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**PARLIAMENTARY OVERSIGHT AND ITS ROLE IN ENSURING
CONSTITUTIONALISM AND ACCOUNTABILITY UNDER THE FDRE
CONSTITUTION**

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**(A Thesis Submitted to the School of Graduate Studies of Addis Ababa University in
Partial Fulfillment of the Requirements for the Masters of Law (LL.M) in Constitutional
and Public Law)**

November, 2011

DECLARATION

Awel Ahmed, hereby declare that this research paper is original and has never been presented in any other institution. To the best of my knowledge and belief, I also declare that any information used has been duly acknowledged.

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ACRONYMS AND ABBREVIATIONS

ANC African National Congress

Art. Article

DCFFE Declaration on Criteria for Free and Fair Election

EHRC Ethiopian Human Rights Commission

EPRDF Ethiopian People's Revolutionary Democratic Front

FDRE Federal Democratic Republic of Ethiopia

HoC House of Commons

HoF House of Federation

HPR House of People's Representatives

IPU International Parliamentary Union

MP Member of Parliaments

NA National Congress

OP Opposition Parties

PAC Public Account Committee

PM Prime Minister

Procl. Proclamation

UDD Universal Declaration on Democracy

UDHR Universal Declaration of Human Rights

UK United Kingdom

UN United Nation

US United States

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ABSTRACT

Parliamentary oversight is neglected area of research in many jurisdictions and there is very limited discussion on the area. The situation in Ethiopia is not exception in this regard and it is totally neglected. Democratic government is characterized by transparency and accountability. The primary responsibility in this regard falls on the shoulder of the parliament. The parliament has the power and the mandate to oversight the executives to ensure their policy and action commensurate with the need of society. By the advent of modern parliaments, the legislative prerogative was the basic right to scrutinize government actions. The legislature, often conceived as the forum of the nation, acts as custodian of the electorate's trust. As such, it is tasked with ensuring executive accountability through a rigorous parliamentary process that invariably assesses the performance of Cabinet Ministers and their departments. However, nowadays; the lawmakers do not seem to attach the same importance to this activity seeing it as a secondary function. In this thesis the focus is assessing whether parliamentary oversight in Ethiopia (at the federal level) is effective in ensuring constitutionalism and accountability. To this end, the issue of the possible tools of parliamentary oversight that available to the House of Peoples Representative and the factors affecting parliamentary oversight in Ethiopia also to be dealt. The FDRE constitution empowers the House of Peoples Representative to call and question any government officials including the PM and may take any measures it deems necessary. Likewise, proclamation No.470/2005 and Regulation No.3/2006 also empowers the HPR to oversee the executive's overall actions and activities. Thus, this research aims at examining whether the existing Ethiopian parliament is effective in discharging its constitutional mandate of overseeing the executive and to what extent oversight ensures constitutionalism and accountability. The study examines the tools that the House uses in conducting oversight and most importantly factors affecting parliamentary oversight. The study will be conducted by analyzing pertinent laws and with theoretical and practical analysis. Accordingly, the writer argues that the existing Ethiopian parliament is ineffective in conducting effective parliamentary oversight. Thus, objective of oversight which the regulation provides, ensuring constitutionalism, rule of law and accountability among other things remain in question. At the federal level, (in Ethiopia in general) there are different factors hindering the parliament's oversight function. Among this factor most importantly the party system (one party domination), lack of understanding of the significance of oversight by the MP, inadequate resources like financial constraint, experts and lack of commitment and the status of legislative- executive relation are among the challenges of parliamentary oversight.

CHAPTER ONE

INTRODUCTION

1.1. Background

One of the principles of democratic governments is the principle of separation of powers. Under this principle, each organ of government has independent and separate function. On the other hand, what makes the concept of democracy very attractive and important is that it enables the people to participate in decision making process through their representative on important and sensitive issues of their own. The electorates therefore make sure that the rights and freedoms of the people are respected and public properties and finances are properly accounted for by those who are on administrative tasks. The executive is one of the organs of government which carries out these administrative tasks, either through implementing legislation or policy, and acquires considerable power (the ability to influence or determine a person's conduct). The manner of exercising this power in constitutional democracy is checked by being held accountable to an organ of government distinct from it. This notion is inherent in the concept of separation of power, which simultaneously provides for checks and balance on the exercise of the executive power, making the executive accountable to an elected legislature.¹ The parliament or legislature is one of the organs of government empowered with checking the activities and action of executive organ of government. Parliamentary oversight over the executive is therefore one of the means by which the parliament make supervision over the executives action.

The mandate of oversight resides with the parliament through which it establishes rules of procedure or designates subsections to perform this oversight functions.² According to some scholars, as far as legislature is concerned, the national legislature is empowered to hold organs of state at national level accountable and exercises general oversight over national executive authority and other organs of state. There are different factors affecting the quality of the

¹ D. Oliver; Law, Politics and Accountability cited in report on parliamentary oversight And Accountability prepared by Hugh Corner, Sarah Tagwanth, Fred Soltau, Faculty of Law ,University of Cape Town July 1999.

² In most countries, parliamentary oversight is conducted through established committees. Parliamentary committees are delegated instruments of the House of parliament and have varies tools through which they exercise oversight including site visits, departmental briefing...etc. For instance, the Experience of South Africa.

oversight function of parliament. Such factors could be institutional and political factors. For instances, it is true that the committees established for the purpose of oversight should have independence, legitimate power and reliable source of information for the purpose of providing effective recommendations before the House. On the other hand, effective and proper oversight of the executive thus requires the members of parliament and executive to fully understand the constitutional justifications and the rationale behind accountable government and the purpose it serves. The active participation of the opposition political party in oversight also plays important role in ensuring proper oversight and quality supervision.

Legislative control over the executive in presidential system and parliamentary system of government is different from one another. The oversight in parliamentary system of government depends on the legislative-executive relationship. Since the 1995 FDRE Constitution, Ethiopia has adopted the parliamentary federal structure. While looking at the power relationship between the legislative and executive organ of both the Federal and State levels, the legislative organs are constitutionally declared to be the highest political authority.³ Being one of the most important tasks of the parliament, parliamentary oversight is the chief device elected bodies use to supervise and control the executive, and hold it accountable to the people. To conclude, depending on the general conceptual framework given above, this study will examine whether the oversight task of the parliament is effective in ensuring constitutionalism and establish effective government accountability.

1.2.Literature Review

Parliamentary oversight primarily represents the power of the representative body to affect and have control over the executive and its agencies. In a democracy, this is a means of ensuring the accountability of the executive and other institutions as applicable.⁴ In this particular case, accountability would mean that the administration and its agencies also have the obligation to account for what they have and have not done. An American political scientist defines parliamentary over sight (in the American context of course) as:

³ The Federal Constitution of Ethiopia Article, 50(3).

⁴ Michael L. Mezey, 'The Function of Legislatures in the Third in World' Legislative Studies Quarterly, vol.8, No 14(1983),p.512

A congressional review of the action of the federal departments, agencies, and commissions and of the programs and policies they administer. This includes review that takes place during program and policy administration as well as afterwards, but excludes much of what Congress now does when it considers proposal for new programmers' or even for the expansion of current programs.⁵

Parliamentary oversight of the executive has been a contentious matter in the earliest days of the United Kingdom (UK) House of Commons in the late 14th century. The importance of parliamentary oversight as a tool in monitoring government activities was underscored when Woodrow Wilson, President of the United States of America wrote in 1885:

'there is some scandal and discomfort, but in fine advantage, in having every affair of administration subject to the test of constant examination on part of the assembly which represent the nation...quite as important as legislation is the vigilant of legislation.⁶

According to Mary Jane Turner, Kenneth Switzer, and Charlotte Redden, parliament has in principle, restricted itself from conducting the control function as regards some specific activities of the government. Nevertheless, this should not be construed to mean that parliament does not supervise those specific activities that cannot be addressed, as per the principle, by employing the normal controlling process.⁷ Those activities of the government that cannot be controlled owing to some compelling reasons, however, are possible to monitor through the application of what is known as oversight and hence parliamentary oversight.⁸

⁵ Joel D. Abernethy, 1979, "Changes in the Congressional Oversight", in 22 American Behavior scientists; 493-515, at 494.

⁶ Woodrow Wilson cited in EGPA A Study Group on Parliamentary Oversight Glasgow Caledonian University, Glasgow(UK),2000.p.1

⁷ Mary Jane Turner, Kenneth Switzer, and Charlotte, American Government, Principle and Practice,1996.p.268

⁸ Ibid

For Tsegaye Regassa, as opposed to control function which is conducted on regular bases, the task of oversight need not necessarily be conducted on regular basis. Instead, it may be made informally and irregularly based on the need and urgency to monitor the concerned activities.⁹

For John Stuart Mill, the role of a representative body or assembly was that of control. Thus, although enumerated several functions of an assembly, financial, deliberative, legislative, the monitoring of personnel, and the redressing of grievances, they were not be performed in a detailed ways but as ultimate oversight and accountability. Indeed, Mill is very clear on what the parliament should not do: it should not propose taxation or expenditure; it should not administer policy; and it should not examine or approve legislative proposals in detail. To become involved in such matters was not only inappropriate but inefficient though overseeing all such function and activities of government is its mandate.¹⁰

Throughout the world, in last 15-20 years, there has been a marked expansion in the profile and significance of parliament in governmental framework in most countries. As the complex governance web of interacting institutions and social forces has expanded and deepened in many societies, parliaments have often become a key bridging structures that contribute linkages amongst the disparate actors now involved in shaping decision and directions of nations and broad regions.¹¹ It is possible to identify broad themes in governance improvement which many parliaments have stressed from increased transparency in providing information to citizens and the media, to widened participation by all strata of society in the governance system, to strengthen respect for the rule of law enforced by a truly independent and capable judiciary, to improved accountability by executive authorities with respect to their action, to tougher action taken against corruption.¹² There are some studies conducted on the idea of how the powers and function of the parliaments may be affected by the level of the political as well as socio-economic development of the states concerned. The studies generally have shown that legislatures in the ‘third world’ countries were at best marginal to the law-making processes of

⁹ Tsegaye Reggasa, Parliamentary Oversight: A sketch A Paper Presented at a Training Workshop on Parliamentary Oversight in Adama, Oromia, (unpublished)

¹⁰ J.S Mill Representative Government, London, J.M dent,1910,p.239

¹¹ Steven Langdon, Parliamentary Oversight as Mechanism for Accountability.

¹² Ibid

the nations in which they existed.¹³ However, even these studies have confirmed that although the roles of third world legislature in the law making process is minimal, they have also played non law making functions such as representational and legitimization of the political process.¹⁴

The conventional “West Minister View” on oversight as inherited from West Minister ideology is often rather adversarial and in some instances, oversight is professed to be the purview of opposition politicians and not as the legislative institution. Further, those exercising oversight are usually afforded the ‘luxury’ of the highest and generally divorced from the responsibility for failure in terms of service delivery.¹⁵ Oversight is broadly understood to mean not just a supervision of what the executive branch of the government has done but it is also supervision of the executive’s legislative proposals.¹⁶

Richardo Pelizzo, argues that in parliamentary systems, where the executives has the power to introduce a draft law, the process through which a draft passed to become a law, i.e. the referral of the bill to specific committees, the discussion of the bill within such committees, the debates of a bill in the plenary and the fact that the parliament has ultimately the power to amend, approve or reject a governments legislative proposal, gives the legislature the power to oversee the government plans before they are actually enacted.¹⁷ Thus, it underscores our earlier assertion that several of activities and tasks that a legislature performs can be viewed as oversight activities only. Even though different scholars viewed the concept and importance of the parliamentary oversight, none of them could clearly show the nexus it has with the constitutionalism and accountability especially in Ethiopian context. Moreover, the issue is so neglected that it draws a little attention of the Ethiopian scholars despite its importance. This research therefore fills the gaps by trying to show the nexus parliamentary oversight has with constitutionalism and accountability in Ethiopian context.

¹³ Supra note 4

¹⁴ Ibid

¹⁵ Supra note 1

¹⁶ Richard Pelizzo, et al.(eds) Parliamentary Oversight for Government Accountability (World Bank Institute: Washington D.C,2006),p. 7-9

¹⁷ Ibid

1.3. Statement of the Problem

The parliament or legislature holds the executive accountable and responsible for their action. Parliamentary oversight is one of the means by which the parliament holds the executive accountable. Oversight in parliamentary system of government depends on legislative-executive relationship which creates a fusion of power between executive and legislative. When we look at the power relation between legislative and executive both at Federal and State level, the legislative organ is constitutionally declared to be the highest political authority and therefore mandated and empowered to check whether the laws, policies and strategies are implemented by the executive according to their intention and desire.¹⁸ However, there is a contention that there are some people especially from the ruling government party claiming the existing Ethiopian parliament is effective in conducting oversight over the executive organ of government. According to them, the existing composition of Ethiopian parliament does not have any effect on its oversight function. There are also others who argue otherwise and claim that there are no constitutionalism and accountability which parliamentary oversight intends to bring because of institutional and political factors. The subject of this study is therefore to evaluate parliamentary oversight over executives and the extent it ensures constitutionalism and accountability in Ethiopia. In order to evaluate the extent and effectiveness of parliamentary oversight tends to ensure constitutionalism and government accountability, which the FDRE Constitution in one way or another envisaged; it will be useful to examine the tools the Ethiopian parliament uses in discharging its duties of overseeing the executive branch of government and their overall activities and most importantly the factors that greatly affects the quality of oversight.

¹⁸ FDRE Constitution Article 50(3)

1.4. Research Questions

Based on the problems stated above, the followings are the chief questions of the study

- To what extent has the Ethiopian parliament ensure accountability and constitutionalism through parliamentary oversight?
- What are the factors that affect the parliamentary oversight in Ethiopia?
- How does the status of the opposition in parliament affect parliamentary oversight?
- What possible tools of parliamentary oversight are available to the House of People's Representatives?
- Whether or not established scrutiny committees are effective in supervision of the executives action in Ethiopia.
- What significance oversight has in ensuring accountability and constitutionalism?

1.5. Objectives of the study

The main objective of the study is to examine the oversight process and its role toward ensuring the constitutionalism and government accountability under the FDRE constitution. To this end, the study forwards the following points as its objectives.

- Assessing the extent to which oversight activities helps in making the executive government responsible and accountable
- Investigating the mechanisms that FDRE parliament use to hold the executive accountable
- Assessing the legislative-executive relation and if such relation has affect parliamentary oversight
- Exploring the role of each members of the parliament in parliamentary oversight
- Analyzing the factors that affect oversight
- Assessing the role of scrutiny committees in oversight
- Assessing the existing Ethiopian parliament's effectiveness in supervising the executives

1.6. Significance of the study

In its finding the research tries to establish the extent of parliamentary oversight towards ensuring the constitutionalism and government accountability under the FDRE constitution. Having looked at the provisions of the constitution, if some flaws are identified, this finding will help those primarily in charge to resolve the problems before the constitutional principles are upset. It will help the member of the parliament to understand the importance of parliamentary oversight and to take their responsibility seriously. Moreover, the study will contribute a prologue to readers as to whether the existing parliamentary oversight in Ethiopia is effective in terms of ensuring constitutionalism and government accountability. Further, it contributes a lot in pronouncing the factors that affect the oversight function of the parliament and could be used as an input to the Member of Parliament in their role of parliamentary oversight. It further enables the reader to understand the salient issues of oversight and its nexus with constitutionalism.

1.7. Research Methodology

This research is qualitative in nature. In the main, the study has attempted to make an appropriate review of existing literature on parliamentary oversight. In so doing, the study will set up the proper conceptual, legal and theoretical framework, which serves as spring board to determine the extent of the parliamentary oversight toward ensuring constitutionalism and government accountability. Secondly, an interview with the concerned government officials at the federal levels (in particular in House of Peoples Representative) will be conducted. Different parliamentary and executive documents (reports of the executive and ad hoc and permanent committees of the parliament) will be consulted. Analysis of parliamentary rules of procedure, an appraisal of the FDRE constitution and some of the states constitutions (if and when necessary) and other relevant laws to the study are also utilized.

1.8. Scope and limitation of the study

The study covers parliamentary oversight of executive organ at the federal level. To this end the FDRE constitution, the pertinent federal proclamation and regulation will be dealt. The study however, does not cover the parliamentary oversight of other organ of government (the judiciary organ). Moreover, the legislative organ at the state level is beyond the scope of this study. As far as the limitation of the study is concerned, one of the major limitations to conduct this research

will be obviously time constraint. Three or four month is not sufficient to conduct this vast research. Unavailability of the interviewee at the required time because of frequent meeting may possibly be another limitation. Lack of financial resource is another constraint as the university does not provide for financial resource in advance.

1.9. Conceptual framework

Parliamentary oversight is supervision of the parliament over the executive's activities and overall functions. On the other hand an elected popular assembly does not directly implement policies, spend finances, or engage in the day-to-day administration of the nation concerned. These tasks are primarily done by the executive branch of government. The executive branch is not elected in it's entirely except that in the most presidential executive system only in the chief-executive is elected. In the case of parliamentary form of government, all member of the executive including the chief-executive come from among the member of the legislative body. This reason and the very fact that the executive comes in contact on daily bases with citizens and that it's the one that spends public money necessitates supervision of the executive branch to ensure constitutionalism and accountability and that it undertake its functions effectively, respect the fundamental rights and freedoms of the citizens and not engage in maladministration and wastage of resources. Therefore this research identifies the extent parliamentary oversight ensures accountability and constitutionalism in Ethiopia based on the FDRE constitution and other relevant laws. Moreover, the research tries to explore the tools the Ethiopian parliament uses for over sighting their executive functions and overall activities to assess its effectiveness.

1.10. Ethical consideration

The writer will also take important ethical consideration in to account. Inter alia, my interviewees *will be* informed of the purpose of my study without any deception before securing informed consent from them. The writer also provide an accurate account of the information through examining the collected data to build a coherent justification for description, checking by taking the final report or cross validate the accuracy of the study.

1.11. Organization of the study

The study is organized in five chapters. Accordingly, the first chapter provides general introduction and overview of the study, which includes introduction, statement of the problem, objective of the study, research methodology, significance of the study, scope and limitation of the study and organization of the study.

The second chapter is devoted in discussing the conceptual and theoretical frameworks about the legislative-executive relation in the function of the parliament in parliamentary forms of government. To this end, an overview of forms of government is discussed under this chapter. Legislative-executive relation in parliamentary forms of government is also the main focus of discussion under this chapter. The issue of the main functions of the parliament also discussed within this chapter. Most importantly, the concept of constitutionalism and accountability which are the heart of the thesis and their nexus with parliamentary oversight are critically examined in the chapter.

The general concepts of parliamentary oversight are discussed under chapter three of this thesis. Accordingly, the definition of oversight, the need and justification of parliamentary oversight and tools of parliamentary oversight are scrutinized under this chapter.

Chapter four is exclusively devoted to discuss the issue of parliamentary oversight and its role in ensuring constitutionalism and accountability under FDRE Constitution. To this end, an overview of the evolution of Ethiopian parliament is discussed. The general powers of FDRE House of Peoples Representatives, especially its oversight role are discussed in light of the FDRE Constitution and other pertinent laws. The practice of parliamentary oversight and the possible tools that the House may make use are also the points of discussion under this specific chapter. Parliamentary oversight and the executive action, challenges of parliamentary oversight, and the committee structure the points of discussion that the chapter devoted for. Lastly, but not least, some point is touched about other external institution of parliamentary oversight (the Human Rights Commission and Institute of Ombudsman).

The last chapter is about the general conclusion and recommendations that make the House to employ effective parliamentary oversight so as to ensure constitutionalism and accountability.

CHAPTER TWO

Conceptual and Theoretical Framework

2.1. Forms of Governments: An Overview

A nation's form of government refers to how that state's executive, legislative, and judicial organs are organized. Democratic governments are those that permit the nation's citizens to manage their government either directly or indirectly through elected representatives. This is opposed to authoritarian governments that limit or prohibit the direct participation of its citizens. Two of the most popular forms of democratic governments are the presidential and parliamentary systems. Some systems have blended features of both and are known as hybrid systems.¹⁹

In the presidential form of government, the President is both the chief executive and the head of state.²⁰ The President is unique in that he or she is elected independently of the Legislature directly by the people.²¹ This means the Legislature is not involved in the election of the head of government unlike that of parliamentary system of government which the parliament or where Legislature is actively involved in the appointment and approval of the head of the government. However, the Legislature may override the President's veto if they can muster enough votes, especially where the party of the president could not win the majority seat of the parliament. Among many countries having the presidential form of government as their system of government, the typical example of the presidential system of government is United States of America.²² In this system of government, the president's power includes administrative and political affairs. This means, he is the symbol of the sovereign states and execute government

¹⁹ Larry Diamond, *Developing Democracy: Toward s Consolidation* Baltimore: Johns Hopkins University Press, 1999, p. 98.

²⁰ Michell Ameller, *Parliaments, A Comparative Study on the Structure and Functioning of Representative Institutions in Fifty Five Countries*(1966).p.268

²¹ Ibid

²² Inter Parliamentary Union, *Parliaments of their World: A Comparative Reference Compendium*(1986),p.805

policy.²³ The president has the power to receive and appoint diplomatic envoys, to conclude international treaties, to declare war, conclude peace and commissioning all officials, civil and military.²⁴ He is also empowered to appoint the members of his cabinet and some other government officials.²⁵ However, this power of president is shared by the Congress as it requires a congressional endorsement.²⁶ Thus, the president enjoys ultimate power decision and, therefore, has complete political responsibility for all executive actions. This means, members of the cabinet serve at the pleasure of the president and must carry out the policies of the executive and legislative branches. As a result the control function over the members of the executive resides on the president and the Legislature.

In most of the presidential systems either the president or any of his ministers/secretaries can be a member of the legislative organ. However, a member of the legislative can join the executive only after resigning his membership in the Legislature. Therefore, unlike the case in parliamentary forms of government, the relationship of the legislative and executive in presidential form of government is so loose and there is no fusion of power between the executive and Legislatures. It is therefore believed that the Congressional Oversight in presidential system seems more effective because of loose party discipline and executive-legislative relation. Presidential systems, on the contrary, are less disciplined and legislators are free to vote their consciences with fewer repercussions from their party.²⁷ In addition, in presidential system, the executive branch, headed by the president, is distinct from other branches of the government which are all independent from one another.²⁸ This separation of power serves to check and balance the powers of the three branches of government effectively.²⁹

Parliamentary forms of governments are the system of constitutional democracy where the executive organ of government emerges from and responsible to legislature authority.³⁰ This

²³ Oppenheim L, International Law, A Treaties,(1905),p.403

²⁴ Ibid

²⁵ 26 George B.Gallovary, The Legislative Process in Congress,(1961),p.25

²⁶ Ibid

²⁷ Ibid

²⁸ Beroharps Sehwartz, American Constitutional Law(1955),p.15

²⁹ M.J.C Vile, Constitutionalism and Separation of Powers (1967). P.19

³⁰ J.A.G. Griffitti, et al., Parliament: Function, Practice and Procedure(1989), p.15

means, the chief executive is not chosen by the people but by the Legislature. Typically, the majority party in the parliament chooses the chief executive, the Prime Minister.³¹ The fusion of the legislative and executive branches in the parliamentary system tends to lead to more discipline among political party members.³² Thus, party members in parliaments almost always vote strictly along party lines. In both presidential and parliamentary systems, the chief executive can be removed from office by the Legislature as impeachment and vote of no confidence. Parliamentary systems use a "vote of no confidence" in some jurisdictions also called motion of no confidence or vote of confidence, where a majority of parliament members vote to remove the Prime Minister from office. In presidential systems, a similar process is used where legislators vote to impeach the President from office.³³

Parliamentary forms of government first emerged in Great Britain, is to day practiced in most Europe, the Caribbean, Canada, India, and many countries in Africa and Asia often former British colonies.³⁴ Parliamentary form of government is the form of Constitutional democracy in which executive authority emerged from, and is responsible to the legislative authority.³⁵ Because, this system of government arises based upon the principle of parliamentary supremacy, upon which English Constitutional law is based inconsistent with the separation of powers, which is provided for in the American Constitutional system.³⁶ Therefore, parliament, especially the lower House, controls the executive. It seems therefore, in the parliamentary form of government, there is a tight legislative-executive relation. The later depends on the former for its legitimacy of its power and authority.

³¹ Ibid

³² ibid

³³ Many people mistakenly associate a vote of no confidence with the term impeachment. The later word implies that a crime has been committed by government officials. Impeachment is a rare political process. Other political leaders in America from the Attorney General to local sheriff may receive a vote of no confidence. Impeachment is common in British and even in United States of America. It is a formal process in which the official is accused of unlawful activities and the outcome of which, depending on the country can lead to removal of that official from office or other punishment.

³⁴ J. A.G. Griffith, et al., Parliament: Function, Practice and Procedure(1989),p.15

³⁵ ibid

³⁶ Berohrps Schwartz, American Constitutional Law(1955),p.15

Authority of the government officials operates in the parameters of legitimacy. Crucially authority and legitimacy, both terms imply a limiting of power and one of the concerns of many political philosophers and others is how to channel or limit the use of power and above all, how to prevent its abuse. For instance, Contract Theorists, such as Thomas Hobbes (1588-1679) and John Locke (1632-1704) argued that power was exercised in return for providing protection, whereas Hobbes argues that this was only to avoid anarchy and chaos. Parliamentary government represents one solution to this problem.³⁷ In essence, parliamentary government seeks to limit and control the exercise of power by making those who hold power directly and constitutionally responsible to the Legislature.³⁸ More precisely, parliamentary government is form of government which the executive is drawn from and constitutionally responsible to the legislature. It rests on two pillars or devises. Firstly, the executive (or government) derives its authority or right to govern from initially securing and subsequently retaining the support or the confidence of a majority of the member of the Legislature. Secondly, members of the governments are accountable to the Legislature for the exercise of the authority conferred up on them.³⁹ In principle therefore, the Legislature may change the government in whole or in part by withholding or threatening to withhold its support and it may similarly reject or modify government policy.⁴⁰Power is therefore limited by making those who exercise it dependent upon and answerable to those from whom they derive their power. This arrangement is commonly called a fusion of powers, because, on the one hand, members of the executives are also the member of the Legislatures and, on the other hand, the executive exercises its power to make laws through the Legislature (through delegation of power). In short, parliamentary government does not mean government by parliament but government through parliament.⁴¹

Government in parliamentary system comes to existence through the general election, and the party with the largest seats in the parliament forms the government, and the chief executive is also appointed from the dominant or coalition of political parties in the parliament. The member

³⁷ Michael Rush, Parliament Today, Manchester University Press,2005.page,2

³⁸ Ibid

³⁹ Ibid

⁴⁰ Ibid

⁴¹ Alpheus, Tadd, Parliamentary Government, its Origin, Development and Practical Operation(2nd ed) vol.1.1989.p24

of cabinets is chosen by their respective parties from the respective party groups who form the coalition.⁴²

Generally, a form of governmental system under which a country operates fundamentally influences the structure and tenor of legislative-executive relations. Each system assigns certain fundamental privileges and responsibilities to the Legislature and executive. Legislators that desire to have a greater impact on the policy process or enhance oversight of the executive can work within these gray areas to enhance their influence. Therefore, parliamentary form of government, which related to the principle of parliamentarianism, is one of the main achievements of the development of modern democracy and constitutionalism. This principle affirms that representative democracy is of crucial importance in the government of a modern democratic state. The parliament not only represents the will of people in its legislation, but also maintains a check on executive's power through the instruments of parliamentary oversight.⁴³

2.2. Legislative- Executive Relation in Parliamentary form of government

One of the important features of parliamentary system is a political party or coalition of parties, as the case may be, which has the largest seat in the parliament will constitute a government.⁴⁴ The leader of the party which has won the majority seat in the parliament will become a Prime Minister and the latter would, then, form his/her cabinet by nominating either from among the parliamentarians or from outsiders whom he believes are competent enough to discharge their responsibilities.⁴⁵ Therefore, there is a water-tight relationship between the legislative and executive in parliamentary forms of government.⁴⁶ Even more, there is a fusion of power and the members of the executive are considered as the part and parcel of the legislative organ.⁴⁷

⁴² Inter-Parliamentary Union, *Parliaments of the World: A Comparative Reference Compendium* (1986).p.806.

⁴³ Vaidotas A. Vaicaitis, *European Constitutionalism V. Reformed Constitution for Europe* Vilnius University, Faculty of Law, Department of Public Law, Vilnius, Lithuania.p.14

⁴⁴ Supra note 34 p.17

⁴⁵ Ibid

⁴⁶ Charles Hankla, *Legislative-Executive Relation and International Trade Policy Across National Study* International Studies Association Conference Departments of Political Science Emory university Atlanta Georgia 2000.P.11

⁴⁷ Ibid

Modern democracies are characterized by shared decision-making by the legislative and executive branches especially in parliamentary form of government as the latter depends on the former for its legitimacy and existence.⁴⁸ A country's Constitution formally structures this interaction. Practically, precedent and habit then fill in the gaps to create the political system under which a government operates on a daily basis.⁴⁹ Because these circumstances differ considerably in each country, democracies vary widely in how political power is shared and the relative influence each branch of government has over policy formulation. Accepted practices in one democracy may be unimaginable or even unconstitutional in another equally vibrant democracy.⁵⁰ The health of a democracy declines dramatically, however, when the executive branch excessively dominates the Legislature. A government with a Legislature lacking the capacity to effectively oversee the executive or influence policy and that exists solely to "rubber stamp" executive's decisions cannot be deemed democratic in the modern sense. This is very common in most African countries, which have parliamentary government, where the democracy is emerging and inexperienced parliament. In such countries the executive is dominant and the Legislatures are there only to approve without any rigorous debate and criticism over the proposed bills and policy. As a result, individual legislators are under significant pressure to vote with their party leaders, who are usually the very individuals selected to constitute the executive.⁵¹

Legislature is a fundamental component of democratic government.⁵² Indeed, the need for strong Legislature is reflected in the very meaning of democracy, "rule by the people." In order for the people to rule, they require a mechanism to represent their wishes to make (or influence) policies in their name and oversee the implementation of those policies. Legislature serves these critical functions.⁵³ A Legislature "reflects in its ranks a broad spectrum of a country's political

⁴⁸ Strengthen Legislative Capacity in Legislative-Executive Relation, National Democratic Institute for International Affairs(NDI), Legislative Research Series, 2000, Washington p.5

⁴⁹ Ibid

⁵⁰ Ibid p.4

⁵¹ Supra note 48.p.11

⁵² See Dr. Anthony Tsekpo and Dr. Alan Hudson Parliamentary Strengthening and the Paris Principles Tanzania Case Study. January,2009

⁵³ Ibid

opinion,” and as such is the principal forum for debate on vital issues.⁵⁴ It can serve as a demonstration of pluralism, tolerance of diversity and dissent as well as a place for compromise and consensus building.⁵⁵

Despite the need for strong Legislatures, many Legislatures are overwhelmingly dominated by the executive branch. This problem is especially prevalent in emerging democracies. Though democratic elections in these countries may result in multiparty Legislatures, they rarely yield strong democratic institutions. Typically, these multiparty Legislatures lack the organization, financial resources, equipments, experienced members and staffs to serve as a mature and autonomous point of deliberation in the policy process.”⁵⁶ In the course of a legacy of executive branch dominance, legislators in these countries are frequently unable to envision, let alone create, a level playing field in which the members of the Legislature fully participates in lawmaking and checks executive power, controlling and oversight over the overall activities of the executive organ.⁵⁷ Without this level of playing field, democratic countries may risk reverting to exclusive rule by the executive which is resulted in executive dominance.

There are a number of reasons for ineffectiveness of parliaments in developing countries especially in Africa.⁵⁸ First, parliaments are in a weak position in many political systems, where they are marginalized by the executive and constrained by a constitution which fails to provide for parliamentary independence. Second, parliaments often lack institutional capacity and resources and are dependent on the executive for access to resources. Third, parliaments are often bypassed in the policy process, both by dominant executives and by bilateral and

⁵⁴ Parliamentary Scholar Philip Norton remarks, “Parliament is the essential link between citizen and government.” “Strengthening Parliament” (London: Commission to Strengthen Parliament, 2000), p. 4. While acknowledging the lawmaking and oversight functions of Legislatures, Secretary General of the Inter-Parliamentary Union Anders B. Johnson notes, “The very essence of parliament is representation.” “Key- Note Address,” Second International Conference on Legislative Strengthening, Wintergreen Resort, Virginia, 5 June 2000, p. 1.

⁵⁵ Ibid

⁵⁶ Larry Diamond, *Developing Democracy: Toward Consolidation* (Baltimore: Johns Hopkins University Press, 1999), p. 98.

⁵⁷ Ibid

⁵⁸ African Parliamentary Index (API) A Report for Seven African Countries . Canadian International Development Agency. <http://www.parlcent.org/en/WP-content/uploads/2011/og/API-Af> last accessed on September 25,2011

multilateral donors that deal with executive rather than Parliament. Fourth, MPs often lack knowledge, experience, skills and resources. And fifth, voters – as a result of social and cultural norms – are often more concerned that their MPs provide them and their constituencies with school and hospital fees, roads and electricity, than that they legislate, oversee and represent their interests effectively in Parliament.⁵⁹ Legislatures in parliamentary systems, therefore, usually rely on the executive to provide them with information, weakening their ability to criticize the actions of the government.⁶⁰

Despite executive dominance in many countries, the relative balance of power between the legislative and executive branches in a country can be changed. If new Legislatures are going to play a central role in a nation's governance, it is up to legislators themselves to build strong legislative institutions by asserting themselves in the regular law-making and oversight functions, or through specific structural changes via Constitutional amendment, legislation or rules of procedures. The legislative-executive relation can be also expressed in terms of the membership in parliament and cabinet membership. Governmental systems also differ on the issue of simultaneous membership in both the cabinet and the Legislature, although this difference is not strictly divided between presidential and parliamentary systems. In the presidential systems of Brazil and the United States, legislators must resign their seat should they wish to become part of the cabinet.⁶¹ This is also the case in Norway, Belgium and the Netherlands, in the systems that are described as parliamentary.⁶²

Therefore, the legislative-executive relation affects the parliamentary oversight. In parliamentary system of government, the executive organ is part and parcel of the Legislature body. The chief executive (the head of government), is elected from among the member of the Legislatures. The executive organ is not only chosen from the Legislature but also primarily from the majority

⁵⁹Supra note 54.p.10

⁶⁰ Supra note 48

⁶¹ This practice is also the norm in France

⁶² It has been argued that while this practice does lead to greater separation of powers, it also severs a potential link between the two branches, a link that could be employed to improve legislative-executive relations. In contrast, other parliamentary systems such as the United Kingdom, Ireland and Japan require cabinet ministers to be members of the Legislature (or to become members within a certain time period). Inter-Parliamentary Union, *Parliaments of the World*, vol. II (New York: Facts on File Publications, 1986), p. 1121.

party in the parliament. This might hamper effective oversight as members of the Legislature may be reluctant to call to account a government that is made up of leaders of their party. This is further exacerbated by the electoral system of proportional representation because members of parliament presently retain their seats through their membership of political parties. Members of the majority party in particular may be unwilling to subject the government to rigorous scrutiny for fear of being perceived as disloyal and even expulsion from the party and a consequent loss of their parliamentary positions.

Even, a considerable portion of the frontline members of legislative branch become members of cabinet and lead the executive branch.⁶³ On the other hand, however, the executive's role in the formulation of bills that are passed into laws, and the articulation of governmental policies and objects often result into clash of constituencies between the Legislature and the Executive. To put in other words, additional institutional devices must therefore be put in place to keep a watchful eye over the executive and hold them accountable for sins of omission and commission. Moreover, the executive usually dominates the legislative outputs while the bureaucracy dominates the legislative inputs by playing a determining role in preparing legislative bills in a parliamentary form of government. This contention holds that the executive in fact is not in control of all vital areas of public administration and therefore parliament must intervene and step in where executives fear to tread.

2.3. The Role of the Parliament

Instead of the function of governing, which is the main function of the executive organ of government, for which it is radically unfit, the proper office of representative assembly is to watch and control the government, to throw the light of publicity on its acts, to compel a full exposition and justification of all of them which anyone considers questionable and if the men who compose the government abuse their trust, or fulfill it a manner which conflicts with the deliberate sense of the nation, to expel them from office, and either expressly or virtually appoint their successors.⁶⁴ On the other hand, the legislative branch of government undertakes several pivotally important responsibilities in a given political system.

⁶³ Taibur Rahman, Parliamentary Control and Government Accountability in South Asia, a Comparative Analysis of Bangladesh, India, and Sri Lanka, Routledge Advances in South Asian Study. 2005, P.5

⁶⁴ J.s Mill, Representative Government, London J.M Dent,1910.p.239

In discussing the function of parliament it is as well to begin with what the parliament does not do-it does not govern. That is why it is said that parliamentary government does not mean government by parliament but government through parliament. However, parliament is multi-functional institution. The parliament in general terms has the general function of legitimizing(parliaments were a means of normally justifying the prevailing political reality and the legitimacy of modern governments rests on parliament, from whom they derive their authority), representative, financial, redressing grievances, legislative, which is the main function of the parliament, recruitments of ministers, scrutinizing and informing, and judicial functions.⁶⁵ But, on a more principled note, there is no disagreement that parliaments are expected to have the powers and functions encompassing the following activities:

- ✓ Law making;
- ✓ Approval of taxation and expenditure, generally in the context of the national budget;
- ✓ Oversight of executive action, policy and personnel;
- ✓ Ratification of treaties and monitoring of treaty bodies;
- ✓ Debating issues of national and international moments;
- ✓ Educational and awareness creation function;
- ✓ Hearing and redressing grievances; and
- ✓ Approving (participating in) Constitutional changes.⁶⁶

Therefore, this condition confirms that the Legislature directly or indirectly involved in the activities affects the life of the society in one way or another. Therefore, parliaments must undertake these functions ‘effectively’ not only in the sense of the efficient organization of business, but of doing so in a way that serves the needs of all sections of society.⁶⁷

⁶⁵ Michael Rush, Parliament and the Public, London, Longman, 2ndedn.1986.p.25

⁶⁶ David Beetham, Parliament and Democracy in the 21stCentury; A Guide to Good to Practice,Geneva:IPU,2006p.5

⁶⁷ Ibid

2.3.1. Legislative function

Though not always true in many parliamentary forms government there is the concept of parliamentary supremacy.⁶⁸ The idea of parliamentary supremacy comes in to existence together with the theories of Constitutionalism with its acknowledgements of the necessary power of the government while placing conditions and limitations up on its exercise.⁶⁹ This idea is directly related to the idea of Constitutionalism which is government is subject to the law and exercise the power in accordance to the laws and especially the Constitution and other laws enacted by the Legislatures. This implies an absolute supremacy and predominance of the regular laws as opposed to the influence of arbitrary power or even a wide discretion of the authority on the part of the government. Therefore, parliamentary supremacy implies a legal sovereignty of parliament which enables it to make the law. Even though the most striking attribution of parliament is its legislative sovereignty, the Member of Parliament may also discuss the issues like national concern, manner of general policy and criticize the conduct of minister.

Parliament is a Legislature or, more precisely, is a crucial part of the legislative machinery and therefore of the legislative process. Legislation fell in to two categories private and public. Private legislation applied to named persons or specified localities and was therefore of limited application, whereas public legislation applied to everyone and to the country as a whole and therefore had general application. As the level of governmental intervention grew, an additional type of legislation was developed rules and regulation issued by those authority mainly ministers under powers granted by an Act of parliament.⁷⁰ On the other hand, in most parliamentary system of government, the power to make laws vested on parliament. In some countries Constitutional system, like in a Great Britain, the law making power of parliament implies,

⁶⁸ This is not always true of course, in British for instance, a British prime minister is a particularly powerful figure within the context of UK Constitution. The absence of a written or codified Constitution and the supremacy of parliament make a Prime Minister with majority support in the House of Commons more powerful within the context of the British political system than is the president of the United States within the context of the American political system. Of course, this is partly due to the fact that the United States is a federal system, so that some matters are the responsibility of the states rather than the government in Washington.

⁶⁹ Colin Turpin, *British Government and the Constitution of Texts, Cases and Materials*, 4thed,1999,p.26

⁷⁰ Michael Rush, *Parliament Today*, Manchester University Press,2005,p.63

*that parliament....has the right to make or unmake any law whatever, and further that no person or body is recognized by the law of Britain as having a right to over ride or side the legislation of the parliament.*⁷¹

According to this principle, whatever form of law is legal and binding up on any person which is found within Britain territory. Furthermore, it is said that the parliamentary supremacy in England makes any statute enacted by the parliament to prevail over any other forms of law in the country.⁷² Notwithstanding the absolute terms in which parliamentary sovereignty is usually expressed, there are certain legal restrictions on the parliament legal competences which limit that sovereignty. The limitation on the power of the legislation of the parliament can be seen in three ways.⁷³ The first limitation to the law making power of the parliament is a concept of the proper sphere for law making.⁷⁴ In this case, political theorist have suggested and draw up list of subjects which are proper for a statute and another list which are proper for regulation which can come in to force without direct action by parliament.⁷⁵

Secondly, there is the limitation that arises when public opinion can express itself directly during the legislation process. On the other hand, the parliament legislative monopoly also is restricted when the task of law making enthused at least in part to the sovereign people on the principle of direct or semi direct democracy.⁷⁶ This seems to suggest that overwhelming public opinion on the enactment or otherwise of some proposed laws might be taken as cases which somewhat restrict the seemingly unlimited power of the parliament to enact laws of its wish. Thirdly, there is the state of emergency which is recognized in growing number of centuries. For this reason, the recent historical experience has shown that the ordinary processes maybe in adequate in time of crises when it is most necessary for the machinery of government to work.⁷⁷ To deal with these circumstances certain procedures have been developed which have the effect of relieving

⁷¹ Ibid , at p.22

⁷² Id p.25

⁷³ Michel Amell, Parliament, a Comparative study on the Structure and Functioning of Representative Institutions in Fifty-Fife countries, 1966.p.133

⁷⁴ Id p.134

⁷⁵ ibid

⁷⁶ Id p.135

⁷⁷ Id p.136

parliament of its legislative power and of placing it in the hands of an authority which can take decisions at the necessary speed.

2.3.2. Overseeing and Informing Function

Parliamentary oversight broadly involves monitoring of the Executive's actions by the representatives of the citizens.⁷⁸ Effective Parliamentary oversight is one of the tools used by the Legislature to maintain a balance of power among the three arms of Government and to assert the interests of ordinary citizens particularly against the decisions of the Executive.⁷⁹ To put in other ways, the legislative oversight is a prerogative to scrutinize government actions. However, nowadays, lawmakers do not seem to attach the same importance to this activity seeing it as a secondary function. Legislatures are considered paramount for the success of democracy. As the mouthpiece of the people, the legislature must ensure that the executive and its departments properly address societal problems and issues.⁸⁰ On the other hand, the elected assembly does not directly implement policies, spend finances, or engage in the day-to-day administration of the nation concerned.

A distinctive feature of liberal democracies is the fact that the State organs must check and control each other and that the exercise of political power should be guided by the principle of publicity and transparency.⁸¹ It is sought to ensure that citizens could be able to monitor the behavior of its representatives and they could exercise mutual control over their acts and omissions. Beside the attributes of stability and representativeness is the control and accountability of political representatives by who is represented as the fundamental pillar of a democratic regime.

The parliament whether parliamentarian, presidential and the hybrid system of government, involved in scrutinizing of the function and activities of the executive organ of government. The

⁷⁸ African Parliamentary Index (API) A Report for Seven African Countries . Canadian International Development Agency. <http://www.parlcent.org/en/WP-content/uploads/2011/og/API-Af> P.18 last accessed on September 25,2011

⁷⁹ Ibid

⁸⁰ Esau, M.V. (2005). "Parliamentary Oversight and Trust Relations," in Bak, N. & Askvik, S. (eds). Trust in Public Institutions in South Africa. Ashgate Publishing Company:England.p.4

⁸¹ Marta Mendes da Rocha Juliana Jardim Melissa Caldeira Oversight Committees in Brazilian State Legislatures: Minas Gerais State Legislature on the period between 2003 and 2008.P.1

scrutinizing and informing function consists, on the one hand, of seeking to render the executive accountable by examining government policy and administration and, on the other, of providing the public with information about what the government is doing and why. Parliament exercises its overseeing and informing function through most of its other functions by representing the interest and opinion of constituents and the nation as a whole, by seeking to exert financial accountability, by the redressing of the grievances, settings and procedures.

In UK for instance, both Houses have at their disposal a range of procedures for scrutinizing the executive, including a variety of debate-some directed at specific type of business, such as bills and financial matters, others to discuss policy proposal or matters the opposition wish debated, the seeking of parliamentary questions for oral answers in the chamber or written and printed answer.⁸² Member of either House may table bills and motions for debate. Committees deal with much of the detailed consideration of legislation, both primary and secondary, and also conduct investigation in the government policy and its administration, usually by taking oral and written evidence from ministers, civil servants, pressure groups and experts in the field concerned.⁸³ The effective of parliamentary control and scrutiny of government depends much less on the formal powers of parliament than on the recognition by governments of the authority of government. In the view of some parliamentarians, successive governments have failed in these respects in their Constitutional duty to parliament.⁸⁴ The scrutiny function of the parliament also extends to the financial scrutiny. On the other hand, the real power to have in parliament is control over money.⁸⁵ The parliament exercises formal financial control over the expenditure of public money. The formal requirement that expenditure must be authorized by parliament opens up the possibility of an exercise of some control or influence by the parliament over the government's spending policy. In most jurisdictions, the financial scrutiny is conducted by the public Account Committees on behalf of the parliament, as the government expenditure is approved annually by the government.

⁸² Richarded pelizze,et al.(eds) Parliamentary Oversight for Government Accountability (World Bank Institute: Washington D.C,2006),p.16

⁸³ Ibid

⁸⁴ Colin Turpin, British Government and the Constitution, Text, Cases and Materials 4th ed. Butterworths,1999.p.442

⁸⁵ Mr Edward du cann, MP, in Dermot Englified (ed),Commons Select Committees: Catalyst for Progress?1984,p.38

The principle of the government, collective accountability and ministers individually being responsible to the Legislature is one of the defining characteristics of the parliamentary government. This scrutiny role of the Legislature is that of the government policy and its implementation. Whether a particular piece of legislation is likely to achieve its policy objective is a legitimate part of scrutiny role. Parliament therefore developed a variety of mechanisms in seeking to fulfill its scrutiny role- debate, committee, questions to ministers, and the tabling of motions. There is however, one area of scrutiny that straddles the legislative and non-legislative aspect of scrutiny-financial scrutiny. Parliament, more particularly the House of Commons of UK⁸⁶, is required to give annual approval to the government's proposals for taxation and expenditure and those ultimately take the form of bills, but other aspects of financial scrutiny lie outside the legislative process.

2.3.3. Other Functions

As it has been discussed in previous section, the parliament or the Legislature is involved in many activities other than legislation and oversight function. Now a days, in multiparty democracy, the parliaments began to assume more seriously the six generic roles of political governance: legislation, where proposals and programs emanate, in the main, from the political executive, representation by providing the link between government and people, scrutiny of the executive to ensure that government is accountable, including the power to remove it, political recruitment of a pool of talent, some of which is expected to find its way to leading political and decision-making positions, legitimacy through representative legislation, debating public affairs and government performance openly, and conflict management.⁸⁷ Thus, what we can understand from the list of functions of the parliament listed above is, the Legislatures functions is multi faced function.

The first criterion of a democratic parliament is that it should be representative of the people. In the first instance this means that parliament should reflect the *popular will* as expressed in the choices electors make for their representatives and for the political parties in whose name they

⁸⁶ Michael Rush, Parliament Today, Manchester University Press, 2005 p.

⁸⁷ M.A. Mahammed Salih, African Parliament between Governance and Government. (ed.) Palgrave Macmillan, 2005. p.13

stand.⁸⁸ A parliament that is significantly unrepresentative in this respect, whether through deficiencies in electoral procedure or the electoral system, will to that extent forfeit legitimacy, and be less able to reflect public opinion on the important issues of the day. A democratic parliament should also reflect the *social diversity* of the population in terms of gender, language, religion, ethnicity, or other politically significant characteristics.⁸⁹ A parliament which is unrepresentative in this second sense will leave some social groups and communities feeling disadvantaged in the political process or even excluded altogether, with consequences for the quality of public life or the stability of the political system and society in general. Parliament's role and ultimate outcome is to represent the people and ensure government by the people under the Constitution.⁹⁰ The essential common feature of Legislatures of modern democracies is their representation of the popular will in the most proximate way that is possible.

This objective for a democratic parliament of being representative in these different senses is achieved partly through the composition of parliament, which is the result of the election process; partly through fair and inclusive parliamentary procedures, which provide an opportunity for all members to express their views, to take part in the work of parliament on an equal footing with others, and to develop their parliamentary careers. While the composition of parliament looks at first sight to be the result of a pre-parliamentary process, parliaments are nevertheless capable of influencing their own composition indirectly, through their legislative power to set the rules under which elections take place. As to fair and inclusive procedures, these are clearly under a parliament's own direct control.

Legislatures were engaged in implicit and at times explicit critical interventions denouncing government as incapable of responding adequately to social problems such as conflict. In some countries, parliamentarians took up the role of conflict management, or assumed the role of personal representation of aggrieved citizens to the executive branch or local government functionaries. For example, bargaining in ethnically divided societies is an obvious instrument

⁸⁸ Core Objectives Roles and Business of Parliament www.parliament.gov.zo/content/ii-corepdf last visit on September 5,2011

⁸⁹ Ibid

⁹⁰ Ibid

parliamentarians use for conflict management such as the positive involvement.⁹¹ On the other hand, apart from its traditional role of making and unmaking or amending laws, the Legislature is involved in some jurisdiction, in the judicial function. The purpose is so doing is to take step against politicians who in carrying out their duties have in some way traversed the public interest.⁹² This judicial power of the parliament is directed against the member of the executive.⁹³ There are different procedures that the parliament uses in order to bring and arraign the member of the executive to justice because of the fault they have committed and abuse their power. In Belgium for instance, it is the parliament that brought the accused person before the court, recognizing the judicial power of the courts.⁹⁴ The Belgium Constitution provide that the House of representative has the right to bring charge to ministers, and bring them before the court of appeal which is setting in joint has the sole right to judge them. The Constitution of Netherlands has empowered the upper House to bring the ministers who have violated the law before the Supreme Court.⁹⁵ The arraigning of the member of ministers before the court, especially the Supreme Court, in many jurisdictions is decided by the joint decision of the upper and lower House. The other important function of the parliament is the redress of grievances function. In Great Britain for instance, the demand for the redressing of the grievances was limited only taking the form of demands for the redress by the monarch of particular and limited grievances.⁹⁶

The other function of the parliament is the approval of the budget proposal and it is also involved in the appointments of the head of government and the head of state and the approval of the member of executive council (the cabinets). In parliamentary form of government, the lower House selects and approves the appointments of the head of the government and with the joint session of the upper House approves the appointment of the head of the state as it is the case of Ethiopia.

⁹¹ Supra note 86

⁹² Michel Amell, Parliament, A Comparative Study on the Structure and Functioning of Representative Institutions in Fifty-Five Countries, 1966,p.133

⁹³ Id .p.134

⁹⁴ J.A.G Vile, Constitutionalism and Separation of power(1967), p.316

⁹⁵ Ibid

⁹⁶ Beroharps Schwartz, American Constitutional Law(1955).p.62

2.4. Accountability and Parliamentary Oversight

Although the 'Westminster model' tends to be viewed as the archetype, there is no single model of accountable government or indeed method of calculating the precise extent of the 'accountability of the executive to the legislature.'⁹⁷ Accountability is dynamic, circumstantial and involves adaptation to changes in the environment in which it operates. There is, however, broad consensus that accountable government involves two primary components. These are answerability and the requirement on governments to inform, explain and justify and enforceability or the capacity of the accounting agency (parliament) to impose sanctions. Re-stated, 'parliament should provide a permanent monitor of the work of the government, regularly call ministers to explain their actions and, where necessary, seek remedial action'.⁹⁸

Therefore, the effectiveness of parliamentary scrutiny, whether legislative or non-legislative, depends ultimately on the relationship between parliament and the government. This relationship depends on the Constitutional responsibility of the government to parliament in parliamentary system.⁹⁹ No one disputes that government (ministers) are constitutionally responsible to the parliament. In the history of parliament, ministers were responsible not to the parliament but to the king and, it is the recent development in democracy that the ministers and their council is responsible to the parliament especially in the parliamentary forms of government and the parliament sought to exercise control over ministers.¹⁰⁰ One of the principal functions of a legislative assembly is to ensure that the holders of the executive power are accountable, that is, that they are required to explain to the Legislature and the public what they are doing with the power entrusted to them. This requirement is an essential safeguard against mistake and maladministration in government. Mistakes are not only possible but likely, will resist the

⁹⁷ David Alter, From Parliamentary Control to Accountable Government? The Role of Public Committee Hearings in the Swedish Riksdag Oxford Journal of Social Science vol.61 Issue 1.p.122-143

⁹⁸ G. Power and A. Brazier, 'Making Government Accountable', *Parliamentary Affairs*, 54(3), 2001, p. 554

⁹⁹ See Michael Rush, p.268

¹⁰⁰ Ibid

temptation to use the power of the state for improper purposes.¹⁰¹ So the holders of the executive power must be subjected to scrutiny and exposure to ensure that the power is properly employed.

Accountability means being able to provide an explanation or justification, and accept responsibility, for events or transactions and for one's own actions in relation to these events or transactions. Accountability plays a particularly important role in the public sector. It is about giving an answer for the way in which one has spent money, exercised power and control, and used discretions vested by law in the public interest. It is fundamental to our system of government that those to whom such powers and responsibilities are given are required to exercise them in the public interest fairly, and according to law.¹⁰² Ensuring accountability is one of the core justifications for the parliamentary oversight. The rise to prominence of accountability is tied in with the discussion about the need to promote 'good governance', a term used as shorthand for the argument that governments should observe the following principles:

- openness and transparency

- there should be appropriate mechanisms of accountability, whether political, legal,

Public, or auditing;

- there should be in place appropriate provisions to maximize the effectiveness of "government; and

- public participation is to be encouraged.¹⁰³

For public administration, accountability is about the securing and maintenance of integrity in government, as part of good governance. For the specific purposes of this paper, parliamentary accountability addresses the concern that governments and their agencies should fulfill their

¹⁰¹ <http://www.aph.gov.au/./access/acess.htm>. Strengthening Parliamentary Institution, The Senate, Accountability, and Government Control. Paper for Australian Research Council Project, Australian National University Parliamentary Studies Center. Last accessed on September 5,2011

¹⁰² http://www.records.nsw.gov.au/recordkeeping/why_manage_records_4406.asp and <http://www.audit.nsw.gov.au/publications/reports/performance/1998/srdassist/account.htm> last accessed on September 5 2011

¹⁰³ D Oliver, *Constitutional Reform in the UK*, Oxford University Press 2003, p 47.

responsibilities and, where problems occur or complaints arise, there should be mechanisms available to hold them to account for their actions or omissions.

The concept of parliamentary accountability is based on the premise that parliament, as the highest representative organ of government, has the duty to check on the activities of the executive through a number of measures. The mechanisms employed to achieve that has in modern literature been referred to as parliamentary accountability. Also tied to this is the institutional accountability of members of parliament, collectively and individually. Thus champions of accountability must first be accountable to themselves. A number of parliaments develop code of ethics for both MPs and staff to help guide them to maintain ethical and accountable behavior.

Accountability is the hallmark of modern democratic governance. Accountability is at the heart of good governance and has to do with holding governments responsible for their actions. Democracy remains clichéd if those in power cannot be held accountable in public for their acts or omissions, for their decisions, their expenditure or policies. Historically, the concept of accountability was closely linked to accounting in the financial sense. It has however moved far beyond its origins and has become a symbol of good governance both in the public and private sectors especially duty to report and justify their action to the highest representative body of government (parliament). Accountability refers to institutionalized practices of giving account of how legally assigned responsibilities are carried out.

The functions of accountability include the following:

- To enhance the integrity of public governance in order to safeguard government against corruption, nepotism, abuse of power and other forms of inappropriate behavior.
- As an institutional arrangement, to effect democratic control.
- To improve performance, that will foster institutional learning and service delivery.
- In regard to transparency, responsiveness and answerability, to assure public confidence in government and bridge the gap between the governed and the government and ensure public confidence in government.

•To enable the public to judge the performance of the government by the government giving account in public.¹⁰⁴

Generally, the above listed functions of the accountability shows that the core role of the accountability is in respect of holding the executive organ accountable and influencing them to justify and explain their action for the legitimacy of their action. To put in the other words, the justification behind the need to hold the government officials accountable is to ensure that they discharge their responsibility within the limits of their power and without violating the Constitutional rights of the people.

Accountability entails responsibility. This means ministers are collectively and individually responsible to the parliament for their action. Individual ministerial responsibility means that ministers are responsible to the parliament in that they may be called upon to explain and justify any aspects of departmental activities of any kinds or operation and for any kinds of activities by and within the departmental agencies that particular ministers assigned for. On the other hand, individual ministerial responsibility means, that particular minister is responsible personally in the sense of being blamed, for any errors in policy formulation or its implementations that may occur. In most cases, this ministerial responsibility operates routinely and reasonably effectively in that ministers answer the parliamentary questions participate in legislative and non-legislative debates, appear before select committees.

On the other hand, in principle of accountability, there is the concept of collective ministerial responsibility. Once something has become the government policy, it binds all ministers, and the council of ministers is responsible to the parliament. This responsibility entails some kinds of consequences. In most jurisdiction vote of no confidence would be taken to the ministers including the chief executives in case he/she lost the majority support in parliament. Different countries employ different procedures and mechanisms in effecting the vote of no confidence.

2.5. Parliamentary Oversight vis-à-vis Constitutionalism

The conceptualization and definition of what exactly constitutes constitutionalism, has generated a lot of debate worldwide. For many scholars, politicians and activists, the notion of

¹⁰⁴ Taibur Rahman, Parliamentary Control and Government Accountability in South Asia. A comparative Analysis of Bangladeshi, India and Srilanka.p. 8

constitutionalism is one that produces numerous and often times conflicting responses. For some, especially the more positivist or legally minded, constitutionalism simply represents a concern with the instrumentalities of governance. These range from the constitution itself and other legally constructed documents that have been created to support it, the structures and institutions that are established under their framework. Others adopt a more nuanced and embracing view, considering constitutionalism within the much broader context of the social, economic, political, gender and cultural milieu wherein those instrumentalities operate. A nicely worded or eloquently phrased document means nothing if the context in which it is supposed to operate is harsh and hostile a context in which you may have a “Constitution without constitutionalism.”¹⁰⁵ It is thus clear that African countries like Nigeria, with written Constitutions may not necessarily practice constitutionalism. However, constitutionalism has been acknowledged to be the antithesis of non-institutionalized government, where the state is a government of men and not of laws.¹⁰⁶

The concept of Constitutionalism become very broader than it was in modern Constitutional jurisprudence. For instance, De Smith understands the concept of Constitutionalism in its broader sense as:

“ ...Constitutionalism is practiced in a country where the government is genuinely accountable to an entity or organ distinct from itself; where elections are freely held on a wide franchise at frequent intervals; where political groups are free to organize and to campaign in between as well as immediately before elections with a view to presenting themselves as an alternative government; and where there are effective legal guarantees of basic civil liberties enforced by an independent judiciary: and I am not easily persuaded to identify Constitutionalism in a country where any of these conditions is lacking.”¹⁰⁷

¹⁰⁵ J Oloka-Onyango (ed), *Constitutionalism in Africa Creating Opportunities, Facing Challenges*, (Kampala, Fountain Publishers) 2001pp 2 – 3cited in Oyewo constitutionalism and oversight function of the legislature in Nigeria paper presented at African Network of Constitutional Law conference on Fostering Constitutionalism in Africa. Nairobi April 2007

¹⁰⁶ Jackson and Rosenberg, *Personal Rule in Africa*, [1982], Preface, p .X

¹⁰⁷ De Smith, SA —Constitutionalism in the Commonwealth Today (1962) .p.4 Malaya Law Review 1.

Accordingly, the broader concept of Constitutionalism includes among other things the ethics of being complying with the Constitutional norms.

Besides, Constitutionalism would entail a culture of respecting a country's Constitutional normative and institutional frameworks. In this light, Constitutionalism encompasses both Constitutional and political ethos. Constitutionalism goes beyond the mere existence of a Constitution and governance according to a Constitution.¹⁰⁸ It is premised on the assumption that the Constitution is a social contract between people and their leaders; defining democratic governance, guarantees individual rights, and empowers the citizenry to use it as a living document that reflects their needs and aspirations in furtherance of their day- to- day life struggles.¹⁰⁹ On the other hand, the implication of constitutionalism is that in exercising its powers the government should be limited by law. Its authority over the people is dependent on its observance of the limitations under the law. Those limitations are usually enshrined in the constitution.

The idea of constitutionalism involves the proposition that the exercise of governmental power shall be bounded by rules prescribing the procedure according to which legislative and executive acts are to be performed and delimiting their permissible content where Constitutionalism becomes a living reality to the extent that these rules curb the arbitrariness of discretion and are in fact observed by the wielders of political power, and to the extent that within the forbidden zones upon which authority may not trespass there is significant room for the enjoyment of individual liberty.¹¹⁰

Constitutionalism implies that political process, with or without a written Constitution, is more or less oriented to public rules and institutions intended to define and contain the exercise of political authority. The Constitutional regimes necessarily foster a common appreciation of, orientation to, legal rules and the general principles that underlay them. Constitutionalism hence, means, little more (nor less) than the limited states, one in which the political power is

¹⁰⁸ See Maina, W —Constitutionalism and Democracy| in K. Kibwana et al (eds) (1996) In Search of Freedom and Prosperity: Constitutional Reform in East Africa Nairobi: Claripress p.1-6.

¹⁰⁹ Reflection paper by Dr. Kithure Kindiki, on the State of Constitutionalism in East Africa for the year 2005: The Role of East African Community, University of Nairobi, Kenya at page 5.

¹¹⁰ De Smith S. A., *TheNewCommonwealth and itsConstitutions*, London, Stevens, 1964, p. 106.

surrounded by knowledgeable laws whose acceptance transforms power in to legally specified legitimate authority.¹¹¹

The concepts of constitutionalism also related to good governance. By governance is meant the exercise of political power to manage nation's affairs . . . appropriate economic policies must go hand in hand with good governance, a public service that is efficient, a judicial system that is reliable and an administration that is accountable to the public.¹¹² Constitutional rules and principles occupy the center stage in the concept of constitutionalism.

The first principle of constitution is popular Sovereignty. According to this principle all of the power lies in the hands of people who are sovereign. Government can only govern if it is given permission by those who are governed. The overall meaning of popular sovereignty is that the National Government draws its power from the people and that the people have given their government the power that it has threw the constitution and the government abuses the power that they have been given by the people have the right to overthrow their government and change it.¹¹³

The second popular principle of constitution is limited government. This means that the government may only do things that people give them the power to do. The government must follow all constitutional laws and principles for it to be able to have control over the people and to make decisions. Separation of power between the three organ of government, legislative, executive and judiciary is also another constitutional principal. Judicial review and the principle of check and balance are also indispensable constitutional principle. The government is organized around three separate branches. Though constitution of many jurisdiction says that these three powers must be separated they are still connected and are not completely independent of each other through the principle of check and balance. This means that each branch is subject

¹¹¹ Douglas Greenberg, Stanley N. Kart, *Constitutionalism and Democracy* New York Oxford University Press,1993,p.139

¹¹² World Bank, *Sub-SaharanAfrica: From Crisis to Sustainable Growth*,Washington,DC,World Bank 1989, pp. 60 and xii. See also Peter Slinn, 'Constitutional Orders and Sustainable Development: The Southern African Experience and Prospects', in Ginther, Denters and De Waart *Sustainable Development*, p. 165.

¹¹³ Constitutional Principles Available at www.associatedcontent.com/article/843863/the-6-basicprinciple last accessed on September 15,2011

to a number of constitutional restraints or checks by the other branches. This means that each branch has certain powers with which it can check the operations of the other two.¹¹⁴

Overseeing executive organ by the legislature directly associated with the above stated constitutional principles. In the first place, the oversight function of the legislature is justified by the principle of popular sovereign. This principle dictates that the power of government is legitimized by the people who confer this power on the government. The people control the government through electorate representative, parliament. The principle of separation of power and check and balance also justifies parliamentary oversight of executive organ. Thus, overseeing executive organ, checking limitation of their power, and overseeing the overall activities and actions of executive organ is decisive in ensuring constitutionalism. The overall objectives of oversight are among other things, ensuring the carrying out by government organs of tasks according to law, bringing about democracy and good governance, and ensuring respect for fundamental rights and freedom of citizens. Therefore, these and other oversight activities depicted above are directly related to the act of ensuring the implementation of constitutional rules and principles stated hereinabove which occupies the center stage in the idea of constitutionalism.

¹¹⁴ *ibid*

CHAPTER THREE

Parliamentary Oversight

3.1. Parliamentary oversight: Definition

Parliamentary oversight refers to the Legislature's review and evaluation of selected activities of executive branch of government.¹¹⁵ To put in other ways, oversight is about keeping an eye on the activities of the executive and holding the executive to account on behalf of the country's citizens.¹¹⁶ The legislative branch Conducts oversight activities because it not only enacts new programs for the state, but also has a duty to ensure that existing programs are implemented and administered efficiently, effectively, and in a manner consistent with legislative intent.¹¹⁷ In the USA, for instance, parliamentary oversight is called Congressional Oversight which refers to the review, monitoring, and supervision of federal agencies, programs, activities, and policy implementation.¹¹⁸ While oversight is the specific focus of some legislative activities, it is an integral part of the legislative process that is often difficult to separate from the lawmaking process.¹¹⁹ Oversight is mostly conducted by special oversight committees and can also be part of the hearings and work of standing committees.

In most jurisdictions, the country's Constitution directly or indirectly provides the provisions which empower the Legislatures to take the mandate of controlling or overseeing the executive organ.

¹¹⁵ Ohio, Legislative Commission, P.75

¹¹⁶ Dr. Anthony Tsekpo and Dr. Alan Hudson, Parliamentary Strengthening and the Paris Principles, Tanzania Case January 2009 study, Overseas Development Institute, UK.P.10

¹¹⁷National Democratic Institute, in the paper titled "Strengthening Legislative Capacity in Legislative-Executive Relations", defines parliamentary oversight as, "the obvious follow-on activity linked to lawmaking. After participating in law-making, the legislature's main role is to see whether laws are effectively implemented and whether, in fact, they address and correct the problems as intended by their drafters". This definition captures the role that parliaments play in overseeing government policies and activities after they have been enacted but it overlooks that parliaments may be engaged in oversight activities well before a policy is enacted.

¹¹⁸Sela G.Thomson(ed) Congress of United States, Committees, Rules and Procedures, Nova Science Publisher Inc., Newyork, 2009.p.735

¹¹⁹ Supra note 94

In the South African context, oversight is a constitutionally mandated function of legislative organ of state to scrutinize and oversee executive action and any organ of state.¹²⁰ It follows that oversight entails the informal and formal, watchful, strategic and structured scrutiny exercised by legislatures in respect of the implementation of laws, the application of the budget, and the strict observance of statutes and the Constitution.¹²¹ In addition, and most importantly, it entails overseeing the effective management of government departments by individual members of Cabinet in pursuit of improved service delivery for the achievement of a better quality of life for all citizens.¹²² The National Assembly (NA) is mandated to provide for mechanism of ensuring that all executive organ of state in national sphere of government are accountable to it, and to maintain oversight of the exercise of national exercise authority, including the implementation of legislation, and any organ of state.¹²³ Thus, the general mandate of the South African (NA) is to hold organ of the state in the national sphere accountable, and exercise general oversight over national executive authority and organ of state.

Although the US Constitution grants no formal, express authority to oversee or investigate the executive or program administration, oversight is implied in Congress's impressive array of enumerated powers.¹²⁴ Moreover, the "necessary and proper" clause of the Constitution also allows Congress to enact laws that mandate oversight by its committees, grant relevant authority to itself and its support agencies, and impose specific obligations on the executive to report to or consult with Congress, and even seek its approval for specific actions.¹²⁵

The study however, prefers to use the following definition of parliamentary oversight: “the review, monitoring and supervision of government and public agencies, including the implementation of policy and legislation”.¹²⁶ This definition focuses on the purpose and nature of

¹²⁰ See Oversight and Accountability Model, Asserting Parliaments Oversight Role in Enhancing Democracy (South Africa)

¹²¹ Ibid

¹²² ibid

¹²³ South African Constitution, section 55(2)

¹²⁴ See Article I, Sec. 8 and Article II, Secs. 2 and 4. of the US Constitution

¹²⁵ Supra note 97.p.737

¹²⁶ Hironori Yamamoto, Tools for Parliamentary Oversight: A Comparative Study of 88 National Parliaments, Inter-Parliamentary Union/ IPU/ PLC Press Centrals SA, Rene’s, Swizzerland,2007.p.10

the oversight activities rather than on the procedural stages in which they take place. It covers the work of parliamentary committees and plenary sittings, as well as hearings during the parliamentary stage of bills and the budgetary cycle. From this definition, the key functions of parliamentary oversight can be described as follows:

- ◆to detect and prevent abuse, arbitrary behavior, or illegal and un constitutional conduct on the part of the government and public agencies. At the core of this function is the protection of the rights and liberties of citizens;
- ◆to hold the government to account in respect of how the taxpayers' money is used. It detects waste within the machinery of government and public agencies. Thus it can improve the efficiency, economy and effectiveness of government operations;
- ◆to ensure that policies announced by the government and authorized by parliament are actually delivered. This function includes monitoring the achievement of goals set by legislation and the government's own programs; and
- ◆to improve the transparency of government operations and enhance public trust in the government, which is it a condition of effective policy delivery.¹²⁷

Oversight of the executive is perhaps the most important function of any Legislature.¹²⁸ Oversight has become especially critical, given the enormous powers wielded by executive leaders. As one expert on the French parliament notes:

The most important role of a modern parliament is, to quote Sir Kenneth Wheare's phrase, 'making the government behave'....The democrat looks to parliament to

¹²⁷ Ibid

¹²⁸ According to Congressional expert Stanley Bach, oversight has two primary functions: First, it enables the citizenry, acting through its elected representatives, to hold the government accountable for its actions and inactions, for its successes and failures. And second, it assists those representatives in determining how well current laws are working, which is a necessary prerequisite for determining whether new laws are needed. "Incentives and Opportunities for Oversight," p. 2.

*ensure that the executive is kept under scrutiny and prevented from abusing its power.*¹²⁹

Oversight is also the obvious follow on activity linked to lawmaking. After participating in lawmaking, the Legislature's main role is to ensure and see whether laws are being effectively implemented and whether, in fact, they address and correct problems as intended by their drafters or the Legislatures.

Parliamentary oversight primarily represents the power of the representative body to affect and have control over the executive and its agencies. In a democracy, this is a means of ensuring the accountability of the executive and other institutions as applicable.¹³⁰ In this particular case, accountability would mean that the administration and its agencies also have the obligation to account for what they have and have not done. An American political scientist defines parliamentary oversight as:

*A congressional review of the actions of the federal departments, agencies, and commissions and of the programs and the programs and policies they administer. This includes review that takes place during programs and policy implementation as well as afterwards, but excludes much of what congress now does when it considers proposals for new programs or even for the expansion of current programs.*¹³¹

Therefore, parliamentary oversight is not limited only to the financial scrutiny, but it extends to controlling and over watching the overall activities of the executives including policy implementation and proper and effective execution and enforcement of the law according to the intention and desire of the parliament, and other Constitutional objectives and principles.

¹²⁹ Frears, "The French Parliament: Loyal Workhorse, Poor Watchdog," in Norton, ed. *Parliaments in Western Europe*, p. 34.

¹³⁰ D.Oliver,(1994), Law, Politics and Accountability, cited in Report on Parliamentary Oversight and Accountability, Prepared by the Hugh Corder, Saras Jagwenth, Jred Soltau, Faculty of Law, University of Cape Town July, 1999.

¹³¹ Joel D. Abernath, 1979, Changes in the Congressional Oversight, in 22 American Behavioral Scientist,493-515,at 494

Generally, parliamentary oversight can be used in any form of government, though the orientation and its philosophy and the process are varying from one political system to another. However, one important aspects of parliamentary oversight among all political system is a belief that control of the administration is the most important function of Legislatures in modern democracies that, democratic ideology requires control of the administration by the elected representative of the people.¹³² Therefore, effective oversight should cover a broader range of categories of activities of the administration than simply financial issues as it might appear. Parliamentary oversight can be understood as “an act of keeping an eye in a watch and responsible manner, or discharging regulatory supervision”¹³³ over the activities of a certain body or institution. In other words, it can be defined as a way in which a certain entry can be followed as to the proper implementation of a given job entrusted to it. Literally, parliamentary oversight involves employments of some kinds of supervision which the parliaments make over the two branches of government, namely, the executive and judiciary. However, it is not intended in this present research to make a discussion of the parliamentary oversight over the judiciary organ of the government.

3.2. The Need for Parliamentary Oversight

It has been argued that the principle behind parliamentary oversight of executive activity is to ensure that public policy is administered in accordance with the legislative intent. According to this principle, the legislative function does not cease with the passage of a bill. It is, therefore, only by monitoring the implementation process that members of the Legislature uncover any defects and act to correct misinterpretation or maladministration. In this sense the concept oversight exists as an essential corollary to the law making process.¹³⁴

Scholars identify three general ways in which a Legislature may control the bureaucracy in a separation of powers system: oversight, legislation, and budget-making.¹³⁵ For these to work,

¹³² Parliamentary Democracy: Promise and Problem <http://www.fds.oup.com/www.oup.co.uk/pdf/0-19-829784-x-pdf> last accessed on July 10,2011

¹³³ “Oversight” available at <http://www.goodgov.st/oversight> last visit on August 20,2011.

¹³⁴ Parliamentary Oversight of Finance and the Budgetary Process, the Report of Parliamentary Association Workshop. NAIROBI, KENYA, 10TH -14TH DECEMBER, 2001

¹³⁵ John D. Huber, Charles R. Shipan and Madelaine Pfahler, “Legislatures and Statutory Control of Bureaucracy”, American Journal of Political Science, vol. 45, n. 2, 2001, pp. 330-345

some conditions must be met: there needs to be a certain degree of cooperation between the branches in policy making (each side must be willing to bargain and compromise in order to get some policy benefits), the Legislature must have some capacity to monitor the executive, and the executive needs to be willing to comply with legislative enactments.

The principal value justifying parliamentary oversight of the executives is said to be ensuring the triumph of representative government by holding the administration accountable to popular sovereignty. This is precisely because when government officials perform the responsibility that the Constitution shoulders them properly and in an efficient manner, the interests of the parliament representing the people (to mean the interests of the people in general), and the national interests (which is enhancing the national development and prevalence of the rule of law for the better life of the people), will be promoted and enhanced. Accountability is the hallmark of modern democratic governance. Democracy remains clichéd if those in power cannot be held accountable in public for their acts or omissions, for their decisions, their expenditure or policies.

Until the beginning of the 20th century, the scope of parliamentary control¹³⁶ is only limited to the controlling of the public expenditure and proper evaluation of the foreign policy.¹³⁷ Nowadays, however, it extends to the tasks fundamentally related to day to day activities of the government organ, which related to the regular administrative tasks, especially related to the public funds and resources. The executive organ because of the inherent and traditional role of the executing of the policy, programs and strategies, directly involved in the public funds for the proper implementation of the same.

On the other hand, the executive organ initiates laws, concerning financial matters, because it is involved in activities involving financial matters, such as, taxing, borrowing and spending, even though the legislative branch deliberate on the proposal and pass the decision as to its

¹³⁶ Parliamentary oversight is part and parcel of the broader control function of the parliament. On the other hand, the concept of oversight is not detached from the control function of the parliament, rather it is the concept rooted in the control function of the parliament. Therefore, in this research paper in some places the word oversight is interchangeably used with the word control.

¹³⁷ Cecilia Mora-Donatta, *Constitutional Instruments for Parliamentary Control*, p.7

adoption.¹³⁸ The government cannot collect taxes, lend and borrow money from any sources especially external sources without the prior authorization and approval of the parliament as per the principle of ‘power of the purse’. The principle of power of purse can be viewed as a principle in favor of the public evaluation and review of executive decisions.¹³⁹ As a result, the parliament as the body representing the people must devise the mechanisms to control the executive organs to foil the abuse of power and misuse and misappropriation of the public funds and resources.

According to MacMahon,¹⁴⁰ the objective of oversight is to check dishonesty and waste guard against arbitrary and unresponsive administration evaluate implementation in accordance with legislative objectives; and ensuring administrative compliances with statutory intent.¹⁴¹ In most jurisdictions, this entire oversight objective could be achieved through different committees established in the parliament. On the other hand, the American senate committee on government operations also provides for the objectives of the parliamentary oversight. The committee identified the following objectives of oversight.

- ✓ Seeing that policy is implemented in accordance to the intent of the Legislatures;
- ✓ To determine whether the policy is effective and its impact is in accordance with the congressional standards;
- ✓ To prevent waste and dishonesty and assure efficiency;
- ✓ To prevent discretionary abuse; and
- ✓ To prevent the public interest by monitoring and constraining agency-client group relation.¹⁴²

¹³⁸ Paul G. Thomas Parliament and the purse string in Parliament, Policy and Representation by Harold D. Clarke, Colin Compell, F.Q. Quo and Arthur Goddard (eds), 1993 p.161

¹³⁹ Ibid

¹⁴⁰ Arthur W. MacMahon, 1943, ‘Congressional Oversight of Administration: The power of the Purse’, in 58(I-II) American Political Science Review 161-190.

¹⁴¹ William V. Lyons and Larry W. Thomas (1982) cited in Bert A. Rockman, 1984, Legislative-Executive Relations and Parliamentary oversight, in Legislative Studies Quarterly, vol.9, No.3, p.415

¹⁴² Ibid

Generally, what necessitates the parliamentary oversight is the need to hold the executive organ of government accountable so as to ensure Constitutionalism, good governance and accountability. Accountability is also designed to encourage open government. It serves the function of enhancing public confidence in government and ensures that the government is close and responsive to the people it governs. If the values of accountability and oversight and the purposes they serve in a Constitutional democracy are realized, members of the executive will more willingly submit to them, thereby fostering and enhancing the principle of co-operative government contained in the Constitution. Thus, oversight must be seen as one of the central tenets of our democracy because through it the legislature can ensure that the executive is carrying out its mandate, monitor the implementation of its legislative policy and draw on these experiences for future law and policy making. Moreover, One of the core roles of the Legislature is controlling the overall activities of the executive. Parliaments are therefore, the institutions through which governments are held accountable to the electorate. To put in other words, the parliamentary oversight function is one of the cornerstones of democracy. Oversight is a means for holding executive accountable for its actions and for ensuring that it implements policies in an effective manner. The monitoring of the executive by the parliament is an indicator of good governance. This means, the effective and quality oversight over the executive can be helpful in ensuring good governance. Besides the parliament's legislative function, it is through oversight that the parliament can ensure a balance of power and assert its role as the defender of people's interests.

3.3. Tools of Parliamentary Oversight

In overseeing the executive, Parliaments have several different oversight tools at their disposal. The most common oversight tools are committee hearings, hearing in plenary sessions of the parliament, the creation of commissions of inquiry, questions, question time, interpellations, the ombudsman, auditors general, and the public account committees.¹⁴³ On the other hand, to perform the oversight functions, parliaments use various tools. Some of these are stipulated in the text of a country's Constitution, but more commonly they are part of the rules that govern parliamentary procedures (such sets of rules are often called standing orders. This study, however, prefers the term "rules of procedure"). These tools are different in nature.

¹⁴³ National Democratic Institute, "Strengthening Legislative Capacity in Legislative-Executive Relations", Legislative Research Series, Paper # 6, Washington, DC, 2000, pp. 19-32.

- ◆ Parliament can simply ask the government for information.
- ◆ Parliament can ask the government for public clarification of policy.
- ◆ Parliament can obtain information from sources outside the government.
- ◆ Parliament can express its views to the government and the public.¹⁴⁴

Generally, these oversight tools can be grouped along two dimensions. The first dimension pertains to the timing of the oversight activity. If parliamentary oversight is performed before the government enacts a specific policy or becomes engaged in a specific activity, then the oversight tools are “instruments of control ex ante”¹⁴⁵ Hearings in committees, hearings in the plenary sessions of the Parliament, along with the request of documentation are all tools that can be used ex ante. If the parliamentary oversight is performed after the government has enacted a policy to check whether the policy is properly implemented, then the oversight tools are instruments of control ex post.¹⁴⁶

Questions, interpellations, the creation of committees of inquiry are the tools that are used ex post.¹⁴⁷ The second dimension pertains whether the oversight tools are established inside or outside the Parliament that is whether they are internal or external oversight tools. Questions, question time, interpellations, hearings, public account committees are internal tools, while ombudsmen and auditors general are external tools.¹⁴⁸

Regular and effective use of tools such as parliamentary questions and debates can hold the government to account.¹⁴⁹ They enable focused discussion and the clarification of the government’s policy. Parliamentary debates can serve this purpose perfectly, especially if the

¹⁴⁴ See Michel Amell, *Parliament, a Comparative Study on the Structure and Functioning of Representative Institutions in Fifty-Five Countries*, 1966

¹⁴⁵ Richardo Pelizzo and Rick Staphenurst *Parliamentary Oversight: An Empirical Investigation* World Bank Policy Research Working Paper 3388, September 2004, p.6

¹⁴⁶ Ibid

¹⁴⁷ Parliamentary Function of Oversight www.aroga-parl-org/node/1053 last accessed on July 2011.

¹⁴⁸ Ibid

¹⁴⁹ National Democratic Institute, “Strengthening Legislative Capacity in Legislative-Executive Relations”, *Legislative Research Series*, Paper # 6, Washington, DC, 2000, especially pp. 19-32.

sitting is broadcast or the minutes are made public.¹⁵⁰ In many jurisdictions vote of confidence can serve as one of the tools of parliamentary oversight.¹⁵¹ A motion of no confidence is a parliamentary motion traditionally put before a parliament in the hope of defeating and weakening a government or rarely by an erstwhile supporter who has lost confidence in the government. This means, Parliamentary government continues in office as long as retain confidence of the parliament.¹⁵² The motion is passed or rejected by means of a new parliamentary vote. When parliament votes non confidence or where it fails to vote confidence, a government must respond in resignation or seek parliamentary dissolution and request a general election. This procedure either formalized through Constitutional convention as is the case in Westminster style parliament such as the UK, Canada and Australia or explicitly stated in written Constitution as in the case of Germany and Spain. Parliamentary government continues in office as long as retain confidence of the parliament.¹⁵³ It can be expressed in parliament either formally through approval of a motion of censure initiated by the Member of Parliament or rejection of vote of confidence tabled by a government itself or indirectly, less formally, through a defeat to the government in the House on the policy issue.¹⁵⁴ The government placed in minority by a vote of a parliament has lost the confidence of the same must either resign or ask for a disillusion.¹⁵⁵

However, vote of no confidence is not always resulted in the dissolution of the parliament. For instance, In Israel, a vote of no confidence leads to dissolution of Knesset only if the Knesset doesn't produce an alternative government.¹⁵⁶ In England, dissolution is granted where the PM ceases to have majority and the government is voted down in House of commons and if it is not possible for any party singly or in combination with other parties to form a stable alternative

¹⁵⁰ Ibid

¹⁵¹ Supra note 95.p.285

¹⁵² Verney.Dongle v,Parliamentary Government and Presidential Government Lijfort,Arend(comp.and ed),Newyork, Oxford University Press 1998,pp.33.

¹⁵³ Verney.Dongle v,Parliamentary Government and Presidential Government Lijfort,Arend (Comp.and ed),Newyork, Oxford University Press 1998,pp.33.

¹⁵⁴ Ibid

¹⁵⁵ Shukla V.N.The Constitution of India, 4thed.Lucknow; Dstern Book Company, 1964, p, 38.

¹⁵⁶ Menry yves and Andrew Kohl Government and Politics in Western Europe, Britain, France, Italy, German, 3rd ed. Oxfoed University Press,1998,p.125

government.¹⁵⁷ It is said to be stable government because dissolution would not be refused merely because a government which would not last long and which would soon resign or ask for dissolution could be formed. In modern times, passage of no confidence is a relatively rare event in two party democracies. In most cases, party discipline is sufficient to allow a majority party to defeat a motion of no confidence. Of course, motion of no confidence is far more common in multi-party system in which minority party must form a coalition government. This can result in a situation where there are many short-lived governments because the party structure allows small parties to break a government without means to create a government.

While the Constitution may provide for certain tools of oversight, the rules of procedure stipulate which actors are allowed to use which tools on which occasions. In a large minority of bicameral parliaments, the upper chamber plays no oversight role, which is the sole preserve of the lower chamber.¹⁵⁸ The oversight potential is greatly affected by the form of government and levels of democracy. Countries with parliamentary forms of government, higher income levels, and which are more democratic have a greater number of oversight tools and greater oversight potential.¹⁵⁹

3.3.1. Questions

As repeatedly stated in many part of the thesis, members of the Cabinet are accountable collectively and individually to Parliament for the exercise of their powers and the performance of their functions. The procedure of putting questions to the executive is one of the ways in which Parliament holds the Executive to account.¹⁶⁰ Questions can be put for oral or written reply to the chief executive, and the Cabinet Ministers on matters for which they are responsible. Question time affords members of Parliament the opportunity to question members of the

¹⁵⁷ Subha,K,Dissolution of Lock Sabha; Need for Evolution of Convention, Journal of Constitutional and Parliamentary Studies Vol.v.V.No.3 New Delhi; The Institute of Constitutional and Parliamentary Studies,1971,pp,297.

¹⁵⁸ For instance in case of Ethiopia the Upper House, which is the House of Federation, plays a unique role. Most importantly it has the power to determine the issue of constitutional dispute. As a result, the House of Federation hardly involved in oversight role of executive organ of government. This power is vested in the lower House which is the House of Peoples Representatives. See Article 55 of the FDRE Constitution for details.

¹⁵⁹ Riccardo Pelizzo and Rick Stapenhurst; Tools for Parliamentary oversight: An Empirical Investigation. World Bank Policy Research Working Paper 3388, September 2004 p.1

¹⁶⁰ See tools of parliamentary oversight:
statesources.worldbank.org/PSGLP/Resources/Toolsforlegislativeoversight...

Executive on service delivery, policy and other executive action on behalf of both their political parties and the electorate.¹⁶¹ In the nineteenth century, members of parliament had almost unlimited opportunities to speak to the House in the ordinary course of events. Now a days, when parliamentary time is devoted mainly to public business, questions are regarded as a means of eliciting information about the government's intentions, as well as the most effective way of airing, and possibly securing some redress of, grievances brought to the notice of members by their constituents.¹⁶²

In the House of Commons, questions are not arranged through the 'usual channels' from time to time, they may be used as part of an organized group campaign to bring about a change in government policy, but generally speaking they remain the most personal of all proceedings in the House.¹⁶³ There is the question time allotted to the oppositions in parliament. The opposition can use this time to pose questions to the government and to state any criticisms they might have regarding the government's actions and policies.¹⁶⁴ The government, in turn, is given a chance to respond to these opposition questions and criticisms. These exchanges are typically very adversarial and often lack substantive political debate. The opposition will often attempt to trip up the government into making statements that will make it look bad in public, while the government will often respond in a manner that sidesteps the opposition's questions. Moreover, Question Period can also involve personal attacks between opposition and government members, as well as heckling on both sides. Questions put by backbenchers on the government side may reflect their constituency and other interests on their unease about aspects of government policy, and in this way they play on their part in the scrutiny of ministers.¹⁶⁵

A parliamentary question is, by definition, a request for information and asking for the clarifications. Regular questioning can be used by parliament to hold the government to account.¹⁶⁶ To parliamentary questions, government is obliged to provide an answer to any

¹⁶¹ Oversight and Accountability Model <http://www.un.org.disabilities/default.asp>? Last accessed on June 5, 2011.

¹⁶² The British Parliament Great Britain Central Office of Information Reference Division, May 1971.P.29

¹⁶³ Ibid

¹⁶⁴ Tools of Parliamentary Oversight: A Comparative Study of 88 National Parliaments <http://www.pu.org/parline-e/oversight-q-pdf> last accessed on July 5,2011.

¹⁶⁵ Ibid

¹⁶⁶ Supra note 61

question forwarded by the MP's in the floor of the House. Answers to questions can be available not only to the person who provides such question but also to all parliamentarians in the chamber, most obviously in the case of oral questions for oral reply.¹⁶⁷ That is the reason why question is considered as the most effective and important mechanism of parliamentary oversight over the executive in helping the flow of information in the floor of the House as almost in many jurisdictions, the parliamentary proceeding is broad casted through the national media. In Great Britain for instance, PM's question is broad cast on television each week and is frequently shown on news and current affairs programs.¹⁶⁸

Moreover, through questions, parliamentarians can ask the government to clarify its stance on a particular issue or its political course more generally so that the MP's and the public in general can understand the overall agendas and activities of their government. The question time is also very important to the opposition party to criticize the government and to expose the mal practice from the side of the government. In UK Parliament a minister is not compelled to answer every questions forwarded by the MP, and there are many matters on which many ministers customarily refuse to give answers. Among these are confidential exchanges with foreign governments, matters affecting national security, proceedings in cabinet and ministerial committees, advice given to ministers by officials, information about individual persons...etc.¹⁶⁹

In most jurisdictions, there are different types of parliamentary question.¹⁷⁰ Firstly, there is a question of oral question. In this process, each MP's have the chance to provide the questions. There is however the limit on the number of questions that may be asked by the MP's. Question time, the regular period in parliaments' agenda that is set aside for oral questions to the government and answers from the latter, allows both parliament and the public to obtain timely information. Through these sessions parliamentarians who are not in the government can test the government's capacity to address issues of national interest. In many parliaments, question time

¹⁶⁷ Supra note 145.p.49

¹⁶⁸ Michel rush Parliament Today Manchester University Press, Manchester and New York 2005P.211

¹⁶⁹ Colin Turpin, British Government and the Constitution, Text, Cases and Materials 4th ed. Butterworths,1999.p.444

¹⁷⁰ Ibid

is the media highlight of the parliamentary agenda and the session is retransmitted in full or in part.

The other types of Question called urgent question, in commons and Private Notice Questions in Lords. These questions, which are usually related to an important news event, may be submitted to the speaker/president of the chamber, and the speaker has the discretion to grant permission to ask the question. Ideally, oral questions should be able to address all policy areas. In the United Kingdom and countries that inherited its parliamentary tradition, ministers appear at question time in rotation, so that each minister appears before parliament to answer questions about once a month.¹⁷¹ Questions posed to the head of the executive branch can be of particular value because they allow members of parliament to ask for information about and clarification of the government's general policies. In Zambia, where the president is the head of the executive, questions are directed to the vice-president, who is always a member of parliament.¹⁷² The frequency of these sessions varies from twice a week (in Ireland) to "once in each period" (in Estonia). Some parliaments insist that the head of the executive branch attend all question times. In Bulgaria, for example, the prime minister is the first member of the government to answer questions during the weekly question time.¹⁷³ There is also starred question that may be asked at the begging of business each day to obtain specific information, which may not be debated, but supplementary may be asked. In addition 'un starred' question may be asked at the end of business on any day, and these may be debated.

Generally, parliamentary questions are among the most commonly used oversight tool. The purpose of these tools of parliamentary oversight intended to clarify or discuss government policies. For the proper and effective parliamentary oversight over executive, it is essential for members of parliament to be properly informed of the policies of the executive and its ministries. Government responses to parliamentary questions may lead to the publication of valuable information. Questions can often be asked in oral or written form, although oral question and answer sessions may provide a dramatic atmosphere and opportunity for response and follow-up

¹⁷¹ The British Government , Great Britain Central Office of Information Reference Division.p.30

¹⁷² Richardo Pelizzo and Rick Stapenhurst Parliamentary Oversight: An Empirical Investigation World Bank Policy Research Working Paper 3388, September 2004p.10

¹⁷³ Ibid

by either side. Consequently, the organization of these sessions is essential to effective parliamentary oversight.

3.3.2. Debates

The government has variety of ways of announcing policy initiatives and keeping parliament informed about its policies. These includes, white papers setting out government proposals on particular issue and varies forms of consultation documents, although the distinction between the two is sometimes blurred. Such documents are sometimes accompanied by a ministerial statement in parliament. The ministerial statements are an important and flexible ways of bringing various matters in to the public domain and giving parliament, an opportunity to subject the matter concerned to degree of scrutiny. In particular they enable the government to respond quickly to events and allow the parliament to be involved at an earlier stage. As far as the initiation of the debate is concerned, it may be initiated by the government, the oppositions and the backbenchers and such debate continues throughout the session, interspersed with debates on legislation and other business of the House. Therefore, the main contest between the parties takes place in debates on the floor of the House.

In general, parliamentary debates are oral exchanges of opinions that are intended to facilitate the parliament's collective decision-making on certain issues. The decision is made after debating on the issues on the floor of the House. Debates can take place on special occasions such as opening speeches or at different stages of the examination of draft legislation. The debate is conducted in most cases, on the draft legislations. In addition, parliamentary debates can address issues that are chosen by parliamentarians themselves, in most case or highlight the work of parliamentary committees. The rules on parliamentary debates provide parliamentary political groups with an opportunity to express their view, while also allowing individual parliamentarians to bring particular issues to attention.

Plenary debates are a further means to bring important information to the attention of the executive regarding specific government programs and legislation required to improve service delivery.¹⁷⁴ In plenary debates, certain mechanisms for conducting oversight are used. These

¹⁷⁴ Asserting Parliament's Oversight Role in Enhancing Democracy: Oversight and Accountability Model.

<http://www.un.org/disabilities/default.asp>? Last accessed on June 20,2011.

include question time, the consideration of committee reports, showcasing, scrutinizing and debating the implementation of policy and budget votes, members' statements and questions by members of Parliament, which draw the attention of the Executive to the concerns of members' constituents. The involvement of the oppositions and backbenchers in a debate ensures that any perceived cracks in the government's positions will be exploited.

Generally, debates are about subjecting the government to public scrutiny, bringing matters in to the public domain, and providing MP's and peers with opportunities to give voice to public opinion and the absence or curtailment of debate reduces parliament's ability to fulfill one of its major functions. However, since what is said in debate on the floor of the House rarely affects the result of the vote at its end or induces the government to reverse a decision already taken, it is apparent that debates are not a strong instrument of control, however, they are an essential part of the continuous parliamentary scrutiny of government, compelling it to explain and defend its policies and policies. Moreover, the importance of the debate can be expressed in such a way that it prevents the government from being mute and compels them to explain and justify the government's position on a certain matters.

3.3.3. Motions

Motions are one of the mechanisms available to members of all political parties which can be used to help fulfill their oversight responsibilities in Parliament by bringing issues to Parliament for debate. Notice must be given of a motion unless it is by way of an amendment to a draft resolution, raising a point of order or a question of privilege, the postponement or discharge of or giving precedence to an order for the day, referring a bill to a committee, the proposal of a draft resolution on the report of a committee immediately after a debate on the report has been concluded, or in regard to which notice is dispensed with by the unanimous concurrence of all the members present.¹⁷⁵ Notice must be given of every motion since in principle the House must be informed in advance of any substantive motion so that members and parties have time to prepare to debate it. Notices of motion are therefore a vital tool which can be used by members to bring matters of political importance before Parliament for debate or a decision.¹⁷⁶

¹⁷⁵ Cristina Leston Bandeira From legislation to Legitimation, The Role of the Portuguese Parliament Taylor & Francis e-Library, New York, 2005.p.80

¹⁷⁶ Ibid

Motions which require notice may be moved without notice provided no single member present objects. It is therefore common practice for parties to be consulted before the House meets when seeking to move a motion without notice, and to inform the presiding officer of the intention to do so. Motions without notice are moved when the presiding officer calls for any formal motions, usually near the beginning of the day's sitting. This medium allows for consultation between parties to obtain consensus on issues that must be brought to the attention of the House

The motion may have political purpose although this may not be always true. Some are all party motions on matters such as pensions, child abuse, environmental issues, abortion, or human rights. Some relates to constituency matters, some are attempts by government backbenchers to pursue the government to change policy or by opposition backbenchers to pressure their leaders: government backbenchers use them to attack government policies.

3.3.4. The Committees as a tool of Parliamentary oversight

The very term committee has a potential for confusion, whereas it is to mean a collective group, panel or body of members delegated to perform a particular function, each member of such a group was then designated a committee.¹⁷⁷ Committees serve a critical function in both the legislative process and parliamentary oversight of the executive.¹⁷⁸ Committees provide a forum in which current laws, proposed bills, and other important issues can be studied in detail by legislators. Such forums also supply opportunities for legislators to focus their attention on, and improve their understanding of, one set of complex issues, increasing their ability to participate meaningfully in the legislative process. A well developed committee system brings with it an additional resource of information for the Legislature, like a competent committee staff. Permanent committees typically oversee portfolios that parallel executive agencies or ministries.¹⁷⁹ Sometimes they cover policy issues that span multiple agencies. Issue-based committees (or more narrowly focused subcommittees) can be effective forums for enhancing legislator's understanding of technical and complex issues. With the assistance of committee

¹⁷⁷ CHRIS R. KYLE and JOSAN PEACEY, *Parliament at Work, Parliamentary Committees, Political Power and Public Access in Early Modern England*(ed), the Boydell press, 2002, England .P.2

¹⁷⁸ NDI's second *Legislative Research Series* paper, "Committees in Legislatures: A Division of Labor." Available at:<http://www.ndi.org/ndi/resources/archives/archives.htm#governance>. Lastly accessed on July 4,2011.

¹⁷⁹ NDI, *Legislative Research Series, Strengthening Legislative Capacity in Legislative-Executive Relations*.p.16

staff, members can become area specialists in their own right, and can be a trusted resource for their colleagues on policy specifics and nuances.¹⁸⁰

Committee hearings often act as a primary avenue to inject public opinion into the legislative process, allowing various elements of society and government the opportunity to offer their opinions and expertise on proposed legislation. In Canada HoCC, oversight activities are largely undertaken through the committees.¹⁸¹ Each standing committee is mandated to study and report on all matters relating to responsibilities, management and operation of the department or departments assigned to it, to consider and report on budgetary issues, on legislation and on such other matters referred to it by the House.¹⁸² Furthermore, the committees gather information through preparing forums, consult and visit political sites and take other measures for the matters under consideration. They hear witnesses and experts as necessary and listens the presentations in order to extract information and evidence through question and answer sessions. Then, the committees face the House through presenting the report about its finding with the possible recommendation to help the House to reach on decisions.¹⁸³

Committees offer legislators powerful oversight tools. As one expert notes, committees “allows member of parliaments to pursue a line of questioning with ministers in more detail than is possible during normal question time or during debates on the floor of the House”.¹⁸⁴ Committees may request written information from the relevant government and expert sources. In some countries, such as the United States, committees enjoy subpoena power to enforce such requests.¹⁸⁵ They may also offer a setting which facilitates detailed scrutiny of legislation, oversight of government activities and interactions with public and external factors. Consideration of the committees report is necessary because committees work as intermediary bodies between interest groups and government and are an entry point for citizens to the works of parliament.

¹⁸⁰ *ibid*

¹⁸¹ <http://www.oversightofcanadagovernemntthrouhcommitteestructure>.

¹⁸² *Ibid*

¹⁸³ *Ibid*

¹⁸⁴ Shaw, “*Non-Ministerial Leadership in the British House of Commons*,” p. 506.

¹⁸⁵ See generally Frederick M. Kaiser CRS Report for Congress Congressional Oversight July 2006. Order Code 97-936 GOV

To put in other words, oversight undertaken by committees is said to be important because of specialization that develops in it. This is to mean because of the experience that the member of the committees acquire through field visit or through any involvement, they become experts. To this juncture, there are different factors contributing to the conducive committee's oversight role, among which include the legal authority to compel change, the structure, prestige and leadership of the committee, the resources such as staff of the committee, the committee relations with the executive and its officials as well as the programs and policies of the same and the roles of individuals on a committee.¹⁸⁶ This factor in one way or another reduces the incidence of parliamentary oversight through committees. Other factors for instance, modest staffing, disinterested and disoriented chair person and other member of the committee, are among the factors that negatively affect the parliamentary oversight through committees established in parliament.

In addition, the work of committees include site visits that entails physical inspection, conversing with people, assessing the impact of delivery and developing report for adoption by committees which contain recommendations for the Houses to consider.¹⁸⁷ In exercising oversight, committees often obtain firsthand knowledge from people engaged in the direct implementation of specific programs and/or who are directly responsible for service delivery. In order to evaluate the work of government from a broader perspective, committees may invite experts from outside government to provide background knowledge and analysis on relative issues.¹⁸⁸ The committees facilitate oversight and the monitoring of the executive and for this purpose they are provided with procedural, administrative and logistic report, they are regarded as the engine rooms of parliament. Reports of parliamentary committees are the primary vehicle for formulating recommendations to the government

¹⁸⁶ Richardo Pelizzo, et al.(eds) Parliamentary Oversight for Government Accountability(World Bank Institute Washington D.C,2006,p.26-29

¹⁸⁷ Accountability and Audit Improving Accountability: Enhancing Public Confidence (CCAF-FCVI. INC. RESEARCH SERIES)-Parliamentary Oversight, Committees and Relationship, Review of Recent Developments in Parliamentary oversight in Britain, and Australia, with Special Reference to Public Accounts Committee /PAC's/,August,2004.p.12

¹⁸⁸ Ibid

Parliamentary committees have various ways of oversight, including departmental briefing session, annual and departmental budget analysis, call for submission and petition from the public, the consideration of strategic plans and annual reports, and public hearings. Increasingly, attention is being focused on the roles of parliamentary committees, and notably their oversight role, whereas formerly discussion tended to focus on the legislative output of committees. While committee systems are found extensively across the parliaments of the world, they are not all the same. Some parliaments have permanent committees which are involved in both law-making and oversight; others do not. The powers of parliamentary committees also differ. Some parliaments make more use of ad hoc committees of inquiry than others do. In many parliaments, permanent committees oversee the programs of the corresponding government departments. Committees of inquiry can be established to examine the positive and negative aspects of particular policies and to pursue the responsibility of the officials in charge.

By definition, oversight is only possible if committees are able to decide for themselves which aspects of government activity to investigate.¹⁸⁹ For instance, certain agencies and departments of the executive branch were probed on procurement systems and awarding of contracts, thereby ensuring transparency and paving the way for policy reforms.¹⁹⁰ The Norwegian Parliament, has recently decided that ‘a minority of members of the Standing Committee on Scrutiny and Constitutional Affairs (one third of the members) may initiate proceedings of the Committee which is essential for the protection of minority factions in Parliament.’¹⁹¹

Though Parliamentary committee is considered as the most effective tools of parliamentary oversight, their effectiveness depends on different factors. Among such factors the most important one which in one way or another affects the parliamentary committees overseeing role are; the legal authority to compel change, the committee relations with the executive and its

¹⁸⁹ Gay, O and Winetrobe, B (2003). *Parliamentary Audit: The Audit Committee in Comparative Context. A report to the Audit Committee of the Scottish Parliament*
<<http://www.scottish.parliament.uk/business/committees/historic/audit/reports-03/aur03-legacy-02.html>>last accessed on July 20, 2011.

¹⁹⁰ Ibid

¹⁹¹ Krafchik, W. and Wehner, J. (2004). *Legislatures and Budget Oversight: Best Practices*
<http://www.revenuewatch.org/reports/kazakhstan_parliament_budget_forum.pdf>last accessed on July 20, 2011.

official as well as the programs and policies, the resources such as the staff of the committee, the roles of the individual in the committee, the party system and the composition of the committee, and the structure, prestige, and leadership of the committee.¹⁹²

Crucial to the effectiveness of committee investigations is the power to require ministers and civil servants to appear and answer questions, and to produce relevant documents. Access to information is a key to effective accountability, including access to classified information. Freedom of Information legislation which allows extensive exemptions or a ministerial veto on disclosure may well be mirrored by and reinforce limitations on parliament's own access to sensitive information.¹⁹³ The practice of closed sittings for certain categories of information is one method which a number of parliaments use to circumvent such limitations.

The above factors adversely affect the effectiveness of the parliamentary committee's role in parliamentary oversight. Most importantly, the tendencies of the committee to be influenced by the dominant party, especially the composition of the committee in parliament might undermine the quality of the committees role in oversight of the executives in parliamentary system of government where the body who over sighted (executive) is the sub part of the Legislature, because of the nature of legislative-executive relationship.

3.4. Legislative oversight over Delegated Power

Delegated legislation is any law that can be made by ministers, administrative agencies and other state authorities. It is a rule, regulations, bylaws and orders that are made under various legislations or acts.¹⁹⁴ The act under which the delegated act is made called the parent act in India.¹⁹⁵ Therefore, delegated legislations are made by the authority which is given such power under the aforesaid act. In the earlier time, delegation of authority to make laws was not in carrying out of government functions and in this modern world however, the government functions are complicated. The increasing complexity in modern governance and the increasing

¹⁹² Bert A.Rockman, Legislative-Executive Relations and Parliamentary Oversight, *Legislature Studies Quarterly*, Vol.9.No.3 ,387-440 at 425-426.

¹⁹³ National Democratic Institute (1996) *Committees in Legislatures: A Division of Labor* <http://www.accessdemocracy.org/library/030_ww_committees.pdf last accessed on July 2011.

¹⁹⁴ Craises on Statutes Law Seventh edition,1971.p.289

¹⁹⁵ Jerry Mashaw, Richared Amerill, Peter M.Shane, West Publishing Co.Sc, Paul Minn, 19992, P.51.

difficulty of passing complicated measure through oral parliamentary discussion has led to an increase in practice of delegating powers of one branch of government to other authority.¹⁹⁶ In this complexity that brought the doctrine of delegation of power in to effect. It is at this event that the issue of delegated legislative power also appears simply the burden of legislative power or authority.

Delegated legislation is necessary for a number of reasons: parliament does not have time to contemplate and debate every small detail of complex regulations, as it only has a limited amount of time to pass legislation, delegating legislation will allow however thoroughly debated regulations to pass through as well as saving parliamentary time.¹⁹⁷

Delegating legislation allows law to be made more quickly than parliament, which is vital for times of emergency. Parliament takes longer as it does not sit all the time and its procedures is generally quite slow and complex due to the several stages each bill has to pass through. Delegated legislation can also be amended or revoked relatively easily, so that the law can be kept up to date and so that the law can meet future needs that arise such as areas concerning welfare benefits, illustrating a great deal of flexibility in the system. Otherwise statutes can only be amended or revoked by another complicated and time-consuming statute.

Moreover, MP's do not usually have the technical knowledge expertise required in for example drawing up laws on controlling technology, ensuring environmental safety, and dealing with different industrial problems or operating complex taxation schemes whereas delegated legislation can use experts who are familiar with the relevant areas. Another argument for the need of delegated legislation is that parliament may not always be the best institution to recognize and deal with the needs of local people. As a result local people elect councilors from certain districts and it is their responsibility to pass legislation in the form of by-laws to satisfy local needs.

When discussing the issue of delegate power, it is equally important to discuss the issue of control over those delegated powers that ensures as to whether they are in the truck where they

¹⁹⁶ Delegation of power and its limitation www.lwyers.dubindia.com/articles/delegationofpowers last visit on September 14,2011

¹⁹⁷ Ibid

are allowed to run. There are many important reasons why it is necessary to have controls over delegated legislation.¹⁹⁸ Currently delegated legislation is made by non-elected bodies away from democratically elected politicians (parliament), as a result executive organ of government have the power to pass delegated legislation, which provides a necessity for control, as without controls bodies would pass outrageous unreasonable legislation. On the other hand, delegated legislation can share the same issues as acts of Parliament such as obscure wording that can lead to difficulty in understanding the law, which again makes controls necessary as parliament or the courts can stop unclear legislation, which will affect the lives of hundreds of people from passing.

Hence, different mechanisms are used to exercise some control over those delegated powers. Delegated legislations are mandatory to be published and provided for a sale in a way that the people can get in access to their content and determine their Constitutionality.¹⁹⁹ This means, one of the mechanisms of controlling the delegated legislation is through publication. The other mechanism of controlling the delegated legislation is through judicial review.²⁰⁰ According to the principle of judicial review, parties who are victims or potential victim of the administrative laws and actions can come to administrative tribunals of ordinary courts with their claims and complaints in respects of the context of the countries.

Among such mechanisms, the most important one is the committee scrutiny.²⁰¹ This is possibly one through establishing a scrutiny committees which is charged with scrutinizing the implementation of laws enacted under its laws and the action of executive bodies is the most effective and important tools of parliamentary control.²⁰² In this regard, countries have more or less, a similar kind of a scrutiny committee. As it is known, one of the subject matters over which a parliament exercises its controlling power is the steps of executive bodies as to whether they are keeping themselves in the truck they are allowed to go through.

¹⁹⁸ Ibid

¹⁹⁹ <http://www: Western Encyclopedia of America> last visit on July 24 2011

²⁰⁰ Ibid

²⁰¹ <http://www.parliamentstrengthning.org/committeesmodule/p/> last visit on July 24,2011

²⁰² Supra note 163

Accordingly, the scrutiny in England is entrusted with the function of scrutinizing the activities of administrative bodies.²⁰³ In this respect, the scrutiny committee in the aforesaid state scrutinizes the steps of those administrative bodies whether they are kept in the limit they are allowed by the statutes to be. Hence, the issue of delegated legislation is one of the subject areas of the scrutiny wherein the committee is toiling much in reviewing statutory elements and drawing the attention in the parliamentary delegated legislation.²⁰⁴ Thus, the scrutiny committee, after scrutinizing status enacted by the administrative bodies under a legislative power delegated by enabling act to them, informs the parliament the power transcending act thereof.

3.5. Party System and Parliamentary Oversight

The number of political parties that form government is very important for distinguishing between different types of party system, whether ‘one-party’, ‘two-party’, ‘dominant-party’ or ‘multiparty’ systems. The number of political parties is not only important in itself, but also because it reflects the socio-political contexts and the extent of societal divisions and regional differences.²⁰⁵ One party system is a political system in which a single party enjoys the monopoly of power through the exclusion of all other parties (by political or constitutional means) and those that are characterized by a competitive struggle between a numbers of parties. Because monopolistic parties effectively function as permanent governments, with no mechanism (short of a coup or revolution) through which they can be removed from power.²⁰⁶ This therefore, allows such states to be classified as ‘one-party states’, and their machinery being seen as a fused ‘party–state’ apparatus. A two-party system is duopolistic in that two ‘major’ parties that have a roughly equal prospect of winning government power dominate it. Countries like Benin, Kenya, and Zimbabwe can be cited as an example for the African country having two-party system.²⁰⁷ On the other hand, a dominant-party system is competitive in the sense that a number of parties compete for power in regular and popular elections, but is dominated by a

²⁰³ Supra note 168

²⁰⁴ *ibid*

²⁰⁵ M. A. Mohamed Salih and Per Nordlund, Political Parties in Africa Challenges for Multi-Party Democracy African Regional Report Based on Research and Dialogue with Political Parties. International Institute for Democracy and Electoral Assistance 2007, Sweden .p.43

²⁰⁶ *Ibid*

²⁰⁷ *Ibid*

single major party that consequently enjoys prolonged periods in power.²⁰⁸ Angola, Cameroon, Ethiopia and South Africa are among few example countries having dominant party system.²⁰⁹ The other important type of party system is multi party system. A multiparty system is characterized by competition between more than two parties, thus reducing the chances of single-party government and increasing the likelihood of coalitions.

In liberal democracy, it is obvious that political parties play a critical role in deepening democratic process. Besides, providing veritable avenue for popular participation, they are celebrated mechanism for political mobilization, guiding policy formulation, implementation and much more significant guards against dictatorship.²¹⁰ On the other hand, in modern societies Multi-partism has proved to be the only viable and possible form of democracy which can address and key in various interests of the citizens to government agenda.²¹¹ To put in another ways, political parties are central to representative democracy and to the process of democratization. They connect society and the state, they aggregate and represent interests, they recruit political leaders, they disseminate political information, they socialize citizens into democratic politics and they manage conflicts of interest and, very importantly in societies that have recently experienced violent conflict, they can offer a forum for social and political integration, a tool for nation-building. Democracy in the modern world is therefore inconceivable without healthy parties and an effective party system.²¹²

Joseph Schumpeter argued that democracy was best understood not as a practice of collective self-government by the ‘people’, but rather, the selection by the people of representatives to govern on their behalf. Elections, on this account, are a process whereby ‘individuals acquire the power to decide by means of a competitive struggle for the people’s vote’.²¹³ To put in other

²⁰⁸ Ibid

²⁰⁹ Ibid

²¹⁰ Kakuba Sultan Juma Multiparty Politics Dynamics in Uganda African Journal of Political Science and International Relations Vol. 4(3), pp. 109-114, March 2010

²¹¹ Ibid

²¹² Peter Burnell Building Better Democracies Why political Parties Matter? Western Foundation for Democracy 2004.p.11

²¹³ J. Schumpeter *Capitalism, Socialism and Democracy* (1943).p. 269

ways, in established modern democracies, non-exclusive elections and multi party competition for government power have come to be recognized as critical component of a functioning democracy. Ideally, these processes are good indicators of the extent to which the political system allows for reasonable exercise of choice over who governs and accountable governance.²¹⁴ Besides, opposition they called, above all, for the abolition of one-party rule and the modernization of electoral Systems.²¹⁵ The political parties and particularly opposition parties are indispensable in all democratic societies.²¹⁶ After a democratic transition, the opposition can help consolidate and deepen democracy.²¹⁷ Party dominance is rather more likely to close down opposition and, in effect, transform democracy into elective dictatorship.²¹⁸ In many ways, a democracy can almost be defined in terms of the existence of an effective opposition.²¹⁹ The complex relationships between political parties will do much to determine the quality, and indeed the stability, of the political order.²²⁰ In fragile democracies both ruling and the opposition parties may have the capacity to destroy democracy itself. Thus both the balance of political forces and the respective party strategies will be critical in shaping political developments.²²¹ An opposition is of course a necessary but not sufficient condition for democratic accountability. This means their existence would mean nothing unless they are given opportunities to campaign and have equal opportunity with the ruling political party in making public campaign to win the support of the majority.

One party domination in many jurisdictions resulted in domination of the party in government institutions. For instance, in South African context, because of a dominant political party controls the power of constitutional amendment, and the content of a constitution reflects the fact of

²¹⁴ Onalenna Doo Selolwane Monopoly Politicos How Botswana's Political Parties have helped sustain One Party Dominance. *African Sociological Review* 6(1), 2002,p.68-90

²¹⁵ Oppositions in New South African Democracy

²¹⁶ *ibid*

²¹⁷ Alfred Stepan, Democratic Opposition and Democratization Theory, *Government and Opposition*, 32, 4, 1997, p. 657

²¹⁸ Giliomee and Simkins, Conclusion, p. 347.

²¹⁹ J. Arthur, *Democracy: Theory and Practice*, (Andover, Hants: International Thomson Publishing Ltd. 1991).

²²⁰ *Ibid*

²²¹ *Ibid*

political party domination.²²²The implication is therefore, most of the institutions that are controlled by the ruling dominant party are likewise casualties of political party domination. If we see the effects of one party dominance in South African context, the unifying theme is that the ANC's dominant status has eroded the checks on the power of the executive created by the South African constitution, which are internal to democratic institutions and processes, and which are operated by political actors.²²³ Therefore, one party dominance directly affects parliamentary oversight. The reason is that all parliamentary institutions and organs like different committees and those outside parliament but directly accountable to the parliament are controlled and enrolled only by the member of ruling party. Therefore, the institutions that are entrusted with overseeing executive organs are still remain under the control of dominant ruling party.

To put in general terms, dominant parties dominate the legislature and could monopolize the lawmaking process to promote the predominant party's economic and social interests; governments formed under the system are less accountable to the legislature, which they dominate, and the opposition, which is too small to be effective; and they encourage government to develop the arrogance of power and become irresponsible to citizen demands.²²⁴

One of the means of overseeing the overall performance and activities of executive organ is through parliamentary questions. To this end, MPs are entitled to present questions either on the report presented by executive organ of government before the parliament or a motion to be discussed before the floor of House. MPs are entitled to ask the majority of questions in the National Assembly; however, in country having one party domination in politics, they rarely do so, and indeed, are prohibited by the code of conduct from using parliamentary structures to undermine party policy.²²⁵ Although legislative authority formally vests within Parliament, its role has been reduced to approving bills drafted by this dominant party led executive. This is because it creates fusion of power in legislative-executive relations. This in turn resulted in executive dominance over legislation which may result in weakening parliamentary oversight of

²²² Sujit Choudhry, "HE HAD A MANDATE"; The South African Constitutional Court and the African National Congress in a Dominant Party Democracy p. 7.

²²³ Ibid

²²⁴ Supra note 1

²²⁵ Lodge, 'The ANC and the Development of Party Politics' (n 28 above) 209; A Butler 'How Democratic is the African National Congress?' (2005) 31 *Journal of Modern African Studies* 719, 720-722

executive organ of government. In multi party system however, there is considerable skepticism that intra-party democracy is an adequate replacement for competition between political parties, properly functioning parliamentary oversight and legislative processes. On the other hand, the strength of multiparty systems is that they create internal checks and balances within government and exhibit a bias in favor of debate, conciliation and compromise.

In dominant party system, MP's are obliged to vote in accordance to the structure of their party. As a result, if they do not, they face a range of penalties up to and including removal from public office through redeployment. In this regard, as Giliomee *et al* write:

*Ostensible authority resides in the constitution, parliament and cabinet, but real authority resides in the party. Real decision making occurs outside of formal constitutional structures such as Parliament and is instead conducted behind the closed doors of party forum.*²²⁶

On the other hand, in the absence of the right to oppose, the right to “participate” is stripped of a very large part of the significance it has in a country where public contestation exists. In other words, competition makes participation real. Moreover, competition combined with participation *inter alia* provides additional support for political freedoms, dissolves political oligarchies, makes government more responsive to a broader segment of society, promotes the conversion of parties into mass organizations, and increases rates of political participation. To put in other words, the presence of a viable opposition and party competition provides the ultimate check against unrestrained power of government. As long as a party fears loss of office, it will be much less likely to act arbitrarily.²²⁷ Therefore, viable political parties and effective party systems are fundamental to building democracy.²²⁸

²²⁶ Giliomee, Myburgh & Schlemmer ‘Dominant Party Rule’ p.173

²²⁷ E Scheiner *Democracy without competition in Japan: Opposition Failure in a One Party Dominant State* (2006).P. 7-8.

²²⁸ Peter Burnell Building Better Democracies, Why Political Parties Matter. Western Foundation for Democracy 2004.p.9

3.6. The Role of Oppositions in Parliamentary Oversight

The “opposition” is primarily a concept used in parliamentary systems.²²⁹ The context is different in presidential political systems where the head of the executive usually the president is directly elected, and not dependent upon parliament. In presidential systems, such as the USA, or semi-presidential, such as France, there may be periods in which the same party has both the president and the majority in parliament, but there will also be periods in which it does not – in France often referred to as “cohabitation”.²³⁰ A parliament is by its nature not a monolithic and homogeneous institution, but a representative assembly, where the basic idea is that different interests and ideas should be represented, and where there will always be differences of opinion, and always a distinction between the majority and one or more opposing minorities²³¹. In modern parliaments this is organized along political party lines, with the basic distinction running between the governing party or parties and the opposition parties that are represented in parliament.

In parliamentary democracy, decisions are taken by the majority, and a parliamentary system of government is characterized by the fact that the government will usually (though not always) have the support of the majority.²³² The opposition is usually in minority, and the minority as a general rule does not have the competence to adopt decisions for the main reason that they are minors in terms of number and does not govern as they constitute small number of parliamentary seats. The function of the opposition is not to rule. Instead the opposition’s functions is to offer political alternatives, to articulate and promote the interests of their voters (constituents), to offer alternatives to the decisions proposed by the government and the majority representatives, to improve parliamentary decision-making procedures by ensuring debate, reflection and contradiction, to scrutinize the legislative and budgetary proposals of the government, to

²²⁹ Supra note 100

²³⁰ Ibid

²³¹ Cf. Robert Dahl (ed.) “Political Oppositions in Western Democracies” (1966), preface page xiii-xiv

²³² A distinction here is between positive and negative parliamentarism. Positive parliamentarism means that the government must have the explicit support of the majority in parliament, usually through a vote of support or Confidence (investiture). Negative parliamentarism means that the government can sit as long as it does not have the explicit distrust of the majority, as expressed in a vote of no-confidence. Systems with negative parliamentarism are more likely to have periods of minority government. But minority government can also occur in systems with positive parliamentarism, if one or more of the opposition parties vote for the government.

supervise and oversee the government and the administration, to enhance stability, legitimacy, accountability and transparency in the political processes.²³³ In theory, then, the opposition acts as a check on the government's power. In practice, however, it usually do little more than criticize and attempt to publicly embarrass the government. This is due to the level of control the government has over the parliamentary process, as well as the prevalence of majority governments in many parliamentary governments politics, which enable the governing political party to dominate votes in the House.

The functions listed above are supplementary and to some extent interrelated. Some opposition parties may choose to present alternative proposals to those of the government, while others choose to support it. Some conduct strict scrutiny of government actions, while others do not. Whether or not an opposition party may realistically aspire to government power after the next election will impact the way in which it perceives and fulfils its opposition role. While a large and well-established opposition party may typically concentrate on formulating an alternative policy for governing the country after the next election, many small opposition parties often define their parliamentary role quite differently, as watchdogs, emphasizing supervision and scrutiny.²³⁴ Parliaments act as supervisory body and, even where they lack the legal power to prevent certain executive measures from taking effect, or where there is an overwhelming government majority, they can still be the source of initiatives, raise issues for debate and call the government to account for its policies.²³⁵ Members can exercise a degree of independence by calling ministers to give evidence before committees, carrying out comprehensive budget reviews, and holding committee inquiries.

Nevertheless, it is quite reasonable to assume that the oppositions in the Legislative branch have a crucial role in overseeing the executive branch.²³⁶ Their intention to become government in the future can motivate them to control the government and make use of the instruments and

²³³ The Role the Opposition in Parliament www.lawyersjurists.com/.../articles-and-assignment last accessed on August 1st 2011

²³⁴ Ibid

²³⁵ Sara Whitmore State Building in Ukraine, the Ukraine Parliament 1990-2003, Taylor & Francis e-Library, 2005.p,16

²³⁶ The Role of the Political Party in the United States. www.turkishweekly.net/article/98/the-role-of-the-politicalparty last accessed on August 1st 2011

enforcement mechanisms at their disposal. Of course, that the provision of parliamentary opposition to the review may vary depending on other factors as the degree of competitiveness of the system and switching possibilities in the short and medium term, the degree of polarization between government and opposition, the level of popularity and government approval, the size and level of cohesion of the opposition against the coalition.²³⁷ Proportional representation will also tend to foster more political parties of some size and significance. The electoral threshold is another important element deciding the number and size of opposition parties.²³⁸ In the presence of large coalitions of government, the executive can take advantage of procedural strategies and their numerical majority to block initiatives of the opposition forces, a task that becomes even easier when the larger are the requirements - in numerical terms - to make use of mechanisms of oversight.

Parliament is the institution that embodies society in the diversity of its composition and its opinions and which relays and channels this diversity in the political process. Its vocation is to regulate tensions and maintain equilibrium between the competing claims of diversity and uniformity, individuality and collectivity, in order to enhance social cohesion and solidarity. Its role is to legislate, *inter alia* by allocating financial resources, and oversee the action of the Executive.²³⁹ On the other hand, the primary function of the opposition is to offer a credible alternative to the majority in power. Moreover, by overseeing and criticizing the action of the government, it works to ensure transparency, integrity and efficiency in the conduct of public affairs and to prevent abuses by the authorities and individuals, thereby ensuring the defense of the public interest.²⁴⁰ Indeed, the opposition contributes to the promotion and defense of human rights and fundamental freedoms, thus helping to ensure that democracy functions properly.

²³⁷ Marta Mendes da Rocha Juliana Jardim Melissa Caldeira Oversight Committees in Brazilian State Legislatures: Minas Gerais State Legislature on the period between 2003 and 2008p.6

²³⁸ Report on the Role of the Opposition in Democratic Government adopted by the Venice Commission, at its 84th Plenary Session, European Commission Democracy Through Law(Venice commission) 15 November 2010 Study no. 497/2008(CDL-AD(2010)025)P.7

²³⁹ Guidelines on the rights and duties of the opposition in parliament, The representatives of African Parliaments meeting in Libreville from 17 to 19 May 1999 on the occasion of the *Parliamentary Seminar on Relations Between Majority and Minority Parties in African Parliaments*, organized by the Inter-Parliamentary Union in co-operation with the United Nations Development Programme and at the invitation of the Parliament of Gabon,(IPU)P.2

²⁴⁰ Ibid

Without opposition parties, uncensored public criticism and the threat of being thrown out of office, rulers can act with impunity. It is, of course, the right of a democratically elected government to govern but it is also the duty of that government to do so in a manner that contributes to the consolidation of democracy.

For the effective roles of the opposition member of parliaments, the member of oppositions in a parliament should enjoy the same right as the member of the majority enjoyed.²⁴¹ As a result, respect for freedom of expression and information is essential to members of parliament and particularly those who belong to the opposition to permit them to carry out their parliamentary duties. Representatives of the opposition must be able to denounce freely in Parliament and before public opinion the abuses which they have noticed or which have been brought to their attention by their constituents, and to act with a view to their remedy.²⁴² The opposition must also enjoy fair access, on equal terms with the majority, to state media in order to disseminate its views, criticize the government's action and propose alternatives to the government's solutions.²⁴³ On the other hand, the opposition party members in parliament represent at least the interests of the people who elect them. Therefore, they have the same rights and privileges with the member of the major political party. The only difference is the minority and majority difference in terms of the number of seats in the parliament.

Therefore, the opposition in parliaments should not be considered as if they are in the parliament to only criticize the government, even though it is the main role of the oppositions in the parliament. To put in other words, genuine political opposition is a necessary attribute of democracy, tolerance, and trust in the ability of citizens to resolve differences by peaceful means. The existence of an opposition, without which politics ceases and administration takes over, is indispensable to the functioning of parliamentary political systems. Therefore, governing parties need to recognize that an effective and responsible opposition is essential for the success

²⁴¹ Rights and Duties of the Opposition in the Parliament

<http://assembly.coe.int/Documents/workindocs/Doc08/EDOC11465.pdf> last accessed on September 5,2011

²⁴² Ibid

²⁴³ IPU provide the guidelines for the rights and duties of the oppositions in parliament especially based on the consideration of UDHR, ICCPR, DCFE, and UDD.

of parliamentary democracy.²⁴⁴ The government must, therefore, provide the necessary resources, parliamentary time, and information, fair access to the media and opportunities for scrutiny if the opposition is to be able to discharge its duties. Sadly, such conditions do not always exist in most inexperienced Parliaments. In a large number of countries, not only those that have only in recent years introduced a multi-party system, this is a pressing need to give greater recognition to the role of the Opposition, thereby giving them the opportunity to function properly.

There is, undoubtedly, an equal responsibility on government and opposition parties to promote participatory democracy.²⁴⁵ It is also essential that there is a shared commitment to the essentials of parliamentary democracy and to making parliament work properly. There also needs to be an agreement on “how the game is played” and the development of informal channels of communication between government and opposition so that both can keep in touch, however heated the political debate.²⁴⁶

Parliament is fundamentally the forum wherein tolerance is institutionalized and is the instrument for the peaceful resolution of conflicts and the mediation of differences. It is the forum where the cardinal principle is respect for and acceptance of the other. This is reflected in the IPU’s Guidelines for the role and responsibility of the opposition in parliament which reaffirms that parliament is the institution that embodies society in the diversity of its composition and its opinions and which relays and channels this diversity in the political process.²⁴⁷ Its vocation is to regulate tensions and maintain equilibrium between the competing claims of diversity and uniformity, individuality and collectivity, in order to enhance social cohesion and solidarity. Its role is to legislate, inter alia by allocating financial resources, and oversee the action of the Executive. Parliament must accommodate the participation of all people in homogeneous as well as heterogeneous societies in order to safeguard diversity, pluralism and

²⁴⁴ Role of the Oppositions in the Parliament. <http://www.thecommonwealth.org/shared-esp/files/uploadfiles/%7BFOA2CO41-4450-8F2C-488DC-391308%7D-Role%20opposition.pdf> last accessed on September 15, 2011

²⁴⁵ Kamal Siddiqui Local Government in Bangladesh, the University press Ltd 1995.p.1

²⁴⁶ Supra note 146

²⁴⁷ See IPU’s guideline for the roles and responsibilities oppositions in parliament.

the right to be different in a climate of tolerance. This will require recognition of and respect for human rights in general as well as for their specific rights and duties.

The opposition party in parliament also plays the representative roles.²⁴⁸ This objective for a democratic parliament of being representative in these different senses is achieved partly through the composition of parliament, which is the result of the election process; partly through fair and inclusive parliamentary procedures, which provide an opportunity for all members to express their views, to take part in the work of parliament on an equal footing with others, and to develop their parliamentary careers. While the composition of parliament looks at first sight to be the result of a pre-parliamentary process, parliaments are nevertheless capable of influencing their own composition indirectly, through their legislative power to set the rules under which elections take place. As to fair and inclusive procedures, these are clearly under a parliament's own direct control.

Three different features of the election process contribute to this objective.²⁴⁹ First and most basic is the guarantee of fair electoral procedures, to ensure that no voters, candidates or parties are systematically disadvantaged or discriminated against. A second feature affecting the political representativeness of a parliament is how the given electoral system operates in the social and political context of the country, and how fairly it treats different political parties, whose degree of electoral support provides the best index of public opinion. Apart from the inclusiveness of the suffrage and the character of the electoral system, the political representativeness of a parliament may also be affected by who actually exercises their right to vote. Although there are many reasons for people not doing so, a common one is the belief that those who are elected will not represent the interests of the voters. If this belief is more widespread among some sections of society than others, it will skew the resulting character of parliament. The purpose of this thesis is not to discuss about the electoral rules and procedures it is to show the representative roles of the parliament and to vindicate the roles of the oppositions in parliament. The further discussion on these issues goes out of the scope of the thesis.

²⁴⁸ Supra note 141

²⁴⁹ Parliament and Democracy in 21st Century: A Guide to Practice, a Representative Parliament(IPU),2006.p.12

A fundamental condition for a parliament to be representative, and for its members to represent their electors effectively, is that they be free to speak their minds without fear. Historically, parliamentarians have often been subject to all kinds of pressure and intimidation from governments, especially when they have spoken out against government abuses. This is very common in countries with infant democracy and having infant parliament and where the protection and enforcement of the human right is at its infant stage which is true for most African countries including Ethiopia. Ethiopia still experienced only few parliamentary seasons, in which all parliamentary seasons has been said to be won by the EPRDF through election. They have also been subjected to unwarranted pressure from other powerful forces within society itself especially from the supporters of the government. It is for this reason that the rights of parliamentarians to free speech have been given special protection through rules of parliamentary ‘privilege’ or ‘non-accountability’ which protect parliamentarians from prosecution for opinions expressed or votes cast in the exercise of their mandate.²⁵⁰ To put in other words, for effective parliamentary oversight, the member’s parliamentary privilege and immunity is very important, especially the freedom of speech. The point of such a privilege is not only for the protection of parliamentarians, but so that they can better represent and protect the interests of their electors.

One of the basic factors affecting oversight or its effectiveness is a strong party based system. The relationship between the majority party and the government impacts the oversight process more seriously in parliamentary system of government than in any other form of democratic governments because in such a system, the fate of the two sides is intertwined. The reason is that one stands and falls with the other. Member of the Legislature may be reluctant to call in to account the member of the executive which is made up of their party. The oversight system in parliamentary form of government can also be diminished because the government is implementing the program of and policy of the ruling party which wins the majority supports of the members of the parliament.

Traditionally, parliamentary oversight is considered as the only function of the opposition in parliament. If this is the case, for instance, the existing Ethiopian parliament cannot perform its oversight function, because almost all parliamentary seats are possessed by the ruling party EPRDF. However, the oversight role is not only played by the opposition it is also the role of the

²⁵⁰ Ibid

member of the ruling party. That is the reason that it is said all members of the parliament should understand the rational and justification behind the oversight role of the parliament. It must be considered as a key element of good governance and prevalence of Constitutionalism and accountability, both by the ruling and opposition party.

In most parliamentary form of government, there are different mechanisms devised by the rules and procedures of parliament, to the oppositions, the systems that the oppositions use to perform the oversight functions and table the issues for debate before the floor of the parliament. In many western parliaments such as UK, Germany and Canada, there is an ‘‘opposition’s day’’, the day which is left and set aside by the oppositions to choose the issues for debate and table.²⁵¹ However, the oppositions do not use this opportunities for the tabling issues for debate but simply spend the day by criticizing and divulging the government’s fault and mal administration.

Opposition days are days allocated in the House of Commons in each session for the discussion of subjects chosen by the Opposition. In Canada there are twenty two days which an opposition party allowed to set an agenda.²⁵² There are 20 days allocated for this purpose per session and the Opposition generally uses them to raise questions of policy and administration. Opposition days, between political parties with the official opposition²⁵³ party which will be allotted more days and the next opposition party will be allotted more days next to the official opposition day.

²⁵¹ See George Cubie et al, Integrated Comparative Study of the Rules of Procedures of the HPR of Ethiopia, and the Rules of Procedures of the House of Commons of Canada, of the Bundestag of Germany, of the Lok Sabha of the Parliament of India, and the House of Commons of United Kingdom(Addis Abeba,2006)

²⁵² Glossary of Parliament Procedure from Canadianparliament.<http://www.parl.gc.ca/information/about/process/House/glossary/glossary-e.htm#sect> last accessed on September

²⁵³ The ‘‘Opposition’’ in this context refers to all those elected representatives in the House who belong to political parties not in the role government. The title of ‘‘Official Opposition,’’ by contrast, is reserved for the largest of these opposition parties; that is, the opposition party that has the most representatives in the House.

CHAPTER FOUR

Parliamentary Oversight towards Ensuring Constitutionalism and Accountability under the FDRE Constitution

4.1. The Ethiopian parliament: An Overview

It was only after the 1931 written Constitution that the institution of parliament began to take root. There was no institution with the name of parliament before. Article 30 of the Constitution establishes the Chamber of Deputies (the Lower House) and the Senate (the Upper House) as the two Chambers of the Parliament. At first there was no electioneering campaign for the Member of Parliament. The parliament was in power until it was terminated in 1936 due to the Italian invasion. The same parliament resumed in 1942 and the power of the parliament was minimal as the state power was under the tight control of the monarch.²⁵⁴ The system was adopted to the Constitutional monarchy. When he signed the Constitution Emperor Haileseilasie said;

*'It is necessary for modern Ethiopia to accustom herself to take in to the direction of all department the senate and it is that in mind that we have resolved so that those are worthy to do so may sit in them, to create two chambers.....'*²⁵⁵

One of the two Chambers of the Ethiopian parliament, the Chamber of Deputies was the most important, since it is through the Chamber that the people of Ethiopia are represented in the process of government and legislation.²⁵⁶ The Senate was composed of nobilities; local chiefs served his Empire as princes or ministers, judges or high military officials who were appointed by the Emperor himself (Art.31 of the 1931 Constitution). Moreover Article 32 provides that temporarily and until the people are in a position to elect themselves, the member of the chamber of deputies shall be chosen by the nobilities and local chiefs. Thus, there was no popular election of the member of the lower House as it was also true to the upper House or senate. Most members were nobilities or others who got the confidence of the Emperor. Even though, Article

²⁵⁴ James CN Paul and Christopher Clamphem Ethiopian Constitutional Development Vol.II,P.

²⁵⁵ Constitutional Development in Ethiopia, Addis Ababa Ministry of Information Common,1965,p.17

²⁵⁶ James C.N. Paul and Christopher Clamphem, Ethiopian Constitutional Development vol. II 1967

34 of the Constitution said that no law may be put in to force without having been discussed by the Chambers and confirmed by the Emperor, still the Emperor retain veto power.

To put in other ways, even though there are some powers which vested on the two chambers, still the Emperor retained important powers, and they were there to rubber stamp the desire of the Emperor. Their power was over taken by the Emperor who had the veto power.²⁵⁷ The 1931 Constitution didn't provide for the clear empowerments of the House to conduct control and follow up on the executive organs. Even more, the Ministers need to have prior permission from the Emperor for the debate and discussion. Therefore, what we can understand from this fact is that still the power of the parliament under the 1931 Constitution is ideal and unless the Emperor grants such power the House cannot make supervision and follow up. It was unthinkable to oversight the act and activities of the Emperor whose all executive power was in his hands. Therefore, it is difficult to talk about oversight activities of the legislature in the 1931 Constitution and it didn't mandate either of the Houses to exercise oversight over the executive. However, the Ministers are bound to produce report before the Emperor about their functions both in advance and later and held accountable to the Emperor.²⁵⁸

Likewise, the 1955 Revised Constitution under its Article 76 stipulated for the establishment of two chambers. More over the same Constitution under its Article 97 stated that members of the Chamber of Deputies are elected by the people of Ethiopia. The Senators were elite groups like the princes, high government officials and other local governments. They were appointed by the Emperor. This time, the parliament seemed to raise consultative level where the approval of the two chambers required. But, still the approval by these two chambers could become effective only if approved by the Emperor. The ultimate power was still in the hands of the Emperor. Then, by the Constitution of 1987 a new parliament was introduced and named as the National Shengo. According to the Constitution, the Shengo was the supreme organ of the state power in the country. As far the parliamentary oversight under the Constitution is concerned, it could be possibly said that the Shengo did not make supervision on the executive council. The first obstacle of controlling function of the Shengo was it shall meet once a year only. On the other

²⁵⁷ The 1931 Constitution Article 34, where the law that is deliberated by Chamber of Deputies become binding only when the Emperor accepted.

²⁵⁸ Article 48 & 49 of the 1931 Constitution.

hand, even though there were commissions (committees) in the Shengo, there were limited only to deciding the issues to be presented before Shengo.

The Transitional Period Charter was used as a root for the post 1991 Ethiopian Legislature serving as an interim Constitution. The Transitional Parliament, namely, the Council of Representatives (COR) was formed as a supreme organ of power for the transition period. The incumbent Constitution, which was designated as the “Constitution of the Federal Democratic Republic of Ethiopia,” was promulgated in August 1995²⁵⁹. According to this Constitution, (the FDRE Constitution) it provides for the establishment of a federal bi-cameral parliament²⁶⁰ in the form of the House of Peoples’ Representatives (HPR) and the House of Federation (HoF) posing as the lower and upper chambers respectively.²⁶¹ Further, it stipulates that members of HPR be elected for a five-year term on the basis of universal suffrage and by direct, fair, and free elections held in secret ballot.²⁶² Accordingly, members shall be elected from among candidates in each electoral district by a plurality of votes cast and members of HPR shall not exceed 550 of which at least 20 seats are reserved for minority nationalities.²⁶³ However, the importance of these reserved seats seems undermined because still those national minorities in the House are inevitably outvoted since the rule of voting in the parliament is majoritarian.

House of Peoples Representatives (HPR) is vested with a wide range of legislative powers concerning land and natural resources, inter-state commerce and foreign trade, transport and communication, nationality and immigration, labor, and political and civil rights.²⁶⁴ Moreover the House is empowered to enact labor, commercial, and penal codes (federal laws) and

²⁵⁹ FDRE Constitution, Proclamation No. 1/1995

²⁶⁰ Even though the FDRE Constitution provides for the establishment of the two House, (HPR and HoF) it is difficult to determine whether Ethiopian parliament is bi-cameral parliament. The upper House (HoF) is unique in its nature and function compared to other countries upper House. In the first place the HoF hardly involved in law making process. Secondly, the mandate of interpreting the constitution is vested on the HoF. Thirdly, the fact that the HoF represent the Nation, Nationalities and Peoples, make the Ethiopian bicameralism unique from other countries bicameralism.

²⁶¹ Article 53 of the FDRE Constitution

²⁶² Id Article 54

²⁶³ Id Article 54(3)

²⁶⁴ See generally Article 55 of the Constitution

determine the organization of national defense, and security and police forces at the federal level. It can declare a state of emergency in conformity with Article 93 of the Constitution and can proclaim a state of war on the basis of recommendations of the Council of Ministers.²⁶⁵ The House is also empowered to approve on the important public interests like the general policies and strategies relating to issues of economic and social development, fiscal and monetary matters, international agreements, and appointment of ministers, federal judges, commissioners.²⁶⁶

The provisions of articles 61–63 of the Constitution deals with various matters pertaining to the House of Federation (HOF) with regard to powers and functions of the House, membership of the House, and immunity of members of the House. Article 61/1 and 2 stipulates that HOF is “composed of representatives of Nations, Nationalities and Peoples” whereby each of these is represented in the House by at least one member and represented by one additional representative for each one million of its population.” The Constitution provides that, members of HOF are elected either by the State council or directly elected by the people in the same procedure that the members of the HPR are elected²⁶⁷, though the practice shows that the states prefers the first option(sending from the state council).

However, as far as the powers and the status of the House of Federation are concerned, the House of federation appears to have a unique and extraordinary position. It is the second federal House composed of representatives of Nation, Nationalities and People’s not of states and its lack of legislative power makes the Ethiopian upper House unique. To put in other ways, though the Constitution provides the status of the HoF as the second chamber, it lacks the characteristics of other countries second chamber and therefore stands in unique position. In most jurisdictions, the upper House has all powers that the lower House has, and in some jurisdictions, the upper House has important exclusive powers.²⁶⁸ Generally, the HoF is hardly involved in overseeing and controlling the executive’s action.

²⁶⁵ Id Article54(9)

²⁶⁶ See generally Article 55 of the FDRE Constitution

²⁶⁷ Id Article 61(3)

²⁶⁸ For instance, the senate in America has an exclusive power. The first one is the power to confirm or reject official appointment made by the president of the republic (Art. I section II of the Constitution). Second, the senate takes

The above point is just to give bird's eye view of the reality about the HoF. It needs to be noted that the scope of this thesis is limited only to the parliamentary oversight of the executive organs (which is the power of HPR).

4.2. Parliamentary Oversight towards ensuring Constitutionalism and Accountability under the FDRE Constitution

Ethiopia adopted the federal system of government since 1995, and the nomenclature given to Ethiopia is the Federal Democratic Republic of Ethiopia.²⁶⁹ Accordingly, the 1995 Constitution, the Federal Republic composed of nine self governing states, and one city administration (Addis Ababa City Administration). Furthermore, the Constitution enumerates the powers of the two tiers of government under its Article 51 and 52.

Article 50 of the Constitution defines the basic structure and organization of the federal and regional states. Under sub Article 2 of the same provision, it provides that the Federal Government and the States shall have legislative, executive and judicial powers, and the House of Peoples' Representatives is the highest authority of the Federal Government which is responsible to the People, and at the state level the State Council is the highest organ of State authority, which in turn is responsible to the People of the State.

Article 51 of the Constitution enumerates the power of the federal government. Accordingly, the federal government has the power to formulate and implement policies, strategies, and plans which affect the whole nation in economic, social, fiscal, monetary, development, science and technology fields. The federal government also responsible for the formulation and implementation of the foreign policy; negotiation and ratification of international agreements; regulation of inter-state and foreign commerce; intervening in the regional states on the ground of deterioration of human rights and security situation; giving practical effect to the political

part in ratification and drafting of international treaties. This means, the treaties that the president makes are valid if and only if two third of the senate confirms. (Art. II, section II of the Constitution). Moreover, the senate and the House of Representative are the legislative body chamber of the US. The senate can also amend the bills of money initiated by the House of Peoples Representatives.(Art.I, section VII of the Constitution).

²⁶⁹ Art.1 of the FDRE Constitution.

rights recognized in the Constitution; and enactments of laws for the utilization and conservation of lands and other natural resources.²⁷⁰

On the other hand, Article 52 of the Constitution enumerates the power of the regional states. The principle of residual power is incorporated under this article. Accordingly, all powers not given expressly to the federal government alone or concurrently exercised with the regional governments are given to regional government. The provision is also lists the power of the regional states. This includes the power to establish a State administration that best advances self-government, a democratic order based on the rule of law; to protect and defend the Federal Constitution; to enact and execute the state Constitution and other laws; to formulate and execute economic, social and development policies, strategies and plans of the State; to administer land and other natural resources in accordance with Federal laws.²⁷¹ Though the Constitution does not provide a provision that the state should establish parliamentary forms of government, several parts of the Constitution such as Article 50, seems to imply that the states, should also establish parliamentary form of government. The federal Constitution provides for the basic structure for the establishments of state administration. Article 50 of the Constitution provides that state government is established at state and other administrative levels as necessary and the adequate power shall be granted to the lowest units of government to enable the people to participate directly in governance which the state Constitution details the power of such lower units of administrative units. The state Constitution following the federal Constitution, reiterate that the state councils are the highest political authority in the internal affairs of the state.

As far as the relationship of the legislative and executive is concerned, because of the nature of the parliamentary form of government system there is a close tie between the legislature and executive organ of government. The Constitution provides that a political party or coalition of political parties that has the greatest seat in the House of Peoples Representative shall form the executive and lead it.²⁷² Furthermore, it provides that the PM shall be elected from among the members of the HPR's, ²⁷³ and the power of government shall be assumed by the political party

²⁷⁰ See generally the provision of the Constitution Article51 for the power of the federal governments.

²⁷¹ See generally the provision of the Constitution Article52 for the power of the regional states.

²⁷² The FDRE Constitution Article56

²⁷³ Id, Article73(1)

or coalition of political party constituting the majority seats in the parliament. Therefore, because the executive leaders often come from the party leaders, it can be easily understood that the executives are indirectly control the legislature in Ethiopia in particular and the parliamentary system in general. This may not be true for the executive formed by the coalition political party in the parliament. This is because the facts that the parties may form coalition only for the purpose of making government, and still the individual political parties have their own agendas different from the others. Because of this, there will not be a unanimous support for the executive policies as well as their implementations. This in turn therefore, creates a weak executive organ which do not have direct or indirect control over the legislatures.²⁷⁴

As a result, the Ethiopian Constitution has taken note of the importance of parliamentary oversight of the executive for the purpose of ensuring Constitutionalism and accountability. The justification for the parliamentary oversight is that the legislature should make sure that the laws, policies and any other decisions which is authored by it is implemented according to its desire and intention. The executive must also implement these laws, policies, strategies, as per the intention and the desires of the legislature. This means, the executive should read only the script of the film as an actor do in making movies. For this matter, the Constitution has given the far reaching powers and mandates to the House of Peoples Representatives. For instance, the House has the power to call and question the Prime Minister and other government officials, and investigate the executive's conduct and fulfillment of its responsibilities.²⁷⁵

Furthermore, upon the request of third of its members, the House may discuss any matter pertaining to the powers of the executive. It has in such cases, the power to take decision or measures it deems necessary.²⁷⁶ This means every federal government institutions which is run by the executive cannot escape from the scrutiny by the legislature. Therefore they are subject to questioning, investigations, and corrective measures are deemed necessary. Moreover, Article 72 of the Constitution states that the PM and the Council of Ministers are responsible to the HPR.

²⁷⁴ Strengthening legislative capacity in legislative-executive relation Prepared by the National Democratic Institute for International Affairs with funding from the National v Endowment for Democracy. Legislative Research Series.p.10

²⁷⁵ FDRE Constitution, Art.55(17)

²⁷⁶ Id , Art.55(18)

Article 76 also reaffirms that that the Council of Ministers is responsible to the HPR in all its decisions.

This oversight role of the HPR is very important to hold the government organ accountable and answerable for the consequence of their action. This means, the parliament should make sure that the government organs (especially the executive organ of government) exercises their power in accordance with the limit of the constitution and executes the legislature's bill, programs and proposals. This implies the accountability of the executive organ of government (both collective and individual responsibility) which imposes the duty on the executive's organ of government to run only in the truck of constitution, which implies their acts to be in light of the constitution (constitutionalism). As a result, oversight is very important and decisive in ensuring accountability and constitutionalism.

4.3. The General Power of the HPR

One of the core functions of the HPR is law making power. The Constitution, under Article 55 (1) provides that the legislative power resides on the House of Peoples representatives. The Regulation No.3/2006, under its Article 4, the Article which provides for the general function of the House of Peoples Representatives provides the enactment of laws as one of the major function of the parliament. Hence, the ultimate law making power resides in the House of Peoples Representatives'. The House of Peoples' Representatives shall have the power of legislation in all matters assigned by the Constitution to Federal Jurisdiction.²⁷⁷ At the state level the state council has the ultimate power of law making.²⁷⁸ To put on other words, it should be ensured that only the HPR can amend the laws passed by it. It would be contrary to basic democratic principles if the executive, established to implement and administer the laws passed by parliament, could amend those laws. It is for this reason that the power of the executive to make subordinate legislation must be confined within the powers of the principal law, which must indicate to the executive the criteria and purposes for which subordinate legislation is to be

²⁷⁷ FDRE Constitution Article 55(1)

²⁷⁸ Id Article 50(5)

enacted. In no circumstances must the Constitution allow the executive to amend the laws passed by the elected representatives of the people.²⁷⁹

Therefore, the limitations imposed on the federal legislature in making the law is the Constitution itself. This means, the Constitution under its Article 55 (1) empowers the HPR to enact laws only on the matters fall under the federal jurisdiction which is enumerated under Article 51 of the Constitution. The other limitation emanates from Article 9 of the Constitution, which is the kernel of all provisions and makes the Constitution the supreme law of the land. Therefore, the legislature can only enact the laws without challenging this principle of supremacy of the Constitution. Saving the limitation imposed on the legislature, the HPR has the power of enacting laws on the area of utilization of land and other natural resources, of rivers and lakes crossing the boundaries of the national territorial jurisdiction or linking two or more states: the laws regulating inter-state commerce and foreign trade; the laws that regulating the air, real, water and sea transport, major roads linking two or more states, postal and telecommunication service; enforcement of the political rights established by the Constitution and electoral laws and procedures; the laws governing nationalities, immigration, passport, exit from and entry in to the country, the rights of refugees and of asylum; uniform standard of measurement and calendar; patent and copy right; the possession and bearing of arms.²⁸⁰ The HPR have also the power to enact a labor code and penal code.²⁸¹

Apart from law making power, the federal legislature has other important functions that are generally enumerated under the provision of Article 55 of the Constitution. For instance, the House has the power to determine the organization of national defense, public security and police force.²⁸² It shall also declare state of emergency; approve general policies and strategies of economic, social and development, and fiscal and monetary policy of the country.²⁸³ Most importantly, it shall approve the Federal judges, members of the Council of Ministers, commissioners, the Auditor General, and of other officials whose appointment is required by law

²⁷⁹ Kaare Strom, delegation and accountability in parliamentary democracies, department of political science, university of California, San Diego, 9500 Gilman Drive La Jolla, CA 92093-0521, USA.

²⁸⁰ See generally the FDRE Constitution Article 55

²⁸¹ Ibid

²⁸² Id Article, 55(7)

²⁸³ Id Article 55(10)

to be approved by.²⁸⁴ Moreover, very relevant to the issues at hand, the House has the power to call and question the Ministers and Federal government officials including the PM. Moreover, the Constitution empowers the House to take the necessary measures against those officials failing to discharge their duties though the Constitution fails to enumerate what kinds of measures that the House may take. Therefore, the House has the power to conduct effective oversight over the executive action.²⁸⁵

4.4. The HPR and its Oversight Role

While Constitution varies from one country to another, according to the country's political culture, economic and social background, the country's Constitution stipulates that the executive is responsible to the parliament and accountable to the same. It is therefore important to inscribe parliamentary powers regarding to the oversight function of the parliament over the executive actions. Therefore, the Constitution represents an effective way of protecting the power of the parliament in that sensitive field. Such power however may be extended or reinforced by specific legislations and through the rules of parliamentary rules of procedures.

Likewise, the Ethiopian Constitution lays down as one of its fundamental principles the 'transparency of conduct and accountability of government'. The Constitution provides the general importance of the principle that the conduct of affairs of government shall be transparent, and it goes beyond to specify that any public official or an elected representative is accountable for any failure in official duties.²⁸⁶ For this purpose, the Constitution provides the most important legal basis for the parliamentary oversight of the executives. The powers and functions of the HPR are provided under Article55 of the Constitution.²⁸⁷

As per the Constitution, the HPR shall ratify agreements concluded by the executive body.²⁸⁸ As a result, the executive cannot make any agreements, or the agreement that the executive organs

²⁸⁴ Id Article 55(12)

²⁸⁵ Id Article 55(17&18)

²⁸⁶ The FDRE Constitution Article12(1&2)

²⁸⁷ Among the list of the powers and functions of HPR enumerated under the Constitution, the most important one which in one way or another related to its oversight function is the one listed under Article55 (17 and 18) of the Constitution.

²⁸⁸ FDRE Constitution Article 55(12)

of the government enters with another body do not have any effect unless ratified by the House. On the other hand, there is a close tie between the legislative and executive organs of the government. It is because, as per Article 55 (10) and 73(1) of the Constitution, the HPR elects chief executive from among members of the House, and up on recommendation by the chief executive, it shall approve the appointment of the members of the executive council. Furthermore, the House have the power to establish the Federal Auditor General and Control Offices. This is of course, to discharge its financial scrutiny. Most importantly, the House has the power to call for question and request the executive and other state officials and investigate the executive's conduct and discharge of its responsibilities.²⁸⁹ As far as the accountability of the executive is concerned, the chief executive and the executive council in general are accountable to the House of Peoples Representatives.

Apart from this, as per the provisions of the Constitution Article 55 (1) and 59(2), which empower the House of People of Representative to make its own rules of procedure and law making procedure, the House enacted Regulation No.3/2006, the Working Procedure and Member's Code of Conduct Regulation. This Regulation was enacted because it is important to enable the Federal Republic of Ethiopia House of People's Representatives to effectively discharge its powers and functions as well as the responsibility vested with by the public as enshrined in the Constitution, and to organize the working mechanisms and structures of the standing and ad hoc committees of the House in consideration of the Federal Government organ structures. The desirability of establishing codes of conduct governing the behavior of public officials is very important. There is increasingly compelling evidence to suggest that codes of conduct should also apply to members of the Legislature. Members of the Legislature should be obligated under such codes of conduct to observe the rules in the code and non compliance may result in the disciplinary and other measures specified in the code.

The Regulation reaffirms the power of the HPR enshrined under the Constitutions. Accordingly, the House has the power to call and question the government officials (including the PM), and investigate the Executive's conduct and to check if they are discharging their responsibilities in accordance to the limits of the power they are entitled to function. Moreover, the regulation under Article 4(b) as enshrined in Article 55 (17) and (18) of the Constitution the House has the

²⁸⁹Id. 55(17)

power to call and to question Federal officials and overseeing and controlling the executive as well it has the power to discuss on any matter pertaining to the power of the executive and to take decisions or measures it deems necessary. Moreover, the regulation in a clear manner empowers the House to conduct oversight on the executive organ of government.²⁹⁰ However, the regulation, without defining what to mean by oversight directly prefers to state the objectives of the same.

Therefore, the main objectives of the House in overseeing the executive are to check whether:

- (a) Public and government resources and property are utilized properly.
- (b) Executives activities are carried out in accordance with rules and regulations.
- (c) There exists fair and fast development direction.
- (d) Democracy and good governance prevails.
- (e) Right, peace and security of citizens are maintained
- (f) There exists coordination among government bodies.²⁹¹

Generally, the purpose of overseeing the executives actions and activities are to ensure the public officials act within the limit of their power and for the proper allocation and utilization of the limited resources, to combat corruption, to ensure the rights of the citizens are maintained and most importantly to ensure the rule of law, non arbitrary decisions and promoting good governance. For all the above objectives of parliamentary oversight to be realized the existence of the following pointes are indispensable. These are: transparency of government, accountability of officials, participation by the stakeholders in government decisions and the rule of law. The reason is that the weakness and strengths of parliament reflect the degree of

²⁹⁰ However, one should note that the constitution nor the regulation do not employ the term oversight to empower the legislature. Nor they define what it means by the legislative over sight. However, Oversight in this instance means the exercise of constitutional powers by the legislature to check or control the exercise of constitutional powers of the other arms of government, and more specifically to check or control the exercise of executive powers or to make the executive accountable and responsible to the electorate through their representatives.

²⁹¹ Article73, of the Regulation No.3/2006, the regulation of working procedures and the member's code of conduct.

transparency and accountability that prevails in the state as a whole, and the levels and maturity of the political culture of the country.²⁹²

More specifically, Article 74 of the regulation provides the matters and bodies subject to oversight in the following manner.

1. The House shall conduct supervision and follow up around the matters specified below:
 - a) The implementation and the direction of the national polices, strategies, plans, laws and operations towards advancing the Country's development,
 - b) The observance of the fundamental rights and freedoms of citizens, and
 - c) The proper implementation of the budget and resources of the federal government.
2. The House shall exercise supervision and follow up over the bodies mentioned below:
 - a) Federal Government organs,
 - b) A regional state which is unable to stop and control violations of human rights in accordance with Article55 (16) of the Constitution.²⁹³

What one can easily understand from the provisions of the Constitution and the regulation governing the oversight function of the HPR is the objective of overseeing the overall activities of the executive is to ensure that the government activity is in accordance to the law, in order to bring peace, democracy, and the proper enforcement and protection of human rights, and generally to ensure Constitutionalism and accountability of the government through effective parliamentary oversight.

Therefore, the regulation provides for the justification and the importance of the parliamentary oversight, among which the most important one is to check whether the public resources are utilized properly and for the reason that the parliamentary oversight is important for the promotion of good governance. Grounds that justify parliamentary oversight of the government should emanate from the law. The Constitution has prominent role in authorizing Legislatures in this regard. The FDRE Constitution contains the basic principles that have accorded a

²⁹² Strengthening legislative capacity in legislative-executive relation Prepared by the National Democratic Institute for International Affairs with funding from the National Endowment for Democracy. Legislative Research Series.p.4

²⁹³ Article74 of the Regulation No.3/2006,

considerable acceptance of the principles of separation of powers, accountability and transparency in the county. This, among others, has a direct consequence of providing legitimate grounds for the Legislature to conduct its oversight tasks.

The Constitution provides that the works of government as a whole and of the executive branch in particular will be clear and open to the public.²⁹⁴ Moreover, it provides that public officials are susceptible to be held liable for the faults they commit at their official capacity.²⁹⁵ This lays another basic ground for the Legislature to employ oversight on executive organ of the state, as overseeing the executive is the best way to supervise the activities of the executing body.

By virtue of the principle of separation of powers, the body that is entrusted with the law making power at the federal level is the ‘HPR’. As such, it is a body in charge of making laws applicable at the federal level provided that they are consistent with the Constitution.²⁹⁶ Therefore, the Legislature is justified on conducting oversight over the executive organ as a result of its law making power. This is precisely because, law making power normally entails the task of making sure that whether the laws enacted are being properly implemented. This holds true because, law-making power without the adjacent right to supervise the existing body as to how to perform its duties is meaningless. In addition, the House is vested with the power to approve the appointment of higher state officials including the Chief executive and vice chief executive, the president and vice president of the federal supreme court, and the auditor and vice-auditor general of the federal government. It has also the power to approve the appointments of the member of the executive council.²⁹⁷ Thus, this power of the Legislature can be said to serve as a justifiable ground for same to conduct oversight over the various executive institutions in the federal government. This, in turn, helps to create a wide opportunity for the Legislature to scrutinize the behavior and past experience of individuals who are nominated for different posts in light of the duty and function of a given executive department.

Another important ground, which justifies the Legislature in employing oversight over the executive organ relates to the power vested in it to call and question the chief executive and other

²⁹⁴ Article12(1) of the FDRE Constitution

²⁹⁵ FDRE Constitution Article72 (2)

²⁹⁶ Id Art. 9

²⁹⁷ See generally Article55 as far as the power of the House of People’s Representative is concerned.

higher officials.²⁹⁸ By virtue of this power, the Legislature is placed at liberty to obtain full fledged information as regards the performance of the various executive institutions as well as their man power composition. As such, the Legislature will have a valid ground to oversee the overall activities of the executive organs with a view to promote good governance in the country. This holds convincing as the chief executive and executive council are made answerable to the Legislature. Moreover, the Legislature is accorded with the power to approve the budget when it is submitted to it by the executive organ. This indirectly has the effect of entailing a power to the Legislature there by finishing a valid ground for the Legislature to oversee the activities of the executive body.

Furthermore, the Legislature has an essential power of approving some very important policies, programs, and regulations at the federal levels. Hence, as a corollary of this power, the Legislature is expected to make sure that whether the various economic and social policies and programs are being implemented by the executive organ in conformity with the intentions and desires of the legislature. As such, the act of oversight over the executive is also justified in this ground, too. In addition, the legislature has the power to approve any kind of agreement made by the executive organ with foreign governments so that it could have a binding force and some kinds of impact on the country.²⁹⁹ Thus, the Legislature will have ample opportunity to evaluate and assess the significance of the relationship established by the executive. As such, oversight over the executive with regard to foreign relation is justified on the basis of the FDRE Constitution. Therefore, the oversight role of the HPR is justified by the FDRE Constitution.

In practice however, the role of the Ethiopian parliament in monitoring and implementing laws and policies is either totally absent or negligible at best. Parliament periodically deliberates on concerns associated with such things as prevalent poverty, corruption, and human right abuse in the country. Depending on the preferences of the executive, these led to enacting legislation on pertinent matters. HPR listens to the reports of different agencies under the executive. In instances where irregularities and defaults characterizing the actions and behaviors of government agencies under the executive branch are uncovered, HPR hardly urges the executive to account for irregularities and measures taken on defaulter officials and institutions. Progress

²⁹⁸ Id Art. 55(17 and 18)

²⁹⁹ Id Art.55(12)

made in this regard is below satisfactory thereby necessitating improvement in checking and controlling abuse through more rigorous scrutiny and oversight.³⁰⁰ For example, the parliamentary Budget and Finance Committee is legally empowered to participate actively in the budget process. However, its involvement is limited to endorsing government budget proposal of the Ministry of Finance and Economic Development. Given that the Budget and Finance Committee and other parliamentary bodies are not involved in the budget process from the start, they lack information for determining whether budget requests of the executive are appropriate or otherwise. This is one area that calls for improvement by seeking means and ways that could ensure active participation of parliament in the budget process and other oversight functions. In the absence of clarity and pertinent information resulting from lack of active involvement in the workings of government, parliament is left with no option other than endorsing reports and requests of the executive as presented. It should be noted, however, that there are different parliamentary Standing committees that are entrusted with the responsibility of controlling and monitoring the activities and performance of executive departments and agencies that fall under their respective jurisdiction and competence. One problem that Parliamentary Committees encounter in this regard relates to inadequacies in getting expert advice and opinion on matters that require technocratic skills in specialized knowledge. Such state of affairs persist unabated due to inadequate capacity characterizing the educational level and experience.

4.5. The Committees Structure in the House of Peoples Representatives

One of the mechanisms that the House uses in performing its oversight function is through establishments of scrutiny committees in the parliament. Like in many other countries parliamentary committees play a great role in assisting the parliament to conduct its oversight function. As a result, the proclamation No.470/2005 and Regulation No.3/2006 has provides for the establishment of different standing and ad hoc committees in the HPR. On the other hand, as per the provision of the Constitution Article 55 (19) of FDRE Constitution, there are different committee structures that are established in the HPR. Article 135 of the Regulation No.3/2006, provides the following committee structures. These are: the House's Business Advisory Committee, the Coordinating Committee, Standing Committees, Sub-Committees, and ad hoc Committees. Above all the business advisory committee has vast powers and mandates. This

³⁰⁰ M.A.Mohammed Salih (ed), African Parliaments between Governance and Government. Palgrave Macmillan, New York, 2005, p.162

committee is vested with the power of controlling the overall activities of business of the House. Among this , it has the power to formulate the issues to be discussed, proposing the budget of the House, allocating the time of debates and following up and supervising the overall administration of the House, that of man power, finance and administration of property.³⁰¹ More over the committee is mandated in amendment and interpretation of the Rules of procedures and Members' Code of Conduct Regulation.³⁰² There is also coordinating committees which coordinate the general operation of the committees and supervise the effectiveness thereof. It shall also evaluate the general activities of the committees; and set out directions on fundamental matters. This committee is also empowered to determine the government bodies, which each Standing Committee follows up and supervises.³⁰³

The preamble part of the regulation has stipulated that the Legislature will have standing committees for the purpose of effective performance of the works which the House is entrusted with. This as stated above is very important for the oversight function of the parliament which the later is entrusted with. Pursuant to the regulation, standing committees are established to facilitate the work of oversight over the executive organ of the state. Though it is just the step towards achieving the prevalence of oversight, it can be said to serve as one ways for the House to conduct oversight. These are:

- (a) The Capacity Building Affairs Standing Committee;
- (b) The Trade and Industry Affairs Standing Committee;
- (c) The Rural Development Affairs Standing Committee;
- (d) The Natural Resources and Environmental Protection Affairs Standing Committee;
- (e) The Infrastructure Development Affairs Standing Committee;
- (f) The Budget and Finance Affairs Standing Committee;
- (g) The Legal and Administrative Affairs Standing Committee;

³⁰¹ Article 143 of the Regulation

³⁰² Ibid

³⁰³ See generally Article 147 of the regulation

- (h) The Foreign, Defense and Security Affairs Standing Committee;
- (i) The Women's Affairs Standing Committee;
- (j) The Information and Cultural Affairs Standing Committee;
- (k) The Social Affairs Standing Committee; and
- (l) The Pastoralists Affairs Standing Committee.
- (m) The Public Account Committee³⁰⁴

These standing committees, in the House are vested with the power to engage in active supervision of the executive institutions, which have direct connection with their functions³⁰⁵. These standing committees are established on the basis of departmentally based structure. As such, the performance of the various organ administrative agencies will be subject to oversight by the House through these committees. In addition, executive offices will be over sighted as to the proper implementation of laws, policies, strategies and programs, which are enacted mainly by HPR. Standing committees are also endowed with the power to examine thoroughly the budget proposal of different organ of government. It retains the power to ensure the effective implementation of the approved budget by the executive agencies thereby preventing the public resource from possible abuse. On the basis of the above, it can be said for stronger reason that the HPR has an ample opportunity to carefully scrutinize the activities of the various executive departments.

As per the regulation, any member of the federal government bodies shall present their reports to the pertinent committees.³⁰⁶ The committees shall also summon a public debate on the report after their hearing. To this end, the committees invite pertinent bodies of the society and the mass media to attend the discussion.³⁰⁷ Even though the regulation provides that the pertinent federal government organ presents their report to the pertinent standing committees to the House, it doesn't however provide whether the PM presents the report to the standing committees.

³⁰⁴ See the Regulation No.3/2006

³⁰⁵ Id. Art.19(2)

³⁰⁶Id Article 75(1)

³⁰⁷ Id Article 153(2) cum 159(1)

Therefore, the standing committees do not have the legal ground to directly confront the PM who is the chief executives. Thus, it makes the standing committees weak having some limited power. The committees also lack the legal ground of compelling these pertinent government departments to produce reports.

The above factor is one area that calls for improvement by seeking means and ways that could ensure active participation of parliament in the budget process and other oversight functions. In the absence of clarity and pertinent information resulting from lack of active involvement in the workings of government, parliament is left with no option other than endorsing reports and requests of the executive as presented. The other problem is lack of resources both financial and expert man power resources. Most developing countries parliament faces the problem of lack of resources and technical experts in the fields of parliamentary works. This problem is also visible in Ethiopian parliament.³⁰⁸

Apart from the standing committees the proclamation and the regulation provides for the ad hoc committees and sub-committees to assist the work of standing committees.³⁰⁹ As far as the ad hoc committee is concerned, they are established depending on the situation and urgency. Their power and function is determined by the House depending on the nature of the situation and its urgency. The *ad hoc* committee shall dissolve after accomplishing its mission within its powers and presenting a report to the House.³¹⁰ The other important structure of committee is sub-committees that are established under Standing Committees. Sub-Committees are committee established by the House upon the request of the Standing Committee to undertake activities it has been unable to accomplish owing to the heavy workload. The Standing Sub-Committees shall be accountable to the pertinent Standing Committees and shall receive directions and activities to be carried out in consultation with the Standing Committees, prepare work plans, and submit a report and recommendation to the Standing Committee.³¹¹

³⁰⁸ Separation of power and the relationship among the three organ of government, teaching material especially prepared for the Member of Parliament, FDRE House of Peoples Representative by Mohammed Ahmed; November, 2011

³⁰⁹ Regulation No.3/2006, Article 162 and 163

³¹⁰ Id Article 163(5)

³¹¹ Id Article 162

4.6. Parliamentary Oversight and the Executive Functions

At the opening of the twenty-first century, governments have become the most powerful organs of the states. They determine the direction, if not always the detail, of domestic policy. They decide how public money should, and should not, be spent. Foreign policy is made almost entirely by governments. And control of military power is likewise is the preserve of the executive. However, although the executive branch of government conferred all such power, these powers are not an absolute power but they are subject of check. To put in other words, governments may rule, but they do not always rule in supreme. In democracies, the personnel of the executive is subject to the verdict of the electorate; the policies of the executive may be subject to political or parliamentary accountability; and the legality of executive action may be reviewed by the courts of law.³¹² To put in other ways, as one author says;

*...parliaments are the central focus of accountability and legitimacy in democratic polities... Though institutions and practices of democracy are an evolving phenomenon and vary from country to country, it is an undisputed tenet of democracy that the parliament being the representative body of the polity, must exercise oversight over every element of public policy.*³¹³

Likewise, the Ethiopian executive branch of government is established by the FDRE Constitution and has constitutional entrusted powers and functions. This executive branch of government is mainly comprises of the PM, deputy PM and Council of Ministers³¹⁴ consisting of various ministers leading their respective ministerial departments placing the PM at the apex of the executive organ of the state.³¹⁵ The party which won the majority seats in the parliament shall form the government and the PM is elected form the same to take the lead of the government.³¹⁶

³¹² P. Craig and A. Tomkins (eds), *The Executive and Public Law: Power and Accountability in Comparative Perspective* (2006), p 1.

³¹³ Hänggi, H. 2004. The use of Force Under International Auspices: Parliamentary Accountability and 'Democratic Deficits' in *The Double Democratic Deficit*, edited by H. Born and H. Hänggi, Ashgate, Aldershot and Burlington.p.6

³¹⁴ The FDRE Constitution Art.72(1), 74(1), and 75(1)

³¹⁵ Ibid Article 74(1)

³¹⁶ Ibid Art.73(1&2)

Strong executive conforms to the tenets of democracy so long as the accountability of those who exercise the executive authority is ensured.³¹⁷ In modern democracy, the powers and functions of the three organs of the government are identified and enumerated in the Constitution and other legislations. This is important to determine the power limit of the government organs to hold them accountable and to make them liable based on the scope of their authority. Therefore, the FDRE Constitution provides for the extent of power the PM, deputy PM, and the Council of Ministers.³¹⁸ This limitation of power therefore justifies the control over such executive organ of government. Apart from the Constitution, the Proclamation was enacted to determine the power and duties of the executive.³¹⁹

As far as the power of the executive under the FDRE Constitution is concerned, it seems reasonable to start from the power of Prime Minister. Among other things, he/she is responsible to guarantee the implementation of laws, policies and decisions that are adopted by the HPR.³²⁰ Therefore, the PM is expected to strictly comply with the intent and desire of the House. Non-compliance with this rule results in being held responsible and the House may take decisions or measures it deems necessary.³²¹ Therefore, the PM being the head of the executive has to see that the various ministerial offices and the Council of Ministers are discharging their responsibilities in accordance to the intention of the legislature.³²² The PM will be bound to supervise and employ continues follow up and scrutiny of the whole activities of the administrative agencies and as to the proper implementation of the law.³²³ Moreover, the law imposes on the PM to conduct supervision on the efficiency of the Federal administrative offices and take any necessary measures, when it deemed necessary.³²⁴ The PM then produces periodical reports before the parliament (HPR) about the periodical performance and budget report of different

³¹⁷ S.N. Ray Modern Comparative Politics: Approaches, Methods and Issues. Eastern Economy ed (2003), p.226

³¹⁸ FDRE Constitution Article 74, 75 and 77

³¹⁹ Proclamation No.691/2010, The proclamation to determine the powers and functions of the executive organ of government.

³²⁰ FDRE Constitution, Article 74(3)

³²¹ FDRE Constitution Art.55(18)

³²² Id Art. 72(2) and 74(1,4,5, and 6)

³²³ Id 74(3)

³²⁴ Id 74(8)

department of the executive.³²⁵ The Council of Ministers is responsible both to the PM and the HPRs regarding to its decision and the overall activities.³²⁶ The FDRE Constitution provides for the collective responsibility of the Council of Ministers in case of discharging their duties as a body.³²⁷ Even though the Constitution does not directly provide for the individual responsibility of the ministers, the proclamation which defines the power and duties of the executive organ of the Federal government, Proclamation No. 691/2010, infer the individual responsibility of the ministers. The proclamation states that each minister is required to present a periodic report to the House concerning its performance and as to their achievements.³²⁸ Therefore, for stronger reason in Ethiopia too, the individual ministerial responsibility is recognized.

The executive organ of government is responsible and accountable to the legislature organ of government. In many jurisdictions, ministers are collectively and individually liable to the parliament. These collective and individual ministerial responsibilities are very common in British system. In collective responsibility, the executive body as a whole responsible to the parliament for any fault committed in the execution of the government policy.³²⁹ In case of the individual ministerial responsibility, the Minister in charge of the department is held responsible for any fault the department commits.³³⁰

Legislation is therefore, to prescribe rules and power of execution, and the executive is subordinate and accountable to the Legislature. As the body that represents the people, parliament is called upon to see to it that the administration of public policy reflects and meets the people's needs. Parliament is also called upon to ensure that agreed policy is properly implemented and delivered to target citizens. To put in other words, as far as the need for overseeing the executive organ of government is concerned, it rests on the legislative organ of as the representative organ representing the people and exercise the power on behalf of the later. The executive organ as stated above involved in daily activities which in one way or another affects the life of citizens. To put in other ways, the executive involved in the activities having

³²⁵ Id 74(11)

³²⁶ Id 72(2)cum 76(2)

³²⁷ Id Art.72(2) cum 76(3)

³²⁸ The proclamation No.691/2010, Art.10(8)

³²⁹ A.H. Birchi : The British System of Government.(2nd ed.1998).p.204

³³⁰ Id. P. 206

monitory interests, and therefore, rigorous scrutiny is required. Besides, overseeing the executive organ enables the legislature to check whether the laws and the policies that enacted and adopted by the same are implemented in accordance to its intention and desire. This intern helps the legislature to identify the problems of implementation and call for taking the necessary and proper corrective measures which intern ensures accountability, constitutionalism and also promote good governance.³³¹

The legislature uses different tools to discharge its constitutional responsibility of overseeing the overall activities of the executive organ of government. One of the most important way through which the performance of the various administrative institutions of the executive can be checked is by requiring a given office of the executive to present reports before the House. Report may be presented either periodically or irregularly as it deems necessary by the Legislature.³³² Oversight to be undertaken by this method is said to be the direct corollary of the law making function of the Legislature. Once the House passes a certain law, there arises a need to ensure its proper implementation. Hence, it is by ordering the office of some selected executive department to present reports concerning their activities that the effective application of the laws, policies, strategies and decisions of the House can be ensured. The committees have such power to conduct, subject to the purpose of their establishment, studies and supervise the effective implementation of national laws, polices, strategies and programs.³³³

In order to fully supervise the performance of the selected administrative institutions, members of standing committees may take part in the meeting of the concerned administrative agencies.³³⁴ Besides, committee members may also hold talking with the necessary executive personnel with a view to obtain additional explanations as regards the overall activities of the same. To this juncture, the committees may request the executive to produce any documents. One should note that, the office of the executive, through its special secretary, should ensure the minutes of the

³³¹ See Joe L.Evins, Understanding Congress,(1963).p.63

³³² Regulation No. 3/2006 Art.75(1)

³³³ See generally Art.83 of the Regulation.

³³⁴ For instance, this power is entrusted on the standing committees under Art.22 (2,c) of Proclamation No. 470/2005 , the Proclamation for the Working Procedure and Members Code of Conduct.

executive council are kept properly. Therefore, either the specific committee or the House may request and even order the executive council to provide such documents.

The other means of conducting oversight over the executive as regards its performance is by preparing field visits. Field visit is very important. Firstly, they allow legislators (or their staff) to oversee programs and detect problems in their implementation. Visits give executive officials a chance to explain their programs in detail, and perhaps assuage legislators' concerns. Visits also increase communication between legislators and executive officials, who can help to develop cooperative relationship. In some demanding instances, the pertinent standing committee may conduct field visit³³⁵ program to verify the information obtained through the report. By so doing, member of the committee will have a chance to, personally, observe the actual performance of a given administrative agency.

Despite political and structural obstacles, committees remain a promising oversight tool. Committee activity facilitates the development of networks between MPs, civil servants, and interest groups networks that encourage information flows about policy implementation. Committee also encourages MPs to develop expertise in specific policy areas, which in turn allows them to confront ministers on a more equal footing. This, in turn, will help the Legislature take appropriate corrective measures if there is the defect on the parts of the executives.

4.7. The Possible tools of Parliamentary Oversight Available to the HPR

The supervision and follow up power and mandate of the House is not incidental. However, it should be conducted through formal working procedures. As a result, the HPR has issued the supervision and follow up Procedure directive No. 13/2008. Thus, the directive sets out the mechanisms of controlling and conducting supervision and follows up. It provides this mechanism of overseeing under its Article 13-25, which enumerates production of periodical report, the committee scrutiny, debate and question time among other things as a mechanism of oversight that the House uses to discharge this constitutional mandate.

As far as the mechanisms that the House uses to conduct oversight role or as the terms of the regulation³³⁶, supervision and follow up, it refers to the mandate that the House is entrusted with

³³⁵ Id art.22(2d)

³³⁶ The regulation No. 3/2006, uses the phrase'' supervision and follow up'' instead of oversight.

by the Constitution. This means, the House causes every government organs to submit regular reports to it or before the committee concerned at least once a year. The House shall also call the PM and orders to give the oral answers to the question of the House. To put in other ways, as per the FDRE Constitution, it has the power to call and question the Prime Minister and other Federal officials and to investigate the executive's conduct whether they are discharging their responsibilities in accordance to the track and the limit the law conferred on them.³³⁷ However, neither the Constitution nor the regulation (rules of procedures of the parliament) provides clearly for the measures that the House may take against the refused PM. To put in other words, what if the PM refuse to appear and give an oral answer before the parliament?

On this regard, Ato Girma Seifu, the MEDREK representative in the parliament said that:

*“ even though the oral question is taken as one of the tools of parliamentary oversight in the HPR, it is used only during the presentation of regular reports. The member of the parliament those representing the ruling party (EPRDF), are either reluctant or not allowed to ask surprise question. ”*³³⁸(Translation mine).

Besides, according to him, he hasn't seen in his parliamentary experience the member representing the ruling party asking surprise questions and the oppositions in the parliament are not given adequate time for question which puts the speaker of the House neutrality in question. This means, those members frequently ask the questions are identified and ask the already distributed questions.³³⁹ As a result, the ministers including the PM already notified the question to be asked and they come through proper preparation.³⁴⁰ This therefore, become problematic obstacle to effective overseeing of the executive organ through questioning.

Going back to the question raised above, one may possibly argue that the Constitution empowers the HPR to take any measure it deems necessary which may possibly including vote of no confidence though, such is not clear if it can also applied in such cases. As far as other measure

³³⁷ FDRE Constitution Art.55(17)

³³⁸ An interview made with Ato Girma Seifu MEDREK representative in HPR and the chair of Public Account Standing Committee on August 1st 2011.

³³⁹ Ibid

³⁴⁰ Ibid

is concerned, in relation to problems it realized during the process of conducting follow up and supervision of government bodies, the House may take the following remedial measures: a) where the problem emanates from the law it shall provide legal support or complement the loophole in the law through legislation, b) it shall take corrective measures where problems of governmental bodies are related to the budget where it is ascertained by competent body. c) It shall cause a given governmental office to recognize its problem and give it directives to correct its weakness, d) Where the problem is not rectified and where it is serious, it shall cause a measure to be taken through the Prime Minister on the body responsible for the problem, and shall follow up the implementation of the measure taken, e) Where the problem is created by institutions directly accountable to the House, it shall take the necessary measure in accordance with the law.³⁴¹ However, the regulation imposes some kinds of limitation on the power of the House. The first limitation imposed on the House is that the House may not intervene in the day-to-day operations of government bodies, in the course of performing its follow up and supervision. Secondly, in the process of conducting its follow up and supervision, the House shall respect the independence of institutions empowered by the Constitution or other laws to carry out their functions independently. This is based on the concepts of separation of power.

The House however, has the power to call witnesses, experts and may order the concerned government authority to produce evidences in order to perform its supervision and investigation mandates.³⁴² This report or information is obtained from the committees, the public and nongovernmental organizations.³⁴³ As far as the measures that the House may take on the government agencies or organs that found to commit a fault, the House may take both constructive and remedial measures.³⁴⁴ Surprisingly, the regulation opts the procedure of the measure to be taken through the chief-executive.³⁴⁵ Accordingly, the regulation empower PM to recommend the House the measures that could possibly be taken against those government organs. This situation makes the chief-executive to be left unsupervised and unchecked for no

³⁴¹ Regulation No.3/2006, Article75 (6)

³⁴² Id. Article75

³⁴³ Id. Art. 75(5)

³⁴⁴ Id Article 75(6)

³⁴⁵ The regulation empowers the Prime Minister to recommend the measures that the House may take against the government officials found committing faults.

one is empowered by the regulation to recommend the possible measures that could be taken against the chief-executives.

There are also other mechanisms available to the Legislatures that enable the same to conduct the act of oversight on the executive, in particular and the government as a whole. In case of oversight during law-making process, one way through which committees discharge their function of oversight is during legislation. The law making process begins with the submission of draft laws by the executive to the Legislature for approval.³⁴⁶ As such, the House will discuss on the importance of having the bills as a law, and it is only when the House agrees on its importance that the detail discussion is deliberated in the House. Before submitting to the House, the committee will conduct an overall research on it. In some cases, if it is convinced by the House, a public hearing may be called to gather information, comments and suggestions from the people and expert on the matter. Finally, the committee will present a report to the House based on the research conducted by adding its recommendation.³⁴⁷

Therefore, it can be said that oversight is conducted during the law making process through the pertinent committees in the House. As such, the purpose of a particular prospective law might serve and its legality will be assessed in light of the powers and duties of a given executive agencies, which come up with the draft law. By virtue of this technique the essence of the draft law, in light of its role in facilitating the activities of the particular administrative agency thereby promoting the quality of service to render to the society will be evaluated. The other tools available tools for the Ethiopian legislature to conduct parliamentary oversight is through organizing workshops and forums for discussions and experiences sharing also serves as it will pave the way for the establishment of an intimate kind of relationship between the pertinent standing committee and concerned administrative institutions of the executive. This, in turn, helps the Legislature to have a clear picture of the nature and the activities being undertaken with in the executive office. Moreover, it will create opportunities for the members of the standing committees to ask questions for clarifications with regard to certain activities of the executives. Hence, this could also be taken, in the opinion of the writer, as one of the mechanisms of the way of conducting oversight role of the Legislature.

³⁴⁶ See generally Article 50 of the Regulation No.3/2006

³⁴⁷ Id Article 155(3,c) and Article 155(2,f)

Another ways of conducting task of oversight is, by using the question and answering periods in the House. As enshrined in Article 55 (17) and (18) of the Constitution the House has the power to call and to question Federal officials and to oversight the executive as well as it has the power to discuss on any matter pertaining to the power of the executive and to take decisions or measures it deems necessary.³⁴⁸ In cases when certain administrative institutions are required to present a report to the parliament, there will, obviously, be a time where by individual members of the parliament will be allowed to forward questions and raise some issues in connection with the activities of the concerned executive agency. The head of the executive is expected to answer questions with a view to elucidate issues raised in the House. As such, when a report is being presented by the head of a particular executive department, standing committee members are at liberty to employ the act of oversight over the administrative institution required to present report on the basis of the question and answers and interpellations being undertaken in the House. Hence, the question and answers, and interpellations conducted in the House can be considered as one mechanism through which the act of oversight can be made possible. However, in Ethiopia questions and answers have not been properly used, lack of well trained members of parliament. Therefore, there need for capacity building of member of parliaments and committee clerks.

4.7.1. Motion of no Confidence

There can be no democratic system of government without transparency and accountability. The primary responsibility in this field falls squarely on the shoulders of parliament. Through its core oversight function, parliament holds the government to account on behalf of the people, ensuring that government policy and action are both efficient and commensurate with the needs of the public. Parliamentary oversight is also crucial in checking excesses on the part of the government.

The normative strength of democratic rule emanates from, and is predicated on a representative and effective Legislature whose function is to check the excesses of executive power. Parliamentary oversight is therefore one of the main features of parliamentary democracy.³⁴⁹

³⁴⁸ Id Article 7(1)

³⁴⁹ Adedeji Ebo and Boubacar N'Diaye, *Parliamentary Oversight of the Security Sector in West Africa: Opportunities and Challenges*(ed): Geneva Centre for the Democratic Control of Armed Forces (DCAF), 2008, p.17

The institutional underpinning of parliamentary democracy is the government's dependence on majority support in the Legislature. This institutional arrangement ensures that directly elected member of parliaments can control policymaking activities by the executives. Parliament is there to oversight the executives actions and function.³⁵⁰

Under Proclamation No. 470/2005, and Regulation No.3/2006, the House has been given the power to oversight executive's function. Article 4, of the proclamation, and the same Article of the Regulation provides that one of the general mandates of the House is to call and question the PM and other Federal officials to investigate the executives conduct and discharge of its responsibilities and power to take decision or measures it deems necessary. A motion of no-confidence, which could be one possible measure that the House may take, indicates a lack of confidence in the government as a whole and requires that the chief executives and the cabinet resign if the motion succeeds. This opens the way to fresh elections. This in itself inhibits no-confidence motions being called on a whim. However, a no-confidence motion should not necessarily require fresh elections. It should allow for the formation of a new government commanding the necessary support from the members of parliament. It is recognized that parliament is not required to have confidence in a PM who is separately and directly elected by the people themselves.

Motion of no confidence is the measure taken place when this pertinent government bodies fails to discharge their duties and fail to implement the government policy in a proper and desired ways. What would happen if the government fails to discharge its function is not clear under Ethiopian law? The Constitution does not clearly stipulate what kind of measure the House could take on the government bodies or officials in case they fail to discharge their Constitutional duties. Like any other parliamentary government, the Ethiopian parliament has the Constitutional power to take any kind of measure including motion of no confidence.

The Regulation No. 3/2006, under its Article 93 provides for the House the power to take motion of no confidence. As a result, any member may move a motion of no confidence in the Council of Ministers. More over Article 94 provides for the procedures of submission of a motion of no

³⁵⁰ Nizam Ahmed and Shahnaz KhanSource. The Development of Parliamentary Oversight in Bangladesh: A Research NoteAuthor(s):: Legislative Studies Quarterly, Vol. 20, No. 4 (Nov., 1995), pp. 576

confidence and its admissibility. Accordingly, the notice for the motion shall be submitted to the House's Business Advisory Committee through the Speaker, two days before the sitting of the House.³⁵¹ If the Advisory Committee considers the notice for the motion to have been duly submitted, it may cause the motion present to the House and the Speaker shall have the member concerned read to the House the motion approved by the Advisory Committee.³⁵² If the motion is supported by 1/3 of the members, the Speaker shall appoint a day for deliberation within fifteen days. Where the motion fails to get the support of 1/3 of the members, the Speaker shall announce to the House that the motion has been rejected. If the motion is approved by the committee, deliberation will be made on the motion until the speaker of the House believes that deliberation is enough, and the vote will be conducted.³⁵³

The wording of FDRE Constitution of Art.55(18), which empower the House to take 'any measure' should include the measure of motion of no confidence. The rules and procedures should also be the same as provided under Art.55 (18) that at the request of one-third of its member. The justification for this is the HPR is constitutionally declared to be the highest political authority.³⁵⁴ The practice is however, there would be no effective oversight in the existing composition of Ethiopian parliament as almost all parliamentary seats are controlled by the ruling party, and the executive is considered as the sub-section of the parliament. It is unthinkable that the member of the parliament who are also the member of the ruling party, to initiate motion of no confidence on their own government organ with a full knowledge that motion of no confidence is resulted in either dissolution of the parliament or resignation. Besides, exposing the defect and failures of the executive is considered as party failure.

Generally, like other parliamentary form of government, the vote of no confidence is power of the parliament to overview the executive branch of government. There is no parliamentary measure of motion of no confidence that taken in Ethiopian history before. The Constitution also does provide in explicit manner whether the parliament could decide on the motion of no

³⁵¹ Article 94 of Regulation No.3/2006

³⁵² Ibid

³⁵³ Ibid

³⁵⁴ The FDRE Constitution Art,50

confidence.³⁵⁵ In other countries, like Germany, when Commons decide to take motion of no confidence they are required to prepare other person to take the post. This is constructive mode of motion of no confidence. The motion of no confidence is resulted in resignation from power and re election may be called when parliamentary dissolution is opted. This may require time and huge resources both in terms of human and financial. The motion of no confidence requires good faith and mutual consensus among the Member of Parliament. Every action and decision needs careful observation of the situation and facts exist around unless, it may lead to the destruction of the state.

4.8. Challenges of Effective Legislative oversight in Ethiopia

In many jurisdictions, the challenges confronting effective parliamentary oversight of the executive can be explained on the basis of authority, ability and attitude of parliament regarding its oversight functions. Authority represents lack of Constitutional provisions for parliamentary control. Beyond formal Constitutional provisions, the degree and effective parliamentary oversight may be affected by the capacity of the parliament to hold the executive organ accountable. Also significantly, the capacity of parliaments to oversee the executives is handicapped by the tendency of the incumbent executive branch of government to marginalize the legislature.³⁵⁶

Besides, parliamentary oversight depends on the power of the parliament in relation to the government. In this context power means the power to make influences on the government options and behavior according to the collective will as expressed in parliaments. This oversight

³⁵⁵ There are some people who argue that motion of no confidence do not have Constitutional guarantee. They argue that the Constitution does not in any place prove the legal frame work for the motion. However, the writer of this thesis argues otherwise. Article55(18) of the Federal Constitution, the Article which define the powers and duties of the HPR reads, the House can deliberate any item within the power of the executive where one-third of the member of the council so requires. The council shall have the power to deliberate any matter and lake any measures it deems necessary and appropriate. This particular provision gives the wider power to the House to take ‘any’ measure it deems necessary, which also include the motion of no confidence. The undisputed fact however, is that either the Constitution or other legislation does not provides the procedures and the ways the problem can be solved after the motion. In other jurisdictions like Germany there is ‘constructive motion of no confidence’. This means the oppositions should agree who is going to replace the minister in whose against the motion is taken.

³⁵⁶ Gareth Griffith: Parliament and Accountability, the Role of Parliamentary Oversight Committees. Brief paper No. 12/05.p.17

role of the parliament also extends to the overseeing the implementation of the policies, legislations, decisions and even within the budget approved by the parliament. The power of the parliament in overseeing the executive is emanated not only from the Constitution but also from the rules of the parliaments.³⁵⁷

In many jurisdictions, this oversight role of the Legislature may be affected by different factors. These factors may be lack of clearly defined Constitutional and legal powers, resources and experts and political will.³⁵⁸ In case of Ethiopia, the first among other factors that greatly affects parliamentary oversight is strong party discipline. Party discipline means the guiding rules that each party member is obliged to confirm with. To put in other words, this party discipline limits the capacity of the members of the party not to go out of the party's agenda and programs. By the same talken, they have to be very loyal to their political party's agendas and programs and they have to express the views that their political parties believed in even though they personally have the stand that the there is the alternative agendas and programs. Moreover, particularly they cannot vote in favor of the oppositions in the parliament even though they personally believe that the policy alternative proposed by the opposition is better than proposed by their political parties.

In the HPR almost all parliamentary seats is occupied by the country's ruling political party (EPRDF). It is believed that members from the ruling party were said to be highly dictated by their party's political agenda. As such, they usually manifest their willingness to support the government regardless of the matter (political agenda) the government comes up with. As a consequence, the HPR cannot perform its best with respect to its task of oversight, as government party members have a clear unconditional support towards their political party. Moreover, even if the member of the parliament aware that there is a, defect they do not want to disclose it, because, it is considered as party failures. The loyalty of the ruling party members goes even to the extent of believing that challenging the government in parliament amount to the breach of party discipline, and to the extent of being committed to give priority to party concerns than addressing the problems of the people who elect them.³⁵⁹

³⁵⁷ Nizam Ahmed and Shahnaz Khan, *The Development of Parliamentary Oversight in Bangladesh: A Research Note*, *Legislative Studies Quarterly*, Vol. 20, No. 4 (Nov., 1995), pp. 573-583

³⁵⁸ *Supra* note 145

³⁵⁹ *ibid*

Therefore, the member of the government party are proved to be strictly loyal to their party by manifesting their blind support to any matter their party leaders come up with for approval in the House. As such, no challenge comes from these members, as a result of which the leading executive encounters no obstacle in having ratified whatever draft laws it submit to the House. Therefore, there is a clear merger between the Legislature and the executive body in Ethiopian parliament. This is basically due to the strong party discipline and one party dominance that the member of the government party manifest within the legislative body. Ato Dejene G/Mariam, the structural and organizational director in the EPRDF, however, does not agree with this conclusion. He said,

The parliamentary oversight is not affected by one party dominance and strong party discipline especially in EPRDF. The members of the parliament representing EPRDF are not dedicated to the party. They are rather free to raise any issues they think necessary and relevant. I am not supposed to hide the fact that the member are required to dedicate to the party in the past two parliament period history. The reason was the previous parliaments were consists of considerable number of members of the opposition political parties and they were required to go against them. Therefore, there was a uniform stand in the parliament from the side of the ruling party's Member of Parliament. Now this trend has been changed and the parliament is experienced considerable abstention and opposition vote even from our member. This is because, they are not subject to any criticism and are not subject to any measure for the mere reason they take different positions.³⁶⁰ (Translation mine)

However, the above idea cannot go beyond politically motivated idea. This is because, there is always pre-meeting that held in EPRDF to have one stand and they still required to reflect the already agreed agendas in the parliament. On the other hand, the existing nature of the Ethiopian political structure is the dominance and the relegation of multi party system in to loosely conceived ‘‘dominant party’’ political system. One party domination in many jurisdictions resulted in domination of the party in government institutions. For instance, in South African context, because of a dominant political party controls the power of constitutional amendment,

³⁶⁰ An interview Conducted with Ato Dejene G/Mariam, the Structural and Organizational Director in EPRDF on July 4, 2011

the content of a constitution reflects the fact of political party domination.³⁶¹ The implication is therefore, most of the institutions that are controlled by the ruling dominant party are likewise casualties of political party domination. Likewise, the EPRDF continues to control different institutions and the bureaucracy, which are crucial for maintaining and perpetuating its dominance. In all cases, political factors and considerations have undermined the role of parliaments as bodies that failed to foster mechanisms of checks and balances that are pivotal in checking and controlling the mode of operation of the executive. EPRDF's dominance in the HPR and its party discipline, which requires its members of parliament to support steadfastly proposed bills of the executive without much scrutiny and debate, undermine the legislative capacity to check any excess committed by executive organ of government. Therefore, generally what can be said is that Ethiopian Legislatures have increasingly been subservient to the wielders of power, notably the political executives and the HPR existence and mode of operation is a function of power relation closely associated with the working of the party politics and electoral system.

Most importantly, the role of the MP is also very important in tackling the constraint of effective oversight. The members of the HPR are law makers and scrutinizer and oversee of the executive branch of government. They are supposed to ensure that the welfare of people is promoted, the quality and timely services, and to ensure those who fail to deliver are sanctioned especially those government departments, and to ensure that the government department is in charge of the promotion of the service to the people with available resources and enabling legal and implementation framework policy. This therefore, involves the exposing of corruption, inefficiency or waste in the execution or administration within its legislative competence and in the disbursements or administration. Therefore, Effective and proper oversight of the executive thus requires of members of parliament and members of the executive to fully understand the Constitutional justifications and rationale behind the accountable government and the purposes it serves. Accountability and oversight can be at their most effective if recognized by those in power as the central organizing principle of our Constitution. To this juncture, the understanding of the voters on the role of the parliament is another problem to effective parliamentary

³⁶¹ Sujit Choudhry, 'HE HAD A MANDATE'; The South African Constitutional Court and the African National Congress in a dominant party democracy p. 7.

oversight. This means, the MPs face a huge challenge in their efforts to represent their constituencies. The voters expect their MPs to provide them with services and have little appreciation of the role that MPs are expected to play within the country's Parliament. This fact makes the MPs to be reluctant in parliamentary debate, questioning and their oversight role and make them to raise only the issues of their constituencies like the question of infrastructure. This in turn, makes them to neglect their oversight role and they pay less attention to overseeing the executive organ of government through debate, question and even through the committees.

The oversight role is often seen as that of opposition parties alone, designed to police and expose maladministration and corruption. Such a view is limited and deficient. Oversight and accountability help to ensure that the executive its laws in a way required by the Legislature and the dictates of the Constitution. To put it in other hand, political commitment is very important for the proper parliamentary oversight is very important. This means, even if the legal basis for parliamentary oversight is impeccable, effective parliamentary oversight of the executive cannot be achieved without this commitment on the part of the MP's. Thus, the political commitment of the parliamentarians to use the tools and mechanisms at their disposal is a crucial condition for effective parliamentary scrutiny.

The Legislature is in this way able to keep control over the laws that it passes, and to promote the Constitutional values of accountability and good governance. Thus, oversight must be seen as one of the central tenets of our democracy because through it the Legislature can ensure that the executive is carrying out its mandate, monitor the implementation of its legislative policy and draw on these experiences for future law-making. Through it, we can ensure effective government. Seen in this light the oversight function of Legislatures complements rather than hampers the effective delivery of services with which the executive is entrusted.

Our parliamentary system of government does not however give full expression to the notion of separation of powers because of the close links between the Legislature and the executive. Our executive is not only chosen from the Legislature but also primarily from the leadership of the majority party. In addition, like many other parts of the world a strong party-based and one party dominance system exists in Ethiopia. This can hamper effective oversight as members of the Legislature may be reluctant to call to account a government that is made up of their party. Members of the majority party in particular may be unwilling to subject the government to

rigorous scrutiny for fear of being perceived as disloyal and as a consequent loss of their parliamentary positions.

Ethiopia's political system has been characterized by a strong executive supported by a weak Legislature that includes non-elected members from the military and functional groups.³⁶² The relationship between the executive and Legislature was also imbalanced because of the political culture which came to the dominance of the executive over the legislature. This can be characterized as a hierarchical or command culture that undermined democratic control over government. Recent debate has centered on the most appropriate composition for the Legislature. The Legislature enjoys both the powers to make laws and to debate the performance of the executive and other institutions of government. The challenge, however, is to find a balance between an empowered Legislature and an effective executive. It also has an important role in provoking or encouraging a broader extra parliamentary political debate. To do so, it must provide access to information and debates and have an active committee system.

The other important factor affecting the oversight function of the parliament is lack of adequate resources and experts. It is true that effective parliamentary oversight depends on the experts and adequate resources (both financial and manpower and technical), especially for the parliamentary committees. However, the experts found within parliament rarely match the experts of the governments. In most cases, parliaments have a very small research staffs. This obviously affects effective parliamentary oversight. To put in other words, for parliamentarians to effectively carry out their respective oversight roles and responsibilities, it is not sufficient for them to have legal authority. They must also have the corresponding capacity to do so. Exercising oversight entails a diverse range of issues, most of which are highly complex and difficult to comprehend without either experience or accumulating years of knowledge. If they do not have such knowledge and experience, attempting to exert oversight executive organ can become extremely difficult.³⁶³

The ability of the parliament to oversee the executive's action is influenced by time factors and the level of experts and information available to it. It is also very important for the parliament to

³⁶² FDRE Constitution under Art. 74(2), empower the PM to appoint a person for ministerial post either from the two Houses or from outside whom he think possess the required qualification.

³⁶³ Dr. Thomas Jaye Liberia: Parliamentary Oversight and Lessons Learned from Internationalized Security Sector Reform the Kofi Annan International Peacekeeping Training Centre, Accra, Ghana. p.15

receive timely information about the business of the government and decisions on critical issues affecting the public interests. The parliament cannot take necessary measures if the governments brief its action after reaching the final decisions. In such situations, the parliament will be confronted with a 'fait accompli' and will have no other alternatives than to approve or reject the governments decisions. This problem is visible in Ethiopian parliament where the parliament is there only to approve the actions and decisions of the executives action with the view that every of such actions and decisions are correct and there would be no change except wastage of time.³⁶⁴

In other words, the legislature is not informed before hands about what government (executive) is doing. The most important prove to this conclusion is the decision of the PM Meles Zenawi to ban indoor meetings and demonstration at post 2005 election and most recently when the parliament is informed and approves the decision of the government in sending the peacekeeping troops to the Abey the territory claimed by the North and South Sudan.³⁶⁵ Under the regulation, in its way to conduct its effective functions, the committees are empowered to inspect the necessary documents it deems necessary, hearing of witnesses, and even may order the concerned government bodies and agencies to present reports. The problem is however, the committees lack the legal power to compel these departments to produce the report. The other problems associated with the committees are the continuity of the committee membership which makes them to be tedious, the level of experts which they develop, the persistence of the members and their ability to concentrate on the work particular departments or section of departments.

According to Ato Alemu Koya, the director of the office in MEDREK opposition political party, the role of the Ethiopian parliament in monitoring and implementing laws and policies is either totally absent or negligible at best.³⁶⁶ Moreover he said,

The Ethiopian parliament is merely talking shop where the members are gathered only to approve the executive's action. He further remembers the British parliament where they

³⁶⁴ Interview with Ato Girma Seifu representative of MEDREK in HPR.

³⁶⁵ Interview conducted with Ato Alemu Koya former MP and currently he is the director of the office in MEDREK opposition political party on July 5, 2011

³⁶⁶.Ibid

*make a debate which lasts about six months to decide whether to send the troops to the Falkland and compare with Ethiopian parliament which demands about 20 or 30 minutes to decide whether to send the Ethiopian troops to Somalia.*³⁶⁷ (translation mine)

HPR listens to the reports of different agencies under the executive. In instances where irregularities and defaults characterizing the actions and behaviors of government agencies under the executive branch are uncovered, HPR hardly urges the executive to account for irregularities and measures taken on defaulter officials and institutions. Progress made in this regard is below satisfactory thereby necessitating improvement in checking and controlling abuse through more rigorous scrutiny and oversight. For example, the parliamentary Budget and Finance Committee is legally empowered to participate actively in the budget process. However, its involvement is limited only to endorsing government budget proposal of the Ministry of Finance and Economic Development. Given that the Budget and Finance Committee and other parliamentary bodies are not involved in the budget process from the start, they lack information for determining whether budget requests of the executive are appropriate or otherwise.

This is one area that calls for improvement by seeking means and ways that could ensure active participation of parliament in the budget process and other oversight functions. In the absence of clarity and pertinent information resulting from lack of active involvement in the workings of government, parliament is left with no option other than endorsing reports and requests of the executive as presented. One problem that Parliamentary Committees encounter in this regard relates to inadequacies in getting expert advice and opinion on matters that require technocratic skills in specialized knowledge. On the other hand, the effectiveness of the parliamentary oversight through parliamentary committee depends on how much the committees are free from the dominance and also influence of the governing party especially in case of the Public Account Committee (PAC's). There are different factors that for the PACs to be successful in discharging its oversight mandate. These are: the balanced representation of all major political parties in the committee, exclusion of government members from the commission, adequate powers of the committee to make recommendations and choose matters for scrutiny and investigation and the

³⁶⁷ *ibid*

adoption by the committee of appropriate procedures and process to undertake its tasks.³⁶⁸ For this matters, in UK House of Common (HoC) conducts oversight function on the government and for deliberating on matters of public interests. There are 30 permanent committees in the HoC. The House's Public Accounts Committee is chaired by a member of the oppositions.³⁶⁹ The trend in Ethiopia shows of course, that the chair of the Public Account Committee is from the oppositions.³⁷⁰ The present situation in Ethiopia as far as the composition of the committees are concerned all are the member of the ruling party and therefore talking about the oppositions involvement here seems feeble.

Media scrutiny is also very important for the proper and effective oversight not only to the parliament but also to the public scrutiny. Medias are the tools by which government activities are exposed to the public. On the other hand, an important function of mass media is to bring to attention of the people evidence of corruption and abuse of power and ineffective policies and program's of government.³⁷¹

Freedom of press and non censorship are the very heart of the effective media to disseminate relevant and important information to the public. Moreover, it enables the people to judge the actions and decisions of the government and promote the public participation. To this end, the media should transmit all proceeding of the parliament in live. Not only that the media should also transmit the proceedings of the standing committees in the parliament, and the site visit of the standing committees. This enables the people to understand whether the government is acting what they promised during the election campaign. This however seems ideal in Ethiopia. The government Medias always disseminates the information in affirmative. On the other hand, the Medias that are controlled by the government are always in favor of the government. They are reluctant to criticize the government and communicate only the information in affirmative, only the positive action of the government.

³⁶⁸ Riccardo pelizzo,et al.(eds) Parliamentary Oversight for Government Accountability(World Bank Institute, Washington D.C, 2006),p.26-29

³⁶⁹ Assefa Fiseha and Getachew Assefa (eds): Institutionalizing Constitutionalism and Rule of Law: Towards Constitutional Practice in Ethiopia, Ethiopian Constitutional Law Series, AAU, 2010.p.170

³⁷⁰ Currently, the Public Account Committee (PAC) in Ethiopian is chaired by Ato Girma Seifu, the member of the parliament representing MEDEREK opposition political party.

³⁷¹ Paul Soifer, Abraham Huffman, D. Stevan Voss American Government Hungary Minds Inc. Newyork.2001.p.72

On this regard, Ato Girma Seifu said,

*Lack of freedom of press in Ethiopia is the major obstacles to the effective parliamentary oversight. Those authors who release the information that criticize the government on the private magazines and newspapers are given warning and ordered to rewrite the compensatory articles for apologies and which states what they write is wrong.*³⁷²(translation mine).

According to him, most private magazines and newspaper with draw their license either by themselves or by the government orders. Apart from this, the government Media focuses on the executives and the positive actions that are performed by the executives.³⁷³ Even, the members of the parliament confirm this fact complaining the public Media do not give them the necessary and due attention to the parliament proceedings especially to the committees meetings. Those which are broadcasted are edited information and only focusing on the progress not the failures of the committees after two or three weeks.³⁷⁴ Therefore, this fact undermines the ethical consideration of the media i.e. neutrality, impartiality, integrity and reliability.

4.9. External Institutions of Oversight: The Human Right Commission and Institute of Ombudsman

The parliament to make effective oversight has to establish different institutions accountable to it, to help its oversight function. These institutions are the institution of ombudsman and the Human Rights Commission. For that matter, the Ethiopian parliament has also established the two institutions as mandated by the Constitution. The Human Rights Commission is entrusted with enforcement and protection of human rights,³⁷⁵ and the Ombudsman with the same mandate but focus on the violation of human rights because of maladministration.³⁷⁶

In connection to the remedy in the fact of violation of human rights, institutional structure and frame work for the protection and enforcement of human rights is very important. The primary responsibility is on the main stream institutions in the charge of rights administration. These are,

³⁷² Interview Conducted with Ato Girma Seifu, the Medrek Representative in the HPR's.

³⁷³ Sendek News Paper Published on Hamle 13, 2003, E.C, No.306

³⁷⁴ *ibid*

³⁷⁵ See the Preamble Parts of the Proclamation No.210/2000.

³⁷⁶ Art..6 (3) of the proclamation No.211/2000.

the parliament (both the House of People's Representative and the House of Federation) by making preventive laws and through parliamentary oversight, the executives by respecting human rights and prevention by others and judiciary, by enforcing rights by determining entitlements, punishing the perpetrators and redressing the victims. This shows that the duty to protect and enforce human rights in Ethiopia starts from strengthening mainstream institutions. There are also special bodies, Ethiopian Human Rights Commission and the Institute of Ombudsman, in addition to the mainstream institutions responsible for the protection and enforcement of human rights. Their establishment is with regard to consideration arising from violations of human rights in the past provided the driving force and also the acknowledgement that such institutions are instrumental in the protection and promotion of human rights.³⁷⁷

The Ethiopian Human Rights Commission/EHRC/ established under the Proclamation No.210/2000 and the Institute of Ombudsman under the Proclamation No.211/2000. The two institutions are similar in their function. The Institution of Ombudsman of course, mainly works on the violation of human rights arising from maladministration from the executives. The Human Rights Commission has two main mandates, i.e. the promotional and protective mandates. The promotional is raising awareness of the public and the member of relevant institutions and civil organizations by way of education and publicity. The protective will concentrate on the investigation of complaints of human rights abuse as stipulated under Article 5 and 6 of the proclamation. The same mandate is true for the institute of Ombudsman. In the later, the mandate is not limited to abuse of authority by civil servants but would also include abuse by holder of public office (ministers including head of governments) would give a greater degree of credibility and effectiveness to the office. It promotes the government institutions to do better for the protection and enforcement of human rights.

The institutions for the protection and promotion of human rights in Ethiopia are therefore, the bodies' entrusted to ensure the compliance by government organs with the rights and freedoms guaranteed by the Constitution. They do not replace the mechanisms inherent in the legal structure; instead their activities must go hand in hand to compliment the work of existing legal and other institutions in order to make them more effective. For instance, by involving in the investigation of the violations, production of evidence and securing the attendance of witnesses.

³⁷⁷ See the Preamble Parts of both Proclamations

However, under the existing law their function cannot go beyond the power of making the recommendation and mobilizing shame on the institution that perpetrate abuse or neglect of rights. These institutions therefore, indirectly influence main stream institutions for the protection and enforcement of human rights. They do not have adjudicatory power and then cannot give remedial decisions.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1. Conclusion

The aim of this thesis was to explore the parliamentary oversight and its contribution in ensuring constitutionalism and accountability under the FDRE Constitution. It is undisputable that the concept of democracy is very important as it enables the people to participate in important and sensitive issues of their own indirectly through their representatives. The electorate representing the mass entrusted with the power and mandate to watch those who are in administrative tasks. On the other hand, those who are entrusted with the power of administrative tasks, and engaged in day to day activities which in one way or another affects the life of the people are required to be held accountable to the legislatures. A condition of exercising this power in constitutional democracy is checked by being held accountable to an organ of government distinct from it, (legislature). This is because legislature (the House of Peoples Representatives) is the highest organ of the Federal Government which shows that the House is with an overruling influence over the other organs.

The legislature apart from its traditional role of law making power is also mandated to oversee and control the executives over all activities and functions of the executive organ of the state, which extends to checking the implementation of the law in accordance to the legislatures intent and implementation of the policies as per the desires of the legislatures. To put in other ways, the mandates of oversight reside with the parliament through which the House establishes rules of mechanism or designates subsections to perform this oversight functions. Legislature is empowered to hold organ of the state accountable and exercise general oversight over executive authority and organ of the state. The FDRE Constitution, under its Article 55(17&18), empowers the federal legislature to take a necessary measures it deems necessary to hold the executive organ accountable, and the members of the executive council are also individually and collectively accountable to the same.(Article 12 of the FDRE Constitution).

Therefore, the needs and justifications for parliamentary oversight have been briefly explored under this thesis. The parliamentary oversight among other things, have the function of detecting

and preventing abuse on the part of the executive, detecting wastage of resources(financial scrutiny) and enhancing constitutionalism and accountability. As a result, the principal value justifying parliamentary oversight of the executive is said to be ensuring the triumph of representative government by holding the administration accountable to popular sovereignty. In this research an attempt has been made to examine the theoretical basis for the parliamentary oversight. To this end, the research has made an attempt to vindicate the nature of parliamentary oversight in presidential and parliamentary system of government. As a result, the research found that parliamentary oversight is important to ensure constitutionalism and accountability in a given democracy. As a general point the following points can be identified as the general objectives of parliamentary oversight. These are: seeing that policy is implemented in accordance to the intent of the legislatures; to determine whether the policy is effective and its impact is in accordance with the congressional standards; to prevent waste and dishonesty and assure efficiency; to prevent discretionary abuse; and to prevent the public interest by monitoring and constraining agency-client group relation. Most importantly, parliamentary oversight is important to hold the government accountable and to ensure constitutionalism. Therefore, the institution which is mandated by the constitution and its oversight function is justified by the constitution is the legislature organ. The legislature is mandated to this important function because in its representative function and it is the sovereign organ in most parliamentary systems.

The matter of topical interest in the thesis is parliamentary oversight towards ensuring constitutionalism and accountability under the FDRE Constitution. The constitution lay down as one of its fundamental principles the ‘conduct of government to be transparent and accountability of government’. The Constitution provides the general importance of the principle that the conduct of affairs of government shall be transparent, and it goes beyond to specify that any public official or an elected representative is accountable for any failure in official duties. (Art.12 (1&2)). Among the list of the powers and functions of HPR enumerated under the Constitution, the most important one which in one way or another related to its oversight function is the one listed under Article 55 (17 and 18) of the constitution.

Apart from this, as per the provisions of the Constitution Article 55(1) and 59(2), which empower the House of People of Representative to make its own rules of procedure and law making procedure, the House enacted proclamation No.470/2005, the working procedure and member’s

code of conduct proclamation which in turn provides for the enactment of regulation. As a result the House enacted regulation No.3/2006. This regulation was enacted because it is important to enable the Ethiopia House of People's Representatives to effectively discharge its powers and functions as well as the responsibility vested with by the public as enshrined in the constitution, and to organize the working mechanisms and structures of the standing and ad hoc committees of the House in consideration of the Federal Government organ structures. The regulation reaffirms the power of the HPR enshrined under the constitutions. Accordingly, the House has the power to call and question the government officials (including the PM), and investigate the Executive's conduct and to check if they are discharging their responsibilities in accordance to the limit of the power they are entitled to function. Moreover, the proclamation under it Article 4(b) as enshrined in Article 55(17) and (18) of the Constitution the House has the power to call and to question Federal officials and to over sighting and controlling the executive as well as it has the power to discuss on any matter pertaining to the power of the executive and to take decisions or measures it deems necessary. Therefore, the main objectives of the House in over sighting the executive are to check whether: public and government resources and property are utilized properly, activities are carried out in accordance with rules and regulations, there exists fair and fast development direction, democracy and good governance prevails, the right, peace and security of citizens are maintained, there exists coordination among government bodies. (Art.73 of the regulation).

In an attempt to make a large sense of the tools that the legislature uses in playing it's over sighting role, the committee establishment takes the leading place. Committees offer powerful oversight role. It provides a forum in which current laws, proposed bills, and other important issues can be studied by the legislators in detailed manner before the floor of the House. As result, the regulation No.3/2006 provides for the establishment of different standing committees in the HPR to facilitate the work of oversight over the executive organ of the government.

Apart from the standing committees there are also ad hoc and sub-committees established by the House to assist the work of standing committees. There are also other tools of parliamentary oversight used by the House such as oversight during legislation; the most important one is oversight through production of the regular report by the executive organ of government about their overall activities and performance. Oversight through preparing workshops and forums, questions and answers periods, and preparing debate forum are also the most important tools of

parliamentary oversight. Motion of no confidence is also other possible tools available to the House though its realization is in question as there are no detailed rules to the House to make use of it.

The factors affecting the effective oversight role of the legislatures has been also dealt. To this end, the thesis tried to identify the internal and external factors being a hindrance to the over sighting role of the HPR. The merger of legislative and executive is one of such factor. As per article 56, of the FDRE Constitution, a political party, or a coalition of political parties that has the greatest number of seats in the House of Peoples' Representatives shall form the Executive and lead it. This factor therefore, contributed a lot to the existence of strong party discipline. Members of the HPR are highly dictated to their political party, and exposing the executive's failure is considered as the failure of their political party. On the other hand, the existence of one party dominance in Ethiopia has hinders the parliament to conduct effective parliamentary oversight. To put in other ways, the existing nature of the Ethiopian political structure is the dominance and the relegation of multi party system in to "dominant party" political system. One party domination in Ethiopia has resulted in domination of the party in government institutions. Therefore, EPRDF continues to control different institutions and the bureaucracy, which are crucial for maintaining and perpetuating its dominance. In all cases, political factors and considerations have undermined the role of parliaments as bodies that failed to foster mechanisms of checks and balances that are pivotal in checking and controlling the mode of operation of the executive. Therefore, generally what can be said is that Ethiopian Legislatures have increasingly been subservient to the wielders of power, notably the political executives, and this factor negatively affects the oversight function of the parliament.

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The FDRE Constitution enshrined the principle of separation of powers by stipulating that legislative, executive, and judicial powers of the federal government are vested on the HPR, the prime minister and the council of ministers, and the federal courts respectively.³⁷⁸ Looking at its structure therefore it is possible to say that the FDRE Constitution recognizes the principle of separation of powers. Despite such constitutional stipulation of the principle of separation of

³⁷⁸ The FDRE Constitution Arts.55(1), 72(1), 79(1) respectively, see also Art.50 (3)

powers, the practice clearly shows that the legislature, more gravely the executive is dealing with more and more self-aggrandizing enactments yet encroaching on the constitutional mandate of the House, which is clearly observed in case of sending the troops to the Somalia and South Sudan where the House is informed after the troops are already sent by the order of executive council. Therefore, lately informing to the House by the executive is one of the factors affecting effective parliamentary oversight.

Lack of understanding of the members of the House in considering the oversight role as the major role of the legislatures and oppositions is another obstacle to the effective oversight. This is to mean the attitude of the government towards the oppositions, considering them as anti-government is another factor aggravating the problem. The government attempts to discourage their participation in different ways, for instance through enacting different legislations which in one way or another discourage their participation and presupposes their activities as anti-government. As a result, the role of oppositions in the parliament has been undermined which directly affects the oversight role of the parliament. Lack of freedom of expression of the oppositions in the parliament and the non neutrality of the speaker of the House especially in giving opportunity to the oppositions to pose questions before the parliament and tabling the debate before the floor of the House, in allocating reasonable time also negatively affects the role of the oppositions in the Ethiopian parliament. Effective and proper oversight of the executive thus requires of members of parliament and members of the executive to fully understand the justifications and rationale behind the accountable government and the purposes it serves. Accountability and oversight can be at their most effective if recognized by those in power as the central organizing principle of our Constitution. Besides, understanding of the people on the role of the parliament is another problem to effective parliamentary oversight. This means, the MPs face a huge challenge in their efforts to represent their constituencies. The voters expect MPs to provide them with services and have little appreciation of the role that MPs are expected to play within the country's Parliament. This fact makes the MPs to be reluctant in parliamentary debate, questioning and their oversight role and make them to raise only the issues of interest of their constituencies like the question of infrastructure.

In addition, lack of sufficient budget (for standing committees to take field visit like poor infrastructure and vehicles), lack of commitment from the side of the member of committees and

the control of the ruling party the whole standing committees are also the constraints to effective parliamentary oversight. As far as the media scrutiny is concerned, the media owned and controlled by the government are reluctant to expose the government's failures as they only give attention only to the success and the progress achieved by the government. Those private Medias are still under the government's threat which put the freedom of press in question in the country. However, the core problem to contributing to ineffective parliamentary oversight is one party domination of the legislature and the government institutions. Generally, it can be concluded that because of the above mentioned reasons the existing Ethiopian parliament is not conducting effective parliamentary oversight on the executive organs and the writer of this thesis concluded that the quality and process of the parliamentary oversight at the House level is very poor. As a result, the constitutionalism and accountability that the parliamentary oversight intends to bring is in question.

5.2. Recommendations

Based on the above facts and reality, the following points are recommended.

1. One of the core problems to the effective parliamentary oversight in Ethiopia is one party domination. As it is stated in the body of the thesis, one party domination resulted in domination of single political party in all government institutions which undermines the parliament's oversight role. As a result, multi party system is unquestionably decisive for the proper and effective parliamentary oversight which Ethiopia is recommended to have. The government should commit itself for its realization. Effective parliament also needs cooperation between government and oppositions. Therefore, there should be a mutual understanding between the government and opposition and the government should be conscious about the relationship with opposition inside and outside the parliament. Thus, the speaker of the House needs to ensure that the opposition party gets adequate allocated time in the parliament during question time. Moreover, the right to access to information for the oppositions should be ensured by the government. This means, the government should be transparent to oppositions and public about their action and strategy. To this end, the government should consider oppositions view and opinion so that they can understand those sides that may be overlooking by the legislature. They should be given equal opportunity to criticize government policy or action in the parliament freely and ensuring free, independent and open environment for oppositions is also important. For

this purpose, there should be independent state media to broadcast the views and opinion of the oppositions to the public.

2. Most importantly, there should exist loose party discipline. This means, the member of the parliament representing the party in the parliament should not be bound by the ideas of the majority of the members representing the ruling party and the voting should not be in party line. They are not required to oppose the opposition in the parliament if they believe that the alternative policy or decision is better than presented by them. On this regard it is recommended that the parties to check their policy.
3. The parliament exercises its responsibilities in full if it has broad access to information, the necessary technical expertise, and the capacity to hold the government to account. Therefore they need to provide the parliament with adequate resources in terms of finance and experts. HPR also needs to reestablish the new and reorganize the existing tools of parliamentary oversight.
4. The member of the parliament should fully understand the rationale and justification behind the need for parliamentary oversight. Therefore, the parliament should take the necessary steps to upgrade the knowledge and competence through long and short training especially concerning the needs and importance of the parliamentary oversight. The understanding of the MP can also be leveled through experience exchange with other countries parliament.
5. As it is pointed in the body part of this thesis, the committees established in the parliament, can be very effectively used as a primary mechanism to ensure accountability. Ideally this task should not always be entrusted to specific bodies or committees within Parliament but should become an integral part of the work of all parliamentary bodies and structures. This will ensure the effective performance of the oversight task and will contribute greatly towards developing the values of transparency and accountability. At this point, it should be noted that the internal functioning of the committee system is in need of urgent attention: issues of recording, staffing, expertise and resources need to be addressed if they are to perform their tasks effectively. This means, the legislature should be provided with adequate financial and material resources to make them effective in discharging their oversight function. To this end the member of committees should have adequate internet access and well equipped libraries. If this is

made, they equipped with updated and necessary information which enables them to make reasonable decisions.

6. In order to promote public participation and popular awareness of the political process and public policy, it is important that the legislative process be as open and as public as possible. To this end, there must be no unreasonable limitation on press reporting of debates and proceedings of the House or any of its committees.
7. The external oversight institutions (EHC and IoO) role also should go beyond mobilizing shame on the government organs violating their constitutional mandates and or exercise their power ultra virus. They should be given the power to investigate and compel the institutions to give the necessary information to them. They should have compelling power unless they are nothing but toothless lion.

Therefore, the writer genuinely believes that the above measures, if implemented, will ensure effective parliamentary oversight which intern helpful in ensuring accountability and constitutionalism.

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