al*., 2016). The research onion model assists researchers in

choosing appropriate methodologies, instruments, and processes. It also enables them to analyse the judgements and choices made throughout the selection process. For example, among other things, the selection of tools, techniques and methods can be influenced by the philosophical position of the researcher, the time available to collect data and the approach to analysing and building meaning to data (Creswell & Creswell, 2018). Essentially, the Saunders *et al*. (2019) "research onion" helps the researcher to understand what decisions to make in terms of research design, and it prompts us to reflect and describe six layers of influence in our research approach.

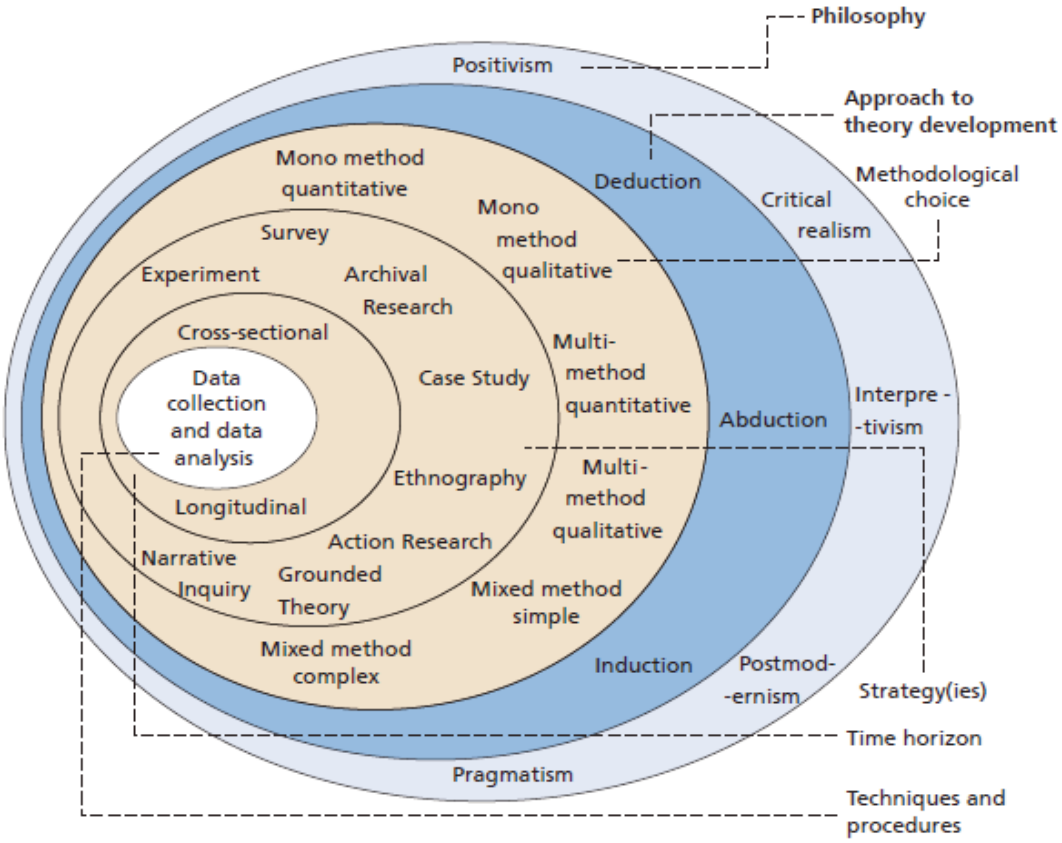

Figure 7.1: The Research Onion' model

Source: Saunders *et al*. (2019:108)

7.1.1 Research philosophy

Philosophy is the use of abstract ideas and beliefs that inform our research (Creswell & Poth, 2018). It is the basis for any study since it describes a set of beliefs the research is usually premised upon. Saunders *et al.* (2016) posit that the research philosophy encompasses key assumptions about the way in which the researcher views the world. The importance of philosophy in research, as articulated by Huff

(2009), is that it provides a direction of research goals and outcomes. That is, the way the problem and research questions of the study are formulated, is influenced by research assumptions and, in turn, impacts how information is sought to answer the question. Research philosophy can be described from the following philosophical assumptions which provide direction to the study: ontology (the researcher's view of reality and/or the nature of reality); epistemology (how the researcher knows reality, what counts as acceptable and/or valid knowledge); axiology (the value stance taken by the researcher); and methodology (the procedures used in the study) (Creswell & Poth, 2018:18–19; Saunders *et al*., 2019; Collis & Hussey, 2009).The subsequent sections provide details on how these philosophical assumptions are applied in this study.

7.1.1.1 Ontology

Ontology is the philosophical assumption about the nature of reality (Creswell & Poth, 2018). It advances the question about what assumptions we would have to make about the way in which the world works (Saunders *et al*., 2019). Johnson and Duverney (2000), and Burrell and Morgan (1979) highlighted two ontological assumptions: realism and nominalism. Realists believe that the external world has an inherent essence and structure that exists, regardless of human knowledge or cognition. Nominalists believe that reality is a construct of the human mind and that many observers might have differing perspectives. The nominalist perspective is consonant with qualitative research because qualitative research embraces the idea of multiple realities.

Hence, Creswell and Poth (2018) argued that, when studying individuals, qualitative researchers investigate persons to report their many realities. For instance, evidence of multiple realities includes the use of multiple forms of evidence in themes and in using the actual words of different individuals and presenting different perspectives. In relation to this study, the nominalist perspective indicates that the partial execution of the separation of powers in Botswana has resulted in structural and functional constraints that serve to limit the effectiveness and even the lack of institutional autonomy of the Botswana's Parliament. From this nominalist perspective, it is clear that its primary role of oversight over the Executive is superfluous. Therefore, this study sought to develop a framework that could serve as a model for the oversight

function of Parliament in Botswana. The framework is necessary to maintain an independent, strong and effective Parliament which can hold the Executive branch of government accountable for their actions or inactions. It is worth noting that the structure of Executive regarding the Legislative arm of government is based on predetermined nature and a structure (as prescribed by the theory of separation of powers, the system(s) of government, and other factors) that could be varied across countries and on the viewpoints of the study participants and the researcher. The researcher reports different perspectives as themes developed from the findings. Therefore, within the two ontological extremes of realism and nominalism, this study could be positioned more towards the nominalist stance and less skewed towards the ontological assumption of realism.

In addition, the interpretative framework of pragmatism has been applied in this study. Pragmatism is a postmodern perspective which focuses on the outcomes of the research (Creswell & Poth, 2018) The emphasis is on what works, and the goal of the researcher is to find solutions to real world problems (Patton, 1990). Accordingly, the ontological beliefs of a pragmatist interpretative framework are that reality is what is useful, practical and what works (Creswell & Creswell, 2018). Therefore, this study is positioned towards the pragmatist interpretative framework because the aim of the research is to address the functional limitations of the oversight function of Botswana's Parliament.

7.1.1.2 Epistemology

With the epistemological assumption, knowledge is known through the subjective experiences of people (Creswell & Poth, 2018). It is about what constitutes acceptable knowledge (Saunders *et al.*, 2019) and what is acceptable as valid knowledge (Collis & Hussey, 2009). The aim of this study is to develop a framework necessary to maintain an independent, strong and effective Parliament with the capacity to hold the Executive branch of government accountable. The developed framework could assist as a model which is able to guide the oversight function of Parliament in Botswana. A model of this nature would specifically assist in overcoming the structural and legal limitations of Botswana's Parliament vis-à-vis the Executive branch of government. In this study, the researcher had more authority over data collection.

Consequently, the research falls under the view of a social constructivist (interpretivist) framework. In social constructivism, individuals seek understanding of the world in which they live and work. They develop varied, subjective and multiple meanings of their experiences, leading the researcher to look for a complexity of views compared to narrowing the meanings into a few categories of ideas (Creswell & Poth, 2018). Therefore, the goal of this research is to rely as much as possible on the participants' views (Crotty, 1998) about the structural and legal limitations of the Botswana's Parliament which limit the effectiveness of its oversight function as well as appropriate solutions to address the research problem of this study.

The research problem to be addressed in this study is: What is the role and function of Parliament in keeping the Executive accountable? With the help of the interview guide, participants' views were obtained through the face-to-face interview process. The interview guide had broad, open-ended questions that provided opportunities for further probing on the participants' responses. This is an example of social constructionism as the reality was socially constructed. In this study, the researcher is deemed to be a part of the research and recognises that their experiences and background shape their interpretation.

In addition, experiences and reality are determined by people rather than by objectives and external factors, and this is a core element of social constructionism, as explained by Easterby-Smith *et al.* (2008). Therefore, a constructionist interpretative framework can be identified as the best way of enquiring into the research question of this study. Furthermore, linked to the epistemological assumption of this study is the interpretative framework of pragmatism**.** The epistemological beliefs of a pragmatist interpretative framework are that reality is known through using many tools of research which reflect both deductive and inductive evidence. As outlined below, this study employs both deductive and inductive reasoning.

The following measures of this study explain the epistemological pragmatism nature of the research: The research used multiple sources of data collection, including members of Parliament (MPs), members of the Executive arm of government, civil society organisations such as political parties, federations of trade unions and the Botswana Council of Non-Governmental Organisations (BOCONGO) as well as University of Botswana lecturers in the Department of Political and Administrative

Studies. In addition, the researcher was determined to undertake a study that would best address the research problem identified in this study, and was concerned about its practical implications.

7.1.1.3 Axiology

Axiology is about the value stance of the researchers (Denzin & Lincoln, 2011). In a qualitative study, the researchers acknowledge the subjective aspect of the study and disclose their values and prejudices openly (Cresswell & Poth, 2018), along with the subjective nature of the data collected from the field. This study could be characterised as value laden since the choice of research area, formulation of research questions, formulation of research design, choice of methods, data collection techniques, analysis of data, interpretation of data and conclusions could be intruded by the values that the researcher holds (Bryman & Bell, 2003). Nevertheless, in accordance with the axiological pragmatist beliefs, the knowledge gathered by this study reflects both the researcher's and the participants' views, as presented, analysed and discussed in Chapter Eight of this study.

7.2 Research approaches

Saunders *et al*. (2016:145) identify three main research approaches, namely deductive, inductive and abductive approaches. A deductive approach involves beginning a study with a theory and aiming to build on it or to test it through research, whereas an inductive approach entail generating theories from research, rather than starting a study with a theory as a foundation. It is about collecting data and developing theory as a result of the data analysis. An abductive approach combines both inductive and deductive reasoning. This study used both deductive and inductive approaches. As for the deductive approach, the study used the theory of separation of powers as its framework for data analysis, interpretation of results and discussion of findings. In addition, the research used an inductive approach as it attempted to develop a framework to guide the oversight function of Parliament from the analysis, interpretation and discussion of study participants' views concerning the oversight function of Parliament.

Essentially, two main approaches of research were involved in this study. First, was the explanatory approach (science), where the study began by identifying and

explaining the research problem through outlining the current practice in as far as the oversight function of Botswana's Parliament is concerned. Specifically, the study looked at the structural and legal limitations of Botswana's Parliament, which renders its oversight function futile. Having identified the problem, the suggestions for the problem solutions were drawn from the existing knowledge/theory base (deductive) as well as from study participants through the data collection and analysis exercise (inductive). Second, is the design science stage (Van Aken, 2005), where the suggestions on how to solve the identified problem as provided by the existing theory (in this case the theory of separation of powers), the data collection (from study participants) and the analysis process was used to develop a framework for the oversight function of Parliament in Botswana.

Hence, explanatory approach and design sciences both play a significant role in this study. The explanatory approach led to an understanding of the nature and the causes of the problem, and was also helpful in designing solutions. On the other hand, the design science led to the development and validation of the solution (framework) itself and the recommendations made (Van Aken, 2005), as outlined respectively in Chapters Eight and Nine of this study.

7.3 Methodological choices

There are three main methodological choices that can be adopted in any study, depending on the philosophical assumptions of the study, the procedures of inquiry, the research methods and the nature of the research problem being addressed (Creswell & Creswell, 2018). The three main research approaches (choices) are qualitative, quantitative and mixed-methods approaches. Qualitative research is framed in terms of using words rather than numbers, whereas quantitative research uses numbers instead of words. Mixed-methods research is an approach to inquiry involving collecting and analysing both qualitative and quantitative data (Creswell & Creswell, 2018). These choices are used to support evidence gathering and are usually reflective of a deductive or an inductive approach. Usually, qualitative techniques will align with an inductive approach, while quantitative research tends to reflect a deductive approach. This study adopts a qualitative approach as informed by similar studies such as those of Sebudubudu and Osei-Hwedie (2006), Zadeh (2007), Oseko (2012), Modungwa (2014) and Zwingmann, (2016). This is in consideration of

philosophical assumptions of being constructionist, epistemological, ontological, and axiological, and the theoretical perspectives of being interpretivist, deductive, inductive and pragmatist in nature. Based on the philosophical position of the research as described above, qualitative strategies are best suited for this study.

As highlighted above, there is sufficient evidence that some previous studies investigating a similar research problem used a qualitative method of inquiry. For instance, the following studies, including journal articles as well as doctoral and master's theses, adopted a qualitative method of inquiry: Modungwa (2014) considered continuity and change in Botswana's democracy in an assessment of the Presidency. For Sebudubudu and Osei-Hwedie (2006), for their investigation of the pitfalls of Parliamentary democracy in Botswana, employed qualitative research methods. The doctoral research study undertaken by Oseko (2012) at the University of Leicester, regarding the Judicial independence in Kenya: is considered to be a model in the choice of research methods for this study. Similarly, Zadeh (2007), outlines the concept of the separation of powers and the Supreme Court: A new institutional analysis of inter-branch disputes, where qualitative research methods are employed in the empirical component of the research.

In addition, Zwingmann (2016) used qualitative methods when looking at the separation of powers the in Germany. In particular, Zwingmann (2016) explores the relationship of the German Federal Government and Parliament in the EU context. Therefore, on this premise, as informed by extant literature, this study also used a qualitative method of inquiry in the investigation of what should be contained in an oversight framework for the Parliament of Botswana to foster the separation of powers.

Qualitative research begins with assumptions and the use of interpretive/theoretical frameworks that inform the study of research problems addressing the meaning that individuals or groups ascribe to a social or human problem (Creswell & Poth, 2018:42). Creswell and Creswell (2018) posit that a qualitative approach to research is appropriate when a problem is explored, when there is a detailed understanding of the problem, and when there is understanding regarding the contexts or settings in which participants in a study address a problem. In the context of this study, a qualitative approach is deemed appropriate as it helps the researcher to examine accountability

mechanisms and approaches for the Executive authority necessary for strengthening the role and function of Parliament.

The primary purpose of the study was set out to examine the role and function of Parliament of the Republic of Botswana in keeping the Executive authority accountable. To achieve this purpose, a qualitative approach was employed to gather experiences of research participants on the accountability mechanisms and approaches that Parliament uses to hold the Executive accountable for its actions. The qualitative approach helps to discover new thoughts and individual views. By using this method, the researcher was able to gather individual experiences and views on the research problem and to inform the applicability of the separation of powers. The findings were used to guide the development of a relevant framework for strengthening the oversight role and function of Parliament as well as for maintaining the separation of powers, especially among the Parliament and the Executive branches of the Republic of Botswana.

7.4 Research design

Research design (strategy) is a plan for conducting a study (Creswell & Poth, 2018). A research design is a structured framework of rules and instructions used to handle a research problem. Research designs are methodologies used in qualitative, quantitative, and mixed method approaches to guide the procedures of a research project (Creswell & Creswell, 2018).

There are several research designs that can be used in a qualitative study. For instance, narrative, phenomenological, grounded theory, ethnographic, cross-sectional, interpretive, and case study research designs (Creswell & Creswell, 2018). Kothari and Garg (2014) posit that research design is the organisation of circumstances for gathering and analysing data in a way that balances being pertinent to the research goal and efficient in process. For Denzin and Lincoln (2011) as well as for Saunders *et al*. (2019), research designs are also called strategies of inquiry that integrate the components of the study making sure that the researcher addresses the research problem effectively. The study seeks to examine accountability mechanisms and approaches for the Executive necessary for strengthening the role and function of Parliament. This is undertaken to ensure a bespoke development of a framework for

strengthening the role and function of Parliament as well as for maintaining the separation of powers, especially between Parliament and the Executive. To achieve this objective, the study seeks to answer the following question: What should be contained in an oversight framework for the Parliament of Botswana to foster the separation of powers?

Therefore, the study adopts a qualitative, explanatory, case study design, since the Republic of Botswana is used as a case study. The study is explanatory since it begins by identifying and explaining the research problem through outlining the current practice in as far as the oversight function of Botswana's Parliament is concerned. Specifically, the study looks at the structural and legal limitations of Botswana's Parliament which renders its oversight function futile. Although grounded theory design is suitable for this study, the case study design has been selected as the most appropriate for this study. Grounded theory is used when the researcher aims to develop a universal abstract theory of a process, activity, or interaction based on the perspectives of study participants (Creswell & Creswell, 2018).

Case study design is deemed to be the most appropriate strategy for this study as it assists the researcher to obtain a good understanding of the context of the research and the processes (Saunders *et al.,* 2007), and it would be possible to get the answers to both the explanatory science and the design science part of the research, as explained above. The case study research involves the study of a case or cases within a real life, contemporary setting (Yin, 2014). Smit *et al*. (2007:38) assert that the benefit of making use of a case study is that it helps a researcher to obtain insights in a particular matter by gaining in-depth knowledge on the phenomenon being studied and to provide an alternative view in relation to the phenomenon. Creswell and Poth (2018:100–101) identify procedures for conducting case study research as follows:

- First, determine whether the research problem is most effectively analysed using a case study technique. Case study design is suitable for this study since the Republic of Botswana is used as a case study in juxtaposition with the cases of several other countries.
- Second, determine the purpose of the research and choose the case (or cases). The intent of the study is to examine the discourse regarding the role and function of Parliament regarding their oversight responsibilities over the Executive branch

of government in Botswana. Hence, the Republic of Botswana has been chosen as a single case study.

- Third, develop protocols for doing thorough data collecting from various sources. Data were collected from both primary and secondary data sources including but not limited to face-to-face interviews, official documents as well as journal articles, books and conference proceedings.
- Fourth, define the analytical method for creating case descriptions using themes and contextual details. The study used qualitative thematic analysis to analyse data from face-to-face interviews with selected study participants.
- Fifth, summarise the inferred significance of the case and insights gained via the use of case assertions. This was done in the 'empirical findings' chapter, where data gathered is presented, analysed and discussed. The findings were used to ensure the bespoke development of a framework for strengthening the oversight role and function of Parliament as well as for maintaining the separation of powers, especially between Parliament and the Executive in the Republic of Botswana.

7.5 Time horizon

Essentially, the time horizon describes at how many points in time a researcher plans to collect data**.** Saunders *et al*. (2016) made a comparison between two studies based on their time horizon. The two standpoints for time horizon include cross-sectional studies and longitudinal studies. A cross-sectional study involves a study in which the researcher collects data at one (snapshot) point in time, whereas longitudinal studies focus on investigating variables or group of subjects over a long period of time (Collis & Hussey, 2009; Saunders *et al*., 2016). Considering its financial and time implications of data collection and its academic nature, this study did not require an investigation over a long period of time but rather at one point in time. Therefore, this study is categorised as cross-sectional research.

7.6 Data collection methods

Data collection methods appropriate for a qualitative study include interviews, observations and documents analysis, among others. These methods can be categorised into primary and secondary sources of data collection. Examples of primary sources include face-to-face interviews and official documents of

organisations, whereas secondary sources include published scholarly books, book chapters, journal articles and conference proceedings.

This study utilised both primary and secondary sources for data collection. Primary data were collected through face-to-face interviews with target study participants, supplemented by the analysis of official documents of the following organisations: Parliament of the Republic of Botswana, Law Society of Botswana, African Centre for Parliamentary Affairs (ACEPA), Presidential Commission of Inquiry into the Review of Constitution of Botswana (2022), International Parliamentary Union (IPU), SADC Parliamentary Forum (SADC PF), Commonwealth Parliamentary Association (CPA), and the United Nations Development Programme (UNDP). On the other hand, secondary data were collected through the use of published academic journals, scholarly books and conference proceedings. Information gathered from both primary and secondary sources was analysed and used to develop a framework necessary to guide the oversight role and function of Parliament. The use of multiple methods of data collection is meant to balance the shortcomings of different methods and to triangulate data.

7.6.1 Semi-structured interviews

According to Brinkmann and Kvale (2015), in an interview, knowledge is created through the interaction between the interviewer and the interviewee in an effort to comprehend the world from the subject's perspective, to reveal the significance of their experiences, and to explore their lived reality. It is for this reason that interviews were deemed appropriate for this study, as they helped the researcher to gather insights and opinions from the research participants on what the role and function of Parliament is in keeping the Executive accountable. Specifically, in-depth, semi-structured interviews were conducted with purposively sampled study participants. Participants' responses were central in guiding the development of the oversight framework for the Republic of Botswana's Parliament.

An interview guide was developed for the purpose of semi-structured face-to-face interviews with study participants. Yin (2014) recommends a pilot test to refine data collection plans and to develop relevant lines of questioning. Through pilot testing, the interview guide was pre-tested to ensure that all questions were formulated clearly

and understood. This was done by interviewing a small sample of the target population as a precautionary test measure. The data collection exercise was carried out over a period of four months from the beginning of March 2022 to the end of June 2022.

The process of collecting field data was particularly intriguing owing to the willingness of research participants, particularly members of Parliament and leaders of civil society groups, to be interviewed. The procedure started with acquiring research authorisation from the Ministry of Presidential Affairs and Public Administration, which was followed by scheduling visits with the desired study participants. The majority of members of Parliament expressed their interest in being interviewed. Conversely, conducting interviews with members of the Executive was challenging owing to the majority of them expressing their unease at being interviewed. Nevertheless, several members of Parliament assisted in identifying both present and past members of the Executive who were inclined to participate in interviews. The members of Parliament aided by contacting the individual members of the Executive and scheduling interview meetings on behalf of the lead investigator of this study. This is how the researcher conducted interviews successfully with members of the Executive.

Face-to-face interviews were conducted at the offices of the research participants and, in a few instances, in their private homes or in public areas such as restaurants. As the study devised an interview guide for semi-structured interviews, the interviews primarily took the shape of a discussion rather than adhering to a predetermined set of interview questions. The conversations facilitated the acquisition of comprehensive data regarding the Parliamentary oversight role, encompassing its challenges and potential remedies to address the obstacles identified.

Challenges encountered involve individuals who delayed the previously arranged interview timetable. Nevertheless, individuals who rescheduled were subsequently interviewed. The data collecting exercise yielded a positive overall experience, as the majority of research participants showed an interest to participate in interviews. The participants were highly cooperative and gave crucial information needed for the successful completion of this study.

7.6.2 Complementarity of data sources

In addition to the face-to-face interviews, a desktop review of official documents was undertaken to complement the empirical evidence data obtained through interviews. This was a necessary part of data collection, which assisted to a great extent in maintaining the reliability of primary data for the study. In this instance, the official documents of the following organisations were taken into consideration: the Parliament of the Republic of Botswana, the Law Society of Botswana, the African Centre for Parliamentary Affairs (ACEPA), the Presidential Commission of Inquiry into the Review of Constitution of Botswana (2022), the International Parliamentary Union (IPU), the SADC Parliamentary Forum (SADC PF), the Commonwealth Parliamentary Association (CPA), and the United Nations Development Programme (UNDP). These official sources were considered to be part of the primary data collection for information relating to the questions used in data collection tools. Having two distinct data collection methods helps in ensuring triangulation of data as a qualitative method, especially against the semi-structured interviews, which makes provision for comprehensive understanding of the nature of the problem outlined in the study.

Obviously, a primary data collection approach was used in addition to the secondary sources of data. Secondary data included the use of published scholarly books, journal articles, book chapters, as well as relevant doctoral and masters' dissertations. While secondary data was initially used to foreground this study in the initial processes where problematisation was undertaken, the subsequent chapters (Chapters Two to Six) serve to provide discussions in which the notion of the separation is contextualised and understood within scholarly discourses in public administration and related disciplines. It is imperative since this chapter also provides critical reflections on the ontological, epistemological and axiological premises as a way of outlining the locus and positioning of this separation of powers discourse (see section 7.1).

7.7 Population and sampling

Bless and Higson-Smith (2000:30) define the population of the study as, "the entire set of objects or people which is the focus of the research and about which the researcher wants to determine some characteristics". Creswell and Poth (2018) define the population of the study as a clearly defined collection of individuals, objects or

events known to have common or similar traits and characteristics that the researcher is interested in studying. The unit of analysis of this study is Parliament and the Executive branches of government in Botswana. Therefore, the target population for this study was the Legislative and the Executive branches of government in Botswana. Specifically, the target population included both former and current members of the Executive and the Legislative branches of government. In accordance with section 58 of the Constitution of Botswana of 1966, the current 12th Parliament of Botswana, consists of 63 members of Parliament and the president. On the other hand, the Executive consists of 18 Cabinet ministers, 10 assistant ministers and the president, as provided for by section 42(1-3) as read, with section 47 of the Constitution of Botswana of 1966. Cabinet ministers and assistant ministers are part of the 63 MPs as outlined above. The target population also included civil society organisations such as political parties, federations of trade unions and the Botswana Council of Non-Governmental Organisations (BOCONGO) as well as University of Botswana lecturers in the Department of Political and Administrative Studies.

Hence, the overall population of this study is 79 participants. The 79 participants include 63 MPs, (comprising both members of the Executive and MPs), four leaders of four opposition political parties represented in Parliament, one umbrella organisation (BOCONGO) representing non-governmental organisations in Botswana, two federations of trade unions in Botswana and nine University of Botswana lecturers in the Department of Political and Administrative Studies.

Civil society organisations were included as part of the target population mainly because, like the Parliament of Botswana, they represent the interests of the citizens. Civil society organisations are important in this study since a well-functioning democracy requires not only an effective Parliament but also a vibrant civil society which can be an active lobbyist to ensure public responsibility and accountability (Sebudubudu *et al*., 2013).

Civil society organisations are independent of the state and have the ability to work together to advance the interests of its members, aiming to guarantee a government that is receptive and responsible (Nyang'oro, 1997). Maundeni (2005) argues that civic power is seen as a tool to restrict state power, preventing abuses and corruption while enforcing accountability. For instance, Osei-Hwedie (2001) maintains that the

opposition's function is to oversee and regulate the activities of the governing party, prevent misuse of authority, and guarantee, among other things, that the government upholds the welfare of the public.

Therefore, Parliament's role of representation and checking the Executive power is a role shared with civil society organisations. Hence, the relevance of civil society organisations in this study cannot be overemphasised. For example, some countries have civil society groups called Parliamentary Monitoring Organisations (PMOs) that watch and record the activities of Parliaments carefully. Their endeavours aim to emphasise preexisting challenges and to stimulate the improvement of the efficiency of legislative institutions. Argentina, Mexico, Canada, and Brazil are among the nations that have PMOs.

The University of Botswana lecturers in the Department of Political and Administrative Studies are considered important in this study mainly because of their technical expertise in the subject matter of this study, specifically, their expertise in Executive–Legislative relations in Botswana and their understanding of Botswana's system of government. Therefore, the study included five currently active political parties represented in Parliament, three federations of trade unions (currently, there are only three federations of trade unions in Botswana), the University of Botswana and the Botswana Council of Non-Governmental Organisations (BOCONGO).

Purposive/judgemental sampling was used to select participants for the study. In purposive sampling, the researcher chooses specific persons and locations for the study because they can contribute deliberately to the comprehension of the research topic and the main focus of the investigation. (Creswell & Poth, 2018). However, some purposively sampled study participants referred this study to other individuals, who helped in obtaining relevant data for the study. Therefore, snowball sampling was also used. Snowball sampling is simply a kind of referral sampling. In snowball sampling, after the researcher has interviewed a participant, the researcher would then ask the participant to refer them to individuals who are knowledgeable or who can assist in the subject matter.

The overall sample size is 33 study participants, which comprised five former members of Parliament, four former members of the Executive, five current members of

Parliament, four current members of the Executive, Speaker of the National Assembly, former Clerk of the National Assembly, former Chief Justice and former Judge of the High Court, four academic experts in the field of political and administrative studies and seven leaders of civil society organisations, particularly leaders of both the ruling and opposition political parties, leaders of federations of trade unions in Botswana and the leader of the Botswana Council of Non-Governmental Organisations (BOCONGO).

7.8 Details of data collection

The study collected data from two primary sources: face-to-face interviews and a thorough examination of official documents from chosen organisations, as indicated in Tables 7.1. and 7.2, respectively. Employing two distinct data collection methods promotes data triangulation and facilitates a more comprehensive understanding of the subject matter outlined in the study. Triangulation is crucial for data collection and greatly enhances the trustworthiness of the primary data for the study.

Table 7.1: Details of study participants

Category	**Number of participants**
Members of Parliament (MPs), current and former. Legislative Branch	**10**
Members of the Executive, current and former. Executive Branch	**8**
Speaker of the National Assembly, Parliament	**1**
Former Clerk of the National Assembly, Parliament	**1**
Former Chief Justice and former Judge of the High Court, Judicial Branch	**2**

Category	Number of participants
Political Party Leaders, Civil Society	**2**
Chief Executive Officer, Botswana Council of Non-Governmental Organisations, (BOCONGO). Civil Society	**1**
University of Botswana, lecturers in the Department of Political and Administrative Studies	**4**
Leaders of the Federation of Trade Unions, Civil society	**2**
Journalists, civil society	**2**
Total	**33**

Source: Author's field data (2022)

The categories of participants, as outlined in Table 7.1, are deemed representative (Thorne, 2016) of different stakeholders relevant to this study.

Table 7.2: Official documents reviewed.

Organisation/Institution	Title of the document	Year
Parliament of the Republic of Botswana	Report of the study on the Independence of Parliament of Botswana	2003
Parliament of the Republic of Botswana	2011 Task force report on the Review of the Recommendations of the Study on the Independence	2011

Organisation/Institution	Title of the document	Year
	of Parliament of Botswana. Gaborone	
Office of the President of the Republic of Botswana	Report of the Presidential Commission of Inquiry into the Review of the Constitution of Botswana	2022
Inter-Parliamentary Union (IPU) and United Nations Development Programme (UNDP)	Global Parliamentary Report 2017: Parliamentary oversight: Parliament's power to hold government to account	2017
Inter-Parliamentary Union (IPU) and United Nations Development Programme (UNDP)	Global Parliamentary Report 2022: Public engagement in the work of Parliament	2022
Inter-Parliamentary Union (IPU)	Evaluating Parliament: A self-assessment toolkit for Parliaments	2008
SADC Parliamentary Forum (SADC PF)	Principles and Guidelines for Parliaments on curbing corruption in the SADC Region	2022
SADC Parliamentary Forum (SADC PF)	Principles and Guidelines for Parliaments in the promotion and protection of human rights in the SADC Region	2022

Organisation/Institution	Title of the document	Year
SADC Parliamentary Forum (SADC PF)	Regional Policy Dialogue on "Strengthening separation of powers & Parliamentary oversight in the SADC Region: A leap towards democratic accountability and inclusive governance"	2022
SADC Parliamentary Forum (SADC PF)	Benchmarks for Democratic Legislatures in Southern Africa	2012
Commonwealth Parliamentary Association (CPA)	Separation of Powers: 20 years of the Commonwealth Latimer House Principles	2023
Commonwealth Parliamentary Association (CPA)	2023 Evaluation of the CPA recommended benchmarks for Democratic Legislatures Programme 2018-2022	2023
Commonwealth Parliamentary Association (CPA)	Model Law for Independent Parliaments: Establishing Parliamentary Service Commissions for Commonwealth Legislatures	2020
Commonwealth Parliamentary Association (CPA)	Recommended Benchmarks for Democratic Legislatures	2018

Organisation/Institution	Title of the document	Year
Commonwealth Parliamentary Association (CPA)	*The Parliamentarian* - Issue 3, Parliamentary Independence and the Separation of Powers.	2017
Commonwealth Parliamentary Association (CPA)	Commonwealth Latimer House Principles on the three branches of government	2009
African Centre for Parliamentary Affairs (ACEPA)	Parliament and GSS: a growing relationship for evidence use in Ghana	2023
African Centre for Parliamentary Affairs (ACEPA)	African Parliaments: Systems of evidence in practice	2022
African Centre for Parliamentary Affairs (ACEPA)	Evidence in African Parliaments	2017

Source: Author's desktop review data process (2022)

7.9 Data analysis

Data analysis involves converting the gathered data into useful information. Analysing data usually entails reducing a large volume of collected data to manageable proportions and identifying patterns and themes in the data to address the proportions of a study (Yin, 2014). This study used the thematic analysis method of data analysis in a qualitative inquiry. Data obtained through semi-structured interviews were transcribed verbatim to address the issue of accuracy in data capturing (Creswell & Creswell, 2018). Field data from each study participant were transcribed verbatim. Using In-Vivo and descriptive coding (Saldana, 2013), all transcripts were coded using

the Microsoft Word comment feature. All comments were treated as codes (Braun & Clarke, 2006) derived from study participants' data.

Furthermore, all codes were extracted from Microsoft Word, analysed and rearranged into sub-categories, categories and themes (Clarke *et al*., 2015). Data from the official documents were analysed in accordance with the objectives of this study and in line with the themes generated from the face-to-face interviews. The emphasis was to determine how generated themes and/or findings from the face-to-face interviews align with or are dissonant from official documents and reports. Thus, a desktop review of official documents helped the study to analyse and discuss findings from the face-to-face interviews.

7.9.1 Thematic analysis

Thematic analysis is a method for identifying and interpreting patterns of meaning across qualitative data (Clarke *et al*., 2015). Gibson (2006) describes thematic analysis as a method of handling data that entails developing and applying 'codes' to the data. The data being examined might come in many formats, such as interview transcripts, field notes, policy papers, pictures, and video recordings. In this study thematic analysis was used and the steps, as prescribed by Braun and Clarke (2006), were followed:

Step 1: Familiarise self with data: This includes reading and re-reading transcripts and listening to recordings, writing down word for word what is captured in the audio recording.

Step 2: Generate initial codes: which includes sorting out data into categories;

Step 3: Search for themes by identifying common areas in participants' responses, which will be used to establish themes;

Step 4: Review to refine and discard unnecessary themes;

Step 5: Define and name themes to get a clear picture of the emerging findings; and

Step 6: Produce reports where data will be transformed and given meaning.

7.10 Validity and reliability

Multiple validity procedures were undertaken to determine the accuracy and credibility of this study's findings. First, the accuracy of the findings was checked by using the triangulation method of data collection. Specifically, the study used two primary sources of data to generate and justify themes. The two major sources of data collection for this study included face-to-face interviews with target participants, and the analysis of official documents of relevant organisations and institutions. Official documents were mainly derived from the following institutions: Parliament of the Republic of Botswana, Law Society of Botswana, Presidential Commission of Inquiry into the Review of the 1966 Constitution of Botswana, African Centre for Parliamentary Affairs (ACEPA), International Parliamentary Union (IPU), SADC Parliamentary Forum, Commonwealth Parliamentary Association (CPA), and the United Nations Development Programme (UNDP). Hence, the themes for this study were established by converging data from the two primary sources which complemented each other. In addition, the credibility of the findings was established by synthesising themes derived from several viewpoints of the study participants.

Second, the credibility of the study findings was ascertained by doing a thorough stakeholder mapping and analysis before the field survey could commence. This was done to ensure the inclusion of all relevant stakeholders in the study and for the purpose of gathering various opinions from all the stakeholders. The stakeholder analysis was also done to ensure that the study interviews experienced and knowledgeable individuals on the issues of Parliamentary oversight. Hence, a sample of participants from all relevant stakeholders were interviewed. Relevant stakeholders identified for this study included current and former members of Parliament, current and former members of the Executive, leaders of the civil society organisations and academics from the Department of Political and Administrative Studies of the University of Botswana, specifically those who had written extensively on matters related to the research problem of this study.

Third, to ensure the authenticity of the findings, the research questions and objectives of this study were derived from and/or were guided by the literature reviewed. The development of semi-structured interview guide was, in turn, guided by the research questions and objectives of this study. Furthermore, a pilot study was carried out as a

way of establishing whether the semi-structured interview guide had all the questions that capture the intended information and to determine the validity of each question.

In terms of reliability, the study employed qualitative methodologies akin to those utilised by past researchers who investigated comparable issues to the one examined in this study. Data quality control was undertaken to ensure that the transcripts from the field data were free from omissions or mistakes. In addition, a comprehensive examination was conducted throughout the data coding phase, primarily to avoid any alteration in the interpretation of codes during the coding procedure.

7.11 Ethical considerations

All anticipated and emergent ethical issues related to principles guiding ethical research were addressed in this study. Principles guiding ethical research include but are not limited to respect for persons, and concern for welfare and justice (Creswell & Poth, 2018). These principles were addressed in this study as follows. The research adhered to and applied principles of confidentiality, anonymity, the right of participants to withdraw from participation in the interview at any time as well as the right to obtain informed consent from participants.

Ethical clearance as well as the research permit were sought from all different stakeholders before going to the field. Specifically, to comply with the research ethics, the researcher applied for and was granted ethical approval to conduct a field research, by the School of Government Studies, Research Ethics Committee of the North-West University. This was followed by an application for a research permit with the Ministry of the State President in Botswana in order to conduct the research in Botswana. A permit to conduct the research in Botswana was duly granted.

During the data collection exercise, the following ethical considerations regarding participants were implemented. Informed consent**:** Informed consent was used to demonstrate respect for the participant's right to autonomy. Before participants could participate in the study, they were informed about the purpose of the study, the risks (if any) and the benefits of the study, how they were identified to participate in the study, and the person who would be conducting the study. Participants who were willing to participate were required to sign a written informed consent from before participating in the study. They were assured of confidentiality and anonymity.

Participants were, therefore, informed that their personal identifiable information, which includes names and contact details, would not be made available to anyone who is not directly involved in the study.

Alternatively, participants were not requested to provide their names. They were informed that the researcher would be the only one who has access to the true identities of participants and that personal identifiable information would not be included in reports or publications. Participants were further informed of their right to ask questions or to voice their opinions without fear of victimisation. Most importantly, participants were informed that they have the right to participate or withdraw from the study (at any time) without fear of being victimised and that their decisions would be respected throughout the study. (Creswell & Creswell, 2018; Creswell & Poth, 2018).

7.12 Conclusion

This chapter attempted to outline and describe the research methodology of this study. There was special emphasis on the research philosophy, approach, strategy, choices, time horizon, population, sampling procedures, ethical considerations as well as techniques and procedures of data collection and analysis. It is worth noting that the study adopted a qualitative approach considering its philosophical assumptions of being constructionist, epistemological, ontological, axiological and the theoretical perspective of being interpretivist, deductive, inductive and pragmatist in nature. The next chapter presents the analysis and discusses the findings of this study.

Chapter Eight: A framework necessary to guide the oversight role and function of Parliament.

8.0 Introduction

The previous chapter outlined the research philosophy, the design, and the research methodology of this study. This chapter presents, analyses and discusses the findings of the study in accordance with the themes generated from the data collection and coding exercise. It is worth noting that this study seeks to analyse the oversight roles and functions of the Republic of Botswana Parliament. This examination is necessary to maintain an independent, strong and effective Parliament which can hold the Executive branch of government accountable for their actions or inactions. Structural, legal, operational and a lack of institutional autonomy constraints experienced by Botswana Parliament have rendered its oversight function over the Executive futile (Sebudubudu *et al*., 2017). The study therefore seeks to develop a framework that can be used as a model for the oversight function of Parliament in Botswana. The framework is developed from the analysis of the empirical evidence data gathered from relevant stakeholders and from the desktop review and analysis of official documents as presented in Tables 7.1. and 7.2 in Chapter Seven.

The chapter begins by presenting details of the study participants, including categories and numbers in each category, followed by a presentation of the official documents examined.

8.1 Data transcription, coding and analysis

Field data from each study participant was transcribed verbatim. Using the In-Vivo and descriptive coding (Saldana, 2013), all transcripts were coded using the Microsoft Word comment feature. All the comments were then treated as codes (Braun & Clarke, 2006) derived from study participants' data. Furthermore, all codes were extracted from Microsoft Word, analysed and then rearranged into sub-categories, categories and themes (Clarke *et al*., 2015).

8.2 Major themes identified.

Various themes emerged from the field data collection exercise, data transcription, coding and analysis processes, described in section 8.1 as major factors affecting the oversight responsibilities of the Republic of Botswana Parliament. The themes, categories and sub-categories are presented in Table 8.1.

Table 8.1: Themes, categories and sub-categories

Themes	Categories and sub-categories
Legal Parliamentary Oversight Challenges	**Independence of Parliament** • Fusion of Executive and Legislative powers • Botswana's Parliamentary system • Parliament is a department under the Office of the President • Dominance of the Executive over Parliament **Powers of the president** • Executive powers • Assent Bills • Prorogation and dissolution of Parliament • Appointment of senior government officials and senior officials of oversight institutions **Motion of no confidence** • The president has the power to dissolve Parliament. **Number of members of Parliament (MPs)** • Insufficient MPs

Themes	Categories and sub-categories
	Qualifications of members of Parliament • The majority of MPs have basic or no qualifications
Administrative Parliamentary oversight challenges	**Parliament is a department under the Office of the President** • Parliament depends on the Office of the President for finance and staffing. **Office of the Speaker and Deputy Speaker** • The Speaker is not autonomous. • Deputy speaker is an MP, nominated from the ruling party MPs. **Support staff for members of Parliament.** • No research officers for MPs • No legal advisors for MPs
Operational Parliamentary oversight challenges	**Single Dominant Political Party** • Dominant ruling party • Weak opposition parties • Weak civil society • Party caucus. **Parliamentary committees** • Insufficient MPs for committee activities

Themes	Categories and sub-categories
	• Lack of research staff for committee activities • Lack of legal advisors • Parliamentary committees dominated by the ruling party MPs. **Government business versus private members business** • Parliament dominated by government business. • No President question time
Other Parliamentary oversight challenges	**Extra-Parliamentary oversight institutions** • Not autonomous

Source: Author's field data (2022)

8.2.1 Legal Parliamentary oversight challenges

Legal Parliamentary oversight challenges are constraints, limitations and/or problems generated by the law governing the establishment and running of Parliament. The law may be in the form of the Constitution, statutes and general orders governing the operations of Parliament. This study revealed that the majority of legal constraints impeding the effectiveness of the Botswana Parliament in the exercise of its oversight functions emanate mainly from the Constitution of Botswana of 1966. Specifically, study participants revealed that the lack of independence of Parliament is a major legal constraint which stems from the way the Botswana Parliament is established by the Constitution of Botswana of 1966. The lack of independence of Parliament in Botswana can be attributed to several factors, as reported by study participants. These factors include the fusion of Executive and Legislative powers, Parliament being a department under the Office of the President, the extensive Executive powers held by the president, the motion of no confidence, and the dominance of the Executive over

Parliament. The next section summarises, examines, and discusses the conclusions of this study regarding the reasons that hinder the independence of the Botswana Parliament, as outlined above.

8.2.1.1 Independence of Parliament

The lack of independence of Parliament was identified by the field study participants as one of the major factors that affect the oversight function of Botswana Parliament negatively. Out of 33 participants interviewed, 33 (100%) participants argued that Botswana's Parliament is not independent of the Executive, and that has consequently led to a weaker Parliament in as far as its oversight responsibilities are concerned. In relation to this matter, a current member of Parliament included among the research participants stated:

> The ability of Parliament to provide oversight starts with its independence, the extent to which it is autonomous and not under the control of the Executive. In the case of Botswana, Parliament is just one of the departments under the Office of the President; it is not independent from the Executive.

Regarding the same issue, another study participant, a former MP said:

> The first and fundamental weakness of Botswana's Parliament is that contrary to the usual practice and, in fact, contrary to the theory of separation of powers, Parliament is not independent. Parliament is not autonomous; it is a department under the Office of the President. That on its own is a weakness in the sense that it is an institution that is supposed to be independent in the spirit of separation of powers, but it is still part of another institution. That on its own is not an ideal situation.

All study participants argued that Parliament is supposed to be independent in accordance with the theory of separation of powers. Among other factors, the following reasons were advanced by study participants as major aspects contributing to lack of independence of Botswana Parliament: fusion of Executive and Legislative powers, Parliament is a department under the Office of the President, and the dominance of the Executive over Parliament.

8.2.1.1.1 Fusion of Executive and Legislative powers

The study participants revealed that the core issue determining the lack of independence of the Botswana Parliament is the fusion of Executive and Legislative powers. There is no separation of powers between the Executive and the Legislative arms of government. All ministers are drawn from among the members of Parliament. Parliament is part of the Executive and subordinate to the Executive. Of 33 study participants, 29 or 87.88% maintained that the Botswana Parliament is weak in all aspects of its oversight responsibilities because members of the Executive form part of Parliament.

The fusion of Executive and Legislative powers in Botswana, as study participants observed, is a result of how Parliament is placed in terms of the Constitution of Botswana of 1966. Parliament is established under section 57 of the Constitution of Botswana of 1966, and it consists of the president and the National Assembly. The composition of the National Assembly is the president (as ex-officio member, who has the right to speak and vote in Parliament), both elected and specially elected members of Parliament (MPs), the Speaker and the Parliamentary Counsel. Currently there are 57 elected MPs and six specially elected members of Parliament. The six specially elected MPs are nominated in accordance with section 58 of the Constitution of Botswana of 1966. In terms of chapter 42(3) of the Constitution of Botswana of 1966, ministers and assistant ministers are appointed from among members of the National Assembly. It is clear from these constitutional provisions that all members of the Executive are members of Parliament. Currently, out of a total of 63 MPs, 30 (48%) of them are members of the Executive. Study participants characterised the fusion of Executive and Legislative powers as problematic and posing a huge challenge to the independence of Parliament. For instance, regarding the fusion of the Executive and Legislative branches, a current member of Parliament, who was part of the study participants, had the following opinion:

> The first challenge concerning our Parliament is that there is no true separation of powers. In fact, sometimes I call our system a constitutional dictatorship, precisely because the president dictates everything. First, he appoints a Cabinet from members of Parliament. For instance, there are 57 MPs. Out of the 57 MPs 30 are in the Cabinet, so already Cabinet they are in the majority among the MPs

in the ruling party. What that means is that because the ministers are serving at the pleasure of the president and because of the nature of our system, they are loyal to the president more than to the Constitution or to anybody else because they serve at the pleasure of the president. The president already has the majority of MPs in Cabinet. Usually, he would come up with an idea, whether [it] is legislation whether [it] is policy, if he wants to introduce a policy or a project or whatever, he can easily push it through Cabinet and the nature of our Cabinet is that they are just too timid, and the president is very dominant for that Cabinet. Nobody has a gut to talk against the president, because there is so much intolerance. We gather that the president is extremely intolerant to hold views of other Cabinet members. Those with contrary views to the president are likely to be thrown out of Cabinet and nobody wants to be thrown out of Cabinet. So, it means he is in total control of the Cabinet. He will push the policy or the legislation through Cabinet and the Cabinet becomes his rubber stamp. Then he takes the issue to the ruling party caucus. At the caucus, he already has the majority. What happens at the caucus? Whether the back bench MPs say 'no', it is inconsequential. In any case, even among the back bench members, there is still a dream of becoming a Cabinet minister and they know they must behave at the caucus for them to have an opportunity at some stage to be in the Cabinet. The caucus decisions are binding as for the ruling party. Once a decision has been taken at the caucus it is binding. Then it is taken to Parliament and when it gets to Parliament the caucus has already agreed. When it comes to the votes, it will pass overwhelmingly. All of them will vote for the legislation or policy that is not even in the interest of the nation. That is where we are in terms of separation of powers. That is the biggest problem that we have. That is why I actually call it constitutional dictatorship or constitutional authoritarian because that is what it is. If the president can have it easy through Cabinet, through caucus, though Parliament, then actually it is the president who dictates terms in the agenda of Parliament.

Similarly, a University of Botswana academic who formed part of the study participants said:

> My opinion is indeed we have a Parliament that is overpowered, especially by the Executive. In my opinion that is where we need to start. We need to start with the relationship between Parliament and the Executive. In terms of the actual powers granted upon to the structures by the Constitution itself as the foundation of

> everything else. Botswana has a problem or a challenge in the sense that the Constitution being the most superior piece [of] legislation in the country, makes the Executive quite powerful. If you ask me this question, does Parliament has little powers or the Executive is too powerful? My answer would be the Executive is extremely powerful, so powerful that the powers that Parliament ordinarily has turns to just be nothing.

Furthermore, a leader of one of the federations of trade unions asserted:

> We have an Executive-dominated Parliament and that has tremendously diluted and weakened the oversight function of Parliament.

Cabinet accounts for about half of the people who are members of Parliament. Parliament and the Executive are mixed together, and Parliament is not able to perform its functions as expected. That weakens Parliament because if half of the people in Parliament are Cabinet ministers and the majority of the other half, consisting of backbench and opposition MPs, are members of the ruling party, it means that the Executive is effectively free to rule as it sees it fit with little or no accountability to Parliament. To buttress this argument, an incumbent parliamentarian who formed part of the study participants clearly explained the challenge brought about by the Executive–Legislative fusion in Botswana, as follows:

> The first challenge that I see is that, while the Executive–Legislative fusion borrowed from the Westminster Parliamentary system works well, for instance, with the House of Commons [in Britain] and maybe with other similar Parliaments, our challenge here is that when you look at the numbers [of MPs and ministers], Executive–Legislative fusion is a problem in the sense that when you look at our Parliament here, all the Executive members, they are members of Parliament except the secretary for Cabinet who is a Permanent Secretary to the president, and then the legal advisor, the Attorney-General, also attends Parliament through his subordinate called Parliamentary Council. So, we have an Executive-dominated Parliament, in other words, when you look at our Parliament, about 48% of our members constitute the Executive. This fusion dilutes our Parliament. It makes it Executive-dominated, but also most worryingly is that members of the Executive they make more than 65%) of the ruling party caucus. It is a very significant number in the sense that anything that is decided at the Executive, it is brought to the ruling party caucus and needs a vote, and it is going to go

> through. So that is why, in some of the debates for instance, I tabled a motion calling for a commission of inquiry on the nature and extent of corruption, mismanagement, maladministration and unethical governance in public institutions with a view to recommend appropriate programmes, appropriate policies and appropriate laws to deal with the problem. But during the debate of that motion, only the front bench debated the motion and the back bench you could tell that they are not really comfortable with the position taken by the ruling party but there was little that they could do. So, this is the problem. Executive–Legislative fusion, much as it is not a problem in some advanced democracies, for instance, if you look at the House of Commons, you find that less than 10% of members of Parliament are in the Executive. Ministers constitutes less than 10% of the 650 members of the House of Commons. Similarly, in South Africa less than 10% of the 400 members of Parliament are ministers, which is a very insignificant number.

It is clear from these responses that the independence of Parliament in Botswana is largely compromised by the Executive–Legislative fusion. Here, in particular, is the significant number of ministers who are part of Parliament and have dual roles. It is also clear that in other advanced and consolidated democracies, the Executive–Legislative fusion is often not as problematic compared to the case in Botswana, specifically because of the smaller number of members of the Executive in Parliament and more ordinary members of Parliament than ministers.

The political landscape of developed democracies also plays an important role in ensuring the independence of Parliament mainly because issues of accountability are often taken seriously in advanced democracies. For instance, in Britain, one could have proposals brought by the Prime Minister being rejected by the House of Commons, among other things, owing to an insignificant number of ministers in the House of Commons and the significance attached to accountability in such developed democracies. For example, it was apparent during the Brexit debate that proposals brought by the Prime Minister were rejected by the House of Commons. However, in Botswana, it is not common, and chances are almost non-existent that one can have Executive policy positions or bills being rejected by Parliament. This is so, owing to the Executive-dominated Parliament.

The dominance of the Executive over Parliament in Botswana can be explained as follows: There are fewer ordinary members of Parliament than ministers, and this has posed serious Parliamentary oversight challenges over the Executive. For instance, if the opposition MPs oppose a government policy and the ruling party back bench decides to abstain, the Executive will still win because it has more members than the opposition MPs. Currently, the opposition has 19 MPs, and the members of the Executive are 30. This means the Executive can form a quorum in Parliament without the back bench. The back bench cannot form a quorum alone without the Executive. However, the back bench can form a quorum if it is combined with the opposition MPs.

The Executive can form a quorum alone and make decisions in Parliament. In other words, if both the back bench and opposition walk out of Parliament, the Executive will still form a quorum and make decisions. In the Westminster Parliamentary system, the Executive cannot always get its way in Parliament because of the numerical strength of the ordinary members of Parliament. Furthermore, unlike in Botswana, in Britain the back bench can combine forces with the opposition and win against the Executive. It is quite easy for the back bench to combine forces with the opposition in Britain because, among other things, as mentioned earlier, it is a developed democracy and places a high emphasis on accountability issues.

There are considerable factors that make it difficult for back bench MPs to combine forces with the opposition and win against the Executive or to hold the Executive accountable in Botswana. First, back bench MPs are not independent owing to issues of political patronage wielded against the president and/or the Executive. Back bench members are bound by the issues of party discipline, collective responsibility, party caucus decisions, owing their allegiance to the party, and cannot openly oppose or hold the Executive accountable in Parliament. Second, members of the back bench of the ruling party always expect to be appointed (promoted) to Cabinet positions by the president. The desire and expectation to be appointed to Cabinet positions drastically hinders independent debates of the back bench MPs in Parliament. An incumbent MP argued that the desire to be appointed to Cabinet positions is also a result of differences in salary and benefits packages of a minister, compared to that of an ordinary MP. He said:

> When you look at the salary disparity between a member of Parliament and a Minister, the difference may go up to 20 000 pula (P20,000.00). So, the incentive to become a minister is even monetarily. In addition, a minister is given a house or an alternative of close to 15 000 pula (P15,000.00) housing allowance. That is not accorded to an ordinary member of Parliament. An MP is given a three-bedroomed flat and if he or she does not stay in it, he or she will not be given the housing allowance. Further, a minister is given two cars, an SUV and a seven series sedan and other packages. So that is why members of Parliament aspire to be appointed a minister.

It is clear from the above that, contrary to the theory of separation of powers, Parliament is not on a par with the Executive to the extent that MPs aspire to being appointed to the Executive as a promotion. This study has also revealed that the fusion of Executive and Parliament limits MPs who form part of the Executive to exercise their legislative and Parliamentary oversight duties. Once an MP is appointed to be a member of the Executive, certain restrictions apply. For example, Cabinet ministers cannot table any motions in Parliament. They are effectively restricted in that regard. However, Cabinet ministers can present bills for laws in Parliament. Only the backbench can table motions in Parliament.

It is worth noting that the oversight function of Parliament is hindered mainly by the lack of independence of Botswana's Parliament. Parliament is not independent from the Executive, primarily because the two arms of government are fused together. All members of the Executive form part of Parliament. In other words, all members of the Executive are drawn from Parliament. Consequently, Parliament is dominated by the Executive to the extent that Parliament is considered subordinate to the Executive.

In accordance with the theory of separation of powers, as discussed in Chapter Three, governmental power is categorised into three institutions: the Legislative, the Executive and the Judiciary. Nonetheless, the personnel within the Executive and the Legislative are not separated. Contrary to the provisions of the theory of separation of powers that "the Executive, Legislative, and Judiciary powers should be separate and distinct, so that neither exercise the powers belonging to the other, nor shall any person exercise the powers of more than one of them, at the same time", the Executive and Legislative powers are not separate; they are fused together. The Executive exercises both Executive and Legislative powers. Members of the Executive form part

of Parliament and they do exercise both Executive and Legislative powers at the same time.

The fusion of the Executive and Parliament in Botswana can also be explained in terms of the British parliamentary system of government which Botswana and other African countries adopted. As discussed in Chapter Four, the British parliamentary system of government applies the theory of separation of powers in a limited sense. In the British model, there is an extensive degree of overlap and mixture between personnel and branches of government.

However, unlike Botswana and many other African countries which adopted the British model, the British Parliament operates in an advanced democracy with strong emphasis on accountability. The British Parliament is independent from other branches of government. The major limitation of many African countries (Botswana included) is that their Parliaments are not independent of the Executive. Therefore, African Parliaments are not effective in terms of holding the Executive accountable. The limitation in terms of Legislative oversight over the Executive is exacerbated when the ruling party is a dominant party, since members of the ruling party are reluctant to vote against it openly or to criticise the government because of the notion of political patronage and party discipline. A dominant ruling party is yet another prominent feature in many African countries. For instance, one of the reasons that the Botswana Parliament is weak is because of the existence of a single dominant ruling party, the Botswana Democratic Party (BDP), since Botswana obtained independence in 1966 to date.

Participants in this study maintained that the fusion of the Executive and Parliament has rendered Parliament ineffective in terms of its law-making, oversight and representation responsibilities. Figure 8.1 depicts the current legal framework of Parliament in Botswana, as outlined and discussed above.

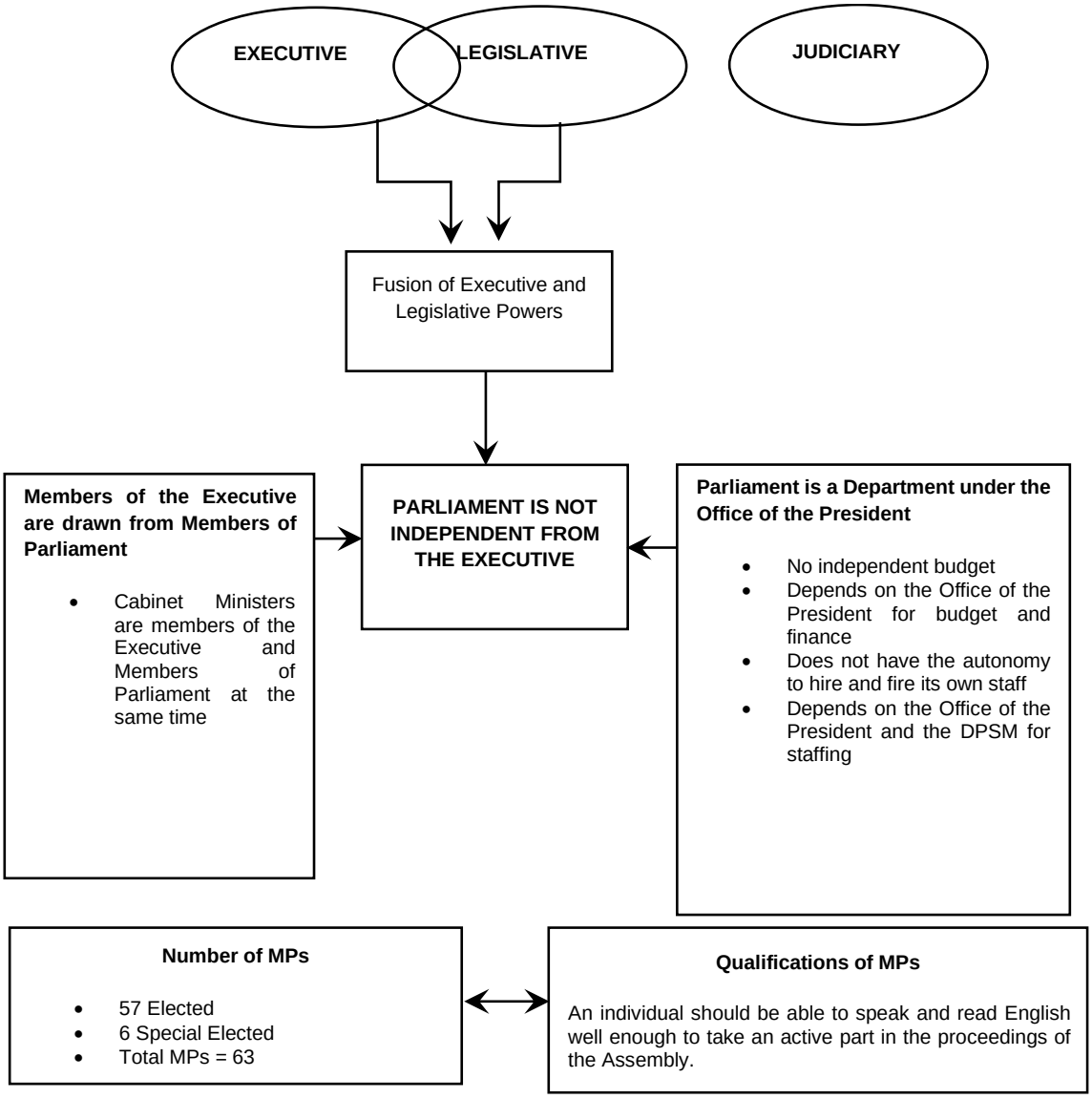

Figure 8.1: Current legal framework of Parliament

Source: Author's field data (2022)

When asked what could be done to overcome the limitations brought about by the lack of separation of powers between Parliament and the Executive, participants had varied responses. In fact, two main positions were adopted by study participants to this issue. Out of 33 participants, the majority, (29 or 87.88%) submitted that the Executive and Parliament should be completely separated from each other. On the other hand, a few, four out of 33 participants (12.12%) submitted that Parliament and the Executive should be partially separated.

Meanwhile 87.88% (29) of the study participants were adamant that, for Parliament to be independent, it needs to be completely separated from the Executive. They

maintained that any effort to strengthen Parliament should start by reviewing the Constitution of Botswana of 1966 to separate Parliament from the Executive. Participants submitted that Botswana should have an independent structure of Parliament that is able to operate outside the Executive. The Executive and Parliament should be totally separated in such a way that Parliament operates without the influence or interference of the Executive. There should be no overlap in terms of functions and personnel. Participants argued that members of the Executive should not be drawn from among members of Parliament. In other words, Parliament should not be a source of recruitment for the Executive. Dual membership of branches of government should be abolished. No one should be allowed to be a member of the Executive and a member of Parliament at the same time. Parliament should have an independent structure and it should be well resourced with its own resources, budget and human capital without having to rely on resources from the Executive.

The recommendation by the majority of study participants that Parliament and the Executive should be totally separated is in line with the literature, specifically, the classical formulation of the doctrine of separation of powers in its purest form, as advanced by Charles de Second at Montesquieu (1689–1755). The conventional expression of the idea of separation of powers is based on the fundamental notion that there are three separate and autonomous roles of government: the Legislative, Executive, and Judiciary. The performance of these responsibilities should be undertaken by three different and independent organs: the Legislature, the Executive, and the Judiciary, primarily to avoid the misuse of authority and to maintain individual and political freedom (see sections 3.2.1 and 3.3.2.2 in Chapter Three of this study).

It is also worth noting that the recommendation by study participants to separate Parliament completely from the Executive also aligns with the American presidential system of government, as discussed in Chapter Four. The American presidential model of government adopted the doctrine of separation of powers in its strictest form with a system of checks and balances. On the other hand, the Westminster system, where ministers hold dual roles as members of Parliament has a tendency to dilute and even to undermine the concept of separation of powers and to reduce the ability for Parliamentary oversight capacity (SADC PF, 2022). The American system is arguably the strictest when it comes to separation of powers between the different

branches of government. The proposal to disentangle Parliament fully from the Executive also resonates with the pure separation of powers, as outlined by Vile (1965) and expressly provided for in article XXX of the Massachusetts Constitution of 1780 and the 1776 Constitution of Virginia of 1776, as discussed in Chapter Three. Similarly, the Republic of Kenya's reform agenda which resulted in Kenya adopting a new Constitution in 2010 can also be attributed to the recommendation to separate Parliament completely from the Executive (see section 4.1.1 in Chapter Four). Before the adoption of the Constitution of Kenya of 2010, the previous Kenya Constitution of 1963 was largely influenced by the British parliamentary system of government.

Just like Botswana and many other African countries, Kenya was faced with a number of governance problems under the Constitution of Kenya of 1963. The problems included but were not limited to the concentration of economic and political powers in the hands of the president, and the dominance and the control of Parliament by the Executive. Parliament was not independent from the Executive and ministers were drawn from among members of Parliament. Therefore, the main purpose of the 2010 Kenya reform agenda was to deal with the aforementioned problems. Kenya made a bold and a drastic change from the British parliamentary system to an American presidential model.

The 2010 Constitution of Kenya is largely influenced by the American presidential system. Major reforms adopted by the Constitution of Kenya of 2010 include but are not limited to a higher degree of separation of powers between the Executive and Parliament, reduction of presidential powers, and eliminating the Executive dominance and control of Parliament. Presidential powers were reduced and are now subject to checks and balances by other branches of government. Executive members no longer form part of Parliament. Furthermore, under the Constitution of Kenya of 2010, Parliament enjoys a high degree of structural and functional independence.

On the other hand, a few, four out of 33 participants (12.12%) are of the view that Parliament should remain partially separated from the Executive. They suggested the following reforms that can be made to strengthen Parliament: First, participants provided two scenarios; that is, either Botswana reduces the size of the Cabinet significantly or increases the number of members of Parliament. Participants submitted that MPs can be increased in two ways: by doubling the current number of

57 constituencies to 114, which will translate to a total number of 114 elected MPs. Alternatively, participants reasoned that Botswana could adopt a mixed-member system by adopting both a first-past-the-post electoral system and a proportional representation system. In that way, 57 MPs will be elected to Parliament through the first-past-the post electoral system, whereas the additional number of MPs will be elected to Parliament through the proportional representation electoral system. Participants argued that, considering the economy of Botswana, a total number of MPs can be increased to about 120 MPs. According to participants, an increase in the number of MPs in Parliament will reduce the dominance of the Executive significantly. Similarly, a significant decrease in the number of Cabinet ministers will also reduce the dominance of the Executive.

Second, participants who are of the view that Parliament and the Executive should remain partially separated, suggested that to reduce the dominance of the Executive, there is a need to reform the way Cabinet ministers are currently selected. They proposed that, instead of selecting all Cabinet ministers from among the members of Parliament, half of the members of the Executive can be drawn from among the members of Parliament, while the other half of the members of the Executive can be selected from outside Parliament. Alternatively, participants suggested that, to reduce the dominance of the Executive in Parliament, there should be a constitutional provision stating that the number of Cabinet ministers in Parliament should not be more than a third of the total number of MPs.

This recommendation is in line with the 2018 Commonwealth Parliamentary Association's (CPA) Recommended Benchmarks for Democratic Legislatures. In particular, Benchmark 7.1.1 states that "the Legislature shall have legislation, a constitutional provision or practice that ensures the size of the Cabinet is in proportion to the size of the Legislature" seems more ideal and relevant for Botswana. This Benchmark is meant to ensure that the oversight role of Parliament is not limited by the size of the Cabinet. Having a small Cabinet allows for a greater representation of Parliamentary members in the oversight committees and reduces the burden on backbenchers affiliated with the ruling party. The CPA Recommended Benchmarks for Democratic Legislatures provide a minimum standard and a guide on how a Parliament should be constituted and how it should function (CPA, 2018).

An insignificant number of Cabinet ministers in Parliament coupled with an increased number of MPs will reduce somewhat the dominance and control of the Executive and enhance the numerical strength of the backbench MPs. However, the strength of Parliament, for instance, under the British parliamentary system, is dependent on a number of factors, including but not limited to the level of democracy, the electoral system, and whether the country is ruled by a single dominant ruling party. For example, the fusion of the Executive and Parliament works well in Britain because it is a consolidated democracy. The British Parliament is also strong, among other things, because of the insignificant number of the Executive members in Parliament. Similarly, although Parliament and the Executive of the Republic of South Africa are fused together, Parliament is not dominated and controlled by the Executive. There is some degree of independence for both the South African and the British Parliament because of their level of democracy and the insignificant number of members of the Executive in Parliament (See Chapter Four)

This study concludes that, in order to attain structural and functional independence of Parliament, there is a need for drastic change in the current status quo of the Republic of Botswana Parliament. The drastic change would mean that Parliament needs to be separated completely from the Executive. There is a need for a strict separation of powers between Parliament and the Executive with some form of checks and balances. Members of the Executive should not be appointed from among members of Parliament. At any point in time, no person should be allowed to hold dual positions of being a Cabinet minister and a member of Parliament at the same time.

Just like the reform agenda of Kenya in 2010 (as explained in the literature chapters of this study), a total separation of powers between the Executive and Parliament will eliminate the dominance and control of Parliament by the Executive. Strict separation of powers will also enhance the effectiveness of the oversight responsibilities of Parliament, including the law-making and the representation function. When the Executive is drawn from outside Parliament, the notion of MPs looking forward to the president appointing them to Cabinet positions will be eliminated. Therefore, MPs of the ruling party would be free to hold the Executive accountable without fearing that when they do so they are bound to lose their chances of being appointed as ministers. Furthermore, this study concludes that partial separation of the Executive from

Parliament would be tantamount to a piecemeal or moderate attempt to solve the weaknesses of the Botswana Parliament. Considering the political landscape of Botswana, for instance, among other things, the current first-past-the-post electoral system, the ruling party caucus system, the single dominant ruling political party, and the level of democracy in Botswana, a partial separation of powers would not be an ideal solution to attaining structural and functional independence of the Botswana Parliament. Parliament would remain dominated and controlled by the Executive. Effectively, Parliament would not be independent from the Executive and its oversight function would remain compromised.

8.2.1.1.2 Parliament is a department under the Office of the President

The doctrine of separation of powers dictates that the three arms or powers of government ought to be separated in terms of personnel and functions. In accordance with the doctrine of separation of powers, the Executive and the Judiciary in Botswana are standalone arms of government which enjoy autonomy in their operations. Likewise, one would expect Parliament to be an independent entity with operational autonomy. Nonetheless, administratively, the Botswana Parliament is a department under the Office of the President and therefore lacks operational independence. The majority, 27 (or 81.82%) of a total of 33 study participants cited, among other factors, two main features that equate Parliament to a department under the Office of the President (OP). In fact, some study participants labelled Botswana Parliament as an *"*office*"* under or within the Office of the President, citing the following reasons: First, that it does not have an independent budget, since it depends on the Office of the President for finance. For instance, a University of Botswana lecturer in the Department of Politics and Administrative Studies said:

> It [Parliament] does not have its own resources. For example, during budget allocation process, the money would be allocated to the Office of the President, which will then allocate finances to its departments including Parliament.

However, this situation is inherent in the budget process. Specifically, when considering the budgeting process of unitary states like Botswana, the budget is centralised and flows through a national funding stream to votes.

Second, it does not have autonomy to hire and fire its own staff. It depends on the Directorate of Public Service Management (DPSM) and the Office of the President for staffing. The DPSM is largely responsible for hiring junior, middle and senior management for Parliament, while the Office of the President is responsible for appointing the Executive management of Parliament, such as the Clerk of the National Assembly, the Speaker and the Deputy Speaker of the National Assembly. Study participants revealed that, although the Speaker is the head of the National Assembly, they are not autonomous to the extent that they cannot convene a meeting of Parliament without authority from the Executive. Parliament cannot run without the Office of the President. A lack of independence from the Speaker is also exacerbated by the fact that Speakers are often aligned with the president because they are from the same political party in power. Moreover, study participants also revealed that the Speaker has to get authority from the Office of the President for basic things such as travel.

One study participant, currently a member of Parliament, comprehensively summarised the assertion that the Botswana Parliament is a department within the Office of the President:

> I will speak as somebody who has interacted with the literature around Parliament–Executive relations as well as somebody who now sits as a member of Parliament. From the early days, when we came into contact with studies on governance and constitutionalism, we were made to believe that there is a notion or a doctrine of separation of powers. We have the three arms of government, namely the Judiciary, Parliament and the Executive. On paper, it says that these are three branches of government, they are at par and they put a check on each other. That the Parliament makes laws, the Executive implement such laws and the Parliament also provide oversight on Executive powers, and the Judiciary plays the role of looking at the legal issues around the exercise of power by the Executive and Parliament. Though the Judiciary is not a majoritarian institution in the sense that it has not been elected, it also has a role of law-making by way of judgments made in courts which become precedents. So, yes, I then obviously took a lot of interest even before I came to Parliament, on the Parliament of Botswana, and I read around it, and one of the things that came very clear even before I came to Parliament was that our Parliament is not necessarily independent of the Executive. That was confirmed when now I became a member

> of Parliament. I realised that our Parliament is, for all terms and purposes, a department under the Office of the President. All matters pertaining to the functions of Parliament are generally decided by the Executive under the Office of the President. So, basically as members of Parliament, all issues that concerns and affects us are decided largely by the Ministry of Presidential Affairs. So, we are a department under the Office of the President and our welfare as members of Parliament is also decided and determined by the Office of the President. Our staff is also employed by the Office of the President because our staff is employed by DPSM which is under the Office of the President. We, by and large, take a lot of instructions in terms of what we do from the Office of the President. The Leader of the House is a very dominant figure in terms of the operations of Parliament. He has greater powers in deciding on what issues are to be tabled before Parliament. Consequently, if you look at our Parliament, predominantly we discuss government business. Private business, yes, is there in the form of questions, but largely the time is consumed by government business. We hardly have any time for private bills because the Parliament agenda is largely focusing on government and government business. Even if you look at the allocation of time in terms of the issues that we raise, you will realise that the government business is allocated more time and the private business less time. So, the notion that we learnt at school of separation of powers, does not apply in the practical context to the extent that Parliament becomes a subsidiary of the Office of the President. On the other hand, we have a powerful Executive that takes decisions on behalf of Parliament.

This observation by the study participant raises pertinent issues bordering on the independence of Parliament in Botswana; that the Executive controls everything concerning the operations and running of Parliament, including but not limited to the welfare of members of Parliament, staffing, budget, the agenda of Parliament, and it controls the Speaker. Consequently, Parliament is subordinate to the Executive, lacks operational independence and is controlled by the Executive. The most fundamental problem is that, not having Parliament as an autonomous entity separate from the Office of the President, is a major drawback on its ability to play an effective oversight role. A similar observation was made by Fombad (2016), and Maripe (2017), who maintain that the Botswana Parliament lacks administrative and operational autonomy mainly because it does not control its own budget and personnel resources.

Study participants were asked what could be done to detach Parliament from the Office of the President. All 33 (100%) participants suggested that, to remove Parliament from administrative and functional control by the Executive there is need to establish a Parliamentary Service and a Parliamentary Service Commission to manage the administrative and operational affairs of Parliament and/or the National Assembly. There is a need to have an independent commission that decides on the budget and personnel of Parliament. It is worth noting that a study on the independence of the Parliament of Botswana, commissioned by Parliament in 2003, also recommended the establishment of a Parliamentary Service and a Parliamentary Service Commission in Botswana.

Moreover, the suggestion to create a Parliamentary Service and a Parliamentary Service Commission aligns with the 2020 CPA Model for Independent Parliaments, the 2018 CPA Benchmarks for Recommended Benchmarks for Democratic Legislatures, and the 2009 Commonwealth (Latimer House) Principles on the Three Branches of Government. The CPA (2020) Model for Independent Parliaments seeks to enable Parliaments to assume authority from the Executive in order to guarantee the necessary administrative, operational, and budgetary means for its efficient functioning. Furthermore, the Model Law for Independent Parliaments aims to assist Commonwealth Legislatures that lack adequate independence from the Executive branch. Specifically, The Model Law for Independent Parliaments advocates for the creation of Parliamentary Service Commissions (Parliamentary corporate body) for Commonwealth Legislatures. These commissions would be responsible for supervising the functioning of Parliament and for ensuring its administrative, operational, and financial autonomy.

The 2018 CPA Benchmarks for Recommended Benchmarks for Democratic Legislatures, specifically Benchmark 5.1.1, stipulates that the Legislature must maintain a sufficient non-partisan professional staff to support its activities effectively, including the functioning of its committees. Similarly, the 2009 Commonwealth (Latimer House) Principles on the Three Branches of Government maintain that Parliament should be supported by a proficient staff that operates autonomously from the regular public service. Participants submitted that a Parliamentary Service and Parliamentary Service Commission would ensure a true separation of powers between

the Executive and Parliament. It is through the Parliamentary Service and the Parliamentary Service Commission that Parliament would be able to put up structures and units to support members of Parliament. Furthermore, participants were adamant that the establishment of the Parliamentary Service and Parliamentary Service Commission would result in a Parliament that is truly independent from other branches of government. Both the Parliamentary Service and the Parliamentary Service Commission would be responsible for managing administrative and operational affairs of the National Assembly, including but not limited to staffing, finance, welfare, research, legal advice, support to MPs and any other operational activities necessary for the running of Parliament.

In accordance with the recommendations of the study on the independence of the Parliament of Botswana (2003), the Parliamentary Service will be an independent and a separate entity from the public service. It will be headed by the Clerk of the National Assembly and will be accountable to the Parliamentary Service Commission. Its main duties would be to offer administrative and support services to the National Assembly including professional advice and support in the form of research to members of Parliament. The Parliamentary Service Commission will be headed by the Speaker of the National Assembly and it will be responsible for the budget, finance and personnel of the Parliamentary Service. That is, the Parliamentary Service Commission would control the budget and expenditure of the Parliamentary Service and would also be responsible for hiring and firing the personnel of the Parliamentary Service.

This study concurs with suggestions of the study participants and the recommendations of the study on the independence of the Parliament of Botswana (2003) that, in order to remove Parliament from the control and administration of the Office of the President, there is a need to establish a Parliamentary Service Commission and the Parliamentary Service. Such an establishment would result in an autonomous Parliament responsible for its own affairs. Parliament would be separated from Executive control and it would attain its administrative and operational independence. The Speaker and the Clerk of the National Assembly would operate and run the affairs of the National Assembly freely without any undue influence or interference from the Executive. The Parliamentary Service Commission would mean that Parliament becomes an independent entity capable of taking decisions including

on the employment of experts or on outsourcing some of the functions in terms of getting researchers to assist members of Parliament. The Parliamentary Service Commission is imperative for the purpose of hiring and firing Parliamentary staff including taking care of all constituencies for MPs as well as to look at the conditions of service for MPs and Parliamentary staff. For example, article 127 and 128 of the 2010 Kenyan Constitution provides for the Parliamentary Service Commission and the Parliamentary Service, respectively. To this end, among other factors, the Kenyan Parliament is considered one of the African Parliaments which is independent from the Executive. Other Parliaments which serve as benchmarks for Parliamentary Service Commissions include, among others, those of the United Kingdom, Ghana, Canada, New Zealand, Zambia and Uganda (see section 1.2 of Chapter One and the literature chapters of this study)

8.2.1.1.3 Powers of the President

A unique problem in many African countries is that constitutionalism is built around powerful presidencies (Venter, 2016) and/or a unique form of African presidentialism. Common amongst powerful African presidencies, is that the president is the head of the state, the head of government and the Commander-in-Chief of the armed forces. In addition, the president is immune from criminal and civil proceedings while in office and has extensive appointment powers. An example of African countries which have powerful presidencies with the features outlined above include but are not limited to South Africa, Kenya, Namibia and Ghana. For instance, article 131(1) of the Constitution of Kenya of 2010 provides that the president of Kenya is the head of state, the head of government, Chairperson of the National Security Council, the Commander-in-Chief of the Kenya defence forces and a symbol of national unity. Similarly, just as in other African countries, the Constitution of Botswana of 1966, provides a powerful executive president (section 47(1-2) who holds dual positions of the head of the state (section 30) and head of government (section 47 (1-2). He or she is the Commander-in-Chief of the armed forces (section 48(1), has extensive appointment powers and is immune from civil and criminal proceedings for acts committed while in office (section 41(1).

Participants in this study cited two major features of the office of the presidency in Botswana which impact the oversight functions of Parliament negatively. First, study

participants cited section 47 (1-2) of the Constitution of Botswana of 1966 which explicitly vests extensive executive powers in the President. Specifically, section 47 (1-2) of the Constitution of Botswana provides:

> (1) The Executive power of Botswana shall vest in the President and, subject to the provisions of this Constitution, shall be exercised by him or her either directly or through officer's subordinate to him or her.
>
> (2) In the exercise of any function conferred upon him or her by this Constitution or any other law the President shall, unless it is otherwise provided, act in his or her own deliberate judgement and shall not be obliged to follow the advice tendered by any other person or authority.

Study participants argued that this provision promotes the dominance of the Executive, subordinates Parliament to the Executive and effectively implies that there is no obligation for the Executive to account to Parliament. Consequently, Parliament lacks the ability to hold the Executive accountable. For example, a University of Botswana lecturer in the Department of Politics and Administrative studies said:

> There is another thing that I want to draw your attention to: you cannot liberate or empower Botswana's Parliament without doing something about the powers of the president in Botswana. There is a constitutional provision, I think section 47 (1) and (2) that empowers the president of Botswana to rule the country as he sees it fit. He/she does not have to take advice from any other institution. Effectively, what that means is that even when Parliament is there as an institution, the Constitution still empowers the President to make decisions as he sees fit without even having to engage Parliament. In fact, this has happened before, I am reminded of an issue in August 1988 when there was a post-election crisis in Lesotho. Botswana and South Africa decided to send some troops to Lesotho on a peace keeping or stabilisation mission and, in the case of Botswana, Parliament was not informed that the Botswana Defence Force (BDF) will be deployed in Lesotho. We hear that Parliament was just informed when the troops were already on their way to Lesotho. There was a question in Parliament, I remember it was by MP for Palapye at the time, Boyce Sebetela, who had just entered Parliament in a by-election after Mogae became the President. He (Sebetela) wanted to know why Parliament was not informed or involved in the decision of sending the national army to Lesotho and the then vice president and also the Minister of Presidential Affairs and Public

> Administration, Ian Khama, his response was that, in terms of Botswana's Constitution, the president is not required to consult Parliament when he makes a decision. I think he was right. So, you see that you cannot empower Parliament without also doing something about the powers of the president. That is the point I am trying to make.

The limitations of Botswana's Parliament in terms of exercising its oversight functions effectively are, among other things, legal in nature. Study participants are of the view that powers of the president ought to be reduced or redistributed across other institutions including Parliament. For instance, another lecturer from the Department of Politics and Administrative Studies of the University of Botswana said:

> What need to be addressed in Botswana is, the powers of the president. There are overwhelming. They undermine almost all legs of government. They need to be watered down not to make him weak but to make him an accountable president. As things stand in Botswana, anybody who becomes the president they are only accountable to themselves and what does that do to Parliament? It makes Parliament inferior, but Parliament is supposed to be superior. Our Parliament is inferior, whatever they say. It may be watered down or discarded. You know the president has to sign the bills? He has to sign a bill for it to become a law. If he does not sign, it means whatever Parliament did was waste of time.

The oversight function of Parliament ought not to be compromised by the excessive powers of the president. Currently, in accordance with section 47(1)(2) of the Constitution of Botswana of 1966, the president is not constitutionally accountable to Parliament. That is a major weakness in as far as the oversight functions of Parliament are concerned. That is, the implications of a powerful and a dominant Executive, as derived from the Constitution, is a subordinate and weak Parliament.

Second, study participants cited the extensive appointment powers of the president as another factor compromising the oversight function of Parliament. The appointing authority of the president is extended to all three major branches of government. On the Executive side, in terms of the Constitution of Botswana of 1966, the president is empowered to appoint and remove from office the Cabinet (Section 42(3) and senior government officials, public enterprises (Section 112(1) (2) and executive management of oversight institutions, such as the Attorney-General (Section 51(1),

the Auditor-General, Ambassadors, High Commissioners, Permanent Secretaries, Director of Public Prosecutions, Commissioner of Police, Secretary to Cabinet, the Director-General of the Directorate on Corruption and Economic Crime (DCEC), the Director-General of the Directorate of Intelligence and Security (DIS), the Ombudsman, and he has the power to appoint members of the armed forces, to make appointments on promotion to any office in the armed forces and to dismiss any member of the armed forces (Section 48(2*b*).

Concerning the Judiciary branch of government, the President is empowered by the Constitution of Botswana of 1966 to appoint the Chief Justice (Section 96 (1), Judges of the High Court (in accordance with the advice of the Judicial Service Commission (Section 96 (2)), the President of the Court of Appeal (Section 100(1)) and Judges of the Court of Appeal in accordance with the advice of the Judicial Service Commission. Regarding the Legislative arm of government, the President appoints the Clerk of the National Assembly and nominates the Speaker and the Deputy Speaker of the National Assembly.

Concerning the extensive appointing authority of the president, study participants contended that the oversight function of Parliament is compromised since Parliament is not involved in the appointment of senior government officials, and officials of public enterprises and oversight bodies. However, one study participant, a former Cabinet minister, is of the view that Parliament is somehow involved in the appointment of senior government officials although the president is not obliged to follow the advice that he is given. He has this to say to support his argument:

> One of the things that people have said is that the executive president has too much power on the appointments of the oversight bodies generally. I think perhaps there are some truths in that, but normally the head of state is advised by his Cabinet. His Cabinet comes in turn from Parliament, so when he makes the appointments, he is affectively advised by Parliament. Having said that, he is not obliged to follow the advice that he is given. He may make his own choice of Chief Justice, Chairman of the Public Service Commission, President of the Court of Appeal, heads of various Security Divisions. He has really quite exceptional power on that. It is not done on the advice of Parliament.

It is worth noting that the advice by “Parliament” here is limited to MPs who form part of the Cabinet and not the general members of Parliament, including the backbench and opposition MPs. On the other hand, while the majority of study participants argued that the appointing authority vested in the president by the Constitution of Botswana of 1966 is extensive, and compromises the independence of Parliament, other study participants were of the view that the appointing authority of the president is not a problem provided he/she follows a laid-down process to make appointments for senior government officials. However, study participants observed that there is no laid-down process for appointing some key public servants, but rather, that the president acts on his/her deliberate judgement.

Study participants also asserted that the selection of the Speaker, Deputy Speaker and the appointment of the Clerk of the National Assembly by the president compromises the independence of Parliament and hinders the effectiveness of Parliament in the exercise of its oversight duties. This is so because they (Speaker, Deputy Speaker and Clerk of the National Assembly) are compelled to have allegiance to the appointing authority in the exercise of their duties. Similarly, the president appoints leaders of the oversight institutions who are supposed to provide oversight of the Executive. Therefore, leaders of oversight institutions cannot hold their appointing authority to account effectively, but rather, they owe their allegiance to the president.

Participants were also concerned that the positions of key senior civil servants are based on the political interests of the Executive. A major concern advanced by study participants is that the civil service is no longer politically neutral. For instance, one study participant, a former MP, said:

> In recent years, the Permanent Secretaries have started to be drawn from politicians and also from people with political background. I think the independence of the public service is being undermined over the years and that now becomes a problem: we start getting pull and push in political parties.

Similarly, another participant, an academic in the Department of Politics and Administrative Studies of the University of Botswana, said:

> You know the appointment of senior government officials is a big hot potato today in light of what is happening under the Masisi administration, even under Khama administration whereby senior civil servants they are moved from one ministry to another, irrespective of their training. To me, that is an anomaly because it creates an element of instability in the public service. When I grew up, Botswana had a well-respected public service which was apolitical, which was not considered to be taking sides, that is what we find in a place, but over time that value has been lost because they have been bringing people with political interest into the public service, especially during the time of Mogae, Khama and even now because we know people who were politicians on paper then the next day they are made civil servants. Can it work? It cannot work.

When asked what the ideal solution is to the extensive powers of the president, participants submitted that the powers of the president need to be reduced or redistributed to other bodies, for instance, to the Cabinet and Parliament. More importantly, participants stressed that the reforms should be made in such a way that the president accounts to Parliament. They also submitted that the appointing authority of the president should be subject to scrutiny by Parliament. Participants suggested that appointments of senior civil servants, parastatal organisations, and senior officials of institutions of accountability should be reviewed and endorsed by Parliament as it is done in some African countries and countries outside Africa.

The suggestion by study participants to have Parliament review and endorse senior government officials aligns with the IPU and UNDP Global Parliamentary report of 2017, which maintains that in order to provide effective oversight, it is necessary to have a certain level of institutional autonomy for Parliament and a share of formal authority. For example, the government should possess legislative powers such as drafting laws and exercising veto authority, while Parliament typically exercises control over the government's operations by ratifying Executive appointments and deliberating on the impeachment of public officials. Similarly, clause 8.2.2 of the 2012 SADC Benchmarks for Democratic Legislatures in Southern Africa stipulates that Parliament should review the presidential nominees for the appointment of independent public institutions that promote democracy. Additionally, the dismissal of such individuals should need Parliamentary consent. Similarly, Lotshwao and Sebudubudu (2017), posit that Parliament should be empowered to approve

appointments of senior government officials as a form of checks and balances against the Executive.

With regard to the redistribution of the powers of the president to Cabinet and Parliament, Botswana can benchmark from other countries or constitutions of its neighbours; the South African Constitution of 1996 and the Namibian Constitution of 1990. For example, in terms of article 27(2) of the Namibian Constitution of 1990, the Executive power of the Republic of Namibia shall vest in the president and the Cabinet. Similarly, section 85(1) of the Constitution of South Africa of 1996, vests the Executive authority of the Republic in the president, whereas section 85(2) of the same constitution redistributes the executive authority of the president to members of the Cabinet. Unlike section 47(1) of the Constitution of Botswana of 1966, which concentrates the executive powers in the president, the Constitutions of South Africa and Namibia, as cited above, vest the executive powers in the president and Cabinet.

Article 27(3) of the Namibian Constitution of 1990 provides that the president is obliged to act in consultation with the Cabinet in the exercise of his/her functions. This is another important feature from which Botswana can benchmark in order to reduce the extensive powers of the president. Currently, in accordance with section 47(2) of the Constitution of Botswana of 1966, the president is not obliged to consult anyone when exercising executive authority. Consultation is a mere courtesy because he/she has the authority and the power to operate without consulting anyone. It is worth noting that the Kenyan 2010 reform agenda also led to the reduction of the then extensive powers of the president. Under the current Kenyan Constitution of 2010, presidential powers are reduced and are subject to checks and balances by other branches of government. In addition, the president no longer has extensive and direct control over the other branches of government.

Considering the appointing powers of the president, it is imperative that the appointments of senior government officials made by the president be subject to review and approval by Parliament. For instance, under the 2010 Constitution of Kenya (as outlined in Chapter Three of this study), Parliament has the power to review and approve Executive appointments. Similarly, in accordance with section 147(2), read with section 231(1)(2) of the Nigerian Constitution of 1999, the appointment of Cabinet ministers and senior government and judicial officials is done by the president

and subject to confirmation by the Senate. To review and approve Executive appointments by Parliament is a form of checks and balances. It enhances accountability of the Executive to Parliament. Checks and balances are an important feature of the theory of separation of powers. An ideal, comprehensive and robust appointing structure of senior government and parastatal officers should involve three important stages. For instance, the initial stage would be recommendations of appointment by the relevant commission (either Judicial Service Commission, Public Service Commission, Security Commission or any other commission) to the Executive; the second stage would be appointment by the Executive; and the final stage would be the review and approval of the Executive appointments by Parliament.

Nonetheless, it is imperative that the appointment of senior officials of oversight institutions should not go through the Executive, but it should rather be the prerogative of Parliament to appoint such officers. This is done to eliminate the influence and interference of the Executive in oversight institutions which are supposed to hold the Executive accountable (see Chapter Six of this study).

8.2.1.1.4 Motion of no confidence

Parliamentary oversight of the sitting president and/or his government can be exercised through the motion of no confidence. Parliament can exercise checks and balances on the Executive by declaring that it does not have confidence in the president or government of the day. The Constitution of Botswana of 1966 provides for a vote of no confidence in the Government of Botswana, but it does not specifically provide for a vote of no confidence against the sitting president nor Cabinet ministers. Thus, the motion of no confidence targets the government as a whole and not the president. Technically, there is no impeachment or motion of no confidence against the sitting president in Botswana. In particular, section 92 of the Constitution of Botswana of 1966 reads as follows:

> If the National Assembly at any time passes a resolution supported by a majority of all the Members of the Assembly who are entitled to vote declaring that it has no confidence in the Government of Botswana, Parliament shall stand dissolved on the fourth day following the day on which such resolution was passed, unless the President earlier resigns his or her office or dissolves Parliament.

Study participants are of the view that this constitutional provision makes it very difficult for Parliament to use a vote of no confidence as an oversight tool against the government simply because, in the event that the motion is passed, Parliament stands dissolved unless the president resigns. Therefore, the motion of no confidence is a threat to members of Parliament, in particular, a threat to their membership of Parliament. Some study participants argued that this provision is as good as non-existence, since the power of vote of no confidence by MPs is counterbalanced by the power of the president to dissolve Parliament. For instance, one study participant, an academic in the Department of Politics and Administrative Studies of the University of Botswana argued as follows:

> Given the constitutional powers of the President, oversight tools like impeachments or motion of no confidence on a President should always be there. In Botswana [it] is not there. I will explain why I say it is not there. I know people will say no, but it is there in the Constitution and it actually say you can pass a motion of no confidence against the government. But it is not there in the sense that the same Constitution that give the power for Parliament to pass a motion of no confidence then actually allows the President to refuse to step down. You hear what I am saying to you? It does not say the president must step down. It says the President can actually decide not to step down Then Parliament itself stands dissolved; then we go for fresh elections. Basically, you cannot impeach a sitting president in Botswana, you cannot pass a motion of no confidence in the sitting president in Botswana. That then say to you a president is guaranteed of his five years, no matter what his failures may be. Now you look into that, and you realise that the ultimate thing you can do as Parliament is very little.

The overwhelming majority, 100% of the study participants stated that it would be very difficult for MPs to pass a vote of no confidence since the consequences are not desirable. For example, MPs are likely to lose their seats and go for fresh elections in the event that the president decides to dissolve Parliament instead of resigning. Similar sentiments were echoed by Maripe (2017), as well as by Lotshwao and Sebudubudu (2017), who maintained that declaring a motion of no confidence has not been an effective way to check and balance the power of the Executive in Botswana because of its undesirable consequences for MPs once it is successful.

Furthermore, this study revealed that because of the undesirable consequences of the motion of no confidence, MPs who table a vote of no confidence are not necessarily interested in its being successful. They table the motion to show their level of displeasure in the government, to spark a national debate, to sensitise the voters on certain issues of concern against the government or to heighten issues they have. For instance, one study participant, an incumbent MP said the following concerning the vote of no confidence in Botswana:

> As per the motion of no confidence, the way it is framed in the Constitution is a non-starter, and is useless, and I can tell you that even the people who are moving it did not expect it to pass, did not want it to pass. It was more like the enjoyment of the debate or not general the debate but to heighten issues they think they have but nobody wanted it to pass, nobody wanted to go back to the ballot box. So basically, the way is it set up is that you cannot move the motion of no confidence on the government without indirectly moving it on yourself. It is tantamount to suicide.

That is, it is not necessarily in the interests of both the opposition and the ruling party MPs for a vote of no confidence to succeed. The motion of no confidence has its own challenges in the sense that, the moment it is applied, it automatically affects the life of Parliament. MPs are not interested to go for fresh elections since election campaigns are not sponsored by government and are very expensive. Therefore, motions of no confidence are not really tabled with the expectation that they will succeed. They are tabled to highlight the weaknesses, the shortcomings of the person in office (the president). They are meant to mobilise the public and draw their attention to certain matters of concern about the president as well as to mobilise the network against the president. One study participant, a current MP said:

> Currently, we use a motion of no confidence just to make a statement. We take it through so that we can state our case, articulate and educate our people about how the government must conduct itself. It is never an expectation that it will pass.

This assertion aligns with the observation made by IPU and UNDP in the Global Parliamentary report of 2017, which posits that although it is improbable for motions of no confidence to be approved when the administration has the backing of the majority in Parliament, they may nevertheless be impactful in highlighting the

deficiencies of the government to the public. These motions are intended to address a significant problem publicly, rather than specifically aiming to overthrow the government.

Therefore, considering this argument, one may posit that a vote of no confidence has been a somewhat effective Parliamentary oversight tool in Botswana. However, in the event that the motion of no confidence is passed, it works against members of Parliament. It affects the life of Parliament and is therefore not desirable. When asked what could be done to overcome challenges brought about by the motion of no confidence; what could be done to enhance the effectiveness of the vote of no confidence, participants provided the following suggestions:

First, that the motion of no confidence should be revised in such a way that MPs can deal with the president and his/her Cabinet without affecting the life of Parliament. Participants argued that there is a need to review the current constitutional provision of the motion of no confidence in order to enable Parliament to be able to deal with the Executive without necessarily affecting its own life. In particular, participants maintained that, in the event that the motion of no confidence against the Government of Botswana is successful, it should not lead to the dissolution of Parliament, and the president should not be empowered to dissolve Parliament either in such circumstances. Instead, the president and his/her Cabinet must resign.

Second, participants submitted that instead of the motion of no confidence directed at the Government of Botswana as per the current provision of section 92 of the Constitution of Botswana of 1966, the motion or vote of no confidence should be directed specifically at the President or his/her Cabinet. That will enable Parliament to deal specifically with either the Cabinet or the president without having to declare that they have no confidence in both the president and his/her Cabinet when it is not necessary to do so. That will also create much stronger leeway for Parliament to hold the Executive accountable. Furthermore, in order to avoid fresh elections and the dissolution of Parliament, a motion of no confidence should be targeted at the president and/or his Cabinet.

Third, participants suggested that, in order to solve the current challenges of the motion of no confidence in Botswana, there is a need to review the Constitution of

Botswana of 1966 and to include an impeachment clause against the sitting president. For instance, an incumbent MP, who formed part of the study participants, said:

> We need to have something like an impeachment clause in our Constitution because right now the Executive can only be dealt with through a motion of no confidence. But the motion of no confidence has got its own challenges in the sense that, the moment you apply it, it automatically affects the life of Parliament.

Out of 33 participants, 25 (or 75.76%) suggested that there is a need to have impeachment laws against the sitting president or the vice president entrenched into the Constitution. Participants maintained that impeachment laws will enable Parliament to impeach a sitting president or vice president separately without affecting the turner of office for MPs.

Thus, participants raised three pertinent issues to be considered when reviewing the motion of no confidence: That the motion of no confidence should not lead to the dissolution of Parliament; that, instead of targeting the whole government, it should be targeted specifically at the president and/or at his/her Cabinet; and that there is a need to include impeachment laws in the Constitution. These suggestions are paramount to enable Parliament to hold the Executive accountable effectively. They are also important in the sense that, currently, the motion of no confidence is a threat to MPs who may think they will lose an election in the event that the president dissolves Parliament and calls for fresh elections. Such MPs will not support a motion of no confidence, no matter how justified it is. If a successful motion of no confidence does not lead to the dissolution of Parliament, it protects the life of Parliament and allays fears on part of MPs to support such motions.

Certainly, in order to strengthen the oversight function of Parliament, there is a need to enact laws that enable Parliament to remove the president and/or his or her Cabinet from office without affecting the life of Parliament. In the event that a motion of no confidence against a sitting president and/or his Cabinet is successful, Parliament should remain standing. In addition, it is imperative to target the motion of no confidence at either the President or his Cabinet instead of targeting the whole government at the same time. This would enable Parliament to hold the Executive accountable.

For example, the constitutional provisions of the Republic of South Africa protect the life of Parliament in the event that a motion of no confidence is successful. In other words, the Parliament of the Republic of South Africa does not stand dissolved when a motion of no confidence is passed against the president or his/her Cabinet. In particular, section 102(2) of the Constitution of South Africa of 1996 provides that, if the National Assembly passes a motion of no confidence in the president, the president and his/her Cabinet must resign. Furthermore, section 102(1) of the Constitution of South Africa of 1996 empowers the National Assembly to pass a motion of no confidence in the Cabinet, excluding the president. In the event that a motion of no confidence against the Cabinet passes, the president must reconstitute the Cabinet. Hence, the motion of no confidence, as provided for in the Constitution of South Africa of 1996, serves as an example of how a motion of no confidence can be implemented without affecting the life of Parliament.

Specifically, section 102(1)(2) of the Constitution of South Africa of 1996 safeguards the life of Parliament and the security of tenure of MPs in the event that a motion of no confidence is passed against the president and/or his Cabinet. Section 102(1)(2) of the Constitution of South Africa of 1996 also provides an example of how a motion of no confidence can be targeted specifically at the president or at his/her Cabinet without targeting the government as whole at the same time, as is the current practice in Botswana in accordance with the provisions of section 92 of the Constitution of Botswana of 1966.

Similarly, impeachment laws entrenched in the Constitution would help Parliament to target the president or the vice president specifically without compromising their membership of Parliament. The current provisions of section 92 of the Constitution of Botswana of 1966, specifically the provision that Parliament shall stand dissolved, and the provision that empowers the president to dissolve Parliament in the event that a motion of no confidence against the government of Botswana passes, must be done away with. These provisions counterbalance the essence of the motion of no confidence and are therefore not desirable in a progressive democracy. The same constitution that empowers Parliament to pass a motion of no confidence against the Government of Botswana, is the same constitution that empowers the president to dissolve Parliament in the event that it passes a motion of no confidence against the

government of Botswana. That on its own is a challenge: the Constitution has provided a knockdown effect for its own provisions. Certainly, that needs to be reviewed.

8.2.1.1.5 Number of members of Parliament (MPs)

Currently, Parliament is constituted of a total number of 63 MPs. Out of 63 MPs, 57 are elected members, in accordance with section 58 (a) of the Constitution of Botswana of 1966, whereas six are specially elected members in terms of section 58 (b) of the Constitution of Botswana of 1966 as amended. This study revealed that there is an insufficient number of MPs to enable Parliament to carry out its oversight function through committees. Of the 63 MPs, 30 members form part of the Executive. Members of the Executive are not eligible for appointment into Parliamentary committees. This means, only 33 members, including the backbench and the opposition MPs, are eligible to be appointed to Parliamentary oversight committees. Currently, there is a total of 23 Parliamentary oversight committees in Botswana. Therefore, 23 committees against 33 eligible MPs poses a huge challenge in terms of populating Parliamentary oversight committees. An incumbent MP, who formed part of the study participants, had this to say:

> Our Parliament is not effective because of insufficient number of MPs to populate oversight committees. We have 23 committees but at any given time, only five committees can sit because we do not have enough MPs to populate all these committees. The oversight function of Parliament is mainly exercised by different committees of Parliament. I would say, at the moment, our Parliament is not functioning because oversight committees are not functioning. Oversight committees are not functioning because there are not enough MPs to populate them. This is exacerbated by the fact that the Executive takes close to half of MPs and eventually, the ability of Parliament to exercise its oversight function is highly compromised.

The majority of the study participants interviewed revealed that, owing to an insufficient number of MPs to man committees, it is common to find an MP sitting in more than three committees and some even sit in seven committees. One participant revealed:

> I sit in seven committees because Parliament is so small in terms of the numbers, but the committees are so many.

Participants argued that sitting in many committees has rendered Parliamentary committees ineffective, since members cannot apply their minds fully to committee issues owing to multiple committee memberships. Participants suggested a number of ways that Botswana can adapt to increase the number of MPs. First, participants suggested that the current number of MPs can be augmented by an additional 20 constituencies to make a total number of 77 constituencies. That will translate to a total number of 77 elected MPs and six specially elected members of Parliament (SEMP) leading to 83 members of Parliament overall.

Second, other participants suggested that the number of MPs could be increased by doubling the current 57 constituencies. That will translate to a total number of 114 elected MPs and six specially elected members of Parliament (SEMP), leading to 120 members of Parliament overall.

Third, participants submitted that the number of MPs could be increased by adopting a mixed-member electoral system. A mixed-member electoral system combines both a first-past-the-post electoral system and a proportional representation electoral system. Participants suggested that through a mixed-member electoral system, 57 MPs can be elected to Parliament through the first-past-the-post electoral system and the additional 29 MPs, which constitute half of the 57 elected MPs, can be brought to Parliament through the proportional representation electoral system. That will translate to a total 86 MPs overall.

Alternatively, participants suggested that through a mixed-member electoral system, 57 MPs can be elected to Parliament through the first-past-the-post electoral system and the additional 57 MPs can be brought to Parliament through proportional representation electoral system. That will translate to a total overall of 114 MPs. In conclusion, participants suggested that the number of MPs can be increased from the current 63 MPs to between 83 and 120 MPs. An increase in the number of MPs is in line with the 2018 CPA Recommended Benchmarks for Democratic Legislatures, which posits that a larger component of MPs is ideal for oversight committees.

The increase in the number of MPs does not only solve the shortage of manpower in the Parliamentary committees. It also helps in the issues of representation in Parliament. Representation in Parliament may be in the form of bringing people with

the required skills to man the committees or representation in the form of representing marginalised and underrepresented groups in society, such as women, youths and people living with different kinds of disabilities and special needs. In addition, an increase in the number of MPs will act as a basis for the numerical strength of backbench MPs and will also help to eliminate the dominance and control of Parliament by the Executive, more especially in Parliamentary democracies where the Executive and Parliament are fused together.

Compared to other countries in the region, in terms of geographical size, population census and the gross domestic product (GDP) per capita, Botswana can afford to increase the number of its MPs from the current 63 to 120. However, the increase to 120 MPs could be staggered or increased gradually to 86 MPs, then to 114 MPs and finally to 120 MPs, depending on the population size, the economic conditions of the country and the number of constituencies, as determined by the Delimitation Commission. Other comparable countries in the region, in terms of the population size, the GDP per capita and geographical size, which have a higher number of MPs compared to Botswana, include but are not limited to: Lesotho with 120 MPs and an estimated population size of about 2.281 million people (United Nations, , 2022); Namibia with 104 MPs and an estimated population size of about 2.53 million people (United Nations, 2022); and Mauritius with 70 MPs and an estimated population size of about 1.266 million people (United Nations, 2022). On the other hand, Botswana has a total number of 63 MPs and an estimated population size of about 2.346 million people (Statistics Botswana, 2022). Hence, considering the current population size of Botswana, the increase of the number of MPs is important.

8.2.1.1.6 Qualifications of members of Parliament

In terms of section 61(d) of the Constitution of Botswana of 1966, for an individual to qualify to be elected to the National Assembly as an MP, he or she should be able to speak and read English well enough to take an active part in the proceedings of the Assembly. That is, the basic qualifications of an MP are the ability to read and speak English. There is no basic level of education or experience required for one to be an elected representative into the National Assembly. There were some varying opinions on whether academic qualifications should be considered as the baseline for electing members into Parliament. While some participants were of the view that academic

qualifications of an MP are important, other participants submitted that academic qualifications are not necessary as long as an individual is able to read and write and be able to take part in the business of Parliament.

Those who believe that academic qualifications are necessary argued that, at the moment, among other things, Parliament is deemed weak because the majority of MPs have basic qualifications of up to BGCSE (form five) level, and there are a few MPs with a diploma, degree or higher qualifications. Participants argued that MPs with basic qualifications of being able to read and write do not have the capacity to debate meaningfully in Parliament. They submitted that such MPs do not have the ability to comprehend technical or legal issues related to bills, policies or any proposals brought before them. They are also unable to comprehend, interpret and analyse proposals brought before them. Therefore, the quality of their debates and engagement is weak and compromised.

Participants were of the view that MPs with high academic qualifications, for instance, degree holders, are in a better position to comprehend technical issues concerning laws, bills or policies brought before them for determination. Participants further argued that, to carry out the oversight function of Parliament effectively, committees need to be populated with MPs who have better qualifications beyond the ability to read and write. Hence, the selection of MPs to man a particular committee should be determined by their academic backgrounds, skills and experiences.

On the other hand, some participants argued that academic qualifications are not important for one to be elected to Parliament. What is important is whether an individual is able to relate well with people, whether an individual is able to understand community needs and issues, and whether an individual is an activist and an advocate on the ground dealing with real issues of the community. In addition, it is important whether an individual understands the business of Parliament, whether an individual can demonstrate a history of leadership, and whether an individual understands government and governance issues. Study participants stated that, owing to a history of leadership and experience, there are some uneducated MPs who grasp legislative and oversight issues better than MPs who hold degrees. They argued that, contrary to the belief that when someone has higher academic qualifications, they tend to appreciate issues much better, there are some MPs, however, who are highly qualified

but not so vocal or participative in Parliamentary debates. Instead, uneducated MPs are quite active, are vocal and are doing a sterling job in Parliament.

The majority of participants (65%) who submitted that academic qualifications are important and need to be considered as part of the selection process for MPs, suggested that the minimum qualifications of an MP should be pegged at a degree level, whereas 35% of the participants suggested that minimum academic qualifications of MPs should be set at a certificate or diploma level. Participants acknowledged that when Botswana obtained independence from the British government in 1966, the country was very poor and underdeveloped with few or no individuals with higher educational qualifications. Hence, the Constitution of Botswana of 1966, in particular, section 61(d) prescribed, and as is still the case to date, the minimum qualifications required for someone to be a member of Parliament is to be able to read and speak English.

However, participants maintained that, from the time Botswana obtained independence in 1966 to date, the education system of the country has evolved tremendously. The country now has a high number of tertiary education graduates with qualifications ranging from certificates, diplomas, and degrees, to masters, doctoral and post-doctoral degrees. Therefore, the minimum academic qualifications of MPs should resonate with the current development in Botswana's education environment where there are a high number of people with high-level tertiary academic qualifications. Hence, the majority of participants suggested that, to enhance the quality of debates in Parliament, a first degree should be a minimum qualification for someone to be considered a member of Parliament. Participants stated that it would be better to increase the minimum qualifications to a degree level rather than maintaining that an individual should merely be able to read and write. Mainly because today's world is complex, modernised and global, a high level of education is needed for survival. Participants argued that, although MPs may be supported by competent research or legal officers, they are still expected to comprehend, analyse and interpret what is brought before them by their support staff. If they are unable to interpret and analyse information/material put before them, given their educational backgrounds, then it would be a challenge.

In contrast, participants who were of the view that to set minimum academic qualifications is not necessary, maintained that it is important to allow change to happen organically without codifying it, meaning that instead of prescribing minimum academic qualifications for MPs, it is better to let the system change itself without imposing any restrictions. For instance, participants argued that, as the political and educational landscape of the country evolves, change in terms of the calibre of individuals, in particular, people holding higher academic qualifications being elected to Parliament would be realised gradually. Hence, a former member of the Executive branch said:

> Botswana's political landscape has evolved without imposing any minimum academic qualifications for elected MPs. The calibre of public representatives has evolved over the years. In the past we used to have MPs with primary school qualifications. We no longer have MPs with primary school qualifications only. As time goes on, we had MPs with Cambridge or Form 5 qualifications. Nowadays, we have few MPs holding Cambridge or Form 5 certificates only. Currently, we have a mixture of tertiary education certificates, diplomas, degrees and even PhD holders in our Parliament. This is the change that came about without imposing any minimum academic qualifications for MPs. It was just an organic process that evolved on its own.

Thus, participants submitted that, although higher educational qualifications are important, some MPs may hold desired degree qualifications but would not be able to carry out the community aspect of service. Therefore, imposing minimum qualifications may bar individuals with desired features such as community service to be elected to Parliament. Individuals who hold higher academic qualifications may not necessarily carry out the community aspect of service and the community would suffer at the expense of qualifications needed.

Given the current educational environment of the Republic of Botswana, where there is a high number of literate people with tertiary education qualifications, ranging from certificates to post-doctoral degrees, this study would recommend that a minimum qualification of an MP should be a degree holder for following reasons:

Although there might be exceptions, there is not much that somebody with a high school qualification such as Cambridge or BGCSE (Form 5) can contribute

meaningfully in Parliament. Similarly, certificate or diploma holders do not necessarily have sufficient capacity to contribute meaningfully in Parliament. A degree holder is better off in terms of capacity development compared to lower levels of study because a degree exposes a person to different fields of study. It has all the components of core subjects, optional subjects and elective courses, which prepare graduates to be well-rounded individuals with different intellectual abilities. For instance, a social-science graduate would have gone through a number of elective courses from other fields of study such as business, politics, engineering, environmental sciences, law and sociology. Hence, a degree exposes a person to various areas that they would not otherwise be exposed to if they held just a Cambridge certificate, BGCSE (Form 5) level certificate, a tertiary education certificate or a diploma. A degree is quite comprehensive in terms of capacitating graduates to take up positions of responsibility in the society.

However, there may be exceptions, say for diploma holders, who might demonstrate extensive leadership experience obtained through their career. For instance, an experienced diploma holder who went through village development committees, councillor positions and any other relevant leadership or community development positions may be in a better position to contribute meaningfully in Parliament because of their experience. Therefore, such candidates would also be considered for membership of Parliament. Based on its findings, this study therefore developed the following proposed legal framework of Parliament as discussed above.

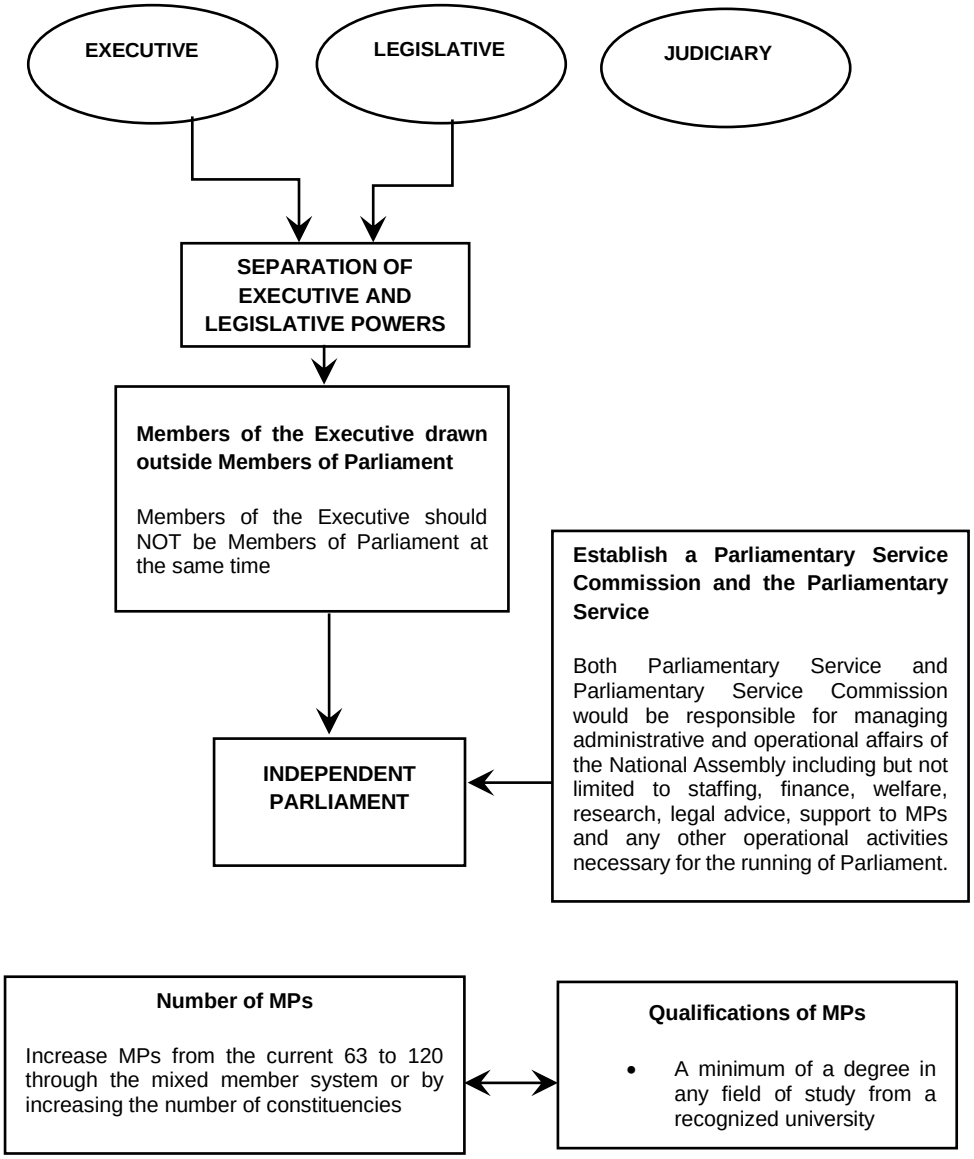

Figure 8.2: Proposed legal framework of Parliament.

Source: Author's field data (2022)

8.2.2 Administrative Parliamentary oversight challenges

These are Parliamentary oversight constraints, problems and/or challenges resulting from the way Parliament is run. Administrative Parliamentary oversight challenges include factors pertinent to the everyday running of Parliament, like finance, human resources, material resources and the organisation of Parliament. The study identified the following administrative challenges: that Parliament is run as a department under the Office of the President; that the Office of the Speaker and Deputy Speaker of the National Assembly are not autonomous; and that there is no support staff for members

of Parliament. Figure 8.3 shows the existing administrative framework of Parliament as induced from participants' field data and the literature reviewed.

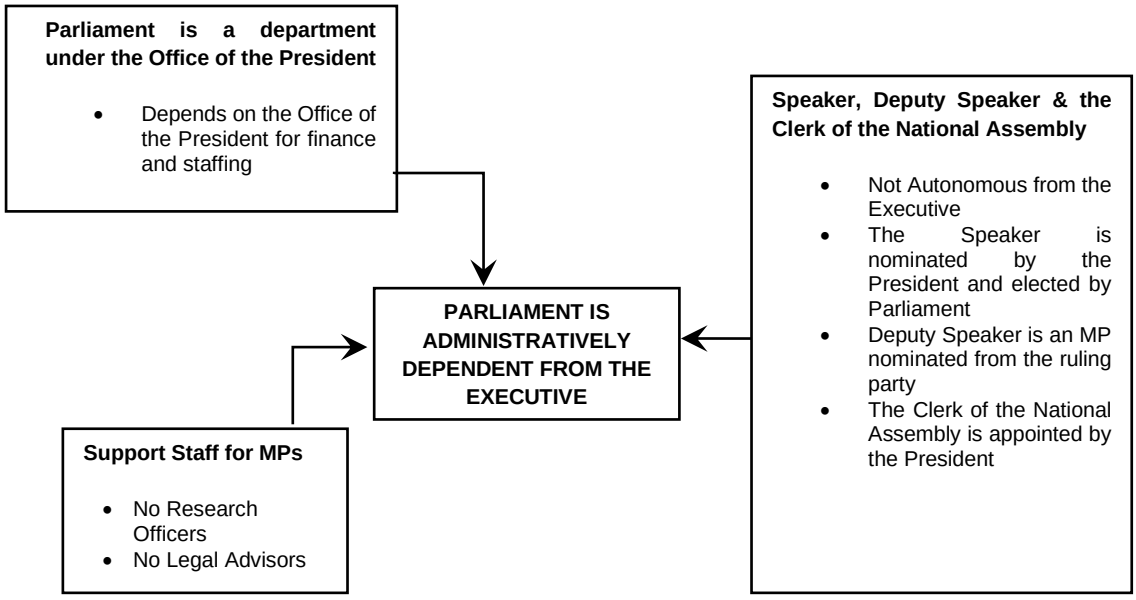

Figure 8.3: Existing administrative framework of Parliament
Source: Author's field data (2022)

The following section presents and discusses administrative Parliamentary oversight challenges, as outlined in the existing administrative framework above.

8.2.2.1 Parliament is run as a Department under the Office of the President

As mentioned under the legal Parliamentary oversight challenges, administratively, the Botswana Parliament is run from the Office of the President in terms of staffing and finance. It does not have an independent budget, but depends on the Office of the President for finance, and it does not have the autonomy to hire and fire its own staff. It depends on the Directorate of Public Service Management (DPSM) and the Office of the President for staffing. The Clerk, Speaker and Deputy Speaker of the National Assembly are appointed and nominated from the Office of the President. All other officers subordinate to the Clerk, Speaker and Deputy Speaker of the National Assembly are appointed by the Directorate of Public Service Management (DPSM), which is under the Executive arm of government.

Therefore, the notion of the Botswana Parliament being labelled as a department or an office under the Office of the President cuts across legal and administrative Parliamentary oversight challenges. All administrative matters pertaining to the running of Parliament, including but not limited to the welfare of members of Parliament, the Clerk, Deputy Clerk, Speaker and Deputy Speaker of the National Assembly, staffing, budget and the agenda of Parliament are generally decided and controlled by the Executive under the Office of the President. Therefore, Parliament does not have the autonomy to run its own affairs, it depends on the authority of the Executive for running its administrative affairs. Consequently, it cannot reasonably be expected to carry out any responsibility for oversight effectively.

As discussed above, under the legal Parliamentary oversight challenges, in order for Parliament to be an autonomous entity, it needs to have an independent separate administrative structure outside the Executive. Therefore, the establishment of the Parliamentary Service and the Parliamentary Service Commission would enable Parliament to have a separate independent administrative structure from the Executive. Both the Parliamentary Service and the Parliamentary Service Commission will be responsible for all administrative and operational matters pertaining to the running of Parliament, including but not limited to staffing, finance and the welfare of MPs. Support structures such as the research division responsible for assisting MPs with research on laws and policies as well as technical and professional assistance to members of Parliament will be provided by the Parliamentary Service and the Parliamentary Service Commission (see Chapter One, section 1.2, and Chapter Two, section 2.3 of this study)

8.2.2.2 The Office of the Speaker and Deputy Speaker of the National Assembly

The president nominates the Speaker and the Deputy Speaker of the National Assembly. The nominations are then subject to elections in accordance with section 59 (for the Speaker) and section 60 (for the Deputy Speaker) of the Constitution of Botswana of 1966. In terms of the Constitution of Botswana of 1966, both the Speaker and the Deputy Speaker are elected from among the members of the National Assembly. However, the Speaker can also be elected from among persons who are not members of the Assembly.

The study revealed that the selection of the Speaker and the Deputy Speaker is problematic owing to the following reasons advanced by study participants: First, the nomination of the Speaker by the president is done before the Cabinet is appointed. The president then subjects his/her nomination to the ruling party caucus for support. As the Speaker is always the choice of the president, the ruling party MPs are in a very difficult position to oppose the president since they aspire to be appointed as ministers. The caucus is compelled to support the president since all MPs are eyeing to be appointed as Cabinet ministers, therefore they would not want to compromise their chances of being appointed at this stage by rejecting the president's nomination. Once the nomination is agreed to at the ruling party caucus, Parliament is then convened for the election of the Speaker. However, study participants argued that once the nomination is agreed upon at the ruling party caucus, convening of Parliament for the purpose of election of the Speaker becomes just a formality. Participants also stated that the opposition can try to bring their nomination, but they will always be defeated because they are not in the majority.

Second, considering the process of appointing the Speaker, study participants argued that, for all intents and purposes, the president is the appointing authority of the Speaker and that the position of the Speaker is and always has been a political position. In fact, all previous Speakers of the National Assembly in Botswana were members of the ruling party. Study participants viewed the process of appointing the Speaker as problematic because he or she will be compelled to have allegiance to the appointing authority. Therefore, the independence of Parliament is largely affected. One study participant, who is currently an MP said:

> The Office of the Speaker is a political position and the speakership, for the most part, they have been the gatekeepers of the ruling party. When you look at even some of their rulings in Parliament, we have had very questionable rulings. Sometimes, members of Parliament have had to go to court, and I refer you to judgements. The judgement where the Leader of the Opposition was kicked out and went to court. The judgement where the former Leader of Opposition advocate Boko's words were removed from the Hansard. He went to court and his words were reinstated in the Hansard. So those are some of the examples, but other examples are there, it is just that they did not go to court. So, the speakership really is sort of conducted Parliament in a manner that sometimes detracts from the spirit

> of constitutionalism, limiting sometimes even the freedom of expression of members of Parliament in terms of what they can say and what they cannot say. For instance, I was once kicked out of Parliament for saying former President Khama was a dictator. I held that opinion and I am protected under section 12 (1) of the Constitution of Botswana of 1966, that I can hold that opinion, but the Speaker just ill-treated me from holding that opinion and asked me to withdraw. I did not withdraw until she kicked me out. So, those are some of the examples in terms of how the speakership really works.

Nonetheless, participants noted that, in the past, some Speakers were fair minded and ran Parliament in a fair manner. However, study participants revealed that fair minded Speakers are and/or were not preferred (by the ruling party) to return to Parliament. They gave an example of Dr Margaret Nasha who advocated for an independent Parliament. According to study participants, she did not return to Parliament as she was rejected by the ruling party because of her advocacy for an independent Parliament.

Similarly, study participants maintained that the position of the Deputy Speaker is problematic owing to the reason that the Deputy Speaker holds dual positions of being the Deputy Speaker and a member of Parliament at the same time. The Deputy Speaker is effectively biased towards the party to which they belong. In the case of Botswana, since the Deputy Speaker has always been an MP for the ruling party, study participants argued that they are always biased towards the ruling party. For instance, one of the study participants said:

> The Deputy Speaker is a very, very problematic position in the sense that they are not independent. There is a problem with the Deputy Speaker who is also a member of Parliament. You will have the Deputy Speaker sitting on his chair as a member of Parliament debating and voting across policies of the ruling party, and then minutes later, he is sitting on the Speaker's chair presiding over Parliament. Can he be expected to be impartial? How does that work? It is disturbing to the extent that sometimes the Deputy Speaker is ruled out of order by the substantive Speaker when he is a member of Parliament. So, it is undesirable to shift positions like that. One minute you are here (as an MP), saying no the ruling party is right in doing so and so; sometimes you are out of order and the substantive Speaker is ruling you out of order. Later on, you are there (as the Deputy Speaker) and maybe

> that same issue crops up. Now you have to decide. I mean, you cannot be a judge in your own cause. It is a problem. I do not think the Deputy Speaker should be a sitting member of Parliament.

The Deputy Speaker, who holds dual positions as a ruling party MP and a Deputy Speaker, cannot be expected to be impartial. Study participants revealed that both the Speaker and the Deputy Speaker are sometimes not helpful in terms of ensuring that ministers respond fully and in a comprehensive manner to questions posed by MPs. Participants revealed that ministers often come up with sketchy answers and sometimes the questions remain unanswered. Furthermore, the Speaker does not make sure that ministers respond fully to unanswered questions. Participants attributed the bias of the Speaker to their inaction towards ensuring that ministers answer Parliamentary questions in a comprehensive manner.

Study participants also revealed that they have noticed an unusual behaviour from the Speaker when it comes to allowing MPs to debate a tabled motion. That the Speaker is biased towards the ruling party when selecting MPs from the floor to debate. According to the study participants, during the debates, the Speaker gives more chance to the ruling party MPs to debate, compared to the chance given to opposition MPs to debate. The Speaker would accord more time to the ruling party to debate than to the opposition in the following manner:

Participants revealed that, for every debate, the Speaker will recognise two MPs from the ruling party and one MP from the opposition and that pattern would continue until the debate is completed. For instance, one study participant, who is currently an MP said:

> The other thing concerning debates in Parliament, the ruling party is accorded more time than the opposition. How? Because for every debate, the Speaker will recognise two members from the ruling party and one member from the opposition; two members from the ruling and one member from the opposition party, and so on. It is a new practice. I understand it started in the 11th Parliament. Before, it used not to be like that. So that is another challenge with our Speaker and how we conduct our business in Parliament.

Under the current structure of the Botswana Parliament, the Speaker, who is elected in favour of the ruling party, cannot be expected to be impartial. The impartiality of the Speaker is also exacerbated by the fact that, in terms of section 59(3)(*d*) of the Constitution of Botswana of 1966, the Speaker can be removed from office at any time by a resolution of the National Assembly supported by the votes of not less than two-thirds of all the members. Since the ruling party is in the majority and the Speaker is nominated by the president, it is very easy for the same party who nominated him to remove him from office through Parliament if he/she does not serve the party interests. Unlike MPs, who are guaranteed five years, unless Parliament is earlier dissolved, the Speaker does not have a security of tenure as he can be removed from office by Parliament at any time.

Compared to the head of the Judiciary and the head of the Executive, the Speaker of the National Assembly in Botswana is just a figurehead. The Speaker presides over Parliamentary proceedings, but the power of decision-making on issues that affect Parliament lies with the Office of the President. The Speaker does not control anything concerning the running of Parliament. He/she does not have power over issues about rights, interest and privileges of members of Parliament, and furthermore, he/she does not have absolute power of determining the agenda of Parliament. The Speaker cannot convene a meeting of Parliament without authority from the Executive. He/she does not have the power to hire and/or fire employees of Parliament nor does he/she have the power to transfer employees. The Speaker depends entirely on the Office of the President for personnel and finance and he/she often refers issues to the Office of the President for determination. For instance, an MP said:

> The Speaker does not have the powers that the Office of the President has. That is why, on a majority of occasions, I happen to sit as a Chairman of Members Rights and Privileges Committee. When we engage on issues of members' rights and interest, more often than not, the Speaker refers issues to the Office of the President. He would say, for example, okay, you have brought an issue but the jurisdiction for such issues lies with the Office of the President.

Similarly, another MP said:

> So, you see, you are having a head of the other arm of government totally dependent on the other arm of government to push any policies or any direction. If

> you wanted money or if you wanted personnel for Parliament, you have to plead with the Office of the President through the Minister of Presidential Affairs. He/she is the one who has to come to Parliament and move the budget for Parliament.

The Office of the Speaker is not separate from the Executive and, to a very large extent, the Speaker reports to the Office of the President. That makes it very difficult for Parliament to be independent. However, the doctrine of separation of powers dictates that the Speaker of the National Assembly should be independent of the Executive.

Participants were asked to provide possible solutions to the problems identified concerning the Office of the Speaker and the Deputy Speaker of the National Assembly in Botswana. All the study participants were adamant that both the Speaker and the Deputy Speaker ought to be independent of the Executive. They should not report to or be accountable to the Executive. Hence, to attain the independence of the speakership positions, their nomination appointment and removal process should occur outside the Executive. The Executive should not have any interference and influence in the nomination, appointment and removal of both the Speaker and the Deputy Speaker. This aligns with the 2012 SADC PF Benchmark for Democratic Legislatures in Southern Africa, which provides that members of Parliament shall have the right to elect their own Presiding Officers (the Speaker and the Deputy Speaker), and that the Executive shall not have the power to remove Presiding Officers.

Participants suggested that both the Speaker and the Deputy Speaker should be appointed from persons outside the members of the National Assembly. They should not be MPs. In addition, participants suggested that both the Speaker and the Deputy Speaker should be appointed based on merit and that individuals eligible for appointment should be neutral and not affiliated to any political party. Participants maintained that, if both the Speaker and the Deputy Speaker are not affiliated to any political party, they would be able to run the business of Parliament in a fair manner without being biased towards any political party.

Participants suggested that the ideal appointment process of both the Speaker and the Deputy Speaker should be done through the Parliamentary Service Commission and Parliament. The Parliamentary Service Commission would be responsible for the

recruitment and selection of the Speaker and the Deputy Speaker through a comprehensive competitive selection process, including interviews. The Commission would then recommend the best candidates to Parliament for appointment. Parliament would either endorse or reject the recommendations of the Commission. That means Parliament would be the ultimate appointing authority of both the Speaker and the Deputy Speaker, and they would be accountable to Parliament.

The suggestion by participants that both the Speaker and the Deputy Speaker should not be MPs, should not be affiliated to any political party, and that they should be appointed based on merit through the Parliamentary Service Commission and endorsed by Parliament is imperative to maintain the independence of Parliament. This suggestion also aligns with the 2020 CPA Model Law for Independent Parliaments, which stipulates that members of the Parliamentary Service Commission (including the Speaker and the Deputy Speaker) should act on behalf of all Members of the Legislature and not on a partisan or governmental basis. Similarly, the IPU and UNDP Global Parliamentary Report posits that Speakers have consistently been recognised as pivotal individuals either in enabling or in impeding oversight. The Speaker's crucial function as an impartial custodian of the Parliamentary institution, and as an advocate for its significance and advancement, rather than as a mere instrument of the ruling party, plays a vital role in ensuring effective oversight. The Speaker's impartiality and support for institutional prerogatives enhance the Parliament's legitimacy in its oversight of government actions.

Through the establishment of the Parliamentary Service Commission, the Speaker would be empowered to have authority and power over Parliament and its business. The Speaker would become the head of Parliament, possessing the same powers as the Chief Justice in the Judiciary. He/she would be in charge of the operations of the Parliamentary Service Commission. That means the Speaker would have final decision-making powers in terms of the operations of Parliament, the debates in Parliament and the agenda of Parliament.

Furthermore, in terms of employment and resources, the Speaker would have control over who is employed, how many people are employed and for what purposes, in the National Assembly. For instance, the Speaker would determine the number of research assistants, legal advisors and any other expertise needed to support MPs.

The Speaker would be responsible for the budget and for the approval of the appointment of the Parliamentary Service staff. He/she would have control over issues of members' rights and privileges. In general, the Speaker would be responsible for all the administrative and operational matters pertaining to the running of Parliament. The Speaker would be in charge of the operations of the Parliamentary Service Commission. That would eliminate the control of Parliament by the Executive and would ultimately enhance the independence and effectiveness of Parliament. Institution of the Parliamentary Service Commission would mean that Parliament becomes an independent entity capable of taking decisions including those on the employment of experts or outsourcing some of the functions in terms of appointing researchers to assist members of Parliament.

To safeguard the security of tenure of the Speaker and the Deputy Speaker, this study recommends that the speakership positions should be valid for the life of Parliament unless Parliament is dissolved earlier. Therefore, section 59(3)(*d*) of the Constitution of Botswana of 1966, which provides that the Speaker can be removed from office at any time by a resolution of the Assembly supported by the votes of not less than two-thirds of all the members, should be amended.

8.2.2.3 Support staff for members of Parliament

> When it comes to functions, how we operate, how we do the oversight, the weakest problem is the staffing in order to facilitate our oversight function. There is hardly anything. There is only one person in the research unit; he cannot do much. Other officials are servicing too many committees. There is no unit for budgeting. There are no sufficient units to help MPs in their oversight functions. Those who are there are just skeletons doing skeletal work. So, we do not have the supporting infrastructure; it is not there. That is another critical weakness in our system.

As stated above by a current MP who formed part of the study participants, this study revealed that the lack of support staff for members of Parliament is a major setback faced by MPs in performing their oversight duties. In fact, all 33 (or 100%) of the study participants interviewed cited lack of support staff as a major hindrance impacting the effectiveness of Parliament in the exercise of its oversight function and other functions

of law-making and representation. A major concern stressed by study participants is the lack of research assistants/officers and legal officers in the National Assembly to assist MPs in terms of deliberating on policies and laws, and facilitating the committee work of MPs. Committee work is a major Parliamentary oversight tool. It is through Parliamentary committee structures that the bulk of the oversight function of Parliament is exercised. The study revealed that there is no fully fledged research division in the Parliament of Botswana. The research division is critical in assisting MPs with research and in providing MPs with technical and professional advice on oversight matters pertaining to the respective committees.

The quality of research and expert advice given to MPs by research officers determines the extent to which committees are able to make a real impact in holding the Executive accountable.

Another major limitation identified by this study is that there is a serious lack of and/or insufficient expert committee staff members in the National Assembly of Botswana. Expert committee staff members are obviously in a better place than MPs because they would have served committees in the past. So, their experience, coupled with their background qualifications and knowledge of committee work, makes them a very important cadre in Parliament. Experienced committee staff members with institutional memory are important as they serve as a fallback for inexperienced MPs.

However, participants revealed that the shortage of expert committee staff members is severe, to the extent that one committee staff member serves so many committees. For instance, participants submitted that a committee clerk, secretary or a legal advisor serves up to six or seven committees alone. Participants argued that such committee staff are overburdened and overwhelmed by the committee work to the extent that they are not effective in their job. Since there are serving so many committees, they are unable to sit, reflect and conduct in-depth research on committee issues.

Study participants argued that there are serious limitations on the part of the MPs when it comes to understanding, comprehending and actually analysing whatever is presented by the Executive before Parliament. Hence, the Botswana Parliament has been labelled a “voting Parliament” since the task of MPs is just to vote and pass laws without having to deliberate and engage the Executive meaningfully on its proposals.

In a deliberative democracy like Botswana, it is very important for MPs to understand and comprehend laws and/or policies brought before them, so that they can debate from an informed position. The deliberative aspect of democracy in Botswana is undermined by the lack of knowledge within Parliament caused by the lack of research officers and/or assistants for MPs. Concerning the lack of research assistants, a current MP said:

> For Parliament to mainly provide oversight, it needs to be adequately staffed. Members of Parliament are not experts per se. The quality of their submissions is dependent on the quality of their support staff in the case of qualified research officers. Now, in the case of Botswana, compared to other Parliaments in the region, we do not have a fully fleshed research division. That alone is another major drawback. For instance, let me speak from the opposition. The only staff member I have is the secretary. In other Parliaments, the Office of the Leader of the Opposition, it is more or less a department with competent staff to support the duties of the Leader of the Opposition. Here you are on your own.

Furthermore, concerning the research unit in Parliament, study participants revealed that the existing research unit is very small with fewer than five personnel. Participants also argued that the existing research officers are not qualified enough, since they are not master's degree holders. They (participants) were of the view that degree holders still have a lot to learn when it comes to research. They said that some MPs who are more qualified than the existing research officers do not have confidence in the research unit. A former MP had this to say:

> The research unit is a very, very small office. The staff members do not have a master's degree. Some of us who come from research background, we have absolutely no confidence in the office. We cannot have a unit manned by less than five people of mainly first degree holders who really still have a lot to learn when it comes to research and call it a research unit.

In addition to the concern over the lack of research officers, study participants also revealed that the Parliamentary library is highly under-resourced, citing that the library only has as available literature/sources, the Hansard and previous questions asked by members of Parliament. They expect to have a fully resourced library which can assist researchers to gather information necessary for Parliamentary committee work. On

the other hand, the study revealed that MPs in the Botswana Parliament do everything for themselves because of the lack of support staff. For instance, MPs carry out their own research and also write speeches for themselves. Although they do their own research, they have limited capacity to do so because of the following reasons advanced by study participants:

They do not have, or they have limited access to research documents. They do not have sufficient time for research since they have to attend to their constituencies and other matters pertaining to the business of Parliament, and the majority of them are not well equipped to do research. Consequently, that weakens Parliament in terms of having robust debates and meaningful engagements with the Executive.

Participants suggested that Parliament should have a fully fledged research division with sufficient and qualified research officers who are able to assist MPs in every aspect of the business of Parliament, including oversight, law-making and representation. Similarly, Lotshwao and Sebudubudu (2017) maintain that MPs need skilled support staff and advisors, since one of the challenges facing the Botswana Parliament is lack of support staff for MPs.

Furthermore, participants suggested that Parliament should have a fully fledged legal division to assist MPs on legal matters relating to law-making and the oversight function of Parliament. This suggestion aligns with the IPU and UNDP (2020) assertion that an MP's access to an autonomous and skilled Parliamentary staff is arguably the most valuable asset. These individuals possess the capacity to comprehend and to implement oversight regulations, assess material obtained from oversight investigations, and aid in the creation of remedial legislation. The individuals serving in Parliament should be designated as workers, chosen based on their specialised knowledge and abilities, and remunerated appropriately. Enacting a dedicated legislation for Parliamentary staff serves the purpose of safeguarding the impartial and non-partisan nature of the administration, while also shielding staff members from political influences inside Parliament.

The establishment of the Parliamentary Service and the Parliamentary Service Commission, as discussed above, will help Parliament to set up independent structures to assist it in its mandate. Thus, the Parliamentary Service and the

Parliamentary Service Commission would be responsible for making sure that Parliament and/or MPs have sufficient support structures at their disposal. Support structures would include but not be limited to research and legal divisions necessary to offer technical, professional and legal advice to MPs. This is in line with the 2012 SADC PF Benchmarks for Democratic Legislatures in Southern Africa, which maintains that Parliament needs well-trained and well-paid professional staff to fulfil its oversight responsibilities. An emerging trend in the region is the establishment of a Parliamentary Service authority, commonly known as the Parliamentary Service Commission. This authority is separate from the regular Public Service Commission and aims to strengthen Parliament's human resources capacity and to professionalise the support services provided to Parliament.

Similarly, the 2017 IPU and UNDP Global Parliamentary Report recommended that, to enhance the mandate and capacity for oversight, it is necessary to guarantee the independence of Parliament in terms of finances and administration, as well as to establish a specialised and competent staff to assist MPs. Thus, oversight necessitates the ability of a Parliament to function autonomously from the government, encompassing the possession of its own financial resources, personnel, and physical facilities.

Based on the study findings, analysis and discussion of both field and desktop data, as outlined above, the study developed a proposed administrative framework necessary for running Parliamentary affairs.

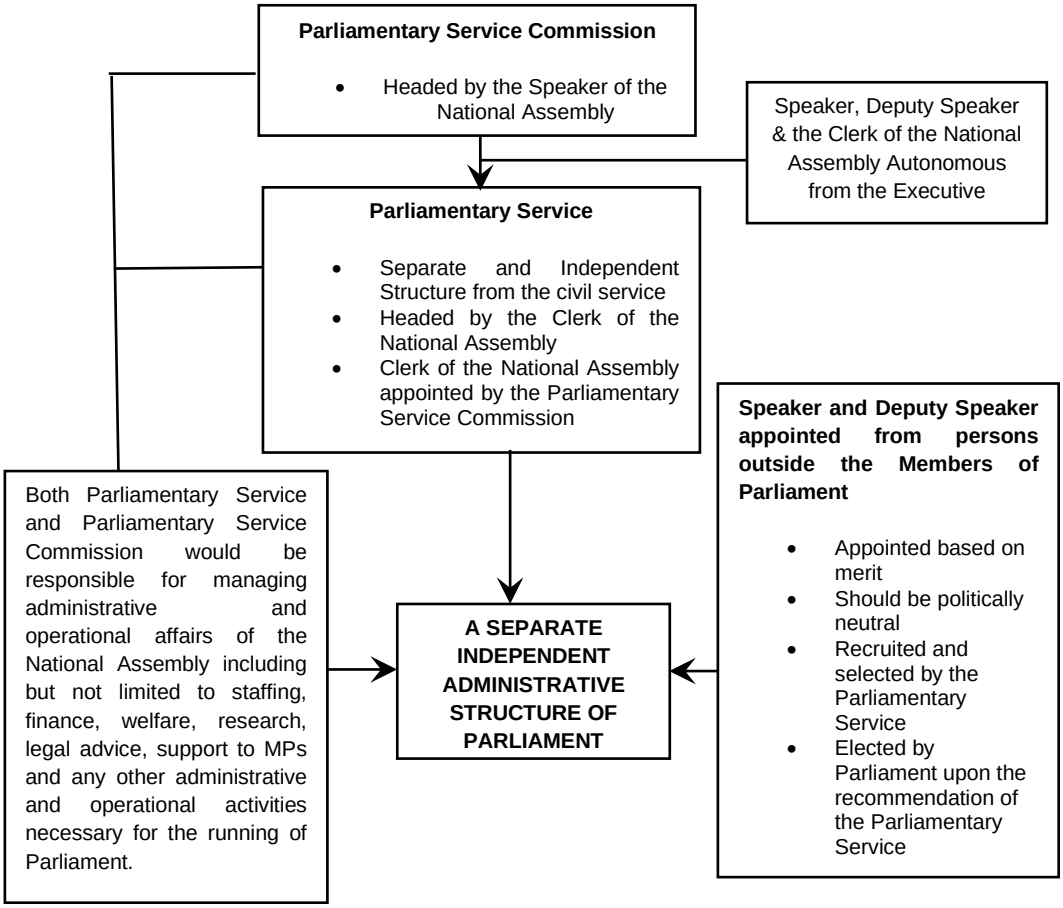

Figure 8.4: Proposed administrative framework of Parliament.

Source: Author's field data (2022)

8.2.3 Operational Parliamentary oversight challenges

These are Parliamentary oversight constraints, problems and/or challenges resulting from the way Parliament operates and the environment in which Parliament operates. Operational constraints involve challenges brought about by the process which Parliament undertakes to fulfil its law-making, oversight and representation functions. The study revealed the following environmental factors limiting the oversight function of Parliament: a single dominant ruling political party, weak opposition parties, and a weak civil society. With regard to the process (manner) in which Parliament operates, the party caucus, weak Parliamentary committees and dominant government business versus private business in Parliament are factors found to be limiting Parliament in the exercise of its oversight functions as well as fulfilling other functions of law-making and

representation. Figure 8.5 shows the existing operational framework of Parliament as identified by study participants.

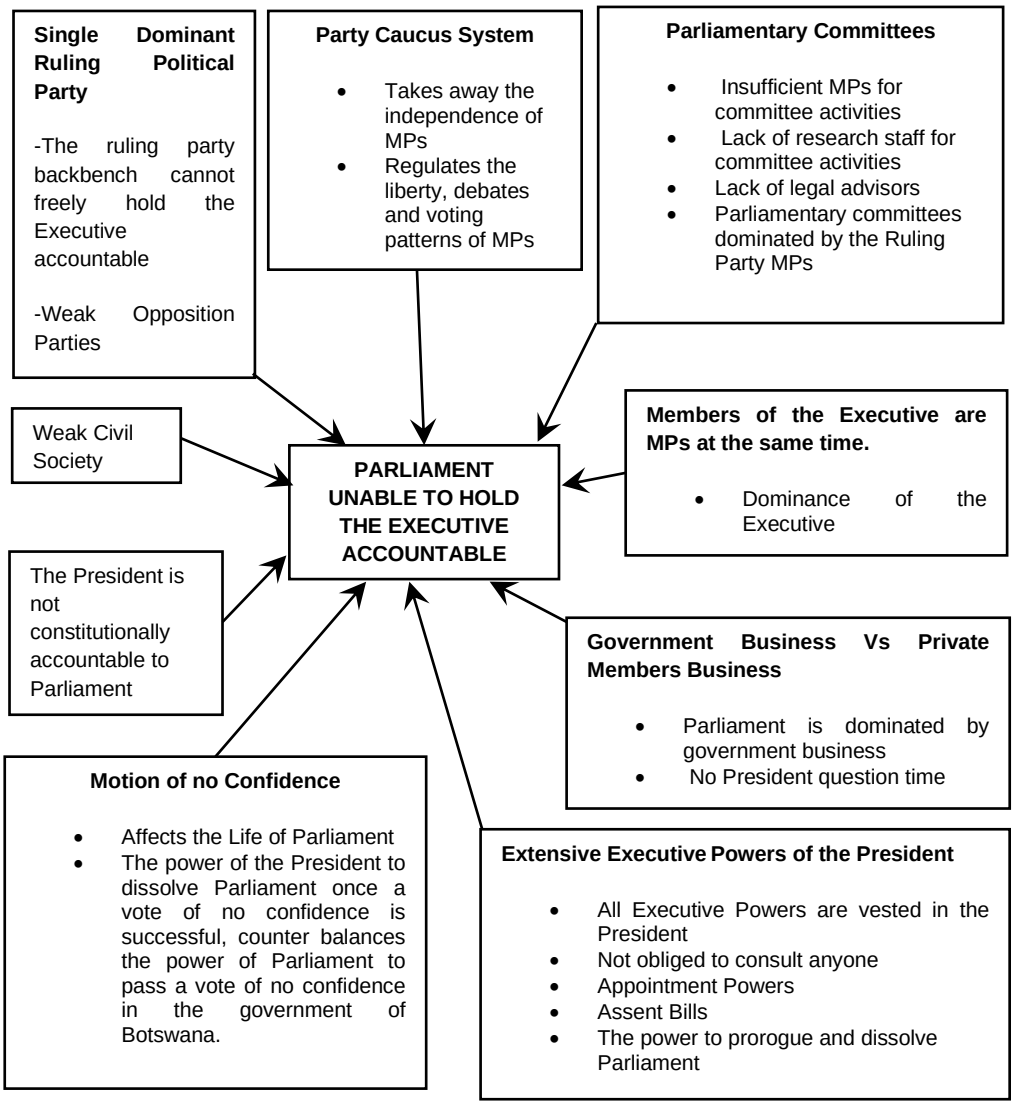

Figure 8.5: Existing operational framework of Parliament

Source: Author's field data (2022)

8.2.3.1 Single dominant ruling political party.

After attaining independence, many democratic African countries experienced single dominant ruling political parties or, as put in another nomenclature, one-party dominant systems. A single dominant ruling political party is a system in which, despite multi-party contestants, the same party wins an absolute majority in conservative elections. For example, African countries which have experienced and/or are still experiencing single dominant ruling political parties include but are not limited to South

Africa, Botswana, Tanzania, Mali, Zambia, Senegal and Namibia. While one-party dominant systems have ceased to exist in other African countries, some countries are still ruled and/or have been ruled by single dominant political parties for decades. For instance, South Africa has been ruled by a single dominant political party, the African National Congress (ANC) since 1994 to date. Similarly, the Botswana Democratic Party (BDP) has been the governing party of the Republic of Botswana since Botswana gained independence in 1966 to date.

One-party dominant systems have proved to be a major challenge to the strength of Parliaments, more especially in developing African countries. Among other things, since the prevailing decisions of Parliaments are subject to majority votes, African Parliaments have been weakened by the numerical strength of the MPs of the single dominant ruling party against the minority of MPs of the opposition parties. This study revealed that a single dominant ruling party (BDP) in Botswana has posed serious limitations to the oversight function of Parliament, owing to the following reasons:

First, study participants argued that MPs of the ruling party are unable to criticise or hold their leaders accountable freely or openly in public. Subsequently, Parliament is not able to exercise oversight effectively over the Executive. Since the Executive is the leadership of that single dominant party, MPs cannot openly or freely differ or hold their leaders accountable. They would rather protect the Executive instead of holding it accountable. Given this situation, any laws or policies originating from the Executive will thus surely pass in Parliament. Hence, in the context of a single dominant party system, Parliament is weak in the sense that it is dominated by one political party. To substantiate this sentiment, a lecturer at the University of Botswana in the Department of Politics and Administrative Studies submitted:

> First of all, the problem with the oversight role of Parliament in Botswana has to do with the party system that we have in place which, for me, yes, it has been a dominant party system that ensures that only one party governs and has the majority of seats in Parliament. What that translate to is a situation in which government or the Executive is hand-picked from the same Parliament. Some scholars have actually termed this as being accountable to themselves because when one party forms government, by implication, it means that the backbench who are also members of that political party cannot effectively hold the Executive to account.

Second, as alluded to by the study participants, the Executive is hand-picked from Parliament; therefore, the Executive cannot hold itself accountable. The backbench of the ruling party cannot hold the Executive accountable effectively either.

Third, owing to the single dominant political party system, bills or policies initiated by the Executive pass easily because of the numerical strength of the ruling party MPs against opposition MPs. The party caucus and party discipline dictate that MPs of the ruling party, both the backbench and Cabinet ministers, must toe the party line in terms of debates and voting in Parliament. This compromises the oversight function of the backbench MPs, since they are compelled to debate and vote in line with the interests of the Executive. Therefore, MPs of the ruling party are neither free nor independent to exercise their oversight function in Parliament.

The dominant single ruling political party is a very important feature to consider in any effort to strengthen Parliament. While it is ideal to reform and empower Parliament, the reality in many African countries is that they operate a system of government in which one political party is dominant. Hence, although the reforms to strengthen Parliaments are imperative, their impact may not be significant as long as the country has a single dominant ruling political party. A single dominant ruling political party, as experienced in other countries in the region, would still be able to use its numbers to dominate Parliament. The backbench of the single dominant ruling party is bound to protect the Executive. At the end of the day, not much will be achieved in any efforts to strengthen the oversight function of Parliament. Therefore, Parliament–Executive relations are better studied in consideration of the political reality on the ground. Otherwise, we can have good reforms, but they can be frustrated by the single dominant party system reality on the ground.

Single dominant ruling political parties are not easy to deal with or to neutralise because they have a rich and strong history. They enjoyed and still enjoy legitimacy for historical reasons. While some of them played a role in the liberation struggle, for instance, the South African ANC, some have propelled their countries from under-development to some kind of better development, for example, in the case of Botswana, the BDP, and people still associate them with that success of development or attainment of independence and liberation.

Nevertheless, there are some pro-democracy actors who are fully aware of the reality of one-dominant party systems, and one of the things that they have done has been to provide some form of technical assistance to Parliaments so that MPs are enlightened when they perform their functions. The technical assistance is aimed at putting the MPs on par with Cabinet ministers. Cabinet ministers are often supported by the well-trained and experienced bureaucrats and technocrats. So, it is very difficult for MPs who have no educational background or are semi-literate to match the Cabinet ministers and/or the Executive.

Therefore, the efforts or the idea behind the provision of technical assistance to MPs has been to close the gap between the Executive and Parliament in the hope that, when MPs are enlightened and strengthened, they will be able to exercise their functions significantly and effectively. Some of the pro-democracy actors, such as the International Parliamentary Union (IPU), Commonwealth Parliamentary Association (CPA), African Centre for Parliamentary Affairs (ACEPA), SADC Parliamentary Forum (SADC PF) and some international organisations like the United Nations Development Programme (UNDP), and the Friedrich Ebert Stiftung (FES) and others have all been involved in this form of assistance under the broad framework of democracy assistance and governance promotion.

In addition to the technical assistance offered to MPs, there is the need to strengthen opposition political parties to the extent that they provide an appeal to the voters as alternatives to the dominant ruling political parties. Once the opposition political parties attract many voters, there is a chance of winning the elections and taking over government thereby neutralising the single dominant party system. The ideal is a situation where you have a two-party system, where each political party stands a chance of winning or losing an election. In that way, many issues of maladministration, corruption or abuse of power would be avoided. However, in the case of Botswana or South Africa, for example, because the ruling party is in office, it does everything to maintain its power. Therefore, the challenge is on the shoulders of the opposition to see to it that it presents itself as an alternative to the extent that, when elections come, it can compete effectively for power and it can be seen as an alternative by the people.

8.2.3.2 Weak opposition political parties

Single dominant ruling political parties exist because of weak opposition parties which, in the eyes of the voters, do not form a concrete alternative against the ruling parties. This study revealed that opposition parties in Botswana have been deemed weak, to the extent that they are unable to attract a large number of voters to win the elections or at least to gain a considerable number of seats in Parliament. Opposition parties have always gained a few seats in Parliament and consequently are unable to challenge the Executive. If the opposition had a large number of seats in Parliament, their numerical strength would help them to neutralise the dominant ruling party and to hold the Executive accountable.

Therefore, there is a need to have a large number of opposition MPs in Parliament in order to make it possible for Parliament to hold the Executive accountable. There is a need for a Parliament where the margin between the ruling party and the opposition is as narrow as possible, where you can never be sure which side of the House will win which debate. That would keep the ruling party in check. Opposition parties need to be strengthened on issues of leadership, funding and their visibility to the electorate in order to form a viable alternative to a single dominant ruling political party. That will increase the chances of opposition parties to win elections.

8.2.3.3 Weak civil society

Civil society organisations form part of the important stakeholders concerned with the oversight function of Parliament (IPU & UNDP, 2022). They represent different groups within the society with different interests and needs. They are watchdog organisations which exists to safeguard the interest of their members or the groups they represent. They keep an eye on the activities of the state and therefore complement the oversight role of Parliament. For instance, in some countries, there are civil society groups known as Parliamentary Monitoring Organisations (PMOs) which observe and document the performance of Parliaments diligently. Their efforts serve to highlight existing difficulties and to provide impetus for enhancing the effectiveness of legislative institutions. Examples of countries with PMOs include Argentina, Mexico, Canada and Brazil (see section 7.7, in Chapter Seven of this study).

Although civil society organisations complement the oversight function of Parliament, on the other hand, they also rely largely on the effectiveness of Parliament to push their agendas, including holding the Executive accountable. Since both Parliament and civil society organisations are watchdog entities, the expectation is that there should be synergy between the two entities in order for them to be effective in their mandates. However, this study has revealed that civil society organisations in Botswana are not developed and not organised. They have operational and administrative challenges including a lack of sufficient funds to run their affairs as well as a lack of skilled, qualified and competent staff. They depend on government for finance; hence, they are not autonomous and cannot hold government meaningfully accountable.

Study participants submitted that there is no synergy between Parliament and civil society organisations. Therefore, their activities are not organised, and their complementary role is compromised or non-existent. This is similar to sentiments echoed by Sebudubudu *et al*. (2013), who argued that civil society organisations in Botswana are enfeebled and have not provided an effective complementary role to the oversight function of Parliament.

On the other hand, Molomo and Keorapetse (2017), posit that the nascent civil society in Botswana has been relatively ineffectual. Participants suggested that civil society organisations should work closely with Parliament to hold the Executive accountable. They suggested that, to achieve this, civil society organisations should pay close attention and contribute to activities of Parliament, including motions tabled and debates in Parliament. They can do so by assisting Parliament in research and in offering technical advice to MPs concerning motions and bills tabled in Parliament. They can also offer their position papers on matters of interest to MPs so that MPs debate in Parliament from an informed position. That will result in synergy between Parliament and civil society organisations and ultimately the effectiveness of their oversight functions may be improved. This is in line with the position of Molomo and Keorapetse (2017), that civil society, in its function as an advocate, must recognise that in order to have an impact on and mould public policy or draft laws, it is crucial to provide their opinion at an early stage in the bill's development, rather than waiting until its final reading in Parliament.

Strong and robust civil society can influence change by holding demonstrations and by exerting pressure on the government on certain policy directions and/or changes. For instance, some structural, legal and administrative changes of Parliament suggested in this study can be effected by government (the ruling party) through the influence and pressure from civil society in Botswana. This is crucial in the event that MPs are willing but unable to effect change and the ruling party is not willing to effect any changes. Civil society can act as pressure groups and change agents in many policies, programmes or any desired changes that are beneficial to the society. Hence, civil society is crucial in encouraging and ensuring citizen engagement with the work of Parliaments (IPU & UNDP, 2017).

For instance, in 2015, a consortium of civil society organisations (CSOs), including *Transparencia Mexicana* (IPU & UNDP, 2017), collaborated to develop a plan aimed at enhancing the efforts to combat corruption in Mexico. They launched a campaigned dubbed '3-out-of-3', aimed at compelling public officials to disclose publicly three distinct sworn declarations: of their assets, tax matters, and any conflicts of interest. The idea showcases the dynamic, structured, and efficient nature of Mexico's civil society. The law was initially initiated by the *Instituto Mexicano para la Competitividad* and *Transparencia Mexicana*, with the assistance of many other Mexican civil society organisations and attorneys in drafting and endorsing it. The measure has garnered support from Mexico's chambers of business, the primary public employee union, and a well-known chain of pharmacies, who have all gathered signatures at their respective offices. The bill was later approved by the Mexican Congress in 2023 after having been approved, with modifications, by both the Senate and the Chamber of Deputies.

Similarly, the Electoral Amendment Bill, which was signed into law by President Cyril Ramaphosa in April 2023, represents a change into the country's electoral act in which civil society participated. Several civil society organisations have headed to court to contest the inherent inequity in the revised legislation. The previous election system, intentionally designed since 1994, was fundamentally predisposed towards favouring a party based structure. Hence, the new electoral law enables individuals to participate in national and provincial elections independently, without the involvement of political parties.

8.2.3.4 Political party caucus

The political party caucus system (hereinafter referred to as the “party caucus”) is a forum and/or a structure used by political parties (both ruling and opposition) to decide and agree on a certain law, policy proposition or any matter ahead of the debates and voting in Parliament. The main purpose of the party caucus is to lobby, advocate, convince, obtain a buy-in and influence party members to reach a common understanding and an agreement on a certain issue, policy or law before it is tabled in Parliament for deliberations. However, there are instances when party caucuses are gathered to decide on issues already tabled in Parliament. Party caucuses are also used to decide and to reach an agreement on selection, nomination and appointment of party members to certain positions, either in Parliament, the Executive or any other positions. For instance, a party caucus can be used to decide and reach an agreement on the election and/or nomination of leaders such as the president or vice president, or to formulate laws and policies.

In the case of Botswana, party caucus is a decision-making structure recognised by Parliament in the sense that there is a whip for the majority party and a whip for minority parties. This is a position formalised in the structures of Parliament as provided for by the Standing Orders governing the rules and conduct of Parliament. In addition, there are certain days when time is allocated by Parliament for party caucus to meet. However, technically, the caucus system is not an official undertaking recognised by the law. In terms of how caucus conducts itself, it is an internal matter subject to the parties and Parliament, the Office of the Speaker, the Clerk of the National Assembly and the entire administration of Parliament has absolutely no business of engaging with the caucus.

This study has revealed that, although party caucus is a very important decision-making structure at party level, it stifles the independence of Parliament, and it compromises the ability of individual MPs to exercise their oversight responsibilities of the Executive effectively. In particular, this study revealed that, owing to the party caucus system, the ruling party backbench oversight responsibilities are almost non-existence. This is because members of the Executive form more than 60% of the ruling party caucus. Members of the Executive are more than the ruling party backbench MPs. Currently, the Executive has 30 members while the ruling party backbench has

14 members. What happens is that anything that is decided and agreed upon at the Executive caucus (Cabinet) is brought to the ruling party caucus for voting mobilisation, determination and agreement before it goes to Parliament. At this stage, the backbench is bound to agree with the Executive decisions, since they are not free to reject decisions of the Executive. The backbench is not free to reject decisions of the Executive owing to the issues of party discipline, the expectation that they must toe the party line, and the expectation that they may be appointed to Cabinet positions in the future. Nonetheless, given the number of the Executive (30) against 14 backbench MPs, even if the backbench decides to reject the decisions of the Executive, their rejection will be inconsequential, since the Executive are in the majority.

Once the ruling party caucus has decided and agreed upon any matter, the agreement of the caucus is binding on all ruling party MPs. Since members of the party are bound by the party caucus decisions, they cannot oppose party caucus decisions and/or proposals in Parliament. If an MP speaks or vote against the party caucus, he/she is likely to face disciplinary action from the party to the extent of being suspended or removed from the party. For instance, member of Parliament, Mephato Reatile was suspended from the ruling Botswana Democratic Party (BDP) after he voted against the party caucus during a motion seeking to suspend Leader of Opposition Dumelang Saleshando from Parliament. In the past, and recently, many other BDP MPs were subjected to disciplinary action, suspended or expelled from the ruling party after defying the party caucus in Parliament. That creates challenges in the oversight function of Parliament. Once the ruling party caucus has reached a consensus, the caucus decision is then taken to Parliament for debate and voting. Since the caucus decision is binding, taking the matter to Parliament is just a formality. The chances are extremely high that the matter will go through Parliament. Therefore, the oversight role of MPs is compromised when they are often compelled to toe the party line, especially when a party caucus has taken a position on issues before they are debated in Parliament. For example, a member of the civic society organisations who formed part of the participants, provided an illustration of how the party caucus suppresses the independence and the oversight role of Parliament:

> There is lack of independence of members of Parliament. Ordinarily, MPs are supposed to represent their constituencies because that is where they get

> employed, so to speak. They get the mandates from their constituents to represent their constituencies but then, the problem is that they get torn between to represent their people or constituents and also to protect the interest of their political party. This compromises their oversight role in the sense that they are often compelled to toe the party line whenever a party caucus has decided and taken a position on certain issues before they are debated in Parliament. It is very difficult for MPs, especially those who sit in the backbench to then turn around and hold the Executive accountable in Parliament. In essence, they are not independent themselves to exercise, first of all, their representative issues, and secondly, their oversight role in Parliament.

The study also revealed that the ruling party caucus is a very powerful decision-making structure because it is chaired by the president. The president holds dual positions of being the president of the ruling party and the president of the country. He/she has a great influence on both Executive decisions and party caucus decisions. The president appoints Cabinet. Since the president appoints Cabinet, ministers generally serve under his/her influence, pressure or mercy. In fact, in terms of section 47(2) of the Constitution of Botswana of 1966, the president is empowered to decide alone and he/she is not obliged to follow advice from anyone, including the advice of his Cabinet. As a result, the Cabinet serves at the pleasure of and/or is supposed to be loyal to the president. Hence, the Cabinet is more like a “rubber stamp” to the ideas and decisions of the president.

Subsequently, the president has a great influence on the ruling party caucus decisions. In fact, the study revealed that the ruling party caucus involves two stages, with the president being a very influential figure in both stages. First, the ruling party caucus starts at the Executive (Cabinet). Once the president intends to introduce an idea in terms of legislation, policy or any matter, he/she will start by selling the idea to his/her Cabinet before it is brought to Parliament for determination. Owing to the extensive Executive powers granted to the president by the Constitution of Botswana of 1966, in particular, section 47(1) and (2), the president dominates the Cabinet. He/she is in total control of the Cabinet. Therefore, the president could successfully push his/her idea through the Executive caucus with little or no resistance. The Cabinet becomes his/her “rubber stamp”.

Second, when the Executive caucus has reached a consensus, the president would bring the issue to the ruling party caucus. The ruling party caucus at this stage comprises the Executive MPs and the backbench MPs. At the second phase of the ruling party caucus, the president already enjoys overwhelming support of the majority of the Cabinet. Owing to the reasons illustrated above, the backbench of the ruling party is also in a very difficult position to reject decisions of the president and/or the Executive. At this stage, the ruling party caucus reaches an agreement collectively. Once again, the president succeeds in pushing through his/her agenda. The matter is then tabled to Parliament for determination.

Although the decision of the ruling party caucus is subject to deliberations and determination by Parliament, there is little or nothing Parliament can do to stop or reject Executive proposals decided and agreed upon at the ruling party caucus, for the following reasons: First, as previously mentioned, decisions of the party caucus are binding, and the backbench MPs are obliged to toe the party line. Therefore, the backbench cannot oppose or reject the Executive proposals freely in Parliament. They would rather or are compelled to “rubber stamp” the Executive decisions brought to Parliament. Study participants submitted that this reflects the weaknesses of the backbench, which eventually weakens Parliament. For instance, an incumbent MP said:

> We have a weak backbench of the ruling party in that they toe the line of whatever comes from the Executive. They follow the party caucus and that has weakened Parliament significantly.

Second, the opposition MPs do not have the numerical strength to overpower decisions of the Executive in Parliament. Therefore, no matter how the opposition disagrees with Executive proposals, there is nothing they can do to stop or reject them since they are in the minority. Subsequently, whatever has been decided and agreed upon at the ruling party caucus has a high chance of being voted for successfully in Parliament.

Study participants argued that the ruling party caucus takes away the independence of individual MPs and the independence of Parliament in general. For example, a current member of the Executive said:

> The party caucus offsets the position of MPs in Parliament, since they are compelled to vote in line with the caucus decisions. Strict party caucus system takes away the oath of an MP to represent his/her constituents and more often MPs are forced to vote against their conscious [sic].

Owing to the ruling party caucus, individual MPs are often caught in a compromising position between whether to represent the interests of their party, their voters (constituencies), the interests of Parliament collectively as a representative structure of the masses, or to debate and vote according to their individual consciences. Nonetheless, under the current ruling party caucus context, the prevailing interest represented by Parliament is that of the Executive. Subsequently, the Executive dominates Parliament. Given the scenario above, it is safe to conclude that the party caucus political system affects the independence and effectiveness of Parliament, and that the Botswana Parliament largely serves the interests of the Executive. Moreover, the decisions and interests of the Executive always prevail in Parliament, since the decisions of Parliament are technically the decisions of the Executive. In addition, it is also safe to conclude that the decisions of Parliament are largely influenced by the Executive and that Parliament is effectively a rubber stamp of the Executive decisions. Therefore, Parliament cannot meaningfully hold the Executive accountable.

An example given below shows how a former Cabinet minister provided an elaborate illustration of how powerful the Executive is in influencing the decisions of Parliament through the ruling party caucus. In particular, the participant shared an example of how specially elected members of Parliament (SEMPs) are nominated and elected to denote the role of the president in influencing decisions of Parliament and also to showcase how powerful the Executive is in terms of Parliament.

> Perhaps it is at this juncture that I need to elaborate on the relationship between Parliament vis-à-vis the Executive, to answer your question. After the elections, it is provided for in the Constitution of Botswana that Parliament will nominate six special MPs. It does not say the ruling party or the winning party; it says the Parliament of Botswana. But what often tend to happen is that the majority party, which forms government, will nominate those six members. The way it happens in my experience in the Botswana Democratic Party (BDP) is that the president with his colleague the vice president (VP), remember immediately after elections; even prior to elections, because there is always anticipation that the ruling party will

retain its mandate, there is a lot of lobbying for these six positions either directly or through influential people and society within the party and so on. You get a lot of people lobbying for six positions. But ultimately, the purpose of their lobbying efforts is to catch the eye of the president who ultimately is the final arbiter in the final decision-making.

Ultimately, remember elections are over, a new government must be formed. Cabinet has not been announced yet. So, what happens is that the party will meet and caucus on which people to elect as SEMPs. The caucus involves the people who are not sworn in yet as MPs, but they have been elected. They have been declared winners of different constituencies. So, caucus will meet, chaired by the president. The president, what he would say is that we have to nominate six individuals to go to Parliament. Remember this is a new caucus, majority are new, so they look up for the leadership to table the names, propose the names. I was one of the six names proposed. It goes without saying, it is a given, six names proposed will always be praised by the rest of the caucus. There has never been an outlier, unexpected shock where you get somebody who is nominated but his or her name is not endorsed by the caucus. So, it underlines the power of the Executive that ultimately, MPs are going to endorse the names proposed by the Executive in the form of the President of Republic and also by his stature as the president of the party.

Nonetheless, the newly elected MPs are also allowed to come up with alternative names to the caucus. It is the caucus that has to make a decision before the six names are subjected to Parliament for voting, but to underline the power of the Executive, ultimately, even if other names are nominated within the caucus, it is the president's six choices, the Executive choices that then goes to the House for voting. Why do you need caucus to endorse the names? Remember, I said it is Parliament that nominates the six MPs. You need the endorsement of caucus because those names go through a formal Parliamentary voting process.

The names have to be submitted to the Speaker. Then Parliament will vote on those names but there are not limited to the six in this case tabled by the ruling party, the BDP. Even the opposition can table names, that is why it has to go to an election in the house of Parliament under the auspice of the Speaker. In this case, because the BDP commands the majority of the numbers, when they present their names when we go to that election, notwithstanding that there are six names, Parliament does not say okay it is only six names they should go through. There

> has to be a formal voting process and that is how I got voted in with five others. Remember, those six names originated from the president and went through the party caucus. Here is where I want to underline the role of the president vis-à-vis the powers of Parliament. The president represents the Executive. In the case of specially elected MPs is the president's choice that end up being voted for by the rest of Parliament. The opposition, of course, they just abstain unless they have names. In the past they have got one or two names but when we go for elections, obviously they do not have the numbers. So, my point is that the Executive is very powerful, starting from this simple premise that the moment when the new government is formed, the president present six individuals and request the support of the rest of the caucus after then the names are tabled in Parliament and those names are always voted for as the president had proposed. That is an illustration of how powerful the Executive is.

The illustration above not only shows how powerful the Executive is against Parliament, but it also shows the power and influence of the president over the ruling party decision-making structures, the Cabinet and the ruling party caucus, and ultimately the power of the president in influencing the voting in Parliament. Hence, the president dominates all decision-making structures in this regard. The excerpt above also reveals that the ruling party caucus does not necessarily have the power to reject or scrutinise the decisions of the president. It also reveals that, although the party caucus can have a different opinion or idea, it is always the president's idea that prevails. Therefore, a conclusion can be drawn that this is due to the extensive Executive powers of the president. In addition to the extensive powers of the president, the president also enjoys influence that emanates from his/her dual positions of being the ruling party president and the president of the country.

Similarly, one study participant labelled Botswana as a constitutional dictatorship or a "constitutional authoritarian", by reflecting on the influence of the president over the decisions of the Executive, the ruling party caucus and Parliament. The participant also sought to explain the effects of the ruling party caucus on the independence of Parliament, as follows;

> That is where we are in terms of separation of powers. There is no separation of powers in Botswana, especially between the Executive and Parliament. The two are fused together. That is the biggest problem we have. That is why I actually call

> it a constitutional dictatorship or constitutional authoritarian because that is what it is. Parliament is not independent because the ruling party caucus influences every decision of Parliament. If the president can have it easy through Cabinet, through caucus and through Parliament, then actually, it is the president who dictates terms and the agenda of Parliament.

Here, the participant raised two important aspects: lack of separation of powers and the independence of Parliament. Specifically, the study revealed that the Parliament of Botswana is not independent because of the lack of separation of powers and the influence of the ruling party caucus on the decisions of Parliament.

This study also revealed that the rights of backbench MPs to exercise complete freedom to perform their functions are restricted by the nature of the relationship between the Executive and the backbench. The backbench is overpowered and somewhat truncated by the Executive in the exercise of their legislative and oversight responsibilities. For example, study participants who form part of the ruling party backbench revealed that motions tabled before Parliament by the ruling party backbench have to be vetted through the party caucus system. The Executive have a final say on whether any motion proposed by the backbench sees the light of day. It is the prerogative of the Executive to determine whether proposed motions proceed to Parliament. For example, a study participant who forms part of the ruling party backbench said:

> In terms of how the BDP (the ruling party) operates, in terms of my experience, motions tabled before Parliament have to be vetted through the caucus system. You do not wake up in the morning from your constituency and say, 'they asked me to table motions on roads, corruption, on this and that', and go straight to Parliament to the Clerk of the National Assembly and submit your motion. In the case of the BDP, you go to the caucus first, then the caucus discusses and makes a determination on your motion. Remember, caucus is the Executive and the backbench chaired by the president. My experiences are that where the Executive is not in favour of a certain motion, it is killed at caucus level. Of course we debate; the mover of the motion together with supporters of the motion will probably advocate and speak in favour of the motion. Cabinet will also push back if they do not like the motion and chances are, more often than not, it is the will of Cabinet

> that will prevail. They will present their reasons why they believe that motion should be presented in Parliament or not.

Essentially, the presence of the Executive in the caucus and participation in the discussion of motions removes the element of independence completely from the backbench MPs. The study revealed that, if the Executive supports a motion, they will take it to Parliament and they will support it in Parliament. If they do not support it, they will kill it at the caucus level. Hence, a conclusion is made that backbench MPs do not have complete agency: they are not their own agents nor the agents of their constituencies. Rather, they are subjects of their party. They are not free rangers; they are subject to the dictates of the party caucus because they won elections on a party ticket. Effectively, MPs are restricted to strict and binding caucus decisions.

The concept of limiting the freedom and autonomy of backbench MPs in Botswana, as suggested by the study participants, aligns with the political caucus system commonly observed in countries that have adopted the British parliamentary model of government. This model is characterised by the merging of the Executive and Legislative branches of government. The amalgamation of the Executive and Legislative functions is also distinguished by the consolidation of authority in the Executive, resulting in the supremacy and regulation of Parliament by the Executive. In his book, Marland (2020) provides a detailed analysis of how party discipline in Canada limits the autonomy of members of Parliament (MPs) and examines the ways in which the Executive exerts influence on backbench MPs during caucus meetings. It becomes evident from perusing Marland's (2020) book, that the Canadian political party caucus structure and party discipline resemble to those seen in Botswana, as indicated by the participants in the research.

According to Marland (2022), Canadian members of Parliament (MPs) see party discipline as the primary source of discontent inside their Parliamentary system. He further discloses that the party caucus structure and party discipline in Canada, where authority is centralised in the Prime Minister and top advisors, undermines the capacity of members of Parliament to express constructive criticism and advocate for their constituents; therefore, resulting in a democratic shortfall. Similarly, Clarke *et al*. (2019) argue that party discipline and the caucus system restrict individuality, hinder political representation, and facilitate Executive control over backbenchers.

The study revealed that, owing to the ruling party caucus, the backbench acts from a very compromised position. There is the interest of the party to consider, the party that put them in Parliament. They are torn between balancing the interests of the party, without compromising the interests of their constituencies and the interests of their mandate. That calls for a lot of balancing on the part of the backbench. At the end of the day, obviously, one has to suffer, either the party, constituency, or the independent mandate of MPs. Nonetheless, owing to the powerful nature of the Executive, as explained above, the interests of the party (the Executive) always prevail. So, it does not matter how convinced an MP is about the value of the motions they want to table in Parliament. There is always the party's interests to take care of because they got to Parliament on a party ticket. Thus, there is no room or provision for an independent MP under a party ticket. There is no free agency: MPs are subject to the whims and caprices of their party caucuses and/or the Executive.

The rights of backbench MPs are truncated, and restricted by the nature of the relationship between the Executive and the backbench. They are restricted by the party caucus system. For instance, if the Executive is of the view that a backbench MP is pushing a motion that is exposing them or that is harmful to the interests of government or the party, there is a high chance of the Executive rejecting the motion at the caucus level. The motion has a limited chance to reach Parliament no matter how well thought out or considered the motion is. In essence, the Executive exclusively initiates/authors/originates motions and solely determines/gate-keeps what is tabled before Parliament. Consequently, the legislative, representative and oversight duties of MPs are highly compromised. In other words, the party caucus system weakness the backbench ability to play its oversight role.

Study participants also revealed that the oversight role of the backbench MPs is further weakened by the fact that in Botswana, compared to other democracies, it is difficult for the ruling party backbench and the opposition backbench to come together and get the government to bargain with them. They gave an example of the American system where the backbench for both sides is free to caucus together and get the government negotiate with them. For instance, in the political system of America, if a member of the ruling party has a position different from that of the ruling party on any matter, he/she is free to caucus and vote with the opposition. Similarly, study participants cited

the British system where members of Parliament are free go to Parliament, stand up and voice grievances, even against their own party, without having to face any disciplinary actions. In Botswana, party caucus interferes with the operations of MPs and literally takes away their independence.

Some study participants were of the view that the caucus system was designed deliberately by political parties to control its members of Parliament and basically to take away the powers given to each member of Parliament when they are elected. Participants submitted that the caucus system takes away from members of Parliament the freedom to think. It takes away their freedom to vote according to their conscience and, most importantly, it takes away the ability of MPs to debate the issues on the floor of Parliament freely. In essence, there is really no separation of powers in a practical sense. However, the ability of Parliament to provide oversight starts with its independence; the extent to which it is autonomous and not under the control of the Executive.

Although the majority, 30 out of 33 (or 90.91%) of the study participants submitted that a party caucus is problematic, a few, three out of 33 (or 9.09%) of the participants argued that the political party caucus system is very important because that is where collective party positions and/or decisions on certain laws and policies are adopted. For instance, parties can caucus to discuss the voting patterns, or the voting decision of the week, how to answer questions, how to vote on motions, and whether to reject or to accept a motion. Participants who were of the view that the political party caucus system is important, reasoned that what matters is the collective voice of MPs representing a certain political party. Furthermore, they argued that, since the caucus system is recognised by Parliament and practised worldwide, it shows the significance attached to the system. They also maintained that it is important to have collective decisions adopted at party caucuses because, in a political system like Botswana, for example, where the first-past-the post voting system is used, it is a party which is being voted into power and not an individual. Therefore, collective responsibility and collective decision-making through the political party caucus system is paramount. Hence, study participants argued that, for important matters, there must be a collective party position reached through a party caucus. Participants who are pro the political party caucus system further submitted that the caucus does not take away the

independence of MPs, since it is the party which was voted into power not individuals. For example, one of the University of Botswana lecturers in the Department of Politics and Administrative Studies is of the view that the political party caucus system is important and cannot be ignored. He argued as follows:

> My opinion on that is we cannot ignore the party caucus because these MPs in Parliament are as a result of a certain party. Basically, that says a party has this ideology thinking or approach. If we were to stop party caucus it will mean these MPs are suddenly going to be doing their own bidding in Parliament, yet they came in through the tickets of a party. I do not think caucus is a problem. I think the problem is where Parliament itself statutorily is made to look and appear subservient to the Executive. The problem is not the party caucus because, in mainstream political science literature, political parties are actually organised groups with a particular idea of how they will govern, so they revive for power, or they want to take power because there is a certain way through which party want to govern. Hence, the party in power can revive its ideology through the binding party caucus system.

It can be deduced from the extract above that, although the party caucus system is problematic, as advanced by other study participants, the party caucus is an important system that cannot be ignored easily, since MPs represent party ideologies. Despite the disadvantages of the caucus system, it is through the caucus system that political parties in power are able to advance their governing ideologies. The caucus system helps the party in power to govern in accordance with its ideologies. The party caucus is fundamental in driving the party manifesto. It is also worth noting that the challenges brought about by the caucus system in Botswana are exacerbated by the fact that the Executive and Parliament are fused together. Hence, some study participants submitted that the problem is not the party caucus system; rather, the problem is in the nature of the relationship between the Executive and the Legislature.

When asked for possible solutions to the challenges brought about by the caucus system, participants provided the following suggestions: First, there were suggestions that, to attain the independence of Parliament, the party caucus system should be abolished. MPs should be allowed to use their independent minds and to debate freely without restrictions of the party caucus system. The party caucus system should not interfere with the work of members of Parliament. MPs should be able to work and run independently once they are in Parliament. They should not be subjected to controls

by the Executive and/or the party caucus system. Participants submitted that MPs should not be controlled by the caucus system, since once an MP is voted into Parliament, they do not necessarily represent the party, but they represent all the citizens including those who did not vote for them.

Hence, MPs should be concerned with representing the national interests, compared to representing the narrow interests of the party. Therefore, MPs need to be protected in such a way that their business cannot be interfered with. Their tenure as MPs should be protected. Participants submitted that the abolishment of the caucus system and control of MPs by the Executive can only be made possible when Parliament is independent in the true sense, that is, when members of the Executive are drawn from outside of members of Parliament, and when MPs cannot hold dual positions of being a Cabinet minister and an MP at the same time. In this way, the members of the backbench, including both the ruling party and the opposition, would exercise effective oversight of Cabinet, not bound by toeing the party line and not bound by party caucus decisions. If members of the Executive are appointed from within the Legislature, they will often have allegiance to the appointing authority who made them members of the Executive.

If Cabinet is appointed outside of the Legislature, MPs would have no allegiance to the party caucus or party agreements, and then they can exercise their independence of mind and conscience in whatever decisions are made in Parliament. When Parliament is independent of the Executive, MPs will be in a position to speak, debate and vote freely in Parliament. They will freely speak and debate without fear of being victimised by the Executive or the party caucus system.

Second, participants suggested that the caucus system is ideal when practised where the proportional representation electoral system is used, compared to the first-past-the-post electoral system. In other words, the caucus system is not in favour of the first-past-the-post electoral system as used in Botswana and in other countries. The party caucus system resonates very well with the proportional representative system because the proportional representative system is purely party based. On the other hand, the first-past-the-post electoral system is constituency based. Under the first-past-the-post electoral system, MPs are expected to represent the interests of their voters (constituencies) and the interests of the nation at large. Hence, there is always

a problem when the party (caucus) position differs from the constituency position, national interest or the MPs' position on any matter.

Third, participants argued that, owing to the nature and the importance attached to the caucus system, Parliamentary debates can never be without influence from the caucus. However, there is a need to define and set some parameters to determine when the caucus system is appropriate. Participants suggested that the caucus system needs to be regulated by considering, among other factors, at least four important dimensions.

First, since the caucus is meant to promote the party pledges, ideologies and the achievement of the party's manifesto, the party caucus should really be imposing itself only when it deals with policy issues clearly articulated in the party manifesto. In particular, in an electoral system such as the first-past-the-post, MPs are elected, among other reasons, because they pledged to promote particular manifesto positions. Therefore, it would be appropriate for MPs to abide by party caucus decisions or be subjected to caucus restrictions only when matters articulated in the manifesto are debated in Parliament, that is, MPs cannot be expected to campaign for certain manifestos and later deviate from the manifesto positions they campaigned for during Parliamentary debates. Hence, for the issues that are so important for the party, there should be a party position reached through a party caucus.

Second, the party caucus system could be regulated, as participants suggested, by allowing MPs to speak freely, debate and vote independently in Parliament on matters that do not have any bearing on the provisions of the party's manifesto. That would help to eliminate the downside of the caucus system, where the leadership of the party uses the caucus system to regulate every single step of MPs in Parliament. Although MPs can be guided, they should not be instructed on how to debate and vote on issues that are outside the party's manifesto. There should be no binding party caucus decisions either on matters that are outside the party's manifesto.

Third, participants noted that there are issues of national interest, where MPs should be allowed to debate and vote freely outside strict and binding party caucus decisions. For instance, debates on human rights issues like death penalty laws, laws on

abortion, homosexuality, freedom of speech, spy bills, as well as health and education policies, among other things.

Fourth, there was a suggestion that the party caucus system should be regulated in such a way that backbench MPs of the ruling party are free to engage, caucus and vote freely with MPs of the opposition, and vice versa, on issues concerning the oversight function of Parliament. For instance, both backbench MPs of the ruling party and the opposition can caucus and vote together on motions of no confidence, and on any other motions or issues concerning the oversight function of Parliament against the Executive. That would enhance the capacity of Parliament to hold the Executive accountable.

8.2.3.5 Parliamentary committees

Parliament mainly exercises its oversight function through committees. Currently, the Parliament of Botswana consists of a total of 23 committees classified into four categories. In accordance with section 98.1 of the Standing Orders of the National Assembly of Botswana of 1966, the four categories include standing committees established for the life of Parliament, sessional select committees which stand dissolved at the end of every Parliamentary session, portfolio committees created for the life of Parliament, and with a special sectoral mandate as well as special select committees appointed by the National Assembly order to consider the terms of a bill or any other purpose.

This study revealed that there are a number of challenges and/or weaknesses facing these committees in the exercise of their oversight function of the Executive. The challenges revealed include but are not limited to the lack of research staff and legal officers to support the committee work of MPs, an insufficient number of MPs to man all the existing committees, and the way committees are constituted in terms of the Standing Orders of the National Assembly of Botswana of 1966.

8.2.3.5.1 Composition and appointment of members to committees

The composition of Parliamentary oversight committees includes backbench MPs of the ruling party and all MPs of the opposition parties. However, study participants revealed that, currently, the way Parliamentary committees are constituted is

problematic owing to the interpretation of section 100.1 of the Standing Orders of the National Assembly of Botswana of 1966. The section reads as follows:

> Every Select Committee shall be so constituted as to ensure as far as possible that the balance of the parties in the Assembly is reflected in the Committee.

Study participants revealed that the ruling party (BDP) has interpreted the above provision of the Standing Orders of the National Assembly of Botswana of 1966 to imply that, since the ruling party has the majority of MPs in Parliament, they should also have the majority of their members in every committee of Parliament. However, members of Parliament interviewed are of the view that the interpretation of the ruling party is wrong, since the ruling party has included members of the Executive who form part of Parliament to determine their majority in Parliament. In terms of section 100.2 of the Standing Orders of the National Assembly of Botswana of 1966, members of the Executive are not eligible to be appointed to any investigative or oversight committees of Parliament.

Accordingly, members of Parliament whom this study interviewed are of the view that section 100.1 of the Standing Orders of the National Assembly of Botswana of 1966, as cited above, should be interpreted to mean that committee membership should reflect the representation of political parties in Parliament. Representation in Parliament, as submitted by the study participants should only apply to eligible members of the committees. Eligible membership of the Parliamentary committees, as provided for in the Standing Orders of the National Assembly of Botswana of 1966, is limited only to the ruling party backbench and the opposition MPs. One MP, whom this study interviewed, said:

> Our interpretation has always been that the party split refers to those eligible to be in committees only and it excludes MPs of ruling party who forms part of the Executive.

Nonetheless, this study revealed that the ruling party has interpreted section 100.1 of the Standing Orders of the National Assembly of Botswana of 1966 to imply that the appointment of MPs to committees should reflect the numerical party split in Parliament. Hence, the ruling party uses its numerical strength to appoint its MPs to committees. Their interpretation of the Standing Orders is that they must have the

majority in almost all committees since they are the ruling party. This study has revealed that, currently, the ruling party has the majority of membership in most of the committees in Parliament. For example, study participants revealed that, on average, a member of the ruling party possibly sits on six or seven committees, whereas a member of the opposition sits on about three committees. Therefore, membership of committees is applied in favour of the ruling party MPs because of their numerical strength in Parliament.

The study also revealed that the ruling party is of the view that they are entitled to chair almost all the committees. Hence, part of the findings of this study is that, in the past, the ruling party chaired almost all committees of Parliament.

Study participants argued that the dominance of the ruling party MPs in the committees of Parliament poses oversight challenges, since MPs of the ruling party are unable effectively to provide oversight against their leaders in the Executive. Furthermore, MPs of the ruling party are instructed by the party caucus on how to vote in these committees. Therefore, any efforts of Parliament to hold the Executive accountable remains futile. One of the MPs interviewed illustrated the problem brought about by the way committees are constituted, as follows:

> Well, let's start with how committees are constituted. The manner in which committees are constituted is problematic in the sense that when you look at the opposition and the back bench, the opposition is in the majority with 19 members of Parliament and the backbench has 14 members. But when it comes to committees, the position that the ruling party takes is that they must have the majority in almost all committees because they are the ruling party. They say their interpretation of the Standing Orders (I will refer you to the provisions of the Standing Orders) is that committees must reflect the representation in Parliament. I think their interpretation is misleading because, for committees, members who are eligible to sit in committees are those in the backbench and those in the opposition only. Executive members cannot be part of the committee because committees seek to scrutinise the Executive. So now, here is the problem. The problem is that when you say that the ruling party must be the majority in all the committees, sometimes they are instructed at the caucus to vote in a certain manner in a particular committee. For example, key committees such as the Finance and Estimate Committee, that is where the ruling party make sure they

> always have the majority there, and mostly they ensure that they chair those committees. Since I arrived in Parliament, there was never a time that a member of the opposition chaired the Finance and Estimate Committee because everything that the ruling party want to expend on, they want it to go through the committee. They are in the majority, and they chair it. In the past, they used to chair most of the committees. However, somehow, the significant number of committees are currently chaired by the opposition. A worrisome development is that recently the vice president of the country actually remarked, and I quote him 'How did that happen? I was very frustrated, how did it happen that majority of committees are chaired by the opposition?' However, although the opposition chairs many committees, in terms of the majority, the ruling party is the majority in most of the committees. So, there is a problem in the manner in which committees are constituted. The ruling party thinks they are entitled to even chair all the committees and in the past, they have actually chaired almost all of them, until recently the opposition threatened to withdraw from the inter-Parliamentary committees during the eleventh Parliament. The opposition said it is not going to participate in any committee. So that presented a challenge because the ruling party was not going to be accepted by the international community. For instance, they were going to be rejected at the Inter-Parliamentary Union, at the Commonwealth Parliamentary Association, at SADC Parliamentary Forum and at all these other inter-Parliamentary committees, at PAN African Parliament and so forth, they were not going to be accepted.

The major problem that poses oversight challenges is the notion that the ruling party always makes sure they have the majority of their members in the committees and that they chair the key committees. Effectively, the ruling party members of Parliament dominate committees. In this regard, members of the ruling party are likely to protect the interests of their party and cannot meaningfully hold the Executive accountable.

At the time of writing this paper, all MPs belonging to the opposition boycotted membership of all Parliamentary committees. The boycott followed an attempt by the ruling party, the BDP, to dissolve all the existing committees of Parliament and to reconstitute them. The BDP wanted the committees to be dissolved and re-elected in such a manner that the committees would reflect the representation of the composition of political parties in Parliament. The motion read as follows:

> That this Honourable House resolves as a matter of urgency to suspend Standing Order 98.1 and proceed to dissolve all the committees of Parliament and direct the Committee of Selection to expeditiously constitute the new Parliamentary committees within three days of this resolution being passed by Parliament, reflecting the composition of parties in Parliament as near as possible (Daily Hansard of the Parliament of Botswana, 15 July 2022).

The BDP argued that the current Parliamentary committees are not reflective of the balance of parties in Parliament; hence, the need to reconstitute them to reflect the proportion of political party representation in Parliament. However, the opposition MPs viewed the proposed change as a violation of basic oversight principles, since the BDP wanted to remove opposition MPs who headed committees and also to have the BDP MPs forming the majority in all committees. The opposition submitted that that is tantamount to self-oversight and that, in such circumstances, the ability of Parliament to hold the Executive accountable cannot be realised.

The opposition also argued that oversight cannot be realised in a situation where 14 backbench MPs of the ruling party want to be the majority in committees and chair all committees at the same time, against the 19 opposition MPs. Hence, the opposition decided not to participate in all oversight committees, reasoning that they cannot be part of the watered-down and Executive-controlled Parliamentary committees. Consequently, some committee activities were postponed because the membership did not quorate, owing to the non-participation of the opposition MPs in committees. For instance, the 60th Public Accounts Committee (PAC) meeting, which was scheduled to examine the 2020/2021 public accounts and Auditor-General reports was postponed owing to non-participation of the opposition MPs in committees.

As previously discussed, the ruling party and/or the Executive cannot oversee itself through its backbench. The ruling party backbench cannot vote against its party caucus, nor can it publicly criticise the Executive in Parliament. In addition, currently, the backbench constitutes about 33.4% of the ruling party caucus, whereas the Executive constitutes about 66.6% of the ruling party caucus. Therefore, the Executive dominates the ruling party caucus. Furthermore, members of Cabinet constitute about 46% of members of Parliament. As a result, the Executive dominates Parliament. So, if the ruling party backbench forms the majority membership of Parliamentary

committees and heads the committees at the same time, Parliamentary committees would be reduced to an extension of the Executive. That would increase the dominance of the Executive over Parliament and further cripple the oversight function of Parliament.

Since members of the Executive cannot be members of Parliamentary committees, section 100.1 of the Standing Orders of the National Assembly of Botswana of 1966 needs to be amended in order to provide that where possible, membership of committees should reflect an equal representation (50–50) of both the ruling party backbench MPs and the opposition MPs. For instance, if a committee constitutes 10 members, five of them should belong to the ruling party backbench and five members should belong to the opposition MPs. Then 10 members will collectively vote for their chairperson to head the committee. That will help to eliminate the dominance and control of the Executive of oversight committees, thereby enhancing the oversight function of Parliament. Nevertheless, it is worth noting that the ability of Parliament effectively to hold the Executive accountable, is highly dependent, among other things, on the extent to which Parliament is independent of the Executive.

8.2.3.5.2 Insufficient members of Parliament

As mentioned earlier in this study, Botswana's Parliament currently has a total number of 63 MPs comprising both elected and specially elected MPs. Out of 63 MPs, only 33 MPs are eligible for committee membership. The 33 MPs comprise 14 ruling party backbench and 19 MPs belonging to the opposition parties. Currently, there are a total of 23 committees of Parliament. All 33 (or 100%) of study participants interviewed revealed that members of Parliament are insufficient to man all the existing committees. Consequently, the eligible members have overlapping membership to committees of Parliament. Study participants revealed that, owing to the insufficient number of MPs to man committees, it is common for an MP to sit in more than three committees and others sit in up to seven committees. Participants argued that sitting in more than three committees hinders their effectiveness since the committee membership involves a lot of work requiring dedication and a lot of research.

Furthermore, participants revealed that, owing to there being an insufficient number of MPs to populate the existing 23 committees, only 11 committees are operational, and

the rest are non-functional. For example, study participants revealed that, for the past 10 years many committees were not operational, except for a few. Study participants argued that the capacity of Parliament is limited in terms of exercising its oversight function through committees. Hence, an incumbent MP, as previously cited, submitted the following:

> Our Parliament is not effective because of insufficient number of MPs to populate oversight committees. We have 23 committees but, at any given time, only five committees can sit because we do not have enough MPs to populate all these committees. The oversight function of Parliament is mainly exercised at different committees of Parliament. I would say, at the moment, our Parliament is not functioning because oversight committees are not functioning. Oversight committees are not functioning because there are not enough MPs to populate them. This is exacerbated by the fact that the Executive takes close to half of MPs and eventually, the ability of Parliament to exercise its oversight function is highly compromised.

Owing to overlapping membership, only five out of 23 committees can sit at any given time. There are multiple committees that deal with various issues. Eligible MPs have overlapping membership in these different committees. That is a challenge. It presents a problem because MPs are not able to dedicate time to exercise their oversight role effectively. This study revealed that, since committees have conflicting schedules, some committees end up not meeting and, as a result, there is very little that can be achieved by such committees. The study also revealed that not all committees meet during a particular Parliamentary session. Those committees which would not have met during a particular session would then be scheduled to meet at the next available Parliamentary session. Hence, study participants submitted, committees are not effective in holding the Executive accountable.

Furthermore, the study revealed that, owing to overlapping membership to committees and insufficient MPs to populate committees, some MPs sit in about seven to nine committees. An MP whom this study interviewed said:

> I sit on seven committees, for example. This is because Parliament is so small in terms of the number of MPs, but the committees are so many. So, the Parliament's

> oversight role in terms of overseeing the work of the Executive through committees is weak in that respect.

Thus, committees cannot be effective when a member of Parliament sits on seven or more committees. MPs interviewed revealed that, in their interactions with MPs of other countries, they stated that it is common for them only to sit in two or three committees.

As discussed earlier, the challenge of the insufficient number of MPs can be solved by increasing the number of MPs from the current 63 to somewhere between 86 and 120 MPs. The increase can be achieved by doubling the current 57 constituencies to 114, which will translate to 114 elected MPs, plus six SEMPs, leading to a total of 120 MPs. Alternatively, Botswana could adopt a hybrid electoral system model and increase the number of MPs elected through the first-past-the-post electoral system by bringing in additional MPs through the proportional representation electoral system. However, the increase in the total number of MPs should be determined by the population size, the economic conditions of the country, and the number of constituencies, as determined by the Delimitation Commission.

8.2.3.5.3 Lack of research staff and legal officers

Central to the responsibilities of MPs are the three major roles of representation, law-making and oversight. However, members of Parliament cannot be expected to be experts in every field concerning law-making, representation and oversight. Hence, there are some areas where MPs would require the assistance of qualified research and legal officers to make meaningful deliberations in Parliament. MPs need to be capacitated to initiate and present bills in Parliament, to engage and debate meaningfully on the policies or legislative proposals brought to Parliament by the Executive, and to provide oversight effectively on the activities of the Executive. They need capacity to analyse bills and policies brought before them and to provide counter- and/or alternative bills and policy proposals. Therefore, the capacity of MPs to carry out their duties effectively is highly dependent, among other things, on the assistance offered to them by their support staff in the form of research officers and legal officers.

As outlined earlier, this study revealed that there is a lack of research staff and legal officers to support the work of MPs in their legislative, representation or oversight

duties. Participants interviewed submitted that there is no fully fledged research unit with qualified personnel, nor are there sufficient legal officers to support MPs in the exercising of their duties. Participants further revealed that committees of Parliament are not effective owing to the lack of support staff. Committees are at the centre of the oversight function of Parliament. They deal with a wide range of matters that require capacity in terms of research, technical and legal advice. Nonetheless, this study found that the committees are limited in terms of capacity in the form of support staff who offer assistance to MPs. Hence, the efforts of Parliamentary committees to hold the Executive accountable remain futile.

Moreover, participants submitted that, owing to the lack of support staff, MPs are unable to comprehend, analyse and debate meaningfully on the proposals brought by the Executive. Their duty is just to vote and pass the proposals of the Executive. Hence, participants labelled the Botswana Parliament as a “rubber stamp” Parliament, while others labelled it a “voting” Parliament.

This study revealed that, compared to Parliament, the Executive has the capacity to initiate bills and policy proposals. The capacity of the Executive is drawn from technocrats and bureaucrats in both the public and civil service. Public servants and civil servants offer support to the Executive in the form of research, legal advice and expertise in the development of bills and policy proposals. Therefore, the Executive is stronger than Parliament in terms of initiating bills and policies. One would expect Parliament also to rely on its support staff for technical and legal advice on issues concerning legislation and oversight. However, this study has revealed that MPs are on their own. They do not have support staff to rely on for technical and legal advice. Consequently, Parliament is weak and cannot exercise its oversight, legislative and representation duties effectively.

Nevertheless, as previously discussed in this study, the support of MPs in terms of legal assistance, research assistance, technical advice and any other support needed for effective management of the business of Parliament, is highly dependent on the establishment of the Parliamentary Commission and the Parliamentary Service, which are separate and independent of the public service. Just like the bureaucratic and the technocrat machinery which supports the Executive, the Parliamentary Service and the Parliamentary Commission would offer Parliament all the support it needs to carry

out its functions effectively. This is to say, both the Parliamentary Service and the Parliamentary Commission would be responsible for making sure that MPs have access to legal officers, research assistants and any other experts that they might need in the course of executing their duties.

8.2.3.6 Government business versus private members' business

In the exercise of its responsibilities, Parliament entertains both private members' business and government business. Government business refers to all matters brought to Parliament for consideration by the Executive, whereas private members' business refers to all matters brought by individual MPs to Parliament for determination. Individual MPs, in this regard, consist of the ruling party backbench and the opposition MPs. Government or private members' business can be in the form of bills, policy proposals or any other matter that needs Parliament for debate and determination. Nonetheless, private members' business is mainly characterised by questions, motions and bills, whereas government business is mainly characterised by bills, policy proposals and motions.

The study found that the Parliament of Botswana is mainly dominated by government business, compared to private members' business. This is another factor which explains the dominance of the Executive over Parliament in Botswana. Study participants advanced a number of factors that explain the dominance of government business over private members' business. First, and paramount, is that, owing to the technicalities and difficulties of drafting bills, there are often few or no private members' bills brought to Parliament. This is exacerbated by the argument made earlier that MPs do not have support staff in the form of research and legal officers to offer technical and legal advice on the research and drafting of bills. So, that means when there are no bills or proposals brought by private members in Parliament, government business is considered.

Similarly, Fombad (2016), as well as Lotshwao and Sebudubudu (2017) argue that, although the law-making function lies with Parliament, the Executive branch has virtually taken over the role of creating laws from Parliament in Botswana. Parliament (MPs) has little ability to propose laws, and its main role has been reduced to examining and endorsing legislation that is introduced by the Executive branch.

On the other hand, study participants revealed that, even though sometimes there are private members' bills, more often almost all private bills are rejected. The ruling party makes all decisions and has made sure that the opposition is just there for its physical presence because whatever they contribute in Parliament is meaningless. When private members' bills are tabled, it is very easy to predict the end. If an opposition MP presents a private members' bill, it will be shunned by the ruling party because of their numerical strength in Parliament.

Second, study participants revealed that, often, government business is given more time in Parliament compared to private members' business. For instance, participants stated that, in a typical sitting of Parliament, private members' business is given 45 minutes, and the rest of the time would be dominated either by a government bill or by a government policy.

Third, and similar to the second issue, the study found that, when it comes to the allocation of time to present and debate issues in Parliament, the Executive is allocated more time than ordinary members of Parliament are. For instance, participants revealed that a minister would be allocated 30 minutes to present a policy. Thereafter, MPs would be allocated 10 minutes each to respond to the minister's presentation. Then, the minister would be given 20 to 30) minutes to respond to MPs. Participants argued that, despite the Executive having debated the issues in Cabinet, they would still want to dominate debates in Parliament by being allocated more time than the rest of the MPs.

Furthermore, and linked to the third issue, participants who form part of Parliament revealed that, in a week, government business is given three days and private members' business is given two days. Participants expressed concern that, although three days is reserved for government business, the Executive will always find a way of presenting their issues on the days reserved for private members' business. For example, participants stated that ministers would come and present statements or any issues on the days reserved for private members' business.

Fourth, and related to the third aspect, study participants stated that the ruling party is accorded more time than the opposition to debate in Parliament. For example, participants observed that for every debate, the Speaker will recognise two members

of the ruling party and only one member of the opposition. This pattern will repeat until the debate is completed.

Fifth, study participants submitted that the almanac of Parliament is mainly determined by government business compared to private members' business. For instance, participants stated that, if Parliament is supposed to adjourn in a week and then government business finishes prior to the scheduled adjournment date, Parliament can actually adjourn, despite the outstanding motions and questions that members of Parliament would still have. In other words, ministers cannot come to Parliament to answer questions and to respond to motions by members of Parliament or to deal with private members' business when there is no government business to attend to on the agenda. Essentially, when there is no government business, there is no Parliament.

The extract below, obtained from a field data transcript, elaborates comprehensively on the dominance of government business against private members' business in Parliament:

> What I have also seen with our Parliament is that, per session, what we have in Parliament, when Parliament is sitting, there is what we call government business and private members' business, and we have had Parliament being dominated by government business to the point where it is really obscene. It is bad, such that most of the things that are discussed are matters that are brought by the Executive. There are two days which are given to private members' business in the main. Okay, this is a typical sitting: in a typical sitting 45 minutes will be dedicated to questions, and questions are private members' business. They are questions from members of Parliament to the Executive. Then afterwards, mostly it would be dominated by either a government bill or a government policy. So that is the dominance. On Thursday, it's private members' bill, most of the time because of the technical know-how and the difficulties involved in drafting bills. Most of the time there are no private bills. We have been bringing private bills, yes, I am one of those that have brought more private bills in the past Parliament and in this one. Other members have also brought private bills, Honourable Reatile, Honourable Saleshando, the three of us brought private bills and all of them have been rejected. Most private bills are rejected; almost all of them are rejected. So, that is Thursday, and then on Friday, it is a day dedicated to motions but even then, the Executive will always find a way to steal some time. Either ministers come to make

> statements on any issue; they will come and make statements. They are allowed to do so; hence, the business of Parliament is dominated by government business as opposed to private business. What I say with the obscene is this, sometimes, even the almanac of Parliament is mostly determined by what government has, not on what private members has. I will give you an example. If, for instance, Parliament is supposed to adjourn in a week and then government business finishes, Parliament can actually stop, despite the motions and questions members of Parliament have. In other words, ministers cannot come to Parliament to answer questions and to respond to motions by members of Parliament and to deal with private business when there is no government business. So, when there is no government business, there is no Parliament. That is just how it is. The other example I can give which shows how Parliament is controlled by the Executive is the allocation of time to debate. The Executive is allocated more time. When a minister presents a policy, the minister will speak for 30 minutes and then each member of Parliament will be given 10 minutes to respond. The minister will be given another 20 minutes to 30 minutes to respond. The vice president is always allocated more time than everybody when responding to the State of the Nation Address, and so forth. Even on presentation of bills it is the same. Mostly, they are government bills; the Executive will take more time. What is also even irking is that, even when the Executive has debated these in Cabinet, they will still come and dominate the debates in Parliament. The other thing, when it comes to debates in Parliament, the ruling party is accorded more time than the opposition How? For every debate, the Speaker will recognise two members from the ruling party: one member from the opposition, two members from the ruling party, one member from the opposition and so on. It is a new practice. I understand it started in the 11th Parliament. Before, it used not to be like that. So that is another challenge with how we conduct our business in Parliament, more especially that government business dominates private members' business.

A conclusion can be drawn that Parliament predominantly discusses government business. Although private business is there in the form of questions, largely, Parliamentary time is consumed by government business. The government business is allocated more time, and the private business is allocated less time. There is hardly enough time for private bills either, simply because the agenda of Parliament is largely focused on government and government business. On the other hand, most of the laws or bills initiated come from the Executive with a few that are initiated by private

members. Hence, Parliament is dominated by government business compared to private members' business.

When asked what can be done to enhance the private members' business and to balance government business versus private business, participants suggested that there is a need to offer technical assistance to MPs to initiate and draft bills, to ask relevant questions and to table motions in Parliament in a manner that matches the ability of the Executive to do so. This can be achieved by providing MPs with research assistants, legal officers and any other expertise that they may need to initiate, draft and present bills effectively in Parliament in a comprehensive manner.

Participants also suggested that private members' business can also be enhanced by introducing the president's question time, when MPs will be expected to ask the sitting president pertinent questions relating to governance issues, service delivery issues and any other important matters relating to national interests. That will enhance private members' business and also help Parliament to keep the Executive in check. The president would account to Parliament, among other things, through providing answers to questions that would have been asked by members of Parliament.

For instance, the President of the Republic of South Africa and the Prime Minister of the United Kingdom are answerable to Parliament through the question time of the President/Prime Minister, respectively. When Parliament is independent and separated from the Executive, the control of Parliament by the Executive will be eliminated. Hence, Parliament would be responsible for its own affairs, including but not limited to controlling its own agenda, determining and managing the calendar of Parliament, scheduling debates, motions, and questions, and creatin a balance between private and government business in Parliament. Based on the study findings as presented and discussed above, the following proposed operational framework has been developed by this study.

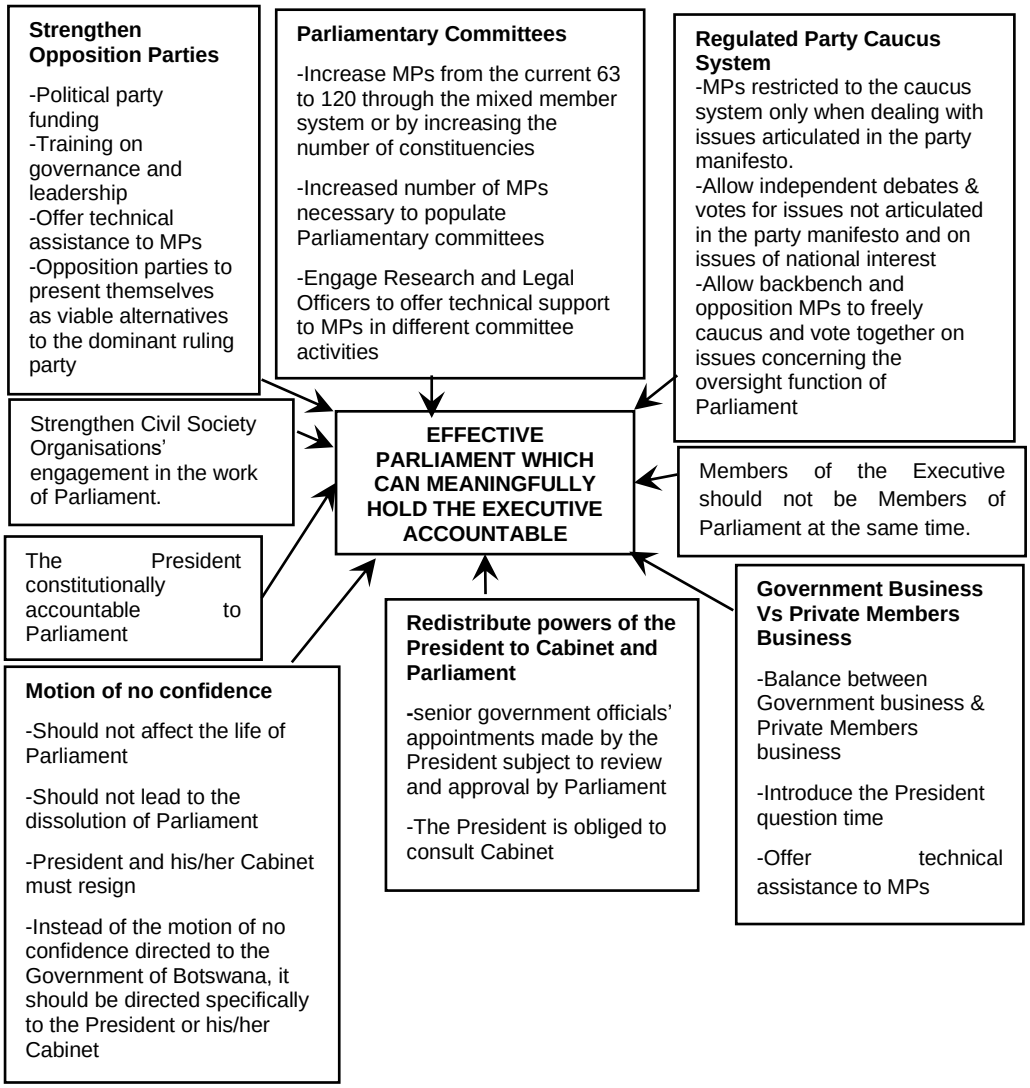

Figure 8.6: Proposed operational framework of Parliament.

Source: Author's field data (2022)

8.2.4 Other Parliamentary oversight challenges

In addition to the legal, administrative and operational challenges, the study found that there are other challenges affecting the oversight function of the Republic of Botswana Parliament. These include but are not limited to the lack of independence of extra-Parliamentary oversight institutions, such as the Directorate of Corruption and Economic Crime (DCEC), the Office of the Ombudsman and the Office of the Auditor-General (OAG). Figure 8.7 depicts the existing extra-Parliamentary oversight institutions framework.

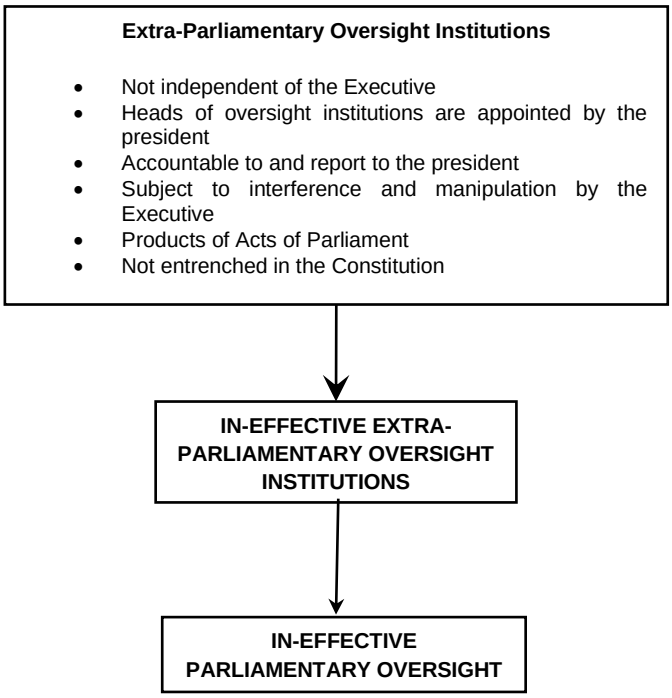

Figure 8.7: Existing extra-Parliamentary oversight institutions framework

Source: Author's field data (2022)

8.2.4.1 Extra-Parliamentary oversight institutions

Extra-Parliamentary oversight institutions are mechanisms of accountability established outside of Parliament. In other words, these are standalone institutions of accountability operating outside the sphere of Parliament. In addition to the intra-Parliamentary oversight tools, Parliament also relies on extra oversight tools in the form of institutions of accountability to carry out its oversight mandate against the Executive. Both the intra- and extra-Parliamentary oversight tools were discussed in Chapter Six of this study. Extra-Parliamentary oversight institutions established in Botswana include but are not limited to the Office of the Auditor-General (OAG), the Office of the Ombudsman and the Directorate of Corruption and Economic Crime (DCEC).

The Office of the Auditor-General (OAG) was established under section 124 of the Constitution of Botswana of 1966. The main mandate of the OAG is to provide oversight on public accounts and performance audits of Botswana. The Auditor-General (AG) is a public officer. In terms of section 112 of the Constitution of Botswana of 1966, the Auditor-General (AG) is appointed by the president. He or she can be removed from office for inability to perform the functions of his or her office, for

misbehaviour, or by Parliament with advice from a tribunal (Section 114, Constitution of Botswana, 1966). The AG reports to the minister responsible for finance, who then submits the reports to the National Assembly. Once the reports are before the National Assembly, the Public Accounts Committee (PAC) of Parliament scrutinises them and calls for evidence from the accounting officers in the public service. Permanent secretaries for different ministries appear before the PAC to answer for any queries the PAC may have in relation to the AG's reports. The PAC then reports its findings and recommendations to Parliament. In Botswana, there is, however, no obligation for ministers to respond or critique reports of the AG.

The Directorate on Corruption and Economic Crime (DCEC) is established by the Corruption and Economic Crime Act of 1994. The DCEC mandate is spelt out in section 6 of the Corruption and Economic Crime Act (1994), and it includes investigating allegations of corruption and economic crime, educating the public on the effects of corruption, and preventing corruption. Thus, the DCEC uses a three-pronged strategy of investigation, prevention and education to fight corruption. In terms of structure and accountability, the DCEC is under the Office of the President, and its Director-General (DG) is appointed by and accounts to the president. The DG is required by section 22 of the Corruption and Economic Crime Act of 1994 to submit annual reports to the President. Section 112 of the Constitution of Botswana of 1966 empowers the President to appoint, remove from office, and to exercise disciplinary control over the DCEC Director-General.

The Office of the Ombudsman is a product of an Act of Parliament, particularly the Ombudsman Act of 1995. Although the Ombudsman in Botswana is established by a Parliamentary legislation, it is technically an Executive Ombudsman rather than a Legislative Ombudsman. Section 2, subsection 2 of the Ombudsman Act (1995) empowers the president, in consultation with the leader of opposition (LOO) to appoint the Ombudsman. The Office of the Ombudsman is established to ensure accountability, transparency and efficiency in public administration. It promotes good governance, democracy, protects human rights, rule of law, and militates against acts of maladministration and administrative injustice in the public sector. The reports of the Ombudsman and his/her recommendations are submitted to the president, who then causes them to be laid before the National Assembly for debate (Section 9(2) of

the Ombudsman Act of 1995). That is, the Ombudsman is appointed by and accounts to the president.

This study revealed two major common limiting factors found in these oversight institutions. First, is the manner in which they are established, their source of authority. With the exception of the OAG, both the Office of the Ombudsman and the DCEC are products of Acts of Parliament. They are not entrenched in the Constitution. There is no guaranteed stability, durability, predictability and certainty (Fombad, 2016) of institutions which are products of Parliamentary legislation. They can be dissolved at any time at the convenience of the government in power. In addition, the legislation governing the operations of institutions which are products of Acts of Parliament can be changed at any time at the mercy of the ruling party or the government of the day. On the other hand, there is the likelihood of stability, durability, predictability and certainty (Fombad, 2016) on oversight institutions entrenched in the Constitution. This is simply because the Constitution is the supreme law of the land and any law that violates the provisions of the Constitution will be declared as null and void. Constitutions are also meant to endure for a long time and cannot easily be changed or amended to cater for the self-interests of political leaders. Therefore, there is durability and stability of institutions which are established by the Constitution as compared to oversight institutions provided by Parliamentary legislation.

Second, this study revealed that all the three oversight institutions in Botswana are not independent of the Executive. They are subject to interference and manipulation by the Executive. All the heads of the oversight institutions in Botswana are appointed by the president. They report to the president. They do not report to Parliament. Therefore, they cannot hold the Executive meaningfully accountable. This aligns with arguments advanced by Molomo and Keorapetse (2017), who maintain that oversight institutions are constrained by their reporting lines. Instead of reporting to Parliament they report to the president. The effectiveness of these oversight institutions has been compromised owing to the appointment system, which is politicised. The Executive is empowered by section 112 of the Constitution of Botswana of 1966 to hire and fire all the heads of oversight institutions. Heads of oversight institutions are not independent of the Executive; therefore, their ability to hold the Executive accountable is limited.

To strengthen oversight institutions, there is certainly a need to reform the manner in which they are established and their appointing authority. In accordance with the reasons advanced above, all oversight institutions need to be a product of the Constitution to instil a sense of stability and durability in them. For instance, the institutions of accountability in South Africa are entrenched in the Constitution. In particular, the South African 1996 Constitution establishes the oversight institutions under Chapter Nine, section 181(*a-f*). Similarly, the oversight institutions for the Republic of Kenya are entrenched in the different articles of the 2010 Kenyan Constitution. Other African constitutions entrenching oversight bodies include but are not limited to the 2010 Angolan Constitution, the Constitution of Morocco of 2011, the 2005 Constitution of Burundi and the Constitution of Zimbabwe of 2013 (see Chapter Six of this study).

The South African 1996 Constitution considers the Chapter Nine institutions (oversight institutions) crucial in supporting its constitutional democracy to the extent of expressly providing some governing principles to protect them. The governing principles aimed at protecting the South African oversight institutions, as spelt out in section 181(2-4) of the Constitution of South Africa of 1996, include the provisions that the oversight institutions must be independent in the exercising of their duties; their operations must not be interfered with by any person or organ of the state; and they are accountable and must report to the National Assembly.

Oversight institutions also need to be independent of the Executive; therefore, the appointing authority of all heads of oversight institutions should be Parliament. Alternatively, to instil some checks and balances, the nomination of the heads of oversight bodies by the president should be subject to approval by Parliament. To attain independence and impartiality, oversight bodies need to be separated and located outside the Judiciary, the Executive and the Legislative. Oversight institutions should also report directly to Parliament instead of reporting to the Executive. They must be accountable to Parliament. Thus, oversight institutions need to be completely separated from the Executive. They ought to have independent structures of the Executive. In addition, they should operate without undue influence and interference from the Executive.

Based on the findings, the study proposes the following framework for extra-Parliamentary oversight bodies, as discussed above:

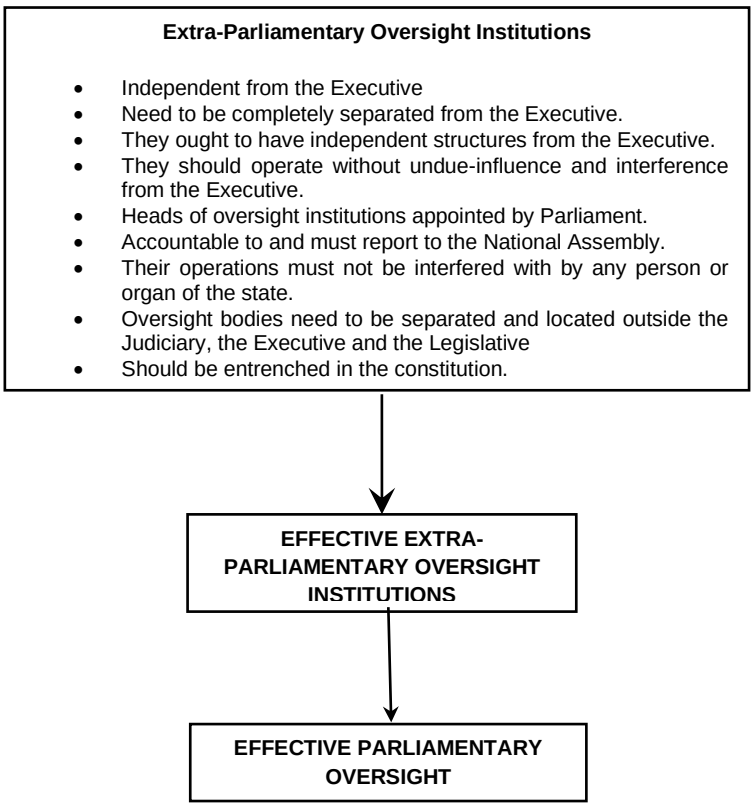

Figure 8.8: Proposed extra-Parliamentary oversight institutions framework.
Source: Author's field data (2022)

The South African Chapter Nine institutions provide a good example of oversight bodies which are independent, separated from the three main organs of the state, accountable to and reporting directly to Parliament. However, there is an exception: the Auditor-General of the Republic of South Africa operates within the Executive. Nonetheless, the Auditor-General is protected from the Executive interference by section 181(2-4) of the South African Constitution of 1996. Although the constitutional set-up of oversight institutions by the 1996 South African Constitution provides a model constitutional framework, South Africa has been experiencing many large-scale cases of corruption, mismanagement of public resources, and poor service delivery, suggesting that there is a need to close some gaps that might exist.

8.3 Overall framework necessary to guide the oversight role and function of Parliament

One of the objectives of this study is to *develop a framework necessary to guide the oversight role and function of Parliament.* It is hoped that the oversight framework developed by this study will help to strengthen and capacitate the Botswana Parliament to exercise its oversight function effectively. Since African Parliaments experience similar oversight challenges to that of Botswana, the oversight framework developed by this study would also help in strengthening and capacitating African Parliaments to hold the Executive accountable effectively.

A framework necessary to guide the oversight role and function of Parliament can be deduced from the four main themes identified by this study. In particular, the descriptive framework can be construed from the data analysis and discussion, as presented under each theme above. The four major themes that emerged from data collection, coding and analysis, as outlined above, include legal Parliamentary oversight challenges, administrative Parliamentary oversight challenges, operational Parliamentary oversight challenges, and other Parliamentary oversight challenges. In addition, the descriptive framework is inferred in Chapter Nine of this study, which provides a summary, conclusions and recommendations of this study. Given the four major themes identified as well as data analysis and discussions thereof, Figure 8.9 therefore presents, in the form of a diagram, a summarised version of the framework necessary to guide the oversight role and function of Parliament, as deduced from each theme above:

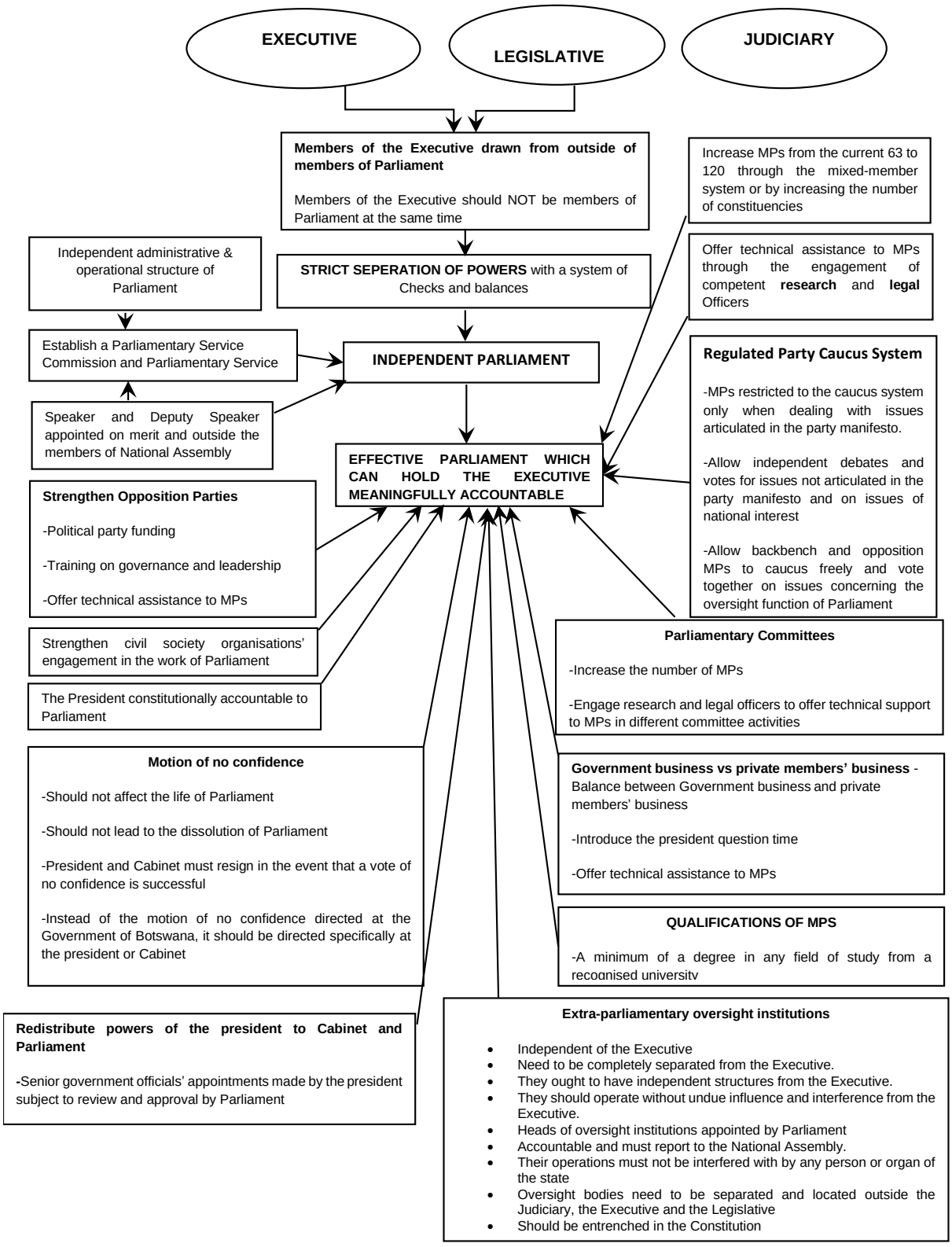

Figure 8.9: A framework necessary to guide the oversight role and function of Parliament.

Source: Author's field data (2022)

8.4 Conclusion

This chapter has presented, analysed and discussed the findings of this study. The major findings presented are grouped into four major themes, namely the legal, administrative, operational and other Parliamentary oversight challenges. The themes identified by this study were induced from the information obtained from the data collection, coding and analysis exercise. The themes are also deduced from the literature reviewed, more especially from relevant published articles by renowned scholars who wrote extensively about Parliament–Executive relations in Botswana, including but not limited to Botlhale and Lotshwao (2015), Fombad (2016), Maripe (2017), Molomo and Keorapetse (2017), as well as Sebudubudu *et al.* (2017).

Key findings discussed in this chapter concerning the oversight challenges faced by the Parliament of the Republic of Botswana include lack of independence of Parliament, a single dominant ruling party, the political party caucus system, extensive executive powers of the president, the manner in which the vote of no confidence is structured by the Constitution of Botswana of 1966, lack of independence of extra-Parliamentary oversight institutions, lack of research and legal officers to support MPs in the exercise of their oversight duties, an insufficient number of MPs to man Parliamentary oversight committees, lack of the president question time, weak opposition parties, and weak civil society organisations.

These findings are in line with and/or confirm the arguments advanced by the literature. more especially the writings of, among others, Botlhale and Lotshwao (2015), Fombad (2016), Maripe (2017), Molomo and Keorapetse (2017) as well as Sebudubudu *et al.* (2017), who submitted that the Botswana Parliament is not effective in its role but rather a “rubber stamp” Parliament owing to its lack of structural and operational independence from the Executive. The chapter also attempted to provide an overarching and a comprehensive framework necessary to guide the oversight role and function of Parliament. This is so because the framework was developed after a thorough analysis of the oversight challenges faced by the Parliament of Botswana. Hence, the proposed framework has attempted to provide solutions to all the identified oversight challenges. The next chapter provides a summary, conclusions and recommendations of this study.

Chapter Nine: Summary, conclusion and recommendations

9.0 Introduction

The previous chapter presented, analysed and discussed study findings in accordance with major themes identified from the data collection, coding and analysis exercise. Furthermore, based on the study findings, major themes identified, data analysis and discussion, literature reviewed as well as the theoretical framework of this study, the previous chapter provides a framework necessary to guide the oversight role and function of Parliament. This chapter provides a summary, conclusion and recommendations of this study.

9.1 Summary of the study

This research comprises a total of nine chapters. Chapter One provides an introduction, background, orientation, statement of the problem, research questions, objectives and the significance of the study. Chapter Two outlines the research methodology of the study. Chapter Three provides a critical review of the literature related to this study. Chapter Four discusses the theoretical principles governing the separation of powers between the Executive and Legislative authorities.

A special focus is on the theory of separation of powers, its meaning, rationale, origins, development, application and its implications on the oversight role of Parliament. Chapter Five discusses the constitutional and legislative imperatives determining separation of powers for both Parliament and the Executive authorities being the American presidential system, the British parliamentary system and the French hybrid system of government. It further discusses the implications of the systems of government on the separation of powers and the oversight function of Parliament. Chapter Six provides a critical and comparative analysis of the nature and scope of the existing Executive–Legislative relations in the context of Botswana. Chapter Seven analyses accountability mechanisms, tools and approaches that Parliament relies on to exercise its oversight function over the Executive. Chapter Eight presents, analyses and discusses findings as well as results of the study. Finally, Chapter Nine provides a summary, conclusion and recommendations of the study.

Hence this chapter shall limit itself to the critical aspects of the summary of the study which includes but not limited to an introduction, a brief overview of the research methods used, a summary of the key findings and results, and a conclusion.

9.2 Findings and results

Using the thematic analysis method of data analysis, four major themes related to the research problem of the study were generated from the data collected from study participants. The themes identified include the legal Parliamentary oversight challenges, administrative Parliamentary oversight challenges, operational Parliamentary oversight challenges as well as other Parliamentary oversight challenges. The major finding bordering across all four identified themes is that the Parliament of the Republic of Botswana is unable to hold the Executive accountable effectively, mainly because, among other things, Parliament is not independent of the Executive branch of government.

The study found that lack of independence of Parliament in Botswana is caused by a number of factors, most are legal in nature and some concern the political and administrative environment in which Parliament operates. This includes the fusion of the Executive and the Legislative branches of government, the dominance and control of Parliament by the Executive, the single dominant ruling political party, the party caucus system, the extensive executive powers of the president and lack of autonomy of the Speaker, Deputy Speaker and the Clerk of the National Assembly. Furthermore, lack of independence of the Botswana Parliament is caused by the administrative structure of Parliament in relation to the Executive. This is to say, Parliament is technically a department or an office under the Office of the President. Another legal aspect which was found to be hindering the effectiveness of Parliament in the exercise of its oversight function is the manner in which the vote of no confidence is provided for in the Constitution of Botswana of 1966. In particular, the constitutional provision that empowers the president to dissolve Parliament once a vote of no confidence is successful, counterbalances the power of Parliament to pass a vote of no confidence in the government of Botswana.

The study also found out that there are oversight challenges bordering around the administrative and operational structure of Parliament hindering the ability of

Parliament to meaningfully hold the Executive branch of government accountable. These include an undeveloped Parliamentary committee structure, lack of support staff for members of Parliament in the form of research and legal officers, insufficient members of Parliament to man oversight committees, the dominance of government business in Parliament as compared to private members' business, lack of the president question time, non-autonomous extra-Parliamentary oversight institutions, weak civil society, weak opposition parties and the calibre of MPs in terms of their academic qualifications and lack of leadership abilities.

9.3 Discussion

The results of this study depicts the major weakness of Botswana's Parliament as caused by its lack of independence. Furthermore, Parliament is deemed ineffective owing to the dominance of and control by the Executive. Therefore, any reforms to strengthen the Parliament of Botswana should be aimed at addressing its independence and removing it from the control by the Executive. To attain independence, and remove the Executive dominance and control of Parliament there is need to totally separate Parliament from the Executive. That is, Parliament needs to be completely detached from the Executive in accordance with the theory of separation of powers. In particular, emphasis should be placed in the classical formulation of the theory of separation of powers which provides for a pure and/or strict form of separation of powers between the Legislative, Executive and the Judiciary branches of government. The theory also provides that the Legislative, Judicial and Executive functions of government should be distinct, separate and independent from one another.

Furthermore, the theory of separation of powers denotes that the three separate functions of government should be exercised by three separate, distinct and independent Executive, Legislative and the Judiciary institutions of the state. In addition, to detach Parliament completely from the Executive there is need to adhere to the principles of separation of powers which states that the same person should not form part of more than one of the three organs of government such that Cabinet ministers should not sit in Parliament, and that one organ of government should not control or interfere with the work of another. This is to say, the Executive should not interfere in Judicial and/or Legislative decisions and that one organ of government

should not exercise the functions of another. In essence, ministers should not have legislative powers.

An analysis of the Executive–Legislative relations in Botswana depicts a set-up which contravenes the theory of separation of powers and its principles as outlined above, hence a weaker Parliament in relation to the Executive. Therefore, a major reform that is critical in strengthening Botswana Parliament, is to make it independent by completely detaching it from the Executive in accordance with the theory of separation of powers. It is worth noting that before Kenya adopted a new Constitution in 2010, its Parliament experienced similar challenges to the ones experienced by the Parliament of Botswana and Parliaments of other African countries. In order to attain the independence of Parliament and to remove the Executive dominance and control of Parliament by the Executive, Kenya embarked on a reform agenda which led to the adoption of the 2010 Constitution of Kenya. Among other things, the 2010 Constitution of Kenya provides for a strict separation of powers between Parliament and the Executive in such a manner that members of the Executive are drawn outside Parliament and members of the Executive cannot be members of Parliament at the same time. Therefore, Botswana can benchmark from the 2010 Constitution of Kenya and other constitutions which are similar to that of Kenya.

Once Parliament is detached and independent from the Executive, then other desirable administrative and operational reforms such as strengthening the oversight committees, balancing between private members' business and government business, providing support staff for MPs, regulating the caucus system, reforming the vote of no confidence, introducing the president question time, increasing the number of MPs, strengthening civil society, strengthening extra-Parliamentary oversight institutions and others should follow.

9.4 How the study addressed its objectives.

The study has five objectives including (1) to analyse the theoretical principles governing the separation of powers for Executive and Legislative authorities, (2) to compare the constitutional and legislative imperatives determining a separation of powers for both the Parliament and the Executive authorities, (3) to analyse the nature and scope of existing Executive and Legislative relations in the Republic of Botswana,

(4) to critique accountability mechanisms and approaches for the Executive authority necessary for strengthening the role and function of Parliament and (5) to develop a framework necessary to guide the oversight role and function of Parliament.

The first objective is addressed in Chapter Four of this study. In particular, Chapter Four provides a description, discussion and analysis of the theory of separation of powers with an emphasis on its origins, meaning, significance, its application in the modern-day governments and its implication on the oversight function of Parliament. The theory of separation of powers provides a basis and/or model for separating the Executive and Legislative authorities. It provides a framework for the establishment, relations and functioning of the three institutions of the state. Central to the theory of separation of powers is that to promote liberty and to prevent the abuse of power, the Executive, Legislative and Judicial powers of the state should not be concentrated in one person or body. Further, the theory states that there should be some forms of checks and balances amongst the three institutions of the state to prevent the abuse of power.

Chapter Five addresses the second objective of this study by comparing the three major models of government, the US Presidential system of government, the British parliamentary system of government and the French hybrid system of government. Emphasis is on how a particular system of government determines the application of the theory of separation of powers and its implications on the oversight function of Parliament. A comparison of the three models of government outlined above depicts that the extent to which powers are separated depends on the political system of government in use in a particular country. For instance, in the US Presidential system of government, separation of powers is adopted in its strictest form. Executive, Legislative and the Judicial powers are distinct and completely separated from one another. Institutions of the state are independent from one another although there are some forms of checks and balances amongst them. The implications of the US Presidential system on the oversight function of Parliament are that under this system, Parliament is independent and in a better position to hold the Executive accountable.

On the other hand, under the British parliamentary system, the theory of separation of powers is not applied in its pure (classical) form. There is fusion between Parliament and the Executive with some forms of checks and balances. Although the fusion of

Parliament and the Executive does not pose serious oversight challenges in countries with advanced democracies like the United Kingdom, it has led to weak Parliaments in many African countries which adopted the British parliamentary model. Majority of African Parliaments operating under the influence of the British parliamentary model are not effective in terms of holding the Executive accountable. This is so mainly because of the dominance of the Executive caused by the extensive executive powers of the president, and dual positions of being a legislator and a member of the Executive at the same time, amongst other things.

The French hybrid system combines elements of the American presidential model with features of the British parliamentary system. The French hybrid system provides a close cooperation between the Executive and the Legislative with no strict separation of powers, and the balance of power is skewed in favour of the Executive; hence, the Executive dominates, and Parliament cannot meaningfully hold the Executive accountable.

The third objective of this study is addressed in Chapter Six, which analyses the nature and scope of Executive–Legislative relations in Botswana. Since Botswana adopted the French hybrid model of government which combines both elements of the US presidential system and the British parliamentary model, its Executive–Legislative relations are characterised by a fusion of power between Parliament and the Executive. The balance of power is skewed towards the Executive. The Executive dominates and controls Parliament. Although there are some forms of checks and balances, Parliament is subordinate to the Executive and lacks operational and structural independence from the Executive. Therefore, it is in a weak position to effectively hold the Executive accountable.

Chapter Seven addresses the fourth objective of this study by providing a critical analysis of the accountability mechanisms and approaches for the Executive authority necessary for strengthening the role and function of Parliament. The chapter focuses on the extra-Parliamentary oversight institutions such as Supreme Audit Institutions (SAIs), Office of the Ombudsman, and the anti-corruption agencies. The study found that central to the effectiveness of accountability mechanisms is a number of factors which include but are not limited to, independence and autonomy of oversight institutions, political will, political influence and interference, legal and operational

framework of oversight institutions, cooperation, coordination and synergy between oversight agencies the level of democracy of a particular country as well as adequate and competent human capital and financial resources.

The fifth objective is addressed in Chapter Eight of this study. Chapter Eight presents, analyses and discusses study findings related to the research problem of this study. A model framework necessary to guide the oversight function of Parliament is developed from major findings, analysis, interpretation and discussion of results obtained from study participants. Salient features of the framework include but are not limited to an independent Parliament, autonomous extra-Parliamentary oversight institutions, empowered civil society, strengthened Parliamentary oversight committees, adequate support staff to members of Parliament, empowered opposition parties, regulated party caucus system and reduced extensive executive powers of the president.

9.5 Conclusion

The study attempted to examine the discourse concerning the oversight function of the Republic of Botswana Parliament. Key findings suggest that Parliament is not effective in terms of holding the Executive accountable mainly because of its lack of independence from the Executive. There are many factors which contributes to lack of independence of Botswana Parliament. Central amongst these factors include but are not limited to the fusion of the Executive and Legislative powers, the dominance of and control of Parliament by the Executive, the imbalance of power between the Executive and Parliament and an administrative structure of Parliament organised in such a way that Parliament becomes an office under the Office of the President.

Other key findings of this study concerning factors that prohibit Parliament from meaningfully holding the Executive accountable include the manner in which a vote of no confidence is structured in the Constitution of Botswana of 1966, the ruling party caucus system, the existence of a dominant ruling party, the extensive executive powers of the president, the president not constitutional accountable to Parliament, weak opposition parties, weak civil society, ineffective Parliamentary committees caused by lack of research and legal officers to support the committee activities of MPs and insufficient number of MPs to populate Parliamentary committees as well as

lack of independence of extra-Parliamentary oversight institutions. Furthermore, the study revealed that there is no question time for the President and that there is an imbalance between government business and private members' business in Parliament. Parliament is dominated by government business as compared to private members' business.

In an attempt to provide a solution to the identified key oversight challenges, the study proposed a framework necessary to guide the oversight role and function of Parliament. It is hoped that the proposed framework will help to attain an independent, strong and an effective Parliament which is able to hold the Executive accountable. It is envisaged that the framework will benefit the Republic of Botswana's Parliament and other African Parliaments which experiences similar oversight challenges to that of Botswana. Hence the developed oversight framework is characterised by the following features; an independent Parliament separate from the Executive, Parliament which has a separate administrative and operational structure outside of the Executive, strengthened Parliamentary oversight committees, strengthened civil society organisations, strengthened opposition parties, introduction of question time for the president, reformed vote of no confidence, introduction of impeachment laws, redistributed extensive executive powers of the president, president constitutional accountable to Parliament and autonomous extra-Parliamentary institutions which are entrenched in the Constitution.

The development of the framework was largely guided by data obtained from study participants, and the literature reviewed. Concerning the literature reviewed, the features of the framework outlined above were benchmarked as practised from advanced democracies, such as the United States of America (USA), the United Kingdom (UK), Hong Kong, South Africa, Namibia, Nigeria, Kenya and many other countries including the Scandinavian countries. It is worth noting that the 2010 Kenya's reform agenda which led to the adoption of the 2010 Constitution of Kenya provides a perfect example of how Botswana can reform and improve the oversight function of Parliament. In particular, the 2010 Constitution of Kenya provides an example of how the independence of Parliament can be attained and how to eliminate the dominance and control of Parliament by the Executive.

This study focused on the general overarching oversight challenges of the Republic of Botswana's Parliament. Future studies may be narrowed down to the examination of specific Parliamentary oversight tools such as Parliamentary committees, motion of no confidence, Parliamentary questions, impeachment laws and extra-Parliamentary oversight institutions. Future studies may also focus on the examination of the law-making and representation functions of Parliament.

9.6 Recommendations

Based on the key study findings, literature reviewed as well as the analysis and interpretation of results, the study recommends the following:

1. In order to attain functional and operational independence of Parliament, there is need to completely detach Parliament from the Executive. This can be achieved by the following:
   - Members of the executive should be drawn outside Parliament.
   - Members of the executive should not be members of Parliament at the same time.
   - Establish an independent and separate administrative and operational support structure of Parliament outside the Executive in the form of the Parliamentary Commission and the Parliamentary Service
   - The Speaker and Deputy Speaker should be autonomous, appointed by Parliament based on merit and should not be affiliated to any political party.
   - The Clerk of the National Assembly should not be an Executive appointee but rather appointed by the Parliamentary Service Commission

2. Motion of no confidence need to be revised in such a way that it prevents the president from dissolving Parliament in the event a vote of no confidence in successful

3. Motion of no confidence should be revised in such a way that instead of targeting the government of Botswana, it should be specifically directed to the President and/or his/he Cabinet

4. Introduce and entrench impeachment laws in the Constitution against the sitting President and the Vice President

5. Redistribute the powers of the president to Cabinet and Parliament

- Appointment of senior government officials should be subject to approval by Parliament.
- Appointment of senior officials of oversight institutions should be done by Parliament and not the Executive.
- The president should be obliged to consult his/her Cabinet.

6. The president should be constitutional accountable to Parliament.

7. Strengthen Parliamentary oversight committees.

- Engage qualified, experienced and competent research officers and legal officers to offer technical assistance to members of Parliament in the exercise of their oversight roles.
- Increase the number of MPs from the current 63 to 120.
- Introduce a mixed-member system, combine both the first-past-the-post and the proportional representation electoral systems.

8. Neutralise the dominant ruling political party by strengthening opposition parties

- Introduce political party funding.
- Offer technical support to opposition parties.
- Opposition parties should present themselves as a viable alternative government to voters.

9. Regulate the party caucus system

- MPs should be restricted to the caucus system only when dealing with issues articulated in the party manifesto.
- Allow independent debates and votes on issues not articulated in the party manifesto and on issues of national interest.
- Allow backbench and opposition MPs to freely caucus and vote together on issues concerning the oversight function of Parliament.

10. Introduce the president question time

11. Balance between government business and private members' business in Parliament

12. Strengthen civil society organisations engagement in the work of Parliament

13. Extra-Parliamentary oversight institutions should be independent from the Executive:

- They should operate without undue influence and interference from the Executive.
- They should be accountable to and must report to the National Assembly.
- Their operations must not be interfered with by any person or organ of the state.
- Oversight bodies need to be entrenched in the Constitution.

14. Basic qualifications of MPs should be a minimum of a degree from a recognised university in any field of study.

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Appendices

Appendix 1: Solemn Declaration and Permission to Submit Form

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NWU Higher Degrees Administration

SOLEMN DECLARATION AND PERMISSION TO SUBMIT

1. Solemn declaration by student

I, **Shadreck Balisi**

declare herewith that the thesis/dissertation/mini-dissertation entitled (**exact registered/approved title**),

Examining the Oversight Role of the Republic of Botswana's Parliament

which I herewith submit to the North-West University is in compliance/partial compliance with the requirements set for the degree:

Doctor of Philosophy in Public Management and Governance

is my own work, has been text-edited in accordance with the requirements and has not already been submitted to any other university.

LATE SUBMISSION: If a thesis/dissertation/mini-dissertation of a student is submitted after the deadline for submission, the period available for examination is limited. No guarantee can therefore be given (should the examiner reports be positive) that the degree will be conferred at the next applicable graduation ceremony. It may also imply that the student would have to re-register for the following academic year.

Ethics number: NWU-01149-21-A7 ORCiD: 0 0 0 0 - 0 0 0 2 - 6 8 0 5 - 3 6 4 9

Signature of Student: University Number: 3 6 7 2 9 8 2 5

Signed on this 14 day of March of 20 24

2. Permission to submit and solemn declaration by supervisor/promoter

The undersigned declares that the thesis/dissertation/mini-dissertation:

- ☑ Complies with the A-rules and the technical requirements provided for in the Manual for Higher Degree studies and in faculty rules;
- ☑ Has been checked by me for plagiarism (by making use of TurnItIn software for example) and a satisfactory report has been obtained, and;
- ☑ That the work was language edited before submission for examination.

Faculty specific requirements as per A-rules: 1.3.2, 4.3.2, 4.3.3, 4.4.2, 4.10.4, 5.3.2, 5.4.2, 5.10.2

- ☑ Complies with regards to faculty rules on submission or acceptance by an accredited scientific journal;
- ☑ Complies with regards to faculty rules on peer reviewed conference proceedings;
- ☑ The student is hereby granted permission to submit his/her mini-dissertation/ dissertation/thesis for examination.

Signatures of supervisor(s) and Promoter(s): (only compulsory in cases where there are co- or assistant- supervisor(s/promoters)

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Appendix 2: Checklist: Submission of Study for Examination

Social Transformation

CHECK-LIST: SUBMISSION OF STUDY FOR EXAMINATION

- The student and supervisor must ensure that the items on the following checklist are complied with before submitting a study for examination.
- The research director must verify this checklist before any submission is made to postgraduate administration.
- **This check-list must be attached to the Solemn Declaration form** when submitted to the Higher Degrees Office along with the other supporting documents:

Ms. Ragel Jafta (Ragel.Jafta@nwu.ac.za) Potchefstroom campus

Ms Tlotlo Makheta (Tlotlo.Makheta@nwu.ac.za) Mahikeng campus

Ms Jenna Wilson (Jenna.Wilson@nwu.ac.za) Vanderbijlpark Campus

Student Name and student number:	Shadreck Balisi - 36729825
Programme/Curriculum:	Doctor of Philosophy in Public Management and Governance
Supervisor:	Professor Kedibone Phago

FORMAT	
Do you have a final version of the dissertation / thesis in **PDF** and **MS WORD**? This must be sent via e-mail to Ms Ragel Jafta (PC) or Ms Tlotlo Makheta (VC) or Ms Jenna Wilson (VC) along with all supporting documents outlined below	√
SUPPORTING DOCUMENTS	
Completed and signed *Solemn declaration and permission to submit* form (The solemn declaration form is sent to students by Ragel Jafta/Tlotlo Makheta/Jenna Wilson after they have received their Notice forms)	√
Evidence that document has undergone language editing (Letter / Certificate signed by Language Editor)	√
TurnItIn report (only summary/title page indicating similarity percentage)	√
Copy of ID/passport	√
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EXAMINERS **(This section is applicable for supervisors only)**	
Have the examiners been appointed?	✓
Please confirm with Ms Ragel Jafta(PC) /Ms Tlotlo Makheta(MC) /Ms Jenna Wilson(VC) ,depending on campus, as to whether examiners have **accepted** the appointment	✓
*STUDENT: ARE YOU FORMALLY REGISTERED FOR THIS YEAR?	√

Signature: Supervisor ..... Date: 15/03/2024

Signature: Research Director ..... Date: .....

Appendix 3: Turnitin Report

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ORIGINALITY REPORT

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Appendix 4: Language Editor Certificate

Editing Certificate

Ricky Woods Academic Editing Services
Cell: +27 (0)83 3126310
Email: rickywoods604@gmail.com

To Whom It May Concern

North-West University

Editing of a Doctoral Thesis

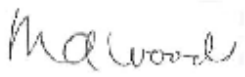
I, Marietjie Alfreda Woods, hereby certify that I have completed the editing of the doctoral thesis: **Examining the Oversight Role of the Republic of Botswana's Parliament** by **Shadreck Balisi**, submitted in fulfilment of the requirements for the degree **Doctor of Philosophy in Social Sciences with Public Management and Governance.** I believe that the thesis meets with the grammatical and linguistic requirements for a document of this nature. The following aspects were covered in the process of the editing:

- A full language edit was completed: grammar, spelling, clumsy expression;
- Reference formatting was checked according to the style used by the author;
- In-text citations were cross-checked against the reference list;
- Heading styles and captions of tables and figures were standardised to ensure that the Table of Contents and the Lists of Figures and Tables were accurate;
- Formatting and pagination were checked.

Name of Editor: Marietjie Alfreda Woods

Qualifications: BA (Hons) (Wits); Copy-editing and Proofreading (UCT); Editing Principles and Practice (UP); Accredited Text Editor (English) (PEG)

MA (Ricky) Woods



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